

## THE IDEA OF LEGISLATION IN THE EARLIER PLATONIC DIALOGUES

### CHAPTER III

#### LEGISLATION IN THE PROTAGORAS

##### I. Origin of Legislation.

The traditional Greek view about the law of the city is that it is both divine and natural. Probably this view is connected with the belief in its antiquity. It is difficult to distinguish the natural from the very ancient (<sup>1</sup>).

This view appears in some way, in Protagoras' speech (320c-328c). We are told there that by Zeus' decision, a «law», i. e. a divine decree, is established, which hinders anyone from being deprived of the sense of justice and reverence (322d). Justice, or rightness, and reverence are divine and so is political skill (322d). This amounts to the view that they are natural (<sup>2</sup>).

Does this apply also to legislation? We are told in 318e that the political art enables one to govern rightly his household and city. This is obviously the same with the art revealed by Hermes to the mortals on behalf of Zeus. Although this is not stated in the dialogue, we can reasonably infer that legislation is the most important species of this art, because it is also an art ruling the city.

If so, legislation is φύσει (<sup>3</sup>) and to say that it is a gift of Zeus is just a traditional way to express it (<sup>4</sup>). Protagoras presumably thinks that there is some natural inclination in man towards social life but that it needs some extranatural power to actualize it. This is evident from the spontaneous but unsuccessful attempts of men to create polis, as long as

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1) D. Loenen, *Protagoras and Greek Community*, p. 86.

2) This is not Pr. Kerferd's view in *J. H. S.* LXXII (1952), p. 43.

3) So, J. S. Morrison in *C. Q.* XXXV (1941), p. 8.

4) Plato, in the *Laws* I, 634e, 635c also thinks that the view of the divine origin of the law is a wish of the lawgiver and political scientist. Cf. Loenen, *op. cit.*, p. 88.

they were deprived of political skill. Divine intervention, giving birth to legislation, happens to be successful when there is a most urgent need of it. This is the case with every human device and legislation seems to be the result of an intuitive discovery stimulated by need. (322b).

This is explicitly stated in 326d. We are told there that the laws are discovered by wise and able lawgivers. These may be related to the «old sophists» who concealed their real art (316d) or to the seven wise men, referred to in 342a (1), with the qualification that Protagoras would not admit the—perhaps ironical—socratic view of their doric culture.

Hermes, acting under the guidance of Zeus, may be considered as a figure of what the wise lawgiver should be.

The wise lawgiver's discovery must be enacted by the decision of the community, if it is to be considered as a legal pattern (326d). It is noteworthy that this description is not so different from the account of the origin of law in *Laws* III 680b.

Thus, we may distinguish in the birth of legislation three main stages, a. the social need of legislation, b. the «divine» inspiration of the lawgiver, that leads to the discovery of legislative art, c. its enactment by the community, which is the birth of the law proper.

The legislative art and the law are by no means the result of a personal and arbitrary inspiration (2). Neither are they the expression of a somewhat artificial contract, although we may read in 326d the idea of a voluntary acceptance of the law by the community. This implies that the law is enacted through some sort of covenant (3). The origin of legislation is different from that of the other τέχναι because it is not only the result of a spontaneous, i.e. fortuitous process.

It is rather the outgrowth of the convergence of the three factors described. This being so, it is in itself a progress and by no means a decay or even a «second best» (4). Thus, it may not be opposed to the claims of nature, as Hippias maintained (337d) and is by no means a «tyrant» (5).

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1) Most of whom were lawgivers as Zeller, «A History of Greek Philosophy from the earliest period to the time of Socrates», I p. 120 says. Morrison, in *Durham University Journal*, IX, 1947—48, pp. 55, 58—59, observes that they were also considered as «sophists».

2) Cf. Loenen, p. 73.

3) For the distinction between contract and covenant see M. Oakeshott's introduction to Hobbes' *Leviathan*, p. XXXVLIII and J. W. Gough, *The Social Contract*, p. 3.

4) W. K. C. Guthrie, *In the Beginning*, pp. 80—81.

5) So, F. Heinimann, *Nomos und Physis*, p. 117. C. M. Gillespie in *Mind* XIX (NS) 1910, pp. 470—492 wrongly assumes that Protagoras admitted the *nomos*—*physis* opposition.



It may be added that, for Protagoras, as for Plato, the moral generation of legislation precedes the enactment of the written law. On the tacit assumption that communities and individuals develop on the same lines, presumably νόμιμα, i.e. the socially established moral standards appear first (325d). They are systematized and established as written laws by the «body politic» (326e) through the counsel of the wise statesman (326c-e) (1).

## II. Who is the Legislator.

Protagoras says that the holder of the legislative power and authority is the city, πόλις, (326c-e, Theaetetus 176b-c, 177c) when she enacts as law the counsel of the wise and establishes moral standards (ὑπογράφειν 326d).

He does not make precise what the nature of the polis really is. Presumably the polis is an ethical entity grounded on the moral unity of the citizens. This is secured by the fact that all the citizens share identical feelings about the honourable καλόν and the right δίκαιον (322c, 322d). This involves sharing identical beliefs, about what moral standards should be (325d), and displaying the identical virtues of rightness and moderation.

Thus, the city as legislator is functionally defined, through the description of her educational and coercive function (326d) (2). Protagoras follows on this point the Greek political tradition as Loenen convincingly demonstrates (3). The same mode of thinking appears in Theaetetus 167c.

Now, the city is not only defined as legislator, since Protagoras allusively recognizes her as a physical reality too (322c). When the former function is specifically referred to, Protagoras uses the expression κοινὸν τῆς πόλεως i.e. «body politic» (319d, Theaetetus 172b). Obviously, this «body politic» is the totality of the citizens, whether assembled or not, as far as their common legislative will and decision is concerned. The city or the body politic is the sole legislator. The wise lawgiver acts only as adviser and counsel. He may be the source of legal suggestions as in 326d but the city is free to admit or reject them.

This view is obviously akin to those of Pausanias, when he deals with the Greek «erotic law» in Symposium 182b-d. He says that the Athenian or Doric communities are responsible for this «law» although he

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1) Cf. Loenen, pp. 66-67.

2) G. Calogero, *Il Protagora di Platone*, p. 54.

3) P. 83, n. 32. He quotes Thucydides VII, 77, Isocr. *Areop* 14, 84 and Aristotle, *Politics* 1274b41, 1295a40 cf. also J. W. Jones, *Law and Legal Thought of Greeks*, p. 308.

pays some regard towards moral traditions of the respective communities. Similar is the meaning of the «legislator of language» in Cratylus 389d. As Taylor says, this is a reference to the linguistic tradition of a community.

There is no, however, such a hint in Protagoras' speech. Moreover, in the Theaetetus (167, 172, 176–178), the legislating city is such because she has the will and power to enact her decisions. Obviously there can be no moral authority when there is no effective ability to exercise it. On the whole Protagoras' thinking on the matter is more positivistic than Pausanias'.

This is very close to some platonic utterances. Plato also suggests that the city is the sovereign (Crito 50a, Laws I, 645b, III 681c–d). These however are statements of what the good citizen is expected to believe or views relevant to a historical analysis leading to probability but not necessarily to truth (1).

### III. Scope and Principles of Legislation.

Protagoras thinks that the sovereign city has a mainly educative function. She proceeds as an elementary schoolmaster γραμματιστής (326d), who establishes outlines, so that children will be taught correct writing (2). The community draws legal and moral ὑπογραφάς which must contain and lead the whole individual and social life of the citizens. Not only the evident acts but also the conscious or unconscious beliefs that these imply are to be regulated.

The term ὑπογραφή suggests however that the legislator must satisfy himself with the enactment of a general moral and legal code, without seeking to establish too minute a legislation. This may take the form of an appraisal of the already existing customary patterns of behaviour (νόμιμα 325d), which of course implies the acceptance of adequate moral standards (327b). Similar is the proceeding of Pausanias in Symposium 182b–d. For him obviously νομοθετεῖν=καλὸν τιθέναι, νομίζειν.

Plato would not disagree with this view. His view of the law in Republic II 383c describes it as a τύπος, pattern, which is expected to mould the souls and behaviour of the citizens according to the right standards, as grasped by the lawgiver's wisdom (III 403b). As the correct development of legislation depends mainly on its starting point, it is superfluous to elaborate minute codes about trivialities (IV 425b–d).

The agreement with Protagoras ends when this view is admitted by him without qualification. The above stated theory is—Plato thinks—only

1) So, R. Weil, Archéologie de Platon (ed. of Laws III), p. 58.

2) See, J. Adam ad l. p. 123, for the legislator's ὑπογραφή Laws V 734e

relevant to the healthy city, whereas it is considered by Protagoras as a universal principle.

This lack of precision of Protagoras' view is presumably due to the fact that, in our dialogue, he appears mainly as a political thinker, not really interested in theory of knowledge (1) as such. This was probably the most important side of his thought and activity, as the whole ancient tradition confirms. Reference however is to be made to the Theaetetus, in order to grasp the epistemology of legislation. That there is some connection between Protagoras' epistemology and his practical philosophy is also suggested by Prot. 334c.

The famous statement that «man is the measure» (Theaetetus 151e, 160e, 166d, 167d, 171c etc.) is also relevant to the city as legislator. This is so since «for every city the right and honourable is what she considers as such, so long as she does so». (Cf. 172a-b). Thus, the assent of the city is the «measure» of the socially desirable.

We cannot deal here analytically with the μέτρον problem. Sextus Empiricus (2) anyhow says that μέτρον=κριτήριο, i. e. the characteristic sign which enables us to distinguish a true from a false statement. This κριτήριο is the assent or value which the city confers on her legal enactments, so long as she does so. This makes perfectly good sense with the qualification that μέτρον enables us to distinguish not between true and false but between right and wrong or rather advantageous and disadvantageous statements (3).

As far as the activity of the community is concerned, Protagoras avoids the term ἀλήθεια. Socrates introduces it in (182a) the Theaetetus in his account of Protagoras' political relativism but τῇ ἀληθείᾳ may mean «effectively». Protagoras is obviously reluctant to use the term, because of its realist connotation in Greek, and is unconsciously bent on admitting the aristotelian distinction of ὀρθὸν standard of practical statement and ἀληθὲς standard of theoretical judgement (4).

There is no explicit reference by Protagoras to the standard of the right as legislative principle. One evidence is the well known anecdote of Plutarch (5). Protagoras seeks here to determine penal responsibility in accordance with ὀρθότατος λόγος.

This is obviously the right standard, securing the determination of

1) So E. Schwartz, *Ethik der Griechen*, p. 77.

2) *Outlines of Pyrrhonism*, I, 216.

3) See, Kerferd in *Durham University Journal*, XI, 1949 (N. S.), p. 24.

4) *Nic. Ethics*, v, VI, ch. 1.

5) *Pericles* 36.

the really responsible, and, by no means, the «persuasive» or «successful» discourse as M. Untersteiner thinks (1).

This is a slight piece of evidence. We may however infer from it that the standard of right—if used at all—should apply both to the relation of a particular enactment with the *ὁπογραφαὶ* of the community and to its relevance to the particular circumstances, i. e. opportunity. This is substantiated by the fact that Protagoras is said to have precise views on *καιρός* (2).

The standard however referred to in the *Theaetetus* is what the community takes as advantageous for herself (167b–c). This is defined as *βέλτιον* and *χρηστόν*. Now, the measure of the advantageous is the fact that the community acknowledges it as such. Although Protagoras is said to consider *ἀλήθεια* as irrelevant to the practical judgement or to equate it with subjective approval of a practical standard (3), he is compelled to refer to what is really advantageous to the community, as contrasted with what is only apparently so (167c).

This leads to the interference of the wise man, comparable with the physician (Th. 167a) or with the orator (167d). He is able to grasp what is really advantageous either to the individual or to the community and to suggest it to them by using the adequate means. This is so because the wise man—of whom one species are the already mentioned ancient lawgivers of Prot. 326d—is possessed with *εὐβουλία*, i. e. practical wisdom (4), which Protagoras claims to be qualified to teach. This practical insight about what should be done is very similar to the «science of shadows» described in the *Republic* (VII–517a).

It can be adequately expressed as *δόξα*, in that context practical judgement rather than «belief» (5). *Doxa* may be related either to the *αἰσθησις* of the community, i. e. the feeling of what the particular circumstances require (179c), or to what the wise man perceives intuitively as such. In that case the latter *doxa* improves the former. Then, the assent of the community is no more the standard of the advantageous legal decision. This is rather her belief that the wise man—thanks to his *εὐβουλία*, has a more adequate view of what the moment requires. Thus, the community

1) ed. of Protagoras' text in *Sofisti*, II, p. 35.

2) *Dio g. La.* IX, 52.

3) So, F. C. S. Schiller, *Mind* XX, 1911, p. 183 and *Studies in Humanism*, p. 38.

4) Jowett, *Dialogues of Plato*<sup>8</sup>, p. 340, translates it by «prudence».

5) N. Gulley, *Plato's Theory of Knowledge*, p. 87 equates *δόξα* with belief. But, as I. M. Crombie, *An Examination of Plato's Doctrines*, II, p. 33 says, *doxa* defines the mainly practical decision resulting from a mental process, which may or may not lead to truth. *Δόξα* is necessarily a belief for him who admits it, not for the man who expresses it. For its practical character, *Meno* 97b.

is disposed to abandon her own former δόξα for the sake of a new one, thought of as more advantageous to her (1).

It is reasonable however to infer that during the supposed modification of the practical decisions of the city there is no legal enactment at all. Thus, the inference to which Protagoras is led is legal positivism. A law is right and fair as long as it is really enacted as such by the community, with the qualification however that the legislating community reserves to herself the right to modify this law, if she is convinced by a wise and experienced statesman to do so.

The contrast between Protagoras' and Plato's epistemology has probably been overstressed, at least as far as philosophy of law is involved. The advantageous—ὠφέλιμον—for the whole of the community is at least as important a legislative principle for Plato as it is for Protagoras (2). This is so in the Republic (II 379b, V 462d–e). In some cases, Plato says that the advantageous is the standard of what is to be held as sacred and honourable within the community (V 462d–e).

Generally the advantageous is connected by Plato with the right ὀρθόν which depends on the insight into the true scale of practical values (Laws I, 631a–d, cf. IV 705e). Thus, the advantageous is really so if it is reduced to the right. This must reflect the true Scala Bonorum and so it depends on the good. This is however the case for the philosopher, or the wise lawgiver. As far as the non philosopher citizen's conduct is at stake, the legal decision is not connected with the true ἀληθές but with the «good» χρηστὸν whose epistemological status is doxa, and not science (Crito 47a–e). In the Crito, a δόξα is good—χρηστή—or bad—κακή—, not true or false (3). The expected attitude of the citizen towards it is that of an emotional submission (47d) and the legal enactment must probably appear to the citizen as a principle to be believed, not a proposition to be discussed. Therefore it is described as doxa. The attitude expected from the non-philosopher magistrate in the Politicus (297d) is not very different. Probably his duty is to believe what he understands as the δόξα of the wise lawgiver. He must abstain from scrutinizing too closely the wise lawgiver's decisions, since he is unable to grasp their ultimate principles. Hence, what the right minded citizen or magistrate can grasp from the wise lawgiver's decisions, and what the latter may say to the former for their persuasion is not very alien from what Protagoras says.

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1) F. M. Cornford, *Plato's Theory of Knowledge*, p. 81.

2) As Loenen, op. cit. p. 60 says. See ch. 2 § III, IV. of this thesis.

3) This is adequately precised by W. Lutoslawski, *A Growth of Plato's Logic*, p. 201 (London 1897). In the Crito the validity of the law depends on the competent man's insight into the normal condition of the soul, although the citizen's conduct is satisfactory if he submits to the ἐπαύων. See ch. I, § II, of this thesis.

#### IV. Functions of Legislation.

The scope of legislation is as broad for Protagoras as it is for Plato. The whole citizen's life falls within its field. Presumably this view may be referred to the generality and vagueness of the Greek view of law.

The most important task of the legislator is however the regulation of political power, understood in its executive sense. This is described as *ἀρχεῖν καὶ ἀρχεσθαι* (326d). It is obvious then that the legislator's most urgent duty is to establish a *πολιτεία* i. e. the constitutional law of the state. Thus, he will be able to precise who is the *κύριον τῆς πόλεως* (1) and how the *ἀρχή* is to be exercised. The urgency of this task is due to the fact that all citizens are likely to be endowed successively with such a responsibility. Moreover, their whole life is otherwise connected with it.

This function however cannot be spontaneously and fortuitously exercised. It implies first a *θεία μοῖρα* (322a). This means that man naturally is endowed with some sense of divine reverence (2) which leads to the respect of the city. Thus the future citizen is likely to feel reverence and rightness (322c). The city has to develop them into actual and active virtues (3).

This educational task is first performed by means of *νόμιμα*, which, as moral standards embodied in social customs, are implicit and unwritten statements on the pattern of conduct approved by the city (325d, 327b) (4). This is described as a moral *τροφή* (5), secured indirectly by the city and directly by the parents of the «tutor», *παιδαγωγός* (325c). It is noteworthy that in a sense, every citizen contributes to it (327b) and so he is in some way a legislator (6).

This nurture is followed by a more intellectual and spiritual instruction, whose aim is however identical (325d–326c). This is bestowed by the schoolmaster (325d) and the master of gymnastics. This view reflects common Greek practice and presumably Protagoras' own policy, as lawgiver of Thurii (7).

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1) Aristotle, *Politics*, III, 4, 1278b 10.

2) Cf. J. B. England on *Laws* I, 642c (I, p. 247).

3) As Adam, *Protagoras*, p. 115 ad 1, says. Cf. Loenen, *op. cit.* 71.

4) In Herodotus *νόμιμον* or *νόμον καθιστάναι*—*νομίζειν τι ὁρθόν*. So, in IV 65, 68, 108. Cf. W. Jaeger, in *«Lettres d'Humanité»* 1949, no. 8, p. 21.

5) Although Protagoras does not use the term. Cf. Ch. I § II of this thesis.

6) The statement of 317a simply points out that the citizens are often unable to do so. Vlastos, in his *Introduction to the Protagoras* (*Liberal Arts ed.* p. xx) makes too important a case of it.

7) So, G. Morrow, *Cretan City*, pp. 319–320 and 321 n. 8.

The physical training aims at a merely negative purpose, i. e. to suppress any hindrance likely to make the citizen unfit for the performance of his political duty.

The intellectual education (325e–326b) is very akin to platonic μουσική. As in Plato, it includes intellectual and literary education as well as music in the strict sense. The means are bright examples of the historical and literary tradition and moulding of the pupil's personality through musical techniques. These are combined with compulsory devices, consisting probably of threats of corporeal punishment (326b) (1).

The expected results are described as orderly manners εὐκοσμία (325e), quietness and harmonious, i. e. rightly adjusted character (326b). The most important is obviously the third feature, as it secures a fitness to the future citizen's function, i. e. ἄρχειν καὶ ἄρχεσθαι (2).

The third stage is the education directly afforded by the law (326d fol.). While the two former stages were indirectly secured by the community and largely depended on the parent's social and financial status (326c), this is secured directly by the legislator. As all are expected to share in the κοινὸν τῆς πόλεως all have to understand the letter and the spirit of the law and to behave according to them. This is a universal education (3) and no citizen may be deprived of or ignore it (327a). Thus all will act responsibly and not fortuitously (326d).

There is a heavy stress on the compulsory character of this type of education (4). This may be referred to the universality of this education by the law. Nevertheless, Protagoras understood in a more authoritarian way than Plato the legislator–citizen relation and he never exalts persuasion above compulsion as Plato does (5), the εἰκὴ πράττειν being particularly hateful to Protagoras. Protagoras stresses, in spite of his alleged liberalism (6), ἀνάγκη more than πειθώς.

There is presumably some connection between this view and Protagoras' educational endeavour, as he himself describes it in 318e–319a. He says that he aims at enabling young men «to speak and act for the best in the affairs of the state», by developing their ability to reach a correct decision.

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1) For Plato's position on this point cf. G. Morrow op. cit. p. 339.

2) So, G. Calogero, p. 53 on 326b.

3) So, M. Untersteiner op. cit. II. p. 30.

4) The term ἀνάγκη is repeated thrice from 326c 5 to 326d 8.

5) F. inst. in Laws IV 720c. See also ch. I § III, ch. 2 § III, of this thesis.

6) For such a view, E. A. Havelock, *The Liberal Temper in Greek Politics*, p. 167. Havelock's inference that Protagoras is «liberal» because he does not admit a priori and eternal truths is by no means evident.



This agrees with what he says in Theaetetus 167c. We are told there that «the wise and good rhetoricians make the good instead of the evil to seem just to states».

It substantiates also the view that his whole activity was directed towards «ἀρχειν» rather than ἀρχεσθαι and only partially coincided with the legislator's education, as he understood it (1).

The above stated views are not absolutely different from what Plato says on paideia in the Republic and the Laws (2). The general view that sound education is the main function of the legislator is common to both (e. g. Laws II 659c). The educational stages are roughly identical although in Plato the legislator is more involved with the whole of education whereas in the Protagoras its earlier stages are relatively independent of him. This analogy is an evidence of their common dependence on the Greek historical background.

There are however two important differences between them. Protagoras excludes scientific knowledge from his own educational activity (318e–319a) and leaves it unmentioned in his analysis of the education of the community. Plato reserves it to the future magistrates (Rep. VII 525c). Mathematical knowledge is particularly connected with leadership, as a revelation of order and logical necessity (3).

This leads us to state the second difference concerning the extension of education. Protagoras thinks that education—and especially the most important part of it, education by the law—is to be extended to all the citizens (322c, 325a, 327b). This is so because the political activity is universal and inherent in the very character of mankind. Thus everybody acts as an educator and a pupil (327b). The will of the citizen coincides with the purpose of the law and there can be no competition in that sphere (327c), whatever may be the moral shortcomings of the citizen as an individual. So, the craftsmen or traders are to be educated just as the other citizens (324c) (4). The ground of this view is that political art has a particular status which can not be similar to that of the other arts.

Plato would probably not agree with such a view, although his thinking on this point has been oversimplified (5). A craftsman cannot be

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1) J. S. Morrison in Classical Quarterly XXXV (1940), p. 8 observes that the term ἀγαθὸς πολίτης used in 319a is ambiguous while εὐβουλία is a quality of the able statesman only

2) A recent analysis of the latter is afforded by G. Morrow op. cit. ch. VII.

3) So, G. Morrow op. cit., p. 345.

4) Vlastos op. cit., p. LI n. 2 thinks that this applies also to the slaves.

5) Cf. Laws I 665c., Rep. IX 590c where some kind of moral equality is the aim of the legislator. For a sound discussion of this aspect of Plato's political thought see V. Goldschmidt, Le Paradigme dans la Théorie Platonicienne de l'Action, Revue



a real citizen (Laws VIII 846d) and must not be educated as if he could. The ground of such a view is, a. the political art qua art is not different from the other arts and requires not only intellectual but also moral competence, b. the citizen's activity and life does not leave enough «leisure time» for a lucrative profession (Laws V 741e and fol.) (¹).

As the Greeks usually held, the legislator is endowed with the right of punishment (²). This is widely understood, so that everybody acting on behalf of the legislator may exercise it. Thus it does not strictly coincide with what is now described as «penal law». The penal function arises from the educational one and is to be understood as complementary to it. This is vividly stated in 325d.

«And if he obeys, well and good ; if not, he is straightened by threats and blows, like a piece of bent or warped wood».

Punishment is grounded on a view of responsibility stated from 323c to 324c. Protagoras is reported by Plutarch (³) to be interested in this problem. He says that the responsible is the cause αἴτιος of a particular event, whether he acted voluntarily or not. Responsibility is determined according to the standard of ὁρθὸς λόγος.

Thus, the notion of responsibility covers even inanimate things, as far as they produced the wrong result. Our dialogue expresses quite different views on this point, probably because responsibility is not considered as such but in connection with penal law. It is stated as an evidence of the «teachability» of virtue (323c). We are no more to answer for what we are naturally than in the case of a fortuitous weakness or ugliness (⁴). One is held to be responsible either for his voluntary shortcomings or for his neglect to improve himself through the available educational possibilities and cultural influence (323d) (⁵). We are told that «... if a man is wanting in those good qualities which are attained by study, exercise and teaching, and has only the contrary evil qualities, other men are angry with him, and punish and reprove him».

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des Etudes Grecques, LVIII, 1945, pp. 129, 135, 139. Socrates, in the earlier dialogues stands nearer to Protagoras. See ch. 2 § III. of this thesis.

1) See ch. 2, § I. B. of this thesis.

2) Loenen op. cit., p. 20. He quotes Aristotle E. N. X, 9.

3) Pericles 36.

4) It is then obvious that φύσις refers here to physical nature. This is illustrated by the following in the text examples of weakness or ugliness. Physis understood in that way has nothing to do with ethical standards because it may be the result of fortuitous connection of events, τύχη. But, we cannot say that αἰδώς and δίκη are φύσει in that sense. If they are so, φύσις must be understood as the whole innate—and susceptible to grow and develop—world of man.

5) A. Adkins, Merit, p. 295, observes that, in that way, αἴτιον and ἐκούσιον depend on each other.

This is described as athenian practice but Protagoras obviously agrees with. It leads to a rather wide view of responsibility, including acts, evil qualities and, in some way, the absence of the socially desirable good ones (<sup>1</sup>).

The same wide view is held of methods of punishment, far less strictly understood than now (323d, 323e). To punish is mainly «to be angry with», to blame and to qualify anyone's act as *αἰσχρόν* (<sup>2</sup>). Only the really incurable is to be banished or sentenced to death (325a–325b).

Punishment is an educational practice, as Protagoras says when he deals with the ends of penal practice. He thoroughly rejects the retributive view, which identifies punishment to vengeance and is the archaic one, predominant when the clan-links were strong and written law not sufficiently developed (<sup>3</sup>). Although Protagoras uses interchangeably the terms *τιμωρεῖται* relevant to the retributive view, and *κολάζει*, referring to the educative and preventive view of punishment, he stands for the latter (<sup>4</sup>). In 324 a–b he says.

«No one punishes the evil-doer for the reason that he has done wrong, only the unreasonable fury of the beast acts in that manner. But he who desires to inflict rational punishment does not retaliate for a past wrong which cannot be undone; he has regard to the future, and is desirous that the man who is punished and he who sees him punished, may be deterred from doing evil again».

The purpose of punishment is educative up to a point. What is sought is to redress and amend the offender's personality (325d–326e). Nevertheless this appears to be somewhat secondary, the primary aim being to prevent the possible future evil and the social disorder this implies (324b). Thus Protagoras is led to admit that punishment may have also an «exemplary» aim. It is inflicted, so that by its «example» everybody may be deterred from acting mischievously (Ib.).

Moreover, Protagoras thinks that «he who rebels against instruction and punishment is either exiled or condemned to death under the notion that he is incurable». (325a–b, esp. 325b 5–7). This statement, which was forestated in the traditional language of 322d, is utterly inconsistent with the educative aim (325a). Given Protagoras' view of man, to put one into death is to annihilate him, not to improve or educate him.

1) This is also an evidence that Protagoras is far from being a «liberal».

2) As Adkins op. cit., p. 170 n 10 apparently suggests, Protagoras gets rid of the ambiguity of *αἰσχρόν*=shameful and ugly. Obviously Protagoras uses it in the former sense. In 323d—e *νοουθετεῖ* is closely associated to *θυμοῦται* as is *θύμοι* to *κολάσεις*.

3) Such is the Brinnyes' view in Aeschylus, Choefors v 310 and fol.

4) As Calogero says on 324 a6 (p. 48), Protagoras is unaware of Aristotle's distinction of the terms, in Rhetoric I, ch. X, 1369b12.

Protagoras presumably refers to two rather loosely connected theories of punishment. The educative is his own. The exclusion from the city by way of banishment or death may be a survivance of the ritual, archaic view on this point. The traditional link from the educative to the retributive view is provided by the concepts of prevention and example (1).

The above stated views may be considered as a foreshadowing of what Plato has to say on this point (2). Plato admits both the educative and an exemplary purpose of the penal procedure (Laws IX 854d), even the view of the annihilation of the evil-doer (Gorgias 525a). He is nevertheless consistent with himself in doing so, because even death is profitable, as the necessary purification, to the incurable evil-doer who suffers it (3). It is so because chastisement re-establishes in the culprit's soul the real *τάξις* which was disturbed by his *ὑβρις* (Gorgias 505c) (4).

## V. Anthropological Implications.

Protagoras, like Plato, underlines the importance of what Montesquieu describes as a «*ressort de la législation*» (5). The effectiveness of the legislation requires a general reverence on behalf of the citizen towards social and moral values. This must be exercised as virtue. The legislator has therefore to state what human nature should be, in order to shape the citizen in accordance with his own requirements.

Protagoras deals with brevity and ambiguity with this point. As far as he does, he is partly inconsistent with his general view of law which was described as legal positivism. If he was consistently positivist, such a problem should be superfluous to him. It should be sufficient for the law to exist.

He says of course in 323c that «political virtue» is neither natural nor fortuitous. As it was described as a gift of Zeus in 322c, many scholars found an inconsistency between those two statements, while Pr. Kerferd inferred that according to Protagoras political virtue is by no means «natural». In his view it is simply imparted to all citizens though not all are equally endowed with it (6). Pr. Kerferd neglects the previous reference to *θεία μοῖρα*, the various possible senses of *φύσει* in Greek terminology. It may be observed that 323c 5 refers to *ἀρετῆς* of 323c 4.

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1) On this subject W. Nestle, *Protagoras* 1, pp. 98 and 101 n. 27.

2) I don't take into account Laws IX in detail.

3) *Gorgias* 477e—479e and Dodds ad l p. 254.

4) As Pr. R. Robinson, *Plato's Earlier Dialectic* 2, pp. 12—13 says, even theocratic *ἔλεγχος* amounts to a kind of spiritual *κόλασις*.

5) *Esprit des Lois*, Book III, chs. I to IX.

6) J.H.S. LXXII (1952), p. 43.

This again refers to δικαιοσύνης σωφροσύνης of 323a 1. This again is equivalent to δικαιοσύνης τε καὶ τῆς ἄλλης ἀρετῆς of 323c 6—7. This is a strong evidence of Protagoras' distinction between the case of δικαιοσύνη—σωφροσύνη and that of αἰδῶς—δίκη. Even if the former is not φύσει <sup>(1)</sup>, reverence (αἰδῶς) and righteousness (δίκη) of man are so, a. since they imply the natural abilities included in θεῖα μοῖρα, b. as gifts of Zeus through Hermes <sup>(2)</sup>. Thus, the legislator must assume that man is a perfectible being, as the discovery of fire, this symbol of his cultural potentialities <sup>(3)</sup>, substantiates.

The legislator also must assume a trend in man towards communication with his fellows. He relies for this on the development of language (322a, 327c—328a, cf. 327b). In 322 language is described as an art. This however is particularly connected with its διάθρωσις, i. e. its formal order. In 327e—328a, language is described as a universal feature of mankind, as is the social and political instinct. In 327b we are told that this is so because through the medium of language is secured the socially and «legally» desirable education of each citizen by his fellow citizens <sup>(4)</sup>.

This implies that the most important function of language is an ethical appraisal of one's behaviour by his fellow citizens and the legislator. Protagoras presumably, as any other ancient thinker, would never imagine dealing with «communication media» for their own sake <sup>(5)</sup>.

This function of mutual appraisal would remain however a mere requirement, if mankind would have been deprived of reverence and righteousness. Reverence is natural, because it is a characteristic feature of human nature, animals being deprived of it <sup>(6)</sup>. Reverence, in Plato, is a species of fear, mainly the fear of one's fellow citizens and the blame

1) Although if Protagoras rejects this view in 323c, he does so because he feels that φύσις is connected with αὐτόματον or at least that this may be the case. Now, Protagoras obviously hates αὐτόματον as much as εἰκὴ πράττειν.

2) «The divine gift» is in Plato's and probably Protagoras' language a solemn terminology to describe some innate quality or instinct, I o n 536c, 534c, 535a, not deprived of some character of irrationality, as opposed to τέχνη. Neither θεῖος nor θεῖα μοῖρα may refer to a quality shaped through «exercise», «art» or education. If then the less important «arts» are according to Protagoras the result of «divine dispensation», is it sound to suggest that αἰδῶς and δίκη are something artificial?

3) So, Nestle, op. cit., p. 96 on θεῖα μοῖρα of 322a.

4) λέγειν and διδάσκειν refer to the same act of social education.

5) Aristotle refers to this tradition when he says that man is a «political animal» because he is able to praise or blame through language one's acts. Politics I, ch. I. 12 3<sup>a</sup> 10—20.

6) This is a traditional Greek view, as Nestle observes, aptly quoting Hesiodus W. D. v. 192, 199.

he may suffer if he infringes the law or moral custom (Laws II 671d). It is therefore a social link and, as such, creative of «friendship», (Prot. 322c). This is so because all citizens feel the same reverence towards the law. Thus, they escape moral loneliness, since they instinctively avoid any act prohibited by the standards established by the legislator.

Through *aidos* the citizens' intimacy with these standards grows and so, in spite of Antiphon (1), they respect them even in the case of absence of direct social pressure for that purpose.

Thanks to his reverence, a man becomes a citizen because he abandons his natural—animal—inclination towards *ὕβρις*, which would lead him to increase without limitation his personal power or share of goods, being indifferent to the prejudice caused to his country men or the community (2). He is in that case *δίκαιος*, since he respects his fellow citizens *δίκαια* (327b3) i. e. legal claims and more generally what agrees with law and justice, *δίκαιον* (325d 2). Thus he may be described as a righteous man, possessing the feeling of *Δίκη* (3).

Righteousness is therefore a species of reverence, i. e. that part of reverence connected with others rights. In another sense righteousness may be positively what «reverence» or rather shame is negatively. Shame arises when one is inclined to neglect or suppress what his own sense of righteousness obliges him to do or avoid (4). Nevertheless reverence may be the outgrowth of righteousness, since this involves traditionally a fear of a chastising authority, wherever external or internal (5).

These feelings, when actualized through the legislator's education, evolve into justice (*δικαιοσύνη*) and moderation (*σωφροσύνη*) (323a) (6). Protagoras, as Socrates does in Republic I, considers those virtues as arts. This means, a. that they are teachable and rational (7), b. that they permit a successful action meeting the requirements of opportunity. They prevent fortuitous agitation which is not only lawless but also regardless of *καιρός*. They differ however from the other arts, since their exercise does not raise competition (327a—b).

To possess them apparently and not really is more or less satisfac-

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1) Quoted by Gough, Social Contract, p. 11.

2) Such would be the case if he adopted the *τύχη* standard. See J. S. Morrison CQ XXXV (1940), p. 10 n 4

3) I take *δίκαια* of 327b 3 as a substantive=rights. Parallel is the use of Aristotle's Politics, I, I, 1253a 1.

4) J. W. Jones, Law and Legal Theory of Greeks, p. 24.

5) So, L. Pearson, Popular Ethics in Ancient Greece, p 45.

6) To translate invariably *σωφροσύνη* by temperance seems in many cases misleading.

7) So, Vlastos, op. cit., p. xi.

tory (323b 5). This is so because the legislator's requirements are not openly challenged, as the ἄγριοι would have done. Moreover, Protagoras does not accept the opposition of appearance and reality, since the seeming is real. Therefore to grant to these virtues appearance is to secure them some degree of reality. Viewed in their interconnection and on their application to the city—cult, i. e. holiness (<sup>1</sup>), they constitute the «good man's» (325a), i. e. the man as required by the legislator, virtue.

Probably this conception of appearance and reality is the most un-platonic part of Protagoras' politics. When Protagoras deals with moderation, he describes it as the virtue which enables someone to act advantageously, by escaping any open conflict with existing social standards (332a—b). Thus, he will avoid acting disorderly and unreasonably, which is qualified as κακουργεῖν (326a). This view is admittedly loose and vague. Nevertheless, if pressed hard it may be recognized as a sound view of moderation, comparable to that required from the lower class or element by the platonic legislator (<sup>2</sup>).

Similar is the case of courage. We are told of a «manly» virtue in 325a (<sup>3</sup>). This however does not formally include courage. Obviously Protagoras refers to manly excellence in general more than to courage in the narrow military sense. As Nestle says (<sup>4</sup>), the legislator of Protagoras here establishes as an educational ideal the homeric αἰὲν ἀριστεύειν καὶ ὑπείροχον ἔμμεναι ἄλλων (Homer IL. VII 708). Protagoras is suspicious of courage. He is inclined to identify it with daring spirit which may easily turn into blind and lawless temerity (329e, 349d). This criticism implies the average Greek view describing courage as fearlessness of death and, more extensively, of anything frightful (<sup>5</sup>).

Protagoras then is understandably reluctant to admit courage as a virtue desirable from the legislator's standpoint, since it can so easily be corrupted into ὕβρις. Now, Socrates thinks that this view of courage is

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1) For the Greeks to be pious is to be respectful of the gods' δίκαια, Euthyphro 12e. Euthyphro and Socrates take for granted the general connection δίκαιον—δσιον. For a recent discussion of this point see R. S. Bluck, *Platos Meno*, pp. 261—262.

2) 333c simply points to a common V century topos, that the σώφρων man may act for his own disadvantage and so be the opposite of the traditional view of σώφρων. He is for tradition the man acting «sensibly» and not through «madness». Cf. Tuckey, *Charmides*, p. 7—15, quoting the alleged etymology σώφρων (σάος—φρήν).

3) Nestle, p. 103, compares it with Euripides' εὐανδρία.

4) P. 107 n. 17. Calogero, p. 52, correctly explains it as «incitamento ad alte cose».

5) So, Aristotle *Nic. Ethics* III, VI, 1115a 25. Cf. Nestle, p. 150 on 349d.

wrong on the ground that ἀνδρεία implies science and wisdom of what is really to be feared (<sup>1</sup>). Plato qualifies later Socrates' or his own earlier view by observing that courage for the subordinate element of the community is to maintain internally the legislator's view about what is to be feared (R e p. 430b). For that element courage is an opinion and not a science. Thus, there is a conciliation of courage and law (<sup>2</sup>).

In spite of this, Plato seems to feel uncertain on the matter, if the criticism of Doric constitutions and Tyrtaeus' educational ideal (L a w s I 629c) may be taken into account. We are told in the L a w s that courage is the lowest virtue (I, 631d). To that is added the view that courage may turn into blind temerity (641c). The conclusion is that victory in war is by no means a standard of appreciation of a healthy state of politics (I 628c—d, 638a—b). This view is not so alien to Protagoras' reluctance towards courage.

Protagoras seems also reluctant to accept pleasure as an ethical standard (351c). In doing so, he probably yields to the popular bias on this point 333e). He may however be inclined to such a view because of his excessive confidence on compulsion as a legislative proceeding. Plato, on the opposite, prefers πειθῶ to ἀνάγκη. Persuasive means can be successful only if the citizen feels that the legislator's suggestions are agreeable or at least less painful to him than if he rejected them. This being so, the citizen must be educated in such a way that he will be able to feel as agreeable, or at least painless, what the legislator establishes as right (L a w s II 658a—659d, esp. II 662d and V 733a) (<sup>3</sup>).

As Nestle says (<sup>4</sup>), there is a platonic hedonism, provided that pleasure is «real». It may be added that when the legislator—citizen relation is involved the former can appeal only to pleasure standards, in order to persuade the latter to abandon his spontaneous ὄβρις. The citizen may however take as pleasure what is commonly held as a pain. The legislator's task will be to convince the citizen to seek r e a l pleasures only. If the legislator is to be successful in doing so he must himself refer to a criterion enabling him to distinguish real from unreal pleasures. This is precisely what Socrates suggests in 356d—357b. The required

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1) Socrates' criticism of Nicias' definition in L a c h e s 195a simply points to the fact that the science of the future cannot differ from science as such. The definition of courage is not really challenged.

2) As J. Moreau says in Construction de l'Idéalisme Platonicien, pp. 235—236 and 238.

3) It is strange that Jowett, Dialogues of Plato<sup>3</sup>, I, p. 126, thinks that Socrates' hedonism may be considered as unplatonic. On the point cf. R. Hackforth C. Q. XXII (1928), p. 42.

4) P. 153 n. 5 on 351c—d.



standard appears here as resting in the art of measure which is contrasted to the impact of appearance, ἡ τοῦ φαινομένου δύναμις. Socrates requires that this standard must be as certain (βέβαιον) and intelligible as mathematical measures are (<sup>1</sup>). This entails that there must be a rigorous science of human practice, at least up to the mathematical rigorousness.

Plato appears to give up this claim of his master, partly at least. In *Politicus* 289d—e and *Laws* I 636e, where μέτρον is very akin to Aristotle's μέσον, he is more anxious about flexibility and applicability of the required standard than about its rigorousness. He will however never satisfy himself with Protagoras' standard of δόξα.

Thus, Protagoras' view of legislation is not a false one for Plato. It lacks what Kant describes as «discursive clarity». It is philosophically vague as being inadequately established. So, it may easily be overthrown by some Thrasymachus or Antiphon.

In spite of this criticism, as far as the citizen's social behaviour is involved, the platonic legislator cannot tell him any persuasive explanation very different from what Protagoras says in his myth. Thus, his views are, from a platonic standpoint, as sound as a «noble lie» can be.

## CHAPTER IV

### LEGISLATION IN THE GORGIAS

#### I. The definition of legislation in the *Gorgias*.

It is a good method to start the study of any aspect of Socrates' politics by considering the standpoint of his sophistical opponents with regard to it. This is so not only because Socrates develops his own views in contradistinction to those of some particular sophist, generally quoted with great fairness. But, as the following development will establish, he very often assimilates the pattern of their argument (<sup>2</sup>). Thus, it may be interesting to consider first what Kallikles has to say on legislation.

He claims that there is a legal order, which is established by the weak multitude (<sup>3</sup>). This legislation includes the establishment of written laws, e. g. those concerning the contracts between private persons (<sup>4</sup>). It also includes the enactment of such moral standards, as will enable the multitude to praise or blame the conduct of individuals (<sup>5</sup>) by applying

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1) Cf. *Alcibiades* I 126d fol. and ch. 2 § II of this thesis.

2) See ch. 3, particularly, § III and V.

3) ἀσθενεῖς καὶ πολλοί, *Gorgias* 483b.

4) συμβόλαια, *Gorgias* 484d.

5) *Gorgias* 483b—c.



to it terms like καλὸν or αἰσχρόν. Polos, for instance, was unconsciously influenced in his attitude towards Socrates by the αἰσχρόν as determined by the law of the multitude (1).

This appraisal is not necessarily clearly stated but may be embodied in customary patterns of conduct (2). Therefore τιθέναι (3) and νομίζειν (4) are not clearly distinguished but apparently refer to the same act of establishing unwritten, customary laws. These are indifferently described as νόμος, λόγος, ψόγος (5).

From a practical, utilitarian view-point, Kallikles considers seriously this type of legislation. The citizen and the statesman, who wants to be successful, must take it into account (6). The main defect of philosophical education consists in the fact that it prevents them from doing so. The strong man will be nothing but a coward (7) and a «slave» (8) if he has not a thorough knowledge of this legislation.

But from the theoretical standpoint, Kallikles suggests that this type of legislation deserves the utmost contempt (9). The true statesman has to adapt himself to it only seemingly and while compelled by circumstances to do so (10). Otherwise he must disregard it and act as a tyrant (11).

The laws of the πολλοὶ are despicable because their strength is artificial, against nature and, to some extent, due to their own weakness (12). They contradict therefore the claims of true justice (13). The multitude use «wiles» in order to secure the maintenance of their laws (14).

The only legislation which rests on nature (15) and might be qualified as «just», i. e. in keeping with «natural justice» (16), is the law of the

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1) G o r g i a s 483a.

2) τὰ τῶν πολλῶν νόμιμα, Gorgias 488d, cf. Kallikles in 489c.

3) G o r g i a s 483b.

4) G o r g i a s 488e, cf. ch. 3 § III, of this thesis.

5) G o r g i a s 492b.

6) G o r g i a s 484d, 485d.

7) ἀνάνδρῳ γενέσθαι 485d.

8) ἐλευθερον μηδέποτε φθέξασθαι 485e.

9) G o r g i a s 483b, 492b.

10) G o r g i a s 492a cf. Antiphon im D K<sup>10</sup> B 44, 1-2.

11) G o r g i a s 492b.

12) G o r g i a s 492a.

13) δίκαιον, 483d.

14) γράμματα, μαγγανεύματα, ἐπωδὰς, νόμους G o r g i a s 484a.

15) νόμος φύσεως G o r g i a s 483e.

16) κατὰ φύσιν τὴν τοῦ δικαίου, 483e, τὸ τῆς φύσεως δίκαιον, 484b, τοιούτου ὄντος τοῦ δικαίου φύσει, 484c.

strong (<sup>1</sup>) whose nature is physically superior (<sup>2</sup>). It might however be asked, a. what exactly is the «natural justice» or «law of nature» which grounds the claims of the mighty, b. what is their strength, c. how far Kallikles is seriously interested in the function of legislation as such.

a. «Nature» in Kallikles' mind applies to anything that might happen when arts, conventions or designs do not interfere to alter the spontaneous course of events (<sup>3</sup>). In 482e φύσις is essentially what is opposed to νόμος. In so far as nature is subject to a positive definition, it is tantamount to freedom from any internal or external restraint. It involves freedom for satisfaction of one's desires (<sup>4</sup>), shamelessness in their expression (<sup>5</sup>), action unrestrained by any sort of prejudice (<sup>6</sup>). This sort of freedom is itself understood in opposition to a life of submission or obedience to any authority (<sup>7</sup>).

The pattern of such an absolutely natural and «happy» life (<sup>8</sup>) may be provided by the tyrant or the dynast (<sup>9</sup>). Such are Dareios, Xerxes (<sup>10</sup>) or Archelaus of Macedon (<sup>11</sup>). This life requires «imperium» over others and it might be suggested that the natural life implies the existence of «slavery» in the broad sense. This is why Kallikles' view of natural law is completely different from that suggested by Hippias (<sup>12</sup>) and developed by the Stoics.

b. The strong, who naturally ought to be the legislator, achieve the human type endowed with overwhelmingly intense desires at any human level, with the qualification that the biological ones should prevail (<sup>13</sup>). They must also possess a sufficiently strong daring spirit to seek the satisfaction of these desires at any cost (<sup>14</sup>). They should be prepared to overthrow the various conventional rules in order to secure

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1) τὸν ἀμείνω G o r g i a s 483d, τὸν κρείττω ibid., τὸν δυνατώτερον ibid., δεσπότης ἡμέτερος Gorgias 484a.

2) φύσιν ἱκανὴν G o r g i a s 484a.

3) Cf. L a w s X, 889a—b. P r o t a g o r a s 323d, discussed in ch. 3 § I and V of. this thesis.

4) πλεονεξία 483d.

5) τόλμα G o r g i a s 483a.

6) G o r g i a s 492b.

7) The life of an ἀνδράποδον G o r g i a s 483b, cf. 484a, 491e.

8) εὐδαιμονία G o r g i a s 491e.

9) G o r g i a s 492b.

10) G o r g i a s 483d.

11) Referred to by Polos in 471a ff.

12) P r o t. 337c, cf. A. Chiappelli in Archiv für Gesch. der Phil. III (1890) p. 273.

13) G o r g i a s 491e—492a.

14) The worst vice for Kallikles is ἀνανδρία G o r g i a s 492b, or the synonymous κακία 483a.

it (<sup>1</sup>). They may however behave like a καλὸς κἀγαθὸς in order to secure for themselves a useful good reputation in a society where the laws of the weak still prevail (<sup>2</sup>).

The socratic criticism suggests that Kallikles' view of the superior man is internally inconsistent as it includes both physical and moral superiority (491b-c) (<sup>3</sup>). Kallikles thinks that the κρείττων is mainly the superior from an amoral point of view and not merely the physically stronger (<sup>4</sup>). The strong man must have also a mental superiority such as φρόνησις εἰς τὰ τῆς πόλεως πράγματα (<sup>5</sup>). But this is instrumental to his happiness, which consists in the free exercise of power (<sup>6</sup>). On the whole Kallikles' notion of the strong man may be compared to the idea of the athenian ἀρχὴ as Pericles (<sup>7</sup>) and especially Cleon understood it (<sup>8</sup>).

c. Thus it is perhaps slightly inaccurate to suggest that Kallikles is merely an individualistic dilettante with no interest in politics or law as P. Lachière-Rey does (<sup>9</sup>). Kallikles apparently thinks, like Thrasymachus (<sup>10</sup>), that the relation of the «legislator», i. e. the tyrant or the dynast (<sup>11</sup>), to the city is similar to that of a military commander to a subdued enemy (<sup>12</sup>) or of the city to its subdued allies (<sup>13</sup>). He disagrees however with Thrasymachus in so far as for the latter the stronger is neither the κρείττων nor the βελτίων but simply the κρατοῦν (<sup>14</sup>). The legislation is what the actual ruler enacts. Kallikles would not share this positivistic view. He acknowledges the fact that the «natural» legislator is seldom the actual one (<sup>15</sup>).

Plato would not necessarily disagree with this markedly individualistic conception of political and legislative authority. Darius, for instance,

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1) ἀποσεισάμενος... διαρρήξας... διαφυγών... καταπατήσας... Gorgias 484a

2) εὐδόκιμος G o r g i a s 484d.

3) Socrates and Plato rightly assume that one has to choose. So R e p. I 341d 342b, d, e, 345d, esp. 347a, 350b.

4) A slave might be so. He is nevertheless μηδενὸς ἄξιος G o r g i a s 489c.

5) G o r g i a s 491c. Here, as in Thucydides III, VII, φρονεῖν is opposed to σωφρονεῖν Cf. 492a.

6) εὐδαίμων G o r g i a s 491e.

7) Thuc. I, XLI, 3, XLIII, II, LXII, 1, cf. L a w s I 638a, 641c, IV 706b-c.

8) οὐ σκοποῦντες ὅτι τυραννίδα ἔχετε τὴν ἀρχήν, Thuc. III, XXXVII, cf. Pericles in II LXIII, 2.

9) Revue Philosophique, CXLVI, 1956 p. 7.

10) R e p u b l i c I 338e, cf. 344a on tyranny referred to as perfect injustice.

11) For the distinction between them see Aristotle, P o l i t i c s IV, 5, 1292b10.

12) G o r g i a s 492b.

13) Cf. Thucydides II, LXIII, 2.

14) R e p. I. c. 338e, cp. Xenophon's M e m o r a b i l i a IV, 4, 13; I, 2, 42.

15) G o r g i a s 483e.

is praised by Plato as legislator (<sup>1</sup>). He is ranked with Solon and Lycurgus (<sup>2</sup>) and considered as a real legislator (<sup>3</sup>) probably because he was able to maintain his laws, while Kallikles praises him mainly as a military commander (<sup>4</sup>). Δυναστεία (<sup>5</sup>), commended by Kallikles (<sup>6</sup>), is generally considered as a pejorative term by Plato (<sup>7</sup>). It is however praised by him as a normal stage of the development of legislation, particularly connected with primitive law (<sup>8</sup>). Tyranny itself is incidentally approved by Plato as being an opportunity for the much hoped for coincidence of philosophical knowledge and political power (<sup>9</sup>).

The real ground of disagreement with Kallikles lies in the fact that Kallikles praises the most limitless and lawless aspects of personal government (<sup>10</sup>). The emphasis is on the fact that the tyrant is free from any hindrance (<sup>11</sup>) and able to enjoy any pleasurable «good». Kallikles is led to this view because of the vagueness and ultimate incoherence of his notion of power (<sup>12</sup>).

As Socrates suggests, the weakness of Kallikles' practical «philosophy», is due to the fact that he accepts the opposition of nomos and physis while he maintains that the κρείττων must be also βελτίων and ἀμείνων (<sup>13</sup>). Socrates assumes with a slight inaccuracy that Kallikles confounds simply κρείττων and βελτίων. It is then easy for Socrates to establish that, in this case, the appeal to physis against nomos is meaningless (<sup>14</sup>) and that Kallikles ought to accept Trasymachus' legal positivism. If, on the other hand, Kallikles maintains the distinction between the morally «superior» and the physically stronger, as he is compelled to do (<sup>15</sup>), then the opposition between nomos and physis is valid. But Kallikles must then recognize that the stronger should also be prudent (<sup>16</sup>). Even if this φρόνησις is a merely political, utilitarian one (<sup>17</sup>), it implies wisdom, i. e.

1) καὶ ἐν βαρβάρους Symposium 209e.

2) Phaedrus 258c, cf. Laws IX 858d—e.

3) Laws III 695c, Ep. VII 332b, Xenophon Oeconomicus 14, 6. Cf. A. T. Olmstead, A History of the Persian Empire, p. 130 ff.

4) Gorgias 483d.

5) «That form of polity in which the son succeeds the father» Adam in Rep. VIII 544d.

6) Gorgias 492b.

7) So Rep, l. c. and Ep. VIII 353e, Aristotle apparently agrees.

8) Laws III 680b. Cf. H. S. Maine, Ancient Law, pp. 124—125.

9) Laws IV 711b ff. As it is suggested in 711c τυραννίς=δυναστεία.

10) Gorgias 491e on ἀκολασία.

11) Gorgias 492b.

12) Pericles himself was not perfectly clear on the ultimate ends of the athenian ἀρχή, as J. de Romilly says in «Thucydide et l' Impérialisme athénien», p. 117.

13) Gorgias 488d.

14) Gorgias 489b.

15) Gorgias 489c.

16) φρόνιμος Gorgias 490a.

17) Gorgias 491d.

knowledge of one's good (1). In that case Kallikles must accept Socrates' view—point.

The criticism of Kallikles' view provides Socrates with the opportunity to establish that true legislation cannot be a mere δύναμις to enact a decision whatever it is. As Socrates suggests, this term is ambiguous and might denote good as well as evil effects (2). But if the ambiguity is removed, power will be defined as the ability to realize what one wills (βούλεται) as opposed to what it seems good to him to do (3). The discussion of this term enables Socrates to connect legislation with two other attributes, namely βούλησις and τέχνη.

Socrates makes clear in the *Gorgias* that the will (βούλησις) is always of an end, as opposed to the means (4). As the end is chosen because it is thought to be advantageous for the agent (5), τέλος cannot be distinguished from αγαθόν. In so far then as the legislator intends to realize a system of ends (6) his δύναμις implies a βούλησις (7).

Now, it may be asked why the «will» is not a sufficient attribute of legislation and why the analysis of political art in general is compelled to refer to the ambiguous notion of power. This is so because βούλησις, considered independently from δύναμις, might denote a mere intention (8). Legislation then must be a true power and, if so, beneficial not only for the citizens but also for the agent himself (9). To that extent, Thrasymachus' view that the laws are beneficial for «the powers that be» and that of Kallikles' that they must be advantageous to the «superior», who is the natural legislator, are true from the socratic standpoint (10).

We are not explicitly told that legislation is a power in the *Gorgias*. This however may be inferred from 1) the fact that power is always linked with art (τέχνη). As legislation is an art (11), it is unlikely that it would not be also a δύναμις. 2). When Socrates and Plato describe the weakness of the seemingly

1) *Gorgias* 490c—d

2) *Gorgias* 525e—526a. Cf. Joseph Moreau, *La Construction de l'Idéalisme Platonicien*, p. 134. See also ch. 2 § II. of this thesis.

3) ποιεῖν ἃ δοκεῖ *Gorgias* 468e.

4) *Gorgias* 467c—d. Cf. *Laws* I 646c

5) *Gorgias* 468b—c.

6) *Laws* IV 705e, 707d, V 726a ff, 728a, VIII 836d, I 631b ff.

7) This is explicit in the *Laws* (III 687e, 742d) and implicit in the socratic views in the *Gorgias* about the educational function of the statesman

8) *Gorgias* 509d—510a. Cf. *Laws* II 668c, βούλησις might even refer to the implicit meaning of any text and, in that case, it can hardly be distinguished from ὑπόνοια. See *Rep.* II 378d—e, *Laws* II 668c.

9) *Gorgias* 466b. Cf. P. Shorey, ed. of the *Republic*, I, p. 46 n.b.

10) See ch. 2 § II and V of this thesis. Βούλησις there refers to a practicable scheme because its connection with δύναμις is established.

11) *Gorgias* 465c.

powerful tyrant who does what he wants (ἐπιθυμεῖ) but not what he wills (<sup>1</sup>), the implied contrast is with the real power of the legislator who does what he wills, i. e. what is good for him, because it is advantageous to the citizen (<sup>2</sup>).

The legislator as τεχνικός must act rationally since an art cannot be an ἄλογον πράγμα (<sup>3</sup>) and excludes activity at random (<sup>4</sup>). As every art realizes the real well-being of its object, in contradistinction to mere «experience» (ἐμπειρία) which realizes the apparent one (<sup>5</sup>), it may be expected that legislation realizes an effect of this kind. This is said in 465b where legislation, in contradistinction to sophistry (<sup>6</sup>), is defined as a part of the political art (<sup>7</sup>). Its function is to maintain the real well-being of the soul, and, as this will be established further, of the city. Its complementary art is the judicial art (δίκη or δικαιοσύνη) whose function is to restore this well-being when it happens to be disturbed by some spiritual disease (<sup>8</sup>).

Now, the well-being of every real thing is restored when its particular order, κόσμος or τάξις is secured (<sup>9</sup>). The order of the soul—and the city—is its law (<sup>10</sup>). The task of the legislator is to maintain it.

It may be asked if legislation is also an ἐπιστήμη. This may be inferred from the following: a. the terms πολιτική τέχνη and πολιτική ἐπιστήμη are interchangeable in Plato (<sup>11</sup>) as τέχνη and ἐπιστήμη are (<sup>12</sup>). This «lexical» argument is inconclusive as far as Plato is concerned. As L. Campbell suggests, πολιτική ἐπιστήμη might refer to an abstract knowledge while πολιτική τέχνη might be relevant to an applied knowledge depending on particular circumstances (<sup>13</sup>). But in both cases political art is also a science because, b. it can be an object of knowledge, since it is not either as such or with reference to its results, ἄλογον, c. political art requires the knowledge of the φύσις of the citizen and the community (<sup>14</sup>) and is therefore able to give an account of its own steps (<sup>15</sup>).

1) G o r g i a s 466d—467a, 468d.

2) Cf. L a w s X 903b ff.

3) G o r g i a s 465a, 467a.

4) Ibid. 465c.

5) G o r g i a s 465c. Cf. R e p. I 346d, L a w s XI 937e—938a.

6) G o r g i a s 465c.

7) μόριον πολιτικῆς τέχνης G o r g i a s 465b.

8) G o r g i a s 478b.

9) G o r g i a s 506e. On κόσμος cf. Thuc. II, LXXXIX, 9, III, LXXVI, 2, CVIII, 3 where it refers to the orderly aspects of the ranks and motions of an army or a fleet.

10) νόμιμον—νόμος G o r g i a s 503e—504a, 504d.

11) P o l i t i c u s 296c—d, cf. 304d. See also ch. 2 § II of this thesis.

12) P r o t. 344c—e.

13) «S o p h i s t e s and P o l i t i c u s of Plato», p. 7. See also the Retrospect of this thesis.

14) G o r g i a s 465a, 501a.

15) Cf. P h a e d r u s 268a—b, L a w s I 636d, 650b, XII 962b—c. The preambles of L a w s IV will be a legal application of the requirement of λόγον διδόναι.

It might be objected that this knowledge is not the real platonic ἐπιστήμη whose object is being. From this point of view, dialectic only is a science (1). The «order» or «good» of the *Gorgias* is by no means transcendent because it is what the legislator realizes and not what he contemplates (2). The knowledge of the nature of the citizen might be compared to the knowledge of matter by the creator in the *Timaeus* (3). Furthermore legislation, as a πράξις, is related to a world of change and cannot attain truth in its purity (4). But the knowledge of the end of his action, which is proper to the legislator as it is to every τεχνικός or δημιουργός, implies ultimately the knowledge of the model, whose picture is this end. And the φύσις of the citizen reflects to some extent the order of the world (5). It might then be suggested that even the legislator of the *Gorgias*, who only knows the ends of his enactments, possesses an applied knowledge (6) which «partakes» of the knowledge of the «true being» (7).

It remains to consider if legislation involves «experience». The account of ἐμπειρία in the *Gorgias* is on the whole depreciatory (8) on the threefold ground of its unreal character due to its concern with appearances, its irrationality, resulting from the fact that it is a mere guesswork (στοχαστική), and its immorality resulting from its being a flattery interested in the pleasure rather than the good of its object. It appears then that there cannot be a sound legislation merely consisting of μνήμη τοῦ εἰωθότος γίνεσθαι (9). And, assuming that the doctor's knowledge is strictly empirical, it is only in a metaphorical way that the legislator or the τεχνικός may be compared to the doctor (10).

«Experience» resulting from memory of the past through association of ideas, as Polos (11) and Aristotle (12) understood it, cannot secure the well-being of the soul of the citizen and the city, even if it enables one to guess the future.

1) The νοητὸν being the only γνωστὸν. *Rep.* VI 510b.

2) As the κόσμος of *Rep.* VI 500c is.

3) V. Goldschmidt, *Le Paradigme et la Théorie Platonicienne de l'Action*. *Rev. Et. Grecques* LVIII, 1945, p. 127.

4) *Laws* I 636a, *Rep.* V 473a.

5) The evidence is according to the *Laws* (II 653e—654a) the sentiment of rhythm and musical harmony.

6) See P. Kucharski, *La Rhétorique dans le Gorgias et dans le Phèdre*, *Revue des Et. Gr.* LXXIV, 1961, p. 376, *Philobus* 61e.

7) The legislator need not necessarily be conscious of this implication in order to legislate ὀρθῶς.

8) *Gorgias* 501a—b, 462c, 463b, 464c, 513d.

9) *Gorgias* 501b, cf. *Rep.* VII 516c—d.

10) Cf. F. Wehrli, *Der Arztvergleich bei Platon*, *Museum Helveticum* VIII, 1951 p. 182.

11) *Gorgias* 448c.

12) *Metaphysics* A, I, 981a 1—10.

But if «experience» is the ability to recognize that a particular case reproduces the «nature» and the relations of a general pattern, there is nothing in the *Gorgias* which contradicts the later platonic statement that the true legislator should possess it <sup>(1)</sup> and that it is a requisite for practice and dealing with particulars <sup>(2)</sup>.

The analogy of the political art and the other crafts <sup>(3)</sup>, which implies that the legislator and statesman should have the qualities of the δημιουργός, points to the same conclusion.

The whole description of νομοθετική as an art throws some light in what is commonly referred to as aristocratic prejudices of Plato. These prejudices are something rather uncertain since the aim of political art is to make the citizens the equals of the wise ruler <sup>(4)</sup>. The apparent ground of the supposed aristocratic feeling in Plato is his contention that the multitude decide hastily, irrationally, through emotional drives <sup>(5)</sup> and are therefore ready to repeal their former decisions. Plato may have in mind such decisions as those concerning the Lesbians <sup>(6)</sup>, the admirals of Arginusae <sup>(7)</sup> not to say anything of the death of Socrates <sup>(8)</sup>. As legislation is an art it implies unity of purpose <sup>(9)</sup>. This in turn implies knowledge and the unity of the subject of this knowledge. Hence, there should be one ruler and legislator unless the πολλοί are able to speak «with one voice»<sup>(10)</sup>.

## II. The functions of legislation in the *Gorgias*

Socrates assumes <sup>(11)</sup> that the natural function of every art is the improvement of its particular object. This is the *differentia specifica* which distinguishes an art a. from mere power <sup>(12)</sup>, b. from any other kind of πραγματεία <sup>(13)</sup> or ἐπιτήδευμα <sup>(14)</sup>.

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1) *Rep.* VII 520c. This is also a socratic requirement. See ch 2 § II of this thesis.

2) *Philebus* 55d—56b, esp. 62a—b.

3) *Gorgias* 503e—504a.

4) ἵνα εἰς δόναμιν πάντες ὅμοιοι ὦμεν καὶ φίλοι, τῷ αὐτῷ κυβερνώμενοι, *Republic* IX 590d—e, *Laws* VI 772c. Cf. *Gorgias* 516e.

5) *Gorgias* 473e—474a, cf. *Crito* 48c, 44d—e, 46b.

6) *Thuc.* III, 49.

7) *Apology* 32b, Xenophon, *Hellenika*, I, VII, 15 ff.

8) *Ep.* VII 325e

9) *Politicus* 300e.

10) *Laws* I 634e, *Rep* V 463e. Cf. *Laws* XII 950b—c.

11) *Gorgias* 501b. See also ch. 2 § II and III. of this thesis.

12) Cf. ch. 2 § II of this thesis.

13) *Gorgias* 1c.

14) *Gorgias* 463a.



This distinction particularly applies to those arts, which are concerned with the moral and spiritual activities of man, as the political art or legislation (<sup>1</sup>). Since legislation cares for the well-being of the soul (<sup>2</sup>) it can also be described as ψυχῆς θεραπεία or attendance of the soul (<sup>3</sup>). To that extent, legislation is meant to keep the soul safe from any harm (<sup>4</sup>), this being tantamount to the maintenance of its healthy condition. One should note that σωτηρία for its own sake is held to be valueless by Socrates (<sup>5</sup>) whose alleged «conservatism» is only the requirement to maintain the best and most rational order of the soul or the city (<sup>6</sup>). This is the proper function (ἔργον) of the legislator. By performing it, the legislator realizes his own ἀρετὴ and therefore secures his real happiness (<sup>7</sup>), which does not necessarily involve his material advantage (<sup>8</sup>).

The analysis of the function of political art in the *Gorgias* might be paralleled with the analysis of political power (ἀρχή) as defined in *Republic* I. Here also we are told that the function of any ruler is to secure the well-being of his subjects (<sup>9</sup>). Thus political art is self-annihilated when it is exercised with «greediness» (πλεονεξία) (<sup>10</sup>). The material advantage of the ruler, in contradistinction to his happiness, must not be secured through the exercise of his functions. It should be the object of a distinct art, which is μισθαρνητικὴ (<sup>11</sup>). This is an absolute requirement if the healthy city is to be realized (<sup>12</sup>). The ἀρχή of the *Republic* differs from the τέχνη of the *Gorgias* in the respect that it is held to be possible (δυνατόν) (<sup>13</sup>), i. e. practicable, while the true statesman of the *Gorgias* (<sup>14</sup>), like the wise statesman of the *Politicus* (<sup>15</sup>), might possess their art without actually exercising it, if the actual situation of the city is hopeless, as is assumed in the *Gorgias* (<sup>16</sup>).

It may be asked now what is precisely the object which the political and legislative art are expected to improve. In 464b we are told that the task of vo-

1) *Gorgias* 465b.

2) ἐπιμέλεια *Gorgias* 515b, cf. 513e.

3) *Gorgias* 465b, cf. 521a.

4) *Politicus* 297a—b, 293b—c.

5) *Gorgias* 512d. Cf. ch. 2 § V of this thesis.

6) P. Natorp, *Platons Ideenlehre*<sup>2</sup>, pp. 49—50.

7) *Rep.* I 352d—353e.

8) *Rep.* V 466a—b, cf. IV 419a—420b, 420e. Aristotle, who, in *Politics* II 5 1264b15, restates the objection of Adimantus, does not take into account I 352d—353e. *Ibid.* 346d.

9) *Rep.* I 342e, 345d—e, 347a.

10) *Rep.* I 350a, cf. *Gorgias* 490c.

11) *Rep.* I 346d.

12) *Rep.* VII 521a ff.

13) *Rep.* V 456c, 457a, 457c.

14) *Gorgias* 521d, cf. *Apol.* 31e—32a.

15) *Politicus* 259b.

16) E. R. Dodds, op. cit., pp. 19, 20, 31.

μοθετική is to maintain the normal condition of the soul. Also when the concept of improvement (βελτίω ποιεῖν) is referred to, in the *G o r g i a s*, it is almost always related to ψυχή (¹).

Since there is nowhere in the *G o r g i a s*, with the exception of Kallikles' speech, any close examination of the enactment of written or even customary laws, the legislative art is apparently something quite different from what the Greeks normally understood as νομοθετική, whose purpose was similarly the moral improvement of the citizens (²) but which always included the explicit enactment of written laws or the implicit approval of the unwritten ones (³).

On the other hand the fact that the legislation is a part (μέριον) of political art (⁴), the argument of Kallikles and the whole discussion of the athenian as opposed to the true politics implies that the soul, with whose well-being the legislator is concerned, is neither the strictly individual soul nor the soul viewed as an ontological substance (⁵). This view of the soul may be the ultimate principle of the platonic political theory (⁶). The dialectical analysis, even as it is understood in the *Laws*, seems to point to this (⁷). In the *Gorgias*, however, Socrates' main concern is the soul of the citizens. The term soul perhaps stands here for not much more than what might be termed moral character (⁸).

A further argument grounding this interpretation is that the true statesman, namely Socrates, is equally concerned in this dialogue with the choice of the best life (⁹).

Thus, one must first choose for himself the best life and only if this condition is realized will he be able to exercise true and worthy politics (¹⁰). The true statesman must be just and the Republic reminds us that justice is rather a matter of inward character than of external acts (¹¹).

Now Socrates speaks also of the attendance of the city (521a) which certainly must fall within the scope of πολιτική and νομοθετική. This is identical with the care of the common good (κοινόν) as opposed to one's particular in-

1) *S o g r i a s* 501b, 502e, 503a, 503e, 505b, 508a, 511a. Cf. ch. 2 § III of this thesis.

2) *Aristotle P o l i t i c s* I 333b4—6, cf. *Plutarch, L y c u r g u s*, 14, 1.

3) *L a w s* I 632a.

4) *G o r g i a s* 465b, 478b.

5) As in *R e p.* IX 611d, *P h a e d r u s* 245c, *L a w s* X 896b.

6) This may be so even in the *G o r g i a s* (504b, 508a).

7) *L a w s* X 896d.

8) *G o r g i a s* 503a, 515c. If these passages are compared with 513e or 521a it appears that ψυχαι τῶν πολιτῶν might stand for πολίτας or even Ἀθηναίους. In *Heraklitus DK*¹⁰ B119 ψυχή and ἦθος appear to be interchangeable.

9) ἄριστος τρόπος τοῦ βίου, *G o r g i a s* 527e, ὅντινα χρὴ τρόπον ζῆν 500c.

10) *G o r g i a s* 527e.

11) δικαιοσύνη... οὐ περὶ τὴν ἔξω πράξιν ἀλλὰ περὶ τὴν ἐντός, *Rep.* IV 443d.

terests ἰδία (1). Although there is no definite doctrine in the *Gorgias* about the relation between the individual soul or character (2) and the city, legislation, as attendance of the city, and legislation, as maintaining the well-being of the soul of the citizen, are identical arts.

This does not imply that we must discover in the *Gorgias* a view about the correspondence of the μόρια of the soul and the social classes. Moreover Socrates does not appear, in the *Gorgias*, to accept the view that those involved in banausic occupations represent an inferior class. On the contrary, the activity of the δημιουργοὶ is praised as being the pattern of rational activity (3) and no one, with the possible exception of the philosopher, is entitled to claim any superiority over them (4).

The view, which is probably implied in the *Gorgias*, is that the legislator is concerned with the city, in so far as this is the ideal totality of the citizens (5), something akin to the «volonté générale» as understood by Rousseau (6). The *Gorgias* assumes also that the moral features of the city are the expression of those of the citizens (6) and that therefore the same art may apply to ψυχὴ as well as to πόλις.

Now, the meaning of the improvement of ψυχὴ or its outward expression, πόλις, must be considered. The first point made by Socrates is that this improvement must be a real one (οὔσα εὐεξία) as opposed to the apparent well-being which the various «experiences» (ἐμπειρίαι) or «guessworks» (στοχαστικαί) claim to secure (8).

The term εὐεξία, used in reference to legislation and political art, suggests that they have to maintain what might be stated, in a somewhat medical sense, as the normal condition of the soul. Although this is no more than a metaphor (9), it is thoroughly worked out in the *Gorgias* (10). Legislation then

1] It is interesting to note that for Plato ἰδίωσις is the root of evil. So *Rep.* V 462b, *Laws* V 731e—732a.

2] In *Rep.* too ψυχὴ and ἦθος are closely connected, cp. *Gorg.* 513e with *Rep.* II 369a, VIII 544d—e.

3] *Gorgias* 503a—504a. The contrast with Xenophon's *Economicus* IV, 2—4 is strong.

4] Such a claim is καταγέλαστον *Gorgias* 512d.

5] Cp. κοινὸν τῆς πόλεως in *Crito* 50a, *Protagoras* 319d, *Theaetetus* 172b. On this term see ch. 3 § II of this thesis.

6] *Contrat Social*, ed. M. Halwachs, Paris 1933, pp. 139, 145, 361, 362.

7] *Gorgias* 513b, Cf. *Rep.* VIII 544d—e.

8] *Gorgias* 464a—b, cf. 466d.

9] In so far as medicine is empirical.

10] As the use of terms like προσφέρειν in 465a, ψυχῆς πονηρίᾳ 477c—478a and the penal theory of Socrates (e. g. 478a) suggest.

may be compared to some kind of preventive medicine, as Acumenus <sup>(1)</sup> or Herodicus of Selymbria <sup>(2)</sup> probably understood and practised it.

Εὐεξία has also a strong sophistic, namely protagorean, flavour. Protagoras stated that the purpose of the «wise and good orator» is to establish the better condition of the city <sup>(3)</sup>, as the sophist seeks it as far as the souls of his pupils are concerned <sup>(4)</sup>. Therefore, according to Protagoras, discourses may be compared to φάρμακα <sup>(5)</sup>.

The main difference between Socrates' view of εὐεξία and Protagoras' view of βελτίων ἕξις is that the former is real and the object of a true science while the latter is sufficiently secured even if it is only apparently possessed by the citizen <sup>(6)</sup>. Thus, an art possessing the epistemological status of στοχαστική might efficiently produce it. Such is the political art of Protagoras <sup>(7)</sup> to which Plato may allude when he refers to what he defines as the divination (μαντεία) of the shadows, based on the remembrance of similar past cases <sup>(8)</sup> and by no means despised by Plato without qualification <sup>(9)</sup>. Hence, it is partly right to suggest, as H. Ryffel does <sup>(10)</sup>, that Plato has a conception of political art analogous in a sense to that of Protagoras. But Plato grounded it more rigorously from the ontological and epistemological standpoint. This really normal condition is beneficial for the citizen, since the advantageous (ὠφέλιμον) is what is good for the citizen, i. e. what maintains his soul in its normal condition <sup>(11)</sup>. The legislator's task is to secure it. This may account for the «utilitarian» element in Socrates' thought <sup>(12)</sup>, which survives in Plato's mature theory of the state and law <sup>(13)</sup> e. g. in his views on καλῶς ψεῦδεσθαι. If he is successful in this pursuit the legislator will secure the true happiness (εὐδαιμονία) of the citizen <sup>(14)</sup>, who will live and act according to his true self.

The εὐεξία of the soul, which the legislator seeks to maintain and the judge to restore, is further defined in Gorgias 504b. To «make the soul

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1) P h a e d r u s 227a.

2) R e p. III 406a.

3) Βελτίων ἕξις Theaet. 167c. See ch. 3 § III of this thesis.

4) T h e a e t e t u s 167a.

5) T h e a e t e t u s ibid.

6) P r o t. 323a—b. I assume that the justice referred to here is a species of the healthy disposition of the T h e a e t e t u s.

7) P r o t. 319a, 328b, cf. T h e a e t. 167c.

8) See ch. 3 § III of this thesis.

9) Ibid.

10) Μεταβολή Πολιτειῶν pp. 95, 32, 56.

11) G o r g i a s 499c—d. Cf. 525b. Moreau, op. cit., distinguishes from χρήσιμον= efficient.

12) H i p p. M a j. 295e, cf. M e m o r. IV 6—8. See ch. 2 § III, V of this thesis.

13) R e p. V 458e, 461a—b, 459d.

14) G o r g i a s 458c.

better» is to preserve in it its own inherent order, referred to as τάξις and κόσμος, which in the case of the soul is identical with its own law (νόμος) (1). This analysis is formal up to this point. But its meaning gains in clarity, if the two analogies, with which Socrates illustrates it, are taken into account. These are the analogy of the crafts and the analogy of nature.

In 503e we are told that each craftsman seeks to ensure that the elements of the object he is producing should mutually fit and join (2) in order to compose a well ordered whole (3), which will therefore have εἶδος. Socrates further says that this form is the regulating principle, which orders the activity of the craftsman himself, by excluding any fortuitous element from it. This applies to discourse and to action as well (4).

This analysis applies to nature as a whole (5). Thus Socrates probably and Plato certainly shared Aristotle's view that nature proceeds like a wise craftsman and that every true art, legislation included, is therefore natural (6). The affinity of legislation with nature is due to the fact that the principle of finality dominates both (7).

These two analogies make clear, a. that the soul also must be a κόσμος, b. that only if this is so will the soul be organized according to its own νόμος, which, c. is the εἶδος that the legislator has in mind and seeks to realize approximately in his legal enactments. It might be suggested that the νόμιμον or νόμος of the soul (8) performs exactly the same function, from the point of view of the legislator, as that realized by the εἶδος which the craftsman keeps in his mind, while working (9). This «form» or «law» of the soul provides, as far as politics are concerned, the final cause which Socrates vainly sought in Anaxagoras' Νοῦς (10) and discovered only in the ἐκεῖνα τὰ πολυθρόνητα (11). d. The analogy of the crafts suggests also that the law of the soul will bestow unity

1) Gorgias 504d.

2) Πρέπον τε εἶναι καὶ ἀρμόττειν. These features should apply also to legal codes cf. Laws I 630b. See on πρέπον ch. 2 § V of this thesis.

3) ἕως ἂν τὸ ἅπαν συστήσεται τεταγμένον καὶ κεκοσμημένον πρᾶγμα. Cf. Laws IV 719d, V 746d—e, VI 768b, VII 799e. Philebus 26e on νόμος as πέρας.

4) ὁ ἀγαθὸς ἀνὴρ . . . οὐκ εἰκὴ ἐρεῖ ἄλλ' ἀποβλέπων πρὸς τι, ὥσπερ οἱ ἄλλοι πάντες δημιουργοί. Cf. Laws X 902e.

5) 507e—508a. The σοφοί to whom this view is attributed might be Pythagoras himself. Cf. E. R. Dodds ad loc. pp. 338—339

6) Aristotle's Protrepticus frgs B12, B14 (Düring), Physics B, 2, 194a21, Plato, Laws X 890d.

7) Cf. Phaedo 97d, Laws I. c.

8) Gorgias 504d.

9) Gorgias 503d—e.

10) Phaedo 97c.

11) Phaedo 100b. This does not imply that the εἶδος referred to in the Gorgias is χωριστόν.

and consistency on the legal code, which the legislator is expected to achieve. This is not explicitly stated in the *Gorgias*, because νομοθετική is not dealt with here on its own right but only as an instance of an art maintaining the normal condition of its object. It is however clearly stated in the *Laws* (1), where the τέλος or σκοπός of the legislator provides εἶδος for his legal enactments and makes them contrast with the so called legal enactments which are determined only by opportunity and therefore frequently present a self—contradictory character (2). Although the analysis of the *Laws* is strictly ethical, since the hierarchy of virtues or «scale of goods» stand for what is termed in the *Gorgias* as the «law» or «order» of the soul, both passages express the view that the rationality of its purpose is the condition of the consistency of any legislation.

Now, as the improvement of the soul is achieved through persuasion and compulsion, namely punishment, we have to consider these two procedures of the legislator.

### III. Legislation and persuasion.

It is apparently difficult to suggest that, in the *Gorgias* at least, legislation may resort to such means as πειθώς, since the political art, of which legislation is the most important species, is contrasted with oratory, whose main function is persuasive. The opposition πολιτική—ρητορική might be easily reduced to an opposition πολιτική—πειθώς.

It seems that the opposition of true politics and oratory is grounded on the opposition between persuading (πείθειν) and teaching (διδάσκειν) (3). Persuasion is irrational because it can be subordinated to any set of ends, in spite of Gorgias' reluctant self—emendation (4). The oratory which resorts to it is a mere στοχαστική (5) which Socrates professes with some ostentation to be unacquainted with (6).

Political art, on the other hand, involves knowledge of the well—being of the soul and ability to «teach» it since Socrates and Plato assume that what is known can also be taught (7). Hence teaching is always of something true (8) because there cannot exist a false knowledge.

We must take into account however the distinction between true and false

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1) *L* 630e ff.

2) *L* 630e ff.

3) *Gorgias* 455a, cf 453a, 459a, 459c extended to poetical enchantment in *Gorgias* 502d Cf. Dodds op. cit. p. 206.

4) *Gorgias* 460a.

5) *Gorgias* 501a ff.

6) *Apology* 17a—18a. Cf. *Gorgias* 473e.

7) *Protagoras* 361a—b.

8) *Gorgias* 454d.

πίστις in the *Gorgias* (1). It obviously corresponds to a distinction between true persuasion, which is the result of «teaching» (2), and false persuasion, as Gorgias probably understood and practised it. The «true persuasion» does not produce knowledge, which one ultimately discovers in himself by recollection. Its effect may be described as the acceptance of right principles stated by someone else. In this act of belief one does not grasp the ultimate foundations on which his beliefs are grounded. Such persuasion resulting in true beliefs and equivalent to an inferior kind of teaching, since it does not produce knowledge, is the sort which the legislator uses, e. g. in his legal preambles. He does so especially when he attempts to develop the «quiet» virtues in the citizens (3).

The *Gorgias* passage on «true belief», being, as Dodds says (4), a first statement of the doctrine of doxa, might be considered as a foreshadowing of the views of the Republic on courage, which is defined as the ability to maintain the opinions, which are desirable, from the legislator's standpoint, with regards to what is to be feared or hoped for (5). True belief through persuasion is also the ground of «moderation» which is the «right opinion» about the titles legitimating any authority (6).

The importance of opinion, obtained through persuasion, is further developed in the *Laws*. We are told here that a «right» legislation can be maintained even if some of the magistrates have reached only the level of «true opinion», although the legislator should be endowed with «wisdom» (7).

Thus, it might be suggested that the *Gorgias* already establishes, by means of the doctrine of oratory, persuasion and belief, the logical possibility of the views on «right opinion» in the *Meno* (8) and of their ethical and legal applications, which are referred to in the *Republic* and the *Laws*. The *Gorgias* also grounds the view that the legislator should preferably resort to πειθώς rather than to βία (9).

This interpretation is confirmed by what we are told about pleasure in

1) *Gorgias* 454d—455a.

2) E. g. about justice 454e, 502e, 453d.

3) ἡμερώτερὰ ἀποδείξει *Gorgias* 516b. Cp with the *Politicus*, where the persuasion referred to in 304a is expected to develop the ἡσυχαιῶν, σωφρονικὰ (307a). Cf. also *Laws* XI 937e.

4) Op. cit. on 454d—455a. Doxa is however alluded to in the *Crito*.

5) *Rep.* IV 429c—d.

6) *Rep.* IV 431e.

7) *Laws* I 631c.

8) *Meno* 97b. The whole doctrine of πίστις in the *Gorgias* contradicts J. Gould's views that Plato, by stressing the importance of δόξα in connection with virtue, relinquished the socratic doctrine equating virtue with ἐπιστήμη. See his «Development of Plato's Ethics», p. 76.

9) *Laws* IV 720a, 722b—c.

the *Gorgias*. The general doctrine is stated in 497a. According to this passage pleasure is different (ἕτερον) from good on the ground that (1) the presence of good implies the absence of evil, while the principle of contradiction, perhaps alluded to here, does not apply to pleasure, which may co-exist with its contrary, i. e. pain, «in space and time» (2).

The distinction between pleasure and good does not prevent Socrates from suggesting that there are «advantageous» pleasures (3) and that these are to the «good» as means are to an end (4). This doctrine is by no means inconsistent with that of the *Protagoras*. In the *Protagoras* (5) we are told that pleasure qua pleasure is good. It might be suggested that, a. this pleasure refers only to the «advantageous» pleasure of the *Gorgias*, b. the good is necessarily pleasurable (6), since it secures happiness for its possessor. It is nowhere assumed by Socrates or Plato that true happiness might involve pain. c. Moreover we are told, in the *Protagoras* (7) as in the *Gorgias*, that refraining from χαίρειν might be described as means to secure «greater» i. e. truer pleasures. This is a restatement of the constant platonic doctrine of the instrumental status of pleasure.

This view of pleasure is directly relevant to Plato's theory of legislation. We are told in the *Laws* (8) that the education provided by the legislator is an attempt to secure agreement between the desires of the citizens and the requirement of reason (λόγος). The legislator should make the citizen χαίρειν τοῖς καλοῖς as he himself defines them (9) and only, if the legislator persuades the citizen to consider as pleasurable what he himself defines as good, is he a «true legislator». This is ultimately the persuasion he resorts to (10).

These views are seemingly inconsistent with those of the *Gorgias*. The orator, who will be shown to perform in a sense the function of the statesman and legislator, may produce pleasure as well as pain in the soul of the citizens. As the true political art, legislation included, is concerned with the «good» and not the «pleasures» of the citizens, the true statesman is likely to

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1) *Gorgias* 496c.

2) *Gorgias* 496e, cf. *Phaedo* 60b. As Dodds, op. cit. p. 309, quoting Olympiodorus, says, pleasure and pain are not strictly simultaneous in the *Phaedo* as they are in the *Gorgias*.

3) *Gorgias* 499d—e, cf. 495a.

4) *Gorgias* 500a.

5) 351c ff., see also ch. 3, § V of this thesis.

6) *Protagoras* 354a—b.

7) 354c—d.

8) II 653b ff.

9) Plato would probably accept Meno's definition of virtue in *Meno* 77b if Meno had a real understanding of καλὰ.

10) *Laws* II 659d—660a, 662c, 664b.



make use of painful devices towards them (1). At least Socrates acted in this way (2).

This apparent disregard of pleasure, as far as practical politics and legal methods are concerned, is due to Socrates' assumption that Athens is a corrupted city (3). This is why the theory of punishment holds so important a place in the *Gorgias*. But the *Gorgias* already assumes what the *Laws* develop in detail, that the conduct of the citizen is mainly determined by his feelings and desires rather than by his rational evaluations (4). Thus, an important prerequisite for every art concerned with human affairs, as opposed to the equivalent *ἐμπειρία*, is to distinguish clearly the good from the bad pleasures (5). This requirement would obviously be meaningless if it did not imply that the legislator is expected to take into account what the citizens are feeling as agreeable, even if he must refrain from yielding to it. Nevertheless, if he is really a *τεχνικός* (6), the legislator must know the nature (*φύσις*) and the disposition (*ἔξις*) of the souls of the citizens, their pleasures and pains included.

If so, the legislator and true statesman must act as an orator, since it is oratory, whose function is to persuade the citizens to accept any law or political decision. It might be objected to such an interpretation that oratory is treated with the utmost contempt in the *Gorgias* and that this precludes its close connection with either legislation or true statesmanship.

The opposition of oratory to true statesmanship is not only due to the epistemological and ontological grounds referred to previously but also to the fact that, a. the orator, as described by *Gorgias*, seeks to dominate and enslave his audience (7). His so called *ἀρχή* may remind us of the definition of virtue by *Meno*, the pupil of *Gorgias* (8), also in terms of domination. In so far as the orator possesses an absolute *ἀρχή*, he may be described as *ἐλεύθερος*, an absolute master or tyrant over others (9). This kind of oratory is unacceptable from *Plato's* standpoint, who identifies *ἀρχή* not with unrestrained freedom and absolute domination but with attendance (*θεραπεία*) of its object (10). Moreover political art, legislation included, is defined by *Plato* mainly in terms of knowledge

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1) ἀφαίρεσις—ἀπαλλαγή, *Gorgias* 504d, cf. 503a.

2) *Gorgias* 517b, cf. 521d and *Rep.* VI 492d—e.

3) *Gorgias* 515e.

4) So it is implied in 510d and suggested in 503d.

5) *Gorgias* 495a, 499d—e, cf. *Laws* II 654c ff. on καλόν.

6) *Gorgias* 500a, cf. *Laws* I 650b and VIII 836e—837a.

7) *Gorgias* 452e.

8) *Meno* 73d. Cf. R. S. Bluck, *Plato's Meno*, Cambridge 1961, p. 232.

9) Cf. *Kallikles'* views in § I. The disregard of logical consistency in the *Meno*, as *Meno* practised it, is a species of such an *ἐλευθερία* *Meno* 86d.

10) Ch 2 § III, § II of this chapter.

and exists even if it is not actively exercised (1) and the «royal statesman» happens to be ιδιώτης. Socrates himself is a true statesman (2) while abstaining from τὰ πολιτικά πράττειν (3).

b. This «domination» is more apparent than real. Hence the orator is really the servant δίκονος of the desires, the whims and the changing mood of the citizens. This far from contradicting his «domination» is its prerequisite (4).

But Socrates, in the *Gorgias*, admits that there may be a «good» oratory, which possesses the status of an art (5). Aristides apparently exercised it (6). Its function is to care for the well-being of the citizens. It involves a knowledge identical to that of political art and legislation as it performs partly the same function (7). The stranger of the *Politicus* obviously refers to it when he speaks of «that kind of oratory which partakes of the kingly art because it persuades men to justice and thereby helps to steer the ship of the state» (8). As legislation is identical with the whole or at least the most theoretical part of the kingly art of the *Politicus* (9), the oratory, which «partakes» of statesmanship, may be nothing else than a term denoting the persuasive function of the true statesman. It is already suggested in the *Gorgias* that «true» and «false» oratory are respective denominations of the persuasive function of the true statesman and the deceptive practice of the false one, including the tyrant. The false statesmen of Athens are referred to as ῥήτορες (10). False oratory is parallel to tyranny (11) probably because both resort to βία through ἀπάτη as *Gorgias* had realized (12) and both secure «power without responsibility» (13).

It might be objected to this analysis that the false oratory referred to in the *Gorgias* is mainly the ἐμπειρία corresponding to the judicial art (δικαστική or δικαιοσύνη) (14) and that the function of «true» oratory is to denounce evil rather than to keep, as the legislator does, the healthy condition of the

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1) *Politicus* 259b.

2) *Gorgias* 521d.

3) *Apology* 31d.

4) *Gorgias* 517a.

5) *Gorgias* 502e—503a, 504d, 527c.

6) *Gorgias* 526b.

7) *Ibid.* 504e, cp. with *Laws* I 631a, p. III 688b, IV 705d—e.

8) *Politicus* 303e, Lamb's tr. Cf. *Phaedrus* 270b and E. R. Dodds op. cit. p. 330 on τεχνικὸς ῥήτωρ of *Gorgias* 503a. He rightly suggests that he is the «true statesman» of the *Politicus*.

9) 294a, 305c. 309d. Cf. also J. Moreau, op. cit., p. 137. This point is discussed in detail in ch. 2 § II of this thesis.

10) *Gorgias* 503b, 515a—b.

11) *Gorgias* 466e, 467a.

12) *Encomium Helenae* § 8 (DK<sup>10</sup> B11, vol. II, pp. 290—292).

13) *Ibid.* § 13.

14) *Gorgias* 520a.

soul and the city (<sup>1</sup>). If so, it cannot be described as a way of exercising the legislator's persuasive function.

This kind of oratory is obviously different from that exercised perhaps by Aristides, which was referred to previously. It is mainly relevant to the citizen's duty of denunciation of the evil done, which will make it clear and curable. It might be compared to the frequently given advice of μήνους in the *Laws* (<sup>2</sup>). In that case, as in the *Gorgias* theory of κατηγορία, an identical recognition of truth and clarity, as supreme practical values, is implied.

On the other hand, the kind of oratory referred to in 503a or 504e might be compared to the mythical λόγος or Socrates (<sup>3</sup>) as the protreptic style and concern is strong in both (<sup>4</sup>). This kind of oratory is also akin to the persuasive myths of the magistrates in relation to the citizens (<sup>5</sup>) or of the founder of the city in relation to the magistrates (<sup>6</sup>). Its most relevant application to our field of research is in the preambles of the legal enactments in the *Laws* (<sup>7</sup>). It is noteworthy that the legislator is compared with an orator in so far as he is concerned with these preambles (<sup>8</sup>).

It is then not unlikely that the experience of the «protreptic» activity of Socrates, as hinted at in the *Gorgias* (<sup>9</sup>) and the *Apology* (<sup>10</sup>) is at the root of Plato's views on true oratory, persuasion of the law and the moral use of the myth, the epistemological basis of both oratory and legislation, as a persuasive technique, being partly provided by the hippocratic or similar views on human nature (<sup>11</sup>).

## VI. Legislation, compulsion and punishment

Although the *Gorgias* provides adequate justificatory grounds for the

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1) Ibid. 480b—d.

2) *Laws* VI 754e, V 745a, 742b. Cf. V. Goldschmidt in *Revue de Métaphysique et de Morale* LVIII, 1953, p. 357, also A. Delatte, *Essai sur la Politique Pythagoricienne*, p. 49.

3) *Gorgias* 526d.

4) Cf. the λόγος of 507d and such expressions as ἐατέον, σκεπτέον, οὐ φιλοψυχητέον in 512e.

5) *Rep.* II 382d.

6) Ibid. III 414b, 415a.

7) *Laws* IV 723b, VI 772e, 774a, IX 870d, 880a—b, X 885d, 887b.

8) *Laws* VI 773b—774a.

9) παρακαλῶ, δνειδιζῶ 526e

10) παρακελεύόμενος... ἐνδεικνύμενος... δνειδιῶ 29d—30a It is noteworthy that this passage is quoted by Jamblichus, *Protr.* ch. XIII, (Pistelli) 71.

11) Phaedrus 270c—d. Cf. P. Kucharski, *La Rhétorique dans le Gorgias et dans le Phèdre*, *Revue des Études Grecques*, LXXIV, 1961, p. 396. Classification, in connection with legislation, is dealt with in *Les Chemins du Savoir dans les Derniers Dialogues de Platon*, Paris 1949, pp 14—16.

doctrine of persuasion by law, the emphasis is on the whole on compulsion rather than persuasion (<sup>1</sup>). This is, to some extent, a consequence of the socratic method. Compulsion is involved in «teaching» in so far as the «pupil» is compelled to abandon his former ignorance (<sup>2</sup>). In is a common characteristic of true oratory and socratic elenchus (<sup>3</sup>), which might be due to the connection of elenchus with irony (<sup>4</sup>).

It is noteworthy that we have no doctrine of «opportunity» in the *Gorgias* as in the later *Phaedrus* (<sup>5</sup>) applying to all kind of «discourses» (<sup>6</sup>) including the legal codes of Solon (<sup>7</sup>). Neither have we any doctrine of measure according to the «becoming» (πρέπον) (<sup>8</sup>), later developed as requirement of the «middle» (μέσον), the determination of quantity (δρόσον) (<sup>9</sup>) and of time (δπότε, καιρός) (<sup>10</sup>). These doctrines, which are at the origin of the aristotelian μεσότης (<sup>11</sup>), have themselves a rhetorical and political origin. Their absence in the *Gorgias* may involve some disregard of persuasion.

Further evidence for such a disregard is the almost Cynic παρρησία displayed quite frequently by Socrates in this dialogue (<sup>12</sup>). The socratic bent towards βία, as far as it is distinct from punishment, is a foreshadowing of it. Compulsion is treated as a threat (ἀπειλή), which will be applied if and when persuasion fails. The reduction of compulsion to «threat» is obvious in the case of «warning» (νουθετεῖν) (<sup>13</sup>) in which persuasion implies «reproval» or «punishment with words» (<sup>14</sup>) in accordance, perhaps, with a traditional topos (<sup>15</sup>). A similar way of threatening in lieu of persuading is used in the case of the «example» of the punished incurable evil-doer, in relation to the conduct of the other citizens. Thus, the παραδείγματα of eternal suffering (<sup>16</sup>) in Hades are meant to be θεάματα and νουθετήματα for the arri-

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1) Cf. ch. 2 § III of this thesis.

2) *Gorgias* 454e—455a.

3) *Apol.* 23c, *Rep.* VII 539b, Anytus in *Meno* 94e—95a, Kallikles in *Gorgias* 489b, 489e, 494d.

4) So, R. Robinson, *Plato's Earlier Dialectic*, p. 18.

5) καιρός τοῦ πότε λεκτέον καὶ ἐπισχετέον *Phaedrus* 272a.

6) *Phaedrus* 277d.

7) *Ibid.* 278c and *Laws* II 663e—664b, IV 719e, esp. XI 916e dealing with καιρός in relation to the legislator.

8) *Politicus* 284e.

9) *Laws* IV 719e.

10) *Laws* I 636e.

11) See ch. 3 § V of this thesis.

12) E. g. *Gorgias* 494c—e.

13) *Gorgias* 478d—e.

14) *L. S.* for ἐπιπλήττω.

15) θυμοί, νουθετήσεις, κολάσεις, *Protagoras* 323e.

16) *Gorgias* 525b.

ving souls (1). As «warning» is closely connected with «blaming» (2), it provides the link from education, through threat and compulsion (3), to punishment proper (4).

It is necessary to define the relation between legislative and judicial authority in order to understand the platonic theory of punishment (5). This analysis will provide an answer to the question, how far punishment is connected with νομοθετική, since normally it is a function of δικαστική.

We are told in *Gorgias* 464c that the judicial function completes the legislative and that they «communicate» with each other (6). It is further added that their corrupted forms, namely sophistry and oratory, tend to mingle mutually (7). As the relation of the corrupted forms is identical with that between the healthy ones, the inference may be drawn that φύρεσθαι describes also the very close connection between the legislative and judicial function. This close relationship is not only due to the fact that the judicial function restores what legislation maintains (8). It may also anticipate the later reference to the legislator as a judge, when he acts as a mediator between rival factions or cities in order to restore peace among them (9).

A legislator acts also as a judge, so that it is hard to draw a distinction between them, when he assigns to everyone, as Rhadamanthys did (10), what he deserves to obtain, whether it is a «service», a material or spiritual advantage, blame or punishment. The legislator performs, through such an apportionment, his function of διανομή and establishes «geometrical equality» between the citizens (11). In order to realize this distributive function he has to grasp the exem-

1) *Gorgias* 525c. As Dodds says (ad loc. p. 381) it is difficult to understand how these souls will profit from the «warning». Perhaps when they return to earth, as he suggests. *Rep.* X 621a (cf. *Adam* II p. 461) seemingly precludes this possibility. The «examples» may act as warning in so far as they prevent the souls from getting worse. In *Laws* IX 854e this principle applies to the world of the living, cf. 862e—863a.

2) νοθετούμενός τε καὶ ἐπιπληττόμενος *Gorgias* 478e.

3) Protagoras in *Prot.* 323c, 323e, 325d emphasizes rather the connection between νοθετεῖν and διδάσκειν.

4) So *Laws* IX 879d. Here νοθετεῖν is realized πληγαῖς.

5) See also ch. 2 § III, ch. 3 § III and IV of this thesis.

6) ἐπικοινωνοῦσιν ἀλλήλαις

7) φύρονται *Gorgias* 465c.

8) See ch. I § II and III, § I of this chapter.

9) *Laws* I 628a. It is noteworthy that a city acts as δικαστής in *Thuc.* III, LII, 3. In IV, LXI, 2, LXV, 5 the same rules apply to the διαλλαγή of the individuals and cities.

10) *Laws* I 625a, XII 948b. He was a legislator διὰ τὸ περὶ τὰς δίκας διανέμειν ὀρθῶς. On διανομή in connection with ἀρχή cf. *Gorgias* 490c, *Laws* V 737c, 744c—d, 745d, VIII 848b.

11) *Gorgias* 508a. Further developed in the *Laws* (VI 757c, VIII 848b—c), cf. S. Moser in *Öster. Zeitschrift für Öffentliches Recht*, IV, 1952, p. 141.

plary patterns (τύποι) of distribution. This is necessary in a very strict sense, in so far as distribution of pains is concerned. Therefore the legislator will particularly seek to establish the τύποι τιμωριῶν which the judge will have to apply to his dealing with singular cases of guilt (1).

The whole penal theory of the Gorgias, even if it was inspired in reaction to the various practices of the corrupted Athenians (2), might be described as an «exemplary pattern» of punishment, as it is meant to apply to typical cases of guilt and not to individual instances of evil—doing. Such are, at any rate, the rules established by Zeus in Hades in relation to judgement and pain (3).

The fact that the judge is expected to apply general principles not discovered by himself provides an adequate explanation for the repeated statement of the inferiority of the judge, if compared to the legislator. This view is already expressed in the Gorgias (4). Here the superiority of the legislative to the judicial function is grounded on the principle that «prevention is better than cure» (5), i. e. on moral considerations.

But, as the notion of «pattern of punishment» requires, the judge is also inferior to the legislator on the epistemological ground that his science is an applied one (6), that he borrows his knowledge from the legislator and that he has only an «opinion» of what the just should be (7). There may be ontological considerations explaining the inferiority of the judge, who is said to deal with the «shadows of justice», as opposed not only to the dialectical philosopher but also to the legislator (8). This ground is completely absent from the Gorgias and it is noteworthy that the Gorgias never refers to a χωρισμὸς between the legislative and judicial function like that existing between the soul and the body (9) or between the perfect city and its earthly imitations (10). It is therefore difficult to treat political and social superiority as a mere reflection of ontological transcendence, as Vlastos does (11). Political and social superiority is more

1) Laws IX 876e. This is a later platonic view, implied however in the Gorgias.

2) See § V of this chapter.

3) Gorgias 523c.

4) 520b, κάλλιον ἔστιν σοφιστικὴ ῥητορικῆς ὥσπερ νομοθετικὴ δικαστικῆς καὶ γυμναστικῆς ἱατρικῆς.

5) Dodds op. cit. p. 367 ad loc.

6) Laws XI 934b, XII 957c—d.

7) Theaetetus 201b—c.

8) Rep. VI 517d, cf. III 405b.

9) Phaedo 79b—80a.

10) παῶν γὰρ ἐκείνην γε ἐκκρίτεον, οἷον θεὸν ἐξ ἀνθρώπων, ἐκ τῶν ἄλλων πολιτειῶν Politicus 303b.

11) Philosophical Review 1941 p. 295.

akin to the epistemological one. True political superiority involves a higher degree of self-sufficiency as true knowledge does (1). This is why legislation and «justice» are linked like superior to inferior knowledge.

Now, what are the *τύποι τιμωριῶν* according to the *Gorgias*? Three main «types» may be distinguished, namely a. accusation (*κατηγορία*), b. chastisement or check of the growth of evil passions (*κολάζειν*), c. expiation or punishment proper (*διδόναι δίκην*).

Accusation (2) is, in a sense, the mildest form of punishment, since the evil-doer suffers no pain and is not even threatened with the expectation of any, as he is when «warned». The purpose of accusation is to remove any dissimulation and to make clear (3) the evil done, as the «denunciation» theory of the *Laws*, where (4) *φαίνειν* stands for *μηνύειν*, suggests. As Goldschmidt says, the notion of practical clarity secured by accusation greatly diminishes the acknowledged gap between *λέξις* and *πράξις* (5). We have a mythical statement of this requirement of clarity in the rule established by Zeus that the souls should stand naked before Minos and Rhadamanthys at their ultimate trial (6). The procedure of accusation enables the true statesman to make the practices of the corrupted individual and city appear as they really are by removing all the false appearances (7).

The theory of accusation clearly shows that some degree of truth is attainable in moral and political practice. This is so because, according to Plato, clarity (*σαφές*) implies purity (*καθαρόν*) and this is a necessary attribute of truth (*ἀληθές*) (8).

The doctrine of accusation may also be considered as a forestatement of the later doctrine of legislative purification (*κάθαρσις*) as defined in the *Republic* (9), the *Politicus* (10) and the *Laws* (11). The connection of purification with elenchus (12) provides evidence for the view that the purpose of purification is, to a great extent, similar to the aim of accusation, namely the supremacy of truth in moral and political activity.

1) *Rep.* VI 489c.

2) *Gorgias* 480b—c.

3) εἰς τὰ φανερόν ἔγειν 480c, κατάδηλον *Gorgias* 480d.

4) V 745a. Cf. V. Goldschmidt, *La Dénonciation*, op. cit., p. 364.

5) See ch. 3 § III and IV, § I of this chapter.

6) γυμνός of *Gorgias* 523e—524d, cf. *Republic* IX 577b. γυμνός is the mythical equivalent of φανερός and κατάδηλος.

7) εἶναι instead of δοκεῖν *Gorgias* 527b.

8) *Philebus* 52d, 53b, 57c, 63e.

9) VII 541a, VIII 567c.

10) 293d.

11) V 735e—736a.

12) *Sophist* 230d, cp. with *Gorgias* 524e.

b. The direct aim of accusation is chastisement (κόλασις) (1). The Socratic view of chastisement is developed as a reply against Kallikles' approval of ἀκολασία, who suggested that any self—restraint is unnatural and motivated by cowardice (2). Socrates objects that the unrestrained and intemperate soul is a necessarily abnormal one, because its own greediness (πλεονεξία) deprives it of any κόσμος (3). Chastisement is meant to be a remedy to this unhealthy (πονηρά, μοχθηρά) state of the soul or the city. Thus is fulfilled the curative purpose of punishment (4) and the individual or the city becomes «moderate» and «healthy» (σώφρων) (5).

Socrates does not give many details about the means through which the unrestrained soul is chastised. Apparently chastisement is connected with «expiation» (διδόναι δίκην) (6). This normally implies that this «cure» is quite far—reaching and is secured not only by discourses (7) but by more practical disciplinary means. On the other hand chastisement has a rather mild sense in the *Gorgias* and it may be defined as ethical self—discipline (8) while in the *Laws* there is no distinction between chastisement and expiation (9). The apparently milder tone of the *Gorgias* may be due to the fact that the concern for the individual and good life prevails over the problems of political and social organization. Moreover, the true legislator and statesman of the *Gorgias* is not supposed to be endowed with the political power, which he is assumed to possess in the *Republic* and the *Laws*.

c. The distinction between chastisement and expiation (διδόναι δίκην, τυγχάνειν τιμωρίας) (10) is not easy to draw. As already suggested, even in the *Gorgias*, chastisement and expiation refer to very closely related procedures. In that case

1) *Gorgias* 478d—e, 505b, 507d further developed in 477a, 527b, 527c, cf. Kallikles' praise of ἀκολασία in 491e

2) *Gorgias* 491e—492b, cf. *Gorgias* and *Polos* approval of ἐλευθερία and ἀρχή above § I. In the case of Meletus (*A p.* 26e—27a) ἀκολασία amounts to irresponsibility.

3) *Gorgias* 505b, 508a. Cf. the use of ἀκόσμητος in 506d and *Laws* V, 733e—734d.

4) *Gorgias* 507d.

5) *Gorgias* 507a. Σωφροσύνη is traditionally opposed to ἀκολασία, as in *Thuc.* III, XXXVII, 3.

6) In nearly all the passages relevant to κόλασις, esp. 527c, 478b, 507d.

7) There is not much connection between chastisement and teaching in the *Gorgias*.

8) εἴργειν αὐτήν (i. e. τὴν ἀνόητον ψυχὴν) δεῖ τῶν ἐπιθυμιῶν *Gorgias* 505b. Here κολάζειν is defined as εἴργειν ἀφ' ὧν ἐπιθυμεῖ. Cf. *Plutarch Lycurgus*, 22, 2.

9) So *Laws* IV 718b, V 735e, κολαζέσθω πληγαῖς VI 762c. IV 731b is nearer to the *Gorgias*. κολάζειν is opposed to undue «relaxation» (ἀνιέναι).

10) *Gorgias* 472e, 525b—c, 525d, 478d.



chastisement is understood to be a method whose purpose is expiation (1). There is however an important specific character of expiation, which does not belong normally to chastisement, namely its possibly eternal duration (2). If so, the sufferer does not expiate for his own benefit and happiness as it nearly always happens, in the *Gorgias* at least, with κόλασις. Since he is supposed to be incurable, he becomes, by means of his everlasting expiation, a salutary example to others (3). He might be compared to the member which is to be severed from the body for the sake of its well-being (4).

The respective origin of κόλασις and δίκη may account for this difference. The former probably has a medical use and origin (5). The latter was grounded on θέμις rather than on νόμος. It has a strong religious flavour and might have been suggested to Plato by the orphic tradition (6). This type of δίκη is the central point of the whole Hades myth in the *Gorgias*, although the other details of the myth may belong «to a very ancient stratum of mythology» older than orphism and pythagorism (7).

The religious character of δίκη may account for its extension to the whole universe, a feature not belonging to κόλασις (8). Socrates and Plato may share Anaximander's view that, in a cosmic scale, any excess is followed by expiation (9). Nevertheless, Socrates and Plato think that expiation should be the consequence of evil-doing. This may be avoided by one's free will and is not an everlasting cosmological law as the «excess» was for Anaximander.

It seems that the previously defined forms of punishment correspond to varying degrees of guilt (10). Expiation, for instance, is applied when the most grave sin, i. e. disregard of divine law, is committed (11). Κόλασις, κατηγορία and νοθέτησις are sufficient in case of a mere temptation of evil-doing or lack of moral discipline. Moreover a sin is greater in so far as it is at the origin of lar-

1) *Gorgias* 476d.

2) τὸν αἰεὶ χρόνον τιμωρουμένους 525e. A subtle distinction between δίκη and τιμωρία is suggested in *Laws* V 728c.

3) *Gorgias* 525b-d. Cf. *Laws* IX 854e.

4) οἱ μὲν γὰρ (i. e. ἱατροὶ) τὸ χεῖριστον ἀφαιροῦντες λείπουν τὸ βέλτιστον *Rep.* VIII 567c.

5) Hippocrates, *Præcepta* 5 (quoted by L. S. under κόλασις).

6) *Laws* IV 716a, where δίκη is described as τῶν ἀπολειπομένων τοῦ θείου νόμου τιμωρός, is listed as an orphic fragment by Kern (21, a, 2) and Diels (DK<sup>10</sup> B 6).

7) So Dodds op. cit. pp. 373-376. He does not pay however much attention to Δίκη and τιμωρία in Hades.

8) *Laws* IV 715e. The universality of Δίκη is here the consequence of a universal divine order.

9) DK<sup>10</sup> B 1, cf. τίσις, δίκη in *Gorgias* 523b.

10) *Gorgias* 525d-e.

11) *Phaedo* 113d-e, cf. *Laws* IX 854a ff.

ger evils especially for the whole city (1). Thus, the false statesman deserves a more severe punishment than the ἰδιώτης (2) because he is responsible on a larger scale for the welfare of the state and may have to answer for greater mischief to others. Therefore punishment becomes retributory and one has also to repair the βλάβη he causes, even if he is not strictly speaking «unjust» (3).

One may wonder why, if punishment is meant to be a cure, one has to answer for the evil of which he is the cause (αἵτιος) (4). Socrates' and Plato's standpoint, as opposed to that of Protagoras (5), may be that retribution has curative effects (6).

Socrates' main point, at any rate, is that the most guilty is the man whose soul has been distorted and internally corrupted by his deeds. These can produce morbid affections (παθήματα) (7). As long as these affections are left without cure, the soul is in a morbid condition. The cure must be applied to the soul so long as this condition lasts. If the soul is hopelessly morbid the «cure» should last for ever (8). The soul is distorted if it is left without cure for too long (9).

An important point, in this conception of punishment, is the function of the penalty of death. The Gorgias (10) and the Phaedo (11) assume that the soul, which is distorted by morbid παθήματα due to a wrong nurture and education, keeps them after its separation from the body. On the other hand, Socrates says that the worst fate for an incurable person is to live for ever and that death is an act of mercy (12). This is the ground of the constant approval of the death penalty by Socrates and Plato (13). But one may wonder about its utility if the soul remains after death as it is while incarnated. A possible answer to this question is that death penalty is meant to be an exemplary and retributive, not curative, type of punishment. But, if so, why is it an act of charity towards the sufferer to apply the death penalty to him? A more probable suggestion may be that Hades is the realm of practical clarity. This pain may prevent the disease of the soul from swelling through dissimulation.

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1) Gorgias 519a.

2) Gorgias 525e. See also ch. 2 § V of this thesis.

3) On the distinction between ἀδικία and βλάβη Laws IX 862a ff

4) As implied in Gorgias 519a.

5) Prot. 324a.

6) Gorgias 480a—b.

7) Gorgias 524d.

8) Gorgias 525b.

9) Gorgias 480a, 481a, 510d.

10) 510d, 524d.

11) 107d.

12) So Gorgias 481b, Cp. Laws V 728b—c.

13) Gorgias 481a, Laws V 728c, 735e, VI 778d, cf. Crito 51a, Laws IX 862e—863a.

Perhaps the difficulties connected with the death penalty are a consequence of some lack of unity and even consistency in the platonic view of soul and life. On the one hand the life in Hades appears to be a mere continuation of the life on earth, enabling the soul to maintain its fundamental *ἔξεις* and *παθήματα*. This «soul» which is really not much more than moral character <sup>(1)</sup> is dependent on *τροφὴ* and *παιδεία*. It is corrupted (*λώβη*, *βλάβη*) by its own particular evil, namely injustice <sup>(2)</sup> and improved by an adequate education. This view of the soul prevails in the *Gorgias*. Perhaps this view is the working one as far as the socratic politics are concerned <sup>(3)</sup>.

On the other hand, the soul, in the strict platonic sense, is an independent substance which normally should be unaffected by bodily and exterior *παθήματα*. Its own evil, injustice, cannot «corrupt» (*φθείρει*) or «quench» (*μαραίνει*) it <sup>(4)</sup>. Death is a way by which the soul may recover its *ἀρχαία φύσις* <sup>(5)</sup>. This view of the soul may provide a basis for the death penalty perfectly consistent with Plato's ontology and dialectic but disagreeing with the views stated in the *Gorgias* and the *Phaedo* that the soul remains eternally distorted by its evil—doing during its bodily life if this was serious enough.

Another difficulty is raised by the duty to abstain from defending one's country when it is guilty <sup>(6)</sup>. A corrupted city should be chastised and punished <sup>(7)</sup> by its responsible statesmen and orators. This is seemingly inconsistent with what the «laws» say in the *Crito* <sup>(8)</sup>. This apparent inconsistency is probably due to the fact that the *Crito* is the only work of Plato devoted to the duties of the citizens while Socrates acts as a responsible statesman in the *Gorgias*.

But even if this difficulty is removed, the notion of the punishment of the city remains obscure. If the analogy of the soul and the city is an epistemological device enabling the dialectician to decipher the justice of the individual <sup>(9)</sup>, the punishment of the city is tantamount to the punishment of its ci-

1) See § II of this chapter.

2) *Crito* 47e, *Gorgias* 511a. Injustice is also referred to as *μοχθηρία* of the soul.

3) V. Brochard, op. cit., p.p. 191—192

4) *Rep.* X 609d ff. It may be pointed out that Ast translates by «corrupto» *λωβῶμαι* of the *Crito* as he does with *φθείρω* of the *Republic*. So, Des Places, *Lexique de Platon*, I p. 316.

5) *Phaedo* 65e—66a, 67e ff. *Rep.* X 611d.

6) *Gorgias* 480b.

7) *ἐπιθετέον δίκην, κολαστέον* 507d.

8) 50e—51a. Dodds, op. cit. p. 258, suggests that the *Gorgias* does not contradict the *Crito* because in the former Socrates simply forbids the unconditional defence of one's country. But he does not take into account *Gorgias* 507d.

9) *Rep.* II 368c—369a, VIII 543c, 544d. The city stands as the clearer and easier pattern of *Politicus* 278b. Cf. J. B. Skemp, *Plato's Statesman*, p. 162.

tizens. The same result is obtained if we assume that a political society reflects the «manners» (ἥθη) of its members (1). Perhaps Plato assumes that even in the most corrupted city, the citizens are to some extent endowed with a common will and destiny, which enables them to live together (2). Therefore they are co—responsible for the evils done by the city and should answer for them.

## V. Development and Corruption of Legislation.

### A. Kallikles and Plato.

As previously suggested (3), Socrates generally follows the pattern of his opponents, in order to refute their views (4). His aim is to show that their argument confirms his rather than their views. Thus, the starting point of the analysis of the socratic views on social and legal μεταβολή is provided by the discussion of Kallikles' relevant statements.

Kallikles thinks that there is a stage in the development of human and even animal life (5) when the natural law requiring the supremacy of the strong is respected (6). It is not clear if this stage is an ideal one or a mere description of what actually happens. The reference to animal life, which will become later a topos of the Cynics (7), suggests that the law of nature prevails in a somewhat primitive stage of human development.

Nevertheless, this account of natural law may be explained also through the opposition ἔργω—λόγῳ, which is a consequence of the nomos—physis antithesis (8). The natural law prevails ἔργῳ, namely in the case of war between states (9) and in the case of tyranny (10). It is also referred to as the healthy and desirable state of things by the commending terms δίκαιον and καλόν, which are not used by Thrasymachus (11).

1) R e p. VIII 544d.

2) This is suggested by the expression κοινὸν τῆς πόλεως. See ch. 1 § II, ch. 3 § I, II of this thesis.

3) See above § I of this chapter.

4) This is relevant to oratory rather than dialectical method. Cf. J. de Romilly, *Histoire et raison chez Thucydide*, p. 185, also the dialogue of Athenians and Melians in Thuc., Bk. V.

5) Οὕτως ἔχει καὶ ἐν τοῖς ἄλλοις ζῴοις καὶ τῶν ἀνθρώπων ἐν ὅλαις ταῖς πόλεσι καὶ τοῖς γένεσιν G o r g i a s 483d.

6) ἡ φύσις G o r g i a s 483d, νόμον γε τὸν τῆς φύσεως 483e, τὸ τῆς φύσεως δίκαιον 484b, τοῦ δικαίου φύσει 484c.

7) Diogenes in D i o g. L a. VI, 75. Cp. the reference to Herakles by Kallikles in connection with Pindar (484c) and Diogenes in D i o g. L a. VI, 71.

8) cp. Thuc VI, XXII, XVIII 6 and F. Heinimann, *Nomos und Physis*, pp. 43 ff.

9) G o r g i a s 483d.

10) *ibid.* 492b. Cp. Polos on Archelaos, 471a—b.

11) G o r g. 491e. Ἀκολασία and ἐλευθερία are referred to as ἀρετή by Kallikles in 492c.

The connexion between natural law and legal and political development is uncertain. But there is some such connexion as Kallikles' criticism of the existing social and legal order apparently implies. The current legal *κατασκευή* is grounded on equality (*τὸ ἴσον*) (1) and Kallikles mainly refers to the democratic *ἰσονομία* (2) and *ἰσομοιρία* (3), i. e. equality of rights in the eye, and according to the written law. It is noteworthy that Kallikles does not treat this *ἰσότης* as a false in contrast to a true one, as did the oligarchs (4) or Plato in his concept of geometrical equality (5). Kallikles rejects equality as a whole, without any qualifications. He is therefore led to deny any value to the virtues of justice and moderation, which imply the refusal of *πλεονεξία* shared by all lawful states (6). It is an oversimplification to treat Kallikles as a representative of the opposition to democracy.

The existing legal order is, according to Kallikles, the result of an artificial (7) social contract. The weak multitude agrees to enact (8) laws grounded on the principle of equality. The social contract includes the moral values which the multitude agrees to commend (9) as being the condition of the stability of legislation. It also includes the patterns, standards and methods of education (10). This broad character of the agreement of the *πολλοὶ* is due to the fact that, according to the Greeks, to legislate is not only to enact written laws, referred to as *γράμματα* (11), but also to praise or blame some type of conduct, traditional or not, according to a scale of moral values, which the legislator is expected to define (12). It is noteworthy that Kallikles does not draw any distinction between these forms of legislation while Thrasymachus does (13).

The purpose of the social contract between the members of the multitude is to protect themselves from the encroachments of the strong (14). The motiva-

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1) *Gorgias* 483c, 484a.

2) cp. Otanes in Herodotus III 80, V 78 on *ἰσηγορίη* and Thuc. II, XXXVII.

3) Athenagoras replying to Hermocrates, Thuc VI XXXVIII, 5, XXXIX, 1.

4) *φήσει τις δημοκρατίαν οὔτε ξυνετόν οὔτε ἴσον εἶναι* Thuc I. c.

5) This true equality is implied in the platonic criticism of the false democratic equality of *Rep* VIII 561e, 563b, 558e.

6) *Gorgias* 492b.

7) *καλλωπίσματα* *Gorgias* 492c.

8) *τιθέμενοι, τίθενται* *Gorgias* 483b.

9) *ἐπαινοῦσι... ψέγουσι...* 492a, cp. *τὸν τῶν πολλῶν νόμον τε καὶ λόγον καὶ ψόγον* 492b.

10) *νόμους, ἐπιδάς, μαγγανεύματα* *Gorgias* 484a, *κατεπάρχοντες, γοητεύοντες* *Gorgias* 483e, *πλάττοντες* *ibid*, *ἐκφοβοῦντες* *Gorgias* 483c.

11) Kallikles in *Gorgias* 484a, cp *Phaedrus* 277d—e, 278c, *Politicus* 295c—e, 296b, 297a, *οὐ γράμματα τιθεῖς* 297d, *Laws* VII 822e.

12) *Laws* V 727c, 728a, 728d ff. See also ch. 2 § II, ch. 3 § III of this thesis.

13) *Rep*. I 338e. Cp *Glauco* in II 359a and *Plato* in *Laws* IV 714d.

14) *Gorgias* 483b, 486b, 492a.

tion of the social contract is fear, due to the avowed or unexpressed consciousness of their own weakness (1).

It may be illuminating to compare this view of the social contract with the relevant passages of the *Crito*, the *Republic* (II) and the *Laws* (III). In the *Crito* there is a statement, according to which, a *ξυνθήκη* is an agreement between the citizen and the law (2). But this agreement is an act of acceptance by the citizen of an already existing legal order, which does not depend on the citizen's will (3), while, according to Kallikles, Thrasymachus (4) and Lykophron (5), the law is the result of the will of the citizens or, at least, the *κύριον τῆς πόλεως*.

Glauco's views (6) are nearer to those of Kallikles. He shares with Kallikles the view that the consciousness of their own weakness (7) induces the multitude to agree upon a legal order based on justice (8) and equality (9). What distinguishes Glauco's from Kallikles' views is the notion that the social contract rests on a compromise (*μέσον* (10)) implying renunciation of the best life, i. e. freedom to act unjustly (11), but also security from the worst fate, to suffer injustice without help or protection from any authority.

This notion of a compromise makes Glaucon's views quite similar to those of Antiphon (12) and of the later Sophists, e. g. Lykophron (13). The absence of the notion of compromise or concession in Kallikles' account of the social con-

1) φαυλότεροι ὄντες 483c, ἀποκυπτόμενοι τὴν αὐτῶν ἀδυναμίαν 492a, διὰ τὴν αὐτῶν ἀνανδρίαν 492b, οἱ ἀσθενεῖς 483b, ὅπου δ' ἂν φαῦλος ᾖ φεύγει καὶ λαιδορεῖ τοῦτο εὐνοίᾳ τῇ αὐτοῦ 485a.

2) παρὰ τὰς συνθήκας καὶ τὰς ὁμολογίας καθ' ἃς συνέθου πολιτεύεσθαι *Crito* 52d.

3) In *Crito* 51d the disagreeing citizen leaves the city. The law does not change.

4) *Rep* I 338e.

5) Aristotle, *Politics*, 1280b<sup>10</sup> quoted by Dodds, *op. cit.*, p. 266.

6) *Rep* II 358e—359b.

7) ἀρρωστίᾳ τοῦ ἀδικεῖν... 359b.

8) συνθέσθαι ἀλλήλοις μήτ' ἀδικεῖν μήτ' ἀδικεῖσθαι καὶ ἐντεῦθεν δὴ ἀρξασθαι νόμους τίθεσθαι καὶ συνθήκας αὐτῶν καὶ ὀνομάσαι τὸ ὑπὸ τοῦ νόμου ἐπίταγμα νόμιμον καὶ δίκαιον 359a.

9) Παράγεται ἐπὶ τὴν τοῦ ἴσου τιμὴν.

10) τὸ δὲ δίκαιον ἐν μέσῳ ὄν... ἀγαπᾶσθαι, εἶναι ταύτην γένεσιν καὶ οὐσίαν δικαιοσύνης μεταξὺ οὖσαν *Rep* II 359a.

11) This is what πᾶσα φύσις διώκειν πέφυκεν ὡς ἀγαθόν, *ibid*, 359c, cp. Hobbes, *Leviathan*, Part I ch 14.

12) τὰ τῶν νόμων ὁμολογηθέντα, οὐ φόντα ἐστίν. This agreement is a compromise necessary because of the existence of μάρτυρες. *DK*<sup>10</sup> B 44 (v II pp. 346—347),

13) Lykophron compares political society to an alliance between states (*συμμαχία*). This implies as in Glauco the notion of compromise and reciprocal concessions, *DK*<sup>10</sup> A3 (II p. 307).

tract strongly suggests that his ρῆσις and whole character, to some extent, represent what Plato would be unconsciously inclined to feel (1).

The account of the *Laws* (2) establishes that the opposition of natural and positive law, which is implied in Kallikles' views of social contract, was expressed by a very ancient tradition, as old as Homer (3). Moreover it seemingly provides an evidence that the enactment of written laws succeeds to social life according to custom, as a later to an older stage of development (4). This historical conception may partly apply to Kallikles' views on the relation between φύσις and νόμος. Otherwise, Kallikles' conception of the social contract is quite different from that of the *Laws* (III). In the *Laws* (III) the written laws are established by magistrates, acting as representatives of the patriarchal communities, appointed by election (5) with the approval of the future citizens and magistrates (6). The element of deception (ἀπάτη) (7), so important in Kallikles' account of the law of the weak, does not appear in the theory of the social pact, as developed in the *Laws*.

The purpose of ἀπάτη, whose powerful effects were already acknowledged by Gorgias (8), is to induce the «excellent natures» (βέλτιστοι, ἐρρωμένεστατοι) to accept the false «ideology» of the weak multitude. So, they are spiritually enslaved (9) as their unconscious respect of the laws and moral values of the weak shows (10). Polos' shame (11) is a good example of such spiritual slavery.

Thus, Kallikles thinks that the corruption of the natural law is due to, a) the agreement between the weak, b) the fact that they are able to deceive the strong. The references to the ἴσον establish clearly that the legal order, which is the most opposed to the natural law, is the democratic constitution (12). The nearest to the natural law is tyrannical government (13).

This account of the corruption of the natural law is relevant to the un-

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1) E. R. Dodds, op. cit. p. 14

2) III 681c—d.

3) *O d y s.* 9, 112 f, quoted in 680b. From 680b—681d it appears that the natural communities are patriarchally governed according to customs. To that stage succeeds that of social organization according to written laws.

4) Μετὰ ταῦτα 681c.

5) αἰρεῖσθαι κοινούς τινας ἑαυτῶν 681c.

6) τοῖς ἡγεμόσι φανερά δείξαντες ἐλέσθαι τε δόντες *ibid.* 681d.

7) κατεπάδοντες, γοητεύοντες *G o r g i a s* 483e, ἀποκρυπτόμενοι 492a.

8) cf. G. Calogero in *J. H. S.* LVII, 1957, pp. 13, 16.

9) καταδουλούμεθα *G o r g i a s* 483e, ἑαυτοῖς δεσπότην *G o r g i a s* 492b.

10) ἐκφοβοῦντες *G o r g i a s* 483c.

11) *ibid.* 482d.

12) it should be pointed out however that every lawful city rests on some kind of equality.

13) see § I of this chapter

derstanding of the platonic view of μεταβολή of the constitution and the laws. The platonic view is on the whole opposed to that of Kallikles. «Fear» (φόβος) or shame (αἰδώς), which is a subsidiary cause of the corruption of the natural law according to Kallikles, is the principle through which a sound legal order is maintained or «saved» according to Socrates and Plato (1). There are however some common features between Kallikles' and Plato's theory of legal and political development. These are a) the connexion between a «healthy society» and the «innocence» i. e. credulity of its members. This feature of Kallikles' «excellent natures» (2) is also a characteristic of the inhabitants of the «healthy» or «true» platonic «city of pigs» (3), those of the city of Kronos (4) and the members of the primitive societies, as Plato depicts them (5). Unless Plato expresses Kallikles' views within his own frame of μεταβολή, both accounts may owe something to a minor socratic or antisthenic trend of thought (6).

b) ἀπάτη is for Kallikles (7) and Socrates (8) the fundamental cause of the corruption of the natural law and society. But Socrates thinks that this deception is mainly self—deception about what is the true hierarchy of values (9). It is tantamount to «ignorance» (ἀμαθία) and occurs in the ruler and in the citizen. Deception by others, namely false orators or statesmen (10), is fully acknowledged but held as secondary, since it is a mark of an already corrupted legal order, which deprives the citizen of his freedom (11). For Kallikles the deception is always due to the corrupted, weak multitude (12). The emphasis on deception by both Kallikles and Socrates may be due to the influence of Gorgias' theory and practice of rhetoric (13). On the other hand, the socratic and platonic view that the ruler and the citizen are ultimately responsible for their own ignorance and that individual enlightenment must precede political re-

1) *L a w s* III 699c, cp. *C r i t o* 47d.

2) *G o r g i a s* 483c, 484a, 492a—b.

3) *R e p* II 372b, 372d—e. This «naïveté» is implied in their peaceful character and may be due to their αὐτάρκεια.

4) *P o l i t i c u s* 271e, *L a w s* IV 713e, implied in the absence of strife or conflict (στάσις).

5) *L a w s* III 679c.

6) cp. F. Duemmler, *Akademika*, pp. 67—68, 77, 81.

7) *G o r g i a s* 483e, 492a.

8) *G o r g i a s* 468d—e, 477b, 480c. Cp. on ἀμαθία as «source of strife» *R e p* VIII 545d, *L a w s* III 691a.

9) *A p o l o g y* 22d—e, *C r i t o* 47d.

10) *G o r g i a s* 503a, 521a.

11) *C r i t o* 52e. On the parallel ἀπάτη, ἀνάγκη cp. *G o r g i a s*, *E n c o m i u m H e l e n a e* § 8.

12) *G o r g i a s* 492a, 483e, the feeling is the same in *R e p* VI 493c where the corrupting power of the multitude is heavily stressed.

13) O. Navarre, *Essai sur la Rhétorique Grecque avant Aristote*, Paris 1900, p. 228.



form <sup>(1)</sup> clearly shows that the importance of political education should not be overstressed, as far as the socratic and platonic political theory is concerned.

c) This deception leads to a perverted society, in which appearances conceal reality. Both Kallikles and Socrates regard this society as a corrupted one probably because both share the view that, as far as social reality is concerned, things ought to appear clearly as they are <sup>(2)</sup>.

d) Kallikles, Socrates and Plato agree that the reform, which will restore the natural law or the healthy society, implies the initiative of an exceptional individual <sup>(3)</sup>. Kallikles however is more confident than Socrates and Plato in the miraculous and intuitional impulse, which will induce the excellent nature to restore the «natural law». Plato particularly suggests <sup>(4)</sup> that it is the philosopher, who has completed the necessary curriculum, who may undertake this task. Although he makes some allowance for intuition <sup>(5)</sup>, the practice of the Academy shows that it is an adequate scientific and dialectical education that will open the path of political and legal reform <sup>(6)</sup>.

This internal impulse of the outstanding individual will express itself through ways more subversive according to Kallikles than those which Socrates and Plato would accept and advise <sup>(7)</sup>. This is obviously the reason which induces Plato to give such emphasis on persuasion <sup>(8)</sup> and pleasure <sup>(9)</sup> as far as true political activity is concerned.

## **B. Socrates' views on political development according to the Gorgias.**

There are many platonic features in Kallikles' views on political development, but the specifically socratic points on this field ought not to be disregarded. Socrates seemingly accepts in the *Gorgias* the view that the beginnings of

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1) *Gorgias* 527d—e, cp. *Apology* 29e, 36c—d, 39d. *Alcibiades* I, 130e, 132b.

2) ἐξέλαμψεν *Gorgias* 484a—b, ἀποφαίνειν 483c, ἀληθῶς 521d, μελετητέον οὐ τὸ δοκεῖν ἀλλὰ τὸ εἶναι ἀγαθὸν 527b Cp., the definition of the law, as τοῦ ὄντος ἐξεύρεσις, in the spurious but not unplatonic *Minos* (315a).

3) εἰάν φύσιν ἱκανὴν γένηται ἔχων . . . ἀποσεισάμενος . . . ἐπαναστάς . . . διαρρήξας . . . καταπατήσας . . . *Gorgias* 484a. Cp. *Rep* V 473d, VI 499b, 487a. *Ep.* VII 326b, *Laws* I V 709e ff., V 735d ff. See also ch. 2 § II, III of this thesis.

4) *Rep* V 473d—474c.

5) θεία ἐπιπνοία *Rep* VI 499c, οὐκ ἄνευ τινὸς ἐπιπνοίας θεῶν *Ep* VII 326b, *Laws* VII 811c, XII 950c, esp. 951b.

6) Plutarch, a d v. *Colot* 32 on the legislators educated by the Academy, namely Phormio, Menedemus, Aristodemus. This platonic practice is anticipated in the socratic conception of the competent man.

7) On the value of ἡμερον *Laws* VI, 765e—766a.

8) see ch. 1 § II, ch. 2 § III and V of this thesis.

9) see ch. 3 § V of this thesis.

mankind were blessed, since the government of Kronos cared for mortals <sup>(1)</sup>. There are many common characters between this stage and the «beatitude» which the soul of the justs enjoy in the Isles of the Blessed, after their death <sup>(2)</sup>. This similarity suggests that the notion of «blessedness» was not only connected with orphicopythagorean trends <sup>(3)</sup> but perhaps also with the various pythagorean <sup>(4)</sup> or antisthenic <sup>(5)</sup> accounts of the origin of mankind.

At that stage, the divine law was respected although the judicial organization was deficient <sup>(6)</sup> probably because there was not much need for its development as under the subsequent stage of the government of Zeus <sup>(7)</sup>, which characterizes the beginning of the history of mankind as such <sup>(8)</sup>.

There is no precise account in the *Gorgias* of the origin of the law and political society although the allusion to the period of Kronos suggests that there were, before the development of the legal organization, natural communities comparable to the «city of the pigs» or the γένη of the Cyclops. The transition from social life grounded on unwritten customs to legally organized communities remains unexplained.

The first legally organized community is apparently the state of εὐνομία in which the ruler performs his task with justice as Aristides did <sup>(9)</sup>. Such states were the dorian communities, in which the rulers and the subjects respected their mutual rights in accordance with the laws agreed by them <sup>(10)</sup>. Such was Sparta <sup>(11)</sup>, Persia under Cyrus <sup>(12)</sup> and Darius <sup>(13)</sup> and the athenian, most probably the solonian παλαιὰ πολιτεία <sup>(14)</sup>.

There is no strict equivalent in *Rep* (VIII) of this «lawful city», alluded to, I think, in the *Gorgias* and defined in the *Laws* (III). It shares

1) ἦν νόμος ὃδε περὶ ἀνθρώπων ἐπὶ Κρόνου *Gorg.* 523a, cp. *Politicus* 270d ff, *Laws* IV 713c ff.

2) ἐς μακάρων νήσους ἀπέπεμψεν *Gorgias* 526c, τῆς τότε μακαρίας ζωῆς in connexion with the age of Kronos in the *Laws* (l. c.).

3) like those expressed by Pindar in the *Menoe* (81b—c.) cf. Bluck ad l.

4) Stobaeus IV, I, 80 (Heinze), cf. A. Delatte, *Essai sur la Politique Pyth.* p. 43.

5) F. Duemmler op. cit. See also Hesiod, *Erga*, 91, 110—111. Socrates, of course, uses the theme of Kronos according to the purposes of the *Gorgias*. Cf. K. F. Hermann in *Abhandlungen der Gesellschaft der Wissenschaften zu Göttingen, Historisch, Philologische Klasse*, IV, 1848—50, pp. 25, 40.

6) κακῶς οὖν αἱ δίκαι ἐκρίνοντο *Gorgias* 523b

7) νεωστὶ τοῦ Διὸς τὴν ἀρχὴν ἔχοντος *Gorgias* l. c., during the rule of Kronos there was no strife and therefore no «constitution», *Politicus* 271e.

8) probably because the divine government of the world ended, *Politicus* 272e.

9) *Gorgias* 526b.

10) *Laws* III 691a

11) *ibid.* 691e—692a.

12) *ibid.* 694a.

13) 695c.

14) *ibid.* 698b.

some characteristics of the «perfect state», referred to as aristocracy in the Republic (1). There is also some similarity between this lawful state and timocracy, i. e. the Spartan constitution (2), although it is deprived of the seeds of corruption, which turn timocracy into oligarchy (3), in spite of the fact that timocracy, as such, deserves the epithet of εὖνομος.

There is no hint in the Gorgias of an oligarchic constitution, subsequent, in the Republic, to the lawful state (4). In that respect, the Gorgias is much nearer to the Laws (III), where the distinction is between the lawful and lawless states.

The democracy does not appear in the Gorgias (5) to be a deliberately lawless state. Its main defect is weakness and its most important feature is that the rulers are subservient to the desires of the multitude (6). Pericles is supposed to have corrupted the Athenians because, in spite of the contradictory evidence of Thucydides (7), he was flattering their desires (8) and did not differ on that respect from a tradesman (9) or a sophist (10). Thus, democracy develops in itself the seeds of further lawlessness (11) but, in the Gorgias at least, this lawlessness is only potential and its strictly political features, namely extreme equality (12) and freedom (13), are absent.

Socrates, in the Gorgias, is apparently aware of the difference between the moderate periclean democracy and the rule of the mob (14) for instance under Hyperbolos. The criticism of the Gorgias concerns the former, that

1) VIII 544e. This, of course, is the perfect state, in so far as political μεταβολή is concerned. It cannot be identified with the «paradeigmatic» heavenly city of IX 592b and probably not even with the «true» or «healthy» state of Rep II 372e 373b. It is the best of the historical states.

2) VIII 544c, 545a.

3) Rep 547c—d.

4) Rep. VIII l.c., and 550e ff.

5) 503c, 515e, 517b, 518d, 519a—b.

6) διακονικώτεροι Gorgias 517b.

7) κατεῖχε τὸ πλῆθος, κατέπλησεν ἐπὶ τὸ φοβεῖσθαι II, LXV, 9—11.

8) Gorgias 515e.

9) κάπηλον . . ἢ ἔμπορον ἢ δημιουργὸν Gorgias 517d.

10) who is reproached with the same kind of guilt, Sophist 224b, on ψυχεμπορικὴ, Prot 313c ἔμπορος καὶ κάπηλος ἀγωγίμων ἀφ' ὧν ἡ ψυχὴ τρέφεται. This may explain the analogy νομοθετικὴ, σοφιστικὴ. Cf. Sophist 231d, Prot 317b.

11) as in Rep VI 493b—c.

12) on ἰσονομία as related to lawlessness, Rep VIII 558e, 561e, 563c—e

13) on ἐλευθερία as an attribute of lawlessness ibid. 563d—e, cp. Laws III 699e—700a, where it is treated as seed rather than an attribute of παρανομία.

14) Cf. C. Hignett, A History of the Athenian Constitution, p. 265. In Gorgias 518d—519a the distinction is drawn between the stage of πλησμονὴ νόσου, καταβολὴ ἀσθενείας and the stage of potential evil οἰδεῖ, ὑπουλός ἐστιν.

of the Republic the latter (1). The criticism of the Gorgias follows the lines of the Politicus (2) where we are told that the main feature of lawful democracy is its weakness (3).

Tyranny, in opposition to democracy, is a purposefully, consciously and wilfully lawless state (4). In order to understand this, we ought to be reminded that the law is defined, according to Plato, as linking the citizens among themselves and with the rulers (5).

Now, the tyrant's unrestrained greediness compels him to be in a state of conflict with all the members of his city. He is therefore isolated and deprived of any relationship of friendship (φιλία) or any other social link (κοινωνία) (6). Hence, the tyrant is fundamentally an outlaw (7). He is in a constant state of fear and may feel safe only if he makes, through perverted education and corrupted action, the most promising citizens similar to himself (8). As opposed to democracy, he is deliberately lawless and tyranny represents the ultimate stage of the corruption of the law and the state. This account of tyranny agrees on the whole with that of the Republic (VIII and IX).

It may be interesting, however, to consider the following points: a) The tyrant is, in the Gorgias, the pattern of lawlessness (9) in a strictly ethical sense. His misery is inward and due to the morbid state of his soul (10). He would be pitiable even if he was able enough to conceal his real aims, while, in the Republic (11), his misery and lawlessness is due also to the suspicions the respectable citizens feel towards him and to his action of upsetting the normal social hierarchies and even of liberating the slaves (12). This shifting of emphasis from the inward to the outward notion of lawlessness suggests that

1) This distinction is clearly drawn in the Politicus (291e—292a, 302e.)

2) 303a ff.

3) μηδὲν μήτε ἀγαθὸν μέγα μήτε κακὸν μέγα δυναμένην.

4) Gorgias 473c—d, 507e, 525c—d, 510b—d.

5) Gorgias 508a, 504d, as eros does in Symposium 202d—e, on this notion Timaeus 31c, 32c—33a, cp. Laws VII 793b. See also ch. 2 § V of this thesis.

6) Gorgias 507e—508a, cp. Rep VIII 567d and Xenophon, Hiero, VI, 2—4. See also ch. I, § II of this thesis.

7) cf. Greenidge, A Handbook of Greek Constitutional History, London 1896, pp. 26—28. On the connection between πλεονεξία in desires and παρανομία cp. Thuc VI, XV, 4.

8) Gorgias 510b—d. He is bound to fail with the really superior personalities and will despise the φαῦλοι. It is noteworthy that in Rep. VIII 567d he will seek their support.

9) Gorgias 525d.

10) Gorgias 473d—e.

11) 567e—568a, cp. Hiero VI, 5—10.

12) This point is particularly emphasized in the Hiero, l. c

the criticism of tyranny in the *Gorgias* is remarkably free from any aristocratic prejudices, which may distort the account of tyranny in the *Republic*.

b) It may be inferred from the *Gorgias* <sup>(1)</sup> that a «just» tyranny is not inconceivable. This agrees with the greek practice and feeling <sup>(2)</sup> and is a further evidence for the absence of any political or class prejudice in the *Gorgias*. This «just» tyranny may however amount to the personal government of the *Laws* <sup>(3)</sup>, where τύραννος stands for μέγιστον δυνάμενος or δυναστεύων κατὰ μοναρχίαν <sup>(4)</sup>. This government may provide the opportunity to realize the legal and political restoration of the perfect state smoothly <sup>(5)</sup> and rapidly <sup>(6)</sup>.

c) This point raises the question of the transition from the corrupted to the healthy state. Socrates apparently thinks that the Athenian democracy is hopelessly corrupted <sup>(7)</sup>. If so, there is nothing particularly disquieting or avoidable in the rise of such unworthy statesmen as Kallikles <sup>(8)</sup> or Alcibiades <sup>(9)</sup>. These are the natural outcome of the lawlessness of Athens and they contribute to its further spreading because «they make themselves similar to the constitution under which they are living» <sup>(10)</sup>. This view implies that, in spite of a critical attempt by such well inspired persons as Socrates <sup>(11)</sup>, the corruption of the state and the laws is fatally bound to develop <sup>(12)</sup>. There is no apparent hope of the healthy state in the *Gorgias*. But, in so far its expectation is reasonable, it can only emerge from the πλησμονή κακῶν.

Now, the lawful state of Aristides is doomed to dissolve in corruption. This is not clearly stated in the *Gorgias* but implied in its whole picture of the Athenian politics. Aristides' virtue is itself something near the δημοτική ἀρετή of the *Phaedo* <sup>(13)</sup> and his knowledge does not exceed the level of right opinion <sup>(14)</sup>. Therefore he cannot prevent a subsequent corruption as his knowledge is unstable and he is unable to educate his fellow citizens <sup>(15)</sup>.

1) κατειργασμένος τὴν τυραννίδα ἀδίκως *Gorgias* 473d—e.

2) Thuc VI, LIV, 5 on the ἀρετή and ξύσεις of Peisistratus, 6 on the lawful character of his administration. Cp. Aristotle, *Pol* V, ch. II.

3) *IV* 709e—711e.

4) *Ibid.* 711d.

5) *Ibid.* 711b.

6) *Ibid.* 711a. This point is perhaps disregarded by A. E. Taylor, when he suggests, in his Introduction to the translation of the *Laws*, p. XV|||, that Plato stands for the limitation of the political power by dividing it among many holders.

7) *Gorgias* 517a, 521c.

8) *Gorgias* 513a, 513b.

9) *ibid.* 519a.

10) cp. *Rep* VI 492e, *Gorgias* 513b.

11) *Gorgias* 521d, *Apology* 31e—32a.

12) *Gorgias* 518d.

13) cp. *Gorgias* 526a with *Phaedo* 82b.

14) His justice is like that of Cephalus (*Rep.* I 331d. It consists in δικαίως διαχειρίζειν & ὅν τις ἐπιτρέπη. Cp. also *Meno* 94a on Aristides.

15) *Meno* 1c, 98a. cp. *Euthyphro* 11c.

The Republic will add ontological reasons for the unavoidable character of the corruption of the best constitution. We are told there that the best constitution belongs to the world of generation and is therefore doomed to decay <sup>(1)</sup>. A substantially identical view, on the fate of the most healthy state, with reference to chance <sup>(2)</sup>, to the temporary absence of the divine government of the world <sup>(3)</sup>, causing its contradictory movement, or to the weakness of human nature <sup>(4)</sup>, is suggested in the *Politicus* and the *Laws*, but is dressed there in a more popular fashion <sup>(5)</sup>.

Hence, it may be suggested that the end of the development of a constitution coincides with its starting point in accordance with a cyclical pattern. This conclusion is not clearly stated in the *Gorgias* because this pessimistic dialogue <sup>(6)</sup> considers only the decay of the healthy city. But, nothing, in the *Gorgias* precludes the possibility that, from the *πλησμονή κακῶν*, the *εὖνομος πόλις*, if not the perfect city, will arise.

Now, is this the definite platonic view? It is of course difficult to understand how the best state, especially if it is a primitive one, will arise from tyranny <sup>(7)</sup>. But this may be secured through the purification <sup>(8)</sup> which the «just tyrant» will undertake <sup>(9)</sup>. At any rate this «rebirth» of the healthy state is not a natural necessity, since it will be secured only by a miracle <sup>(10)</sup>.

### C. The causes of corruption of the constitution and the law in the *Gorgias*.

As the *Gorgias* assumes that the causes of the corruption of the law and the state lie mainly in the ignorance of the rulers <sup>(11)</sup>, it is difficult to disentangle them from the causes of individual perversion, dealt with previously, in connection with punishment.

1) χαλεπὸν μὲν κινήθῃναι πόλιν οὕτω συστᾶσαν' ἀλλ' ἐπεὶ γενομένων παντὶ φθορά ἐστίν, οὐδ' ἡ τοιαύτη σύστασις μενεῖ τὸν ἅπαντα χρόνον ἀλλὰ λυθήσεται *Rep VIII* 546a.

2) *Laws IV* 713e, 709a—c.

3) *Politicus* 269c ff, cf. P. M. Schuhl, *La Fabulation Platonicienne*, p. 90.

4) *Laws VII* 804b.

5) Cp. Aristotle, *Politics V*, 10, 1316a 5 ff.

6) See § I of this chapter.

7) Aristotle *Politics*, l.c., ascribes aporetically to Plato this view, cf. H. Ryffel, *Μεταβολή Πολιτειῶν*, pp. 102—103, 132.

8) *Rep VII* 541a, V 567c.

9) *Laws IV* 709e—710a. V 735d—e.

10) *θεῖα μοίρα* or *θεῖα ἐπιπολεῖα*. This theme may convey the popular feeling expressed in the hesiodic motto «τῆς δ' ἀρετῆς ἰδρῶτα θεοὶ προπάρουθεν ἔθηκαν» quoted (*II* 364d) and criticised as a *μὴ καλὸν ψεῦδος* in the *Republic* (*II* 377d).

11) It does not follow that the citizens are not responsible for it. Nevertheless, the *Gorgias* anticipates the later emphasis on the rulers.

The first important point is that the fundamental distinction, in Plato (1) and the young Aristotle (2), between the primary (αἴτια) and secondary or subordinate (συνάιτια) causes, is relevant to the legal, political and social dynamics (3). In the *Gorgias*, we are told that there are fundamental and secondary causes of the corruption of a society and its laws. The use of this distinction is obviously untechnical and refers to the responsibility for the external evils and internal corruption of Athens respectively (4). This is a rare case of application of the distinction of primary and secondary causes with reference to evil results (5). The sense of συνάιτιον here is akin to the judicial one (6).

From this statement two important inferences might be drawn, a) that the corruption, like the improvement of the state, belongs to the world of γένεσις and can be the object of a science of generation only. This is so because the distinction αἴτιον, συνάιτιον is always relevant to the world of generation (7).

b) If a science of legal, political and social development can exist, its subject will be the improvement as well as the decay of the state (8), according to the principle that «the science of the opposites is identical». This view is not clearly stated in the *Gorgias*. It may however be inferred from the acknowledged fact that the most «exceptional» natures are responsible for the improvement as well as for the decay of the state, according to the principle «corruptio optimi pessima» (9).

Therefore as far as lawlessness in the state is concerned, its roots lie mainly in the «ignorance» of its rulers. Kallikles had already suggested this view and Socrates accepted it. The ignorance of the rulers (10) consists in a lack of knowledge of what is superior and what is subordinate (11).

This ignorance entails the ignorance of the scale of values or «goods» which the legislator should keep in mind when enacting laws (12). Lawlessness is

1) *Phaedo* 99a, *Timaeus* 46c, *Politicus* 281c—e, 287d—e, *Philebus* 27a

2) *Protrepticus* Frg. B 42 (Düring).

3) *Gorgias* 519a, cp. *Politicus* 287d—e, *Ep.* VII 329c.

4) κακά in *Gorgias* l.c. stands for both. Thucydides and Aristotle might have drawn the distinction between those two types of evil.

5) cp. *Ep.* VII 329c.

6) *Laws* XI 936d. Cf. J. W. Jones, *The Law and the Legal Theory of the Greeks*, pp. 269—271.

7) So, the passages quoted previously, especially *Philebus* 27a.

8) τὴν τῶν πόλεων ἐπίδοσιν εἰς ἀρετὴν μεταβαλίνουσιν ἅμα καὶ κακίαν ἐκάστοτε θεατέον *Laws* III 676a, cp. XII 945c.

9) *Gorgias* 525e, cp. *Crito* 44d—e, *Rep* IV 434a, *Laws* III 683e.

10) *Gorgias* 477b, cp. *Rep* VIII 545d, *Laws* III 683e.

11) *Gorgias* 501b.

12) *Gorgias* 477b, *Laws* IV 717c, III 697b, V 726a—728c.

unavoidable if the ruler is ignorant that what matters most is the «well—being» of one's «true self» or his soul (1).

As the goods are identical with the natural ends of our actions (2) to be regardless of their scale is to act blindly and haphazardly (3) and to be unable to praise and fix the pattern of the best life (ἄριστος βίος) which is the main task of the legislator (4).

Now, the legislator should know also the nature and «capacities» of what he is caring for, namely the citizens, and the material conditions of the life of the community (5). This is a requirement of something ἀναγκαῖον rather than ἀγαθόν, like the knowledge of matter, which must be possessed by the Demiourgos of the *Timaeus* (6).

The *Gorgias* implies that the absence of this knowledge will prevent the legislator from giving reasons for his legal enactments. He will reduce his laws to commands and threats without persuasive preambles (7). He will be therefore responsible for the corruption of the law through excessive rigidity and irrational hastiness in its application. This cause of lawlessness is not clearly stated in the *Gorgias* but implied in its rejection of ἀλογία (8). It is implied in the criticism of the irrational, hasty and impulsive character of the decisions of the athenian assembly and the athenian courts (9). Socrates and Plato particularly disliked this aspect of the athenian judicial and political practice. They certainly preferred the spartan μέλλησις (10).

On the whole, the causes of legal and political corruption are reduced, in the *Gorgias*, to those of individual guilt and moral corruption. Little or no attention is paid to the strictly political causes of strife and lawlessness, e. g. the absence of division or limitation by each other of the established magistra-

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1) *Gorgias* 506d, *Apology* 36c—d, cp. *Laws* II 661b, V 726a. See also ch. 2 § III of this thesis.

2) *Gorgias* 467c—468c, 499e—500a. These τέλη are not transcendent, *Gorgias* 497e, 498d, 506d. Cf V. Brochard, *Études*, pp. 187—188.

3) *Gorgias* 468b, such a false statesman will act unwillingly and irresponsibly, *Gorgias* 468d—e, 525e, 525a, 519a.

4) *Gorgias* 500c, cp. *Laws* VIII 842c, esp. VII 827b where legislation is the «best tragedy» because of its quality of «μίμησις τοῦ καλλίστου καὶ ἀρίστου βίου».

5) *Gorgias* 465a, 501a, *Phaedrus* 268a—b, cp. *Laws* I 636d, 650b, especially V 747c—e, XII 962b—c.

6) *Timaeus* 47e—48a, cp. *Laws* IX 857e—858a.

7) *Laws* IV 719e—720e.

8) *Gorgias* 465a. Cp. *Laws* IX 857c—857e.

9) *Gorgias* 471e—472a, 481d—e, 513a—b, 521c—d. Cp. *Apology* 37a—c, *Crito* 48c, *Laws* XII 948b—d.

10) *Laws* VI 766d—767a, cp., *Thuc I*, XVIII 1; I, LXXXIV.



cies, which is the condition of the «salvation» of the constitution and the laws, in the later platonic works (1).

The only acknowledgement of strictly political causes of corruption in the *Gorgias* may be the view that the excessive material power of a state contains the seeds of its subsequent decay, if not submitted to justice and moderation (2). But even this statement may be reduced to a criticism of the athenian ἀρχή, especially considered in its connection with naval supremacy (θαλασσοκρατία), on the ground that it provides an opportunity for ἐξουσία and ἐλευθερία, which are as harmful for the state, as they are for the individual (3).

## VI. Conclusion.

The analysis of the legal and political views stated or implied in the *Gorgias* leads to the establishment of some important points.

a) The subject of the *Gorgias* is negative, the denunciation of false politics, and its whole atmosphere pessimistic. It is therefore natural that there are no detailed developments concerning a theory of law. In so far as this topic is dealt with, the «law» referred to is the law or the «formula» of the order of the soul. There is no explicit reference to the written laws of the state. This point may shed some light on the passages of the *Memorabilia*, where Socrates equates the «just» with the «legal». Socrates' view is perhaps that the «just» is what is in keeping with the law of the soul. This notion of νόμος provides also the basis for the understanding of the later equivalence between νόμος and τύπος (4), the emphasis on education, the disregard for a detailed and applied legislation. This notion of the law of the soul, in connexion with the views of such sophists, as Hippias or Kallikles, on the law of nature, may be at the origin of the «jus naturale» of the Stoics, although Socrates and Plato did not develop any theory approximating the «jus naturale» doctrine.

b) The *Gorgias* does not provide any ground for the alleged opposition between the liberalism of Socrates and the authoritarian strain of the later platonic politics. The emphasis on κατηγορία is a forestatement of the μῆνσις theory of the *Laws* and shows that Socrates is at least as «intolerant» as the old Plato. The theory of punishment, as developed in the *Gorgias*, reminds one of the platonic requirement of purification, which is a necessary prerequisite for the establishment of the healthy state. As far as moral guilt is concerned, Plato's conception in the *Laws* (IX) is certainly drawn on less intellectualistic lines.

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1) οὐ δεῖ μεγάλας ἀρχὰς οὐδ' ἀμείκτους νομοθετεῖν *Laws* III 693b, 691e—692c. cp. Plutarch, *Lycurgus*, 5, 30 (42d—f); 7, 1 (43e).

2) *Gorgias* 519a.

3) cp *Gorgias* 525a with *Laws* III 699e—700d.

4) *Rep* II 380b—c, 383c.

Plato appears more aware of the frailties of human nature and makes allowance for its follies and miseries.

c) This may provide an explanation for the fact that, while Socrates acknowledges reluctantly that a «good» oratory is conceivable, he admits with many qualifications such means of government as ἐπωδὴ or καλῶς ψεύδεσθαι, advised and praised by Plato in the *Republic* and the *Laws* <sup>(1)</sup>. When Socrates refers to «education» this means first of all direct or indirect teaching of the truth. If so, the Socratic «ignorance» should not be overemphasized. On the contrary, there are numerous points relevant to philosophical method and legal theory, on which Socrates does not feel the slightest doubt <sup>(2)</sup>.

d) The opposition between Socrates and Plato on the one hand, and the sophists on the other, should not be overstressed. Plato and especially Socrates follow quite frequently the main lines of their argument and take for granted some of their assumptions. These are not rejected as a whole. Simply, the obscurities or inconsistencies of some views of the sophists are removed from them. This criticism enables Socrates and Plato to define the main principles of their own legal and political theory.

e) There is more awareness of the specific character and necessities of political activity in the later works of Plato, especially the *Laws*, than in the *Gorgias*. Here politics and «legal philosophy» are nearly reduced to ethics, while in the *Republic* they are only grounded on them, and in the *Laws* the various types of material ἀνάγκαι are given serious consideration.

## R E T R O S P E C T

The present research establishes that the ethical and epistemological views of the earlier dialogues are the foundation on which Plato elaborates his mature political philosophy and his later legal thought. This view does not preclude a shifting of emphasis on some themes or their consideration from different standpoints. But, in so far as legal and political philosophy is concerned, a noteworthy unity of thought and interests is evident.

This appears if the conception of the competent man, as defined in the earlier dialogues, is compared with the later platonic conception of the legislator <sup>(3)</sup>. An identical knowledge of human nature and of the ends to be approximately achieved in practice is required from the socratic competent man and the platonic legislator. Their functions of θεραπεία and ἐπιμέλεια are

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1) See however ch. 2, § III of this thesis. Ἐπωδὴ in the earlier Socratic dialogues is closely connected with ἔλεγχος.

2) e. g. the relationship between νόμος and τάξις of the soul in the *Gorgias* or νόμος and ὠφέλιμον in the *Hippias Major*. See ch. 2 § IV of this thesis.

3) Ch. 2 § II.

identical. Their method of combining persuasive and compulsory devices is almost the same. It may therefore be suggested that the relationship between the competent man and his pupils is analogous to that of the legislator with the citizens.

Socrates, in the earlier dialogues and the *M e m o r a b i l i a*, is conscious of the political implications of his views on the competent man. He appears to be anxious to define precisely πολιτική and βασιλική. He is successful in doing so, at least in so far as he removes any error preventing the establishment on a firm basis of a supreme science, whose task is the evaluation of the achievements of the existing social and political techniques, in order to secure the happiness of the citizens. Plato's later conception of πολιτική and νομοθετική is expressed in a similar way.

The socratic emphasis on the competent man leads to the view that the reactions of the ignorant multitude deserve contempt in every field, politics and law included. This attitude, which considers «discovery» or «learning» as the basis of competence, may shed some light on the apparently aristocratic bias of the mature and later platonic works. On this point, however, Plato may have felt the influence of such thinkers as «Kallikles». Whether this figure is historical or not, his views are unplatonic, only in so far as the «stronger», to whom he refers, is not also «better», at least in the ethical sense of the term (1).

This being so, it may be suggested that the relationship between Plato and the Sophists is not only one of opposition (2). Plato is certainly by no means indifferent to the sophistic education and its aim, i. e. the ability to give good counsel (εὐβουλία) (3). Although he considers the sophistic view of εὐβουλία flat and short-sighted, he occasionally maintains that «right belief» may be sufficient for the satisfactory settlement of practical matters. In the *P h i l e b u s* he seems to be aware of the deficiencies of a strictly theoretical φρόνησις, in so far as everyday life is concerned.

The platonic emphasis on «healthy disposition» (εὐεξία or ὑγίεια) in connection with the task of the legislator is also interesting (4). In the earlier dialogues it is referred to as the aim of the competent man, regarding the soul of his pupils. This trend of thought presents similarities with Protagoras' views as expressed in the *T h e a e t e t u s*. It may be suggested that Protagoras, Socrates and Plato owe much to the Greek medical thinkers of the 5th century, e. g. Alkmaeon.

Another point of a possible influence of sophistic thought on Plato's legal philosophy may be revealed by Plato's theory of the persuasive function of the legislator. This may owe something to Gorgias' view on πειθώ (5), in spite of

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1) Ch. 4 § I.

2) J. Theodorakopoulos, *Εἰσαγωγή στὸν Πλάτωνα*, p p. 38—39.

3) Ch. 3 § III.

4) Ch. 4 § II.

5) Ch. 4 § III.

Gorgias' alleged failure to ground them on a thorough knowledge of human nature.

Plato however does not owe everything to his predecessors or contemporaries as was suggested by such malevolent «authorities» as Aristoxenus. Plato is a δημιουργός blending some prevailing views of his time and country in keeping with his own theory of εἶδος, φύσις and ψυχή in order to achieve a systematic result <sup>(1)</sup>.

This is clear in the case of the platonic view of the sanctity of the laws, a topic developed from the earliest (Crito) to the latest platonic work (Laws). This was a pythagorean topos but its theocratic character under its pythagorean expression made this theme alien to Socrates' rationalism, as expressed in his theory of the ἐπαῖων. Plato attempts to reconcile these almost contradictory influences. In his later works the theocratic language prevails while rationalism is the frame of thought and expression of the earlier ones. Nevertheless, on the whole, the platonic legal theory remains, from the Crito to the Laws, within the limits of reason.

This appears in so far as Plato's conception of νομοθετική is concerned. In the Gorgias, legislation, which aims at the maintenance of the healthy condition of the city, is a «part» of statesmanship <sup>(2)</sup>. In the Politicus statesmanship and legislation are treated as identical arts <sup>(3)</sup>. There is no discrepancy between these two views. Both seek to establish that there is no part of legislation which is apolitical, as modern administrative law or the law of property might be thought to be. The point in the Gorgias and the Politicus presumably is that while legislation belongs to statesmanship, there are functions of statesmanship which fall outside the scope of legislation. This is explicitly stated in the Politicus, according to which the royal statesman should not be limited, in his initiative, by his own legal enactments. Nevertheless, the royal statesman is, according to the Politicus, a legislator since his art is an expression of λόγος and aims through the establishment of legal and moral standards at the «salvation» of the city. The Greek emphasis on the legislative task of political science, as opposed to the executive and administrative one, sheds some light on Plato's views of νομοθετική, especially in so far as its analogy with οἰκονομική is concerned <sup>(4)</sup>.

These views explain also Plato's view of the connection between legislation and the judicial function (δικαστική or δίκη) <sup>(5)</sup>. We are told, in the Gorgias, that the legislator's task is to maintain the healthy order of the city. The judge should restore this order if disturbed. Thus, the judicial function appears to be complementary to the legislative one and such a view may imply some degree of

1) Ch. 4 § II. See also P. M. Schuhl, *Fabulation . . .*, p. 8.

2) Ch. 4 § II.

3) Ch. 2 § II.

4) Ch. 2 § I<sup>a</sup>.

5) Ch. 1 § II, ch. 4 § IV.

independence of the judge from the legislator, at least in so far as techniques of interpretation and application of the law are concerned. There is no, however, any elaborate theory of *ἐπιείκεια* to be read in any platonic work, which might be compared to that of Aristotle, e. g. in *Rhetoric I*.

Moreover, we are told in the *Theaetetus* that the knowledge of the just and the unjust, as applied by the judge, is a «borrowed» one. According to the *Politicus* and the *Laws* he is required to keep as closely as possible to the *γράμματα* of the law and the *Crito* connects very closely the fate of the law and that of the judicial verdict pronounced on its behalf.

Thus, the judicial function is independent from legislation only in so far as the inferior can be said to be independent from the superior. Presumably it is, much more than legislation, involved with *γένεσις*. Its excessive development is needless, according to the *Republic*, in so far as the true legislator saves the healthy state.

Otherwise, it should be allowed to exist, as is required in the *Laws*, but one should remember always that it may easily fall into corruption.

The military element of the state, loosely termed as «strategy», should be subordinate to the legislator (1). The leaders of the army must never be allowed to dictate to the legislator the general purposes of his policy, neither should they be allowed to influence exceedingly the education provided by the healthy state. According to the earlier and later works, courage is only a part of virtue, which should be blended with moderation in order to provide a healthy moral basis for the state (2). Therefore, the legislator should use «strategy» as a «tool» for the external safety of the state. The legislator only is entitled to appreciate the achievements of the military organization of the state, with its unity and the concord of the citizens as standards.

The status of «oratory», i. e. of its deliberative species, since Socrates and the later Plato disregard *δικανική* and *ἐπιδεικτική* (3), is on the whole similar to that of «strategy», as the *Politicus* suggests (4). It happens, however, that the protreptic element is extremely important in the earlier dialogues and that the platonic legislator himself, according to the example of Socrates, acts like an orator, the preambles of the *Laws* being persuasive speeches (5). Moreover, the requirement that the orator and the legislator should be acquainted with the essential facts about human nature makes the link between them extremely close.

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1) Ch. 2 § II.

2) Ch. 2 § V, ch. 3 § V.

3) With the possible exception of Lysias' (?) speech in the *Phaedrus* Socrates seeks to establish that true epideictic oratory must be an exhortation to the best life.

4) Ch. 2 § II.

5) Ch. 4 § III.

A possible objection against this view may be that the platonic interest in oratory is posterior to the foundation of the Academy, Socrates' attitude towards oratory being entirely negative <sup>(1)</sup>. But even in the *Gorgias* the attitude of Socrates towards true oratory is by no means one of unqualified dismissal. One may suggest that his conception of true oratory is applied by Plato in the legal preambles of the *Laws*. Nevertheless, oratory, in so far as it is not a direct mode of expression by the legislator, should be subordinate to him and used by him as a tool, whose achievements the legislator only is entitled to evaluate.

Legislation may be regarded as a science or a knowledge (*ἐπιστήμη*) <sup>(2)</sup> in so far as it is by itself an expression of *λόγος* or *νοῦς* as opposed to chance. The knowledge which the legislator should possess in order to perform his task in a satisfactory way may be reduced to two types. He should have, like the *τεχνικός* in the earlier dialogues, an empirical knowledge of the various human characters, the patterns of their development, the factors which are likely to affect them. These are thoroughly and carefully considered in the mature and later platonic works. They include, in the *Republic* and the *Laws*, the knowledge of physical, especially geographical, conditions and the ability to foresee the possible effects of some current *ἐπιτηδεύματα*, *νόμιμα* and *νόμοι*. This empirical type of knowledge may be described as a science of opportunity (*καιρός*), a concept particularly emphasized in the later platonic works but not entirely disregarded by Socrates in the earlier dialogues <sup>(3)</sup>. This knowledge offers some similarity to the science of «necessity» (*ἀνάγκη*) with which the Demiurge must be endowed in the *Timaeus* <sup>(4)</sup>.

Nevertheless, this type of knowledge is not sufficient to provide the standard regulating the action either of the competent man in the earlier dialogues or of the later platonic legislator. Both should know what is the normal condition of the human soul, from which arise, as the whole platonic corpus consistently maintains, the normal condition of the city <sup>(5)</sup>. This is referred to as an *εἶδος* or a *νόμος* <sup>(6)</sup> to which the legislator, like any craftsman at work, should look. From a practical standpoint this «form» need not be considered as an ontologically separate essence <sup>(7)</sup>. What matters most is its character of *τέλος*, which the legislator's purpose is to realize approximately in his legal codes. As such, the «form» glanced at by the legislator may be described in terms of a *scala bonorum*, a theme which appears from the *Apology* to the *Laws* <sup>(8)</sup>. The notion of

1) Ibid.

2) Ch. 1 § 11, ch. 2 § 11 ch. 4 § I.

3) pp. 74, 98.

4) Ch. 2 § 1

5) Ch. 4 § 1.

6) Ibid.

7) Ch. 2 § 11 and I V.

8) Ch 1 § 11, 111, ch. 2 § V1, ch. 4 § V.

a separate form appears when the contemplation of the idea of justice and truth and its inward imitation by the legislator, as opposed to the νομογράφος, is dealt with in the Republic and the P h a e d r u s (1). This may be considered as a specifically mature platonic development of which no trace is to be found either in the earlier dialogues or the L a w s.

In so far as the L a w s state that the healthy state may be maintained by a legislator, whose understanding of the true scala bonorum does not exceed the level of true belief (2), it may be said to adopt the practical view—point of such early works as the C i t i o or the M e n o. If this is so, the transcendent or immanent character of the ethical forms in Plato's philosophy depends mainly on the prevailing interest, theoretical or practical, in each dialogue.

Another similarity between the socratic notion of the competent man in the earlier dialogues and the later platonic notion of legislation consists of the fact that both are described in terms of art (τέχνη) (3). In most cases this is just a way to express the «scientific» character of both activities and there is no exact equivalent in the platonic corpus of the strict aristotelian distinction between τέχνη and ἐπιστήμη (4).

Plato, however, is aware of the fact that all kinds of states, the healthiest included, belong to the world of generation (γένεσις) (5). This being so, some kind of «production» is necessary in order to actualize, within the changing world, the knowledge of the true scala bonorum which the legislator is expected to possess. Thus, legislation must be not only a science but also an art.

The transitory character of the state is not much emphasized in the earlier dialogues. The analogy of the competent man and the skilful craftsman may however suggest that the former is expected to «produce» some kind of result. The platonic legislator in L a w s X is expected «to imitate nature». Thus, the description of legislation as τέχνη may imply that it is a ποίησις, achieving or helping to achieve the ends of nature, the latter being an orderly cosmos and not a chaos ruled by τύχη.

The decription of νομοθετικὴ as τέχνη is not inconsistent with the statement of the Politicus that the royal statesman need not necessarily exercise any ruling function, a view anticipated by Socrates' attitude towards athenian affairs, as depicted in the A p o l o g y and the G o r g i a s (6). One is τεχνικὸς if he knows the aims to be achieved and the «raw material» of his action. If the actual exercise of their art is prevented by unforeseen circumstances, the socratic

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1) Ch. 2 § I.

2) Ch. 2 § IV.

3) Ch. 2 § II, ch. 4 § I.

4) EN VII, 3, 1139a 18 ff., 4, 1140a 5 ff.

5) Ch. 4 § V.

6) pp. 149—150.

competent man and the platonic legislator still deserve the title of *τεχνικός*, just like a skilful musician who does not actually play or compose music.

Plato refers frequently in the *Laws* to the will (*βούλησις*) of the legislator (1). He suggests that the legislator, particularly the lawgiver as founder of the city, expresses an intention in his legal enactments just like any dramatic poet in his tragedies. The task of the magistrate, the judge and the successor of the first lawgiver is to understand the meaning (*ὑπόνοια*) of the lawgiver's *βούλησις*.

The use of the term *βούλησις*, in the light of the analysis of the *Gorgias*, correcting the amoral use of the *Hippias Minor* (2), enables Plato to show that the true legislator necessarily aims at his own *εὐπραγία*, which can be secured only if the true legislator performs his *ἔργον* correctly, i. e. secures the well-being of the city. Thus, legal organization founded on a selfish basis is wrong and ultimately *ἄλογον*. It may be suggested that the later platonic view of legislation implies the analysis of *βούλησις*, as stated in the *Gorgias*.

Since legislation is an art, expected to produce perceptible results, it may also be described in terms of «capacity» (*δύναμις*) (3). So it is in the *Politicus* and the *Laws*. This description implies the analysis of *δύναμις* in the *Hippias Minor* and the *Gorgias*. If the legislator's will is morally indifferent, his capacity may be directed towards morally indifferent results. But, if *βούλησις* is always of the good, as the *Gorgias* puts it, then the capacity of the legislator, expressing his will, must be subordinate to the requirements of a rational *τέλος*.

The authority of the legislator, who is ultimately responsible for the foundation if not the maintenance of the healthy city, represents eminently what Plato understood by *ἀρχή*. In so far as legislation is referred to as *ἀρχή*, this is a way to indicate that it is first in time and rationally prior to any other authority in the city. This entitles legislation to be an *ἐπιτακτική* stating the ends to be achieved by the other magistrates of the city (4). The legislator seemingly acts like intellect within the human soul. He must be one as the subject of knowledge is. The unity of the legislating authority will secure coherence to the legal codes enacted by it. Moreover, the systematic character of the ends of the legislator requires the unity of the mental act (*ἀποβλέπειν*) perceiving them and the unity of the agent putting them into practice. This does not imply that the legislator should necessarily be physically one (5).

Plato seems to suggest that if the totality of the citizens could be educa-

1) Ch. 2 § 11, ch. 4 § 1.

2) Ch. 2 *ibid.*

3) Ch. 2 § 11.

4) Ch. 1 § 111.

5) Ch. 2 § 11 B, ch. 4 § 1.



ted in such a way that *ὁμόνοια* or *ὁμοφωνία* on moral standards would link them together, they might act as auxiliary legislators (1). If the distrust of *τὸ πλῆθος* is evident in the earlier works, particularly the *Gorgias*, it is tempered, in the *Laws*, by the distrust of unlimited sovereignty, which is doomed to be a source of *ὑβρις*. The suggested remedy here is the doctrine of the mixed constitution, which is entirely absent in the early dialogues (2). The emphatic rejection of tyranny in them may, however, anticipate the later platonic distrust of unlimited sovereignty.

Plato may not be enlisted as a supporter of any particular view about who should actually perform the task of the legislator. In the *Republic* the legislator seemingly coincides with the philosopher. The same standpoint prevails in the *Politicus*. In the *Crito*, however, as in the speech of Protagoras, the legislator is the idealized city. The *Laws* provide a synthesis of both standpoints. The legislator, in so far as he is treated as founder of the city (*οἰκιστής*), appears to be identical with the philosopher, namely Plato himself, appearing there as the «Athenian stranger». But in Book III, where the actual origin of legislation is dealt with, the city, when sufficiently developed, is endowed with the legislating authority. The general trend of the *Laws* is to widen the basis of the legislating authority in order to include the magistrates and even the plain citizens (3).

Correspondingly, the powers of the «founder» of the city are restricted to those of an adviser of the Cnossian colonists of Magnesia. There is a certain likeness between this view and Protagoras' utterances on the «ancient wise law-givers» in his speech.

The starting point of Plato's analysis of *nomos* is undoubtedly provided by the 5th century discussions on the relationship between *nomos* and *physis*. Plato, like Protagoras, did not admit that any conflict might arise between them (4). In the *Gorgias*, Socrates establishes, against Kallikles, that the *nomos*—*physis* antithesis is unreal (5). In the *Laws* we are told that law is natural or imitates nature (6).

This view, however, does not imply that Socrates or Plato expressed a doctrine of a *jus naturale* as did the Roman jurists under the influence of stoic philosophy. It is consistently maintained, from the *Crito* to the *Laws*, that a law is unthinkable, if not enacted by a particular city (7). When *ἄγραφος νόμος* is referred to, this is either the divine law of Hades or the customary law

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1) Ch. 4 § 111, I V, ch. 3 § 11.

2) Ch. 2 § V.

3) pp. 116, 139.

4) Ch. 3 § 1

5) pp. 114—115.

6) Ibid.

7) Ch. 2 § I V.

«πάτριος νόμος» (1). Both species are related to the city and even when νόμος is referred to as the expression of λόγος and νοῦς Plato still maintains that it should also be a δόγμα πόλεως (2).

The socratic view of the covenant (ξυνθήκη) expresses the same feeling. In the *Crito* (3) the law is ethically prior to the citizen. Nevertheless, its validity depends partly on its acceptance (ὁμολογία) by the latter and his readiness to respect the laws of his country, which are annihilated if disregarded. This does not apply to the law of Hades, which is nevertheless described as «the brother» of the laws of the city.

The nearest approximation to the roman view of a *jus naturale* is to be found in the socratic identification of νόμος with the order (τάξις or κόσμος) of the soul (4), as expressed in the *Gorgias*. This view implies the supremacy of intellect within the soul. It anticipates therefore the later description of law as «distribution of intellect». In so far as the view of the *Gorgias* implies the functional equivalence of νόμος and εἶδος (5), it anticipates the later connection of νόμος with πέρας, as suggested in the *Philebus* (6).

This rationalist view of νόμος, like the statement of the *Republic* that justice is an inward disposition of the individual (7), rather than a matter of administrative organization of the city, foreshadows the idea of a universal law applying to all mankind. Thus Socrates and Plato, while not having expressed the idea of a *jus naturale*, reject what may be termed legal positivism, i. e. the notion that the law is a mere command enforced by a particular city. The rejection of legal positivism is already evident in the *Hippias Major*, where Socrates distinguishes the true νόμος, which is always right, from the spartan educational laws, which may fail to secure the welfare of Sparta (8).

This socratic view enables one to understand why Plato, in his mature and later works, emphasizes the deficiencies of the νόμοι of the particular cities (9), while abstaining from elaborating any worked out theory of ἐπιείκεια comparable to Aristotle's (10). In the first case he considers the actually existing ἐπιτηδεύματα, νόμιμα or νόμοι while in the second he adopts the standpoint of true νόμος. It is the former laws that are subject to change.

In the earlier dialogues, there are few but interesting hints on the pat-

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1) p. 59.

2) p. 95.

3) Ch. I § I.

4) Ch. 4 § II.

5) p. 144.

6) Ibid.

7) p. 105.

8) pp. 102—103.

9) In the *Phaedrus* and the *Politicus*, see ch. I § III C.

10) E. g. *Rhetoric* I, 3, 1374b 10 ff.

terns of change of these laws. These allusions anticipate the elaborate developments of the Republic (VIII) and the Laws (III). From the Crito it appears that the city and its laws stand or fall together. The same applies to the analysis of the Republic and the Laws. Thus it may be suggested that the platonic account of the change of the laws is moral and political rather than legal, in the formal sense of the term (1). Socrates, however, accepts that a law may have to be altered. There are in the Laws various provisions enabling the successors of the founder of the city to meet this necessity (2). So, the change of the laws is considered in the platonic work under three heads

a—the γένεσις of the laws.

b—their improvement (ἐπίδοσις εἰς ἀρετήν) (3).

c—their decay (ἐπίδοσις εἰς κακίαν) (4).

a) The accounts of the Protagoras and the Gorgias on the origin of law express the views of Protagoras and the otherwise unknown Kallikles rather than those of Socrates and Plato (5). Nevertheless, Protagoras' account, according to which the city chooses among the various proposals of the ancient lawgivers and enacts her choice as laws, is not contradicted either by the letter or the implications of the Crito. Moreover, it anticipates the account of the Laws (III).

b) There are no provisions in the earlier dialogues of the best way to fill the possible gaps of the legal codes comparable to those of the Laws. This is so because the earlier dialogues do not deal with legislation as such (6) while the Laws may be considered as a handbook of instructions for the members of the Academy in case they would be invited to act as legislators (7).

The improvement of the existing legal order depends, according to the earlier dialogues, on the development of the citizen's conscience (8), which enables the legislator to use persuasion rather than compulsion (9). This development can only be secured if the citizen rejects the competitive view of δίκαιον and admits that it is «shameful» to be harmful to others. In this way only will a stable κοινωνία between the citizens be realized and the city and its laws saved (10). The legislator should therefore develop the natural feelings of αἰδώς and δίκη into δικαιοσύνη and σωφροσύνη. Natural energy should be transformed into «po-

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1) pp. 30—33.

2) Ch. 2 § V.

3) Ch. 4 § V.

4) Ibid.

5) pp. 163—165.

6) p. 72.

7) p. 67.

8) Ch. 1 § 11.

9) p. 41.

10) p. 38.

litical» courage (1). The citizen should be educated in such a way that he should feel as pleasurable what is good from the legislator's view—point (2).

In the earlier dialogues, especially those dealing with the personality of Socrates, the improvement of the legal order depends apparently on the citizen's rather than the magistrate's conduct. This may be due to the presence of Socrates, who is referred to as the model of the right citizen (3). Nevertheless, there are in the *Gorgias* already various statements emphasizing the responsibility of the magistrate in this matter (4). These are further developed in the *Republic*, the *Politicus* and the *Laws* as Plato's desire of indirect political activity develops.

c) The state of lawlessness is frequently referred to in the earlier dialogues, e. g. the *Crito* or the *Hippias Major*. The analysis of lawlessness in these works is ethical, with no reference to specific political factors, such as absolute authority or excessive freedom, dealt with in the *Laws* (5). Hence *παράνομία* and *ἀνομία* are almost equivalent terms while Plato in his later works occasionally distinguishes them (6).

The ethical character of Socrates' views on the decay of the legal order may provide an explanation for the mainly static terminology used by him. Thus, in the *Crito*, Socrates refers to *ἀπώλεια* or *διαφθορά νόμου* as opposed to the term *μεταβολή* and *ἐπίδοσις* used by Plato in the *Republic* (VIII) and the *Laws* (III) (7). These terms undoubtedly convey the notion of a gradual decay of the legal order much more than those of the earlier dialogues. The view of the gradual corruption of the legal order is for the first time expressed in the *Gorgias*, where such medically inspired terms as *οἰδεῖ*, *ὑπουλός ἐστι*, *πλησμονή . . . κακῶν* occur (8).

Thus, the mainly static outlook of Socrates about legal decay is not due to his alleged inability to perceive its gradual character but to the fact that he deliberately adopts the citizen's ethical standpoint rather than that of the political scientist as Plato does in his mature and later works (9). This however is not inconsistent with the fact that the state of mind of the lawless citizen is described, in the *Apology* and the *Crito*, in terms very like those used by Plato in his description of the lawless ruler (10).

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1) pp. 106, 129—130.

2) p. 130.

3) Ch. I § I.

4) Ch. 4 § V B.

5) Ch. 2 § VI.

6) Ibid.

7) Ch. I § III D.

8) Ch. 4 § V.

9) Ch. 2 § VI.

10) pp. 46—48.

The best state appears to be, in the earlier dialogues, the εὐνομος or εὖ οἰκουμένη πόλις, instances of which are the idealized Athens, Sparta or Megara (1). This lawful city may be considered as an anticipation of the best platonic state, in so far as this is referred to as an earthly creation, which has already existed or is likely to come into existence (2). The kingdom of Hades and its divine laws may be considered as a foreshadowing of Plato's heavenly or «paradeigmatic» city (3). This kingdom is not affected by corruption. Its laws may only be disregarded (4).

Lawlessness appears when the actually existing laws miss their mark (ἀμαρτάνουσι) i. e. cease to be laws at all (5). In that case the right man is not appointed to the right place (6), the citizens lose the consciousness of their social and political links through overspecialization (7), they become exaggeratedly free (8), without any feeling of shame and of the need of self-restraint (9).

According to the *Gorgias* these features apply also to the lawless magistracies. When they prevail, government becomes mere guesswork instead of an art (10). It indulges in flattering the citizens instead of improving them (11). Ultimately, everybody acts at random (12). Deliberate lawlessness however is not characteristic of democracy but of tyranny (13). This view is maintained from the *Gorgias*, through the *Republic* and the *Politicus*, to the *Laws* and the *VIIth Epistle*.

The legal system of a city is more specifically affected when the laws become too rigid, unable to allow themselves to be «persuaded», i. e. altered, and when they are too hastily and thoughtlessly applied by the judges (14). This view, expressed in the *Apology* and the *Crito*, anticipates the statements of the *Politicus*, according to which overreliance on the letter of the laws and on πάτρια may be harmful for the city, in so far as it contradicts the designs of the wise statesman and his right to change the laws for the better (15). Thus, the most «nomocratic» platonic work still acknowledges the unavoidable limitations of any actual legal organization.

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1) Ch. I § 11, ch. 4 § V, ch. 2 § V.

2) Ibid.

3) Ch. I § 1 V, ch. 4 § V.

4) p. 59.

5) Ch. 2 § V 1.

6) Ch. 2 § V.

7) Ibid.

8) Ch. 4 § V.

9) pp. 45, 54.

10) p. 137.

11) p. 155.

12) p. 122.

13) p. 167.

14) p. 50.

15) pp. 49—51.

In so far as the causes of legal and political decay are dealt with, Socrates, like Plato, in his mature and later works, ascribes it to the «ignorance» of the true *scala bonorum* and to the confusion of the means and the ends resulting from it (1). Both citizens and rulers are answerable, according to Socrates, for the decay of the city and its laws, while Plato is inclined to hold the rulers only as responsible for it.

Socrates explains this ignorance in intellectual terms and suggests that the adequate cure for political disorder rests on theoretical agreement on moral standards, comparable to that of the mathematicians in their field (2). The possible disease (*λῶβη*) of the soul is rather the result than the cause of this ignorance.

Plato shares Socrates' intellectualism. Nevertheless he acknowledges, more than Socrates, «arrogance» (*ὑβρις*) as the ultimate source of moral ignorance. This may ultimately be due to a somewhat mysterious corruption (*διαφθορά*) of the soul of the rulers (3).

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1) p. 47.

2) p. 77.

3) p. 112.

## ΠΕΡΙΛΗΨΙΣ

Κατὰ τὸν Πρωταγόραν, ἡ νομοθεσία εἶναι φύσει ὑπὸ τὴν ἔννοιαν ὅτι τὴν ἐπιβάλλει ἡ ἀνάγκη τῆς ἐπιβιώσεως τῆς ἀνθρωπίνης κοινωνίας, τὴν ὁποίαν ὁ νομοθέτης συλλαμβάνει ἐκάστοτε χάρις εἰς τὴν **εὐβουλίαν** του. Φορεὺς ὅμως τῆς νομοθετικῆς ἐξουσίας εἶναι τὸ **κοινὸν τῆς πόλεως**, τὸ ὁποῖον ἐπικυρώνει ἢ ἀπορρίπτει τὰς προτάσεις τοῦ σοφοῦ νομοθέτου. Ἡ νομοθετικὴ βούλησις δὲν ἐκδηλοῦται μόνον διὰ τῆς καθιερώσεως γραπτῶν καὶ ἀγράφων νόμων. Ἀσκεῖται κυρίως διὰ τῆς παιδευτικῆς λειτουργίας καὶ διὰ τοῦ ἐξαναγκασμοῦ τῶν νομοθετουμένων εἰς τὸ πράττειν τὸ ὀρθόν. Τὸ **κοινὸν τῆς πόλεως** καθιεροῖ **ὑπογραφὰς** αἱ ὁποῖαι συνιστοῦν τὸ ἠθικὸν μέτρον τῆς ἐκτιμήσεως τῶν πράξεων τῶν πολιτῶν.

Ἡ περὶ νομοθεσίας ἀντίληψις τοῦ Πρωταγόρου, ὅπως καὶ ἡ τοῦ Θρασυμάχου εἰς τὸ Α. Βιβλίον τῆς Πολιτείας, εἶναι θετικιστικὴ, ἐφ' ὅσον νομοθέτης εἶναι ὁ τῷ ὄντι ἀσκῶν τὸ νομοθετικὸν ἔργον. Τὸ **κοινὸν τῆς πόλεως** ὅμως δὲν ἔχει **ἐπιστήμην** ἀλλὰ μόνον **δόξαν** τοῦ ὀρθοῦ διὰ τὴν πόλιν. Συνεπῶς νομοθετεῖ ὅτι φαίνεται εἰς αὐτὸ ὀρθὸν καὶ ὠφέλιμον καὶ δι' ὅσον χρόνον διαρκεῖ αὐτὴ ἡ **δόξα**. Τὸ πρωταγόρειον μέτρον, ὡς ὀρίζεται εἰς τὸν Θεαίτητον, ἰσχύει καὶ διὰ τὴν πόλιν ὡς νομοθέτην.

Ἐπὶ τοῦ ὀρθοῦ θεμελιοῦται καὶ ἡ σωκρατικὴ καὶ πλατωνικὴ περὶ νομοθεσίας ἀντίληψις. Ὁρθὸν ὅμως εἶναι ὅ,τι ἐπιβάλλει ἡ κλιμαξ τῶν ἀγαθῶν ἢ ἀρετῶν, ἡ ὁποία θεμελιοῦται ἐπὶ τῆς ἠθικῆς υἱείας τῆς ψυχῆς. Τοῦ ὀρθοῦ αὐτοῦ εἶναι δυνατὴ ἡ **ἐπιστήμη**. Ἐν τούτοις, οἱ μὴ φιλόσοφοι ἄρχοντες τῶν **Νόμων** καὶ οἱ πολλοὶ τοῦ **Κρίτωνος** δέχονται ἀνεξελέγκτως ὅ,τι προβάλλουν ὡς ὀρθὸν ὁ φιλόσοφος νομοθέτης καὶ ὁ **ἐπαῖων** ἀντιστοίχως. Ἔχουν λοιπὸν μόνον **δόξαν** περὶ τοῦ ὀρθοῦ, ἀνάλογον πρὸς τὴν **δόξαν** τῆς πρωταγορείου πόλεως.

Ἡ ἐπιτυχὴς ἀσκήσις τοῦ νομοθετικοῦ ἔργου προϋποθέτει, κατὰ τὸν Πρωταγόραν, τὴν παραδοχὴν ὠρισμένων ἀνθρωπολογικῶν ἀρχῶν. Ἡ κυριωτέρα εἶναι ὅτι τὸ αἶσθημα τῆς **αἰδοῦς** καὶ τῆς **δίκης** εἶναι (ἐν ἀντιθέσει πρὸς τὴν ἐρμηνείαν τοῦ G. B. Kerferd) ἔμφυτα εἰς τὴν ἀνθρωπον καὶ δύνανται ν' ἀναπτυχθοῦν, χάρις εἰς τὴν παρεχομένην ὑπὸ τῆς πόλεως παιδείαν, εἰς τὰς συνειδητὰς ἀρετὰς τῆς **σωφροσύνης** καὶ **δικαιοσύνης**. Ἡ δυνατότης αὕτη ὑπάρχει διότι ὁ ἀνθρώπος εἶναι «πολιτικὸν ζῶον» ἐφ' ὅσον διὰ τῆς γλώσσης, τῆς ὁποίας ἡ λειτουργία εἶναι πρωτίστως ἠθικὴ, δύναται νὰ ἐκτιμήσῃ θετικῶς ἢ ἀρνητικῶς τὰς πράξεις ἑαυτοῦ καὶ τῶν συνανθρώπων του, ἐνεργῶν οὕτω ὡς νομοθέτης.

Ὁ νομοθέτης, δὲν θὰ πρέπη, κατὰ τὸν Πρωταγόραν, νὰ λάβῃ ὑπ' ὄψιν του ὅ,τι ὁ νομοθετούμενος αἰσθάνεται ὡς εὐχάριστον ἢ λυπηρὸν διότι τὸ **ἡδὺ** εἶναι ἄσχετον πρὸς τὸ ἀγαθόν, ἐφ' ὅσον εἶναι δυνατόν νὰ καταστῇ πηγὴ **ὑβρεως** καὶ

ἀντικοινωνικῆς συμπεριφορᾶς. Τὰ αὐτὰ ἰσχύουν καὶ διὰ τὴν ἀνδρείαν, διὰ τὴν ἀξίαν τῆς ὁποίας ἀμφιβάλλει ὁ Πρωταγόρας λόγῳ τοῦ ἀνταγωνιστικοῦ χαρακτη-  
ρος της. Πρὸς τὰς ἀνθρωπολογικὰς αὐτὰς ἀπόψεις ὁ Σωκράτης καὶ ὁ Πλάτων  
συμφωνοῦν μόνον ἐν μέρει. Καὶ οἱ δύο δέχονται ὅτι ὁ νομοθέτης θὰ πρέπει νὰ  
παιδεύσῃ τὸν πολίτην ὥστε νὰ αἰσθάνεται ὡς εὐχάριστον ὅ,τι ἀπὸ τῆς σκοπιᾶς  
τοῦ νομοθέτου εἶναι ὀρθόν.

Εἰς τὸν **Γοργίαν**, ὁ Σωκράτης, ἀκολουθῶν τὰ ἐπιχειρήματα τοῦ ἄλλως  
ἀγνώστου Καλλικλέους, δέχεται ὅτι ἡ φύσις ἐπιβάλλει νὰ εἶναι νομοθέτης ὁ  
**κρείττων**, ὑπὸ τὸν ὅρον ὅμως ὁ **κρείττων** νὰ εἶναι καὶ **βελτίων**, ἀπὸ ἠθικῆς καὶ  
νοητικῆς ἀπόψεως. Ὁ **βελτίων** πρέπει νὰ θεσπίζῃ γραπτοὺς ἢ ἀγράφους νόμους  
συμφώνως πρὸς τὸν **κόσμον**, τὴν **τάξιν** ἢ τὸν **νόμον** τῆς ψυχῆς τοῦ ἀνθρώπου,  
θεωρουμένης ἀπὸ τῆς ἀπόψεως τῆς ὑγιοῦς καταστάσεώς της. Τὸ **εἶδος** τοῦτο,  
πρὸς τὸ ὁποῖον πρέπει ν' **ἀποβλέπῃ** ὁ νομοθέτης, δὲν ἔχει ὑπερβατικὴν ὑπόστα-  
σιν, ὡς λ.χ. τὰ **εἶδη** εἰς τὸν **Φαίδωνα**.

Ἡ νομοθετικὴ εἶναι ἀνάλογος πρὸς τὰς **δημιουργικὰς** τέχνας. Καὶ ὁ τεχνί-  
της κατασκευάζει ἐν ἀντικείμενον συμφώνως πρὸς τὴν νοητὴν ἄλλ' οὐχὶ **χωρι-  
στήν** μορφήν του. Ὅπως ὁ τεχνίτης, ὁ νομοθέτης πρέπει νὰ ἔχῃ **ἐμπειρίαν** τῆς  
ὕλης του, δηλαδὴ τοῦ ἥθους τῶν πολιτῶν καὶ τῶν ἀναγκῶν τῆς πόλεως.

Τὴν παιδευτικὴν του λειτουργίαν, σκοπὸς τῆς ὁποίας εἶναι ἡ ἠθικὴ **εὐδεξία**  
τῶν πολιτῶν, ὁ νομοθέτης ἐπιτελεῖ διὰ τῆς **πειθοῦς**, ἡ ὁποία εἰς τὸν **Γοργίαν**  
εἶναι συνυφασμένη πρὸς τὸν σωκρατικὸν **ἐλεγχον**, καὶ διὰ τῆς **ποινῆς**, ἡ ὁποία  
ἐμφανίζεται ὡς **κατηγορία**, ἀποκαλύπτουσα τὰ **παθήματα** τῆς ψυχῆς τοῦ ἐνόχου,  
**κόλασις** ἀποσκοποῦσα εἰς τὴν θεραπείαν τῶν καὶ **τιμωρία**, δηλαδὴ ἐπανόρθωσις  
τῆν **βλάβης** τὴν ὁποίαν προεκάλεσεν ὁ ἐνόχος.

Ἡ σωκρατικὴ περὶ **ποινῆς** θεωρία παρουσιάζει ὠρισμένας δυσχερείας διότι  
ἀφ' ἐνὸς ὑποστηρίζεται ὅτι ἡ **ποινὴ** τοῦ θανάτου καθαίρει τὴν ψυχὴν τοῦ ἐνόχου  
ἀπὸ τὰ **οἰδήματά της** καὶ ὅτι ἡ ἐπιβολὴ τῆς ἀποτελεῖ εὐεργέτημα δι' αὐτόν, ἀφ'  
ἐτέρου, συμφώνως πρὸς τὸν μῦθον τοῦ **Γοργίου**, ὠρισμένοι ψυχαὶ διατηροῦν εἰς  
τὸν Ἄδην τὰ νοσήματα, τὰ ὁποῖα ἀπέκτησαν κατὰ τὴν διάρκειαν τοῦ ἐπιγίτου  
βίου των. Ἡ θανατικὴ **ποινὴ** δικαιολογεῖται ὡς **κόλασις** μόνον ἐὰν προϋποτεθῇ ἡ  
αὐστηρὰ διάκρισις μεταξὺ τῆς **φύσεως** ἢ **οὐσίας** τῆς ψυχῆς καὶ τῶν ἐξωγενῶν  
**παθημάτων** της. Ἄλλως μόνον ὡς παραδειγματικὴ ἢ ἐπανορθωτικὴ εἶναι παρα-  
δεκτὴ ἡ **ποινὴ** αὕτη.

Εἰς τὴν ἐπισκόπησιν συνάγονται τὰ γενικὰ συμπεράσματα τῆς ἐρεῦ-  
νης, τὰ ὁποῖα εἶναι τὰ ἑξῆς: α) Ἡ πλατωνικὴ ἄποψις περὶ νομοθετικῆς, ὡς  
ὀρίζεται εἰς τοὺς **Νόμους**, προϋποθέτει τὴν σωκρατικὴν θεωρίαν περὶ **τέχνης**, ὡς  
ὀρίζεται εἰς τοὺς λεγομένους σωκρατικοὺς διαλόγους τοῦ Πλάτωνος καὶ τὰ **Ἀπο-  
μνημονεύματα** τοῦ Ξενοφάντος.

β) Ἡ ζητούμενη ὑπὸ τοῦ Σωκράτους ἐπιστήμη εἶναι ἡ **βασιλική**, ὡς ἀνα-  
φέρεται εἰς τὸν **Εὐθύδημον**.

γ) Τόσον ἡ σωκρατικὴ **τέχνη** ὅσον καὶ ἡ πλατωνικὴ **νομοθετικὴ** προϋπο-  
θέτουν τὴν ἐπιστήμην τῆς **υἰείας** τῆς ψυχῆς καὶ τὴν **ἐμπειρίαν** τῶν ἐν τόπῳ καὶ



χρόνῳ ὅρων τῆς πραγματοποιήσεώς της. Δὲν προϋποθέτουν τὴν διαλεκτικὴν ἐπιστήμην τῶν **εἰδῶν** ὡς προτύπων ἐχόντων ὑπερβατικὴν ὑπόστασιν. Τὸ περιεχόμενον τοῦ **Κρίτωνος** προδιαγράφει τὴν περὶ νομοθεσίας ἀντίληψιν τῶν **Νόμων**.

δ) Αἱ ἀπόψεις τοῦ Σωκράτους καὶ τοῦ Πλάτωνος ὡς πρὸς τὴν νομοθετικὴν τέχνην διατυποῦται δι' ἐννοιῶν παραπλησίων πρὸς τὰς περὶ πολιτικῆς τέχνης καὶ παιδείας ἐννοίας τοῦ Πρωταγόρου, τὴν περὶ πειθοῦς ἐννοιαν τοῦ Γοργίου, τὰς περὶ πόλεως καὶ νόμου ἐννοίας τοῦ Ἰππίου, τοῦ Θρασυμάχου καὶ τοῦ «Καλλικλέους». Ἡ σωκρατικὴ καὶ πλατωνικὴ πολιτικὴ φιλοσοφία ὁλοκληροῦ τὴν πολιτικὴν φιλοσοφίαν τῶν σοφιστῶν, αἵρουσα τὰς ἀντιφάσεις καὶ ἀσαφείας της.

ε) Ἡ ἐμπειρία τοῦ **καιρίου**, τὴν ὁποίαν πρέπει νὰ ἔχῃ ὁ νομοθέτης κατὰ τὸν Σωκράτη καὶ τὸν Πλάτωνα τῆς περιόδου τῶν **Νόμων**, προϋποθέτει τὴν παραδοχὴν ἀρχῶν αἱ ὁποῖαι προδιαγράφουν τὴν ἀριστοτελικὴν ἐννοιαν τῆς **μεσότητος**.

στ) Ἡ περὶ τοῦ φορέως τῆς νομοθετικῆς λειτουργίας σωκρατικὴ ἄποψις εἶναι δυνατὸν νὰ καταστῇ σαφὴς διὰ τοῦ παραλληλισμοῦ της πρὸς ἐννοίας ὡς ἡ «κοινὴ βούλησις», ὡς ὀρίζεται εἰς τὸ **Κοινωνικὸν Συμβόλαιον** τοῦ J. J. Rousseau.