doi:10.1017/S0003055409990074

Moral and Criminal Responsibility in Plato's *Laws*

LORRAINE SMITH PANGLE *University of Texas at Austin*

In his most practical work, the Laws, *Plato combines a frank statement of the radical Socratic thesis that virtue is knowledge and vice involuntary with a prudential acceptance of the political community's need for retributive punishment. This paper examines the* Laws' *statements of principle regarding responsibility and punishment and compares these with the actual criminal code proposed in Book 9. The result is to show how a radical philosophic insight can be adapted to make ordinary citizens more gentle, thoughtful, and humane without sapping their moral commitments. Lessons are drawn from the* Laws *for the contemporary restorative justice movement.*

Modern democratic societies regard retributive punishment with profound ambivalence. Retribution increasingly strikes us as primitive, bloodthirsty, and irrationally focused on past harm that in most cases cannot be undone; yet justice still seems to demand that crime be punished and punishment be tailored to fit the seriousness of the crime. This ambivalence has only increased with the growing sophistication of the social sciences in analyzing the pathologies, both social and psychological, that accompany and seem to cause crime, for understanding these pathologies raises the question of how freely the offenders who suffer from them have chosen their own dysfunctional actions, and hence how much they may reasonably be held responsible. The work of psychiatrist Michael Welner, director of the prestigious Forensic Panel, which provides expert psychiatric evaluations in criminal cases, embodies our current dilemma. Welner has sought to get an objective handle on the slippery notion of moral depravity by using opinion surveys to identify the features of crimes that society considers most heinous and then seeking to isolate the psychic disorders that characterize the perpetrators of such crimes. Relevant diagnoses include malignant narcissism, psychopathy, and necrophilia (Tucker 2007). In his effort to give courts more objective standards for measuring depravity, Welner seems untroubled by the implications of his own field's understanding of the criminal soul as pathological and to that extent driven by disorders that no one would choose to have. However, other social scientists, finding simple retribution an inadequate response to the complex reality of crime, have increasingly sought a more nuanced and forward-looking remedy in restorative justice.

The modern restorative justice movement emerged in the 1970s and 1980s out of many scattered projects for community-based legal reform. It has since come to draw on indigenous traditions on every continent to devise more inclusive and constructive responses to crime. The movement has been inspired in part by a desire to address the root causes of crime as, for example, the epidemics of alcoholism, domestic violence, and school failure that have plagued Native American communities and that have left the state's essentially punitive approach to crime looking hopelessly inadequate. It has emphasized reconnecting the offender to a community from which he has become estranged and, in the words of Robert Yazzie, former chief justice of the Navaho Nation Court, correcting the "fuzzy thinking" that allowed him to make irrational choices (Yazzie 1998, 125). At the heart of the restorative justice process is the conference. Assembling families and support networks of both victim and offender, the conference aims to understand the causes of the crime and to devise a plan to help the offender make amends and put his life in order. Studies of restorative justice conferencing report high levels of satisfaction with the process on both sides and some reduction in recidivism in comparison with incarceration, findings that have held across both nonviolent and violent crimes, although mainly for youthful and first-time offenders (Bonta et al. 2006, 108–20; Strang 2002; but cf. Braithwaite 2002, 40; Umbreit, Coates, and Vos 2006, 56–9).

However, the restorative justice movement is itself unclear as to whether the response to crime should be restricted to efforts to repair the damage done (Braithwaite 2002, 16), or whether this work should merely supplement traditional punishment (Daly 2006, 135; Daly and Immarigeon 1998). In the case of relatively minor offenses, especially those committed by youths, society seems ready to forgive and forget when the offender expresses repentance, but not in the case of serious crime. Thus the movement comes down on both sides of the question of the rationality of retribution. If justice demands that criminals suffer for their crimes, then is not "restorative justice," whenever used as an alternative to punishment, a subversion of justice itself (Brown 1994)? Indeed, critics have charged that restorative justice even exacerbates injustice by giving offenders more access to their victims and more opportunity to inflict psychological suffering, and in general by making the administration of justice far more uneven and capricious (Daly 2006, 134–43; Roche 2003, 13–18; Strang 2002, 57–9). Nor is the restorative justice movement unequivocal on the meaning of its efforts to get victims to take responsibility for their crimes. Even as the movement asks offenders to repair the harm they have done, it seeks also to uncover and address the reasons for the act and often the broader societal "root causes" of crime, which many of its proponents

Lorraine Smith Pangle is Associate Professor of Government, University of Texas at Austin, 1 University Station A1800, Austin, TX 78712 (lorrainepangle@austin.utexas.edu).

The author wishes to acknowledge the helpful comments of Peter Ahrensdorf, Timothy Burns, Thomas Pangle, Christina Tarnopolsky and the co-editors and anonymous referees for the *APSR* on earlier drafts of this article.

https://doi.org/10.1017/S0003055409990074 Published online by Cambridge University Press

locate not in individual choices but in a radically unjust political and social order (Sullivan and Tifft 2006, 3–14). The goal of restorative justice is typically framed in terms of resolving conflicts rather than righting wrongs (Van Ness 1993, 259), and critics have charged that the focus on mediating between offenders and victims inevitably brings a loss of moral clarity, as injustices and violations of rights come to be construed as personal conflicts in which no one is morally superior to anyone else (Cobb 1997, 414, 436; Coker 1999, 75). Perhaps the deepest problem is that there is no agreement as to what restorative justice in fact seeks to restore—whether it be merely peace between two parties, the moral character of the offender, or the social and moral well-being of the entire community (Braithwaite 2002, 11–16).

An unappreciated source of reflection on this constellation of problems regarding retribution, criminal responsibility, and justice can be found in Plato's *Laws*. Here a wise but nameless Athenian Stranger turns his attention for a day to laying out the framework for the best practicable regime and the best practicable code of laws. His interlocutors are two elderly Greek gentlemen, Kleinias and Megillus, the former of whom has been asked to serve as a legislator for a new Cretan colony, Magnesia. Thus the *Laws*, like the *Republic*, consists in the construction of a city in speech, but this one unambiguously intended not only to provide food for reflection on the problem of justice but to serve as a model for actual legislation under favorable but not utopian conditions. In the process of elaborating the laws, the Athenian Stranger gives voice to Socrates' famous critique of all retributive punishment, arguing that vice is involuntary and calling for a form of criminal law that wherever possible will restore the offender to a responsible and constructive place in society. The outline of criminal jurisprudence in Book 9 of the *Laws* is tailored to a society vastly different from our own, but it shows a deep and nuanced appreciation for the complex passions and human needs that still must be addressed by any society that aspires to base its legislation on reason. Throughout his discussion, the Athenian shows that the ambivalence we feel in reflecting on criminal responsibility is not unique to us in the twenty-first century but reflects a profound and perhaps universal dissonance in the human understanding of justice.

In the analysis that follows, I trace the development of the argument in the *Laws* that virtue is knowledge and consider Plato's suggestions as to how it could possibly be true, taking guidance from the thought that virtue in the deepest sense is the good condition of the soul, which no wise person would ever choose to neglect. Then I turn to Plato's elaboration of the criminal law and the high standard of justice he articulates as its aim. Not only does the *Laws* explore deep problems with retributive justice, as other scholars have observed, but it in fact portrays punishment aimed at deterrence as almost equally problematic; only reform and education aimed at crime prevention meet his highest standard of justice. To grasp this standard is to see why a rule that satisfied it could never be implemented in practice in anything like its pure form. Nevertheless, I argue that the *Laws* in general and the criminal law in particular represent a more serious and pervasive effort to increase the rationality and humanity of political life than has hitherto been recognized. This article unfolds that project in detail. It shows how Plato uses the preludes to the laws, legal reforms that encourage calm deliberation, a new understanding of responsibility, the concepts of pollution, nature, and luck, and the equation between justice and psychic health, as well as subtle but far-reaching reforms of both piety and thumos or spiritedness, to bring the citizen's outlook as close as possible to the gentle humanity of the philosopher.[1] I also show the points at which this project breaks down, especially in the treatment of voluntary and involuntary crimes, and trace Plato's indications as to why thumos remains so recalcitrant to reason, preventing the laws from ever becoming purely rational and creating an ineradicable gulf in perspective between the wisest lawgiver and the patriotic defender of justice as Plato presents them. I close with a number of suggestions about how Plato's insights and practical recommendations might be constructively applied to contemporary restorative justice programs.

VIRTUE AND KNOWLEDGE

The Socratic view of criminal responsibility is, in its pure form, so radical that it is surprising to find it appearing in the soberly practical *Laws* at all. For of course the famous Socratic claim is that virtue is in essence knowledge of what is good, knowledge so powerful as to guarantee its own efficacy in action (e.g., *Protagoras* 352c). It follows, according to Socrates, that vice is rooted in ignorance, and therefore that criminals ought to be educated rather than punished (e.g., Plato *Apology* 25d–26a). In the *Laws* the Athenian gives a civic version of this same claim about ignorance and vice:

> With regard to the things the lawgiver enumerates and sets down as shameful and bad, and the opposite, good and noble, whoever is unwilling to use every means to avoid the former and employ all his capacities in the practice of the latter—every such human being—is ignorant of the fact that in all these matters he is treating his soul, a most divine thing, in a most dishonorable and unseemly way. (728a–b)

If the noble condition of our souls is the thing that matters most, and if the lawgiver sets down the laws correctly, no one who is thinking straight would debase himself by breaking the laws. Yet even apart from the problem that no code of laws is likely to be perfect, is it so clear that the noble condition of our souls should always trump all other considerations, including happiness? The Athenian never tries to argue that it should;

[1] This effort to infuse ordinary political life as much as possible with the philosopher's spirit of humanity has, in particular, received little attention in the otherwise illuminating commentaries of Leo Strauss (1975, 126–39) and Thomas Pangle (1980, 496–500) on Book 9 of the *Laws*, two commentaries that take especially seriously the *Laws*' Socratic critique of moral responsibility.

https://doi.org/10.1017/S0003055409990074 Published online by Cambridge University Press

rather, he makes it his project to persuade his listeners that virtue *is* what makes us happy. He adumbrates this claim first on the level of the city as a whole, in telling Kleinias how divinely inspired laws should be praised.

> "O stranger," it should have been said, "not in vain are the laws of Crete in especially high repute among all the Greeks. They are correct laws, laws that make those who use them happy. For they provide all the good things. Now the good things are twofold, some human, some divine. The former depend on the divine goods, and if a city receives the greater it will also acquire the lesser. If not, it will lack both." (631b–d)[2]

The Athenian goes on to class health, beauty, strength, and wealth among the "human" goods, and all the virtues of soul, including justice, among the "divine" ones. Now good laws certainly conduce to peace and prosperity, but can they possibly guarantee them, let alone the rest of the human goods? Does power come only to nations that are just?[3]

Silently withdrawing this extreme claim, the Athenian subsequently puts a new form of it into the mouth of the good poet, as part of a broader project of reforming traditional poetry. Now speaking on the level of the individual, he makes the good poet say that "the good man, being moderate and just, *is* happy and blessed, whether he be great and strong or small and weak, whether he be rich or not" (660e, emphasis added). The lesser goods do not inevitably accompany virtue, but one can be happy without them, whereas happiness requires and is even guaranteed by a good soul. There is much truth in this, but again, is it simply so? As Aristotle dryly remarks, "nobody" would call a virtuous man happy whose life was full of suffering and misfortune, "except for the sake of maintaining an argument" (*NE* 1096a1–3).

As if acknowledging the force of this objection, the Athenian goes on to give a subtler and more compelling version of his thesis at 661b–d. He argues now that the lesser things commonly "said to be goods," such as health, beauty, wealth, and even tyranny, "are all very good when possessed by just and pious men, but all very bad when possessed by unjust men" (661b). Excellence of soul is neither the only thing that matters nor a guarantee of the other good things that do, but it is the essential foundation for using any of them well and deriving solid happiness from them. Just as most of us would not exchange our condition for that of a lunatic, even the richest lunatic in the world, so the Socratic philosopher would never exchange the clarity and inner harmony of his soul for anything else at all. Indeed, he says, "To see, to hear, to perceive, and, in general, to live as an immortal for the whole of time, while possessing all the things said to be good except for justice and the whole of virtue, is the greatest of evil. The evil gets less as the time such a man continues to live gets shorter" (661c). Unless or until such a soul can be cured, its life is, like the unexamined life, not worth living (cf. Plato *Apology* 38a). The Athenian concludes, "the things said to be bad are good for unjust men and bad for just men, while the good things are really good for good men but bad for bad men" (661d). The suggestion here is that the more wealth and power a wicked person possesses, the worse off he is, presumably because more resources allow him to commit worse crimes, and because success in crime encourages arrogance, while failure sometimes brings a criminal to repentance. This thought will form the cornerstone of the penal code in the *Laws*, insofar as it is truly rational and not a mere concession to irrational anger.

Nevertheless, it is one thing to claim that our virtues are what allow us to make the most of every opportunity, and quite another to claim, as the Athenian now does, that the just life is always the most pleasant. This argument, however, is crucial to his thesis that virtue is knowledge. For pleasure is not a trifle that virtue demands we disregard; it is of the essence of happiness. Indeed, the Athenian insists that "no one would voluntarily be willing to be persuaded to do that which does not bring him more joy than pain" (663b). Elsewhere he elaborates:

> By nature, the human consists above all in pleasures and pains and desires. To these every mortal animal is, as it were, inextricably attached and bound in the most serious ways. The noblest life should be praised not only because it is superior as regards the splendor of its reputation, but also because, if someone is willing to taste it and not become a fugitive from it because of his youth, it will prove superior in respect to that which we all seek—namely, having more delight and less pain throughout the whole of one's life. (732e–33a)

This claim is important for the Athenian's argument, because if he granted even an occasional divergence between the noble life and the happy life, he would have to concede that the person who had his own best interest clearly in view would not invariably choose to act virtuously. He would sometimes face a choice between justice and happiness, and then something else other than knowledge, something like the good will of Kant's philosophy, which chooses what is right for its own sake without regard for its beneficial or deleterious consequences, would be needed to keep him just.

Certainly it seems to many human beings that there are such divergences between the demands of justice and those of happiness, but the Athenian calls it "the greatest ignorance of all" when a man

> doesn't like, but rather hates, what in his opinion is noble or good, and likes and welcomes what in his opinion is wicked and unjust. This dissonance between pleasure and pain on the one hand, and the opinion that is according to reason on the other, I assert to be the ultimate and greatest ignorance, because it belongs to the major part of the soul. In the soul, you see, the part that feels pain and pleasure is like the populace and the majority in the city. So when

[2] To see how sharply this view departs from the common understanding of even the most serious Greek communities, cf. 626b.

[3] Indications that it does not can be found, for example, at 638a–b, 706a and c, 707d, and 742e–743a.

https://doi.org/10.1017/S0003055409990074 Published online by Cambridge University Press

> the soul opposes knowledge, or opinions, or reason—the natural rulers—this I call lack of intelligence. (689a–b)

The Athenian here acknowledges that people often find the noble course painful and the base one more pleasant, but he insists that the root cause of such dissonance is still ignorance. Not only when the mind holds an inadequate opinion about the good but even when it apprehends the truth, the Athenian insists that there is some kind of ignorance at work whenever reason fails to prevail, and that we are not perfectly free from ignorance until reason has perfectly permeated all the passions.

This dissonance that the Athenian calls ignorance appears whenever we are torn between obeying and disobeying the laws. At such times we somehow believe that living a choiceworthy life means being a good, law-abiding citizen, and yet we may doubt that our imperfect laws are worth following. Or we may think we believe that true justice, at least, deserves our unswerving allegiance, and yet at times we doubt that *every* act of justice is really incommensurably good, so that its rightness always outweighs any advantage that may be secured by bending the rules. It is considerations such as these that keep the vast majority of people torn, thinking at once that virtue is good for the virtuous man and that virtue demands sacrifices of personal happiness for a higher principle. The Athenian is relentless in insisting that unless we agree with him we will be forever "unable to speak in consonance" with ourselves (662e). However, he does not pretend that his arguments will heal the rift in most of us: "The argument that does not split the pleasant from the just, and the good from the noble, is (if nothing else) persuasive in making *some* willing to live the pious and just life" (663b, emphasis added).[4]

A crucial part of the Socratic argument for the choiceworthiness of virtue lies in the peculiarly interior meaning Socrates and the Athenian give to justice, the virtue that is commonly thought to be "the good of another" (Plato *Republic* 343c, 392b; Aristotle *NE* 1130a3–4). Both in the *Republic* and the *Laws,* Plato defines justice as the good order of the soul, in which passions and habits form a harmonious whole under the guidance of self-knowledge and a thorough understanding of the human good (see esp. *Republic* 435b–44e; *Laws* 863e–64a). The unjust soul from this point of view is so foolish, chaotic, and unhealthy as to be the most undesirable thing of all. It is true that one can have a well-ordered soul and still be crushed by adversity. However, a good soul is still the one possession most worth having and the essential precondition for making the best of whatever fortune brings. The consequence is clear: criminals have a terrible disorder in their most precious possessions, their souls; they are incapable of a truly happy life; they are pitiable.[5]

Xenophon gives further help in seeing why escaping self-contradiction on this question is so difficult: it requires a clear and extremely steep hierarchy of goods to free one from the temptation to commit injustice. In the *Memorabilia* he gives us a beautiful portrait of the rare human type whose priorities are so ordered. To be untroubled by temptations to injustice, one would have to have the self-sufficiency of Socrates, a man who could live contentedly in 10,000-fold poverty, who could face neglect or scorn by most of his fellow citizens and feel no bitterness, and who could find joy in the quality of his own thought, together with a tiny number of like-minded friends, or with none at all (see esp. Xenophon *Memorabilia* 1.5, 1.6). Those who lack Socrates' austere self-sufficiency can never simply pity the criminal, because they cannot help envying the criminal's gains and the freedom and power that criminals have when they elude punishment and "get away" with their crimes. But can the citizen qua citizen ever share this self-sufficient perspective?

Plato acknowledges throughout the *Laws* that no code of legislation, however wise, can instill in the majority of citizens the virtue that in Socrates' soul sprang from philosophic independence—the self-sufficiency, the strength to face necessity calmly, the humane spirit of moderation, and the freedom from tumultuous desires and ambitions and resentments that bend most of us out of shape and make us put the higher things in the service of the lower ones. Even the best laws can only foster a simulacra of true virtue in the form of shame-bred self-control. This is one reason the Athenian says that while the individual should try to acquire true reasoning and live according to it, the city must take its reasoning secondhand and, he implies, in diluted or distorted form (645b). It must rely on extrinsic sanctions for virtue and not upon a simply autonomous love of virtue in its citizens; it must to some extent bow to society's irrational demands for vengeance against those with unhealthy souls. What well-framed laws can do, however, is to remind citizens at every opportunity of the higher and truer perspective on virtue and criminal responsibility, so as to move them at least some distance from harsh vindictiveness

[4] Bobonich (2002, chap. 2) offers a lucid and detailed defense of the *Laws*' thesis that everything good depends on virtue, bringing out the importance for happiness of understanding what is good and why it is good, but I think without giving sufficient weight to the problem of evident exceptions and conflicting goods that make the Athenian's strongest claims for the unwavering adherence to virtue so problematic. Strauss (1975, 130) points to the deepest problem with this claim, the imperfect unity of virtue itself, or the imperfect nobility of justice. While Strauss seems to take the view that nature points us to a certain rough justice that often falls short of both perfect rationality and perfect nobility, I explore in this article the alternative but not incompatible view that Plato is calling on us to take more seriously, whenever we can find it, the perfect justice that *is* thoroughly noble, and not to settle so quickly for its rougher cousin.

[5] This argument, the foundation of Plato's critique of retribution, has received an especially rich analysis by Stauffer (2006). While Stauffer confines his attention to the problematic character of retribution and indeed all ordinary notions of justice in this and his earlier book on Plato (Stauffer 2001), my thesis is that Plato made it a major project of his political writings and especially the *Laws* to advance a positive teaching about justice as both the good order of the soul and the common good, considering it to be a great gain if he can give these views any foothold at all in citizens' souls, even when their understanding of the well-ordered soul is not the philosopher's understanding (as I shall show) and even when their view of justice as the common good grows alongside the contrary opinion that justice is the good of another.

https://doi.org/10.1017/S0003055409990074 Published online by Cambridge University Press

toward a more healthy autonomy and a more humane way of regarding human failing. This, I would argue, is the reasoning at work behind Plato's complicated and seemingly self-contradictory pronouncements on criminal law throughout the *Laws*.[6]

REQUIREMENTS OF A JUST CRIMINAL CODE

According to Plato's reasoning about the nature of virtue and vice, what would a perfectly rational and just criminal law look like, and on what premises about responsibility would it rest? Plato begins to show his thoughts on this in a series of revealing but tension-laden comments about moral responsibility at the beginning of Book 5. After exhorting the citizens to take the good of their souls with utmost seriousness, the Athenian observes,

> No one, so to speak, takes into account the gravest of the so-called just penalties for wrongdoing: what is gravest is to become similar to men who are wicked, and, in becoming similar, to avoid good men and be cut off from good conversation, and instead to attach oneself to the bad by seeking intercourse with them. He who grows similar in nature to such people must necessarily do and suffer (πάσχειν) what such men by their natures do and say to one another. (728b–c)

This much certainly can become part of a coherent and constructive public teaching, for everyone should be encouraged to see that the worst consequences of vice are the natural ones. However, the next thought is more radical.

> Such suffering (πάθος) is not, indeed, a just penalty (δίκη), since the just—and the just penalty—is noble. It is retribution (τιμωρία), a suffering that is a consequence of injustice. Both he who undergoes this and he who escapes it are miserable: one because he does not get cured, the other because he is destroyed in order that many others may be saved. (728c)[7]

Here the Athenian slides imperceptibly from natural consequences into purposeful deterrence or retribution, which are pursued by human beings who are precisely not willing to let nature take its course. However, the clear message is that neither retribution nor the estrangement from good men that vice naturally brings is really just. As Socrates argues in his confrontation with Polus in the *Gorgias*, what is just must be something noble and hence good; there is nothing noble about an action or event that is wholly destructive (*Gorgias* 474d–75a). That is why Socrates always treats pure retribution as ignoble and irrational: it piles harm upon harm without accomplishing anything good. Even when it accomplishes some good for others by deterring them from the same error, that still does not make it noble according to this reasoning. For even the natural destruction that vice brings in its wake may do good in providing an object lesson to others, just as an obese person who dies of heart disease may serve as a warning to gluttons, yet we do not treat their demise as anything noble. The most troubling suggestion of the present passage is that even punishment calculated to work as a deterrent is no more noble, and in the final analysis no more truly just, than the bodily ills of the immoderate. Both are, in different ways, just grim necessities.

In Book 9 of the *Laws*, Plato sheds further light on the standard that a perfectly just criminal code would have to meet. Here he continues not only his gingerly critique of retribution but also his insistence on the injustice of deterrence whenever it is severed from rehabilitation or other benefits to the criminal.

> Perhaps by paying the penalty [the temple robber] would become better, by becoming moderate. For no judicial punishment that takes place according to law aims at what is bad, but for the most part accomplishes one of two other aims: it makes the one who receives the judicial punishment either better or less wicked. (854d–e)

The Athenian insists that whatever is nobly done must be nobly undergone, and that it makes no sense to say (as we all tend to think) that a punishment that is noble and just to inflict may be base and harmful to suffer—for then society is simply using the criminal to benefit itself. Nor, if it is truly noble, can it be base but beneficial to suffer (859e). The Athenian censures "the many" for saying, "without consonance, that the noble things and the just things are separate" (860c), with the result that they vacillate endlessly between what they judge as good and what they judge as just. Unless we are to deny the nobility of justice, the only exit from this morass is to grasp that what is just is necessarily both noble and good and what is unjust is necessarily both base and bad, so thoroughly undesirable that no one in his right mind would willingly choose it, and hence that, as the Athenian says, "the bad are all bad involuntarily in every respect" (860d). They may at times be beyond our help, but they should never be beyond our pity, and

[6] In my understanding of this complex project, I depart decisively from Schofield (2006, esp. 87, 98 n.104, and 321), who views the *Laws* as fundamentally paternalistic. He does qualify this claim in comparing the *Laws* with the *Republic* (cf. 283 and 315–19); on the other hand he says that "In the *Laws*, Plato has elected to talk to his readers in language that (unlike the *Republic*) offers no challenge to the conceptual framework with which they are antecedently familiar" (81). In contrast, Bobonich (2002, 97–119) makes a good case for the *Laws'* nuanced efforts to take each citizen as far as possible toward virtue based on reason and stresses the crucial fact that the dialogue itself is to serve as a basic educational text. But I think Bobonich goes too far in the other direction, beginning with his denial that virtue for Plato requires philosophic wisdom (2002, 90), and throughout underestimating the distance the *Laws* leaves even the most serious subphilosophic citizens from perfect rationality.

[7] This passage has occasioned much debate, summarized and joined by England 1921 at 1:477-78 and Saunders 1972 at 18–21. My own reading departs from all of these: I take the word πάθος in 728c2 to refer to what bad men naturally suffer from one another, mentioned in the previous line (πάσχειν). In falling into bad company, one might occasionally escape the quarrels and abuse that naturally occur in such company, but one still is miserable because one is not cured. On the other hand, if one suffers such "natural" retribution to the utmost and is destroyed by one's bad companions, this still is not a just punishment, for its only good effect is that *others* benefit from one's example.

https://doi.org/10.1017/S0003055409990074 Published online by Cambridge University Press

if our treatment of them is to be truly just, it must be noble and good on both sides.[8]

But how could any punishment be noble to undergo as well as noble to impose? The only punishment that could fully meet this standard would be the kind of punishment Socrates says in the *Apology* that crime deserves: education. This line of thought has several counterintuitive consequences. First, any punishment is in fact noble if it results in true reformation, however much the criminal may resist it and however shameful it may seem to ignorant eyes. The benefit is of course likely to be deepest, and hence the punishment most truly noble, when the criminal himself accepts it as needed medicine, as an occasion to learn to do better and, if necessary, to restore what he has destroyed, so that he may return to a state of friendship with his fellow citizens (862b–c). At the same time, the best and hence most just punishment need not hurt at all. It need only improve the offender and repair the harm.

> To accomplish these things by deeds or words—with pleasures or pains, by honors or dishonors, even by monetary penalties or gifts, and in general by whatever procedure someone may use to bring about hatred of injustice and desire, or lack of hatred, for the nature of the just—it is this that is the task of the noblest laws. (862d)[9]

Finally, the most just punishment for a criminal who cannot be reformed—the one that in fact best expresses the nonpunitive spirit of compassion that a wise judge would feel—is death, not imprisonment. For death reduces the evil of an irredeemable life as imprisonment cannot. With this judgment Plato shows both his humanity and his adamant toughness. If even the unexamined life is not worth living, how much less is the life in which ignorance and rage wreak havoc on oneself and others? Yet his logic demands that we first make every effort to teach and reform—unstinting efforts that do not begrudge the sick soul what it needs to heal—and that we reserve capital punishment for crimes that show an absolutely hardened disregard for law and human life. Punishment that simply restrains the criminal because society is unwilling to make a serious effort at curing him is no more just than a Victorian insane asylum. Plato would be dismayed by the prospect of a nation with over 2 million men behind bars, many of them languishing for years on death row.

In sum, the Athenian takes the common insight that justice must secure a common good and must not harm one person to benefit another, and he shows what drastic changes would be needed in our penal codes to attain this standard of justice. Not only retribution, not only deterrent punishment that fails to help the convict, but all attempts to make the punishment fit the crime by matching the seriousness of the crime with the painfulness of the punishment are unjust. They seem just only because we still harbor the thought that the criminal has gotten away with something and deserves to suffer even more harm on top of the terrible havoc he already suffers in his soul.

THE IMPOSSIBILITY OF IMPLEMENTING THE RULE OF WISDOM

Simply to articulate Plato's high standard of strict justice is to see why no actual penal code could even approach it in practice. No society is able to deter unhealthy souls from crime without imposing harsh punishments on its most unhealthy citizens, punishments that usually make their souls even worse. No society is willing to devote the time and resources to rehabilitating criminals that Plato's standard requires. Every system of justice must first accomplish what the Athenian Areopagus did when it took the place of the blind depredations of the furies: it must provide lawful punishments that are harsh enough to satisfy citizens' outraged anger so that they will willingly forego private vengeance and accept the rule of law. However, in accepting the rule of law, society must give up not only personal vendettas but the truly forward-looking and constructive stance of Platonic justice. For to attain this standard, commands and prohibitions, even if applied to all citizens alike, would have to be enforced in ways that would differ endlessly depending on the character of the offender. One thief might need only a stern rebuke in order never to repeat his crime, another might need to be publicly shamed, a third would need to study Plato, and a fourth might be so incurable that death would be the only just penalty. But why, indeed, should the criminal justice system wait for citizens to commit crimes before applying a remedy, if the remedy is meant to help them? Why should it not spring into action, admonishing and if necessary restraining the citizens, whenever they show any inclination to commit a crime, because surely prevention is the best cure? We now have an image of a justice system that, if wisely administered, would resemble the rule of a good parent over a young child more than the rule of law. If a government of fallible men and women ever tried to implement such as system, the result would be intolerable totalitarianism.

Plato accepts the need for the protection that comes from a rule of known laws and fixed penalties, but he forces us to see how seriously this compromises the highest standard of justice. He also prompts us to wonder whether divine justice might not succeed where human governments fail, and whether the only solution to our predicament would not be the rule of a wise god who needs no laws and who teaches and heals each unhealthy soul. However, he also gently contrasts his standard with his own society's idea of divine rule. At 859a, he asks, "How do we conceive writing about laws in the cities should be: should the writings appear in the

[8] Even those commentators who make the most of the irrationality of retribution (Thomas Pangle 1980; Stauffer 2006) do not observe how problematic punishment for the sake of deterrence is according to this Socratic analysis. Hobbes likewise criticizes the former but not the latter: see, e.g., *Leviathan*, 15, 19.

[9] So uncomfortable is Stalley (1983, 142–3) with the suggestion that the just response to crime need not be painful that he denies the plain sense of this passage. Saunders (1991a, 144) grasps clearly what is at stake, commenting, "This passage has a fair claim to be the most radical penological manifesto ever written."

https://doi.org/10.1017/S0003055409990074 Published online by Cambridge University Press

shapes of a father and mother, caring dearly and possessing intelligence, or, like a tyrant and despot, should they command and threaten, post writings on the walls and go away?" But then a few pages later, returning to the problem of the confused notions of justice that result from our lack of clarity about the involuntary nature of all injustice, he asks, "Is the argument now being uttered by us going to say only this much and depart, as if it were being spoken by a god, giving no argument as to why it has spoken correctly, and just legislating in defiance of the difficulty in some way?" (861b–c). The divergence between his view of crime and the view embodied in the law codes of Sparta and Crete that claimed divine inspiration lies at the heart of the Socratic critique of all the claims to divine inspiration known to Greek antiquity.

PRACTICAL SOLUTIONS: PRELUDES AND THE APPEAL TO REASON

So what practical and workable proposals for criminal justice does Plato offer in light of these unsettling insights? His starting point is the thought that even if society can never accomplish for all its citizens what a good parent can; society can do much better than it usually does in providing lifelong moral education and guidance, to make crime the rare and shocking exception that it should be rather than the dismal commonplace that it is among us. The law code that he offers is therefore one tailored to a small polis, the society that most nearly approaches the intimacy and educative potential of the family at its best. Its tiny size, in a world of warlike rivals for power, ensures that every citizen will be valued and that all will have a reason to help educate the young and push delinquents to reform. In these ways the polis epitomizes the fraternity that advocates of restorative justice seek to re-create through their conferences as an antidote to the fragmentation of social connections in the modern world that allows crime to proliferate. The crucial difference is that Plato, unlike advocates of restorative justice, believes that the best community—indeed the only true community—must be built around an agreement that the community's highest purpose is to cultivate the good character that is essential for happiness. Thus the polis, as Plato envisions it, enlists the entire law code and way of life to teach and persuade and charm the citizens into being good: it is as morally serious and at the same time as gentle and rational as Plato thinks a society comprising of real human beings under optimal circumstances could be. The aim of everything in the laws is education, of a twofold character. First, through the education in poetry and music that shapes both taste and morals from childhood, and through the judicious use of honor and dishonor, the laws seek to instill in the souls of citizens a habitual love of lawfulness, rooted in pious awe and reverence for ancestral ways, and a horror at injustice. Even when this habitual disposition is not informed by a complete understanding of what justice is and why it is good, and when it therefore coexists uneasily with contrary desires, it still comes much closer to true virtue than the self-control that rests merely on fear of punishment. Punishment is of course a necessary part of criminal law, but Plato presents it as a last resort; to the extent that it is needed, it is a sign of the failure of civic education. Second, the laws encourage the thoughtful reflection that allows any citizen who carefully ponders them to progress toward a deeper understanding of ethics. Thus the code has at every point a curiously double and tension-freighted character. For much of what impressionable young people need in order to acquire moral seriousness is the sight of vice meeting with shame and punishment, which all too often are inflicted in anger and do the criminal no good. But, although the Athenian makes concessions to the harsh necessity that requires society to harm the sick for the sake of the healthy, and even to the vindictiveness that demands harm for no good purpose at all, he seizes every opportunity to write into the law signposts that point us toward his own truer and more humane perspective.

This better, more rational perspective is present nowhere more clearly and strikingly than in the Athenian's use of "preludes" to introduce the major laws, an innovation Morrow (1960, 553) calls "almost unique in political philosophy." Modern laws are sometimes introduced by brief preambles stating their purpose, but the aim of Platonic preludes is far more ambitious. Preludes, sometimes much longer than the laws themselves, use extended discussions to enlist the citizens as willing participants and at best active partners in the laws' educational project. Their aim is, if not quite to engage the citizens in philosophy, at least to make them "as persuadable as possible with regard to virtue," disposed to listen "in a more tame and agreeable mood" to the laws' injunctions (718c–d). Preludes soften the harsh, peremptory commands of ordinary laws, which threaten as tyrants do, or merely give their commands and rush away as "slave doctors" do (720c), with the persuasive reasoning of the "free doctor" who treats free citizens by discovering the truth about the condition of each patient's soul and reasoning with him about what is best for him.

The Athenian explains the need for this reform by citing Hesiod's famous observation that "the immortal gods have put sweat before virtue, and a path to it that is rough and steep," though the road becomes "easy to endure" when one reaches the top (718e–19a, citing *Works and Days*, 287–8). By assigning responsibility for this state of affairs to the gods, Hesiod seems to hint that popular religion has made virtue less appealing than it ought to be, given its inherent goodness. But are poets such as Hesiod not themselves largely to blame for this error? And indeed, the Athenian parts ways with the poets in giving a much bolder critique of popular conceptions of morality and popular piety. Shortly before this passage he even pronounces it "the noblest and truest of all principles" that the good man should commune continually with the gods but that the devotions of the wicked are a positive evil (716d–17a). Piety in defective human beings only reinforces the view that virtue is something painful that needs a reward and

https://doi.org/10.1017/S0003055409990074 Published online by Cambridge University Press

that vice is only bad because it provokes divine wrath, which gifts may appease: it is better for these people to stand at an awe-stricken distance from the gods than to worship them in such a spirit. The Athenian's use of preludes thus comes to sight as a radical and rational departure from the poetic presentation of virtue and its justification. The first example of a prelude illustrates the new aim of instilling a more autonomous dedication to virtue by showing the citizen how the law, in this case, the law requiring everyone to marry and procreate, is in fact good for his individual happiness, fulfilling his soul's profound longing for a share in "immortality" (721c). Whereas the poets rely too much on stories of angry gods, the preludes, like thoughtful doctors, make their appeal to nature, to reason, and to the individual's own truest good.

However, when we look more closely, the picture is less simple. First and most obvious, no prelude stands alone; the choice is not between laws that compel and laws that persuade, but between simple laws that merely compel and "double" laws that also persuade through their accompanying preludes. The art of legislation may mix persuasion with force, but it cannot dispense with force (722b–c).[10] Is this only because human beings are too shortsighted to see what is in their own best interest? Second, the Athenian, for all his apparent departure from the approach of the poets, is in fact adapting their methods. He likens his preludes to songs; he says the preludes make the listener more "apt to learn" rather than teaching the truth themselves; he expressly distinguishes preludes from arguments (723b). After reminding his interlocutors that the poets must be strictly supervised because they do not understand which of their own speeches accord with the laws and which are harmful, he allows the poets to speak in their own defense (719b ff.). Although the defense is ostensibly that the poets merely repeat the words of the muse without understanding them, like intoxicated priestesses, or rather that they merely imitate life as they see it, in all its multiplicity, this defense from ignorance merges imperceptibly into an account of the poet's ability to praise "what is fitting" more adequately than the blunt law ever can. For whereas the lawgiver must "always exhibit one speech about one subject," the poet can take different individuals' circumstances into account and give guidance better tailored to each. However, it is precisely this capacity to address citizens individually and enter into dialogue with them that characterize the free doctor and that is the aim of the "double" form of law that consists in both prelude and command. Good preludes, it seems, like good poetry, must be able to convey different messages to different listeners.

Finally, although the Athenian's first example of a persuasive prelude appeals explicitly to nature, the natural yearning that it appeals to—the yearning for immortality—is, curiously, the one human longing that can never be satisfied on the plane of natural human existence. The individual's obedience to the marriage law does perhaps allow the species to partake of immortality, as the Athenian says (721c), but the individual's hope that this will bring him personal fulfillment entails something either more or less than perfect reason.[11] In sum, the preludes move the law in a more rational direction without making it wholly a matter either of persuasion or of reason: they represent less a rejection than an adaptation of the ways of the poet.

THUMOS, PIETY, AND AIDOS: REFORMING THE PASSIONS

When the Athenian begins laying down actual laws and preludes in Book 6, he relies even less on reasoned appeals to nature and individual happiness and more on piety. This shift may perhaps best be explained, as Thomas Pangle (1980, 472) suggests, by what has intervened: a rich discussion of thumos or spiritedness, the aspect of the human soul that in Platonic psychology is rooted in our vulnerability to death, that is called into play in the passionate defense of oneself and one's own, and that expresses itself in courage, anger, the concern with dignity, and the love of justice. Spiritedness is an indispensable support to moral seriousness, and in particular a crucial ally of reason both in controlling unruly desires and in defending the city's freedom, but at an even deeper level it tends to be hostile to the calm reasoning that philosophy requires and that simply rational preludes and laws would rely on. Spiritedness chafes at the limited happiness that nature and fortune offer; it demands divine support for our hopes, our dignity, and our outrage at injustice. Without sapping the root of spiritedness's toughness, the Athenian works to make it less closed to reason and less of an obstacle to individual happiness and social harmony. He does this by encouraging the aspect of spiritedness that is compatible with reason (a calm strength and habitual self-reliance in the face of fortune's vicissitudes) and moderating the aspect that is most unreasonable (anger and the inclination to seek retributive punishment).

This reform of thumos is especially evident in the new direction the Athenian gives to popular piety. Recognizing a need for piety and for divine sanctions for the laws in a society that demands so much of

[10] Schofield (2006, 84) makes this point well, and he raises an interesting question as to why the preludes even deserve to be described as entering into a "dialogue" with the citizen at all as the doctor does with a sick patient: they give reasons but the only choice is to obey or be punished. Where is there anything like the respectful give-and-take of dialogue? This discrepancy suggests, I think, that the "patient" addressed by the preludes is as much the law-abiding citizen who needs to ponder the law's reasons as the one on the verge of crime who needs immediate restraint; one need not be a criminal or even seriously drawn to crime to be "sick" and in need of a doctor; anyone who has failed to think through to the bottom what his soul truly needs for happiness is unhealthy and in need of a kind of philosophic inquiry that the preludes can in the best case instigate and help guide.

[11] The human inability to accept the temporal limits of our individual lives is also pointed to in the example of poetic speech at 719: this problem is integral both to the need for preludes and the reason these preludes can never be simply rational arguments. Consider further Stalley's observation on the imperfect match between the marriage law's details and the reason the citizen is given for obeying it (1994, 171–2; but cf. Schofield 2006, 320–21).

https://doi.org/10.1017/S0003055409990074 Published online by Cambridge University Press

citizens, he takes every possible occasion to channel the city's piety to support the calm, tough self-control and self-reliance that the laws seek to inculcate in all of them. Just as the citizens are expected to defend themselves when assaulted rather than go running to the authorities, and even women, or at least their close relatives, are expected to fend off or punish sexual assaults (879c–e, 874c), so citizens both male and female are to defend their homeland when it is threatened and not rush to the temples to beg divine protection (814b, 909e–10a). Just as calm acceptance of necessity is a central goal of childhood education, so, even when the lawgiver appeals to sanctions beyond this life, he presents those sanctions as natural necessities rather than as the personal vendettas of angry deities (870d), and he paints the gods as willing to help those who strive their utmost to be virtuous. In teaching the citizens to revere gods who are not vengeful, to rely on themselves, to regard their own virtue as the basis of their happiness, and to regard criminals' disorderly souls with more pity than anger, the Athenian teaches a calm spirit of self-sufficiency that is at least partially akin to the philosopher's own.

In other ways, too, the Athenian ensures that calm reason will prevail over harsh vindictiveness. As Glenn Morrow has shown, the legal procedure Plato outlines in the *Laws* contains many innovative improvements on contemporary Greek practice, all aimed at introducing into trials more questioning of witnesses, sifting of evidence, and leisurely collective deliberation, as well as opportunities for defendants to appeal their verdicts before sentences are carried out (766d–67a; Morrow 1960, 253–8). One notable reform is the rule that prevents trials for capital offences from being concluded in less than three days, addressing Socrates' criticism of Athenian procedure in the *Apology* (*Laws* 855c–56a; *Apology* 37a–b). This new spirit of calm deliberation reaches its peak in the laws on impiety in Book 10 and the establishment of the nocturnal council, which must reform the serious athiests by proving to them the error of their opinions—or allow the atheists to persuade the council of the merits of their unconventional views.

Nevertheless, the Athenian sees serious limits on the degree to which the city is able to become rational. A small sign of this is the emphasis he puts on cultivating a sense of reverence for the law—reverence that necessarily combines respect for its underlying moral principles with reflexive respect for what is simply old. Another is the cultivation of a profound fear of public disapproval, or shame. Uniting these two closely related passions under the heading of αἰδώς, or awe, the Athenian says that the lawgiver should "consider lack of awe to be the greatest evil for everyone both in private and in public life" (647a–b). To ensure its hold upon the citizens, the Athenian says it is not enough to do as most cities do and enjoin the young "to be ashamed before everyone"; the lawgiver must also "urge the elderly to be ashamed before the young, and to take care above all lest any young person ever see or hear them doing or saying anything shameful" (729b–c). Shame is a potent tool that the Athenian relies on especially to curb dishonesty among the magistrates. However, perhaps surprisingly, he also connects shame with battlefield courage (647b). For shame is in fact the obverse of the sense of honor that pervades every good army including our own.[12] The shame or awe that Plato finds most valuable is not the debilitating shame at what one is that may or may not impel the offender to reform, but what we might call "preventative shame," the sense that one *would* be ashamed to behave in certain ways, which in the best case keeps one from ever doing so.

With such civic education and such training in self-control, the Athenian considers it practicable to impose surprisingly light penalties for most crimes, especially first offences and especially when motivated by the sudden anger or the excessive vigilance in self-defense to which spirited men are naturally prone. In most cases even of murder the penalty is only two or three years in exile, although it is death for premeditated murder prompted by greed. Plato attempts to give reformable criminals every opportunity to regain their places as full members of the community. Likewise, the emphasis in cases of theft is upon restitution and restoring the severed connections between the offending member and the rest of society (862c). Like modern advocates of restorative justice, the Athenian argues that informal conferences of families and friends should be the court of first recourse when trouble breaks out between individuals (766a ff.; cf. Braithwaite 2002, 42). And if criminals are, as often as possible, to be given a fresh start after they have paid the penalty, so much the more does the Athenian insist that punishment not be visited upon their children. Indeed, the child of a criminal who overcomes his parent's shame and bad example and goes on to live an upstanding life is to be given special honor for this achievement. In all of these ways, the Athenian weaves a spirit of philosophic gentleness into the morally impressive but often unforgiving ethos of his Cretan and Spartan models.

NEMESIS, POLLUTION, AND THE ACCEPTANCE OF RESPONSIBILITY

In the final analysis, however, the Athenian concedes that neither reasoned appeals nor habituation nor shame can prevent the worst crimes, and thus fear of harsh punishment is indispensable as the ultimate sanction. At the beginning of the discussion of criminal law in Book 9, he says it is a disgraceful thing that, after legislating such a rigorous moral education, the founders of the new city should still be required to deliver threats in order to deter crime, but he accepts this necessity. Later he acknowledges that earthly sanctions alone are not enough, and that both punishments in Hades and further punishments when the soul returns to earth must be invoked (870d–e). Still later he acknowledges the limits even of these threats, and casts about for "some ultimate deterrent" (881a), but he never comes up with anything worse. Good

[12] On the deep connection between Greek notions of shame and honor, see Cairns's (1993, 1–4, 13, 383–4) discussion of the meanings of the word αἰδέομαι.

https://doi.org/10.1017/S0003055409990074 Published online by Cambridge University Press

laws can make crime rare but can never extinguish it. Otherworldly sanctions seem especially needed at both ends of the spectrum of social bonds. On the one hand, they are required to ensure just treatment of those for whom ordinary social connections are too weak to provide adequate protection. Immediately after denying the justice of retribution, the Athenian finds himself forced to invoke the avenging gods to come to the aid of strangers from abroad, who have no champions to protect them (729e). On the other hand, extreme sanctions are also needed to reinforce what should be among the strongest bonds of all, children's sense of duty toward their parents. For parents in traditional societies demand an extraordinary degree of gratitude and deference, claims that no reasoned appeal to the grown child's own advantage can ever fully support. Thus the Athenian speaks of Nemesis for the first and only time in a speech warning about the rage of dishonored parents.

This rage is a vivid expression of the all but ineradicable human desire for vengeance against those who harm us. This desire, if it had its way, would punish every wrong, deliberate or inadvertent; it would punish citizens when they "refuse to believe" (887d) and "dare to misunderstand" (892a) the sacred stories about the gods; it would punish dumb beasts that kill people and rocks that fall and injure them. Popular anger demands not merely that crimes be judged and punished, but that the people at large have a direct say in the process. As the Athenian puts it,

> In regard to crimes against the public, it is necessary, first, that the majority have a share in the decision. For when someone does an injustice to the city everyone suffers the injustice, and they would justly be vexed if they had no share in such trials. . . . Even in private suits it is necessary that everyone take part as much as possible. For anyone who does not share in the right of judging considers himself not at all a sharer in the city itself." (768b; cf. Aristotle *NE* 1132b33–33a1)

This means that the people, in insisting on serving on juries, insist on being judge in their own cause, a thought troubling enough in itself. But why do people feel themselves so personally affronted when crimes are committed? Somehow the law-abiding citizen finds his own sense of dignity assaulted by a crime that goes unpunished, suggesting that if criminals routinely got away with their crimes, the value of law-abidingness itself would become questionable in his eyes. Thus the law-abiding citizen is vulnerable to being persuaded of the validity of the criminal's way of looking at the world; both need to see crimes punished if they are to have respect for justice and for just citizens (cf. Booth 2001, 779–80).

So powerful is the demand that injuries must be avenged that it is even assumed to persist after death, and even against those who were never really at fault. Thus, when a citizen killed another by accident, the killer was required to go into exile for a time, on the assumption that

> he who dies a violent death after having lived with the outlook of a free man feels, when freshly dead, spirited rage against the perpetrator. Filled with fear and horror on account of his violent experience, and seeing his own murderer going about in his own accustomed haunts, he feels horror; being himself disturbed, he does all he can, having Memory as an ally, to disturb the perpetrator and his doings. (885d–e)[13]

Anger reaches its crescendo when it is parents who have been wronged, and especially when they have been killed, by their own children. Aeschylus in the *Oresteia* gives a gripping portrayal of the rage such parents are thought to carry with them beyond the grave, embodied as the Furies that hound Orestes out of Argos for killing his mother, despite the fact that her death was punishment for murdering her husband Agamemnon and was ordered by none less than Apollo himself. The Furies are utterly savage, vengeful, and unwilling to listen to argument. They press their claim so unrelentingly that, in the third play of the trilogy, the *Eumenides*, they successfully threaten to ruin the young city of Athens if they are not given a place there. The achievement of the story is that the Areopagus is established as the final judge in all cases of homicide: law does replace raw fury. However, Athena promises the Furies that those who kill their parents will be acquitted only when they have an exceptionally strong justification, as Orestes has, and even then purification and expiation will be required. Athena and the Athenian chorus recognize that it is in fact a positive good for Athens that the Furies be allowed to remain in the background. For they stand behind the law as the oldest and strongest source of awe, evidently embodying for Aeschylus the thought that there are some things to which we must bow simply without qualification or question (*Eumenides* 475, 690–98). The positive, written law of the city and its lawfully instituted courts never quite have this power, wise and good as they are. For like Apollo in Aeschylus's trilogy, the laws have arisen within memory in the clear light of day and they use the language of reasoned argument, which as such is always open to questioning and to counterargument. The *Oresteia* hence stands as a warning against placing excessive hopes in enlightened politics. To secure a rule of laws based on reason and public consent

[13] Cf. Aeschylus, *The Libation Bearers*, 37–40. For an eloquent contemporary discussion of the way vengeance is fueled by a desire to keep memory alive (and so in a sense to keep the dead alive), see Booth 2001, 780. Saunders (1991b, 118–21) is appropriately troubled by Plato's introduction of such a vengeful element into a law code whose principles abjure retribution. He understands this as the result of a collision between Plato's principles of justice and his decision to give the family a prominent place in the society of Magnesia; he further tries to bridge the gap by arguing that the relative gain in honor that comes to the dead when their killers suffer retribution is the only "recompense" that can be given them in fulfillment of the criminal law's nonpunitive goal of "redressing the injury" and "restoring friendship" outlined at 862b–c. This may indeed be the only recompense possible, but Plato's recourse to it only serves to highlight the punitive element present in virtually every demand that the law should "take away" from the criminal what he has "gained" so as to restore the proper equilibrium between criminal and victim (cf. Aristotle *NE* 1132a7–14).

https://doi.org/10.1017/S0003055409990074 Published online by Cambridge University Press

is an excellent accomplishment, but in the gloom behind the positive law must lie something more terrible that inspires us with shuddering awe and unquestioning obedience.[14] The official teaching of Plato's city Magnesia, by contrast, is that reason provides an adequate basis for all legislation and that unquestioning obedience is never demanded. Yet Plato's references to the power of Nemesis and the importance that he gives to civic piety in the *Laws* show a quiet, qualified agreement with Aeschylus's judgment on the need for some such supplement to reasoned arguments about justice.

This mixture of reason and unreason appears in the prelude to the first criminal law the Athenian takes up in Book 9, that on temple robbery. In good Socratic fashion, the Athenian emphasizes the inner affliction of the soul of those who are drawn to crime and the misfortune of finding oneself in this condition. However, the laws also teach people tempted by this most impious crime to look upon their own inclinations as a curse as well as a natural affliction (854b). These two descriptions are not compatible, but both support the thought that crime is never wholly voluntary. Throughout the exposition of the criminal code, Plato makes maximal use of the ancient and morally ambiguous concept of "pollution."[15] The thought that pollution accompanies great crimes deepens the seriousness with which society regards them but also softens society's vindictiveness, for a pollution is a thing so horrible that no one would choose to have it. In the concept of pollution the difference between voluntary and involuntary offences is minimized and the possibility for redemption is emphasized. Anger is given its due; the polluted one must make some expiation, but once he has done so, he is to be forgiven.

The notion of pollution carries with it a recognition of the interconnectedness of the community and a sense that one cannot simply dismiss crimes as someone else's business, but in a very different way from the angry tendency to see crimes against anyone as a personal affront to oneself. The thought that the community is polluted suggests that the evil tendency at the root of a crime is infecting the whole community and must be purged from it for everyone's sake. Such a notion of pollution is in general quite alien to our liberal, individualistic ethos, but it is felt in cases where crimes have become so atrocious that blame seems to extend from the direct perpetrators to everyone who failed to stop them, and even subsequent generations feel tainted by belonging to a community that could do such things. As Booth (1999, 252–8) shows, the difficulty of coming to terms with their Nazi past has caused thoughtful Germans to look beyond simply liberal and individualistic paradigms for ways to understand crime and to expiate a disorder that seems to go to the core of their identity as a nation.

With his advice on how to view and handle one's own evil impulses, Plato gives a new meaning to the old idea of taking responsibility for one's actions. The individual or the society that takes responsibility in this way need not view crimes as the result of a radically free will; one may even, like Sophocles' Oedipus, believe that one's crimes were fated, but nonetheless one acknowledges them as one's own; one acknowledges the presence of the disorders that exist in one's soul or one's community and strives in every way to overcome them, taking an active part in the administration of justice and in one's own education and making no excuses. "The greatest of all evils for the mass of human beings is something which grows naturally in the soul, and everyone, by excusing it in himself, fails to devise any way to escape it" (731d–e; cf. 727b–c). To the would-be temple robber, the Athenian offers exhortations to pray for divine help, to seek out virtuous company, to "hear, and try yourself to say, that every man must honor the noble and the just things," and to "flee, without turning back, the company of bad men. If by your doing these things the disease abates somewhat, well and good; but if not, look to death as something nobler, and depart from life" (854b–c).

Like the Athenian, the restorative justice movement seeks to replace the backward-looking process of "holding responsible," which usually consists in the government's imposing punishment on a passive convict, with the active, forward-looking process of "taking responsibility" in which the offender himself takes on the task of setting right the harm he has done (Bovens 1998; Braithwaite 2002, 129). This seems an important improvement. Plato goes a step further and calls on individuals to engage in a proactive process of taking responsibility for correcting their own bad tendencies

[14] For a contrasting account that places the significance of the Areopagus not in reason, law, or any constructive civic purpose for punishment that replaces blind fury, but instead in its successful monopoly of authority, see Allen (2000, 18–24). Allen argues persuasively that, on the one hand, law was appealed to before this event, and on the other, that revenge remained an important motive for civic punishment after it, but she underrates the importance of the effort to replace anger's pointless destruction with sanctions aimed rationally at social order and peace—and hence misses the significance of the limited success of that effort. In general, following Foucault's emphasis on punishment as an expression of power, she focuses on the "who" and "how" of punishment to the neglect of the "why," which is my central concern.

[15] The relation of pollution or miasma to moral responsibility has been much discussed. Dodds (1951, 44–5) argues that the idea of pollution developed in post-Homeric times out of a new sense of guilt and insecurity that were alien to the "shame culture" depicted by Homer, but he is able to maintain this thesis only by denying the authenticity of significant passages in Homer that do imply clear notions of moral responsibility (cf. Cairns, 1993, 27–146). Adkins (1960, 86–108) also claims a growing emphasis on pollution in archaic Greece, rooted in a deep sense of foreboding and fear of having transgressed the divine order and often provoked by national disasters that society was able neither to explain nor to cure. He observes a tension between the archaic Greek view that any killing incurs pollution and requires expiation, and the code of Draco, the first known Greek homicide law, which distinguishes between willful, accidental, and justifiable homicide and demands no purification in the case of the last. In his account of the archaic world, as in Plato's *Laws*, the notion of pollution seems to blur rather than sharpen the concern with moral responsibility. Glenn Morrow (1960, 120), taking a far more rationalist approach than Dodds or Adkins, argues that the concept of pollution was deliberately developed by the Greeks after Homer to ensure that the community took a hand in bringing punishment on a murderer, thus putting a stop to cycles of vengeance killing. For a nuanced and I think more persuasive account that argues for the antiquity of the full-blown notion of pollution and its eclipse by formal law, see Parker 1983, esp. 104–43.

https://doi.org/10.1017/S0003055409990074 Published online by Cambridge University Press

before they break out into overt crime. However, this requires focusing on the flaws of one's character, and most restorative justice proponents are uneasy about all evaluations of character (Van Ness 1993, 259). Even Braithwaite (2002, 96), who criticizes the tendency to allow conferences to become mere negotiating sessions devoid of clarity about right and wrong, is uneasy about discussion of the offender's character. However, Plato would say this reticence vitiates the very meaning of taking responsibility.

VOLUNTARY AND INVOLUNTARY CRIMES

In all of this, Plato shows his gentleness, even as he acquiesces in the popular demand that criminals should suffer something. In terms of humanity and gentleness, perhaps he does not give up too much: we can hope that in such a society there will be some convergence between the punishments that anger demands and the punishments that do in fact either bring reformation or end hopelessly evil lives. However, in terms of clarity, the Athenian is at certain junctures forced to give up a great deal. After his careful argument that all injustice is involuntary, the Athenian finds himself compelled by a stubborn Kleinias to write into the law some version of the common distinction between voluntary and involuntary injustices; this is the only time Kleinias simply digs in his heels against the Athenian's reasonings (861e). Thus Plato portrays wisdom bowing to the inescapable political power of the view that people deliberately do wrong and for that deserve retributive punishment. Immediately after emphatically refusing to retract his claim that all injustices are involuntary (861c), the Athenian capitulates and begins to delineate a class of "voluntary" injustices that should be punished.[16] In an interesting shift, however, he now refuses to call *any* harm an injustice if it is *not* "voluntary" (862a). In this way he at least preserves the thought that nothing anyone does involuntarily deserves retributive punishment.

To satisfy Kleinias, the Athenian makes use of a sensible distinction between harms done on purpose, such as killing a man in anger, and those done by accident. He follows common opinion in calling the former voluntary and unjust, while refusing to call unjust any harm done inadvertently. The crucial difference is that actions of the first type show the character of the agent in a way that the latter do not (862b), and hence, the Athenian and ordinary opinion both agree, the former calls for a more serious response. But whereas most people see such acts as deserving more harm, the Athenian sees them as calling for more help. And although most people view them as in every respect voluntary, the Athenian's argument taken as a whole suggests that crimes committed "voluntarily" are at the deepest level even more *involuntary* than harm inflicted accidentally, for in corrupting one's own soul, one acts more against one's true wishes than in making a simple mistake.[17] In a similar spirit, the Athenian accepts the common thought that those who break the law while insane should not be punished (864d); but whereas others think it is because insanity provides an excuse, Socratic reasoning would say it is because reforming such a person is probably hopeless. Thus the distinction that others make for the sake of imposing retribution on some and excusing others is made by the Athenian only in order to identify some who can and should be cured and others who either need no cure or are incapable of it.[18]

A similar dynamic is at work in the discussion of ignorance and its role in crime. In the theoretical discussion of crime in Book 5, the Athenian makes it clear that all wrongdoing is rooted in ignorance (see esp. 728b and 731c). Yet in the actual criminal code, the Athenian follows common practice in attributing only some crimes to ignorance and others to anger or desire (863c). He further distinguishes between "simple" and "double" ignorance. Simple ignorance is ignorance of a fact—i.e., that it is against the law to divulge certain information. Such ignorance is responsible for "light faults" that deserve gentle punishments or forgiveness. By contrast,

> the double version occurs when someone lacks understanding because he partakes not only of ignorance but also of the opinion that he is wise, and believes he knows completely things about which he knows nothing; if this is accompanied by strength and force, the lawgiver sets such things down as the causes of great and unmusical faults. (863c)

The Athenian makes plausible the blameworthiness of "double ignorance" by reminding us of the arrogance of "unmusical" souls, those whose natural forcefulness and courage, perhaps strengthened by an education in the gymnastic and martial arts, has not been rendered thoughtful and gentle by a corresponding education in music and poetry that would instill it with a reverence for what is beautiful and an openness to reasoned persuasion. Such unmusical souls take no care to inform themselves about relevant facts and laws, believing that they are wiser than the law.

Yet even here the Athenian stresses the peculiar character of ignorance. The other faults that contribute

[16] Roberts (1987) makes an ingenious and often insightful effort to save this whole passage from inconsistency, but she does not face the fact that the Athenian really does begin to speak of voluntary injustices. Adkins (1960, 306, 308–9) notes the contradiction but implausibly suggests that Plato never noticed it.

[17] See Saunders (1989, 143) for a helpful discussion of this paradox. Weiss (2006, chap. 1 and 7) notes it as well, although she argues that the Athenian and Plato hold to a conventional view that unjust acts are freely chosen and their agents morally culpable (the very view I think the Athenian clearly denies but that Kleinias forces him to accommodate). Weiss (2006, 202) even claims that Plato holds everyone morally responsible for his ignorance, and that he departs from the usual view of moral responsibility only in placing a new stress on the importance of character and in insisting on the unenviable state of the unjust man's soul.

[18] That the Athenian does not call for execution of the criminally insane is of course an anomaly on his principles. In fact, he only calls for execution in cases where popular outrage and a cool Socratic judgment as to the choiceworthiness of a life *both* support it, as in the case of premeditated murder.

https://doi.org/10.1017/S0003055409990074 Published online by Cambridge University Press

to crime all present temptations, temptations to indulge anger or to pursue pleasure, against what we believe or think we believe is good. Because desire and anger come to sight as temptations that moral opinion tells us we have a duty to resist, we praise those who "master" or "control" these passions and blame those who "yield" to them. However, no one blames in the same way one who "yields" to ignorance. For ignorance, especially ignorance of what is truly good and bad, offers no temptation (863d–e). We are ruled by it when and only when we are unaware, or insufficiently aware, of its presence: it is a trap most difficult to escape.

Immediately after making this observation, the Athenian returns to the thought that what is done in ignorance, even the deep ignorance of right and wrong, should *not* be blamed:

> The tyranny in the soul of spiritedness, fear, pleasure, pain, feelings of envy, and desires, whether it do some injury or not, I proclaim to be in every way injustice. When, on the other hand, the opinion about what is best (however a city or certain private individuals may believe this will be) holds sway in souls and brings order to every man, then, even if it is in some way mistaken, what is done through this, and the part of each man that becomes obedient to such a ruler, must be declared to be entirely just and best for the whole of human life—even though many are of the opinion that such injury constitutes involuntary injustice. (863e–64a)

Here we have a case very similar to the case of the "double fault" above, which the lawgiver was encouraged to blame harshly, yet now the soul in the grip of an error it does not even perceive is called "entirely just." Why so? The difference seems to be that we are speaking now of erroneous opinions that result in orderly self-control rather than lawbreaking, even though this self-control still falls far short of the true rule of reason.[19] Thus we have three different views of moral responsibility on the table: the conventional one that measures injustice mainly by the harm done, while excepting justified harm and pardoning harm based on ignorance; the public teaching the Athenian is laying out for the city that measures injustice mainly by the condition of the doer's soul, treating the tyranny of passion as injustice and the spirited self-mastery that bows to prevailing moral opinion (as exemplified by the guardians in the *Republic*) as just, even when the opinion is erroneous; and the Socratic view of which this civic view is a reflection, namely, that the truly just soul is ruled not by spiritedness obedient to opinion but by truth allied with healthy desires.[20]

The unsettling upshot of the two passages quoted above is to underscore the close resemblance between "justice" in this civic-minded definition and the "great and unmusical faults" of the doubly ignorant who are both ignorant and ignorant of their ignorance, and whose ignorance is "accompanied by strength and force" (863c). For what is the rule of law in any actual polity but a mixture of wisdom and ignorant folly, backed up by force? At 722e–23a it becomes clear that actual laws in real political communities have invariably been like the commands of the slave doctors, and that only the Athenian's innovation of preludes can make laws even partially acts of reasoned persuasion (see also 875d on the inferiority of law to reason). The practical result of the passage just quoted will be to give protection to citizens who in good faith obey even erroneous laws and mistaken notions of what their duty is, and protection likewise to doubters of the official religion, while unleashing punishment on those who knowingly break the law out of anger and especially out of greed and incontinence.[21] At a practical level this makes a certain sense. If the task of the law is to "teach and compel" wrongdoers to do better (862d), then those who with perfect self-control follow the wrong end need only be taught, if possible, why their end is inadequate, while those who act against their own better judgment often need compulsion as well, to shore up their inadequate self-control. However, the Athenian knows that no community will take seriously the task of enlightening citizens whose behavior is already orderly, nor, when compulsion is needed, is any community likely to exercise this compulsion in the compassionate knowledge that the ultimate cause even of arrogant violence is ignorance of what is truly best (728a–b), and that the worse the fault, the deeper and more pitiable the ignorance is that drives it.

The Athenian must thus dilute his own insight about the involuntariness of crime in offering legislation, but he reminds us of his higher and more comprehensive perspective in many small ways throughout the exposition of the criminal law. One way he does so is through the frequent use of medical language that treats crime as a disease and the proper remedy for crime as a "cure." A second is seen in his language of luck and misfortune: the slave or foreigner convicted of robbing a temple is to have the "misfortune" written on his hands and face before being executed and cast out of the city unburied (854d); the family that takes the allotment of a family of inveterate criminals is to be set up "with better luck" (856e); having defined injustice as the tyranny of passion over the soul, "whether it does some injury or not" to others (863e–64a), the Athenian adds that if indeed it does harm others, if one succeeds in one's evil purposes, that is "bad luck" (877a). A third use of language that points to the Socratic perspective is seen in the Athenian's frequent references to nature

[19] Weiss (2006, 191–200) denies that the Athenian intends this admittedly strange statement that acts based on erroneous opinion should be declared "entirely just." She translates κἂν σφάλληταί τι at 864a4 not as "even if it is in some way mistaken" but as "even if it does some harm," not seeming to notice the problem this creates for the last line I have quoted. For most people never simply equate acts done out of moral conviction that do some harm with involuntary injustice; if they did they would view all legal punishments as involuntary injustices. The point here is radical: the Athenian is indicating that the city must often declare just what is based on error.

[20] Strauss (1975, 132–3) is most helpful in sketching how this civic justice remains distinct from the true justice that is based on true knowledge of what is good, pointing out that only the latter can be counted upon to do real good.

[21] Thomas Pangle (1980, 502) suggests that in fact the chief practical effect of the Athenian's reforms in criminal law is to lay the foundation for a new and far less harsh way of dealing with impiety.

https://doi.org/10.1017/S0003055409990074 Published online by Cambridge University Press

and what occurs or grows naturally. Even the longing to rob temples is called a natural affliction (854b), and the divine punishment the Athenian says the city must hold up as a threat against the most stiff-necked criminals is presented as a natural consequence of crime (870e). Especially revealing is the glimpse the Athenian gives us of his own view of retributive punishment when he says that, were it not for the love of wealth, "there wouldn't occur in cities murders that require murders to purge them" (870c).

PUNISHMENT AND THE "GREAT MAN IN THE CITY"

Yet a very different view of responsibility is not only inevitable but in an important way valuable in a community's citizens and especially their leaders. As human beings live in ignorance of their own good and commit injustices upon one another, not only punishment but even the anger that fuels it is socially necessary. This fact casts a long shadow over the dignity of political life. At the beginning of Book 5 the Athenian contrasts the life that is truly blessed with the life and preoccupations of the political man as such. "Whoever is to become blessed and happy should partake of [truth] from the very beginning, so that he may live as a truthful man for as long a time as possible," he says (730c). "Yet the great man in the city, the man who is to be proclaimed perfect and the bearer of victory in virtue, is the one who does what he can to assist the magistrates in inflicting punishment" (730d). Every political community needs spirited citizens who believe in punishing their enemies, abroad and at home.[22] There are limits to the Athenian's efforts to overcome moral indignation, for indignation is a useful and indeed necessary force supporting the rule of law.

> Every real man should be of the spirited type, but yet also as gentle as possible. For there is no way to avoid those injustices done by others that are both dangerous and difficult, or even impossible to cure, except to fight and defend oneself victoriously, in no way easing up on punishment. This every soul is unable to do, if it lacks a high-born spiritedness. On the other hand, in regard to the curable injustices men commit, one must first understand that no man is ever voluntarily unjust. For no one anywhere would ever voluntarily acquire any of the greatest evils—least of all when the evil afflicts his most honored possessions. Now the soul, as we asserted, is truly the most honorable thing for everyone; therefore no one would ever voluntarily take the greatest evil into his most honorable possession and keep it for the rest of his life. So the unjust man, like the man who possesses bad things, is pitiable in every way, and it is permissible to pity such a man when his illness is curable; in this case one can become gentle, by restraining one's spiritedness and not keeping up that bitter, woman's raging. But against the purely evil, perverted man who cannot be corrected, one must let one's anger have free rein. (731b–d)

As citizens we should be as gentle as possible toward first offenders and youthful offenders who give reason to hope that they may be cured; we should willingly expend time and resources to help them and should not let irrational indignation get in our way. The Athenian indeed goes quite far in associating gentleness with the greatest strength and the ultimate manliness: this is part of his systematic attempt to reform thumos.[23] Although anger looks manly, he suggests that it is really an expression of the bitterness of one who was impotent to stop a harm and who now is unable to feel whole again until one has lashed out in return. Francis Bacon echoes this judgment, arguing that, though men with the keenest sense of honor may be especially prone to anger, real strength demands that they cultivate "an honor of a stouter web" (Bacon 1936, 172).[24] According to Plato, the greatest strength would be the quiet strength to hold on to what one knows about the sickness of all criminals' souls and to rise above anger entirely. Most citizens will never be able to adhere consistently to such gentle equanimity—Bacon (1936, 170) indeed considers it impossible—but the Athenian suggests that citizens can be taught to admire and emulate this equanimity in a way that will make their individual lives happier and civic life more humane.

Yet the political community still needs anger. In cases in which hopes for reform are slim and examples must be made to deter others (for no society can in fact avoid practicing deterrent punishment), anger is necessary if society is to have the stomach to hurt those who have broken the law.[25] In reality, of course, those with incurably sick souls are much more pitiable than the curable: they are the ones in whom the cancer of moral decay has metastasized throughout the whole soul. The real condition of the political community is now illuminated for us in a nightmarish way: the fabric of society keeps being attacked by humans who have gone mad, who keep smashing into our houses and our windows and our children and doing grotesque harm to themselves, but harming us too. To get up the energy and determination necessary to stop them, we have to go a little berserk ourselves and blame them for being in such a bad condition and want them to be even worse off. Yet this passion to punish the mentally deranged is part of what characterizes "the great man in the city," the man with the great love of justice (730d). If moral

[22] Our own inevitable ambivalence about filling such a punitive function is reflected in the fact that, as Foucault observes and popular modern television shows attest, there is still glory in being the police detective who solves a crime or the district attorney who obtains a conviction, but none at all in carrying out the sentence (Foucault 1977, 9–10).

[23] In developing my account of Plato's project for a constructive reform of thumos I have built upon Thomas Pangle's (1976, 1980) helpful exposition of the Platonic critique of ordinary thumos.

[24] Bacon also observes, "Anger is certainly a kind of baseness, as it appears well in the weakness of those subjects in whom it reigns: children, women, old folks, sick folks" (Bacon 1936, 171–2; cf. Seneca 1995, 31).

[25] Allen (2000, 279–80) tries to mitigate the problem here by arguing that it is good and even a "cure" for the offender to serve as an example for others, which Plato never says. Nor does Allen recognize the extent to which nearly all the penal laws in Magnesia in fact make compromises with anger; she claims that *only* in the treatment of incurables does it come into play (2000, 281).

https://doi.org/10.1017/S0003055409990074 Published online by Cambridge University Press

indignation is a failing, it is a failing deeply intertwined with the best impulses and noblest deeds of many of the very best souls among us.[26]

Plato was as sensitive to the dangers of cynicism and political apathy as anyone in our time has ever been, and he acted thoughtfully and consistently to counteract these dangers. He was determined to support both "the great man in the city" and the philosophic observer of his own and all times. However, his own assessment of these two lives shines quietly forth, and that assessment turns in the end on his estimation of the highest embodiment of the love of justice, the rule of law. The rule of law stands as a compromise between reason and unreasoned force, seeking to bring dispassionate uniformity to a process that at bottom rests on the irrational demand that wrongs must be punished and that punishment must fit the crime. Plato invites us to consider what a government would look like that did not bow to these spirited demands but sought to improve each citizen by ruling him with continual scrutiny and personally tailored supervision. Such a rule would be gentle in its freedom from vindictiveness but endlessly oppressive when entrusted to fallible human beings. Against this alternative Plato sides unambiguously with the rule of law. Yet he supplements it with music and poetry and early habituation to deepen the citizens' appreciation for what is admirable in the best citizens' souls, and he tempers all of this with arguments that hint at the ways that human perfection surpasses good citizenship altogether. We are in the habit of thinking of Plato as an almost fanatical proponent of unrealistic ideals in politics, one who naively thought the political community could instill true virtue in everyone if only it tried hard enough. However, this is propaganda invented by Plato's modern rivals, beginning with Machiavelli. In fact he was the original realist, who fully grasped the need to lower the sights of politics so as not to do more harm than good. The difference between him and his modern critics consists above all in this: that he saw more clearly how much higher true virtue and true justice are than what passes and must pass for these in every actual political community.

APPLICATIONS

As a realist, however, Plato offers many suggestions for improving common practice where improvement is possible, suggestions that are still applicable to the twenty-first century and to the restorative justice movement in particular. One of the greatest contributions Plato's *Laws* can make to the contemporary discussion of restorative justice is in giving it a theoretical foundation that it has hitherto lacked. Proponents have generally defended restorative justice on pragmatic grounds or with appeals to compassion, but Plato shows why justice itself demands some such reform that attends to the well-being of the offender and not only of society, and why conferences that bring the law into individual dialogue with offenders and their communities, teaching them and learning from them, attain more nearly the standard of justice of the "free doctor" than traditional trials do.

A second and equally important lesson (if a paradoxical one coming from a philosopher) is that in a society's understanding of moral responsibility, theoretical consistency is neither an attainable nor even a useful aim. As the Athenian introduces the gentle, humane perspective of the "free doctor" into the criminal law without wholly removing the laws' punitive character, he allows the citizens' understanding of moral responsibility to become more and not less divided. Beliefs that the criminal's unhealthy soul is pitiable, if always at least implicitly present in the people's thinking, will now have a prominent place alongside the belief that criminals deserve to suffer for gaining an unfair advantage over everyone else. Plato evidently agrees with Aeschylus's judgment that the vindictive response to crime is all but ineradicable, and that any justice system that disregards it will alienate many of the most decent citizens and likely provoke a moralistic backlash. Yet Plato suggests that it is still better to temper this punitive spirit with the Socratic perspective than to leave it in undisputed possession of the citizens' hearts and minds. Thus the Athenian would support Braithwaite's contention that restorative justice processes should always be backed up by the possibility of recourse to punitive sanctions, even though Braithwaite (2002, 35, 63, 119–20) fails to give a consistent account of why punitive sanctions are really rational. This inconsistency can still be a gain for both offenders and law-abiding citizens, because the understanding of virtue as health of the soul, to whatever extent it can be inculcated, will strengthen the commitment of both to living virtuous lives.

Third, however, this benefit is possible only if the unavoidable theoretical murkiness on the question of responsibility is offset by clarity about all that good legal processes should aim to restore. Not only the bonds between the offender and his community, not only his neighbors' willingness to give him a second chance, but everyone's respect for the law and the offender's respect for the condition of his own soul should be objects of sustained attention. Clarity about what is to be restored requires in turn clarity about what virtue and vice are and the admiration and blame that they deserve: every page of the *Laws* strives to promote such understanding. Without this foundation, restorative justice conferences can easily degenerate into negotiating sessions between offenders and victims that draw no clear distinctions between wrongdoers and wronged, potentially leaving the former more cynical and the latter demoralized. Restorative justice projects

[26] The stoic view that anger, being irrational, is never necessary to the good citizen is thus, from Plato's perspective, far too sanguine in its hopes for making political life thoroughly rational: see Seneca 1995, 25–31. Yet Seneca is probably a good illustration of the calming effect that Plato sought to have on high-minded readers. Seneca encourages a proud spirit of independence that rises above all volatile reactivity, but he never grasps the true nerve of the Socratic argument, and hence he continues to think that retributive punishment—calmly administered—is wholly just. Adkins (1960, 308–9), Mackenzie (1981, 198–204), and Saunders (1991a, 1991b) have been more attuned to the problem that the Athenian is compromising his ideal of justice as medicine for sick souls in order to protect the broader community from harm.

https://doi.org/10.1017/S0003055409990074 Published online by Cambridge University Press

on college campuses have been especially prone to such moral confusion, partly out of a misguided desire to avoid shaming offenders, with the result that even cases of cheating have been treated as personal conflicts between student and professor to be mediated and compromised. Plato can help the restorative justice movement avoid such pitfalls in two important and related ways: by showing how it is possible to sustain moral clarity while minimizing punitive harshness, and by showing how shame and the related passions of honor and reverence may be put to positive use while minimizing their destructive tendencies. In both respects he points us to the most constructive ways both communities and individuals may take responsibility for correcting their faults.

On the level of the community, and especially in communities where distrust for the authorities and even for the law itself is endemic, restorative justice conferences can fill much the same function that the preludes do in Magnesia, affirming through rational conversation the reasons behind the law. In this way they can accomplish the task legal scholar Mary Ann Glendon calls on American law to take up, that of teaching citizens as Plato's "free doctor" does and helping them to understand the law as an articulation of the kind of society the nation is striving to become (1989, 4–9). If modern conference participants bring to these conversations a more active and skeptical spirit than the Magnesians would bring to a reading of their preludes and laws, that is perhaps only appropriate for a liberal democracy, in which laws are necessarily seen as impermanent works of fallible humans and not as ancient, immutable, and divinely inspired commandments. However, Plato would insist that under such conditions it is all the more essential to direct the process to strengthening citizens' reverence for the unchanging principles of justice that our system takes as its highest standards, as well as a commitment to working respectfully within the law to reform defective laws. For, he suggests, an attitude of awe, or deep respect for law and a dread at the thought of violating it that goes beyond any specific fear of punishment, is inseparable from the moral seriousness that a healthy community needs.

In the best case, restorative justice projects will deepen not only participants' commitments to live by the laws but also their willingness to take collective responsibility for correcting their wayward members and preventing others from following their example. Setting a young offender on a better path usually requires finding someone in his social circle who is prepared to offer ongoing supervision and counsel, and one of the benefits of these conferences is to encourage others to do the same with other youngsters who are at risk. What the *Laws* contributes here is a strong theoretical argument for shifting our efforts in this direction. To our too-complacent assumption that justice is satisfied by giving everyone freedom and opportunities for personal advancement and punishing those who break the law, Plato opposes an argument for the questionable justice of all punishment that is merely punitive or deterrent; but to take seriously society's responsibility to find rehabilitative sanctions is in turn to see how much more effective prevention is than reform.

Our unease with the Platonic insistence on crime prevention goes to the very root of the difference between modern liberalism and the ancient view of social responsibility that Plato endorses and we tend to consider "paternalistic." For prevention cannot succeed without concerted efforts to shape both the judgments and passions of the young, efforts that invariably involve not only reason but honor and shame as well. We tend to regard shame as an unhealthy emotion, opposed to the robust self-esteem that seems to us the essence of psychic health; we tend to regard the social use of shame to control behavior as an unjustified infringement on individual autonomy. But in fact the *Laws* takes into account the serious concerns at the root of these reservations, and to call the book's approach paternalistic is, I think, to overlook crucial elements of its project. First, everyone is to share in responsibility for correcting injustices and resolving quarrels: here is no powerful monarch who treats the citizens as children, but a small and close-knit community that upholds its own standards—just what restorative justice circles try to recreate. Second, the emphasis is much less on shaming offenders than on cultivating the healthy fear or aidos that we have called "preventative shame." Third, although many of Magnesia's laws do foster shame, others seek cautiously to mitigate its greatest drawback—the tendency to suppress critical and self-critical thought. These counterweights range from the endorsement of adult drinking parties in the early books to the respectful treatment of atheists at the end to the provision that the whole thought-provoking dialogue is to serve as the community's fundamental law and educational text. Thus while the Athenian, like contemporary critics of Braithwaite's (Gilligan 1996, 110; Harris and Maruna 2006; Massaro 1997; Tangney 1995), recognizes that excessive shame can impede constructive self-examination and reform, like Braithwaite he also sees a degree of shame as inseparable from any clear affirmations of society's moral norms and the individual's act of taking responsibility for his errors (cf. Braithwaite 1989, 69–75 and 100; 2002, 120). The key is that one experience shame as little as possible as an external imposition and as much as possible as an autonomous response to the truth and an impetus to reform one's character. Where Braithwaite might benefit from Plato's analysis is in giving greater attention to the kindred but more positive emotions of awe and honor, which most nations' court buildings and proceedings seek deliberately to instill in witnesses and spectators and which restorative justice proceedings might well work to promote in different ways as well.

At the heart of a good restorative justice process is this act of taking responsibility for one's own errors, and here as well Plato can shed helpful light on the best way to frame the goal. Taking responsibility does not require viewing one's acts as the choices of a radically free will, for which society bears no share of the blame. Much can be accomplished toward reconciliation, future prevention, and even individual resolution

https://doi.org/10.1017/S0003055409990074 Published online by Cambridge University Press

to reform when the inquiry into a crime makes room for stories to be told about the social and family dynamics that led the offender to go wrong in the first place—so long as this process also includes clarity about *what* has gone wrong, and what the character flaws are that need to be corrected. This process of telling stories to help account for crime, which can lessen the burden of shame and guilt that could otherwise easily become too painful for the offender to face, has taken many forms in many societies. Plato's use of the Greek notion of pollution is one; the idea that one's sins are caused by the workings of a devil so powerful that no human being can escape it without divine help is another; the modern accounts of social ills as a cause of crime are a third. Taking responsibility for one's errors as Plato depicts it need not mean taking responsibility for the whole chain of antecedent causes, but it does mean accepting the error as the direct result of one's own flaws and resolving to mend them. By focusing attention on good and bad character and by stressing the society's shared responsibility for shaping character, Socratic philosophy can help avoid both the harshness of "law and order" attitudes toward crime that focus narrowly on punishment, and the evasion of responsibility that can happen when social pathologies become the main subject of attention and are offered as an excuse for wrongdoing.

Perhaps the strongest objection to making individual character the focus of legal proceedings is again the concern about paternalism: is it not of the essence of freedom as every liberal democracy defines it that we are accountable to society only for our outward acts and not for our passions, thought, or characters? Indeed. But well-designed restorative justice projects can combine the strengths of modern liberal and traditional preliberal approaches to crime by leaving the recourse to conventional sentencing always open to the offender. Whether his character becomes an object of discussion is up to him. For as the wisest restorative justice advocates insist and Plato agrees, the heart of character reformation is a process of taking responsibility that only the individual can do for himself. This is why Plato's laws address themselves first and last to the individual, exhorting him to take the initiative to flee bad company and seek good, to pray to the gods to release him from evil impulses, to turn his mind to what is beautiful and seek to make himself akin to it, and above all to reflect deeply on what a truly happy life entails (731d–e, 727b–c, 728b–c, 854b–c). If Plato does not agree with us about the value of the freedom that merely leaves us alone, perhaps we can still agree with Plato that freedom only becomes a blessing when exercised by autonomous individuals who know and know how to pursue for themselves what is truly good.

REFERENCES

Adkins, Arthur W. H. 1960. *Merit and Responsibility: A Study in Greek Values*. Oxford: Clarendon Press.

Allen, Danielle. 2000. *The World of Prometheus*. Princeton, NJ: Princeton University Press.

Aristotle. *Nicomachean Ethics*. Translations my own.

Bacon, Francis. 1936. *The Essays of Francis Bacon*. Boston: Houghton Mifflin.

Bobonich, Christopher. 2002. *Plato's Utopia Recast*. Oxford: Clarendon Press.

Bonta, James, Rebecca Jesseman, Tanya Rugge, and Robert Corimer. 2006. "Restorative Justice and Recidivism." In *Handbook of Restorative Justice: A Global Perspective*, ed. Dennis Sullivan and Larry Tift. London: Routledge.

Booth, James. 1999. "Communities of Memory: On Identity, Memory, and Debt." *American Political Science Review* 93: 249–63.

Booth, James. 2001. "The Unforgotten: Memories of Justice." *American Political Science Review* 95: 777–91.

Bovens, Mark. 1998. *The Quest for Responsibility: Accountability and Citizenship in Complex Organizations*. Cambridge, UK: Cambridge University Press.

Braithwaite, John. 1989. *Crime, Shame and Reintegration*. Cambridge, UK: Cambridge University Press.

Braithwaite, John. 2002. *Restorative Justice and Responsive Regulation*. Oxford: Oxford University Press.

Brown, Jennifer Gerada. 1994. "The Use of Mediation to Resolve Criminal Cases: A Procedural Critique." *Emory Law Journal* 43: 1247–309.

Cairns, Douglas L. 1993. Aidos: The Psychology and Ethics of Honor and Shame in Ancient Greek Literature. Oxford: Clarendon Press.

Cobb, Sara. 1997. "The Domestication of Violence in Mediation." *Law and Society Review* 31: 397–440.

Coker, Donna. 1999. "Enhancing Autonomy for Battered Women: Lessons from Navajo Peacemaking." *UCLA Law Review* 47: 1–111.

Daly, Kathleen. 2006. "The Limits of Restorative Justice." In *Handbook of Restorative Justice : A Global Perspective*, ed. Dennis Sullivan and Larry Tift. London: Routledge.

Daly, Kathleen and R. Immarigeon. 1998. "The Past, Present, and Future of Restorative Justice: Some Critical Reflections." *Contemporary Justice Review* 1: 21–45.

Dodds, E. R. 1951. *The Greeks and the Irrational*. Berkeley: University of California Press.

England, E. B. 1921. *The Laws of Plato*. 2 vols. Manchester: Manchester University Press.

Foucault, Michel. 1977. *Discipline and Punish*. Trans. Alan Sheridan. New York: Pantheon Books.

Gilligan, J. 1996. *Violence: Our Deadly Epidemic and Its Causes*. New York: Grosset/Putnam Books.

Glendon, Mary Ann. 1989. *Abortion and Divorce in Western Law*. Cambridge, MA: Harvard.

Harris, Nathan, and Shadd Maruna. 2006. "Shame, Shaming, and Restorative Justice. In *Handbook of Restorative Justice: A Global Perspective*, ed. Dennis Sullivan and Larry Tift. London: Routledge.

Mackenzie, M. M. 1981. *Plato on Punishment*. Berkeley: University of California Press.

Massaro, T. M. 1997. "The Meaning of Shame: Implications for Legal Reform." *Psychology, Public Policy, and Law* 3 (4): 645–704.

Morrow, Glenn. 1960. *Plato's Cretan City: A Historical Interpretation of the Laws*. Princeton, NJ: Princeton University Press.

Pangle, Thomas. 1976. "The Political Psychology of Religion in Plato's *Laws*. *American Political Science Review* 70 (4): 1059–77.

Pangle, Thomas. 1980. *The Laws of Plato*. Translation with notes and interpretive essay. New York: Basic Books.

Parker, Robert. 1983. *Miasma: Pollution and Purification in Early Greek Religion*. Oxford: Clarendon.

Roberts, Jean. 1987. "Plato on the Causes of Wrongdoing in the *Laws*." *Ancient Philosophy* 7: 23–37.

Roche, Declan. 2003. *Accountability and Restorative Justice*. Oxford: Clarendon Press.

Saunders, Trevor. 1972. *Notes on the Laws of Plato*. London: Institute of Classical Studies.

Saunders, Trevor. 1991a. *Plato's Penal Code: Tradition, Controversy, and Reform in Greek Penology*. Oxford: Clarendon Press.

Saunders, Trevor. 1991b. "Penal Law and Family Law in Plato's Magnesia." In *Symposion 1990: Papers on Greek and Hellenistic Legal History*, ed. M. Gagarin. Cologne: Böhlau Verlag, 115–32.

Schofield, Malcolm. 2006. *Plato: Political Philosophy*. Oxford: Oxford University Press.

https://doi.org/10.1017/S0003055409990074 Published online by Cambridge University Press

Seneca. 1995. "On Anger." In *Moral and Political Essays*, ed. John M. Cooper and J. F. Procopé. Cambridge, UK: Cambridge University Press, 1–116.
Stalley, R. F. 1983. *An Introduction to Plato's Laws*. Oxford: Blackwell.
Stalley, R. F. 1994. "Persuasion in Plato's *Laws*." *History of Political Thought*, 15: 157–77.
Stauffer, Devin. 2001. *Plato's Introduction to the Question of Justice*. Albany, NY: SUNY Press.
Stauffer, Devin. 2006. *The Unity of Plato's Gorgias*. Cambridge, UK: Cambridge University Press.
Strang, Heather. 2002. *Repair or Revenge: Victims and Restorative Justice*. Oxford: Clarendon Press.
Strauss, Leo. 1975. *The Argument and Action of Plato's Laws*. Chicago: University of Chicago Press.
Sullivan, Dennis, and Larry Tifft. 2006. "Introduction" In *Handbook of Restorative Justice: A Global Perspective*, ed. Dennis Sullivan and Larry Tiff. London: Routledge.
Tangney, June Price. 1995. "Recent Advances in the Empirical Study of Shame and Guilt." *American Behavioral Scientist* 38: 1132–45.
Tucker, Neely. 2007. "Juries Don't Always Know Heinous Crimes When They See Them, but This Might Help." *Washington Post*, 23 July.
Umbreit, Mark, Robert Coates, and Betty Vos. 2006. "Victim Offender Mediation: An Evolving Evidence-Based Practice." In *Handbook of Restorative Justice: A Global Perspective*, ed. Dennis Sullivan and Larry Tift. London: Routledge.
Van Ness, D. 1993. "New Wine in Old Wineskins: Four Challenges of Restorative Justice." *Criminal Law Forum* 4: 251–76.
Weiss, Roslyn. 2006. *The Socratic Paradox and Its Enemies*. Chicago: University of Chicago Press.
Yazzie, Robert. 1998. "Navaho Peacemaking: Implications for Adjudication-Based Systems of Justice." *Contemporary Justice Review* 1 (1): 123–31.

https://doi.org/10.1017/S0003055409990074 Published online by Cambridge University Press