

## Changing the Laws of the *Laws*

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What is suggested by the term Progress is the idea of moving onward, whereas the meaning of it here is quite as much the prevention of falling back. The very same social causes—the same beliefs, feelings, institutions, and practices—are as much required to prevent society from retrograding, as to produce a further advance. Were there no improvement to be hoped for, life would not be the less an unceasing struggle against causes of deterioration; as it even now is. Politics, as conceived by the ancients, consisted wholly in this. The natural tendency of men and their works was to degenerate, which tendency, however, by institutions virtuously administered, it might be possible for an indefinite length of time to counteract.

John Stuart Mill, *Considerations on Representative Government*, chapter 2

Did Plato think that the lawcode given in the *Laws* should be changed by its citizens? Because the *Laws* is Plato's most detailed political work, establishing the extent to which Magnesia's legal and political norms are dynamic or static constitutes much of the framework for our understanding of Platonic political philosophy in practice. While much ink has already been spilled on the issue of legal change in the *Laws*, I contend that the relative consensus in the scholarly literature, which claims that the laws can and should be changed, is mistaken or at least seriously misleading.<sup>1</sup> In particular, commentators have not been careful in

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<sup>1</sup> The most forceful voice defending the fixity of Magnesian laws is Klosko 1988, 82 who writes that, 'the laws of Magnesia are to be all but completely resistant to change'; Klosko, however, thinks that Plato has been *inconsistent* because he believes that the Nocturnal Council are given the authority to change the laws, and that the Guardians of the Law are given the authority to improve the law, 1998, 84; 2008, 464-465 (see also Stalley 1983, 81-82). The conservative position, however, is very much the minority view (Nightingale 1999, 118 holds it but provides little argument). By contrast (working backwards chronologically), O'Meara 2017, 111-112 writes that the 'Guardians of the Laws will be able to legislate in making changes in the law, adjusting and improving it as time and need require' and that 'the Nocturnal Council...will make of legislation, not something that is absolute in itself and unchangeable, but a means, a political instrument, to be constantly modulated and improved.' Annas 2017, 84 argues that, 'the Magnesian law code, once established with its main aim clear, is to be regarded as settled. Law making is not to be a normal part of Magnesian politics or civic activity', but then qualifies this in reference to the ambassadors and the Nocturnal Council, claiming that, 'Magnesians laws, while they have solid and stable principles, may need to be adjusted in the light of changing circumstances and new ideas that arise abroad. A city will never maintain its level of virtue and civilization if it isolates itself completely from other cities and refuses to learn from foreign ideas. This is only to be expected, given the way Magnesia has been produced on the basis of considerations from history and experience' (142). Schofield, in his notes to Griffith 2016, claims that the Guardians of the Law will have the duties of 'reviewing, revising, and supplementing the body of law' (204n13). Marquez 2011, 188 writes that, 'Plato's defence of the rule of law never rules out the possibility of improving the law through the accumulation of new experience' (see also his 2012, 360). Schöpsdau 2011, 577-585 argues that the Nocturnal Council, by means of the Guardians of the Law who form part of that group, correct and improve the law in response to changing circumstances and new information. Brisson and Pradeau 2007 claim that the Guardians of the Law 'ont pour rôle de

distinguishing three questions:

- (1) Are there legal mechanisms for changing the law in Magnesia?
- (2) What are the attitudes of Magnesian citizens towards innovation and legal change?
- (3) What are Plato's general views about the authority of law and knowledge?

These are importantly distinct issues. The first question concerns the constitution that the Plato has actually given us in the text of the *Laws*.<sup>2</sup> Given the laws and institutions detailed, *who* would have the power to change the laws and *how* would they do it? The second question concerns how the citizens of Magnesia think about their laws. Do the citizens view the law as unchangeable, or do they think of the laws as something to be improved over time? The third question opens up the possibility that certain people—likely those with virtue and knowledge—might be justified in acting above and beyond the legal framework of the existing constitution. Does Plato suggest that there are times when outstanding people are right to act in ways that are illegal?

My focus is primarily on the first two questions, as this limits my project to the text of the *Laws*. Answering the third question adequately would require going further afield in the Platonic corpus and addressing a number of sophisticated arguments, though I end by pointing out how the position on the authority of knowledge from the *Statesman* is addressed in the *Laws* but ultimately dismissed as incidental to its project.

In part 1, I consider the framework of offices (*ἀρχαί*) that structures the Magnesian constitution. This directs our attention to the important question of *who*

completer et de corriger la législation élaborée par les législateurs primitifs' (143) and that 'ils n'hésiteront donc pas à améliorer la loi en procédant même à des expérimentations...ou à des adaptations' (144); as they elegantly state their view, the Guardians of the law allow for 'une évolution qui ne soit pas une révolution' (145). Meyer 2006, 380-382 says that the Guardians of the Law and the Nocturnal Council have the authority to change and repair the law. Bobonich 2002, 394-395 states that 'there is an open texture to the political and social institutions that Plato sketches' and that 'Plato appears to assign to the "guardians of the law"...some important role in revising Magnesia's laws' (see also 395-408). Saunders 1995, 603 says that, 'Magnesia is a shifting structure'. Cohen 1993, 314 claims that, 'though the legislator *advises* against any fundamental tampering with his scheme, by acknowledging the necessity for adaption, filling of gaps, and amendment he leaves room for alteration of both substantive rules and rules regarding change... Just as the citizens of Magnesia can reject or amend the code initially proposed to them by the lawgiver, so can they at any time after its enactment change their mind and either start over or amend the existing code.' Lewis 1998, 8 declares, 'it is incorrect to see the *Laws* as dedicated to a thoroughly static version of the law'. Brunschwig 1980 (attributing his view to De Romilly 1971) writes that Plato wanted a 'lente mise au point des lois' (518), and to proceed with 'rectifications mineures' (536). Morrow 1960, 200 states that the Guardians of the Law 'are not merely to fill in the outline according to the principles that inspired the original legislators...but also revise or reject whatever does not in practice actually serve the purpose for which the laws are intended', and that, 'the original legislation will require to be replaced, rather than supplemented' (200). Barker 1960, 353n1 is more cautious, noting that most laws are to be fixed after the trial period but also says that 'it is not clear, though it seems to be implied, that [the Nocturnal Council] has a power of [legal] revision'. Thus, the vast majority of scholars believe that Magnesian law, ultimately, can be and should be changed.

<sup>2</sup> I assume that the Athenian Visitor represents Plato's own views. Readers not accepting this assumption should substitute 'The Athenian Visitor' for 'Plato' in the relevant discussions.

can change the law. If no office is given the authority to change the law, then the law cannot legally be changed. More specifically, I argue that the Guardians of the Law (νομοφύλακες) have the authority to institute supplementary laws, but they do not have the authority to change them after the 10-year trial period. I also discuss the only explicit legal mechanism for changing the law, which involves the unanimous consent of (at least) all of the offices in times of emergency. Given the extremely high standard required for such a motion to pass, there is effectively no legal way to change the law in Magnesia.

In part 2, I answer the second question by addressing the functions of the ambassadors (θεωροί) and the Nocturnal Council alongside the general attitude that Magnesians citizens have towards the laws. While the entirety of the population is taught to have a reverential respect for the laws, a select few (who have already proven themselves as faithful to the laws) are allowed to question the quality of the Magnesians laws. Nonetheless, I argue that the functions of the ambassadors and Nocturnal Council can be adequately explained without making reference to their seeking to change the laws. Rather, the institutions of higher education in Magnesia are to have a superior understanding of the justification for the laws, thus grasping the law by more than habit alone, and are to keep the Magnesians education system up-to-date with important foreign discoveries. Innovation thus occurs within the framework of the existing laws but does not supplant it.

In part 3, I briefly consider how the view from the *Statesman* that knowledge is always superior to law might undermine my reading of the *Laws*. I contend that Plato considers such a view about the ultimate authority of a knowledgeable statesman explicitly in the *Laws* but brackets such considerations as irrelevant for the practical task at hand.

I conclude by considering the implications this interpretation of the *Laws* has for our understanding of Platonic politics in the history of political thought, suggesting that Plato ultimately sees the task of politics as fighting to preserve good order against the decay and corruption caused by regular and predictable human failings.

### I. Institutional mechanisms for changing the law

Magnesia's political system functions by means of legally appointed officers (ἀρχοντες), all of whom are subject to a scrutiny (δοκιμασία) before holding offices and an audit (εὐθύνα) after completing their term (761e5-6).<sup>3</sup> While all commentators on the constitution of the *Laws* mention the various offices, recent work by Melissa Lane has highlighted the normative significance of office-holding in Greek political thought and in Plato.<sup>4</sup> In order to act with political author-

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<sup>3</sup> The one exception to the audit rule concerns the Guardians of the Law who act as judges for cases where somebody prosecutes a high court judge; this presumably prevents an infinite regress of appeals (767e3-9).

<sup>4</sup> The institutional framework I use throughout has been inspired by Lane's recent Carlyle Lectures, forthcoming in a revised form with Princeton University Press. The importance of office as a

ity, one must be appropriately appointed to one's office, be subject to the law and legal oversight, and be acting legitimately within the powers granted to that office. While it is of course wrong to assume that Plato simply imported all ideas of political authority from his historical climate, the *Laws* is explicit in the powers and the limits of power that it details for its office-holders. Because of this constitutional framework, it is fruitful to approach the issue of whether the laws of Magnesia can be changed by asking *who can change the law* and *how are laws changed?* In other words, which officers or group of officers are given the power to change the law, and what is the political mechanism by which they are changed? While it is important to discuss more general considerations for or against legal change, we should first look to the Magnesian constitution.

#### A. The Legal Mechanism for Changing the Law

Are there provisions for changing the law in the *Laws*? I contend that there is only one passage that explicitly provides a mechanism for changing the law in Magnesia. However, it is a matter of scholarly dispute *which* laws can be changed and *by whom* they can be changed. The passage occurs in book 6, and because every position on legal change in the *Laws* depends in some way on this text, I quote it in full:

It is unavoidable, as we said, that on questions of this nature a lawgiver is going to leave out (ἐκλείπειν) all kinds of minor details, and that at any particular time it will be up to those with practical experience from year to year, having learned from use, to draw up regulations and amendments (τάττεσθαι καὶ ἐπανορθομένους κινεῖν) on a yearly basis, until it is thought that these rules and practices have been determined sufficiently (ἕως ἂν ὅρος ἰκανὸς δόξῃ τῶν τοιούτων νομίμων καὶ ἐπιτηδευμάτων γεγονέναι). A reasonable measure of time for this trial and error—this applies to sacrifices and choruses, to overall arrangements and particular details—would be ten years, in collaboration with the lawgiver who drew up the arrangements, in his lifetime, and then after his death, each group of officials themselves referring any omission (το παραλειπόμενον) in their own area of responsibility to the guardians of the law for them to amend (ἐπανορθοῦσθαι), until they are satisfied it has been fully worked out in every detail. At that point they should declare their arrangements immutable (ἀκίνητα), and put them into practice alongside the other laws (τῶν ἄλλων νόμων) which the lawgiver who gave them their laws originally drew up for them. Concerning these (ὧν περὶ), they are never willingly (ἐκόντας) to alter any of them. But if at some point they decide they have been overtaken by some necessity (τις ἀνάγκη), then they should meet with all the offi-

cials, the common people in its entirety, and all the oracles of the gods (πάσας μὲν τὰς ἀρχὰς χρηὶ συμβούλους, πάντα δὲ τὸν δῆμον καὶ πάσας θεῶν μαντείας ἐπελθόντας). And if they all agree, thus it is to change, otherwise not in any way at any time, but the one preventing it, following the law, is always to prevail (ἐὰν συμφωνῶσι πάντες, οὕτω κινεῖν, ἄλλως δὲ μηδέποτε μηδαμῶς, ἀλλὰ τὸν κωλύοντα ἀεὶ κατὰ νόμον κρατεῖν).<sup>5</sup> (772a6-d4)

It is clear that the Athenian takes the project of legislation in the *Laws* to be incomplete, as the lawcode we have is not everything that will be required for the city to work. Thus, the Guardians of the Law will need to *supplement* the legislation provided. Moreover, the Athenian details a trial period where laws may be altered, after which they said to be ‘unchanging’ (ἀκινήτα, see also 957a7-b5). Finally, in the above passage there is *some* mechanism for changing the law even after this trial period is over.

Now to the two main issues of scholarly dispute. First, what is the scope of the authority to change the laws here—does it cover only the minor laws concerning religion and choruses (which are the subject of discussion in the context of the passage), or does the process generalize to all laws? Second, which people have to agree in order for the law to be changed, or, in other words, how is the implied veto from ‘the one preventing the change’ (τὸν κωλύοντα) supposed to work?

The first issue arises from the ambiguity of the clause ‘the other laws’ (τῶν ἄλλων νόμων, 772c5). Because the genitive at the start of the next sentence picks up on this (‘concerning these’ [ὧν περὶ], 772c6) and the Athenian declares that those laws are never to be changed willingly (κινεῖν...ἐκόντας μηδέποτε μηδέν, 772c7), ‘the other laws’ could suggest either that *all* laws in Magnesia are to be left unchanged or that only *these kinds of laws* are to be left unchanged.<sup>6</sup> Grammar alone suggests the wider scope, as there is no qualification on ‘the other laws’. But the argumentative context—minor pieces of religious legislation—perhaps speaks in favor of a more restricted scope: if this were the Athenian’s general view about legal change, why would he embed it in such a specific discussion and without explanation of how it applies to the more important pieces of legislation? Moreover, if it did apply to all the laws, the procedure is strange—why would the oracles need to be consulted about whether to change laws about farming or the marketplace regulations? Thus the text itself supports applying this procedure of legal change to all laws, but it perhaps shows a lack of hermeneutical sensitivity to generalize from this passage alone.

But what hangs on the scope of this clause? Those who have defended or

<sup>5</sup> Translations are modified from Griffith 2016 unless otherwise stated. I use the Greek text of Diès 1951 for *Laws* i-vi and Des Places 1956 for vii-xii.

<sup>6</sup> Note that it is not a viable strategy to say that Magnesians will never change the law *willingly*, though they may change the law with pain and regret if they think it best. The μὲν...δέ construction in 772c7 clearly lays out the options as either willingly leaving the law unchanged or being *forced* to change the law by ‘some necessity’ (τις ἀνάγκη). Thus the unwilling changing of the law just is the mechanism described in the following lines.

acknowledged the narrow scope reading have generally taken it as a concession to the conservative position: while legal change may be permitted in minor matters, the text does not support legal changes in more serious matters, which are more important to keep fixed. However, as Marquez 2011, 194 points out, those defending the narrow scope reading have assumed that if you are not permitted to make changes in minor matters, then *a fortiori* changes to more serious matters are not justified. But that is not obvious: if legal errors are discovered in small matters, then there is no substantial threat to the development of the virtue of the citizens and the good functioning of the city; but if errors are discovered in the major laws, then it is crucial that these errors be rectified as soon as possible. Hence, major laws promise the most benefit and thus are the most important to change if they are found to be damaging. This is an ingenious line of argumentation. However, one could respond by saying that the importance of the major laws means that the risks of changing the legislation *incorrectly* would make things even worse and so extra caution is required. Thus, given this impasse, we should set aside the debate about scope ambiguity, as the grammar is indeterminate and nothing follows philosophically from either interpretation.

More pressing is the second issue, the mechanism for legal change detailed in the passage. Who is involved with changing the law and what is the procedure they use? The text says that ‘they’ (presumably, but not stated explicitly, the Guardians of the Law) should meet with all the officials, all the people, and all the oracles (πάσας μὲν τὰς ἀρχὰς χρῆ συμβούλους, πάντα δὲ τὸν δῆμον καὶ πάσας θεῶν μαντείας ἐπελθόντας), and that all must agree or be in harmony (συμφωνῶσι) for the law to be changed (κινεῖν), otherwise it is not changed in any way (ἄλλως δὲ μηδέποτε μηδαμῶς).

So which people have a say in this process? It appears that the Athenian is suggesting a massive assembly where everybody gets to vote and everybody gets a veto (Klosko 2008, 461). Given that there are at least 10,080 citizens (there are 5040 households, and women are not excluded: 785b5-6, 804d6-806c7) and the oracles are to be consulted too, that is a lot of potential vetoes.<sup>7</sup> If this is the mechanism Plato has in mind, then it would truly be a miracle of collective action and social harmony for a motion to change the law ever to be passed; the laws, as Klosko 2008, 461 puts it, would be ‘all but impossible to change’.

Though such an interpretation is a natural reading of the text, it is also a very literal reading and practicality about institutional design speaks against it. More plausibly, what the Athenian means here is that the Guardians of the Law are to meet with the officers and the people *collectively* (i.e., in the assembly, as is suggested by the singular πάντα δὲ τὸν δῆμον).<sup>8</sup> So rather than each citizen having a

<sup>7</sup> It is unclear which oracles Plato had in mind (note the plural), and thus how many they number. Delphi, Dodona, and Ammon are mentioned in a different discussion at 738c1-2. I say ‘at least 10,080 citizens’ because it is possible that the adult children of each of the 5040 households also get to vote (thus increasing the number of voting citizens well beyond 10,080), but there is also some suggestion that the additional children are sent off as colonists elsewhere (740d5-e8).

<sup>8</sup> Marquez 2011, 191, which rightly cites *Statesman* 298c3 and *Politics* 1305a34 as parallels for this phrase to indicate the people as an assembly. Taylor’s note *ad loc* also seems to suggest this read-

vote, the assembly *as a whole* decides whether to change the law, and then if they speak against the change, the motion to change the law is vetoed. While reducing the citizen body to one collective veto certainly makes the process easier than if each individual citizen had a veto, how much easier would it in fact be to pass a law with this revised mechanism? Marquez seems optimistic that it would make legal change substantially easier, to the point where it could be a regular mechanism for legal improvement, but is he right?

Addressing this question depends partly on how many offices there are in Magnesia and whether *each officer* gets a say or just *each office*.<sup>9</sup> On the most minimal reading, there are at least 20 offices the Athenian describes in the *Laws*, and even if we exclude the 360 council members, there are still easily over 150 sitting officers in Magnesia.<sup>10</sup> To be sure, it is easier to pass a motion if only 25 or 150 people have vetoes than if 10,080 did, but the details here are genuinely puzzling and is no easy way to resolve the difficulties.<sup>11</sup> Do the country wardens and judges of athletic competitions *really* get a say in whether laws should be changed? The text explicitly says *all* offices and yet for a process as important as

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ing: ‘i.e. after ten years of preliminary experiment a change in the regulations shall only be possible if it is desired by the body of magistrates, the popular assembly, and the representatives of the oracular shrines unanimously. The dissent of any one of these authorities shall be fatal to an innovation’. Thanks also to Emily Hulme for emphasizing this reading to me. She notes that if Plato wanted to include every citizen individually then πάντες πολῖται would have been the obvious linguistic choice, whereas πάντα δὲ τὸν δῆμον strongly suggests ‘the whole of the people’ acting collectively.

<sup>9</sup> τὸν κωλύοντα speaks in favor of the literal reading that Klosko defends, but it could stand in for τὸν κωλύοντα ἄρχοντα, which is ambiguous between ‘the *office* preventing it’ and ‘the *officer* preventing it’. The masculine probably speaks in favor of the latter (the feminine is more commonly used for the abstract ‘office’), but it does not settle the issue.

<sup>10</sup> The offices I am counting (and the number of office-holders) are as follows: Guardians of the Law (37), Generals (3), Infantry Colonels (12), Cavalry Colonels (12), Cavalry Commanders (2), Priests (number unspecified), Exegetes (3), Temple Treasurers (exact number unspecified), Country Wardens (60), City Wardens (3), Market Wardens (5), Judges of Artistic Competitions (2) Judges of Athletic Competitions (3), the Officer of Education (1), and the Auditors (minimum 12). I am not counting any of the judges, because their term does not last beyond the case they are judging, nor am I counting the marriage overseers, nurses, mess-hall supervisors, ambassadors, or the Nocturnal Council, because it is not clear whether Plato considers them offices.

<sup>11</sup> It is still far from easy to pass legal changes with a group of this smaller number. Part of the impetus to reform the Articles of Confederation of the Continental Congress was that the existing procedures required unanimity from all thirteen colonies to make changes. As Carey 2001, xxii-xxiii explains the situation, ‘In practice, the unanimity requirement rendered it virtually impossible to amend the document even if an overwhelming majority of the States favored change. The inability to act on these provisions necessarily doomed the Articles of Confederation to extinction, because the Continental Congress was helpless to correct flaws in the system or to adapt it to changing circumstances.’ It might also be helpful to consider a parallel with unanimous decisions from the nine Supreme Court Justices of the United States. Between 1946 and 2009, the court voted unanimously in 33 of the 139 cases (23.7%) for a decision that altered legal precedent, and voted unanimously in 2017 of 6399 cases (31.5%) in cases where there was no precedent alteration (see Epstein, Lee, and Posner 2012, 703). Obviously the Justices are not Magnesians and we should expect unanimous decisions to be fewer for each increase in the number of parties, but these statistics may at least be a helpful place to start thinking about the likelihood of legal changes being passed by unanimous vote.

changing the laws, Plato has been frustratingly (and unusually) vague here. In fact, it is not even obvious that Plato is describing a formal voting and veto system here at all.<sup>12</sup>

But if we take a step back, we see that what Plato is emphasizing is that laws are only to be changed because of ‘necessity’ and that the necessity for changing the law has to be utterly obvious to everybody.<sup>13</sup> The Athenian may not be requiring the literal unanimous vote of every citizen, but he is requiring that there be a unanimity rule or decision procedure for instituting changes to the law. This is very important from the perspective of political science and institutional design. Indeed, given that Plato is happy to use majoritarian voting elsewhere in the *Laws*, the stringency of this particular process is sufficient to show that changing the law is intended to be maximally difficult. Furthermore, the passage gives us reason to think that no one person or office may change the law unilaterally—legal change is a collective matter. So however the details are filled out, multiple offices and authorities need to be consulted and all must agree. This is significant for determining whether particular offices are granted the power to change the law.

What, then, can we conclude from the 772a6-772d4 passage? Well, while there is some legal provision for changing the law, the process is astonishingly difficult and no single office is assigned the power to change the law. Thus, legal change on the basis of the described procedure would not be a normal occurrence in Magnesia; rather, it is an unwilling response to a kind of necessity or emergency, only to be used in situations where it is clear to everyone that a law must be changed.

## B. The Guardians of the Law and the power to amend the laws

It may be objected that I have been too quick in my conclusions from the previous discussion—are the Guardians of the Law not given the power to change the law in other passages?<sup>14</sup> While the 772 passage suggests that they must act in concert with the other officers and the people, other passages have been taken to

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<sup>12</sup> Thanks to Melissa Lane for this point. She suggests as a possibility that Plato may have something in mind not dissimilar to practices in British common law, where laws that are in general not followed by average citizens are eventually struck from the record. Thus the population as a whole are ‘in harmony’ that the law should be changed, but not because of a formal vote taken in an assembly. Her suggestion is insightful (especially given that it would explain why this legal change need not undermine the habituation of the citizens—the legal change would not result in a change of social norms). I worry that adopting this understanding fails to make sense of the way in which the Guardians of the Law are supposed to meet with the offices and people (συμβούλους, 772d1). Perhaps, though, there may be a good reason why the Athenian does not mention a formal voting process here, namely, that a vote is unnecessary—all the needs to be done is one of the relevant parties to voice formal dissent for the motion not to pass. The simplicity of the decision procedure obviates the need for counting individual votes.

<sup>13</sup> Griffith captures the sense well by translating τις ἀνάγκη as an ‘emergency’, though it does mask the ἀνάγκη/ἐκόντας interplay.

<sup>14</sup> See n1 for numerous commentators who claim that the Guardians of the Law have the power to change the law. Morrow 1960, 200-201 is especially representative and explicit on this point.

suggest that the Guardians of the Law can act unilaterally.

Even careful readers of the *Laws* may be forgiven for getting the impression that Guardians of the Law can amend the laws, for that is how the vast majority of translators render the Greek and there may be technical language here that has escaped our notice. Consider the following:

ἄρ' οἶει τινὰ οὕτως ἄφρονα γεγονέναι νομοθέτην, ὥστ' ἀγνοεῖν ὅτι πάμπολλα ἀνάγκη **παραλείπεσθαι** τοιαῦτα, ἃ δεῖ τινὰ συνεπόμενον **ἐπανορθοῦν**.... Οὐκοῦν εἰ τίς τινὰ μηχανὴν ἔχει πρὸς τοῦτο, ἔργῳ καὶ λόγοις τίνα τρόπον διδάξειεν ἂν ἕτερον εἴτε μείζονα εἴτε ἐλάττω περι τοῦτ' ἔχειν ἔννοιαν, ὅπως χρῆ φυλάττειν καὶ **ἐπανορθοῦν** (769d4-e2 and e5-8)

Griffith: Do you think there has ever been a lawgiver so foolish as to be unaware that there are inevitably going to be any number of things **left** for someone coming after him to **amend**... In which case, assuming he had some mechanism for this purpose—a way of teaching somebody else through instruction and example to have an understanding, to a greater or lesser degree, of how best to preserve or **amend** laws

Des Places: Crois-tu qu'il y ait eu législateur assez inintelligent pour ignorer qu'il reste fatalement un très grand nombre de **défauts** et qu'un autre devra les **corriger** avec attention.... Et si l'on avait quelque moyen d'arriver à ce but, si quelqu'un savait comment apprendre à un autre, par le précepte ou l'exemple, à se pénétrer plus ou moins bien de la façon don't il faut conserver ou **corriger** les lois

Saunders: Do you think there's any legislator so stupid as not to realize that his code has many inevitable **deficiencies** which must be **put right** by a successor... So if a legislator were able to discover a way of doing this—that is, if by instruction or pointing to concrete examples he could make someone else understand (perfectly or imperfectly) how to keep laws in good repair by **amending** them

Bury: You cannot suppose that any lawgiver will be so foolish as not to perceive that very many things must necessarily be **left over**, which it will be the duty of some successor to **make right**... Suppose then that a man knew of a device indicating the way in which he could teach another man by deed and word to understand in a greater or less degree how he should conserve or **amend** laws

Pangle: Do you suppose there's any lawgiver who is so imprudent as to be ignorant of that fact that he must necessarily **have left** very many such things that require being **set right** by some follower... So if someone had some device indicating the way in which, by deed or by words, he might teach another to understand more or less, how he ought to guard and **set right** the laws

Schöpsdau: daß da ein Gesetzgeber so unverständlich sein wird, daß er nicht erkennt, daß zwangsläufig viele derartige **Mängel** übrig bleiben werden, die irgendein Nachfolger **berichtigen** muß....wie er durch praktische und durch theoretische Belehrung einen andern irgendwie dazu bringen kann, daß er mehr oder weniger Einsicht dafür besitzt, wie man Gesetze bewahren oder **berichtigen** muß ὅθεν νομοφύλακες χρῆ τὰ πρέποντα τῇ νῦν γεννωμένη πολιτεία κατασκευάζειν

συλλογισαμένους καὶ **ἐπανορθομένους**, ταῖς ἐμπειρίαις διαβασανίζοντας, ἕως ἂν ἰκανῶς αὐτῶν ἕκαστα δόξη κείσθαι, τότε δὲ τέλος ἐπιθέντας, ἀκίνητα οὕτως ἐπισφραγισαμένους, χρῆσθαι τὸν ἅπαντα βίον. (957a7-b5)

Griffith: From these the guardians of the law should put together procedures appropriate to the political system which is now coming into being; they should collect and **revise** these, submit them to the test of experience, until they are sure that the procedures for various situations are satisfactory. At that point they should call a halt, give them the seal of irreversibility, and make use of them their whole life through.

Diès: C'est là que les gardiens des lois doivent aller chercher de quoi constituer une législation qui convienne à la cité que nous sommes en train de créer: ils trieront, **corrigeront**, éprouveront aux leçons de l'expérience chacune de ces prescriptions jusqu'à ce qu'ils les aient reconnues valables et, seulement alors terminant leur examen, les marqueront du sceau qui les rends intangibles et s'en serviront toute leur vie.

Saunders: The Guardians should examine them and **touch them up** after trying them out in practice, until they think they have licked each single one into shape; then they should finalize them, ratify them as immutable, and render them life-long obedience.

Bury: From these the Law-wardens must construct a code which is suitable to the polity we are now framing, partly by comparing and **amending** them, partly by submitting them to the test of experience, until each such ordinance be deemed satisfactory; and when they have been finally approved, and have been sealed as absolutely unchangeable, then the magistrates shall put them into practice all their life long

Pangle: the Guardians of the Laws ought to select what is fitting and equip the regime that is now being brought forth. They should consider these pieces of legislation, **correct them**, and test them by experience, until each of them should seem adequately established; then they should set them up as final, seal them as simply unchangeable, and employ them for the whole of the city's life.

Schöpsdau: aus denen die Gesetzeswächter das Geeignete entnehmen und der jetzt entstehenden Staatsverfassung anpassen sollen, indem sie es durchdenken und **verbessern** und es in der Praxis ausprobieren, bis sie den Eindruck haben, daß alles befriedigend geregelt ist; dann erst sollen sie dies zum Abschluß bringen und in dieser Form als unveränderlich besiegeln und es das ganze Leben hindurch an wenden.

The Guardians of the Law are clearly given the power to 'amend' the laws and the deficiencies of the original lawgiver. The problem is that 'amend' is ambiguous in English between *changing* and *supplementing*. This is especially important in a legal context: an amendment to a law could be either a change in the law that amounts to repealing or revising a previous law, or it could be an addition to the original law.<sup>15</sup> That the Greek verb in question (ἐπανορθῶ) is translated inter-

<sup>15</sup> In the constitution of the United States, the Fourteenth Amendment is an example of an

changeably in English as ‘correct’, ‘set right’, ‘revise’, in French as ‘corriger’, and in German as ‘berichtigen’ strongly suggests that translators have the *changing* meaning in mind. Recall that it is uncontroversial that the Guardians of the Law are to fill in the gaps that the original lawgiver leaves behind—their supplemental function is clear; do these passages also grant additional powers to the guardians to change the law?

It is not obvious they do. The first passage quoted (769d4-e2, e5-8) clearly states that the amendments are to be for areas that the original lawgiver *left aside* (παραλείπεσθαι; Taylor thus translates ‘lacunae’).<sup>16</sup> This is also the sense that we saw in the 772 passage where the where the amendments to be made were regarding areas that the original lawgiver *left out* (ἐκλείπειν, 772b1 with ἐπανορθουμένους, 772b3; το παραλειπόμενον, 772c2-3 with ἐπανορθοῦσθαι, 772c3). Further evidence for the amendment-as-supplementation reading can be gleaned from 781b4, where the Athenian corrects (ἐπανορθώσασθαι) the ‘omission’ (μεθειμένου, 781a6) in Megillus and Kleinias’ cities that allowed women’s lives to go unregulated.<sup>17</sup> With respect to the second quoted passage above (957a7-b5), the interpretation that the Guardians amend in the sense of ‘supplement’ also works here, as the legislation collected from elsewhere is unlikely to be complete for the Magnesians’ purposes. Moreover, whatever amendments to which this passage refers occur during the trial period after which the laws are explicitly said to remain fixed, thus this passage does not grant to the Guardians of the Law the ability to change the law either.

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amendment that changes that law (effectively repealing the three-fifths compromise), while the Bill of Rights (the first ten amendments) is an example of supplementation.

<sup>16</sup> Note that ‘deficiencies’ is also ambiguous between *failings* and *gaps*. I do not think that these texts show that the original lawgiver has made mistakes.

<sup>17</sup> An especially clear passage concerns the function of the ambassadors at 951c3-4: τὰ δ’ ἐπανορθούμενον, εἴ τι παραλείπεται, considered in the next section. The verb also shows up in two passages earlier in the *Laws* before the formal legislation has begun: at 644b3 the Athenian talks about correcting (ἐπανορθοῦσθαι) an education that has gone astray, and at 653d4 the Athenian explains how festivals correct for (ἐπανορθῶνται) the deterioration of education of the course of a human life. I grant that the former passage is an instance of revising (we do not want to *supplement* bad habits—we want to change them [cf. Aristotle, *EN* 1165b19]), but the latter suggests that festivals are supposed to be a counterbalance to the natural deterioration people experience. Thus the weight of evidence is on the amendment-as-supplement reading in the legislative passages I consider. I am not saying that ἐπανορθῶ cannot *mean* ‘reform’, ‘revise’, ‘improve’, or ‘correct’—it can; rather, my point is that we should ask *what* is being corrected for (the *error* of the lawgiver or his *omission*?) and when it is being used in the sense of ‘amendment’, whether that should be disambiguated as ‘revision’ or ‘supplementation.’ My preferred translation is ‘amend’ precisely because it captures in English the ambiguity in the Greek. For parallel passages elsewhere in Plato, see *Resp.* 425e5 and 426e5—is the problem here that bad lawgivers keep *changing their mind* about the original laws or that they keep *supplementing* the original bad lawcode to try to fix the problems that arise? So too *Tht.* 143a2-5, where Euclides, with Socrates’ help, is able to ‘correct for’ the parts of the dialogue with Theaetetus that he could not remember—are these omissions or errors? An excellent example of the usage I have in mind is *Symp.* 180d2 where Agathon ‘amends’ (ἐπανορθώσασθαι) the earlier speeches by introducing an important distinction between the nature of Erôs and its effects; the earlier speakers did not get this distinction *wrong*, they just *missed* it; this usage is also seen at *Prt.* 340d6-8, where the ‘correction’ is Socrates’ introduction of the being/becoming distinction.

Finally, there is unambiguous Greek for changing the law using the verbs κινεῖν or μεταβάλλειν. For example, Aristotle's discussion in *Politics* ii 8, which is clearly about changing the law, makes extensive use of these verbs (1269a3-27). Plato also uses κινεῖν and μεταβάλλειν in explicit passages about changing the law (e.g., 772d3, 797d9, 798a3, b7, d2), and frequently uses the cognate ἀκινιήτα ('unchanging') to describe the status of laws that are not to be altered (e.g., 736d1, 798b1, 816c6, 846c6-7, 957b4). By contrast, Demosthenes uses λύειν to designate a *repeal* of an existing law (e.g., *Against Leptines* 20.1, 6, 14, 58, 87, 96, 98, 99, 143; cf. Herodotus i 29.1, in reference to the Athenians not being able to repeal [λύσαι] the laws Solon had laid down). The Athenian nowhere grants the Guardians of the Law the power to λύειν, κινεῖν, or μεταβάλλειν τούς νομούς. Thus, any ascription of the power to change the laws to the Guardians of the Law depends on the understanding of 'amendments' to the law.

Given the arguments above, we should read the passages about amending the laws in a way that is consistent with what everybody agrees is a power explicitly granted to the Guardians of the Law, namely, that of supplementing the incomplete original lawcode. Nowhere does the Athenian say that the Guardians of the Law may unilaterally change the law after the trial period (though even during the trial period I believe their primary function is supplementary); indeed, the *Guardians themselves* are the ones who are explicitly said *not* to change the laws after this period (μὴ κινεῖν, 816c6). The Guardians are to finish the law, not to alter it (Nightingale 1999, 118).

With these considerations in place, we can now consider more fully the painter analogy, from which the 769d-e passage is taken:

Suppose someone took it into his head to paint the most beautiful painting possible—and what is more, one that would never deteriorate, just go on getting better with the passage of time. You can see, can't you, the painter being mortal, that unless he leaves behind him some successor able to make good any damage to the painting by time, or embellish it and **improve it, in the case of any defect resulting from the painter's own deficiencies in technique** then all his great labour will last but a short time (συννοεῖς ὅτι θνητὸς ὢν, εἰ μὴ τινα καταλείψει διάδοχον τοῦ ἐπανορθοῦν τε, εἰάν τι σφάλῃται τὸ ζῶον ὑπὸ χρόνων, καὶ τὸ παραλειφθὲν ὑπὸ τῆς ἀσθενείας τῆς ἑαυτοῦ πρὸς τὴν τέχνην οἷός τε εἰς τὸ πρόσθεν ἔσται φαιδρῶνων ποιεῖν ἐπιδιδόναι, σμικρὸν τινα χρόνον αὐτῷ πόνος παραμενεῖ πάμπολυς;)... Well, what about the lawgiver? Don't you think he has the same kind of intention? First, to paint his canvas of laws with all the precision he can muster; second, as time passes and he tries out his ideas in practice, do you think there has ever been a lawgiver so foolish as to be unaware that there are inevitably going to be any number of things left for some-

one coming after him to amend, if he wants the political arrangements and organization of the city he has founded to go on getting better and not worse? (769b8-e2, Griffith trans.)

The relation of the Guardians of the Law to the original lawgiver is analogous to that of a master painter and his successors who are tasked with preserving the painting over time. The first thing to note is that this is hardly a good image for Plato to use if he wanted to show a dynamic process of change from an original—preservationists would be fired if they substantially changed the painting. As the Athenian expresses the point a few lines later, their ‘job will be to fill in the outline’ (τοῦτο δὲ δεήσει συμπληροῦν ὑμᾶς τὸ περιγηθέν, 770b8-c1; see also 779c7-d2). This explains the first implication of the analogy, namely, that the original lawgiver has been as precise as he can be, but that there will inevitably be gaps.

What of the second point, that parts will need to be amended because of ‘any defect resulting from the painter’s own deficiencies in technique’? Griffith’s translation is loose in this sentence generally—and he is to be forgiven because of a tricky anacoluthon, but we can work around this.<sup>18</sup> The relevant question is whether Plato is here saying that amendments will be required because of failures in the original lawgiver’s *skill*. Meyer 2006, 380, for example, argued on the basis of this passage that ‘it is inevitable for the work of legislators to be imperfect, and to require correction by subsequent lawmakers’ (cf. Morrow 1960, 502). But Griffith’s translation is not the only possible rendering.<sup>19</sup> The phrase τὸ παραλειφθὲν ὑπὸ τῆς ἀσθενείας τῆς ἑαυτοῦ πρὸς τὴν τέχνην would better be translated as ‘what is left over because of his own weakness with respect to his technique’; this captures the ambiguity of the Greek, in that the πρὸς phrase (‘with respect to his technique’) could be qualifying τὸ παραλειφθὲν (‘what is left over’) or τῆς ἀσθενείας τῆς ἑαυτοῦ (‘because of his own weakness’). So the phrase could mean *either* that the painter has technical deficiencies (i.e., he is incompetent in some respect, as the translators take it) *or* that the painter has a weakness that causes there to be issues left over related to his work.<sup>20</sup>

Given that we are nowhere led to think that the original lawgiver is deficient with respect to his technique, and the only kind of deficiency we are told that the painter has is that he is *mortal*, we should not conclude that the original lawgiver has made mistakes that the Guardians of the Law will later correct. Rather, the problems in this passage are the *decay from time* and the *mortality* of the original

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<sup>18</sup> See the notes by Des Places and England *ad loc.*

<sup>19</sup> It should be noted that Des Places, Bury, Saunders, Pangle, and Jowett all render this phrase similarly to Griffith. It is a more natural reading, but a genitive sandwiched in the way I suggest is a common construction, and Plato may have used it here to avoid hiatus between ἑαυτοῦ and οἴος.

<sup>20</sup> Note that while τὸ παραλειφθὲν can be taken to mean ‘deficiencies’ in the extended sense of ‘incompetence’, its primary and literal sense is the idea of ‘left aside’ or ‘left out’ (thus, a synonym of ἐκλείπειν), as we have already seen in a number of relevant texts. My reading of this passage thus has the virtue of making Plato’s use of these terms consistent and straightforward.

lawgiver, which prevent him from finishing his own project.<sup>21</sup> In that sense, both the original painter and lawgiver must hand over the project to successors to preserve and complete. Their problem is that they will die—not that they are incompetent or made errors in the original.<sup>22</sup>

This has been a complex philological discussion, but my goal has been to show that Plato is in fact much more careful in his linguistic choices than our translations suggest he is. If I am right, Plato has the Athenian use κινεῖν and μεταβάλλειν to designate changes in the law, while he uses cognates of ἐπανορθόω to refer to amendments that supplement what has been left out (the literal meaning of παραλείπω and ἐκλείπω) by the original lawgiver. This is important for our question about the legal status of changing the law in Magnesia because the Guardians of the Law are given the power to supplement the law but they are not explicitly given the power to change the law after the trial period. Because everybody agrees that the Guardians of the Law are given powers to supplement the law, the burden of proof is on interpreters who want to show that the Guardians also have the additional power to change the law. I contend that there are no texts in the *Laws* that give them such powers unilaterally.

So much for the Guardians of the Law. Are there other offices that are able to change the laws? The answer, in short, is no. What about the Nocturnal Council (νύκτωρ συλλεγόμενος)? Interestingly, there are very few commentators who think that the Nocturnal Council can change the law directly, *because the Nocturnal Council is not technically an office*.<sup>23</sup> Though it is comprised primarily of office-holders, the Nocturnal Council is not an additional βουλή, nowhere is it called an office, nor is it subject to the usual processes of scrutiny and audit that characterize legitimate office holding.<sup>24</sup> Thus, any changes to the law issued from the Nocturnal Council itself would be done from outside the official constitutional structure of Magnesia, and would thus be illegal. Following Morrow's

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<sup>21</sup> Note that the painting needs to be *improved later* (εἰς τὸ πρόσθεν...φαιδρύνων ποιεῖν ἐπιδιδόναι) because it will lose its luster from age (and weather)—not because the original was bad. Presumably the parallel here with the decay from age is that the law will lose its force unless there are people to explain in fresh terms what the law was getting at. Thanks to Julia Annas for this point.

<sup>22</sup> René de Nicolay suggests that we could also understand ὑπὸ τῆς ἀσθενείας τῆς ἑαυτοῦ as a kind of fatigue or limitedness; a human being simply does not have the physical and mental capacities to legislate for everything in their lifetime.

<sup>23</sup> Cf. Bobonich 2002, 407-408, who says of the Nocturnal Council in relation to changing the law that, 'the fact that Plato does not explicitly give it a formal role is a weak ground for thinking he intends to deny it any such role'. This comment is puzzling. Note, however, that Bobonich does not claim that the Nocturnal Council is given the sole authority to change the law.

<sup>24</sup> See Lewis 1998, 14-15 on the significance of Plato using the term σύλλογος rather than βουλή. For the normative significance of office and office-holding in Greek political thought, I have learned much from Lane 2018b and rely on her excellent and insightful analysis. It might be objected that classical poleis did not have complex, well defined administrations as contemporary governments do, in which case the line between rulers and non-rulers is much less clear (and thus less significant) than I am suggesting it is. Thanks to an anonymous referee and Josh Wilburn for raising this objection. If readers are unpersuaded about the importance of office-holding, then the argument will rest on what the Nocturnal Council is said to do, which I address in the next section.

influential interpretation, we should understand the Nocturnal Council as exerting indirect influence on the city but not wielding political authority directly.<sup>25</sup> The Nocturnal Council is no more part of the constitution of Magnesia than Yale Law School or Oxford University are part of the constitution of the United States or Great Britain. Regardless of how much political influence they may have, they have no official powers. Nonetheless, the Nocturnal Council and ambassadors (θεωροί) may reveal something important about Plato's attitude towards legal improvement, and thus they are worth considering as part of our discussion more generally. I consider their role in the next section.

But first, let us take stock. Our goal here was to ask whether there are legal provisions for changing the law in the text of the *Laws*. Specifically, we asked *who* would change the law, and *how* they would do it? As we saw, there is only one explicit legal provision for changing the law, and that comes in the 772 passage. This procedure is to be used under necessity, prompted by some emergency, and requires the Guardians of the Law to consult with all of the offices and the people as a whole in addition to the oracles, all of whom have to agree for the legal change to be passed—one body preventing it is sufficient to keep the existing law in effect. Thus, it is extremely difficult to change the law in Magnesia using this decision procedure. We then considered whether particular offices are given the power to change the law. The only plausible candidates are the Guardians of the Law, but a close reading of the relevant passages shows only that they have the power to supplement the law and perhaps to change it during the trial period, but certainly not after this period, where it is explicitly said to be unchanged (ἀκινήτα). Thus, no office in the *Laws* may unilaterally change the laws, and there is only one (very stringent) procedure for changing the laws. If Plato's explicit constitutional and legal provisions were put into practice, changes to the existing laws would occur very infrequently; ideally, they would not happen at all.

## II. Attitudes towards legal change and innovation: the citizens, the ambassadors, and the Nocturnal Council

The explicit constitutional and legal provisions do not settle all of the interesting questions about legal change in the *Laws*. For while they reveal much about how Magnesia works in practice, these provisions do not give us the full picture about how Magnesians (or Plato) think about innovation more generally. My goal in this section, then, is to consider what the introduction of the ambassadors (θεωροί) and Nocturnal Council suggest about Magnesian attitudes towards legal innovation and progress.

First, I consider passages that explain what many interpreters take to be the default attitude most citizens will have towards the law, namely, that they are servants to the law and should treat it as a divine authority. I then ask whether what we are told about the ambassadors and Nocturnal Council provides a counterbal-

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<sup>25</sup> Morrow 1960, 500-514. See especially 510: 'no procedure is mentioned whereby the nocturnal council is to make its insight and intelligence effective in the affairs of the state'.

ance to this attitude or whether the goals of this higher education and foreign travel are consistent with the views that ordinary citizens will hold. Many readers have suspected that these institutions, introduced in the last pages of this massive dialogue, provide a glimpse behind the veil and allow older, wiser, and more virtuous Magnesians citizens to challenge and seek out improvements for existing legislation. While it is undoubtedly true that ambassadors and members of the Nocturnal Council will have a greater understanding of the laws and their justification, it is worth exploring whether this greater understanding provides a basis for legal change and political innovation. I argue that the higher education in Magnesia bolsters the existing laws and provides valuable supplementation, but it is not a source of revision.

#### A. The average Magnesian citizen

Though relatively uncontroversial, it is worth reminding ourselves of the general attitude towards the law and legal innovation that the average Magnesian citizen is to have. This provides the background against which we can see more clearly how the ambassadors and Nocturnal Council differ from most citizens.

In the first place, citizens and office-holders in Magnesia are to be strictly law-abiding. Being a ‘slave to the law’ is held up as an ideal for the office-holders (δοῦλοι τοῦ νόμου, 715d5; Annas 2017, ch. 4), and the Athenian explicitly approves of the Dorian practice whereby none of the youth inquire into which laws are right and wrong, but rather say with one voice that the law has been divinely established (634d7-e3). Regardless of whether or not some older citizens eventually get to do so, young people will certainly not give criticisms of the laws. Furthermore, one of the explicit duties of the Guardians of the Law is to prevent ‘innovating’ in the citizen body (νεωτερισμῶν, 758c6). At various points throughout the *Laws*, it is not Sparta or Athens but Egypt that is upheld as a model for the new colony (Nightingale 1999; Rutherford 2013). This is because Egyptian law has been free from innovation for literally 10,000 years, at least with respect to the arts (656e5-6). Interestingly, the motivation for innovation is said to be pleasure, though such motivation can be made ineffectual by the divine sanction of the law (657b4; see also 700e2-3).

This Egyptian attitude towards legal fixity is prominent in the discussion of education and of children’s games (797a7-799b9). What has not been sufficiently emphasized, however, is that the fixity of laws in children’s games is supposed to cultivate a *general* attitude of reverence for and happiness with the existing laws, and that for the process to work the laws need to be *totally* unchanged:

Change, we shall find, is for all things (apart from outright evils) by far the most dangerous, whether it’s the seasons, the winds, the body and its diet, or the soul and its habits. That is pretty well true for everything—not true in some contexts but not in others—apart, as I have just said, from things which are downright evil.... Where the laws under which people have been brought up have remained, by some divine good fortune,

*unchanged through many long ages, so that there is no memory, even through hearsay, of things ever being any different from the way they are now, this fills the soul full of awe and fear of changing the established order in any way. Some clever way of bringing about this state of affairs in the city is what the lawgiver has somehow or other to dream up. (797d9-798b6)*

In order to make the laws truly secure and revered, the citizens should not even *think* of things possibly being different. The Athenian goes on to suggest that it is because people become accustomed to innovating in their youth that they then go on to innovate later in life (note νεωτερίζοντας again in 798c3-4). Thus while it is certainly crucial that children's games are to be left fixed, the justification for this is to prevent a desire for innovation in citizens once they are older.

Meyer, citing a compelling parallel passage from the *Republic*, takes an earlier discussion on music (665c5-7) to show that Plato is troubled by innovation in musical *forms* but that innovation *within* the established forms is unproblematic—indeed, it may even be a good way to fulfill our otherwise troublesome desire for novelty. ‘The variation [the Athenian] endorses here’, she says, ‘must...involve variation *within* the sanctioned forms so that the citizens will not have to sing over and over *ad nauseum* a limited menu of songs; thus new songs can be introduced into the canon over time (cf. *Rep.* 424b-c). It is not to variety as such that the Athenian objections, but to the pursuit of variety that leads to abandonment of those features essential to making the music beautiful and appropriate for education’ (2015, 284-285). So there could be any number of new sonatas, for example, just as long as nobody is playing any jazz. Meyer’s account supports what I argue is an unproblematic kind of novelty and change in the education system and infrastructure of Magnesia, namely, changes in accordance with the existing legislative framework.<sup>26</sup>

In sum, then, the ordinary citizen is trained not to desire particular kinds of novelty and any attempts at innovation in form are discouraged. While the importance of keeping laws fixed is highlighted for children's games in particular, their function is to instill a more general contentedness with the laws, lest citizens come to think that whatever does not change is boring or old-fashioned. But is this the only attitude towards innovation in Magnesia, or are there some who counterbalance this conservatism and seek out more radical changes?

## B. The Ambassadors

While foreign travel is banned for all Magnesians under the age of 40 (950d7), there are some people who are approved to travel abroad—the ambassadors (ἄεθροί, literally ‘observers’ or ‘spectators’).<sup>27</sup> Though it only occupies a few

<sup>26</sup> Thanks to the anonymous referees for pushing me on this tension in the *Laws* and to Susan Sauvé Meyer for providing such an elegant solution.

<sup>27</sup> The ambassadors are not the only people who go abroad. Magnesia also sends out delegations to the major Panhellenic festivals, and on public business as heralds for diplomatic purposes (950d8-9). I do worry about how the aged Magnesian Olympic team will fare, even with their rigorous gym-

pages of text, the discussion of the ambassadors reveals something important about Plato's openness to ideas that spring up elsewhere and how Magnesia develops over time. Thus even if the average citizen is not to think about how their way of life may be different, there are clearly some people in Magnesia for whom this is an important concern.

What, then, are the specific functions and goals that the Athenian ascribes to the ambassadors? First, all those who go abroad (including those who compete in the Panhellenic games and festivals) will bring glory to Magnesia on account of their virtue and excellence. Thus, Magnesians are to be shining examples for others. But what function will the ambassadors serve for Magnesia itself?

A city with no experience of bad people and good, a city in isolation, can never be properly civilised or complete, nor can it safeguard its laws unless it grasps them with real understanding—mere habit is not enough. And there are always, among the population, people who are an inspiration—not many of them, but people whose company is worth its weight in gold. There are no more of them in cities with good laws than in those without; once on their track, the person who lives in a city with good laws should always be prepared to set out by land and sea in search of them—with a view to buttressing those of his own institutions which have a sound basis, or making amendments if something is left out (ζητεῖν ὅς ἂν ἀδιάφθορος ἦ, τὰ μὲν βεβαιούμενον τῶ νομίμων, ὅσα καλῶς αὐτοῖς κείται, **τὰ δ' ἐπανορθούμενον, εἴ τι παραλείπεται**). Without this fact-finding and enquiry a city will never remain in perfect condition—nor again if the fact-finding is poorly carried out. (951a7-c5).

There are a number of justifications for foreign travel here that are worth considering separately. The first reason is that a city in isolation cannot be sufficiently civilized and complete (ἡμερος ἰκανῶς εἶναι καὶ τέλειος). It is unclear exactly what this amounts to, but Plato is surely aware that there are many advances in civilization and culture that an isolated city will miss out on (I consider some of these advances below).

Second, the law cannot be preserved (διαφυλάττειν) by habit alone without understanding (see also 951e5-952a5). This is a revealing line, especially given the debates about levels of citizen virtue in Magnesia and the importance of habituation in the *Laws*. Even if many of the citizens have little philosophical understanding, here the Athenian makes clear that *some* people in the city need to progress beyond mere habit. Foreign travel is important for this task so that Magnesians can be exposed to other ways of life, and to consider the various merits and (many) errors of other societies.

Most importantly, ambassadors are tasked with finding good people who will make secure (βεβαιούμενον) the existing laws and amend them if something is

left out (τὰ δ' ἐπανορθούμενον, εἴ τι παραλείπεται). This is a particularly nice pairing of the key terms that we saw in the discussions of the Guardians of the Law, and it is clear that the ambassadors are to aid the Guardians in their project to supplement and complete the Magnesian lawcode. Once again, though, I do not think that this wording suggests that the ambassadors are on the lookout for ways to change the laws; rather they are searching for ways to correct for any gaps that the original lawgiver may have left. Upon their return to Magnesia, the Ambassadors would suggest these amendments to the Nocturnal Council (951d3-952b5), whose sitting office-holders could then pass them onto the other Guardians of the Law or to the educational and artistic offices for collective consideration. This provides a clear example of how it is that the higher education of Magnesia could exercise an indirect influence on the governance of the city.

But what about *new* ideas? Will the ambassadors not discover genuinely good innovations? Of course they will. The Athenian says, 'If [the ambassador] has come across people with something worth saying on the subject of lawgiving or education or upbringing (περὶ θέσεως νόμων ἢ παιδείας ἢ τροφῆς), or if he has come back with some ideas of his own, he shall share these with the committee as a whole' (952b6-9). And as Annas 2017, 142 rightly asks, what is the point of finding out good ideas about these things if the Nocturnal Council is not going to do anything with them?

There are plenty of helpful additions to the city that the ambassadors will discover abroad. Consider education. The ambassadors would do much to help Magnesia by bringing back, for example, books that detail new scientific, medical, and mathematical advances (Taylor 1960, lx-lxi notes the substantial mathematical advances of the 4<sup>th</sup> century), new artworks, new gymnastic regimes or treatises on military tactics, martial technologies, histories (especially those that emphasize the importance of lawfulness and the evils of war), and, most importantly, philosophical developments.<sup>28</sup> While these things will need to be consistent with the laws and educational goals of Magnesia, my point is that there is plenty that the ambassadors could find abroad that advances such goals. It is clear that Plato does not want Magnesia to be an uncivilized backwater, and it is unreasonable to think that *everything* outside of Magnesia will be unacceptable or inconsistent with its goals. Recall also that the ambassadors are supposed to be on the lookout for *good* people—whatever it is that they are working on is likely to be helpful for furthering the understanding of Magnesians.

Thus, because we have considered all the explicit duties that the Athenian provides, it is far from obvious that the goal of the ambassadors is to seek out legal changes, though they are clearly supposed to enrich the city's understanding and develop its levels of civilization. Commentators have not been sufficiently creative in their thinking about how Magnesian education could be advanced without changing the law—Plato has no reason to shield the citizens from domed

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<sup>28</sup> See also 811e4: one of the duties of the Officer of Education is to find artworks that are 'akin' (literally, 'brothers') to the lawcode, put them in writing, and use them to educate children, as Nightingale 1999 emphasizes.

roofs, aqueducts, discoveries about conic sections, propositional logic, or the nervous system, even though the ambassadors may not be bringing back much Catullus. Once we see how much could be added *within* the framework of the *Laws*, it is unsurprising that Plato would want to send people abroad to keep up to date with these important discoveries.<sup>29</sup> That being said, it is also clear that Plato wants the ambassadors and members of the Nocturnal Council to have a deeper understanding of the justification for the laws. What happens when Magnesians come to have political knowledge? Are they to leave the laws fixed even then? To answer these questions, we must consider the role of the Nocturnal Council more fully.

### C. The Nocturnal Council

Barker 1960, 398-399 memorably introduces the Nocturnal Council as follows:

In the last book the veil is lifted, and we see clearly the figures, hitherto hidden, of guiding and controlling wisdom. Here the normal Greek institutions of assembly and council, officials and courts of laws, which appeared in the earlier books, begin to fade away; and instead there appears a nocturnal council of philosophers, or rather of philosophic astronomers, who guide the State because they know the mysteries of the heavens. Here too the law-state, rigid in character, unalterable in its rules, to which Plato has hitherto sought to ascribe the stability of an Egyptian Pyramid, unchanged and unchanging through the centuries, begins to dissolve; and the outlines of a State based on the free play of reason and guided by ‘genuine free mind’ reveal themselves in its place.

Many readers—including Aristotle (*Pol.* 1265a2-4)—have suspected that the introduction of the Nocturnal Council is in deep tension with the structure of the established constitution. Though it is undeniable that one gets a different impression from the end of the *Laws* than earlier books, impressions can be misleading and we are perhaps too eager to see the more-familiar *Republic* in the darker thickets of the *Laws*. Let us look closely, then, at the specific powers and respon-

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<sup>29</sup> Overemphasizing this point may generate a genuine tension here with the passage about innovation quoted earlier (797d9-798b6). Will citizens not get excited about the new discoveries and artistic works coming in from abroad (even if they are morally wholesome) precisely because they are new? More generally, what is to stop the citizens from coming to love novelty in the new artistic works that are being produced in Magnesia (the Officer of Education and judges of artistic competition have as one of their main jobs approving new works for public performance, 801c8-d6, 802b1-c4)? Perhaps Plato’s point is that as long as the standards of evaluation and rules for composition remain the same, as in Egypt, they will not be of a new type even if they are new tokens (as Meyer 2015, 284-285 suggests). Or perhaps the new works are introduced so infrequently that there will not be an expectation for innovation. Nonetheless, we should note that even within Magnesia new artistic works are being produced in a culture that suppresses innovation, so the ambassador’s project in this respect does not introduce a further problem.

sibilities that the Athenian ascribes to the Nocturnal Council and see if their role accords with the understanding of Magnesia developed thus far.

First, who is part of the Nocturnal Council? The gathering is composed of (a) the 10 oldest Guardians of the Law, (b) all those who have won awards for excellence (presumably from among the auditors, 947a1-e5), (c) those who have been ambassadors, (d) the current Officer of Education and all previous Officers of Education, and (e) one person aged 30 or over, selected by each of the people in (a)-(d) and approved by all of them (951d6-e5; 961a2-b8).<sup>30</sup> Thus, while it is composed of office-holders and their apprentices, the Nocturnal Council is not itself an office.<sup>31</sup>

What are the responsibilities they are assigned? The Nocturnal Council's primary role is to be an institution of higher education.<sup>32</sup> Their formal description comes very late in the *Laws*, though they are alluded to earlier in book 7 as a small minority of the population that engages in more advanced study of arithmetic, measurement, and astronomy (818a1-4), and in book 10 as sending members to speak with good-natured atheists who have been imprisoned (908e5-909a5), a task which requires a good deal of theological and philosophical acumen. In book 12 they said to know the target of statesmen and how to hit it, and to know which laws and people counsel well or badly (962b6-9); they have a sufficient knowledge of virtue (964c7), can view the many and the one, and order things towards that end, looking towards one single form (965b7-c3); they have real knowledge of the truth about the fine and the good, and the gods (966a5-d3); they know about the primacy of soul, its immortality, the role of intelligence (νοῦς) in astronomy, the connection between music and ethical habits and laws, and how to provide logical explanations (967d4-968a).

As with the ambassadors, the members of the Nocturnal Council are to grasp the laws by more than habit alone. They are to have a superior understanding of what the laws aim at and how it is that the laws achieve their goal. But it does not follow from this that the Nocturnal Council will seek to change or repeal the laws of Magnesia. Rather, if the laws laid out in the *Laws* do in fact promote the virtue of the citizens and the well-being of the city, the Nocturnal Council will come to realize *why* the laws are good laws and how they improve the souls of the citizens. So when the members are said to know which laws and people counsel well

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<sup>30</sup> The Officers of Education are included in the first cited passage, but not the second.

<sup>31</sup> Commentators have been far too insensitive to the fact that *half* of the Nocturnal Council is composed of young people—people who are potentially 20 years too young to be Guardians of the Law. Given Plato's insistence on age restrictions even for minor offices (you cannot be tasked with judging a choral performance in Magnesia until you are 40, 765a1-2), it would be astonishing if he gave so many inexperienced and untested people substantial political power, regardless of how clever or promising they might be.

<sup>32</sup> It may appear that the Nocturnal Council has a legislative function on the basis of 968c3-7, but this passage should be read in light of the next comments that the Athenian makes: the problem is that there is no point in legislating for a body like this before it has been established, because they will be the ones in the best position to decide what they should study, when they should study it, and for how long they should study it (968c9-e5).

or badly, this need not mean anything more than that they can recognize why the laws of the other cities they consider may prescribe badly in comparison to their own laws, which prescribe well. Learning does not make the Nocturnal Council a source of legal innovation—quite the opposite.

But how does this explain why the Nocturnal Council preserves the city and its laws, keeping it from harm (968a5-b1)? It is here that I think Mill's point in the quoted epigraph is truly insightful for understanding the *Laws*. It is very tempting for us to think that the city's guardians must preserve the city by intelligently responding to continually changing and difficult new circumstances. But does Plato consider these causes of political degeneration in the *Laws*? Not obviously. It might be argued that surely, if anyone, Plato would think of the task of politics is to respond to the endlessly changing sensible world. But this does not seem to be a major concern in the *Laws*. Plato's metaphysics may be one of Heraclitean flux, yet his psychology does not predict major variation across people and time. Rather, the causes of human vice and failures in education and politics are regular and predictable.<sup>33</sup> The Athenian's priority is to avoid people overturning the good laws laid down, and to stop them falling victim to common errors that undermine good character development—valuing human goods over divine goods, being corrupted by excessive political power or illicit pleasures, and so forth. The Nocturnal Council, then, is charged with the unending project of teaching each generation anew why the structure of the city is good and why its goals should be maintained.<sup>34</sup> If the laws are followed only by habit, the city will be helpless when citizens inevitably challenge the laws and their authority (consider especially the good-natured atheists from book 10). With the establishment of the Nocturnal Council, Plato can provide for his citizens a rational and comprehensive response to such challenges. It is in this way that the Nocturnal Council preserves the laws and values of Magnesia.<sup>35</sup>

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<sup>33</sup> Melissa Lane has rightly pointed out to me in correspondence that *Statesman* 294b-c is relevant here. In that passage, law is characterized as stubborn and ignorant, not altering its judgment even when somebody thinks of something new and better than what the law prescribes. Law, being simple, is thus (in a sense) inappropriate for the complexity of human life, which is never simple or at rest (*ἡσυχίαν*). But it is this very insight that prompts the Eleatic Stranger to ask why it is necessary to make laws at all, and his answer is that it is possible to give general rules that work for most people, most of the time. Thus, I believe that Plato's view is that the principles of political psychology are *regular and stable enough* to justify a conservative position regarding legal change in Magnesia.

<sup>34</sup> Mill continues: 'Though most men in the present age profess the contrary creed, believing that the tendency of things, on the whole, is towards improvement; we ought not to forget, that there is an incessant and ever-flowing current of human affairs towards the worse, consisting of all the follies, all the vices, all the negligences, indolences, and supinenesses of mankind; which is only controlled, and kept from sweeping all before it, by the exertions which some persons constantly, and others by fits, put forth in the direction of good and worthy objects. It gives a very insufficient idea of the importance of the strivings which take place to improve and elevate human nature and life, to suppose that their chief value consists in the amount of actual improvement realized by their means, and that the consequence of their cessation would merely be that we should remain as we are.' (*Considerations of Representative Government*, ch. 2, p. 197)

<sup>35</sup> A useful parallel here might be with our contemporary project of teaching critical reasoning skills to college students. We do not expect experts in critical reasoning to make 'new contributions

We thus need not read the closing comment that the city should be ‘handed over’ (*παραδοτέον*) to the Nocturnal Council in a way that reintroduces philosopher-rulers at the end of the day (969b3).<sup>36</sup> The project of the *Laws* as a whole is to justify and construct a feasible city that aims at the virtue and thus the happiness of the citizens. The Athenian has been leading this discussion because he has sufficient experience and training to explain to his Dorian interlocutors what the law should aim at and how it is that the laws achieve their goal. Once it has been established, the members of the Nocturnal Council will be able to continue on the Athenian’s behalf. Thus it is not the Guardians of the Law or the citizens of Magnesia who are handing the city over to the Nocturnal Council, but the interlocutors of our dialogue. That, I think, is why the dialogue ends with the Nocturnal Council and why the Athenian says then that the city is to be handed over to them. Magnesians will not need to go in search of their original lawgiver for answers to their questions—they will need only to go to someone on the Nocturnal Council, who will explain to them the justification for the lawcode.<sup>37</sup>

But what if the Nocturnal Council’s wisdom and understanding ultimately *surpasses* that of the original lawgiver, and they come to recognize that some of the laws established are not the best? Would they not then be justified in changing the existing laws? Not necessarily. In the first place, the Athenian explicitly says that Magnesia does not have the best laws—he is legislating for humans and not for gods (739d6-e6; 853c3-d4). Magnesia was not supposed to be *optimal*, it was supposed to be *good*.<sup>38</sup> The Athenian surely thinks that these laws will work (why else would he propose them?) and so it may be sufficient for the Nocturnal Council to show that the Athenian is not mistaken in this respect. Even if in principle some law might be more effective at developing the virtue of the citizens, if in practice the laws are working well, then it is not obvious that they should be changed.<sup>39</sup> Changing a good law because it is not optimal would incur substantial

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to the literature’ on which argument forms are valid and which are fallacious. Rather, the task is the same year after year, as it has been for millennia: to explain why certain forms of argumentation are good, and to explain why, regardless of how compelling some of them may be psychologically, fallacies are bad forms of reasoning. The task of the teacher of critical thinking is to establish good patterns of thinking and then to guard against tempting corruptions. There is no end to this project, even if it does not change annually.

<sup>36</sup> Klosko 1988; 2008. Ultimately, I do not find Klosko’s arguments for the shift in Plato’s view from the earlier books to these closing passages compelling, primarily because one of the key texts about leaving the law fixed and unchangeable after the trial period comes at 957a7-b5—after the discussion of the ambassadors and a mere four Stephanos pages before the main discussion of the Nocturnal Council. To say that Plato changed his mind (multiple times?) while writing these dozen pages is implausible, and though books 11 and 12 are perhaps a hodgepodge of miscellanea compiled by Phillip of Opus, I think it is better to try to think about other ways in which the Nocturnal Council might be consistent with the strict legal constitutionalism of the earlier books.

<sup>37</sup> This is also the way in which I think the *Laws* responds to the critique of writing in the *Phaedrus*. The legal writings will be preserved and their wisdom defended by living people who guard the laws and understand the system that justified them.

<sup>38</sup> Hence there may be Solonian parallels here, in not giving the best laws but the laws that the people can accept (Plutarch, *Life of Solon*, xv 1-2).

costs in Magnesia. There is not space to develop this point fully, but suffice it to say that the habituation of the citizens and their respect for the law depends in large part on law being fixed and seen as divine, rather than as a tool to be used by fallible mortals to further their individual goals (even purportedly good goals). Thus the costs of introducing the possibility of legal change may outweigh the putative benefit of the new law (recall especially 797d9–e2).

But what if the Nocturnal Council discovered not only that some law is not optimal, but that it is in fact outright bad, undermining the goal of the lawcode? Would they not be justified in changing it then? Perhaps. We should remember that there is ultimately *some* provision for changing the law—though it is an exceedingly difficult process. It is possible, though, that Plato just does not think any of the laws he proposes are bad. The *Laws* does not read like a provisional project upon which other philosophers and lawgivers are to improve after his death. Details will need ironing out, to be sure, but on the whole Plato thinks he has the right idea. For those who prefer a skeptical and intellectually detached Plato, this is not a welcome reading—but the *Laws* is no Socratic dialogue. The Athenian is not tentative about his ranking of goods, the goals of politics, and the appropriate system of education (even when his interlocutors disagree), nor does he suggest that there might be any number of effective ways to achieve these goals. So Plato likely expects the Nocturnal Council to further justify his conclusions, not to overturn them, and they will not discover any bad laws given by the original lawgiver because there are not any.

Thus, I do not think that either the ambassadors or the Nocturnal Council show that Plato is interested in having institutions of higher learning in Magnesia in order to allow future revision of the laws. Their main roles are to grasp the laws by more than habit, and to ensure that the lawcode will be filled out and its content kept up to date with advances that are consistent with the goals of the law. If they innovate, they do so within the existing legal framework. The Nocturnal Council and ambassadors preserve the laws by showing why Magnesian laws are superior to many existing alternatives (or are at least sufficiently good) and why they achieve the goals that they set out to. Thus we can see both why Plato would want to include the ambassadors and Nocturnal Council, and why they are consistent with the rest of the constitutional arrangements described in the *Laws*. The supposed contradiction between the institutions of book 12 and the explicit Magnesian laws dissolves once we read the text without the assumption that the institutions of higher learning are meant to undo what came before—the members of these institutions are the people who can explain why the laws are good and who can defend them against anybody who might challenge them.

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<sup>39</sup> Compare Demosthenes 20.110: ‘In general, I think that then only ought you to praise the habits and character of other nations and decry your own, when it is possible to prove that they are doing better than you. As long as you (thank Heaven!) are doing better than they are, in public policy, in internal harmony, and in every other way, why should you belittle your national institutions and imitate theirs? Even if theirs could be proved superior in theory, yet the good fortune that you have enjoyed under your own institutions makes it worth your while to retain them.’

### III. Law, knowledge, and authority

There are, however, considerations from elsewhere in the Platonic corpus that suggest more complex ways in which law and knowledge might relate, and determine which is ultimately authoritative. While I cannot settle difficult questions about Plato's views across multiple dialogues (especially concerning the *Crito*, *Apology*, and *Republic*), it is worth addressing one important consideration from the *Statesman* to which the Athenian alludes in the *Laws*.

In the *Statesman*, the Eleatic Visitor makes clear that the only criterion of correctness of a constitution is whether the ruler has knowledge (292d2-8). This criterion is explicitly distinguished from rule in accordance with written laws (293a7). So while knowledgeable statesmen will make use of written laws, their action is right if it proceeds from their knowledge, not if it is accordance with the laws—even laws that they knowledgeable laid down (295c7-296a4). Thus, an action that is in fact illegal according to existing legislation is not always a wrong action.<sup>40</sup> Notably, though, the *Statesman* also suggests that in the absence of such a knowledgeable statesman 'the principle that no one in the city should dare to do anything contrary to the laws, and that the person who dares to do so should be punished by death and all the worst punishments...is very correct and fine as a second choice' (297e1-4, Rowe trans.). Whether anybody has more authority than the law, then, depends on how politically knowledgeable they are; if a person did meet such a standard, then they would be justified in acting contrary to the law even though such an action may not be justified for anybody else in that society. Thus, it would be a mistake to think that law is the *ultimate* political authority for Plato, even though it is a very important source of authority.

This view from the *Statesman* about the priority of knowledge is especially important given a parallel passage in the *Laws*. The Athenian Visitor makes explicit that, while human nature is prone to be corrupted by power,

If there were ever a member of the human race of satisfactory character, who by some divine allocation of talent was born with the capacity to assume such power, he would have no need of laws to rule over him, since no law or regulation is more powerful than knowledge, nor is it right for mind to be the servant or slave of anything; rather (if it is the real thing, and in its nature truly free) it should be the ruler over all things. *In reality, however—well, no such person exists, not in any place nor in any fashion, or only to a very limited degree. So we must opt for what is second-best: order and law.* (875c3-d4, emphasis mine)

Here the Athenian acknowledges that in the ideal case, a virtuous person with knowledge would have no need of laws, nor would it be right for law to rule over

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<sup>40</sup> The qualification 'illegal according to existing legislation' is important if Plato holds an early version of the Stoic view that what is in accordance with right reason is in accordance with law, as may be suggested by the *Minos* dialogue. I bracket this conception of law here, as I am interested in actual written laws of cities—not what we might call cosmic or natural law.

knowledge. But the lines that follow make it clear that the ideal almost never obtains and thus is not a relevant consideration for the administration of Magnesia.<sup>41</sup> We should be careful to distinguish, then, between Plato's unqualified ideals and the principles that he uses in applied political contexts, especially those labeled 'second-best'. Because the *Laws* has a practical aim, one that does not rely on there being such outstandingly virtuous and knowledgeable people, it is easy to see why Plato does not consider such people making legal changes in the day-to-day administration of Magnesia—even if in fact they would be justified in making such changes. The axiological priority of the knowledgeable statesman over law is crucial to emphasize in the *Statesman*, but it is an aside in the *Laws*.

Thus neither establishing the illegality of one person changing the law nor there being a general attitude against innovation in Magnesia entails that a virtuous and knowledgeable person should not change the law if they are able to and if such a change would be genuinely beneficial. However, in practice, a lot depends on how high the standard is to qualify as such a person. If Plato thinks these people are very few and far between, then even very good and intelligent people in Magnesia will not seek to change the law. Moreover, it is important to emphasize that the position I have been defending need not entail that one be *unthinking* about government, law, and political legitimacy. If Socrates is a model of Platonic lawfulness, then it might matter a great deal whether the people holding office, making laws, and giving orders are doing so legitimately. Magnesia may demand a high level of obedience from its citizens, but whether the same principles that obtain in Magnesia also obtain in other and more non-ideal states is very much an open question.

#### IV. Evolution and Decay in Platonic Politics

The conceptual space we have covered began with whether there are legal mechanisms for changing the law in Magnesia, and if so, who is given the authority to make such changes. Though many commentators claim that the Guardians of the Law are given this power, a close reading of the text shows that this is unlikely to be the case. More plausibly, the Guardians are given the responsibility to complete the lawcode, but not to change it—as the Athenian says, their job is to fill in the outline. Nonetheless, there is one mechanism for changing the law when it is necessitated or there is an emergency, but for the motion to be successful all of the offices must unanimously agree and the change is made unwillingly. Thus, legal changes in Magnesia will be extremely rare and difficult.

I then considered whether the lack of legal mechanisms for changing the law also suggests a hostile attitude towards innovation in Magnesia. While the citi-

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<sup>41</sup> We might rightly worry that if the laws of Magnesia are not produced by people with knowledge—either the Visitor himself or the office-holders—then the laws would be more in need of changing because of their inferior quality. Nonetheless, I think Plato's position in the *Laws* is that the laws proposed are *good enough* such that they will not frequently be in need of reform (recall 797d9-798b6) and that no knowledgeable statesman will arise such that they would be justified in reforming the constitution. Thanks to an anonymous referee for raising this important objection.

zens in general are discouraged from innovating, it is clear from the inclusion of the ambassadors and the Nocturnal Council that Plato is not opposed to all forms of innovation. It is in fact necessary for the preservation and civilization of the city that some citizens engage in a higher education and seek out advances that will be included in the education and governance of Magnesia. What we saw, though, was that it is important to distinguish between *legal* innovations and other kinds of innovation. Everything that the ambassadors and Nocturnal Council discover and propose for inclusion in Magnesia needs to be consistent with the goals and laws of the original lawgiver. While it is important that the law be grasped by more than mere habit, the greater understanding that the higher education of Magnesia provides is supposed to justify and preserve the original vision for the city, not to overturn it. Thus, the Nocturnal Council and ambassadors will suggest supplementations to the law, but they are not given the authority to change the law nor is seeking out legal revisions the object of their studies.

Finally, texts from both the *Statesman* and *Laws* suggest that when somebody is acting from knowledge or genuine political skill, they are not bound by the directives of existing law (even if the law was originally laid down from knowledge). This suggests that there is a more complex relationship between *right* action and *lawful* action in Plato. Further work needs to be done on determining this relationship across the Platonic corpus, but it is worth noting that in the *Laws*, the consideration that somebody with political knowledge might rightly change the laws seems not to be of practical concern nor does such a consideration find an institutional manifestation in Magnesia.

No doubt some readers will balk at just how conservative a position I have ascribed to Plato. But I began in the epigraph with Mill because he noticed something important about ancient political philosophy—something that I suspect is especially prominent in Plato—namely, that the task of politics is to establish something good and then to fight against its decay. Whether the problem of politics is ultimately about responding to the regular and predictable failures of humans, or whether it is ultimately about evolving to meet the new challenges of circumstance is a question not easily answered. What Mill points out in his discussion more generally, however, is that it is a mistake to think that the process of preserving good political order is inert, uncreative, or unreflective. Consider what he says in trying to show that conservative and progressivist values here are not as far apart as one might expect:

If there is anything certain in human affairs, it is that valuable acquisitions are only to be retained by the continuation of the same energies which gained them. Things left to take care of themselves inevitably decay. Those whom success induces to relax their habits of care and thoughtfulness, and their willingness to encounter disagreeables, seldom long retain their good fortune at its height. The mental attribute which seems exclusively dedicated to Progress, and is the culmination of the ten-

dencies to it, is Originality, or Invention. Yet this is no less necessary for Permanence; since, in the inevitable changes of human affairs, new inconveniences and dangers continually grow up, which must be encountered by new resources and contrivances, *in order to keep things going on even only as well as they did before*. Whatever qualities, therefore, in a government, tend to encourage activity, energy, courage, originality, are requisites of Permanence as well as of Progress.<sup>42</sup>

Mill's lesson for us here is that in order to preserve a political system, simply keeping it running well requires a great deal of energy, skill and, indeed, virtue. Thus we should not get the impression from Plato's insistence on preserving the law that Magnesia's citizens are mindless, brainwashed, or mechanical. Magnesians will be actively and creatively involved in improving their city in accordance with the goals of the original lawcode, and will fight in each generation against the regular and predictable causes of political decay with whatever resources they can muster.

Nonetheless, Mill also has a lesson for Plato, namely, that preservation might also require change. While the goals of the *Laws* may remain fixed, it may be that changing circumstance really does demand new means for achieving the same goals. Thus, keeping fixed the goals of the laws is not the same thing as keeping the laws fixed. But the extent to which Plato was right or wrong to think that to preserve his political goals meant preserving the original laws is a question worthy of serious consideration.<sup>43</sup>

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<sup>42</sup> *Considerations on Representative Government*, ch. 2, p. 194. Emphasis mine.

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