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## PLATO ON LEGISLATION: TWO HISTORICAL ASPECTS OF THE PROBLEM\*

*Abstract:* The author discusses Plato's patriotism and the rôle of the *patrios politeia* in his programme of Athenian reform. Both subjects are analyzed with reference to the facts of Plato's biography, principally his perception of the laws as a living but idealized paternal figure and his wish to influence Athens' *Realpolitik*.

The adjective "historical" is used here in a broad and perhaps untechnical meaning, close to that of "synchronical". I propose to point out two controversial elements in the complex of Plato's attitudes toward Athenian and Greek legislation. The diachronical<sup>1</sup> and purely philosophical dimensions of the phenomena involved will be put aside. I am interested in Plato as a fourth-century Athenian with aristocratic and Panhellenic leanings, who led a philosophical school with, it seems, pronounced ambitions to influence practical policy. The subjects to be discussed can be epitomized as, first, Plato's patriotism, and second, the rôle of the *patrios politeia* in his programme of Athenian reform. They are interconnected<sup>2</sup>, as the analysis to follow will hopefully demonstrate. The paper is dedicated to the memory of Professor Miroslav Marcovich, in token of the author's gratitude, affection, and admiration.

I. The imaginary dialogue between Socrates and the laws of Athens that closes the *Crito* (50 A ff.) gives the laws<sup>3</sup> the suggestive traits of a living creature. This is not a mere literary device of Plato's: the ancient Greeks in general tended to personify the laws and re-

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<sup>1</sup> K. R. Popper's criticism of what he calls Plato's 'paternal state' and 'patriotism' (*The Open Society and Its Enemies*, vol. I: *The Spell of Plato* [London 1977 (fifth ed.)] 44 ['change and rest'], 184 *et passim*) is, like Popper's critique of Plato in general, unhistorical and fails to consider the emotional aspect of the problem.

<sup>2</sup> As seen by Popper, among others.

<sup>3</sup> In the sequel, the term will be differentiated from the title of the last of Plato's writings, which will be referred to as *Leges*.

lated concepts, democracy<sup>4</sup> and *politeia*<sup>5</sup> for example. In that sphere, their inclination to personify abstractions variously reflected the facts of public life<sup>6</sup>. The choir of the *Laws* in Cratinus' comedy of the same name<sup>7</sup> must have well illustrated that tendency which, among the scholars of our day, has been overlooked or neglected too often. However, the difference between the ancient and modern mentalities as to animistic thinking about political issues should not be minimized. A comparison between the two mentalities shows, among other things, that the Greek notion of the law was pregnant with feelings which are not quite understandable any more. It is hazardous, in a historian's view, to look upon Plato's political philosophy as an exclusively intellectual problem, one completely solvable by modern man. To note an important implication of Plato's animistic perception of reality, the living laws were capable, and ready, to lead one in a morally beneficial direction, as Socrates' *Daimonion* and the Freudians' Superego are believed to have been; the classical laws did not embody a passive norm. It hardly needs to be added that Plato refused to admit the existence of indifferent gods<sup>8</sup>. And the emotional aspects of his theory of Forms may be emphasized – to be exact, his need to combine epistemological and moral aims through that complex doctrine. The Forms had, from the Scholarch's point of view, the attractive force of supreme patterns<sup>9</sup>.

The emotion which dominates in the remarkable conversation between Socrates and the Athenian laws is that uniting son to father. Modern Platonists, notably Ernst Barker and Ada Hentschke-Neschke<sup>10</sup>, have underlined this particular feature of the *Crito* more than once. (I leave aside the psychoanalysts' angle here<sup>11</sup>, as well as

<sup>4</sup> Frequently sculptured as a young woman.

<sup>5</sup> Cf. Isocr. *Areop.* 14 and *Panath.* 138: 'the soul of the state is its constitution'.

<sup>6</sup> Note e.g. the habit of the Athenians to erect statues of Demos in the public places of their city and Aristophanes' decision to introduce Demos' personification into the *Knights*.

<sup>7</sup> R. Kassel – C. Austin, *PCG* IV 186-192 frgs. 128-142 (with p. 269 frg. 274, persuasively attributed by Bergk to the same comedy). The editors cite Kaibel's summary of the play as a whole: 'certamen fuisse videtur inter antiqui et recentioris saeculi homines; Legum chorus patriae rei publicae instituta defendit'. Indeed, Solon seems to have spoken, or his name figured in, the parts of the play which have left frgs. 128 and 133-135; frg. 274 refers to Solon and Draco explicitly.

<sup>8</sup> *Leg.* X 885 B and 888 C, XII 948 C. Cf. *Rep.* II 365 D-E; *Parm.* 134 E.

<sup>9</sup> See e.g. *Symp.* 211 C.

<sup>10</sup> E. Barker, *Greek Political Theory. Plato and His Predecessors* (London 1960 [fifth ed.]) 140 ff.; A. B. Hentschke, *Politik und Philosophie bei Plato und Aristoteles* (Frankfurt 1971) 68 ff.

<sup>11</sup> Y. Brès, *La psychologie de Platon*, Paris 1973 (2<sup>nd</sup> ed.), 74 ff. 331 ff. et passim. *Rep.* VIII 549 C ff. may have reflected Plato's (? and Glaucon's, cf. 548 D) family experience: U. von Wilamowitz-Moellendorf, *Platon*, I, Berlin 1920 (2<sup>nd</sup> ed.), 434.

Plato's comments on the doublet *fatherland/motherland*<sup>12</sup>.) The laws of the city, in their own words (51 E), are both the parents and the guardians of every Athenian; obviously, they speak to Socrates in the tone of an idealized paternal figure. We are tempted to cite again the parallel of Socrates' sign, which some modern anthropologists define as Socrates' father's voice.

With regard to the animistic inspiration of the *Crito* passage, this emphasis on the 'family' aspect of the laws' authority is something more than a genealogical figure of speech<sup>13</sup> or the simple fruit of edifying intentions. We are entitled to suppose that the 'Socrates' of the *Crito* expresses Plato's own filial sentiments of love toward his native polis<sup>14</sup>, represented by its νόμοι καὶ πολιτεία<sup>15</sup>. Such sentiments were no rarity among people of his origin and social milieu<sup>16</sup> but, it is legitimate to assume, Plato's complex mind and exceptional pedigree gave them certain original features. An instructive parallel for the *Crito* 50 A ff. is found in the *Fifth Letter*, if it is admitted as genuine. There Plato explicitly compares his political duties to Athens – duties stemming from the reformer's ambition – with his personal obligations to his own parent<sup>17</sup>. Conversely, according to the metaphorical images from the *Republic*, the 'timarchical' men 'run away from the law as boys from a father' (VIII 548 B) and the evil character of the typical 'tyrant' makes him kill 'his old father and his elder brother' (X 615 C-D)<sup>18</sup>. Plato seems to have rationalized his Athenian and Greek patriotisms – so important in his attitude to the paternal laws – through the notion of philosophy, 'love of wisdom', which was both a prerequisite of good legislation and the mental privilege of his nation<sup>19</sup>.

Indeed, there is indirect evidence to reveal that Plato's legislative patriotism was, at the same time, intensive, coloured by 'family'

<sup>12</sup> *Rep.* IX 575 D, cf. *Menex.* 237 B f. et pass.; *Rep.* VIII 549 C ff.

<sup>13</sup> Like those in e.g. *Hipp. Mai.* 297 B (beauty); *Theait.* 155 D (Thaumas); *Symp.* 209 D (Solon).

<sup>14</sup> Not only Socrates', as taken by Popper (n. 1) 194 and 304 f. At least the 'Sparta and Crete' of 52 E point to Plato rather than Socrates.

<sup>15</sup> *Crito* 50: οἱ νόμοι καὶ τὸ κοινὸν τῆς πόλεως. The latter part of the phrase includes the notion of 'constitution' (thence H. Tredennick's translation 'the laws and constitution of Athens').

<sup>16</sup> Compare the etymological meaning of the term *eupatridai* and contrast Xen. *HG* II 3, 48 (Theramenes' speech, translated by C. L. Brownson [LCL]): '... the slaves and those who would sell the state for lack of a drachma'.

<sup>17</sup> 322 B; on *Ep.* VII 331 C see *infra*, note 20.

<sup>18</sup> From that point of view, Euthyphro's vice (cf. *Prot.* 346 A-B) is analogous (4 B-C).

<sup>19</sup> See e.g. *Symp.* 209 A ff. (love of perfect legislation), *Rep.* IV 435 E (philosophy in Greece), *Prot.* 337 D (the wisdom of Athens), and *Leges* I 642 C-D (the goodness of the educated Athenians).

feelings<sup>20</sup> and idealistic in its essence – structured around an idealized picture of Athens' past, to be precise. It was also pyramidal, so to speak, having at least three levels: Athenian, Ionian, and Panhellenic. All three, especially the first two, tend to be neglected by modern scholarship, though a number of isolated statements in Plato's writings are explicit enough on the point<sup>21</sup>. Two dialogues offer comprehensive testimonies to that effect, which are still more instructive. The *Charmides* combines, significantly, an aristocratic-political topic (*sophrosyne*), socially distinguished *dramatis personae* related to Plato (the participation of Critias and the references to Solon's memory are especially suggestive), and the symbolic introduction of Basile (153 A) as an Ionian personification of the royal art<sup>22</sup>.

In the *Timaeus-Critias* similar messages are conveyed, in the sign of Solon's and Critias' defence of the values of Athens' past. It is a characteristic detail that the Apaturia, the 'parents' festival', figure as a symbolic day-date at *Tim.* 21 B<sup>23</sup>. The same may be said of the rôle of Amynder, the fictitious eponym and symbol of the Amyndridae, at 21 C-D<sup>24</sup>. In both cases, the underlying pattern is that of a patrician *patrios politeia*.

The term 'ancestral constitution' was too technical and too widely exploited to be explicitly cited by Plato. Its content, however, permeates all his comments on constitutional matters. By its very name, the *patrios politeia* included and even stressed the fatherly ideal and corresponded, of course, with Solon's double figure of a perfect law-maker<sup>25</sup> and Perictione's ancestor. Solon's merits transcended the framework of Athens' history<sup>26</sup>; no wonder then that the *Timaeus-Critias* unites Plato's Athenian and Panhellenic patriotisms.

<sup>20</sup> Cf. *Ep.* VII 331 C (Hentschke [n. 10] 67 f.). For the moderns, the word 'patriotism' has lost most of its etymological content and emotional force.

<sup>21</sup> A brief list of relevant passages includes *Rep.* V 469 B ff. (Plato's Panhellenism), *Euthyd.* 302 C (Plato and the Ionians), as well as *Leg.* I 642 C and *Ep.* VII 336 D (Plato and Athens).

<sup>22</sup> With good reason, J. Burnet (*Greek Philosophy: Thales to Plato* [London 1914 (first ed.)] 169, cited by W. K. C. Guthrie, *A History of Greek Philosophy*, vol. IV: *Plato, the Man and His Dialogues. Earlier Period* [Cambridge 1975 (the first ed.)] 155) described the opening scene of the *Charmides* as a 'glorification' of Plato's family connections. S. Dušanić, *JHS* 119(1999) 1-16, esp. 3 and 10.

<sup>23</sup> Note *ibid.*: 'the poems of Solon' and *οἱ πατέρες*. On the cosmological level of the dialogue, in the famous passage at 37 C, Timaeus speaks of the God as 'the father and creator' of the universe.

<sup>24</sup> Cf. J. Toepfer, "Amyndros" (no. 1) and "Amyndridai", *RE* I(1894) 2003.

<sup>25</sup> *Symp.* 209 D: 'the father of Athenian law'. Cf. *Leg.* II 662 D-E: 'fathers and legislators'; *ib.* III 682 D-E: the destructive aggressiveness of the Neoi.

<sup>26</sup> *Phaedr.* 278 C. For Plato, Lycurgus, too, was a Panhellenic paternal figure (*Symp.* 209 D; *Leg.* III 691 E ff.). On Tyrtæus, 'an Athenian by birth, and a naturalized fellow citizen of our friend from Sparta', see *Leg.* I 628 A; on Epimenides, who also united the Attic and Dorian values, *ibid.* 642 D-E.

The hoplites of the pre-diluvial Athens, in Plato's eloquent formula, 'were at once guardians of their fellow citizens and freely followed leaders of the Hellenes at large'<sup>27</sup>. On the other hand, the principle of paternity presupposed that fathers and sons shared the qualities of thought, character and action; purely familial connections did not suffice<sup>28</sup>. The list of Plato's own paternal figures included, after Solon, Critias and Socrates himself. Even the Academy – like Socrates' circle before it – had something of a family in its structure; Speusippus owed his status of the School's head after 347 BC to his being Plato's nephew.

II. Bearing in mind Plato's respect for the Athenian laws *qua* an embodiment, or *the* embodiment, of the paternal principle, we are led to ask the question of what he thought of the Athenian constitution of his time. Though there was always the possibility of characterizing the existing laws as good and their implementation as bad (actually, this was the line of argument followed at the end of the *Crito*), he obviously held that a reform of the constitution of the contemporary Athens was both inevitable and necessary. In his opinion, the reform required measures of radical discontinuity – the lesson of the *Timaeus-Critias* seems to be: return to the *patrios politeia* ! This would present, for the author of the *Leges*, a legitimate 'change from what is bad'<sup>29</sup> – in other words, a change from 'the evil of public dissatisfaction with the ancient fashions'<sup>30</sup>. Otherwise, it is well known, Plato disapproved of radical reforms and 'innovation' as such. And the desirable change would have to be complete, embracing the entire community with its *mores* and *politeia*; Plato did not trust partial improvements of serious defects<sup>31</sup>. Now, what did the programme of the restoration of the *patrios politeia* mean for the writer of the *Leges*, perhaps the most instructive of dialogues in the *corpus Platonicum* dealing with the subject? Two aspects of the question will be briefly outlined in the sequel.

To begin with, Plato was well aware of the fact that certain ancestral laws – Cleisthenes', for example – had to be abandoned or modified. The Scholarch's realism in matters of politics and legisla-

<sup>27</sup> *Critias* 112 D. Cf. my papers in *Ant. class.* 51(1982) 25-52 and (L. Aigner Foresti – A. Barzanò – C. Bearzot – L. Prandi – G. Zecchini edd.) *Federazioni e federalismo nell' Europa antica* (Milano 1994) 87-106.

<sup>28</sup> Brès (n. 11) 75 ff.

<sup>29</sup> VII 797 D ff., cf. VI 770 E – 771 A (πόλις ἀνάστατος [S. Dušanić, *History and Politics in Plato's Laws* [in Serbian with an English summary; Belgrade 1990] 298 ff. 387]) and *Politic.* 296 A-E (on this last passage, A. Motte, *Ant. class.* 50, 1981, 573 f.).

<sup>30</sup> VII 797 D. Contrast e.g. 798 A ff.

<sup>31</sup> *Charm.* 156 B ff.

tion<sup>32</sup> did not allow him to contemplate the revival of a particular *patrios politeia* in all its elements. In the language of the Academy, the definitive selection and purification of the legislative heritage seems to have been called the ‘rebirth’ or ‘rejuvenation’ of the *patrios politeia*. The ‘(curative) fire’, evoked in a much-debated phrase at the close of the *Leges*<sup>33</sup>, is best interpreted as an allusion to the famous mythologems of Medea’s and Peliades’ rejuvenating old beings<sup>34</sup>. On the level of more serious religious thought, the programme of the rebirth of an improved *patrios politeia* will have been recommended by the teaching of the transmigration of souls<sup>35</sup>; the laws and the constitution, it is well known, were generally identified with the soul of the State<sup>36</sup>.

Second, the fundamentals of the constitution of the Magnetes’ city were borrowed from those sources which corresponded with the ideals of Plato’s Academy – let us term them patriotic sources. This meant, on the one hand, that they were borrowed from the best of the Athenian traditions; on the other, from the statesmen or philosophers-statesmen of Plato’s and his teachers’ ilk. Plato is more or less explicit in recommending the succession of three sources or three saviours as he terms them in his anthropocentric and religious per-

<sup>32</sup> G. R. Morrow, *Plato’s Cretan City. A Historical Interpretation of the Laws*, Princeton 1960, 564-572.

<sup>33</sup> XII 960 C 9 (the τῶ πύρι has been frequently emended, and the τῶν λεχθέντων, ἀπῆρασμένα τῆ omitted, without good reason and satisfactory results). cf. Dušanić (n. 28) 327 n. 340 and “Les *Lois* et les programmes athéniens de réforme constitutionnelle au milieu du I<sup>er</sup> siècle”, *Rev. fr. hist. id. pol.* vol. 16 (Paris, 2002) 344 with note 13). The phrase should be taken to mean: ‘That the first of them is Lachesis, the second Clotho, and Atropos the third saviour of the chosen’ (i.e., in the case of an individual or a state, chosen by ‘some divinity’ [III 691 D-E: *Politicus* 271 C]), ‘which’ (i.e. the etymology of Atropos’ name, cf. the προσρήματα of C 5) ‘expresses (the image of) the threads on a spindle that, through fire, give the quality of irreversibility’. – Atropos and the irreversibility of the destiny: *Rep.* X 620 E ff.

<sup>34</sup> Cf. *Euthyd.* 285 C: (Socrates speaks): ‘I am only an old man, so I am ready to run the risk, and I deliver to Dionysodorus here as if he were Medea of Colchis. Let him destroy me, boil me too if he likes, only let him turn me out good...’ (a popular parallel, implying the *patrios politeia* theme, in Aristophanes’ *Knights* 1321 ff. ). But the notion of the curative destruction recurs in Plato in other forms as well: *Leg.* VI 770 E (above, note 20), *Politic.* 293 B (doctor’s ‘knife or cautery or other painful treatment’), et al.

<sup>35</sup> Thence the author of the *Leges* uses the terms σωτήρ / σωτηρία in the contexts dealing with the fate of the Magnetes and their constitution. Dušanić (n. 28) 227 ff. (on *Leg.* XI 919 D and XII 946 B), 325 ff. Cf. the myth of the *Politicus* (270 D ff.), with its stress on ‘the resurrection of the dead’ and the capability of early humanity to rejuvenate itself. J. B. Skemp’s comment on 271 C justly points out the theme of the three-life cycle, and the influence of ‘the Orphic hope of deliverance from the “sorrowful, weary wheel” of becoming and of attainment of everlasting bliss as an immortal’ (in that connection, the commentator refers to the second Olympian victory-ode of Pindar among other parallels).

<sup>36</sup> T. J. Anderson, *Polis and Psyche* (Stockholm 1971; *non vidi*).

ception of things<sup>37</sup>. The Nomophylakes present an idealized Areopagus, whose foundation or the beginning of its political engagement was ascribed to Solon, according to a branch of Atthidography<sup>38</sup>; even the Dorian elements of the Magnetes' constitution were attributable to Solon's contacts with Epimenides the Cnossian<sup>39</sup>. The assembly of the Five Thousand imitates the régime of 411-410 BC<sup>40</sup>, which owed so much to Socrates' pupils Critias and Alcibiades; no wonder that the young tyrant of the Fourth Book has recognizable Alcibiadean features<sup>41</sup>. Plato's own school served as the model of the Nocturnal Council<sup>42</sup>; the Athenian does not hide his spiritual parentage of the Council whose future political rôle depends on the success of the Athenian's collaboration with practical politicians<sup>43</sup>. The name of Clinias – an allusion to Alcibiades, son and father of Clinias – reveals Plato's historical example of the successful joint activity of an experienced dialectician and a powerful *politikos*<sup>44</sup>. In the mid-fourth century, when the *Leges* was composed, Plato seems to have politically collaborated with Eubulus of Probalyntus, the most influential and perhaps least parochial and least corrupt of the leading Athenians of the moment<sup>45</sup>.

In conclusion, I should insist upon two points. (A) Plato's perception of the laws as a living but idealized paternal figure shows us that we must approach the problem of his attitude to the phenomena of constitutions with due attention paid to the peculiarities of historical context and the philosopher's psychological structure. This approach suggests, among other things, that he was both unwilling and

<sup>37</sup> XII 960 C, cf. III 692 A (of Sparta).

<sup>38</sup> Plut. *Sol.* 19, 2; cf. Arist. *AP* 8, 4. Morrow (n.31) 211 ff. et pass.; Dušanić (n. 28) 265 ff. 383 ff.

<sup>39</sup> Plut. *Sol.* 12, cf. *Leg.* I 642 D-E (note Plato's accent upon the merits of ancestors!) and III 677 D-E; *FGrHist* 70 (Ephorus) F 139 (Dušanić, *Epigraphica* 53, 1991, 1-32).

<sup>40</sup> J. Bisinger, *Der Agrarstaat in Platons Gesetzen*, Leipzig 1925 (the first ed.), 12-55; Dušanić (n. 28) 318 ff. 387 f.

<sup>41</sup> Dušanić, in: (Ch. J. Rowe ed.) *Reading the Statesman. Proceedings of the III Symposium Platonicum*, Sankt Augustin 1995, 337-346.

<sup>42</sup> Morrow (n. 31) 509 f.; Dušanić (n.28) 290 ff. 385 ff. Cf. M. Pièrart, *Platon et la Cité grecque. Théorie et la réalité dans la constitution des "Lois"*, Bruxelles 1974, 233 f.

<sup>43</sup> XII 968 A-B, 969 A-C. Note that the Council's membership includes the senior Nomophylakes and some other office-holders of Magnesia (XII 951 D-E, 961 A-C). Both Eubulus and Leosthenes of Cephale (Plato's candidate for the duty of the enlightened autocrat as portrayed in the Fourth Book of the *Leges*) had important connections with the Areopagus. Dušanić (n. 28) 286 ff. 384 f.; (n. 40) 341.

<sup>44</sup> Dušanić (n. 40) 338-341.

<sup>45</sup> G. L. Cawkwell, *JHS* 83(1963) 47-67; Dušanić, in: (P. Brulé – J. Oulhen edd.) *Hommages à Yvon Garlan* (Rennes 1997) 79 and 83 ff.

unable to study the laws *per se*, detached from their venerable versions which shaped Athens' past. At least, unlike the sophists and Aristotle, he refused to do that on the level of 'the third polity'<sup>46</sup>. (B) Plato's concentration upon the *patrios politeia* of his teachers and forefathers, if admitted as a historical fact, helps us to better understand certain institutions recommended in the last of his dialogues.

\* The translations cited in the present paper are by H. Tredennick (the *Crito*), W. H. D. Rouse (the *Euthydemus*), P. Shorey (the *Republic*), J. B. Skemp (the *Politicus*), and A. E. Taylor (the *Critias* and the *Leges*).

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<sup>46</sup> *Leg.* V 739 B-E. On the problem of Plato's 'third polity' see K. Schöpsdau, *RhM* 134(1991) 136-152; Dušanić (n. 28) 236 ff. 381.