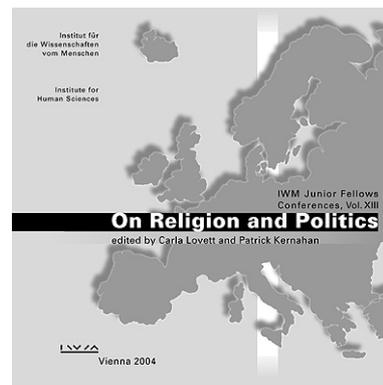


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## The Meaning of Law: Plato's Minos<sup>1</sup>

Patrick Kernahan

In a recent book devoted to the history of phenomenology, Dermot Moran argues that genuine phenomenology, conceived of as “a science of the essential structures of pure consciousness with its own distinctive method”, begins with the work of Edmund Husserl.<sup>2</sup> Husserl's concern was to create a science of pure consciousness, a science free of any psychological, scientific or metaphysical presuppositions, a science of appearances as appearances, as they appear to us, a *logos* [reasoning] about the *phainomena* [phenomena, appearances] of human experience. As is well known, Husserl's insights were subsequently radicalized and historicized by Martin Heidegger in *Being and Time* and other works. For Heidegger, “[p]hilosophy is in large part the work of tracing back to the original emergence of insights which determine the course of subsequent cultural development.”<sup>3</sup> This is the meaning of Heidegger's “destruction of the history of philosophy”:

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<sup>1</sup> This essay has benefitted throughout from the following treatments of the *Minos*: L. Strauss's “On the *Minos*” and chapter 2 of C. Bruell's book *On the Socratic Education*.

<sup>2</sup> See Moran's *Introduction to Phenomenology*, p. 60.

<sup>3</sup> Moran, p. 196.

*If the question of Being is to have its own history made transparent, then this hardened [philosophical] tradition must be loosened up, and the concealments which it has brought about must be dissolved. We understand this task as one in which by taking the question of Being as our clue, we are to destroy the traditional content of ancient ontology until we arrive at those primordial experiences in which we achieved our first ways of determining the nature of Being – the ways which have guided us ever since.*<sup>4</sup>

Now, my purpose in this paper is not to provide a complete account of the relationship between the phenomenological movement and Plato. Rather, I hope that this short discussion will help to make my approach to Plato's dialogues intelligible to an audience with some familiarity with the twentieth-century phenomenological tradition. Essentially, I take the view that Plato's dialogues, at least in their treatment of political and ethical matters, are best viewed as presentations of what one could call "moral phenomenology". That is, Plato is concerned above all in his presentations of moral and political matters with a rigorously accurate or "scientific" (in the original meaning of the term) presentation of the essential structures of morality and our moral life, a presentation that – like Husserlian phenomenology – is supposed to be free from any psychological, scientific or metaphysical presuppositions. Plato wants to present moral and political life as it appears to those engaged in moral and political life, without any "a prioris", he wants to "engage" with moral life as moral life. So I want to try to present a portrait of a Plato who is rather different from the usual dogmatic metaphysician, whose answers to any moral question that might arise are already determined by his metaphysical "system".

At this point someone could object that, unlike, say, historians who present political life "directly", or dramatists and novelists who present moral life "directly", Plato presents us with "philosophical" discussions, discussions that are already at a certain remove from practical moral life. My first answer to this objection is that the dialogues themselves are dramas, that is, the dialogues themselves show – at a rather "low key" level – people engaged in moral actions. Characters in the dialogues get angry, they change their minds, they try to conceal embarrassing features about themselves, and they do many, many more things familiar to us from our "everyday" moral lives. So the dialogues themselves are a kind of phenomenological drama, and in order to understand them it is crucial that we pay attention to their

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<sup>4</sup> *Being and Time*, trans. Macquarrie and Robinson, p. 44 (p. 22 in the original German).

dramatic details. And by paying attention to the dramatic form of the dialogues we are led to see a crucial way in which Plato's phenomenological "method" differs from that of Husserl and Heidegger. As the Heidegger passage which I quoted above makes clear, both Husserl and Heidegger ultimately have the goal of accurately or scientifically describing Being, reality, that which "objectively" exists, "nature". Husserl's approach to Being is through an attempt to articulate the structures of pure consciousness. Heidegger engages in a "destruction of the history of ontology" in order to get back to those "primordial experiences in which we achieved our first ways of determining the nature of Being". Plato clearly shares this goal of articulating Being to the extent that it is possible for human beings to do so,<sup>5</sup> but differs as to method, especially as to the correct method of approaching the "moral beings".

We can begin to understand Plato's "method" by looking at two separate remarks which Socrates makes in the course of the *Minos*. The dialogue is devoted to the question, "What is law?" (313a1). In the course of the conversation, Socrates gives only one definition of law: "The law [*ho nomos*] ... wishes [*bouletai*] to be the discovery of what is [or "of being", *tou ontos*]" (315a2-3). This definition is apt to strike us as extremely strange. I think most of us more or less take for granted – or, if pressed to defend our moral principles, reflexively fall back upon – a view that can be described, broadly, as "legal positivism", the view that laws have no "independent" existence or "independent" truth, that they are essentially the arbitrary decrees of some more or less conscious mixture of deliberate political decision, tradition, and chance. (This is the position of Socrates' interlocutor in the dialogue, as we will see. Ultimately I think it is rooted in the contention of modern natural science that we can have knowledge of facts, but not of values, although many people who hold this position of course try to defend it on other grounds). How can "law", say the law against crossing the street when the light is red, "want" to be a discovery of being? Socrates' contention begins to make more sense if we look at the Greek word which I have translated as "law", *nomos*. *Nomos* means more than just a written, specific law in our sense; it means something like the principles and customs which guide the whole way of life of a community, including specific commands and prohibitions, of course, but also including accounts of the nature of things and justifications of the law itself. The modern equivalent might almost be something like

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<sup>5</sup> Heidegger recognizes this. See the quotations from the *Sophist* which he uses at the beginning of *Being and Time*, pp. 19, 21 (1 and 2 in the German). Compare Xenophon, *Memorabilia*, 4.6.1: Socrates "never ceased examining with his companions what each of the beings is."

“Worldview” (*Weltanschauung*), except that this is a morally neutral term, implying that we stand “above” the worldview in some way, whereas the *nomos*, for its’ adherent, is something believed in as somehow true. A much closer analogy is the meaning that the Law has in the Jewish and Muslim traditions: more than just a series of commands and prohibitions, rather a whole way of life, indeed the *right* way of life, the *righteous* way of life.

So Socrates means something like: *Weltanschauungen*, including the moral and ethical principles contained within them, are believed in by their adherents as true, a relatively uncontroversial statement. But this seems to mean that one who wishes to discover the truth has to *engage* with these worldviews, to take seriously their claims to truth, including their claims to have the true morality. This is perhaps more difficult in our time, when claims to possess the “true morality” are more or less dismissed. Presumably Socrates would try to show such “dismissers” that they do, in fact, adhere to a morality as true, that they inevitably somehow want their morality to be true, to be real. To return to a previous example: most of us would regard an attempt to defend a law prohibiting crossing the street against a red light as a “true” law as absurd. However, not so many of us, perhaps, would be willing to dismiss “laws” (in the broad sense of the term) that we consider truly fundamental, say respect for basic human rights, as “merely” our opinions. (The aftermath of the September 11 attacks has raised this question in interesting ways.) And it is also rather strange, if we try argue that respect for basic human rights is just “our opinion”, that we become angry at people who try to present as factual opinions that seem to undermine our belief in the truth of human rights.

So Socrates’ “method” is to somehow “engage” with various political and moral points of view to try to discover whether they are true or what in them is true. But how does he do this, exactly? Here I want to introduce the promised second Socratic remark from the *Minos*. In reply to Socrates’ contention that law wishes to be the discovery of what is, Socrates’ interlocutor launches into a speech detailing the various different laws that are held in different places, and arguing from this that there is no “true” law. Socrates replies to this speech as follows:

*It's no wonder, best of men, if what you say is correct, and this has escaped my notice. But so long as you tell how things seem to you by speaking in your own manner, with lengthy speech, and I in turn do so, we will never get together on anything, I believe. If, on the other hand, the investigation is set forth as a common (koine) one, perhaps we would come to agree. So, if you wish, investigate in common with me by asking me something; or, if you wish, do the answering. (315d-e).*

Socrates' demand for "short speeches" recurs repeatedly in the Platonic corpus: Socrates always wants to converse, to engage in a dialogue (*dialegesthai*), rather in than long speeches.<sup>6</sup> To judge by this passage from the *Minos*, the crucial advantage of dialogue is that it allows the investigation to become a truly common (*koine*) one. Through dialogue one can truly come to see how a matter presents itself to the other person, whereas "long speeches" are necessarily more like "paintings", one-dimensional, not properly "fleshed out".<sup>7</sup> But how exactly does this "work" to produce truth? Xenophon reports that Socrates said that "conversing (*dialegesthai*) was named from the collective deliberation of those who come together and separate (*dialegein*) the things (*ta pragmata*) according to class". Xenophon adds, however, that Socratic dialectic was twofold. If somebody contradicted Socrates in something, Socrates "would bring the entire argument back to its hypothesis" by asking a "what is..." question about the matter under discussion, and "in this manner the truth became visible even to the contradictors themselves". If, on the other hand, Socrates himself initiated a conversation, then he would "proceed via what was most agreed upon" and thus produce "by far the most agreement in his listeners."<sup>8</sup> So Socratic dialectic was twofold: it could be used in either an investigative capacity (by asking "what is...") or in a rhetorical capacity (by proceeding through agreed upon opinions). This account of Xenophon's agrees with what Plato has his Socrates tell us about the origins of his dialogical investigations in the *Apology of Socrates*. After being told by the Delphic oracle that he was the wisest man alive, Socrates began to engage in dialogues both to investigate the meaning of wisdom and the extent to which he possessed it (the investigative use of dialectic) and in order to exhort his fellow citizens to virtue.<sup>9</sup>

So we can see that in Plato's presentation "Socratic Moral Phenomenology" has the following character: it aims to produce truth, or to accurately describe our moral experience, through the asking of "what is..." questions, which allows the two interlocutors to accurately and precisely "separate (*dialegein*) the things (*ta pragmata*) according to class". The core of Socratic dialectic is thus a certain "strictness regarding what is and what is not knowledge." This strictness allows Socrates

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<sup>6</sup> *Gorgias* 449b-c, 471d-472d, *Symposium* 198a-199b; cf. *Republic* 344dff.

<sup>7</sup> Cf. *Republic* 344d, 361d. Sometimes Socrates declares himself "compelled" to engage in long speeches by the defects of his interlocutor. Cf. *Gorgias* 519d-e and my discussion of the twofold nature of Socratic dialectic in the next paragraph.

<sup>8</sup> See *Memorabilia* 4.5.12, 4.6.13-15.

<sup>9</sup> *Apology of Socrates* 20e-23c, 29c-30c.

to be aware of his own ignorance, to remedy that ignorance where possible, and to be aware of the potential for coming to genuine agreement with others who are *not* yet as strict as Socrates in their view of what constitutes knowledge (and are thus at least potentially open to having their opinions “purified”).<sup>10</sup> But Socratic dialectic also has a secondary, rhetorical, exhortative function that we can expect to find “in play” in any given Platonic presentation; the job of the interpreter of the Platonic dialogue is to separate out these two elements.

The Socratic method of proceeding obviously presupposes the “validity” of what Hegel calls the “natural consciousness”.<sup>11</sup> Or, as Socrates puts it in the *Gorgias*, “[I]f human beings did not have some feeling [or “experience”, *pathos*] that was the same – some having one and others another – but if some one of us suffered some private feeling [*pathos*] different from what the others feel, it would not be too easy to point out one’s affection [*pathema*] to the other.”<sup>12</sup> How does Plato claim that his moral phenomenology overcomes the inevitable “subjectivity” problem, the view that whatever two people may happen to agree upon, this has no “universal” validity? A preliminary answer to this question would be that we have no other “starting point” than the “natural consciousness”: if Socrates were confronted by a person who denies the existence of a “natural moral consciousness”, Socrates would try to show, dialectically, that the objector, “despite himself”, in fact adhered to some form of

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<sup>10</sup> C. Bruell, “Strauss on Xenophon’s Socrates”, p. 308. How much “optimism” this implies in Socrates’ view of the amount of knowledge humans are able to attain is suggested by an earlier remark of Bruell’s on the *Oeconomicus*: “[W]hereas Ischomachus [the “gentleman”] separates his possessions according to kinds in order to bring each of those kinds to its proper place, a place established in accordance with the hierarchy of his needs or with his purpose, Socrates can see no more order in the whole than its articulation into kinds or classes of things” (p. 286). Compare Plato’s *Apology*, 22e-23a: “This is the examination, men of Athens, from which I have incurred many hatreds, the sort that are harshest and gravest, so that many slanders have arisen from them, and I got this name of being “wise”. For those present on each occasion suppose that I myself am wise in the things concerning which I refute someone else, whereas it is probable, men, that really the god is wise, and that in this oracle he is saying that human wisdom is worth little or nothing.”

<sup>11</sup> Compare the following passage from the *Phenomenology of Spirit*, tr. J. B. Baillie, p. 94: “The manner of study in ancient times is distinct from that of modern times, in that the former consisted in the veritable training and perfecting of the natural consciousness. Trying its powers at each point of its life severally, and philosophizing about everything it came across, the natural consciousness transformed itself into a universality of abstract understanding which was active in every manner and in every respect. In modern times, however, the individual finds the abstract form ready made.”

<sup>12</sup> 481c-d.

the “natural moral consciousness”, that it is the inevitable “starting point.”<sup>13</sup> To flesh this out a bit more, I propose to turn more directly to an example of Plato’s moral phenomenology, that contained within the *Minos*.

The *Minos* begins with a Socratic question: “What is law, for us?” or “What is law, among us?” (313a). (The Greek is ambiguous.) The dialogue is very “sparse”: there are few dramatic details, and of the interlocutor, we know only that he is an Athenian (cf. 320e7). While the dialogue begins with a “what is” question, it is far from clear that the dialogue is “investigative” rather than rhetorical. This is because while the interlocutor starts out from the view that law (*nomos*) is “the things that are lawfully accepted (*ta nomizomena*)”, Socrates spends a considerable portion of the dialogue exhorting him to believe that “law is discovery of what is” (315), an exhortation that is highly rhetorical in nature, and culminates in the praise of the semi-mythical Cretan king Minos as a divine lawgiver. It is perhaps safest to assume, then, that – as with most Platonic dialogues – the two goals (investigation and exhortation) are somehow mixed.

So Socrates begins with a “phenomenological” question. “We” know that law is *something* – after all “we” and all human beings think about or refer to *something* that is recognizable as law (or at least *nomos* in the broader sense of the term) every day. We at the Institute for the Human Sciences, for example, all have a set of “IWM House Rules” on the backs of our office doors, which we more or less obey every day. So law is *something*, some aspect of our experience... but *what?* This is a little harder to specify. The comrade asks Socrates what sort of laws he has in mind. (Already we see the position which the comrade later expresses that law is nearly infinitely variable, or that radically different prescriptions or commands all fit within the class “law” (315b-d). Socrates expresses surprise. Doesn’t the term “law” correspond to some *one* fixed “category” in our experience? He cites two examples drawn from physical perception: gold and stone. It’s true, there are different kinds of gold (24 karat, 14 karat, gold-silver mixtures, etc.) and different kinds of rocks (granite, shale, quartz...) but we somehow “recognize” the “goldness” of a particular example of gold, the “rockness” of a particular piece of rock without too much difficulty. Explaining *how* we recognize “goldness” and “rockness” is of course another matter, a problem still hotly disputed today – but the recognition itself is something “easy”, something that children can quite easily be taught to do, if the process is not simply natural. So, on the basis of this physical analogy, Socrates concludes that all laws

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<sup>13</sup> Cf. L. Strauss, *What Is Political Philosophy*, p. 75.

“are” somehow “law to the same degree” (313b). The analogy from the physical world (gold, rock) to something that seems to exist primarily “in *logos* (“speech”)” is important.<sup>14</sup> For Xenophon relates that Socrates came to his investigation of the moral-political phenomena after a prior investigation that divided up the physical or perceptual world into “categories” on the basis of “what is...” questions. At some point Socrates decided to investigate the “category” of beauty or nobility (*to kalon*) within the human realm. He quickly learned what the good “works” or physical products of the craftsmen were. But then he wanted to try to meet someone with a beautiful soul, a “gentleman”, a morally serious and morally admirable person. Quickly learning that the most physically beautiful people are not necessarily the most “gentlemanly”, he decided to approach people who were *reputed* to be “gentlemen”, and his investigation of these people marked the beginning of the so-called Socratic turn from the investigation of physical nature to the investigation of moral-political matters.<sup>15</sup> In a way, Socrates’ rather dubious analogies in the *Minos* from the physical or perceptible world to the moral-political world, the world of law, replicate this process. Or rather, they show that precisely if one abandons or postpones the attempt to find the possibly unknowable “first principles” of nature in favor of a turn to “phenomenology”, to an investigation of the world as it appears to our consciousness, to asking “what is...” about the “elements” of our consciousness, one is eventually led to recognize the radical heterogeneity of our experience, the fact that the moral-political entities (like law, gentleman, etc.) which exist at least *primarily* in speech have to be carefully distinguished from other physical, perceptible entities.

But once we recognize that law, for example, exists primarily in speech, there is an immediate temptation to deny that it is “really” anything at all, to reduce it to the status of mere opinion.<sup>16</sup> This is what the companion wants to do, or fears he has to do, and this is what Socrates wants to resist. At least the companion now de-

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<sup>14</sup> To say that something exists primarily in speech is not to say that it doesn’t exist at all, given the wide meaning of *logos* in Greek. As Heidegger notes: “In Plato and Aristotle the concept of the *logos* has many competing significations.... *Logos* as “discourse” means rather the same as *deloun*: to make manifest what one is “talking about” in one’s discourse.... The *logos* lets something be seen (*phainesthai*), namely, what the discourse is about....” *Being and Time*, pp. 55-56 (32 in the German).

<sup>15</sup> See Xenophon, *Oeconomicus*, 6.12-17. Compare Plato, *Apology*, 20eff, also an account of the “Socratic turn”, where, after being informed by the Delphic oracle that no one was wiser than he, Socrates turns to “investigating” those reputed to be wise (21bc). For the idea of the “gentleman” as the possessor of a “beautiful soul”, and this as a link to “law”, cf. *Minos* 318a.

<sup>16</sup> I emphasize again that this denial is *not* “necessary”; cf. note 14 above.

defines law (*nomos*) as follows: “the things that are lawfully accepted (*ta nomizomena*)” (313b). There is a word play in the Greek here that is hard to translate into English: the law is those things which are held to be lawful, accepted as lawful. In other words, laws are only laws because some group of people *thinks* that they are laws, or *accepts* them as laws. Taking advantage of the relationship of the two Greek words *nomos* (law) and *ta nomizomena* (the lawfully accepted), Socrates asks if the same things applies to other entities within our experience. Is speech or reasoning (*logos*) the same things as “the things that are spoken” (*ta legomena*)? Is sight the same thing as the things that we see? Is hearing the same as the things that are heard? (313b-c). In the case of sight and hearing the answer seems obviously to be “no”: we have a “faculty” within us that allows us to see or hear, and this faculty is not identical with *what* we see or hear, with the “object” of our perception. *Logos* or reasoning is different, because it is not simply a faculty that allows for perception of things outside of us, but rather both “interpret” different kinds of perceptions (different sights, sounds, etc.) and *also* produces perceptible phenomena on its own, by “expressing” its’ reasoning through speaking, writing, acting, etc. In all three cases (speech, sight, hearing), however, the “faculty” seems clearly to be different from its “objects”. Socrates next takes up the two faculties of physical perception (sight and hearing), and defines them with relative ease: sight shows matters (*pragmata*) through the eyes, and hearing shows matters (*pragmata*) through the ears (313c-314a). Is there some analagous faculty that simply “shows” use the law, with the same “self-evidence” as sight shows us the things seen and hearing shows us the things heard. It doesn’t seem so. It is open to the companion to identify the law with the third faculty, reasoning or *logos*, but he does not take this step, despite Socrates’ encouraging him to do so with the example of the arts, which “discover” their objects through the use of reasoning about perceptions (314a-b). (A smith, for example, learns by the use of his reason that if he hammers iron in a certain way, it will have a certain desirable or undesirable result). That is, Socrates is already pointing towards the view (which he will express later in the dialogue) that law is simply the principles of the art of arts, the kingly art, the art of living correctly, or that true law is identical with (practical) reason.

The companion is still far too impressed with the variability of law, however, to identify it with “universal” or “fixed” reason. He gives his second definition of law: law is “these official opinions and decrees passed by votes”, or taken as a whole it is “the official opinion of the city”, or, as Socrates immediately puts it, it is “political opinion” (314c). Now, opinion has an ambiguous relationship to reason: opinion *can* be “rational” or in conformity with reason, but it can also be false. From our

“phenomenological” perspective, we could be led to some pretty deep waters by the introduction of the idea of falsehood: how is false opinion, false appearance even *possible*, especially if we assume that from the “natural consciousness” we can somehow reach “the truth”?<sup>17</sup> More relevant for our immediate purpose, however, is that the companion once again reveals himself as (what we would call) a *half-hearted* relativist. For when Socrates asks “You says some are wise?”, i.e. you accept the fact that there is such a thing as a wise person, the companion immediately replies “yes” without any further ado. Whereas a contemporary relativist would probably dig in his or her heels at this point, and deny that there is such a thing as a “wise” person in moral-political matters. To a certain extent Socrates can even be said to share this opinion,<sup>18</sup> but, to repeat, confronted with a contemporary relativist he would most likely try to show that this person in fact cannot help but accept some people’s opinions as better than others’. The companion, on the other hand, seems to be a person who “naturally” wants to accept the authority of the law, but whose faith or trust in the law has been weakened by exposure to the simplest form of argument against this authority, namely the fact that different societies have radically different laws (315b-c).<sup>19</sup> The limited nature of the companion’s relativism emerges clearly in the sequel to his acceptance of the existence of wise men: he goes on to accept without any argument that, “justice and law [are] most noble”, that the law “saves cities and *everything else*”<sup>20</sup>, and that one thus “ought to think about law as being something noble and seek it as good.” The companion accepts the goodness and even the bindingness of law; he is just “troubled” about its apparent lack of grounding. This has to be contrasted with the position of Thrasymachus in the *Republic*: Thrasymachus, like the companion, accepts that there are wise men, and that genuine knowledge of the good is possible for human beings; he simply denies that justice or law is one of the good things.<sup>21</sup> The “modern” position, that goodness too is relative or a matter of belief, is briefly represented in the *Republic* by Cleitophon.<sup>22</sup>

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<sup>17</sup> Cf. note 11 above.

<sup>18</sup> Cf. Plato, *Apology of Socrates*, 22e-23b.

<sup>19</sup> Cf. *Minos* 316b-c: “Thus, Socrates, as you say, the same things come to sight as legal, both for us at all times and for the others. But when I reflect that we never stop changing the laws, this way and that, I can’t be persuaded.”

<sup>20</sup> My emphasis on the “everything else”: Thrasymachus, for example, could accept that well-written laws save or benefit cities, but he would not accept that they save or benefit “everything else”.

<sup>21</sup> *Republic* 348b-349a.

<sup>22</sup> 340b.

Socrates is quickly able to exploit the half-hearted nature of the companion's legal relativism with the following argument: if law is something good, and the official opinions of the city are sometimes good and sometimes bad, then law cannot be identified simply with the official opinion of the city (314e). Rather, law is "worthy opinion", which the companion immediately agrees to identify with "true opinion" (314e). On the basis of the companion's further agreement that "true opinion<sup>23</sup> [is] the discovery of what is", Socrates offers the only definition of law which he provides in the dialogue: "Law... wishes to be (*bouletai einai*) the discovery of what is" (315a). As translator Thomas Pangle notes, the phrase *bouletai einai* has a colloquial meaning of "tends to be", but Socrates also means to bring out the literal meaning of "wishes to be". To a certain extent, this "personifies" the law, or makes the law into a "moral agent" of some kind. One might compare in this regard the *Crito*, where Socrates makes "the laws and the community of the city... come and stand before us" and argue with "us" (50aff). I think this passage from the *Crito* helps to make Socrates' "personification" of the law in the *Minos* intelligible: since the law is, or tends to be, the collective opinion of the city, the law can be said to speak for the city, or to speak in the city's name. And from this point of view, the contention that law "wishes to be the discovery of what is" is not so unintelligible: the political community as political community can't help but want its opinions to be true, because it recognizes that somehow their "truth" is a condition of their being genuinely binding upon us. In other words, Plato seems to assert that individual "intellectuals" may argue and even believe that their most cherished opinions about justice and morality are "just their opinion"; political communities as political communities do not, and laws as "spokesmen" for political communities do not.

Socrates says merely that law "wishes to be the discovery of what is": the comrade misunderstands him and takes him to be asserting that law as such *is* "the discovery of what it" (315a). This is a significant "slip", since it shows that the companion shares, or wants to share, the perspective of "the city" about the truth of law – but, as is immediately revealed, he is troubled by the fact of law's manifest variability (315b-d). Socrates then makes the appeal for the use of short speeches which I discussed above – a standard which he himself will violate in the sequel.<sup>24</sup> In my opinion the passage from Socrates' "definition" of law at 315a to his appeal for a dialogical method of joint investigation at 315d-e (and including the comrade's most

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<sup>23</sup> 315a1 is mistranslated in the Pangle translation: for "Isn't the true the discovery of what is?" substitute "Isn't true *opinion* the discovery of what is?"

<sup>24</sup> Cf. note 7 above.

extensive statement of the cause of his difficulties or doubts at 315b-d) marks the turning point of the dialogue. Prior to this passage, Socrates' dialectic is somewhat "investigative": he is trying to discover exactly what the comrade thinks law is (albeit probably already with the purpose in mind of eventually "curing" the comrade of his doubts about the law); after this passage, the dialectic is almost exclusively rhetorical, or exhortative, designed to restore the comrade's lost faith in the law.<sup>25</sup> Despite the overtly "exhortative" character of the last two-thirds of the dialogue, however, flashes of "investigative" truths do manage to peek through, above all if we pay attention as to why Socrates' statements about law (a kind of opinion, remember) are convincing to, or become the opinion of, the comrade. The last two thirds of the dialogue can be divided into three sections.<sup>26</sup>

In the first of these sections, 315e-316c, Socrates gets the comrade to agree that "the noble things... are everywhere lawfully accepted (*nomizetai*) as noble and the shameful things as shameful, but not the shameful things as noble or the noble things as shameful" (316b). The comrade takes Socrates to mean that "the same things come to sight as legal, both for us at all times and for the others", and, mentioning the variability of Athenian laws and presumably thinking of the variability of law from city to city, the comrade concludes that he "can't be persuaded" by the argument (316c). Socrates replies: "Perhaps [this is] because you do not reflect that these things, being moved as draught pieces, remain the same", and moves on to the next argument. But this statement of Socrates provides a very important indication of Plato's method of "overcoming" relativism, one that Socrates apparently does not think the comrade can appreciate, to judge by the fact that the philosopher immediately moves on to the next argument.<sup>27</sup> The idea that the moral "concepts" are like draught pieces, moveable within certain defined limits, but fundamentally contained within a certain "structure" (presumably ultimately a "structure" of human moral consciousness) is a very powerful one. Let's look again at Socrates statement at 316b: "[T]he noble things... are everywhere lawfully accepted (*nomizetai*) as noble and the shameful things as shameful, but not the shameful things as noble or the noble things as shameful." This statement can be understood differently from the interpretation the comrade puts on it, as meaning only that everywhere one finds

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<sup>25</sup> For the distinction between "investigative" and "rhetorical" dialectic, see pp. 6-7 above.

<sup>26</sup> For this division, see C. Bruell, *On the Socratic Education*, pp. 10-12.

<sup>27</sup> The reason for this may be that the comrade, in Socrates' judgement, "needs" not an abstract account of the "structure" of all law, but an actual "living" belief in some fairly conventional existing law. Compare the discussions of the second and third sections below.

human beings who hold laws, one finds that the laws define certain things as noble, and certain things as shameful. It is true that different law codes define different things as noble and shameful, but one never finds a law that says *x* is both shameful and noble.<sup>28</sup> While the *content* of the ideas “noble” and “shameful” is variable (within certain limits, as the draught board analogy implies), the *ideas themselves*, and the “states of soul” that perceive these ideas are universal. Human moral life has a certain “structure”, within which, of course, there are many disagreements. But because the disagreements occur on the basis of more fundamental common experiences (e.g. the experience of the noble as noble, of the shameful as shameful) the questions “what is *truly* noble” or “what is *truly* shameful” (and thus what are the true moral laws) make sense to all human beings (or at least all human beings of a certain level of moral development), and can (potentially at least) be “dialectically” investigated.<sup>29</sup>

Be this as it may, Socrates quickly moves on to the second section (316c-318a). Based on the comrade’s earlier acknowledgement of the existence of people who are (genuinely) wise (in political and moral matters) (314c), Socrates now argues from the analogy of writings and “laws” or rules in the arts (medicine, gardening and cuisine) that the writings of possessors of the true political art, “those who have knowledge of how to rule a city”, “the statesmen and kings” (317a) constitute the laws. This permits us to make a clear distinction between true law and pseudo-law: “[W]hat is correct is kingly law, while what is not correct – what seems to be law to those who don’t know – is not [law]” (317c). The section concludes with Socrates arguing on the basis of the fact that “the laws of the shepherd are best for the sheep” and “those of the cowherd for the cattle” that the laws of “the king” are “best for the souls of humans” (318a). This argument is problematic. For, as Thrasymachus indicates, it is very possible that “shepherds or cowherds consider the good of the sheep or cows and fatten them looking to [nothing] other than their masters’ good and their own”;<sup>30</sup> it is not necessarily true that even “good” shepherds or “good” cowherds prefer the good of their livestock to their own good. But objections of this kind can be disposed of with the reply that whatever may be the case with shep-

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<sup>28</sup> Or more precisely, if such a discrepancy is discovered, the genuine adherent of a particular law will attempt to remedy it.

<sup>29</sup> Think of the allegory of the Cave in this regard: “the Cave” is a “generic” political community; *all* political communities as such have this structure; in *all* cities certain opinion leaders deceive by means of artifacts, and so forth. *Republic* 514aff.

<sup>30</sup> *Republic* 343bf.

herds and cowherds, benefitting the ruled is a necessary part of the “job description” of a ruler of human beings. Because law necessarily praises certain things as noble, and blames certain other things as shameful (316b), it necessarily has a concern with “those things in [the soul] in which good and base inhere” (321d). It thus follows that law’s most basic concern is with the “souls of humans”, and that the best laws are those that are best “for the souls of humans” (318a). Or, as Socrates puts it in the *Gorgias*, “The soul’s arrangements and orderings... have (in my opinion) the name “the lawful” and “law,” whence they become both lawful and orderly; and these things are justice and moderation”.<sup>31</sup>

The second section thus leads to a very familiar Platonic doctrine, namely wisdom or knowledge of the good, of how to genuinely benefit others, as the sole legitimate title to rule. In the *Statesman*, however, the preferability of the absolute rule of “the king with intelligence” is defended by the Stranger on the grounds of the necessary imprecision of law. “[T]he law strains pretty nearly with all its might for [the best and most just], as if it were some self-willing and foolish human being who allows no-one to do anything contrary to his own order or even for anyone to ask a question, not even if it turns out that, after all, something new is better for someone contrary to the speech which he himself enjoined”.<sup>32</sup> In the context of the *Minos*, however, the perfect ruler is the very source of the laws, perhaps as a kind of second best to the absolute rule of the wise. The third section of exhortation (318b-321d) is thus an extended attempt by Socrates to prove that the true laws given by the true ruler are no mere flight of fancy but were once actual in the legislation of Minos. Now, as Bruell notes, *the* theme of the extended discussion of Minos is Minos’ alleged harshness. It seems that even the best legislator will necessarily encounter resistance to his laws, and thus be forced to punish or to be harsh, in the first place because laws necessarily have a burdensome character. But precisely for people who take morality seriously, this very burdensomeness can be recognized as a good, and thus the laws can be seen as good for the soul.<sup>33</sup>

This dual character of law as somehow both burdensome and beneficial to our souls emerges clearly in the *Minos*’s companion dialogue, the *Hipparchus*.<sup>34</sup> There

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<sup>31</sup> 504d.

<sup>32</sup> 294a-c.

<sup>33</sup> Bruell, *On the Socratic Education*, pp. 14-15.

<sup>34</sup> For defenses of the view that the *Minos* and the *Hipparchus* are meant to be considered together, see Strauss, “On the *Minos*”, pp. 78-79 and Bruell, *On the Socratic Education*, pp. 7, 15.

Socrates perplexes his interlocutor by defending the “love of gain” (or “profiteering”, getting money and other “goods” for oneself) and refusing to understand or acknowledge the existence of any kind moral restriction on one’s pursuit of one’s own good in this fashion. The comrade in the *Hipparchus* tries repeatedly to articulate his sense of what the moral restrictions entail or imply but fails: lovers of gain are “those who think it worthwhile to make a gain from worthless things” (225a), they are “villains and evildoers who are overcome by gain” who “know that the things from which they dare to make gain are worth nothing, yet ... still dare to be lovers of gain through shamelessness” (225b), they are those who “out of greed, are always striving preternaturally for insignificant things of little or no worth in loving gain” (226de), or who “think it worthwhile to make a gain from those things which the decent wouldn’t dare to gain from” (227d). As these repeated attempts indicate, the companion seems to be groping toward a view of the moral law as somehow both demanding a sacrifice and entailing our highest good. It is the merit of the *Hipparchus* and the *Minos* taken together to present this demand “phenomenologically” as it arises.