What Is Law?

Huntington Cairns
Sir Winston Churchill once complained, "Those Greeks and Romans, they are so overrated. They only said everything first. I've said just as good things myself. But they got in before me." He remained unshakeable in the conviction that they had stolen a march on him by unfair means. However, in our time of troubles it may be helpful to look at what the greatest mind among them said about the most basic of all legal questions, What is law? In the last fifty years, as a reaction against Austin, the problem has been examined from several points of view. First of all, there was a call for teamwork with the social sciences. But when the proposal was looked at closely it was seen that legal thinkers were in truth themselves social scientists of a high order, in fact, perhaps better sociologists than the sociologists. It was the Roman jurists who first gave to Western thought a sophisticated presentation of the forms of social relations. In addition, the social sciences did not fulfill their promises of the 1920s. Several other movements followed, from realism to contemporary analysis, but we seem to be advancing nowhere. Perhaps it is time to begin again, and there seems to me no sounder starting point than where thinking about law began.

One of the great passages in the literature of the law is Plato's justification of the law's necessity. Mankind must either make laws and follow them, or its life would be no better than that of the wildest of wild beasts. We know this because no man has the natural gift both of being able to see what is good for a nation, and upon seeing it, always to be both able and willing to do what is best. It is hard to see that the true political art is concerned with the nation and not with the individual. The common interest binds the nation together for
the common purpose; private interest tears the nation apart. It is also
difficult to see that the good of both the nation and the individual is
better met if the nation's well-being has priority over the individual's.
Although a man may know this to be true in principle, yet if he at-
tains a position of absolute and unrestrained power, he will not hold
to his knowledge and endeavor to keep the nation's interest foremost
and his own personal interest subordinate. The weakness of human
nature will always entice him to self-aggrandizement for personal
gain, avoiding pain and pursuing pleasure without consideration, and
giving precedence to them rather than to the right and the good. Such
a course means disaster to the ruler and to the nation. If, providenti-
ally, a man should ever appear who understood and pursued the good
he would have no need of laws to govern him. For no law is superior
to intelligence. The intellect must not be the subject of any man, but
king of all if it is really genuine and free. But in the nature of things
there is little such insight anywhere. Thus it is that we must choose
law as the second best which sees the general principle and cannot, as
a free mind would, provide for every case.

That law is a necessity for a sound nation is a view Plato was
loath to accept. Philosophers are not easily persuaded to acquiesce in
anything less than the best, as the history of Utopian thought shows.
Most, if not all, Utopias exclude law from the societies they advocate.
It is sometimes said that positive law is not present in the Republic
but this is untrue. The Republic is not a Utopia, but an effort to set
forth the principles which must operate in a healthy nation. Further,
positive law is clearly present in the Republic, and its correct formu-
lation is the subject of much discussion. Plato's view of human nature,
on which he grounds his case for the necessity of law, is not one of
high esteem, and it might be argued that it was based on the limited
experience of the Greek polis. But Lord Acton's widely accepted
maxim that all power tends to corrupt and absolute power corrupts
absolutely is evidence that even in the perspective of a vastly enlarged
historical experience, Plato's position has support. The Philosopher-
King demands a union of omniscience and altruism not heretofore en-
countered on this earth. Plato never succeeded in finding a satisfactory
substitute for law, although he took up the problem again in his last
dialogue. He saw as clearly as Madison in the Federalist that in the
everyday world the only likely alternative is faction, and that this
means the destruction of the State. "The law is the ally of all classes in
the State," said Plato in the Republic. Plato's view that law is a neces-
sity for communal living has never been seriously challenged. It cul-
minated in Hegel's argument that the highest development of a peo-
ple is reached when it has reduced its laws and its idea of justice to a system.

Greek thinkers saw that the end of the State is the good life, both for the group and for the individual, and the cement is a common interest supported by law. The service directly rendered to legal insight by thinkers of this order of magnitude is vital although their writings may seem remote and abstract to the majority of practicing lawyers. It demands that law be systemized as a condition of its intelligible existence. Systemization has several important consequences. It enables us to see that law itself, to its great advantage, may be treated as a distinct department of knowledge, separated, but not divorced from philosophy, morals, politics, and other areas of exploration. Aquinas was the first important thinker to treat law from this point of view, and so successfully that jurisprudence, which used to be a part of philosophy, now has an independent career of its own. Primitive law is a hodgepodge of more or less, usually less, loosely related rules. A systemized legal order is a unified field of knowledge and possesses many of the advantages of the developed sciences. In Holdsworth it has given us the best history of itself possessed by any field of knowledge. In torts, evidence, constitutional law, contract, quasi-contract, and other subjects, it has brought coherence to fields which were previously incoherent or not perceived as fields at all. When Roman jurisprudence based itself directly upon Plato’s theory of science it became the powerful legal instrument we know. As a great analyst of Roman law has observed, Plato’s method proved to be verily the fire of Prometheus for Roman legal thought. Systemization has a further advantage. It reveals contradictions and inconsistencies in the legal order, and it discloses gaps in the structure which heretofore had not been recognized. The American Law Institute’s Restatements are continuing witness to the almost overwhelming significance of this approach. The first great instance of this benefit is revealed by Plato’s efforts to construct a legal code, and the advantages are clearly recognized by Cicero and subsequent legal thinkers.

Plato saw law as a whole and in its detail. He brought his great knowledge of Greek law to bear on many problems of jurisprudence, and also upon the minutiae of practice. His efforts were so influential that it appears many of the numerous city-states inaugurated during Hellenic times found his insights useful enough to incorporate them in their constitutional and statute law. When he started to write upon legal matters near the beginning of the Fourth Century B.C., he had

1F. SCHULTZ, HISTORY OF ROMAN LEGAL SCIENCE 68 (1946).
before him the ferment of the Fifth Century speculation of the Sophists, dramatists and historians to build upon, and when he wrote upon a problem he tried to take its solution further than did his predecessors. The Fifth Century had been much concerned with whether the just was right by nature or convention. The Sophists took the position that the laws of the polis were arbitrary enactments promulgated by those who had the power to do so and for their own advantage. In the Antigone the law of the polis forbade Antigone to bury her brother, but she asserted that the god's ancient, unwritten laws commanded her to do so. That is also one of the main points of Plato's Apology. Socrates' actions, for which he was on trial for his life were, he maintained, commanded by god; and notwithstanding the law of the polis, whether he was acquitted or not, he would not alter his conduct. Antigone's position is asserted with dramatic force, but Socrates brings to bear upon his own predicament arguments of such power that they have become part of the permanent legal and political thinking of the West.

Plato saw that the problem which he had inherited was only half formulated and therefore only half answered. In what circumstances and within what limits may an accused appeal to a "higher" law for exoneration? In the Crito Socrates is in prison awaiting execution when his friends offer him escape to Thebes or Megara or some other state. Socrates replies that if it is the right course of action he will accept the offer, otherwise not; and this in the face of his conviction that his sentence is wrongful and unjust. He examines the question point by point and concludes that the offer must be rejected. The discussion reaches its culmination in a supposed dialogue between the Laws of Athens and Socrates. The Laws ask, "Do you think you are authorized to destroy your country and its laws merely because we try to put you to death in the conviction that it is right to do so?" Socrates convinces Crito against Crito's will that he is right in refusing the offer. The arguments are strong ones, tinged with an emotional appeal, and have been criticized as rhetorical rather than logical. Nevertheless in the literature of dissent since that day they have not been improved upon. Socrates began in the Apology by appealing to a "higher" law which held the preservation of the nation to be the supreme duty. He maintained that it was his divine mission to save Athens from self-destruction, and for that reason would not change his conduct. In the Crito the argument is turned against him by the Laws of Athens. No nation, they argue, can survive if its legal system can be repudiated at the will of an individual. If you think, says the Apology, that your conduct
will save the nation from destruction, you may as justification appeal
from positive law to a "higher" law, but you must be prepared for the
consequences. If, says the Crito, you desire by your conduct to save
merely your own life you owe an allegiance to the law of the polis
which forbids it.

Thus by the time of his middle years Plato had worked out the
central thought of public law, that the state must be ruled by law. It
is the basic idea of constitutionalism and the most vital and ancient
principle of Western political thought. At all times and everywhere, in
ancient Greece, in Rome and during the Middle Ages, in England
during the Sixteenth and Seventeenth Centuries, and in Europe and
America, the principle has been attacked and defended, restudied, re-
interpreted and discarded, but in the end it has always succeeded in
maintaining itself.

But the Dionysiac impulse as represented by Antigone is too power-
ful in times of great crises to be confined in the nets cast by philosop-
HERS. "Damn braces, bless relaxes," exclaimed William Blake. It is a
fine saying and was often quoted by the young in Victorian days. But
the delicate balance of a nation cannot persist without controls. In
the Bacchae of Euripides we see the Dionysiac process at work. A
chorus of maidens on a mountain top describes the spirit as it some-
times manifests itself:

\[
\begin{align*}
&\text{Will they ever come to me, ever again} \\
&\text{The long long dances} \\
&\text{On through the dark till the dim stars wane?} \\
&\text{Shall I feel the dew on my throat, and the stream} \\
&\text{Of wind in my hair? Shall our white feet gleam} \\
&\text{In the dim expanses?} \\
&\text{Oh, feet of a fawn to the Greenwood fled,} \\
&\text{Alone in the grass and the loveliness;} \\
&\text{Leap of the hunted, no more in dread,} \\
&\text{Beyond the snares and the deadly press:} \\
&\text{Yet a voice still in the distance sounds,} \\
&\text{A voice and a fear and a haste of hounds;} \\
&\text{O wildly laboring, fiercely fleet,} \\
&\text{Onward yet by river and glen . . .} \\
&\text{Is it joy or terror, ye storm-swift feet? . . .} \\
&\text{To the dear lone lands untroubled of men} \\
&\text{Where no voice sounds, and amid the shadowy green} \\
&\text{The little things of the woodland live unseen.\textsuperscript{2}} \\
\end{align*}
\]

But soon the Dionysiac force is transformed into frenzy, and the
women literally tear King Pentheus to pieces. His own mother dances
with exultation, holding her son's head high on a wand.

\textsuperscript{2}G. Murray translation.
Thus a great dramatist. In the legal world the lawyers have naturally seen the problem in legal terms, and they have kept it under scrutiny for more than twenty-five hundred years. Plato pointed out that rules of law are general in nature and are adapted to the average man acting under usual conditions. But because the rules are general they do not from time to time fit the particular situation and we are then presented with the "hard" case. Aristotle's solution was a doctrine of equity, *i.e.*, when the rule does not meet the particular case, the rule should be rectified by deciding as the legislator would himself decide if he were present on the occasion and would have enacted if only he had known. The Roman lawyers, although they were fully aware of the problem and Aristotle's solution, were too professional to be persuaded by it. They found the answer to the "hard" case through interpretation or the forms of action or exceptions. The Byzantine lawyers could reverse inequitable decisions but they were incapable of formulating sound substitute principles. The Middle Ages thought in moral terms, of law as an embodiment of the principles which order everything, and it returned to Aristotle's theory of equity. Its leading ideas centered on the moral and the just, and they became the foundation of English equity as is evident from the Sixteenth Century dialogue, the *Doctor and Student*. The equitable doctrines which Anglo-American law has developed since then are more or less doing their work, and we may here leave them. But the underlying problem is still with us.

A stark example is the Fugitive Slave Law of 1850 which provided for the return between states of escaped slaves. Many historians are of the view that it postponed the war for ten years and gave the North time to marshall its resources so that it could meet the South on something approaching even terms. There was hope that it might perhaps put off the war altogether. The northern democrats accepted the statute, as did the mass of the people, but the abolitionists and others saw it as an unconstitutional and infamous document. It was publicly burned by William Lloyd Garrison, together with the Constitution; and Emerson, who searched the books from Cicero to Blackstone for legal support for his position, declared, "This filthy enactment was made in the nineteenth century, by people who could read and write. I will not obey it, by God!"

Political moralists justify the maxim that it is the duty of the citizen to obey the law on the ground that wrongs which result from the operations of the legal process are less fraught with danger to the nation than the abandonment of the legal order altogether. Neverthe-
less, they maintain that the rule is limited because the actual law is administered by human beings who are neither omniscient nor perfect, and hence fall into injustices and immoralities of more or less degree. Thus follows the rule that it is the duty of the citizen or community to disregard the law in favor of justice and human welfare. But this latter position is inconclusive. A well-ordered legal system has built into it by way of the right of petition, appeal, the pardoning power, legislative amendment, and so on, numerous safeguards against injustices and immoralities of the kind envisaged.

It was not until his last years that Plato turned to the problem of the specific nature of law. He knew law's strength and weakness as well, or perhaps better, than any man, but he postponed until the end of his life the effort to explain its nature. The explanation was worth waiting for. The Laws is Plato's longest composition and is perhaps the richest and most profound work on law ever written. Compared with his other works it has been much neglected which is a loss to legal thought as recent studies have demonstrated. Such are the vagaries of classical scholarship that Nineteenth Century German criticism rejected it as spurious along with the Parmenides, Sophist, Politicus, Philebus and Laches. The Laws occupies itself with many topics from law to education and theology. But its central legal idea is identical with the idea of law that informs all Plato's writings on the subject, either explicitly or implicitly. In his view the world is an intelligible whole, and proportion is the limiting principle. The ends which the law seeks to realize must be related to this world order. Thus Plato's philosophy of law affirms an ultimate norm. It stands in opposition to the unlimited and the fragmentary, to the arbitrary or merely hopeful norm, as the guide in lawmaking.

II

Associated with the Laws, and perhaps contemporaneous with it, is a short dialogue entitled the Minos. It is a brief statement of Plato's idea of the nature of law and must be approached as an important source of one of the two outlooks which have influenced legal thinking for the past twenty-five hundred years.

The Minos is too valuable a document to neglect because classical scholarship has not brought the question of its authenticity to a decisive test. On the whole the evidence is in its favor as a work from Plato's hand. If he is the author its contribution is not unworthy of the founder of jurisprudence. It was accepted as being by Plato in ancient times, and was discovered or placed in the Platonic canon as part of a system of bibliographical classification by Aristophanes of Byzantium,
the Third Century B.C. scholar and chief librarian of Alexandria. The Alexandrian savants do not appear to have been unduly hospitable to the Platonic works in their custody. They excluded ten such writings as patent forgeries, a judgment which modern scholarship still accepts, and they marked in the manuscripts held to be authentic, passages they deemed spurious. To the present day the Minos still meets the usual tests by which ancient works by great writers are measured. There are no anachronisms and no absurdities; it was known to ancient scholars; there are numerous Platonic parallels but no imitations of other authors, and no one has been able to fault the Greek as not being of the period.

Grote was the last important scholar to give the authenticity of the Minos full endorsement on the basis of a reasoned defense. The Minos was also regarded as genuine by Burnet, who printed its text with the dialogues he regarded as authentic. Previously it had been accepted in the Seventeenth Century by the great Bentley in the crucial controversy of his tempestuous career, a judgment for which he was later reproved in the Nineteenth Century by his devoted admirer Jebb. In the Eighteenth Century it had the support of Ruhnken. But in the next century German criticism began to apply its exceptional powers of analysis to classical texts; in the end, as I have intimated, it overreached itself. In the case of Plato only nine dialogues survived the holocaust, and the Minos was not one of them. Since then the Minos, when it has been studied on its merits at all by Platonists, has been discussed briefly in appendices devoted to the Platonic apocrypha. It is rejected by its latest French editor on the ground that its simplistic character does not show an awareness of the complexities and nuances of Plato's other dialogues. It is also held to be apocryphal by Professor Dodd and Margherita Isnardi. Gilbert Murray seemed inclined to accept its attribution to Plato. Now there is a new interest in the dialogue both in the United States and abroad. Professor Glenn Morrow recently has advanced fresh and strong reasons for its authenticity, the late Professor Shorey believed that Plato "could not have written the first half of the dialogue," and it is "hard to conceive who else could have written the last five pages," and the contemporary British scholars, T. A. Sinclair and I. M. Crombie, are undecided.3

3G. GROTE, 1 PLATO chaps. IV and V passim (ed. 1867); 5 J. BURNET, PLATONIS OPERA (1962); R. BENTLEY, EPISTLES OF PHARALIS 325 (Dyce ed. 1856); R. JEBB, BENTLEY 72 (1902); D. RUHNKEN, SCHOLIA IN PLATONERN 211 (1800); J. SOULISI, PLATON XIII, Pt. II, 82 (Bude 1930); E. DODD, GORGIAS 385 (1939); M. ISNARDI, Una nota al "Minosse" pseudoplatonico, 9 LA PAROLA DEL PASSATO 45 (1954); G. MURRAY, THE RISE OF THE GREEK EPIC 52, 157 (ed ad. 1907); G. MORROW, PLATO'S CRETAN CITY 35 (1960); P. SHOREY, WHAT PLATO SAID 425 (1933); T.
Inasmuch as there is no extrinsic or historical evidence against the authenticity of the dialogue, its critics, of necessity must find its spuriousness within the dialogue itself. This method is reduced to criticisms of the manner in which the Minos is written, its abrupt opening and sometimes abrupt transitions, its brevity in some places, and the absence of the wit and graces associated with the dialogues accepted as by Plato. While its content is in accord with Plato's views, it has never been claimed for the dialogue that it is anything other than a lesser work, perhaps no more than a preparatory sketch. Dionysius of Halicarnassus said that Plato continued to "comb and curl his dialogues until he was eighty years of age," and it is clear that the Minos, like the Laws, received little, if any, such attention. But it is still a work of enduring power for jurisprudence, even for scholars who do not accept it as one of Plato's dialogues, e.g., A. E. Taylor and Werner Jaeger.

In any event, the dialogue has not been proved spurious by anyone, but to make out the case for its authenticity will demand more intensive study than it has yet received. Meanwhile, we have before us a work purportedly of Platonic authorship, intentionally Platonic in substance, and supported by evidence that it was written during Plato's lifetime.

The Minos is concerned with the problem of the nature of law and how law is to be found. It discovers law in the nature of things and opposes the view that its source can be found in the diverse wishes and desires of men. It asserts that law is too primary an instrument in the affairs of men not to seek its security and rational purpose in the intelligible order of the world. Even in the relatively simple domain of the polis, to say nothing of the complexities of the modern state, the framing of sound laws is the supreme task for those who administer it. The Minos declares that the work of finding such laws should be entrusted only to those men who are thoroughly trained for that purpose.

On the surface the dialogue appears not well organized, and in places the argument seems too abbreviated and in others too extended. Actually, it is a cunningly constructed, sophisticated tract, the oldest

surviving document on jurisprudence which we possess. Probably, in support of his affirmation that knowledge of the nature and universality of law is old, the author uses the ancient meaning of the Greek word for law and its cognates very much in the way of variations on a single theme. The device is not forced; it is a device to reach the ultimate meaning of law. Thus we get usage and custom, to distribute and apportion, to pasture or tend, and by indirection, musical mode, all meanings of the word nòmos (law), and its cognates, some of which cannot be carried over into English legal terms. However, it is significant that this practice, or something like it, is followed from time to time in the Platonic Dialogues. The questions the Minos raises and the answers it offers are among the most cogent jurisprudence must face. If the case were otherwise, the dialogue could be entrusted largely to scholars concerned with textual examination. But the Minos, whether or not it was written by Plato, stands on its own worth. In legal thought from the Fifth Century B.C. to the present day there has been a tug of war between the doctrine that norms are a matter of human preference and the doctrine that the nature of the world is their source. The worth of the Minos lies in the fact that it is the earliest attempt within its compass at a systematic jurisprudence embracing the latter position, and the fact that its thesis is a sound one. The same view is taken in the Laws, but in other terms and at greater length. Both dialogues affirm that there is an ultimate dissimilarity between sound laws and unsound laws.

Socrates opens the dialogue abruptly, but not un-Platonically, with the question, "What is law?" He makes it clear to his anonymous Companion that he does not want a definition of the ordinary rule of positive law, he wants a definition of law in general. This is the first record in Western literature, of the formal putting of the question "What is law?", and there has been a tendency in juristic thought since the Nineteenth Century to pass it by as of little significance. Modern logicians also criticize the "What-is-X?" question as "perhaps, when unsupported by a context, the vaguest of all forms of questions except an inarticulate grunt." But in the Platonic Dialogues, and in the Minos, when a question of this kind is asked, e.g., "What is temperance?", "What is justice?", "What is courage?" the context clarifies the meaning. How formidable the problem is of seeing clearly the distinctions to which general words refer is il-

*R. Robinson, Plato's Earlier Dialectic 61 (1941).
Illustrated by the painstaking labor in the Republic to determine the meaning of the word "justice".

The question with which the Minos opens goes to the heart of legal theory, a major aim of which is to clarify the nature and function of law. Inevitably, legal theory must also either affirm an ultimate ground for law or deny that a ground exists. The problem is an inescapable one. For Platonism, in a world without constants, we cannot know the truth of things; there would be neither knower nor known. In the legal domain there are continuous appeals to norms to fill the interstices necessarily present in any legal system. These norms, whether called "Natural Law", "fairness", "due process", or something else, although they vary in labels from system to system, and within systems, are the surrogates for the constants which Plato saw to be necessities.

Socrates at once makes clear the point of his question. He implies that the term "law" is univocal, a position vigorously disputed today. He wants to know the characteristic which makes law, in all its varieties, law. No more than in the other dialogues will Socrates accept examples as an answer. In this, as well as in what follows, Socrates is attempting to lead his Companion step by step to see for himself what Socrates already knows.

The Companion replies that law is a body of settled rules and binding customs, to which Socrates answers that speech is not what is said nor sight what is seen nor hearing what is heard. The analogy tells us that as sight is the means by which we see, so law is the norm by which we know laws. We ask what sight is, and in the same sense we ask what law is. Socrates suggests that law may be associated with techné, or art, a fundamental Platonic idea embracing the notion of the discovery of something real. Law is then defined by the Companion as the usual resolutions and decrees of the polis. He takes this to mean that law is a decision of the State which Socrates in turn interprets to mean that law is an opinion of the State, i.e., a judgment determining how the members of the State shall conduct themselves. The Companion agrees, but in so doing plays into Socrates' hands. Law is a good thing and preserves the State, but some decisions are good and some are bad. Yet law is not bad, and it is a mistake to say simply that law is a decision of the State. Nor is it fitting for a bad decision to be a law. Nevertheless it is evident that law is opinion of some kind, and inasmuch as it is not bad opinion, it is clear that it is good opinion. Good opinion is true opinion and true opinion is the finding of that which is. Thus law aims to be the finding of that which is.

For Plato, the State has its necessary origin in the needs of men
for one another. Men are not self-sufficing; they have needs, the foremost being survival. Thus the State is essential to man's subsistence, and Plato holds that law is indispensable to the State's very life. Socrates is maintaining that bad laws are in fact a cause of the destruction of the State. The argument is now no longer based on the fact that injustice and lawlessness destroy the State and that justice and law preserve the State and are good. He here attempts to show that the laws which preserve the State are good because they are true, and that what is true is that which is. The doctrine of true opinion, which becomes knowledge "by working out the reason" is of course Platonic, and is present in the *Laws*.

The Platonic Socrates' conception of law is far from novel in Greek thought. Until the appearance of the Sophists, Socrates' view was the traditional one of Greek philosophy which saw man as part of nature and subject to its law. In Homer the good king has direct access to knowledge which it is his duty to discern in the rendition of justice. This knowledge is symbolized by his golden scepter. To Hesiod justice is the principle of the world. For Solon justice permeates and unites the State and nature. Anaximander accounted for the transformations of the world in terms of justice. For Heraclitus all positive laws are nourished by one law, the divine. Parmenides held that the philosopher in his search for Being was guided by the goddesses Themis and Dikē, and that Dikē never releases Being from her fetters to allow it to come into existence or to perish, but holds it fast. With the coming of the Sophists the tradition which asserted a connection between positive law and the world order was broken. Plato made it his salient task to restore the relationship which culminated in the doctrine that both law and art exist by nature, or by a cause not inferior to nature, since they are the products of intelligence and true judgment.

In the Platonic atmosphere of the *Minos "that which is" refers to the principles or entities which constitute reality, or in other words, to the Forms or the conditions of real existence. At the opening of the *Laws*, and eschewing the higher reaches of the philosophical vocabulary, Plato explains the object of the inquiry is "to find what is naturally right or wrong law."\(^5\) The Philosopher King of the *Republic* has this knowledge, and anything less than that is opinion or belief. But in the *Statesman*, the practical possibility of the Philosopher King is given up in favor of positive law as the second best. The rules of law are written imitations of the principles which guide the statesman.

\(^5\) *Laws* 627 D 1.
who knows the truth about his art, and when the laws are amended the legislators, believing they are making an improvement, are following, so far as they can, the path of the genuine statesman. The legislators will try to imitate reality, and if they do not know, they will do it badly. However, sound laws are imitations of the truth written out under the guidance of men who know. The idea is thoroughly Platonic and is stated again in the Laws, as it was previously in the Republic.

The Minos, in holding law to be the finding of that which is, is in accord with the argument of the Statesman that all the arts and sciences necessarily assume the reality of standards of measurement. To measure the size of an ancient Athenian jury against that of a modern Anglo-American jury tells us little except that one is larger than the other. The task is to find the norm by which we can determine the proper size of a jury which will render due justice to the State and the individual. Nevertheless, Plato recognized that no art is likely to lay down a rule which will last forever. The endless differences of men and circumstances, and the constant flux of things, forbid it. In the Philebus and the Laws, Plato advances the idea of limit as the fruit of the standard of fitness. We are in the presence of limit when we find definiteness stamped upon what hitherto has been indefinite. It is the idea of the principle of proportion which asserts that the constituents of anything must be in the proportions necessary to realize its purpose. Plato observes that if we violate the rule of proportion, if we give too much sail for canvas to a boat, too much food to the body, too much authority to the mind, ruin results in every case.

Behind this thought is the classical problem of the reconciliation of the apparent contradictions present in appearance. The general solution is to affirm a reality in the phenomena. In science, reality is described under the form of invariant entities, and in the Platonic Philosophy, as Forms, and other elements. The doctrine that all is flux cannot be sustained, for an element of identity must persist in change, or change is meaningless.

But the Companion asks, if law is the finding of that which is, why do laws differ? Socrates gives the simple answer that men may not always be able to discover reality. He goes further and argues that laws do not really differ very much, just as things that weigh more are considered heavier everywhere, the lighter less. Everyone also holds the just to be just and the unjust unjust; they also acknowledge the real to be real, and what is not real as what is not real. Thus he who fails to find the real fails to find law. In its modern form Socrates' argument recognizes that a science is a body of principles which hold good
everywhere, although their application may vary in accordance with the circumstances of the time and place. The principles behind the treatment of some human ailments are well known, but the patient's condition frequently requires variations in their use. Thus in the Minos and the Laws the principles put forward are intended to be applicable to all developed systems of law.

But the Companion objects that we are constantly amending our laws, to which Socrates replies that in the game of checkers, pieces remain the same when their positions are changed. Further, the principles or laws of medicine, agriculture, gardening, and the other arts are laid down by the experts who know those arts, who have grasped the reality upon which they are based. We regard writings on the government of states by statesmen and political experts as containing the principles and necessary laws of those states, and the writings neither differ nor are amended if their authors really know. The expert, as in farming, music, and physical training, knows how to distribute and apportion seed, musical notes, and food; and it is their laws which are the sound ones. Similarly, the laws of the expert ruler are best for the guidance of men.

This is Plato's answer to critics who claim that the real as a norm is too rarefied to be of use in the settlement of problems that confront legal systems. He puts forward no formula to be followed blindly. He argues that the Good holds all things together, and its "notes" are truth, proportion and beauty. He says that the proper organization of man's concerns depends in the last resort upon limit and proportion. They lead to orderliness and reality, and if they are not present the result is chaotic. All this is Plato's view of the philosophical basis of the life of man. But in the world where legal rules are devised and cases decided he offers no rule of thumb which will yield the correct solutions of the problems involved. Rather, the answer to his critics must be found in his own writings in the way he himself treats or solves such problems.

Socrates tells the Companion that King Minos of Crete is held to have been the greatest of lawgivers, for he was educated by the greatest of educators, no less a teacher than Zeus. The Companion objects that Minos is regarded as coarse, and unjust, but that Rhadamanthus, his brother, is held to be a just man. This, says Socrates, is a myth of Attic tragedy prompted by the enmity of poets because of the tribute Minos had exacted from Athens. Homer and Hesiod give a different account of Minos. Homer says in a puzzling line that Minos had conversations with Zeus every ninth year, for Zeus was a great teacher and Minos was his pupil. Rhadamanthus was a good man and
had been taught by Minos. But he had not been taught the kingly art in its entirety, but only the subordinate art of presiding over courts of law. In a like manner, Hesiod described Minos as holding the symbolic scepter of Zeus with which he ruled the cities. This, Socrates explains to the Companion, means that Minos, intent on having sound laws, resorted to the cave of Zeus where he achieved the understanding that enabled him to ordain for his people the laws that made Cretans happy, and made Spartans happy when they too adopted Cretan laws.

The story of Minos and his conversations with Zeus is also the subject of the opening page of the Laws where the same interpretation of the vexed line in Homer is also given. This part of the story is the crux of a recent plea by Professor Morrow for a reconsideration of the genuineness of the Minos. Homeric translators have had difficulty with the meaning of the lines "where Minos ruled and had intimate conversations with Zeus in the ninth year," and have offered five interpretations: (a) Minos reigned as king for nine years; (b) became king when he was nine years old; (c) talked to Zeus for nine years; (d) talked to Zeus every ninth year; and (e) reigned as king when he reached the age of maturity. The interpretation given by Plato in the Minos and the Laws would not be the ordinary one; nevertheless, it won wide approval in antiquity. In the terminology of the present day the heart of the Minos is an argument for the formation of a system of laws based on principles which make a healthy nation. This idea was at the root of Roman constitutionalism, and in the United States it took concrete form in the Constitution. A system of such principles was held by Plato to be a necessary condition for a healthy State, and was an impediment to arbitrary rule.

The author of the Minos explains, rather than argues, the case for basing the legal order of the State upon the world order. The author of the Minos was aware that the connection could not be taken for granted, for the "Double Think" of the Sophists maintained that there is no distinction between the just and the unjust. At any rate,
the conflict between these opposing views has been persistent through the centuries. John of Salisbury in the Twelfth Century said that the world had grown old discussing the problem, and that more time had been given to its study than the Caesars needed to conquer and rule the world. The difficulty is still with us.

The Minos closes on an uncertain note. Minos and Rhadamanthus, as ancient lawgivers, were the best shepherds of the people. Now the good shepherd of the body apportions food and exercise to it to train and strengthen it. What does the good lawgiver apportion to the mind to make it better? It is a disgrace to us not to be able to answer this question. With this observation the Minos closes.

The Minos therefore appears unfinished, but it may not be. Socrates has answered the question of the source of sound laws, through the story of Minos and Zeus, and he has now raised a third question: What should the good lawgiver, the shepherd of his people, apportion to their intelligence to make it better? The answer is given at length in the Laws and briefly in the Minos itself. The answer of both dialogues is that the laws of the State are the prime educational instruments for the achievement of civic virtue and therefore the soundness of the State. In the Charmides, presumably known to the Athenian reading public, Socrates had drawn the analogy between the care of the mind and the care of the body, and the prescription for the former was fair reasoning. In the Protagoras it had been argued that the laws of the State, which are the discoveries of the great ancient lawgivers, teach the proper pattern for the life of sound citizenship. In the Gorgias Plato wrote: "To the pair, body and mind, there correspond two arts; that concerned with the mind I call the political art; to the single art that relates to the body I cannot give a name off-hand, but this single art that cares for the body comprises two parts, gymnastic and medicine; and in the political art what corresponds to gymnastic is legislation, while the counterpart of medicine is (the maintenance of) justice." In the Laws the idea that the positive law of the State should itself be the teacher of the citizens is developed in overwhelming detail. A system of law should perform its role as law, and it should also

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7Cornford, whose view is gaining some acceptance, has argued that the ostensible conclusions of such dialogues as the Laches, Charmides, Euthyphro, Lysis, Meno, and Parmenides are apparently confessions of failure, but that the true conclusions are skillfully masked in the dialogues themselves, thus forcing the reader to discover them for himself. F. CORNFORD, PLATO AND Parmenides 244-45 (1939).

8464 AB (W. Woodhead's trans. slightly modified). Later, Aristotle was to remark in the Protrepticus, "Therefore if mind is better than body (being more of the nature of a first principle), and there are arts and branches of knowledge
educate men. It should draw and lead youth towards true judgment approved by law and custom. Education is not concerned with teaching techniques, but with the cultivation of the understanding necessary for good citizenship. Intelligence and sound opinions are the product of mature years, and the man is fortunate who acquires them even as he approaches old age. Education in the early years means cultivation of the ability to like the right things and to reject the wrong ones. All this is spelled out in the Laws, together with the content of the laws which Plato thought would realize those ends, and the curriculum of training and studies to be followed. No question put by any other dialogue, not even those propounded in the Republic, has received a fuller answer.

In sum, the Minos argues against the view that law is merely accepted custom, and against the view that law is merely the command of the State; it holds both views to be erroneous. It distinguishes between law and a law; it maintains that a bad law cannot properly be a law; it seeks to show that the principle of valid law is apportionment; it insists that knowledge of the nature of law is ancient, and that where it is known it gives stability and health to the nation; it endeavors to make the validity of law a question of truth or falsity, and not a matter of opinion; it holds legal administration of necessity to be an art acquired after long study; it emphasizes that law is the business of specialists; it closes with a graphic account of Minos, the traditional lawgiver of Crete, designed to enlarge the meaning of what has gone before. Underlying all that is said is the clear thought that positive law must take account of the constants that necessarily define and limit its purposes.

In more concrete terms this means that we must pass from opinion to knowledge. It has been said before. Long ago H. G. Wells, influenced at the outset of his career by the Republic, defined the problem of the present age as a race between education and catastrophe.

Plato had no doubt that our moral and legal principles could be systematically organized very much on the model of scientific principles in natural science. If those principles take their departure from the nature of things, legal systems, as the Minos argues, will exhibit marked similarities. But Plato was aware, as was Aristotle even more strongly, that human imperfection makes the realization of such systems most unlikely, although it should constantly be before us as a concerned with the body, namely medicine and gymnastics (for we reckon these as sciences and say that some people possess them), clearly with regard to the mind, too, and its virtues there is a care and an art, and we can acquire them, since we can do this even with regard to things of which our ignorance is greater and knowledge is harder to come by." Frag. 32 (Ross's trans. slightly modified).
goal. Thus Plato saw that the true conception of law was a blend of rational principles with the traditional and unwritten usages of the nation.

The *Minos* does not provide us with examples of what Plato means by laws which partake of reality, and we must turn to the *Laws* for specimens. We should think of them as we think of constitutional principles, and not as mere statutory enactments, directing or allowing this or forbidding that. Perhaps the chief example is the doctrine of the separation of powers which dictated much of the form of our own Constitution, but which did not achieve the force of a rule of law until *Springer*\(^9\) in 1928. Plato argued that one of the ends of law is to make men good. In devising his laws the legislator must keep in mind not only a part of virtue, but all virtue. This conception led Plato directly to the influential idea of a rational code based not merely on the laws of Athens, but on laws drawn from many of the Greek city-states. He objected to the piecemeal codes of his time which are characteristic of some of our own. He pointed out that the legislator put his code together under various captions, such as *Estates* or *Assault*, which limits him, as it does us, to adding a paragraph if a case appears which is not covered by the code. In the *Republic* he compares the legislator’s attempt, acting under the constraints of the prevalent codes, to put an end to business frauds to the effort to cut off a Hydra’s heads. Plato’s code would follow from the basic principles of government and would allow reasoned extensions to fill gaps and correct imperfections. Again, Plato maintained that laws enacted in the interest of a faction were not true laws; real laws are enacted for the good of the whole nation. These are samples.\(^{10}\)

Plato’s contributions, particularly because they were restated in principle and in detail by his able pupil Aristotle, were the most influential contributions ever made to legal theory. All this was achieved because Plato based his thought on Greek science. He insisted that our control of affairs must be founded on knowledge; otherwise the seeds of failure are built in from the beginning. He saw that the good life was a legitimate field of study in the sense that our preferences can be rationally determined. It was this insight that raised law from the tribal level and set it on its subsequent course.

\(^9\) *Springer* v. Philippine Islands, 277 U.S. 189 (1928).

\(^{10}\) *Laws* 691C-692A; 693E-694A. Perhaps the most imitated of Plato’s proposals is his idea of a council which will keep the laws under study in order to ensure their soundness and pertinence. *Laws* 960D *et seq*. In modern times this idea finds expression in the great legal commentaries, in law review studies and case notes, in the committees of the states which keep the statutes current, in the work of the American Law Institute, and in other ways.
WHAT IS LAW?

APPENDIX*

MINOS or ON LAW

Characters

Socrates Companion

Soc. I ask you, what is law?
Comp. What kind of law do you mean?
Soc. What is that? Is there any difference between law and law in that each is law? Heed what I say. I am asking, as if I had asked, "What is gold?" If, in a like manner, you had wanted to know what kind of gold I meant, I think you would have missed the point. I assume that gold does not differ from gold, or stone from stone, in that gold is gold and stone is stone. By the same token, I suppose, law does not differ in any manner from law, but all law is the same; for each is equally law, one not more, another less. With respect to law in general, this, then, is what I am asking, what is law? Now, if you are ready, answer me.

First Reply

Comp. Well then, Socrates, what can law be other than the body of settled rules and binding customs?
Soc. Then, to your mind, is speech what is said, or sight what is seen, or hearing what is heard? Or is speech other than what is said, sight other than what is seen, hearing other than what is heard, and accordingly, law other than the body of settled rules and binding customs? Do you agree or what do you think?
Comp. I now think that law is something else.
Soc. Law therefore is not the body of settled rules and binding customs.
Comp. Apparently not.

Techné

Soc. Then what can law be? Let us try another approach. If someone had asked us about what has just been said,
“Since you say that what is seen is seen by sight, what is sight by which things are seen?” we would have replied to him, it is the sense which discloses objects through the agency of the eyes. And if he had asked us further, “Tell me then, since what is heard is heard by hearing, what is hearing?” we would have replied to him, it is the sense which discloses sounds through the agency of the ears. Similarly, had he also asked us, “Inasmuch as the body of settled rules and binding customs are settled by law, what is the law by which this is done? Is it a perception or explanation, just as matters learned are learned by scholarly knowledge explaining them; or is it a finding out, just as things are made known by discovering them, for example, the nature of health and illness by the art of medicine, or the purposes of the gods by the divining art, as the diviners say? For certainly art with us is the discovery of things, is it not?”

Comp. Of course.

Second Reply

Soc. Well, which of these particularly shall we take law to be?

Comp. The usual ordinances and decrees, it appears to me. How can we say that law is other than this? And so, it may be, to return to your question, that all law is a decision of the State.

Soc. You mean, it seems, that law is an opinion of the State.

Comp. Yes, I do.

Criticism of the Imperative Concept

Soc. You may be right, but perhaps we can understand it better this way. You call some men intelligent?

Comp. I do.

Soc. Evidently the intelligent are intelligent by intelligence?

Comp. Yes.

Soc. Also, the just are just by justice?

Comp. No doubt.

Soc. Then are the law-abiding law-abiding by law?

Comp. Yes.

Soc. And are the lawless lawless by lawlessness?

Comp. Yes.

Soc. And the law-abiding are just?
Comp. Yes.
Soc. And the lawless unjust?
Comp. Unjust.
Soc. And justice and law are most excellent?
Comp. Certainly.
Soc. And injustice and lawlessness most shameful?
Comp. Yes.
Soc. And the one preserves States and all things, the other ruins and overthrows them?
Comp. Yes.
Soc. We must then hold law to be something excellent and pursue it as a good.
Comp. How else?
Soc. Now we said that law is a decision of the State.
E Comp. Certainly.
Soc. How so? Are not some decisions good and some bad?
Comp. They are.
Soc. And yet, law is not bad.
Comp. No indeed.
Soc. So it is wrong to reply simply that law is a decision of the State.
Comp. It appears so.
Soc. It is not fitting then for a bad decision to be a law.
Comp. Of course not.

Socrates' Position

Soc. Yet, it is also evident to me that law is opinion of some kind; and inasmuch as it is not bad opinion, is it not now clear that it is good opinion, if in fact law is opinion?
Comp. Yes.
Soc. Then what is good opinion? Is it not true opinion?
Comp. Yes.

315 Soc. Well then, true opinion is the finding of that which is?
Comp. Certainly.
Soc. In that case law aims to be the finding of that which is.

An Objection

Comp. Then how does it come about, Socrates, if law is the finding of that which is, that we do not always use the same laws in the same circumstances, if we have found that which is?
B Law, nevertheless, aims to be the finding of that which is. But men whose laws are not always the same, as we suppose, are not always able to find what the law seeks, that which is. But come, let us from now on try to see clearly whether our laws are always the same, or are different at different times, and whether all have the same laws, or different ones.

Comp. Well, Socrates, it is neither difficult to see that the same people do not always use the same laws, nor that others have different laws. For example, with us no law requires human sacrifice, it is abhorrent; yet among the Carthaginians it is a pious and lawful act, so that some of them even offer their own sons to Cronos, as probably you too have heard. And not only do foreigners use laws unlike ours, but also the citizens of Lycaea and the descendants of Athamas. The sacrifices they offer, although Greeks! Similarly, among us, you certainly know from accounts of earlier laws regarding the dead, how the victims' throats were cut before the body was removed, and how women were called to collect in urns the bones from the funeral pyre; further, in an even earlier time the dead were buried in the home. But we do none of these. Thousands of such examples might be mentioned; for there is abundant proof that we neither always follow our own customs, nor other men the customs of one another.

Soc. My dear friend, it is not to be wondered at if you are right, and I have failed to observe it. But so long as you air your views in such abundance of words, and I do the same, we shall never, I fear, reach an understanding. But if we pursue the question together, perhaps we may be of one mind. Now, if you are willing, let us examine our subject together, with you questioning or answering, as you prefer.

Comp. Of course, Socrates, I am willing to answer whatever you wish.

The Objection Answered

Soc. Well, then, do you hold the just to be unjust and the unjust just, or the just just and the unjust unjust?

Comp. Certainly I hold the just to be just, and the unjust unjust.
316 Soc. And everyone holds this as we do here?
Comp. Yes.
Soc. Among the Persians too?
Comp. Among the Persians too.
Soc. And no doubt always?
Comp. Always.
Soc. Do we here hold the heavier to weigh more, the lighter less, or the contrary?
Comp. No, we hold the heavier to weigh more, the lighter less.
Soc. Is this also true in Carthage and in Lycaea?
Comp. Yes.
Soc. The honorable, it appears, is everywhere held to be honorable and the dishonorable dishonorable, not the dishonorable honorable or the honorable dishonorable.
Comp. That is true.
Soc. Then, without exception, the real is acknowledged as the real, and what is not real as what is not real, by us and by all others.
Comp. So it appears.
Soc. Then he who fails to find the real fails to find law.

The Amendment of Laws

Comp. So, Socrates, according to you, the same things at all times seem lawful both to us and to others; but when I recall that we constantly alter our laws one way and another, I am unable to agree.

Soc. Perhaps you are not mindful that in the game of checkers pieces remain the same when their positions are changed. But look at the matter as I see it. Have you at some time come upon a work on the treatment of the sick?

Comp. Yes.
Soc. Then do you know under which art this work falls?
Comp. Yes, medicine.
Soc. And you call those who know that art physicians?
Comp. I do.

Soc. Do those who have this knowledge hold the same opinions on the same matters, or do they differ?
Comp. The same opinions, I should say.
Soc. With respect to what they know, do Greeks alone agree with Greeks, or do non-Greeks also agree with Greeks and with one another?
Comp. Doubtless those who know must of necessity hold the same views, whether Greeks or non-Greeks.
Soc. A sound answer. Then they always do so?
Comp. Yes, always.
Soc. And do writings of physicians on the subject of health set forth what they hold to be true?
Comp. Yes.
Soc. And writings of physicians are concerned with medical matters and medical laws?
Comp. Certainly, medical matters and laws.
Soc. And writings on agriculture also set forth agricultural laws?
Comp. Yes.
Soc. Then whose writings and usages are concerned with gardening?
Comp. Those of gardeners.
Soc. So these set forth the laws of gardening?
Comp. Yes.
Soc. Of persons who know the management of gardens?
Comp. Clearly.
Soc. And gardeners have this knowledge.
Comp. Yes.
Soc. And whose writings and usages are concerned with preparing appetizing food?
Comp. Those of cooks.
Soc. These then set forth the laws of cookery?
Comp. Of cookery.
Soc. The laws, it would appear, of those who know how to prepare appetizing food?
Comp. Yes.
Soc. And those who know, they say, are the cooks?
Comp. They indeed know.
Soc. Good. But now, whose writings and usages are concerned with the administration of a State? Is it not those who know how to govern States?
Comp. So it appears.
Soc. But there are others than statesmen and kings who have this knowledge?
Comp. The two latter, certainly.
Soc. Then writings on the government of States, which we call laws, are the writings of kings and superior men?
WHAT IS LAW?

B  Comp.  You are right.
Soc.  But then men who know will not write sometimes one way and sometimes another on the same subjects?
Comp.  Of course not.
Soc.  Nor will such men in treating the same subjects ever replace their established laws with others.
Comp.  Surely not.
Soc.  Then if we see some men doing this, wherever they may be, shall we say that those who change their laws know or do not know?
Comp.  They do not know.
Soc.  Now shall we affirm that what is true is in each instance lawful, whether in medicine, cookery or gardening?
Comp.  Yes.
Soc.  And that which is not true we shall no longer call lawful?

C  Comp.  No longer.
Soc.  Therefore it becomes unlawful.
Comp.  Necessarily.
Soc.  Then, in writings on the just and unjust, and in general on the organization of a State and its proper administration, that which is true is the royal law; but that which is not true is not law, and even though it appears to be law to the ignorant, it is, on the contrary, unlawful.
Comp.  Yes.

D  Soc.  Then we were right in allowing that law is the finding of that which is.
Comp.  It seems so.

Law as Apportionment
Soc.  Then let us examine this further aspect of the matter. Who understands the distribution of seed to the fields?
Comp.  The farmer.
Soc.  And does he distribute seed proper for each soil?
Comp.  Yes.
Soc.  Then the farmer is a skilled apportioner of seed; his laws and apportionments in this respect are correct?
Comp.  Yes.
Soc.  And who is a good apportioner of notes for music, who allots them properly, and whose laws are correct?

E  Comp.  The players of the flute and cithara.
Soc. Then he who observes most closely these laws is the most skillful player of the flute.

Comp. Yes.

Soc. And who is the best to distribute food to human bodies? Is it not he who allots what is proper?

Comp. Yes.

Soc. The apportionments and laws of such a man are therefore excellent, and whoever best knows the law in this field is also the best apportioner.

Comp. Of course.

Soc. Who is he?

Comp. The master of gymnastics.

Soc. And is he the best to tend the human flock in the care of the body?¹

Comp. Yes.

Soc. And who is best to tend a flock of sheep? What is he called?

Comp. A shepherd.

Soc. Then the laws of the shepherd are best for sheep?

Comp. Yes.

Soc. And those of the herdsman for oxen?

Comp. Yes.

Soc. And whose laws are best for the minds of men? Are they not the king's? What do you say?

Comp. I agree.

*The Antiquity of Knowledge*

B Soc. That is good. Can you now say who in the old days distinguished himself as a lawgiver by giving the laws for the flute? If you do not remember, may I remind you?

Comp. Please do.

Soc. Is it not said to be Marsyas and his darling Olympus of Phyrgia?

Comp. So it is.

Soc. And their music is godlike, it alone awakens and reveals those who stand in need of the gods; and to the present time it alone endures because it is from the gods.

C Comp. That is true.

¹This sentence is unintelligible and needs amendment of the kind customarily given faulty passages in the Platonic canon. If followed closely the text reads "He is the best man to pasture the human flock of the body." The above translation conforms to the sense of Polit. 267 E-268 A.
The Cretan Tradition

Soc. And who among the ancient kings is said to be a skilled lawgiver whose laws have endured because of their excellence?

Comp. I cannot recall.

Soc. Do you not know who among the Greeks use the most ancient laws?

Comp. Do you have in mind the Lacedaemonians and Lycurgus the lawgiver?

Soc. Well, that was perhaps scarcely three centuries ago, or a little more. But where did they get the best of their laws? Do you know?

Comp. They say, from Crete.

Soc. Then it is there they use the most ancient laws in Greece?

Comp. Yes.

Soc. Do you know then who were their good kings? They were Minos and Rhadamanthus, the sons of Zeus and Europa, and they gave them their laws.

Comp. They certainly say, Socrates, that Rhadamanthus was a just man, but that Minos was a coarse character, cruel and unjust.

Soc. You are repeating, my good friend, a myth of Attica and of tragedy.

Comp. What! Is that not what is said of Minos?

Soc. Not by Homer and Hesiod. And they are more dependable than the whole lot of tragic poets from whom you had this story.

The Praise of Heroes

Comp. And what do they say about Minos?

Soc. I will tell you so that you may not, like the rank and file, be lacking in respect. For there is nothing more lacking in respect, or of which we should be more wary, than erring about the gods in word or deed, and next, about godlike men. It is essential, when you intend to blame or praise a man, to take every care against saying what is not so. Consequently, you must learn to distinguish worthy from worthless men, since a god is displeased when one like himself is blamed, or one unlike himself is praised; for the first is the good man. Do not fancy that stones, wood, birds and snakes are revered
and men not; rather, the excellent man is the most revered of all these things, and the base, the most repugnant.

Minos the Hero

As for Minos, I shall tell how Homer and Hesiod praised him that you, a man, son of a man, may not err in speech about a Hero, the son of Zeus. For Homer, when speaking of Crete, says there were in it many men, and ninety cities, and adds,

Among them is the great city of
Cnossus where Minos ruled and had intimate conversations with mighty
Zeus in the ninth year.

Here is Homer's praise of Minos, putting in a few words a eulogy not given to any other Hero. He shows elsewhere in many places, and especially here, that Zeus is a great teacher, and that teaching is a noble art. For he says that Minos consulted Zeus in the ninth year, and went to him as one would go to a teacher for instruction. It is wonderful praise that Homer attributes to no other Hero but Minos the honor of being educated by Zeus. Moreover, in the Odyssey, in the episode of the Judgment of the Dead, Minos, and not Rhadamanthus, is represented as judging with a golden sceptre in his hand. Rhadamanthus is neither shown there as judging nor anywhere associating with Zeus. This is why I say Homer has praised Minos as he has praised no other Hero. Indeed, to have been the son of Zeus, and alone taught by Zeus, is superlative praise.

In fact the verse "ruled and had intimate conversations with mighty Zeus in the ninth year," means that Minos was the confidant of Zeus. For intimate conversations are discussions, and a partaker in such conversations is a confidant. Thus every ninth year Minos went to the cave of Zeus, partly to learn, partly to review other things which in the preceding nine years he had learned from Zeus. However, there are those who take "intimate conversations" to mean that he was a drinking companion and playfellow of Zeus. But here is the proof that nothing to the point is said by those who assume this: among the numerous Greek and foreign nations, there is not one that abstains from drinking par-
ties and the merry-making which accompanies wine, except the Cretans, and later the Lacedaemonians, who were influenced by the Cretans. In Crete, one of the laws Minos made forbade men to drink together to the point of intoxication. And it is clear that what he himself held to be right he also made the law for his people.

Minos certainly did not, like a lesser man, believe one thing and act contrary to what he believed, for the purpose of his meetings and conversations with Zeus, as I affirm, was to educate himself in excellence. Thus he made those laws for his people which have always maintained the well-being of Crete, and of Lacedaemonia too, since it began to use them, for those laws are from the gods.

Rhadamanthus was in truth a good man, since he had been taught by Minos. However, he had not been taught the kingly art in its entirety, but a subordinate art, sufficient for presiding over courts of law; because of this he was said to be a good judge. Minos depended upon him as guardian of the laws in the city, and for the rest of Crete upon Talos. Three times every year Talos went through the villages watching over the laws in them, and carrying their laws written on tablets of brass, for which he was named “Brazen”.

Hesiod also spoke of Minos in a like manner, for having mentioned his name he continues:

Who, kingliest of mortal kings, reigned over the greatest number of neighboring people, holding the scepter of Zeus with which he ruled the cities.

And he means by the scepter of Zeus nothing other than the teaching of Zeus in accordance with which he ruled Crete.

Minos Manhandled

Then why in the world, Socrates, has this rumor been spread against Minos that he was ignorant and boorish?

For a reason that will warn you, my good friend, if you are prudent, and all others who are concerned for their good reputation, to guard against inviting the enmity of a poet. For poets exert great influence over reputation in the way they portray men with praise or blame. The error Minos made was to war on our city, where learning
and taste thrive, and there are poets of every type, particularly tragic poets. Tragedy is very old here; it did not start, as is believed, with Thespis or Phrynichus, but if you will examine the matter you will discover that it is quite an ancient innovation of our city. In the realm of poetry, tragedy is the most pleasing to the people and the most persuasive to the intellect; by this means we assailed Minos in verse and balanced the debt for the tribute he exacted from us. Thus by provoking our anger Minos erred; from this, to answer your question, came his bad reputation. That he was a good man, devoted to law, and as we have said, a good apportioner, is well proved by the permanence of his laws, for they were the result of his having discovered the truth of what is concerning the ordering of a State.

B

Comp. It seems to me, Socrates, that this is a likely explanation.
Soc. If then I am right, is it not evident that the Cretans, the fellow citizens of Minos and Rhadamanthus, have the most ancient laws?

Comp. It appears so.
Soc. Consequently, in ancient times, these were the best lawgivers, apportioners and shepherds of men, even as Homer says the good general is the "shepherd of the people."

Comp. Yes, certainly.

C

The Answered Question

Soc. Come now, by Zeus, protector of friendship, if we should be asked, "What does the good legislator and shepherd of the body apportion to it in order to make it better?", we should answer rightly and in few words, "Food and exercise, the former to nourish, the latter to train and strengthen it."

Comp. Just so.

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Soc. And if he should ask us further, "What does the good lawgiver and shepherd apportion to the mind to make it better?", what do we reply in order not to shame ourselves and our years?

Comp. That I cannot say.
Soc. But certainly it is a disgrace to your mind and mine to appear not to know wherein their goodness and badness lie, while we have examined what is good and bad for the body and other things.