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Introduction

These four essays, on Plato's *Statesman* and Laws, Maimonides' *Guide of the Perplexed*, and Joseph Albo's *Book of Roots,* are linked by the theme of the philosophical response to divine law. One of the central issues of classical political philosophy is the nature and status of law, as measured by the standard of wisdom. In the political sphere, rule by law stands in competition with rule by a wise man, who would be able to respond to the very distinctive needs of a particular situation. To the extent that the law aims to mold the opinions of the citizens living under it, it poses another challenge: how can the philosopher carve out the space, under such conditions, for unrestricted inquiry? In the classical tradition law thus poses a twofold problem, in relation to political practice and to philosophy.

If law is taken to be divine, it could compromise the ability of the statesman to violate the law when necessary; but in a pinch, it will be up to the statesman to develop ad hoc justifications for his violations of the law. The philosopher, however, cannot settle for such a justification—philosophy demands an examination of the belief that the law is divine. The problem that law poses for the statesman may have a solution satisfactory enough for action. But that raises the question whether there is any such solution for the deeper problem that law poses for philosophy. A political philosopher wants to know what divine law is, how it differs from merely human law, and what the ramifications of divine law are for philosophy. Before answering any of these questions, it is necessary to

find out how divine law can even become an object for philosophical questioning. This preliminary study is necessary because the superhuman origin of divine law might preclude a human, all too human investigation.

My study commences with an account of Plato's *Statesman*, a dialogue in which an Eleatic Stranger, in conversation with a young mathematician (intriguingly named Socrates) pursues a critical analysis of law as such. He begins his search for the statesman with a tongue-in-cheek series of divisions (διαἰρησες) in speech that purports to divide larger classes into their natural parts. The outcome of this analysis is that the statesman is a kind of herdsman who nurtures the human herd. The metaphor of the statesman as a shepherd of his people creates a problem: must rulers of human beings be understood as another species, superior to the subjects they rule? To address this question, the Eleatic Stranger presents a version of the Golden Age myth: the "Age of Cronus," when men were ruled by superior beings, i.e. gods, belongs to distant antiquity. Political rule, in our "age of Zeus," must be understood as one function among all the arts in the city.

On the basis of its divisions and myth of the Golden Age, the *Statesman* traces the consequences of the assumption that the purpose of law and of political rule in general is to nurture the human herd, which means, above all, ministering to the needs of the body. The Stranger does not specify what, if any, specific need of human beings might define their distinctive nurturing. It is left to young Socrates, in his naive, haphazard way, to raise the question whether and how human beings differ from animals, and thus politics from herd nurture.

Only at the climax of the dialogue does the Stranger finally make explicit the point behind his strange search for the statesman through the divisions and the myth: he

wishes to criticize law from the perspective of reason without any reverence for law interfering with the critique. The Stranger's thematic treatment of the problem of law unfolds in a dialectical argument that begins with the assumption of the superiority of rule by the wise: the law in its necessary generality cannot adequately handle particular situations, not to mention emergencies, and laws that may benefit most people can do violence to the souls of exceptional individuals. Hence law could never "command what's best" (294b2). Any laws that do exist among us are at best the hard-won approximations of wisdom and must be regarded as provisional. But the Stranger's argument proceeds to show that the perfect statesman, as a human being, is impossible, and even in a modified form, the rule of the wise man is by and large unavailable. Rule by law, therefore, though it looks like only a "second best" alternative, is a necessity in the political sphere.

The Stranger's critique of law is mostly a practical one: law leads to errors in judgment and inflexibility in emergencies, severely curtailing the freedom of the prudential statesman.

The Stranger raises another consideration, however, when he imagines someone intent on investigating the basis of the laws and questioning their excellence: this Socrates-esque figure, the Stranger indicates, would be suppressed by the city just as the historical Socrates was executed (299b2-d1). Not only statesmen but also philosophers suffer a restriction on their activity from the community's code of law, however politically necessary it might be. While the city is said to be "strong by nature," the philosopher is at the mercy of the city (302a). In the midst of his myth contrasting the supposedly golden times of the Age of Cronos with the harsh realities of our Age of

Zeus, the Stranger asks whether human beings are happier in that earlier era or in ours. He doesn't answer this question, but he tells young Socrates how he could think about it: if the humans of the Golden Age used their advantages to philosophize, they would be happier by "a thousand-fold," but if they did not, "it's very easily decidable." Is the Eleatic Stranger's deepest criticism of the law that its aim is to cultivate obedience, which threatens the activity and life of philosophy?

Because of its different cast of characters and dramatic context, Plato's *Laws* hews closer to the political phenomena than the *Statesman*, and in particular the role of the sacred in political life lies more on the surface. In the *Laws*, an Athenian Stranger has a discussion with two elderly gentlemen, one Spartan and the other from Crete, while they make a pilgrimage to the cave where Minos received the Cretan laws from Zeus. The Athenian pursues a rational analysis of divine law according to its end (virtue) and its distinctive means (shame and honor). Whereas in the *Statesman* the Stranger only alludes to the importance of the Athenian Stranger is confronted with the question of divine law, though he approaches it rather indirectly. When his interlocutors report on the legendary source of their codes of law in the contact between a god and the lawgiver, the Stranger does not inquire into that remote origin, preferring instead to analyze the structure of a law that would count as divine. He pursues a "Napoleonic strategy," to use Strauss's phrase from his book *Philosophy and Law*, and avoids a dangerous attack on the fortress of traditional authority. He is able to pursue this strategy because he finds two shared premises between himself and his Cretan and Spartan interlocutors: they agree that law is directed toward complete virtue, and there is a law that permits critical discussion of the laws, albeit under certain constraints—not for the young.

With the agreement that the law is directed at virtue, and there is an intelligible structure of virtues, the Athenian Stranger can pursue his strategy on the basis of a standard of what divine law would be. Unlike the Eleatic Stranger in the *Statesman*, the Athenian Stranger takes it as his premise that law aims at more than simply keeping the peace of civil society, but actually aims to produce happiness by cultivating virtue. In the course of their examination, however, he finds the Spartan and Cretan laws unable to meet this goal. In fact, the Stranger casts doubt on the power of law as such to produce complete virtue in the citizens. Complete virtue is something that exists in accord with mind, which is the leader of all the virtues. The primary virtue is prudence, but the Athenian never claims that the lawgiver can provide prudence, let alone give any access to mind. At best he can establish in the city a gerontocracy that is an image of rule by the prudent. Worse still, the Stranger claims that awe (αἰδος) is the lawgiver's secret weapon for producing obedience to the law. Yet awe substitutes fear of shame for all of the other virtues, and obedience is a substitute for prudence. Like the Eleatic Stranger in the *Statesman*, the Athenian Stranger does not deny that law is a necessary instrument for human welfare. But he too ends up implying that law is incapable of accomplishing the highest human ends.

From Plato, this study moves to its second part, turning towards Maimonides' *Guide of the* Perplexed, which offers an explicit, fully formed inquiry into divine law. In the first part of my study, I focused on elaborating the classical argument about the superiority of rule by a wise man. In the second part, I focus on how the classical argument poses a challenge to the fundamental premise of Biblical revelation, which, in Maimonides' treatment, postulates God's bestowal of an enduring and absolutely correct

legislation that is sufficient for the governance of His people. In my discussion of, Maimonides, I aim to show that he indeed engages with the classical critique of law when he explores why the law has to be as eternal and unchangeable as it claims to be, according to the critical assessment of the Eleatic Stranger in the *Statesman*. More specifically, Maimonides explains what assumptions have to be made about God's power and the purpose of human existence to support the belief in eternal and unchangeable law. To be sure, I do not argue that Maimonides had access to authentic copies of the *Statesman*, or even the *Laws*. However, I contend that the classical account of law raises inescapable questions about law that any intelligent person, such as Maimonides, could raise for himself in any era.

Maimonides enters into his discussion of divine law in the second book of the *Guide* through the question of whether the world is created by God or has existed eternally. This question arises because divine law requires that God have absolute power over nature. If the world were eternal and governed by a necessary order, not only the miracle of creation but with it all miracles would be excluded. God would be unable to reveal His law or fulfill its promises, if that depended on miracles.

Accepting that the Law[*] in principle could have been miraculously revealed by God, Maimonides explores the mode of revelation: the prophet. Moses' legislative prophecy is the preeminent example of prophecy for Maimonides. The prophet is a human being who has achieved perfection in all the moral and theoretical virtues, and also possesses an extremely vivid imagination. Such an individual receives a divine overflow into his intellect that enables him to provide a law code and allows his

[*] Following the convention of the Pines/Strauss edition of the *Guide of the Perplexed*, I always use "Law," with an initial capital, in order to indicate divine law, e.g. Sharia or Torah, as opposed to human law (which Maimonides sometimes refers to as "nomos").

imagination to produce images of God and the angel that are suitable for the multitude. The prophet provides laws and images of God because the two-fold purpose of divine law is to produce peace and to encourage correct opinions about the divine.
Ordinary law, in contrast, only produces peace so that the community can get on with its pursuit of its presumably misguided ideas about happiness.

Maimonides calls into question, however, whether the Mosaic law actually fulfills the standard of divine law. He indicates that it is devoted, for the most part, to the lesser purpose of creating civil peace. He admits that elimination of wrongdoing among human beings might entail spreading opinions about God that are not rational, such as the belief that He is an angry and vengeful ruler. If the higher function of the law is to provide images of God accessible to the multitude, is that sufficient for it to foster the perfection of the rational faculty, which was supposed to be the higher aim of divine law?

Although Maimonides' investigation seems to lead to the notion that "divine law" might be a sort of contradiction in terms, he complicates this picture in a number of ways. First, he raises doubts about whether the thesis of the creation of the world is compatible with an intelligible divine law, one that can be analyzed into means and ends. If divine law is the product of divine will, as the universe apparently is, then we cannot know in what way it contributes to human happiness—even the apparently intelligible commands such as "thou shalt not murder" might be issued for a mysterious purpose beyond our comprehension. There could be situations in which the law contradicts the dictates of prudence or enjoins an act that is contrary to the ends that have been stipulated for the law (elimination of wrongdoing, promotion of correct opinions). In that case, philosophy, insofar as it is the search for knowledge of the good life, would be a pointless endeavor,

because the good life would not be an object of knowledge at all. At the most, reason would be either a tool for refuting heresy or infidels, or a tool of juristic interpretation.

Other problems in Maimonides' presentation of legislative prophecy stem from ambiguities in his account of the prophet and his abilities. While he dwells at length on how the divine overflow moves through the intellect into the imagination in order to produce images of God, Maimonides does not really explain what the relationship is between this process and the laws that concern actions. The overflow seems to produce an impetus in the prophet to help his fellow men by legislating for them; Maimonides compares this to the case of the philosophers, who are moved through the agency of a divine overflow to write books to educate their fellows.

Although he does not spell it out fully, these chapters of the *Guide* lend themselves to a naturalistic reading of prophetic legislation as the philanthropic activity of the wise, or even as a product of the overwhelming moral urge of public-spirited and courageous men who are not necessarily wise.

Overall, Maimonides investigates law in a manner that is cognate to the Athenian's approach to the Spartan and Cretan legislations in the *Laws*. In both cases the point is to understand divine law by inquiring into its ends and to investigate whether a particular code of law provides the means to reach those ends. Maimonides, however, in comparison with the Athenian Stranger, engages more openly with the concept of the prophet legislator, Both, however, agree that the ultimate question directed at any law, insofar as that law aims at more than just harmonizing society, is whether it can lead its adherents to wisdom.

The final essay in this study examines a follower of Maimonides, Joseph Albo, whose *Book of Roots* purports to disclose the principles of divine law as such and defend Judaism as the true divine law. At first, Albo attempts to demonstrate that all true divine laws are identified by three "roots"—belief in god, belief in revelation, and belief in reward and punishment in the afterlife. Any divine law that contains these roots would be intellectually consistent, in his view. However, Albo admits that there may be a law that enjoins these beliefs yet is somehow not divine; in other words, these three beliefs are necessary but not sufficient for divine law. A divine law must be genuinely revealed by god, a fact which can only be accessed through trusting in a tradition that passes down an eyewitness account of the event. Albo appears to acknowledge that divine law is an object of trust, or faith, rather than knowledge; yet, he gives many hints that there are no reliable traditions he knows of, or perhaps tradition is in itself unreliable.

The Athenian Stranger in Plato's *Laws* shies away from investigating into the divine origin of the Cretan and Spartan law, preferring to consider what a law would have to be like to be divine, then inquiring into whether the laws under consideration meet that standard. Maimonides follows a very similar pattern in his treatment of divine law, and at first, Albo appears to follow Maimonides' approach. However, Albo also raises even more explicitly than Maimonides does the problem that revelation might pose for the critical analysis of law as an artifact that is a means to the ends of harmonizing society and acquiring wisdom.

Divine law, according to Albo, is a manifestation, most importantly, of justice. Looking back over the *Statesman*, the beginning of the *Laws*, and the sections under examination from the *Guide*, one realizes by the contrast with Albo how much justice has

been absent from these discussions. Justice seems to disappear from view when law and politics are considered only as instruments for keeping civil peace. Even if the highest purpose of civil peace is to provide a peaceful atmosphere for the pursuit of wisdom, justice itself is an instrumental good, not good in itself.

In conclusion, this dissertation explores four different texts, each of which represents a distinct confrontation with divine law. In the *Statesman*, Plato's Eleatic Stranger proceeds through hints and by leaving certain argumentative roads untraveled. In doing so, he indicates why this confrontation must be necessary: if "non-divine" law forbids philosophizing, how much more so would divine law? In the *Laws*, Plato's Athenian Stranger approaches divine law by understanding it in light of its claim to complete virtue. He then works backward to examine whether Spartan or Cretan law accomplishes this task, or whether any law can do so. Maimonides follows a similar strategy in the *Guide of the Perplexed*, asking what a divine law would be like by asking what God would have to be like to give such a law. In contrast with the Plato, Maimonides focuses on the question of the nature of the divine lawgiver, an unavoidable emphasis due to Moses' prominence in the Jewish tradition.

Joseph Albo follows in Maimonides' footsteps by considering revelation as a phenomenon that might be investigated by philosophers, yet his text highlights the limits of this approach rather than its power. For Albo, divine law appeals directly to the desire for certainty about the sovereignty of justice. He locates the divinity of the law in its promise that God rewards and punishes human beings in the world-to-come. This promise is known through a revelation whose authority is vouchsafed by an apparently

unbroken tradition. Thus, in Albo's approach, an investigation of divine law cannot be complete without an inquiry into the reliability of the traditions.

Part I – Plato

Chapter 1: *Statesman*

Divisions

Plato's dialogue the *Statesman* (Πολιτικος) continues the Eleatic Stranger's answer to Socrates' question from the dialogue *Sophist* (Σοφιστης) about the sophist, statesman, and philosopher, whether they are one or three. In his proem to his question, Socrates suggested a possible answer: the sophist and the statesman (and the madman) might be the apparitions of the philosopher. The philosopher appears other than he is when he "visits the cities" because of the ignorance of others; Socrates does not make it clear whether the philosopher deliberately disguises himself or not. From the very beginning of the *Sophist/Statesman* pair, the question of how the philosopher navigates political life is on the table. It is not surprising that this question would be on Socrates' mind the day after he received his indictment on charges of impiety and corrupting the youth (*Sophist* 216c-d).

As he unfolds his account of who the statesman is, the Eleatic Stranger pursues a pathway through his divisions that leaves many intriguing alternatives unexplored. The Stranger clearly has an idea about statesmanship through which he guides young Socrates throughout the dialogue. However, by noting the places where he tendentiously picks one of a set of alternatives, and exploring the consequences of his selection, we can better understand the Stranger's view of statesmanship by sketching out the views of statesmanship that he rejects. What the Stranger most conspicuously disqualifies is any role for the gods in political life and any special character of human political life that

would distinguish it from the life of the other animal herds. I argue that insofar as these views are insufficiently discussed in the earlier parts of the dialogue, the Stranger's discussion of the problem of law is also insufficient. This insufficiency may be expressed through the question, "where is divine law in the problem of law?"

From his very first move, the Stranger makes assumptions about what statesmanship is. He asks young Socrates whether the statesman is "one of the knowers (τῶν ἐπιστημόνων)" (258c6-7). If the statesman is one of the knowers, than presumably what he knows is the political art, which is itself a kind of science: knowledge of the purpose of politics and of the means for achieving those ends. But such a position assumes that statesmanship is not a kind of knack born of long experience, or a natural gift for persuasion and prudence. To assume that the statesman is a knower is also to begin to discount the non-cognitive elements of political success—a commanding presence, luck or divine favor, and most of all the desire to rule rather than to be ruled. Further, we can ask who has knowledge of what the purpose of political life is, or of what fair or foul means are appropriate to achieve those ends without undermining or failing to accomplish them?

Granting that statesmanship is to be found among the sciences, the Stranger proposes that there are two kinds of science: cognitive (γνωστικῆς) and practical (γνωστικῆς). The cognitive sciences are those such arithmetic that are "stripped of actions and furnish only cognition," while the practical sciences are those which "bring to completion along with their actions the bodies that come to be through them and were not before" (258d4-e2).Through this definition, the Stranger elides the difference between making (ποιετικη) and action (πραξις) that is so important if one wishes to separate an

activity that is an end in itself from the more prosaic or even demotic productive arts. Because there is no realm of action here, but all practice is made into production, statesmanship is sought within the cognitive class (γνωστικῆς).

Before moving on with the divisions, the Stranger adds a quick step that seems like a digression. Since statesmanship has already been removed from the realm of practice, the Stranger can ask whether "the statesman and king and slavemaster and further household-manager" are various names for a single art. With this step, the Stranger destroys the heterogeneity among the arts that rule over human being, and decisively prepares for his later equivalence of animal herding and politics. Young Socrates lets this go by without any objection, but we will see that he objects to some of the later consequences of this move.

Returning to the divisions, the Stranger proceeds to divide cognitive science into two subgroups. "Then if we bisected cognitive science (γνωστικῆς) as a whole and called one part the injunctive (ἐπιτακτικὸν) and the other the critical (κριτικὸν), might we say we had made fitting division?" (260b3) The injunctive (ἐπιτακτικὸν) is a funny in-between thing – it is not a practical art, insofar as practical arts are limited to manual arts (259c any king can do little with his hands or his whole body toward holding his position, compared with what he can do with the sagacity and strength of his soul, 259e: As supplying knowledge, not manual labor). However, although the injunctive is a species of cognitive science, it is distinct from the arts which are said to be exclusively critical. The injunctive (ἐπιτακτικὸν) is partly practical, and it involves a faculty other than comprehension (σύνεσις) – it involves the strength (ῥώμη) of the soul in addition. To boss around his workmen, the architect must possess some strength of soul besides

technical knowledge. There is no reason to think strength of soul is a kind of knowledge, or that it could be taught or learned.[1]

If rule requires a non-cognitive component, then we ought to be skeptical when the Stranger identifies the ability to advise a king with the ability to be a king (259a). If a king requires an advisor, it must mean he has strength of soul but lacks knowledge, whereas the advisor has the cognitive capacity to rule but lacks the commanding presence. The advisor would not truly be a king without a crown. However, the stranger asserts that the advisor has the kingly art in the context of denying the distinction between kingship, household rule, and slave-mastery. Perhaps these lower authorities do have strength of soul as well as political knowledge. In that case, why are they merely advisors to the king rather than kings themselves? The republican implication of this argument is that the successful householders at least are fit to rule. However, if they do not rule because they have chosen a private life over a public one, then we have found a second non-cognitive component of kingly rule: the desire to rule. The injunctive (ἐπιτακτικὸν), then, is a part of the cognitive science because the king doesn't get his hands dirty, but it contains elements of practical science, viz., strength of soul, desire, and a direction towards practical action.

The injunctive is itself divided into the self-commanding (αὐτεπιτακτικός) and the heraldic (κηρυκικός), mirroring a distinction in the *Sophist* between the retailer who sells someone else's product (κάπηλος) and the self-seller or wholesaler who sells their own (αὐτοπώλης) (260d, *Sophist* 223d).[2] The king will not be placed among the interpreters, coxes, soothsayers, and heralds whose function is to pass on the injunctions of another, higher authority. In a way, the heralds are more part of γνωστικῆς than the ones who give

them orders; heralds don't need to have any strength of soul since the royal emblem confers authority on them. But heralds are less a part γνωστικῆς than the kings because the kings think up the messages that heralds merely repeat. In a way, human kings are of a higher rank than the prophets of the gods, if all heralds are of the same order whether they convey the orders of a merchant ship captain or of a god. Of course, a prophet may convey a command from a god to a human king.

It is ambiguous whether the "auto" of αὐτεπιτακτικός refers to the king as one who rules by himself or as one who rules over himself. Similarly, in the *Sophist*, the one who sells his own intellectual wares might reasonably be said to be selling himself, if it is true that the things of the soul are most one's own. Self-commanding might be of a higher rank than heraldry because even though the herald is ruled by a god, the king rules by himself, through his own thoughts, and might even rule his own self, which is in some sense the aspiration of philosophers. Self-commanding at its highest might refer to philosophy's practical dimension. By dividing self-commanding from heraldry and placing self-commanding in the higher position, the Stranger points toward human rather than divine rule as his topic. At any rate, the Stranger makes clear that he is speaking of by speaking of rule as a human thing by mentioning heralds and then excluding them from the hunt for the statesman. It seems likely that he is displaying some kind of irreverence toward divine rule.[3]

Self-commanding admits of further division into rule over the coming-to-be of the soulless and of the ensouled (261b). This step is puzzling because the previous sorts of rule were quite reasonably assumed to be rule over human beings. Whereas the previous divisions led to greater specificity, the new division between ensouled and soulless

moves to a higher level of generality. With this step, the investigation turns towards defining the being that is subject to command by "the royal science" (261c) or the "statesman" (261d), and away from defining the power of commanding. From now on, the divisions will focus on narrowing down the animal herd that the statesman or king nurtures. The result of this unexpected turn is to put human nature into question, while before the humanity of the ruler and the ruled was taken for granted. Perhaps human nature was problematized by the implicit appearance of the gods in the previous step, the separation of self-commanding from the genus of heralds. The presence of the soothsayer among the heralds raised the possibility of super-human rule. It has become necessary to consider what would differentiate human rule from superhuman rule (260e).

The statesman looks after the nurture of many animals together, a kind of "herd-nurture" (ἀγελαιοτροφίαν) or "common nurture" (κοινοτροφικήν), rather than "single animal nurture" (μονοτροφίαν) or a "nurse in private" (ἰδιοτρόφον). Since political life involves the common rather than the private, it makes sense that the statesman would be a herder rather than a kind of groom who takes care of a single animal. Although it may seem obvious that the statesman oversees a group of people, perhaps the Stranger wishes to highlight the specific difference between political rule, which looks to the common good and treats individuals as fungible, and the nurture of a single individual, which attempts to cultivate a particular person. This distinction will be fundamental to the Stranger's discussion of law, where the legislator, who "supervises the herds," is compared to the instructor of a gymnastics class, who teaches based on coarse approximation of the average human body. In the same context, the Stranger contrasts the communal gymnastics class paradigm with the doctor, who treats individual patients with

an eye to the unique circumstances of each case (294d-295b). The individualized care provided by the doctor can also be seen as an image of the education through purifying refutations that the Stranger calls the activity of the "well-born" sophist in the *Sophist* (230a-231a).

After separating herd nurture from the nurture of individuals, the Stranger invites young Socrates to make the next division of herd nurture. Young Socrates says he is eager to try (προθυμήσομαι) and goes on to split herd nurture into the nurture of humans (ἀνθρώπων), on the one hand, and the nurture of all the other beasts (θηρίων), on the other (262a). Young Socrates' term "beast" refers especially to wild animals – his division seems to place human beings in the class of the tame animals. The Stranger praises young Socrates for his "altogether eager and manly (ἀνδρεῖος)" way of dividing, but rejects this division as methodologically unsound. Young Socrates was playing fast and loose with the distinction between "part" and "species": the grouping together of all herd animals except humans might be a part of the herd animal genus, but it is not a species. It is "safer," more moderate, to move through the middle, in order to be sure that one is dividing according to species and not merely separating out arbitrary chunks. The Stranger attributes this error to eagerness to "urge the forward the speech" when he saw it was proceeding toward human beings (262b). It appears that Young Socrates correctly guessed that the sought-after expertise is the nurture of human beings, but the Stranger does not want him to circumvent the sequence of divisions. Why is it so important to delay the inevitable conclusion of the investigation, especially when there seem to be such powerful grounds for separating human beings from all other animals?[4]

Perhaps the Stranger wants to calm down young Socrates' political passions. When he says that he will explain the error out of "the goodwill I have for your nature, Socrates" (262c), presumably he means that he has goodwill towards young Socrates' that will be expressed by moderating his "manly (ἀνδρεῖος) and eager" nature.[5] However, this comment could also be directed towards the elder Socrates who is listening in on the conversation. Insofar as the elder Socrates' way of inquiring into human things was by starting from the conventional human opinions of those around him, he too is implicated in the Stranger's critique of young Socrates' naive belief in the specific integrity of the human realm.

To consider statesmanship or kingship as a kind of herd-nurturing, human beings have to be regarded as non-political, as mere humans (ἀνθρώποι) rather than as "real men" (ἄνδρες). Young Socrates appears to be aware of this, because he uses the generic term ἀνθρώποι rather than ἄνδρες. However, by separating humans from all other animals, young Socrates is doing something that the Stranger regards as "manly". By calling young Socrates manly for holding the belief that humans are distinct from the other herd animals, the Stranger highlights that, despite his use of the neutral ἀνθρώποι, young Socrates shares in the political opinion par excellence—Aristotle, for example, makes the claim at the opening of his *Politics* that human beings are more political than any other animal (*Pol* I.2 1253a10-15*).* Young Socrates is probably thinking along the same lines when he divides humans from the rest of the herd animals, but the Stranger chides him on the grounds that dividing the herd animals into human and all the others is as incorrect as splitting humanity into Greeks and barbarians, or splitting the numbers into 10,000 and all the others (262d-e). "Barbarian" is not a proper species; there are lots

of distinctions that may be drawn between human communities. It is likely that some of the so-called Greeks might have less in common with each other than with the so-called barbarians, and vice versa. The Stranger is using a paradigmatically political distinction as an example for the incorrect way to divide up a genus. Just as, in the *Sophist*, the Stranger cut generals down to size by finding them in the same division as flea-catchers(*Sophist* 227b), so too here the Stranger finds the statesman, and humanity in general, in the class of animal herds.

However, the Stranger might nevertheless be abstracting from sound reasons for the separation of the Greeks from barbarians on what might be called cultural or political grounds. The Greeks did share many practices with the barbarians in earlier times.[6] However, the Greeks contemporary with this dialogue had many practices that the barbarians regarded as shameful.[7] Also, for the most part, the Greeks lived in πολεις, while the barbarians lived in either tribal villages, as nomads, or under "oriental" despotism eg. Persia (with some exceptions--Aristotle mentions Carthage as non-Greek in this connection).[8] The Stranger's denial of these facts points out again how he pushes young Socrates to a view of politics that is very estranged from conventional experience. We must keep in mind the question of why he does this and what he is trying to teach young Socrates. If the distinction of Greeks and barbarians has to do with their different way of being ruled (in poleis vs in households, large or small), then the difference in how animals and humans are ruled is that much more significant. Perhaps the Stranger is challenging young Socrates to distinguish between ruling and herding, or perhaps the Stranger's long term goal in this dialogue is to investigate what this distinction is.

Despite his comment about young Socrates' manliness, the Stranger goes on to discuss young Socrates error as if it were unrelated to character, like an arithmetic blunder. Although it might be true that young Socrates has erred because he did not understand the methodological necessity to divide according to species rather than simply by parts, his error stems as much from his character as from his grasp of the Stranger's method of divisions. The Stranger compares young Socrates to a species of intelligent cranes that haughtily dismisses humans and all other animals as one genus in opposition to itself (263b, 263d). Here we see that the Stranger really is pointing to young Socrates' psychology as the cause of his error—he believes in human exceptionalism. But we do not yet know why he does.

When all is said and done, the human comes to light as a two footed cousin of the pig, or as a featherless biped (266c-d, 267a), and the royal and political art is "a grazing science of non-mixing becoming" (because humans, like pigs, do not interbreed with any other species) (267c). The Stranger has found human beings, but they differ in terms of quantity of legs alone from the other animals. The reduction of the political art to "nurturing" of featherless bipedal pigs leads to a conundrum: what does the political art do that is not already comprehended by the activities of all the other nurturers, eg., the merchants, farmers, trainers, and physicians? Unlike the cowherd who single-handedly does all of these tasks for his cows, the king is practically drowned out by all of his co-workers. How will the statesman be shown "pure and alone" (267e-268c)?

Part of our confusion results from the Stranger's choice to allow the nature of the ruled to define the activity of ruling. His method has somehow failed to find humans as we know them, the political animal par excellence that possesses the power of speech.[9]

The earlier emphasis on "command" certainly pointed in this direction, and his description of the cowherd points that way even now, by noting that "both with instruments and by the mouth alone he handles best the music of his own herd" (268b). Because the Stranger has failed in the fullness of time to make the move that young Socrates did prematurely, to separate humans from animals, the political art remains indistinguishable from the arts that care for the body. To remedy this, the Stranger now turns his attention back to the ruler through a myth. Perhaps a myth is necessary here because the purportedly scientific method of division, which impartially and objectively places humans among the animals, cannot account for Young Socrates' conviction, or divination, hasty though it may be, that human political life is somehow more noble than a specialized kind of animal herding. However, the Stranger's myth will over-compensate by providing an account of the supernatural rule of divinities over humans, rather than defining political or kingly human rule over humans.

The Myth of the Golden Age

According to the Stranger's myth, the cosmos from time to time reverses its circular motion. When the god conducts the circulation of the cosmos, an Edenic Golden Age ensues, known as the Age of Cronos in Hesiod. After this Golden Age, the god withdraws and the cosmos is left to its own devices and begins to spin in an opposite direction, eventually bringing disorder. During the Golden Age, humanity was earth-born and under the god's care, "all things came to human beings spontaneously." All the animals lived as herds under the supervision of divinities (δαίμονες), or divine shepherds (νομῆς θεῖοι). The herds lived peacefully together, without predation. Humans were herded by their own divine shepherd, who was as superior to the human beings of that

time as humans today are superior to the animals that they graze. Humanity lived outdoors in a temperate climate; private property and the family were unknown (271d-272a). Our epoch, the age of Zeus, maps onto the disorderly period when the god is absent (269c-d, 270a, 272b).

The Stranger now asks Young Socrates to pronounce on which age is happier, the age of Zeus or the age of Kronos. Young Socrates responds that in no way would he be able to make such a judgment (272b). Why not? Is it because he lacks a clear standard for judging human happiness? Young Socrates might be tempted to agree that the humans were happiest in their pre-political state because their existence was free of pain and involved moderate pleasures. But like Glaucon, who rejected a "city of pigs," Young Socrates might believe that the distinctly human life, which involves political rule and the arts (including his own art of mathematics), is possible only in the age of Zeus. For Young Socrates, it might not be clear whether human happiness is due more to living pleasantly or living well or nobly. For his part, the Stranger has a much clearer standard for judging human happiness. The inhabitants of the Age of Kronos would be happy if they employed their leisure for philosophy, but unhappy if they merely ate, drank, and were merry with the beasts as certain scurrilous stories report (276c-d).

After a prescribed time, the god withdraws along with his assistants and allows the cosmos to take its own way. Following the initial shock of reversing its course, the cosmos settles down and runs in an orderly way as long as it remembers its divine instruction. Over time, forgetfulness effaces the good order of the cosmos and things fall apart. Before the cosmos flies apart completely, the god steps back in and rights it (272e-273a, 273d-e). Left to themselves, all the animals become savage while the humans are

weak and defenseless without their divine shepherds. Humanity had to fend for itself, which led to the arts. Old stories hold that the arts are gifts from the gods, but the arts must in fact be products of human ingenuity. Therefore, divine care is characteristic of the previous epoch, not of ours (274c-e).

Through this myth, the Stranger points out "a great error" in the divisions that led to the discovery of "royalty and the statesman" (274e). Our mistake, he explains, was to consider the king and statesman as a kind of shepherd, which is the type of rule characteristic of the "contrary circuit." To rule human beings in the age of Zeus is to rule over a city rather than a herd (274e-275a). In our time, the king and statesman is also human, so he cannot rule the human beings as a human rules a herd of sheep or cattle. Although he earlier blamed Young Socrates for moving too quickly to the political art, after the myth the Stranger is now ready to move beyond the reductionist view of politics as herd nurture and to accommodate Young Socrates' more conventional yet more plausible view of politics.

Rather than nurture the herds, the statesman is part of a more broad class of those who "tend the herd" (ἀγελαιοκομικὴν).[10] The statesman belongs to the class of those who tend alongside the divine shepherd and the lesser beings who care for the body such as physicians, farmers, etc. who earlier threatened to crowd out the statesman (276a, 267e-268c).The royal art is distinct because it rules over an "an entire human community" and is "applicable to all human beings," while the other caring arts looks after only one or a few people and only in certain respects (276c). The last and greatest mistake the Stranger points out was that the original divisions had not divided caring into "voluntary and forcible." This last division marks a large departure from the model of herd nurture, and

brings us close to something recognizable as politics. The Stranger explains that "we earlier made a mistake of a sort more naive than we ought to have done, when we put together into the same kind king and tyrant." This is a reference to the discussion that preceded the initial divisions, when the Stranger argued that "the statesman, king, slave master, and further, household manager" are identical (258e). That earlier argument had also denied that there was a difference between rule of a large household and a small city (259a). Because of young Socrates' manly nature, the Stranger gradually abandoned his initial apolitical bird's-eye-view from which the he could blithely ignore the difference between rule over slaves and free men (262a, 276e).

The Measure of the Mean and the Paradigm of Weaving

Having gone through the mistakes they made while searching for the king and statesman among herdsmen, the Stranger suggests another paradigm: weaving (279b) specifically the making of woolen cloaks (279b, 280e). In the presentation of weaving, the Stranger tries to avoid the errors that plagued his use of herding as a paradigm. When the statesman was said to be a herd-nurturer, he was swamped by all of the other trades that claimed to nurture or care for human beings. Now, the Stranger makes sure to dismiss out of hand all the arts that are kin to "the art of repelling winter-storms, productive of a woolen defense, which goes by the name weaving."

The Stranger says that he picked weaving for this exposition of method because it's the smallest paradigm with the same business as politics, just as he picked the way children learn letters as the smallest paradigm of the use of "paradigms" in discovery (278b-279b). Learning to read is about using known elements in simple syllables to understand how letters form words in more complex arrangements, and discovering the

truth involves using simple combinations of known elements to understand the arrangement of elements in complex entities (278d-e). How, then, does weaving serve as a simple paradigm for the political art? The Stranger does not make this clear until late in the text, when the political art turns out to involve a breeding project based on the principle of weaving the bold citizens (the warp) with the moderate citizens (the woof) (310a-311c). However, since this discussion is deferred until the very end of the dialogue, it seems likely that we are first meant to consider the political aspects of weaving independently of this eugenics program. Nevertheless, the later discussion of inter-breeding should confirm that the most obvious political implication of weaving is that politics is an art of joining citizens together. Yet at this juncture, it is not necessary to consider only that most intimate method of weaving together disparate types. The major element of statesmanship is binding together the citizens and creating friendship among them.[11] Laws both written and unwritten serve to paper over the differences between citizens and unify their habits and actions.[12] It is also reasonable to regard political life as an artifice that shields human beings from hostile nature, but as more like a fabric than a wall.

Turning to the divisions that lead to the discovery of cloak-making, we can find some revealing moments in a seemingly banal description (279c-280a). First, the Stranger opts to find politics among ordinary "defenses" (προβλημάτα) rather than protective drugs/charms (αλεξιφάρμακα), whether they are human and divine. It is hard not to see some kind of denial of the significance of the sacred within the make-up of the city, as earlier he separated the statesman from the rejected class of heralds, a class which included prophets (260d). Among the defenses, the Stranger selects coverings over

shelters and envelopments over spreads. Spread loosely, fabric totally obscures what it covers, but it can also take the shape of whatever is tightly enveloped in it. Perhaps political life is highly variable and matches the contours of the people that make up a given community – there is no "one size fits all."

The Stranger locates the weaving art among the arts that make composites rather than seamless wholes—this points to the possibility that political life cannot totally homogenize the disparate elements that make up the city. Next, the political community is fashioned from wool rather than plant fibers. Wool is produced through a mutually beneficial partnership of human and animal; the farmer is not in a partnership with his crops. Of course, the relationship of shepherd and sheep is not really "voluntary," but it is mutually beneficial. Perhaps the voluntary is not as important to the Stranger as he suggested earlier (at 276e). Also, the disparate parts that compose the city might be inferior and superior elements, rather than equal ones. Of course, it is unlikely those elements will be as distinct in nature as shepherds and sheep, given how the Stranger attributes rule by divinities to the Golden Age alone (274e-275a).

Before moving on to his central discussion of statesmanship and law, the Stranger introduces the crucial concept of the "measure of the mean" under the guise of a digression about how long the dialogue has become. The Stranger explains that there is another measure besides the arithmetic—there is a measure relative to the "becoming of the mean," in other words, to "the fitting, the opportune, and the needful (284d-e). This kind of measure is at work in all of the arts, and sounds very much like Aristotle's prudence. The importance of the "measure of the mean" will not be fully grasped until the discussion of the superiority of the rule by the wise to rule of law.

The Stranger introduces the discussion of the statesman by clearing away the others who might claim to nurture the human herd, just as he cleared away the other arts that crowded around cloak-making (287c-290a). However, he runs into some trouble when he comes to those who work most closely with the statesman: "the tribe of heralds...and all those who by frequent service become wise in letters." Young Socrates wants to dismiss them as mere servants, but the Stranger believes that it is among this group that the "those who particularly dispute the political art will come to light," although he admits it is "strange" (ἄτοπον) to look for these rivals of the statesman among the slaves.

The rivals of the statesman turn out to be the diviners, "interpreters from gods for human beings," as well as the priests, who have knowledge (ἐπιστῆμόν), "as the lawful (νόμιμόν) says" of how to sacrifice to the gods and to pray for benefits from them. Because of the prestige that accrues to them from their commerce with the gods, the priests and diviners are so powerful in Egypt that a king must come from among the priests or join their rule. In other places, the most important sacrifices are associated with kingship, and in Athens there is a priestly officer known as the "king."

Despite the earlier efforts of the Stranger, it seems that the gods cannot be kept away from the city. Even though the Stranger insisted that the king was not to be found among the heralds of the gods, and despite his strong case that we no longer live in an age in which gods rule over human beings, and although he explained that the woolen cloak of the city was not any kind of magic charm, nevertheless the priest and diviners have returned to fight for the role of the statesman.

The Problem of Law

Just as the gods and their interpreters have returned, so too does ordinary politics in the form of the well-known regimes. The Stranger calls the rulers in these regimes "the greatest enchanters of all the sophists and most experienced in this art." The possible regimes are defined first by the quantity of rulers, whether they are one, few or many, and next by whether they take part in "the forcible or voluntary, poverty and wealth, law and lawlessness." However, these divisions turn out not to matter to the Stranger. According to him, one who rules according to *techne* is a ruler in the unqualified sense. It does not matter if he rules "the willing or the unwilling, whether in conformity with writings or without and writing, and whether they are rich or poor" (293c). Just like a physician is a physician because she works for the good of the body, and makes it better from worse, so too a ruler is a ruler because he employs "science and the just, and in keeping it safe, makes it better or worse" (293d). Just as the physician is permitted to cut, burn, purge, or increase the body for the sake of health, the ruler is permitted to kill, exile, or import citizens for the sake of the city's health. The principles responsible for the immunity belonging to the physician and the ruler are (1) that a good end justifies any means and (2) that *techne* is the proper method for directing means towards ends. According to the Stranger, all regimes are imitations of the unqualified rule of the knower, and "good laws" are responsible for the most beautiful imitations. However, the knower himself is not bound by any conventional restraints at all.

Young Socrates accepts that possession of the ruling art removes almost all qualifications from the ruler except the need to act for a good end, but he says he is disturbed by the lawlessness of the knower, making the following objection, "It seems

that everything else, stranger, has been said in a measured way, but the statement that one must rule even without laws is more difficult to take in" (293e). The Stranger says that he had been about to ask young Socrates whether he was distressed by the conclusion, and begins a discussion intended to defend the thesis that the best ruler will be lawless (294a *ff*).[13] The Stranger's remark indicates that he expected young Socrates to be distressed. Indeed, most decent, law abiding folk would be repelled by the Stranger's argument. Yet young Socrates is only distressed by the most extreme formulation; he could have expressed his discontent earlier. It seems that he is not distressed by the lawlessness itself, but by the dangerous consequences of the analogy between what is acceptable for a doctor to do and what is acceptable for a ruler. Doctors can remove limbs to save a patient because these limbs are the totally subordinate parts of a whole creature. The arm does not possess any consciousness or will. However, it is debatable to say the least that human beings bear the same relationship to the city as arms or legs do to the human body. The city is not necessarily a whole in the same way the body is, and the citizens, unlike limbs, have a mind of their own.

Underlying this objection is young Socrates' manly desire for freedom and his fear of being made a victim of tyranny. Young Socrates does not have a tyrannical nature, and so does not imagine himself as the ruler but rather empathizes with the victimized citizens who are subject to the apparently arbitrary will of the knower. Of course, the knower's will is emphatically non-arbitrary, but for young Socrates this is not enough to eliminate his desire for rule by consent. Earlier in the dialogue, the Stranger tried to steer young Socrates' passionate belief in human exceptionalism towards a more rational understanding of what separates rule over human beings from herd nurture. Beginning

with the discussion of the measure of the mean, the Stranger has tried to help young Socrates move beyond his passionate assertion of human independence and his limited mathematician's view of reason towards a rational understanding of how human beings can navigate the world for themselves through prudence. The conversation about rule of the wise vs. rule by law that the Stranger now initiates must be seen as a part of this dramatic context.

The Stranger makes his argument for the superiority of the consent-free rule of the wise human being very succinctly. First, because a law is written down and unchanging, it cannot adapt to the differences among human beings or to changing circumstances. The unchanging character of law can be contrasted with the arts, which are constantly innovating and adapting. Unlike the arts, law strives to give the rule in particular scenarios without sacrificing its unchanging character. The Stranger compares the law in this regard to a "a 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 turns out that , after all, something new is better for someone contrary to the speech which he himself enjoined" (294b8-c5). Law, unlike the arts, is not focused only on producing a good result; one of the objects of law is to maintain its own authority and to strain towards eternity. According to the Stranger, law desires to be an end, not merely a means. However, the Stranger claims that law can never reconcile its drive towards eternity with goodness, asking, "Isn't it impossible, then, for that which proves to be simple through all times to be in a good condition relative to things that are never simple?" (294c7). Young Socrates responds "probably," which is not exactly a ringing

assent, although he doesn't challenge the Stranger's assertion. Young Socrates' lukewarm assent here is due to his doubts about whether the wise man should rule even without law.

The Stranger asks young Socrates the obvious next question, "On account of what exactly is it necessary to legislate, inasmuch as the law's not the most correct"(294c9-d2). Since legislation is not optimal, the fact that we legislate must stem from necessity, i.e., we legislate against our will, not because we wish to. To explain the necessity for legislation, the Stranger invokes the image of a gymnastics class, in which the teacher prescribes exercises that would do the most good for the most athletes, rather than the best exercise for each athletes (294d7-e2). Likewise, the legislator prescribes collectively, because he will never be in a position "to prescribe precisely what is suitable for each one" (294e9-295a3). The legislator prescribes using writings or "ancestral usages," but the result is the same – a uniform law that prescribes equal actions for unequal beings (295a7-9, 294e4-7). The problem the legislator faces is that he cannot be everywhere at once—even if he could figure out what was good for each, "how could anyone, Socrates, be so competent as to be always sitting beside each one throughout his life and order with precision the suitable?" Thus it is necessary to produce an average, one-size-fits-most legislation that fits no one person but effectively manages "the human herd" (295b1-3, 295a1). The phrase "human herd" applied to the function of law should remind us of the divine shepherding of the Age of Cronos rather than the precision found in the arts that characterize the Age of Zeus.[14] This moment is the closest the Stranger has yet come to addressing the phenomenon of "divine law."

In order to understand how legislation falls short of the best, the Stranger proposes some counterfactuals. Suppose that there could be someone so competent to

give individualized direction to each individual. That person, who had grasped "the royal science," would never write laws, which would actually just become obstacles to his exercise of scientific rule. Or, suppose that a doctor or trainer planned to go on a trip and therefore left written prescriptions to help his patients remember their treatment. Once that doctor returned,

> Would he staunchly believe that neither he, but ordering different things, must trespass the ancient things that were once legislated, nor the sick must have the nerve to do other contrary to what is written, on the grounds that these writings are medically scientific and sound, and the things occur in another way are unsound and are not artful or wouldn't everything of the sort, should it happen in science at least and true art, prove in any case to be altogether the biggest laugh that legislation of this sort incurs? (295d3-e2)

If the doctor forced himself to revere his old prescriptions, and required others to revere them as well, he would contradict the art of medicine. The Stranger puts together "the artful" and "productive of health," over against the artless and the productive of illness. The only purpose of the medical art is to heal, and that is the only standard upon which the medical art is judged. The ancestral is of no value in the arts, and innovation is often required because of changing circumstances or new inventions. It would be laughable if the medical art operated with the same reverence toward tradition as political life (295e1-4). To complete the analogy, the Stranger considers the case of the departed legislators "who wrote, or legislated without writing, the just and unjust, beautiful and ugly, good and bad things," for the cities. The Stranger asks whether the legislator or "someone other similar to him" should be allowed to change the laws, or whether it would be laughable to prohibit this revision (295e4-296a1). It is unclear whether this scenario refers only to the laws that instantiate the principles of justice, beauty, and the good, or to the principles themselves. The inclusion of "legislation without writing" implies at least that the

legislator could change the sacred laws and customs that are deeper to or prior to the written laws. Young Socrates agrees emphatically that the legislator or his successor should be able to change the laws as he sees fit.

The prudential argument for law, as a kind of group exercise, is not sufficient to make the case for law as unchanging, but only for law as temporary reminder in the absence of an artful statesman. Now that young Socrates agrees that law is artless and he no longer assents to the conventional, or citizen's, view of law's immutable authority, the Stranger himself takes up the argument on behalf of law.

He first addresses the matter of the consent of the governed, which was earlier dismissed through the analogy with medicine, in which the doctor's orders and actions are good regardless of whether the patient is treated voluntarily or involuntarily (293a5-7, 293c6-d3). According to "the speech which issues from the many," legislation can only take place once the legislator "has persuaded his own city, but not on any different condition." Young Socrates still has not accepted the Stranger's critique of law because he responds, "What then, isn't it right (ορθος)" to the Stranger's question about whether or not to make consent the condition of legislation. The Stranger reminds young Socrates that in medicine, if a doctor forces a person "to do the better contrary to the writings," it is anything but a mistake or contrary to the medical art. The Stranger makes explicit for young Socrates how this analogy applies to the political art: "And what about in our case? That which is spoken of as a mistake contrary to the political art? Isn't it the ugly, bad, and unjust?" It is of the essence of the Stranger's approach to focus on the outcome of an action, rather than its procedural (lawful or voluntary) character. Based on such an approach, it would be ridiculous to say that one who was "forced, contrary to writing and

ancestral practices, to do other things more just, and better, and more beautiful than the previous…has undergone ugly, unjust, and bad things." More simply, "if [the enforcer] does advantageous things, mustn't this in these cases too be at least the simply true distinctive mark of the right arrangement of a city – that which the wise and good man will arrange as the advantage of the ruled?" (296a5-296e5).

Throughout the Stranger's remarks from 296c5-297b4, he has referred not only to the good but to the beautiful and the just as outcomes for the ruler's actions. In the Stranger's usage, the just and the beautiful no longer refer to the fair or foul means by which an action is done, but are synonymous with a good outcome. Only "artful" or "intelligent" act as qualifications on how an action is done, and they are in turn dependent on the outcome. A good outcome and an act of intelligence are mutually reinforcing – an outcome is good if it was produced through art, and the rational character of the art is verified through the goodness of the result. In the Stranger's picture, there can be nothing that is reasonable and beneficial yet ugly or unjust. Politics, the realm of the lawful and procedural, has receded entirely in the Stranger's argument.

Politics returns because of the necessities imposed by survival in all of the lesser regimes. If the best regime is rule by the wise, then in its absence the rest of the regimes have to make do with imitating the best regime. In order to imitate the best regime, according to the Stranger, the rest of the regimes have to preserve the inviolability of their laws. Anyone who violates the laws must suffer "death and all the most extreme punishments." If the safest course for the best regime is total flexibility, the safest course for the inferior regimes is total inflexibility and brutally stringent enforcement of all the laws. The first way the inferior regimes imitate the best regimes is by positing the

perfection of their laws, just as the best regime acknowledges the perfection of its ruler (297d3-e5).

Elaborating further on how the laws of inferior regimes come to be, the Stranger gives an extended analogy based once again on the doctor, now joined by the ship-captain. His analogy is intended to address the question of how statutory law, made by assemblies, comes to replace the rule of art. There are two reasons why doctors and captains come to lose their authority: (1) through the unintelligence of the patients and (2) through the criminality of the practitioners: "What if we should think about them that we're suffering most terribly at their hands?" asks the Stranger. Doctors cut and burn both those they wish to help and those whom they wish to ruin. They also demand pay, perhaps they are corrupted into murder by the patients' families. Without the medical art, we cannot tell whether his failures are due to chance or malice. We cannot even tell whether the improvement he makes in our condition is a cure or palliation. Ship captains fall under the same suspicions, mutatis mutandis. (298a-b5)

In order to protect themselves, the patients and passengers revolt against the doctors and captains. Since it is impossible by definition for the laymen to audit and control the doctors and ship captains, the arts must be democratized (or opened to a committee of the rich, at the least) for public safety. What the people resolve about these, "whether some physicians and captains or else laymen contribute their advice, we write on some kind of *kurbeis* and pillars, and lay down for ourselves as well some unwritten ancestral customs…" (298d5-e3). Young Socrates is aghast at this procedure, and just as appalled when the Stranger suggests that doctors and captains be elected yearly in order

to execute the medical and navigational laws and that courts be established to audit the elected doctors and lawyers in terms of their conformity to law (298e6-299b1).

Having elaborated an image of politics that makes lawfulness and consent of the governed sound truly ludicrous, the Stranger shows what would happen to any dissidents. Someone who sought, "contrary to the writings," a medical or navigational art, and thus inquired into "the truth of medicines about winds and the conditions of heat and cold," would surely be accused of being a "garrulous sophist." Prosecution for corrupting the youth and insurrection against the laws would soon follow, on the grounds that such a person is trying to be "wiser than the laws." There is no need to inquire into medicine or navigation, because these arts are well known to all through written law and ancestral customs (299b2-d1). It is impossible to miss the parallels to the trial of Socrates; the Stranger seems to be saying that the fate of Socrates is a foregone conclusion based on the inherently anti-rational character of political order. Any attempt to introduce reason into politics is misguided because the phenomenon of politics (as opposed to the unpolitical best regime) only exists because of the incompatibility of reason and the multitude's consent.[15]

To show young Socrates how the reliance on authoritative texts vitiates practical wisdom, the Stranger asks what would happen if all the arts were obedient only to ancient writings. Young Socrates replies that "all the arts would completely perish, and they would never come to be at a later time on account of this law that forbids their search. And hence life, which is now hard, would prove to be altogether unlivable throughout that time" (299e5-9). If politics is an art, then obedience to law has defeated its progress and improvement. Part of the hardness of life that young Socrates sees would be due to

the unchanging law, and the arts would be the only relief for the misery of artless political life.

Law Rehabilitated

At this point, the Stranger has once again brought young Socrates face to face with the radical insufficiency of law. Having turned young Socrates against law, the Stranger provides an argument in favor of law's practical necessity. Rule by the writings, hidebound as they are, is preferable to rule by a charlatan (300a1-9). But if the laws only possess sham wisdom, what difference does it make if a human charlatan or a parchment charlatan rules? In order to explain why rule by the law is better, the Stranger concedes that the laws might not be totally incompetent; rather, they "have been laid down on the basis of much trial and error, when certain advisers gave several pieces of advice in a neat and elegant way and persuaded the multitude to set them down" (300b1-6). Whoever overturns the laws is in danger of making a far bigger mistake than the mistakes enshrined in the laws (300b7). Perhaps the Stranger is revising his initial presentation of law as immutable and originating in the whim of the multitude. If the law is the product of much trial and error and wise advice then it is not so unchanging and arbitrary as we had been led to believe. This "evolutionary" process would result in a law that is an imitation of the deliberations of a wise ruler. Obedience to the law is a kind of "second sailing" that allows the imperfect law to imitate the rule by the wise (300c4).

Of course, some might wish to imitate the rule by the wise in a more concrete fashion, by acting contrary to the law "on the grounds that another thing is better" (300d5). Monarchy is a literal-minded imitation of rule by the one wise person. The name "tyrant" is reserved for the one who rules contrary to the laws. The tyrant uses the wise

ruler's maxim, "after all…at least the best has to be done contrary to what has been written" (301c2). It is precisely this sort of tyrant that young Socrates feared when he gave his initial objection to the anti-nomian rule by the wise, "the statement that one must rule even without laws is more difficult to take in" (293e7-9).

The people's reaction to a tyrant suggests that rule by the wise would be impossible, even if a wise person should arise, since "the one monarch rankles human beings, and they don't trust that anyone would ever to be worthy of a rule of that sort, so as to be willing and able as ruler with virtue and science to distribute correctly the just and holy things to all, but they're convinced he ruin, kills, and harms whichever one of he wants to…" (301c5-d5). The many cannot recognize the knower, since his wise exercise of power would necessarily appear bloody and tyrannical to those who lack that wisdom. It is thus perplexing that having made this statement, the Stranger goes on to add, "[although/since] if there should come to be the sort we're speaking of, he would be welcomed warmly and in piloting with precision would be the only to manage with happiness the right regime" (301d5-7). It is scarcely credible that the wise ruler's actions on behalf of the regime's happiness would be well received, unless those actions were obviously conducive to happiness in the eyes of the multitude. That would only be the case if the actions necessary to acquire happiness for the regime were somehow pleasant. But the ongoing analogy to medicine suggests that the happiness of the regime requires the political equivalents of "cutting," "burning," "purging," etc. Perhaps the people hope for a ruler who will bring about happiness through happy means, and would consider that ruler to be the wise one. But the evidence of the dialogue suggests that the improvement of the regime will be bloody indeed.

Given the absence of rule by science or a god-like ruler in the cities, the Stranger says we ought to be "astonished as to how the city is something strong by nature." Somehow, the cities muddle through, although many are destroyed by their hapless citizenry (302a-c). The Stranger seems to be saying that obedience to the law, the second sailing, is somehow an adequate substitute for science, that regardless of the content of laws, and despite the gap between written law and the variability of events. How does simple obedience to orders make up for the deficiencies in the orders? First, perhaps it is possible for there to be better or worse laws; some laws might be more flexible or more prudent, within the boundaries that limit the wisdom of law as such. Second, laws that are old and hallowed by long observance might contribute greatly to overall social cohesion, such that their particular content is irrelevant.[16] Even if, for the sake of argument, a city is obedient to bad laws, perhaps the habit of obedience to the laws can produce a certain martial virtue that transcends the differences between regimes. Maybe peace-time laws contribute to war-time success simply by being laws at all, regardless of their content. Throughout the discussion of law in the *Statesman*, the Stranger abstracts from the irrational roots of law, despite the irrational attachment to law that Young Socrates expresses in his initial rejection of the thesis that rule by the wise ought to be unfettered by law.

Chapter 2: The *Laws*

Legitimizing the Critique of Laws

Between the *Laws* and the *Statesman*, there are major differences in dramatic scene and cast. The *Statesman* featured a visiting philosopher from Elea discussing the identity of the political art with a young mathematician while Socrates and an older mathematician listen in. Among such interlocutors and auditors, theoretical study, if not philosophy is taken for granted as a serious pursuit. In such company, it is only natural that the statesman or king be hauled up before the tribunal of science—a poignant approach considering that Socrates will soon himself stand trial before the city. In the *Laws*, an old man from Athens who is visiting Knossos on Crete accompanies two other old men, a Spartan and a Cretan, on a pilgrimage to the cave of Zeus. The Athenian has much work to do to convince the Cretan and Spartan to allow him to critically discuss their laws. If the critique of law in the *Statesman* was perhaps overly breezy at times, the discussion in the *Laws* gives the case for law its full merit. However, the Athenian is able to persuade his conservative interlocutors to put their laws to the test—how does he accomplish this?

The dialogue begins with an Athenian Stranger's seemingly innocent question to a Cretan and a Lacedaimonian, "is it a god, or some human being, strangers, who is given the credit for laying down your laws?"[1] His question presents two alternatives for the sources of law—divine, or merely human. Kleinias, the Cretan, is at once voluble and non-committal in his answer. He affirms that their laws are from "a god, stranger, a god,"

although he emphasizes the justice of his saying that rather than its truth. He is especially non-committal about whether a god is the source of the Spartan laws—he thinks that they say (οἶμαι φάναι) Apollo made their laws. Kleinias' answer points to some of the difficulties involved in an investigation of divine law. The would-be investigator is forced to rely on hearsay and tradition, since the divine legislation took place in the remote past. Further, even if one has doubts about the provenance of the laws, it is not just to deny that they are from a god. The Athenian Stranger, in turn, raises some more difficulties with the investigation into divine law. The Cretan law was not disclosed directly to the Cretans from Zeus but through the intermediary of Minos. Worse, the story of Minos and Zeus is corroborated by a reference from Homer, who was a poet not a historian. Rather than engage in a provocative debate about the divine founding of the Cretan laws, the Stranger suggests a leisurely discussion about the laws themselves. He begins by asking Kleinias why his law enjoins common messes and a certain kind of gymnastic training and weaponry (624a-625b8).

Kleinias' answer explains not only the purpose of these specific practices but the intention behind the Cretan law in general. Because the lawgiver, as Kleinias understands him, believed that all cities are in a permanent state of war, the only reasonable criterion for a city's laws is whether they are conducive to victory. Kleinias asserts further that a state of war exists not only between cities but within them as well—in fact, there is faction even within the souls of the citizens themselves. The best laws, then, create a city that is stronger than external enemies and "superior to itself," that is, a city where the better men are capable of overcoming the majority in a civil war (625c8-627a10).

To show why this view is wrong-headed, the Stranger employs an image of the city as a family in which the many unjust brothers have overpowered the few just ones. Supposing this divided house was put into the hands of a judge, who would be the better judge: 1) a judge who destroyed the wicked brothers so the better ones could rule themselves; 2) a judge who put the worthy brothers in charge of the worse; 3) a judge who reconciled the brothers through laws that made them friends of one another? Kleinias responds that the third judge is best and calls him a lawgiver. The Stranger had called this third option "third in respect to virtue;" it is ambiguous whether he meant third in descending or ascending order, and whether it is a third only with an eye to virtue, or in other sense as well. According to the Eleatic Stranger in Plato's *Statesman*, the second option, the lawless rule of the worse by the better, was the best (627c3-628a5; *Statesman* 290ff).[2]

Kleinias' view of the lawgiver is in trouble, because if the purpose of law is to harmonize the citizens, then it cannot be the case that law exists for the sake of creating successful combatants in the civil war between the many and their betters. Of course, laws that aim at domestic tranquility might nevertheless do so for the sake of victory, since a divided city is one with a potential fifth column. The Stranger rejects this line of argument on the grounds that wars are fought only for the sake of peace, just as medicine is taken not for its own sake but for health. Kleinias is easily convinced, yet he is also perplexed because the Cretan and Lacedaimonian customs are clearly directed, "in all seriousness, to what pertains to war." Since Kleinias agrees that "everyone sets up his laws for the best," and that the best condition is peace, then he must find a way to view the Cretan laws as existing with a view to peace, or he must admit that Minos was a not a

lawgiver in the strict sense. He cannot do the former because a lifetime of habituation and his own conscious reflections have shown him that the Cretan laws are "serious" about war, or that they treat war as and in itself. Despite his open-ness to the Stranger's argument, as a loyal Cretan he does not wish to deny that the Cretan laws are divine (628a6-628e5).

By describing the Cretan laws as "serious" about war, in which case courage would be especially valued, Kleinias makes an inchoate turn toward understanding virtue as the end of law, and he turns away from concern with the "good things" that are seized or defended through war. The Stranger makes this turn explicit by examining two poets, Tyrtaeus and Theognis. He paraphrases the following lines from Tyrtaeus, to the effect he would not "memorialize or set down in speech a man," unless he were always best in war, even if he were wealthy and possessed many good things. Kleinias had earlier attributed a similar sounding line of reasoning to Minos, "nothing is beneficial, neither possessions nor customs, unless one triumphs in war." Rather than referring to the good things themselves, Tyrtaeus judges whether the man who has them deserves them or not. By quoting this poem, the Stranger has already begun to expand on Kleinias' nod towards virtue (629a1-629b7).

While Tyrtaeus praised the man who fights against external enemies, the next poet the Stranger quotes, Theognis, praises the fighter in civil war. Whereas the fighter in foreign war must have courage, the trustworthy man in civil war must also possess justice, moderation, and prudence. Because civil war is harsher than ordinary war, the sound combatant requires the whole of virtue. From the discovery of complete virtue in the civil war combatant, the Stranger obtains a criterion for judging a code of law: a

lawgiver worthy of the name, and especially one who is divine like Minos, would "never set down any laws with a view to anything but the greatest virtue." Courage is the least virtue, only fourth best, a demotion that Kleinias believes puts Minos in the lowest rank of lawgiver (629b8-630d3).

The Stranger acknowledges that if Minos had legislated "chiefly with a view to war," then the critique would be just. However, he diplomatically suggests that the problem is a misunderstanding of Minos rather than any deficiency in his lawgiving. Perhaps the fault lies in how Kleinias praised Minos, a fault that would indicate a deficiency in Kleinias' understanding of Minos' laws. When Kleinias asks what they should have said, the Stranger answers that those who are "carrying on a dialogue on behalf of a divine man" have to say what is true and what is just – they should have said Minos looked to the whole of virtue rather than its lowest part (courage). The Stranger praises Kleinias for having correctly begun with virtue in his interpretation of the laws. However, Kleinias went off the track when he narrowed his focus to courage and martial virtue (630d4-631b1).

At the outset of the dialogue, Kleinias had said that the most just statement was to affirm that a god was the source of the Cretan laws. Now, the Stranger reminds us that when speaking of a "divine man," we must not only say what is just but also what is true. It is true that law must look to the whole of virtue, and true that the law of Minos looks only to courage. It is just, but not true, to say that the law of Minos looks to the whole of virtue. Kleinias had truly and justly praised the Cretan law for its power to inculcate martial virtue; he had justly praised the Cretan law as god-given – we do not as yet know if this praise was true as well as just.

In what follows, the Stranger will put aside the question of the divine origin of the Cretan law. However, that does not mean he is abandoning the investigation into the divinity of the Cretan laws.[3] The Stranger will make a hypothesis about the class character of the best possible law, and, on the assumption that such a law would be worthy of the name "divine," he will try to determine whether the Cretan or Spartan laws belong to the class of divine laws. This procedure will enable the Stranger to inquire into divine law through his own natural power without relying on hearsay, tradition or revelation. He already explained his method when he said that we must assume that Minos, as a divine man, would have looked to the whole of virtue. A divine man is a synonym for one who looks to the whole of virtue; the question is whether Minos was such a man. We must also not forget the question of whether the Stranger is correct that the meaning of "divine" is a synonym for the best as the best is disclosed by reason.

The "correct" law, then, is to be understood as one that provides the divine goods and the human goods that are said to follow from them. The human goods are, in descending order, health, beauty, strength and wealth, "insofar as it follows prudence." Among the divine goods, prudence is the leader, moderation is "second after mind," justice is third followed by courage in last place. "By nature," the divine goods are prior to the human goods, and the lawgiver should rank them in the same way (631b3-631d2).

The law which looks most of all to the divine goods would have to be understood as the divine law worthy of the name. Divine can be meant in many ways —why are the divine goods divine? The divine goods seem to belong to the soul, while the human goods belong to the body; insofar as the gods possess the virtues, then the things of the soul would be something shared by humans and gods, unlike the bodily goods. The

divine goods are said to be "by nature" prior to the human goods; what is pre-eminently natural may be said to be divine. Similarly, the divine goods might be understood as following mind, if "second after mind" in the description of moderation does not refer to prudence (in which case prudence would be first after mind rather than first as such). Last, but also first, the divine goods might be present among humans by divine dispensation. Of course, if the divine goods, i.e. the virtues, are available only by divine dispensation, it might be pointless for the legislator to look to virtue in his legislation.

The divine and human goods will be attained for the citizens by legislation. In many ways this legislation is not so extraordinary—the ruled are to be molded through honor and dishonor, or praise and blame. Their reciprocal dealings will be regulated through honor and penalties. At the end (τελος) of the whole regime (πολιτεια), the legislator should determine proper burial rites and honors. If the end of the whole regime is burial, then the divine understood as the sacred rather than as the intelligible has re-asserted itself by way of a pun on τελος, which can mean end in the sense of limit or purpose.[4] We must now look askance at the earlier claim that in the correct legislation, the divine goods and the human goods look to "the leader, intelligence." The Stranger hints at the possible depreciation of mind again at the end of his summary: The legislator will set up not only "guards grounded prudence," but others that merely make use of "true opinion." Intelligence is present in this summary in a subsidiary role, ordering things toward moderation and justice—nothing is said about prudence (631d2-632d7).

Having described what would constitute a legislation sufficiently good to be deemed divine, the Stranger says he wants Kleinias and Megillus to explain how the order of divine and human goods is to be found in the laws "said to be" from Zeus and

Apollo, the laws "laid down by Minos and Lycurgus." I infer that the laws are at most "said to be" from Zeus and Apollo until the Stranger is satisfied that they teach the whole of virtue. Otherwise, their laws are merely of human origin, and perhaps they are even of a low rank among the class of humanly originated laws. Since they have already begun a discussion of the ways that the Cretan and Spartan laws teach courage, the Stranger suggests that they continue that discussion and work their way up through the whole of virtue. Megillus is able to list several Spartan institutions that inculcate courage and endurance of pains. Rather than asking directly whether the Spartan laws teach moderation, the Stranger presents moderation as a part of courage, asking Megillus which Spartan practices teach endurance in the face of pleasures rather than pains (632d8-634b6).

It is hard to see why the Stranger includes moderation as part of courage. The parallel seems very imperfect between pleasure and fear. We teach endurance of fear by habituating people to fearful objects, hoping that the familiarity will bring them to tolerate the presence of what they fear. However, pleasure is intrinsically attractive. If we were to habituate someone to the presence of a certain pleasure we fear they will come to depend on it. To teach moderation by "constraining" someone to "endure" pleasure seems rather bizarre—the problem with pleasure that we see from everyday experience is that people have to be restrained from it, not that they have to be constrained to put up with it.

Perhaps the Stranger wants to say that the Spartans have indeed made pleasure an object of fear for themselves. In that case, pleasure would be an object of courage rather than moderation. The rather strange result of this line of thinking is that since courage

constrains us to face what we fear, the Spartans need a practice to constrain them to face pleasure. At the root of this paradox is the assumption that law teaches us to be fearless, rather than to be fearful. But this assumption will turn out to be quite wrong when we learn at the end of Book I that shame, a type of fear, is the number one tool in the lawgiver's box.

Kleinias and Megillus are unable to list any practices that inculcate endurance of pleasures. Once again, the Cretan and Spartan laws appear to fall short of what a divine law ought to be. This time, however, the Stranger heads off any offense by reminding his interlocutors that they are seeking the "true and at the same what is best," and that it would not be fitting, given their age, to become irritated at criticism of the laws. In fact, old age is the proper license to criticize the laws, according to the Stranger. He cites a law, which he calls one of the "finest," that forbids the young to inquire into "which laws are finely made and which are not," but licenses the old men, if no young men are around, to discuss such things. The young must proclaim "that all laws are finely set down by gods." Kleinias is impressed with how the Stranger "divines" the existence of this remarkable law. Since there are no youths around, the Stranger suggests they may proceed on the inquiry into the laws (634b7-635a5).[5]

With the discovery of the law permitting inquiry into the laws, the Stranger has satisfied any lingering doubts among his interlocutors about the legitimacy of their activity. The Stranger has also found a source of support for his method of inquiry as well. If there is a law that permits the elderly to question whether the laws are finely made or not, then in principle the lawgiver is admitting the existence of a higher principle in the light of which his laws may be judged. The laws must be judged in light of "the

true" and "best"; they are not finely made simply because they are old and our own, or because they were laid down by the will and unquestionable authority, superhuman or otherwise. The law that sanctions investigation into the law licenses the Stranger to continue his analysis of the law through ends and means rather than through tales about the genesis of the law. By consigning to the immature youths the song that the laws "all are finely made by the gods," the Cretan legislation itself indicates that the most serious basis for its divinity would be its excellence, rather than its purportedly divine origin.

Critical Inquiry into a Lawful Practice

The next section of the first book of the *Laws* concerns the practice of symposia, or drinking parties. Megillus initiates this conversation by pointing to the ban on wine-drinking in Sparta as proof that Lycurgus' laws teach moderation in addition to courage. The Stranger attempts to defend the distinctly Athenian practice and by so doing models the appropriate method of inquiring into the laws.

When pressed to come up with a Spartan practice that teaches moderation, Megillus first comes out with the common meals. The Stranger disagrees, and prefaces his remarks with the image of gymnastic exercises, which are sometimes beneficial but can be harmful in other circumstances. Likewise, all practices have some drawback or other—common messes encourage sexual license, in particular pederasty and other forms of homosexuality. In fact, the Stranger charges the Cretans, who share the practice of common meals with the Spartans, of inventing the tale of Zeus and Ganymede in order to defend the practice of pederasty (636d1-3) .

At any rate, the Stranger dissents also from the demand for the complete abstinence from wine; he gives an image of pleasure and pain as two springs, and one

must know when to draw from one and when from another. Moderation would be to experience pain and pleasure in measure, rather than to abstain totally from pleasure. This passage illuminates some of the problems that an inquiry into laws might face. First, there is the problem once again of inquiring on the basis of hearsay—perhaps the Cretans invented the tale that their laws are from Zeus just as they are reputed to have invented the tale of Zeus and Ganymede, in order to defend their practices (but perhaps not). Second, any investigation into laws has to take into account their unintended consequences. These consequences may be unforeseen, if not unforeseeable, by the lawgiver; the Spartan lawgiver did not expect that the common messes would lead to pederasty and loose morals among the women. Third, the disagreement between the Stranger and Megillus about whether moderation is abstinence or measure points to the necessity of investigating the virtues before judging whether they are present or not in the laws (636a2-636e3).

Megillus is not immediately able to respond to the Stranger's arguments, but eventually marshals some anecdotes that show that the Athenians are very mistaken to allow drinking parties. He has seen the Dionysia at Tarentum, and was appalled at the sight of an entire city drunk. For his part, the Stranger points out again that the Spartans have loose sexual mores, particularly the women. He also takes aim at Megillus' martial pride by listing several valorous nations that allow wine-drinking. Megillus hits back, exasperated, reminding the Athenians that the Spartans have routed all those nations. The Stranger avoids the blow by remarking that there is no way of knowing if the teetotal Spartans defeated the drinking nations because of their superior practices or because of chance or numerical superiority (636e4-638c1).

At the beginning of the dialogue, Kleinias praised the laws of Minos precisely because they led the Cretans to victory. The Stranger had gradually led Kleinias away from victory, towards virtue, as the criterion for a good law. Now it's Megillus' turn for a similar re-orientation. Victory is a poor measure of the goodness of laws because victory does not always go to the valorous party that "deserves" it. Sometimes the unworthy conquer through superior numbers; sometimes the nation with good laws is defeated on the battlefield because of poor fighting conditions and other adverse effects of chance. Because of the difficulties that come from reasoning about laws using victory and defeat evidence, the Stranger suggests that the nobility of practices comes to light only through speeches. Of course, part of the problem here is using victory as the only empirical standard for good laws. Sparta and Crete produced no poets or philosophers worth mentioning, while Athens was home to Aeschylus, Sophocles, Euripides, Socrates, Plato, and many other great writers and thinkers; that is also empirical evidence about what might constitute good laws, insofar as the Athenian laws had something to do with this kind of flourishing.

The Stranger decides to use the custom of drunkenness as his paradigm for the proper discussion of laws. His first step is to determine what the conditions are for orderly symposia. This will be difficult because the Stranger admits that although he is very familiar with symposia, he has never seen one that was run correctly. However, as a heuristic device the Stranger assumes that a symposium is a kind of community that can only be run well with proper leader. The question becomes, who is the appropriate leader for a symposium? A group of drunk people requires a sober leader, just as an army requires a courageous general. Since the symposium is an activity of friends communing

in good-will, the symposium leader must be "prudent" and a good guardian of the friendship as well as able to increase the friendship among the drinkers. Until we have seen a symposium conducted by a "sober and wise" ruler, it would be rash to blame the practice (638c2-641a2).

In this passage, the Athenian Stranger has constructed a sort of symposium-in-speech, similar to the city-in-speech from the *Republic*. Since he has never seen a well-run symposium, he must extrapolate the possibility of one from the deficient symposia he has experienced. The Stranger appears to be suggesting that any discussion of a practice or law must begin from an artificial idealization of that practice or law. This is similar to the procedure that the Stranger sketched out for inquiring into the laws of Lycurgus or Minos; first determine in speech what a divine law would be, if there were such a thing, and then use the divine law-in-speech as a measure to determine whether any putative divine law truly is divine. So too, the Stranger argues that they must refrain from blaming symposia until they construct a perfect symposium in speech. If something defective remains in the symposium-in-speech, then we at least know that the defect is not due to our insufficient experience with good symposia.[6]

In the Stranger's view, Megillus and Kleinias blame symposia because their experiences with symposia are limited by contingency and so cannot disclose the truth about the symposium. To construct a symposium in speech would be to eliminate contingency from our evaluation of symposia. Similarly, a people's laws should be discussed with "interpretive charity," which would mean ignoring as merely contingent any historical catastrophes that have befallen the community that adheres to the laws in question. One might object to this procedure on the grounds that laws are a device

intended to save cities and individuals from misfortune. Wouldn't it make sense for the adherents of a divine law, in particular, to hope their obedience to the god would confer on them immunity to chance, or at least as far as possible? Isn't the legislating god obliged to protect the community that has pledged obedience to his laws, to say nothing of the protection owed to his own reputation? In that case, it would be reasonable to be skeptical about the divinity of a law belonging to an unlucky nation. However, the Stranger avoids this line of argument, just as he avoided a discussion of the putative divine origins of the Cretan or Spartans laws. Instead, he prefers to develop a model of the best law in speech, and prudently to let his listeners (and the readers) draw their own conclusions.

Law, Education, and Prudence

Kleinias admits that the Stranger has adequately proven that in principle, symposia might not be harmful. As a practical man, however, he feels compelled to ask the Stranger what positive good the well-led symposium confers on the revelers. The Stranger tells an incredulous Kleinias that symposia are useful for education. Symposia are a form of play, and play is an unobtrusive vehicle for education. For instance, children develop skills that will be useful later in life through playful imitation of adult practices. How, then, can the young be prepared to "desire and love to become a perfect citizen, who knows how to rule and be ruled with justice?" The Stranger appears to intend to show how symposia would be useful for the education of the young toward citizen virtue (641a3-644b4).

To begin his account, the Stranger presents an image of the human being as led by two "opposed and imprudent counselors," pleasure and pain. These two counselors give

their advice as a special form of opinion, called "expectation": the expectation of pleasure is "boldness," and the expectation of pain is "fear." Over both of these is "calculation as to which of these is better or worse," and this calculation is named law when it becomes the "common opinion (δογματος) of the city." Kleinias and Megillus are stumped by this rather straightforward description of human nature. Perhaps the perplexity comes from the process whereby calculation becomes the common opinion of the city, i.e., a law. Why must calculation be transformed into law, and what is added to calculation when it becomes law (644b5-644d6)?[7]

The Stranger provides another image in order to clarify the relationship between the passions and reason in human beings. Humans are to be understood as divine puppets, created by the gods for either a serious or playful purpose. The human puppets are pulled by hard, iron cords of pleasure and pain, as well as by a soft, gold thread of calculation. The golden cord can be transformed into the "common law of the city," but we must be concerned with what is lost in translation. A private individual can acquire "the true logos" for control of these cords, but a city must make a law for itself out of "a reasoning" acquired from one of the gods or from a knowledgeable person. The golden cord becomes a mere opinion in order to rule in the city as law. Since law functions through awe, reward, and punishment, the golden cord must somehow be allied to the iron cords of pleasure and pain. As if that were not enough to think about, the Stranger asks, what will happen when we get this puppet drunk (644d7-645c7)?

The implications of the Stranger's image for our understanding of divine law are highly ambiguous. He leaves it as open question whether the human puppets are made for a serious or playful purpose. If we do not know the human end, then the Stranger's

analysis of law into ends and means is futile. We cannot know what human virtue is unless we know the human end, and we certainly cannot determine if any law, divine or otherwise, is an adequate means to that end unless we know what human virtue is. However, the gods know why they made human beings, so the genuine divine law would presumably accomplish the divine plan for man, whether it is playful or serious. Of course, if the gods intend a serious purpose for man, it is far less problematic than a playful purpose. If man is made for the play of gods, it would be tantamount to saying that human life is absurd—in that case, the divinity of a law would shine forth in the most paradoxical elements of that law. For example, earlier in the dialogue, Kleinias argued that the Cretan law was divine because it directed all human activity towards war as an end. The Stranger showed persuasively that was must always be for the sake of peace. However, if we are playthings of the gods, it could be that the Stranger is wrong to subordinate war to peace, and that Kleinias rightly divined the purpose of law. Peace might be for the sake of war, if war was the purpose the gods had in mind for us. Our wars might be a spectator sport for the gods: a puppet show, if you will. Maybe the gods are bloodthirsty, and demand war as a kind of mass human sacrifice. Of course, war might still be for the sake of peace if the god's play for us is benign—perhaps the divine purpose of human life is the spectacle of our festivals, as the Athenian will suggest in the seventh book (803c-d).

The Stranger's explanation of his puppet image also suggests that the purpose of divine law is to govern communities, rather than individuals. The Stranger distinguishes between the private individual, who can acquire within himself "true logos" about the cords, and the city which must take "[a] logos" from some one of the gods or one of the

knowers of these things. It appears that the city, but not necessarily the individual, must receive a logos second hand, which needn't be the true logos. [8] The question then arises whether and how the logos from some one of the gods differs from the logos acquired from the knower.

Having explained that man should be understood as a kind of puppet pulled by the strong cords of pleasure and pain, which reason is too weak to fight against, the Stranger now begins to clarify the value of symposia for education. First, he must describe the debilitating effects of wine on the one who drinks it: his passions are heightened, his reason is silenced, and basically he becomes a child again. Kleinias is eager to have the Stranger explain what benefit such a degrading practice might bring. The Stranger compares drunkenness to the painful side effects of necessary medicine—as medicine is to the sick body, so wine drinking is to the soul. In what respect does wine-drinking damage the soul in order to heal it (645d1-646e2)?

The Stranger prefaces his explanation of the function of wine-drinking by distinguishing between two types of fear: fear of evils and fear of opinion. Fear of opinion, known as shame, opposes fear of evils. The lawgiver makes extensive use of shame, and gives it the reverential name of "awe" (αἰδος). Awe is especially useful in wartime if the soldiers fear the shame of cowardice before one another more than they fear the enemies (646e3-647c5).

If there were some drug that induced fear of evils, it would be of great use both for training in courage and for safely testing bravery. The benefit of the fear drug is that it could simulate the experience of danger without actually endangering its user. The Stranger suggests that wine-drinking may be used in a roughly analogous way to the

imaginary fear drug. Wine induces shamelessness, thus enabling an individual to experience dangerous, unlawful desires and passions in the context of play. Thus, wine could be useful for testing the awe of the citizens, and observing the soul without inhibitions. Such knowledge, "of nature and the habits of souls," would be very useful for "the art whose business it is to care for souls...the art of politics" (647c6-650b9)

The Stranger does not elaborate here how wine would be useful for training oneself in moderation. Instead, he emphasizes how useful wine would be for the one observing the symposium. The drunken revelers show their inner character when they are intoxicated. At first the emphasis seems to be on the particular individuals at the party—wine makes it possible to see who is avaricious, or who is lecherous. But in his summary, the Stranger seems to speak about knowledge of the nature and habits of souls in general. Perhaps the drinkers reveal the human condition—that obedience to the law depends on habituating awe into the citizens, and when wine removes the awe the citizens become totally lawless.

Drunkenness, then, would explain how logos becomes law. Logos must be transformed into a process of habituation by means of shame and honor. The Stranger had already made this point when he described how the table of divine and human goods is secured for the citizens through law. The lawgiver must "care for the citizens by apportioning honor and dishonor among them"; "one must keep a guard...blaming and praising correctly by means of the laws themselves"; "in all such situations what is noble and what in ignoble in each case must be taught and defined"; "for those citizens who obey the laws he should ordain honor, and for those who obey he should ordain penalties." If we return to our earlier question about why the "end of the whole political

regime" turned out to be honorable burial for the good, we can now see why. By inducing fear of a shameful burial and awe of the underworld (awe and Hades are even linked through the term αἰδος), the lawgiver might even be able to overcome the citizens' fear of death. Although mind and prudence are the leaders of all the goods that law seeks to provide, mind and prudence are the sole province of the lawgiver and some of his successors; the law is not an adequate vehicle to produce mind or prudence in the citizens.

Part II *Guide of Perplexed*

Chapter 3: Creation of the World and the Divine Legislation

In the context of revealed religion, the question of the relationship of law to wisdom points to the theologically profound question about the relationship of God's wisdom to His will in creation, because the revealed law may be thought of as a created thing just like the heavens and the earth.

In the order of the *Guide of the Perplexed*, the question of God's wisdom and will first arises concerning whether God is the creator ex nihilo of the world, as revelation implies, or the sustainer of an eternal natural, intelligible order, as classical philosophy holds. The question concerning the role of wisdom and will in law is secondary in the order, although perplexities that arise about God's role as legislator and sovereign will turn out to be the driving force behind the inquiry into God's wisdom and will in determining the cosmic order. Maimonides spells out the political roots of the question about God as creator thus:

> …the belief in eternity the way Aristotle sees it—that is, the belief according to which the world exists in virtue of necessity, that no nature changes at all, and that the customary course of events cannot be modified with regard to anything—destroys the Law in its principle, necessarily gives the lie to every miracle, and reduces to inanity all the hopes and threats that the Law has held out… (II.25)

The classical critique of law implies that nature is the standard for law, just as the Aristotelian claim that the world is eternal posits nature as the highest principle. Either way, God is subordinated to something higher than himself, which restricts the freedom

that God must have in order to be a miraculous legislator who brings a revelation that is beyond natural human reason.

If there was a demonstration of the eternity of the world, Maimonides admits, the Torah would have to be re-interpreted in light of this fact. But, in Part II of the *Guide*, Maimonides claims that there is no such demonstration. Maimonides argues that there can be no demonstration of the eternity of the world without a perfected cosmology. Aristotle's attempts at cosmology are faulty, in Maimonides's view, because he fails to explain the particularization of the cosmos, e.g. why the spheres rotate at their various speeds, why the sphere of fixed stars is dotted so randomly with stars, etc. Since Aristotle could not explain the intelligible necessity of the heavens, he could not conclusively deny that the world was created in time by the will of a god (II.19-II.22).

Maimonides puts himself in the bizarre position of using the apparent disorder of the cosmos as proof of its divine craftsmanship: to argue against the Aristotelian thesis about the eternity of the universe, Maimonides has to downplay God's wisdom in favor of His power, or will. The trouble with this strategy becomes apparent in Part III of the *Guide*, when Maimonides takes up the project of discovering the reasons for the statutes of the Mosaic law. His primary opponent in this discussion are those who, out of fear of falling into the belief in the eternity of the world (III.25), deny that the laws have any intelligible benefit, just as they also deny that nature has any intelligible necessity—a connection Maimonides remarks on explicitly (III.26). To refute these theologians, whom Maimonides calls sick, he provides an analysis of the law in chapters III.25-III.34 that downplays God's power or will in favor of His wisdom and prudence. This strategy works in an opposite fashion to his strategy in defense of the doctrine of creation, which

put so much emphasis on the role of God's power and will (II.13-II.25). I suggest that this two-sided strategy is motivated by the need to deal with the self-undermining character of any defense of revealed law: God's will must be constrained by the limits of justice and goodness, but God must have unconstrained power in order to actualize justice and goodness in the world through miracles and the afterlife.

The Argument from Particularization (II.18, II.19)

As stated above, according to Maimonides, one of Aristotle's most important failures was his inability to account for the *particularization* of the heavens, a term used in the *Guide* to refer to the unique qualities of our world that distinguish it from other possible worlds. The particularized phenomena that are of special interest in the text are the differing speeds of the heavenly spheres, their order, and the position of the stars in outer sphere. According to Maimonides, Aristotle does not explain the necessity of these features of the world; that is, he was unable to say why they could not have been otherwise. Aristotle thus lacks a completed cosmology, without which he cannot verify that the world is an ordered whole in which rational necessity determines all things. The believer in Biblical revelation now has an opening to claim that the particularization of the structure and motion of the heavens is due to the "purpose of one who purposes according to his will whatever it be and the particularization of one who particularizes in whatever way he likes."[1] In that case, the world would have been created rather than eternal. Such a claim would not only support the Biblical teaching, it would have greater explanatory power than the limited Aristotelian cosmology.

The argument from particularization, as found in the *Guide*, constitutes its own section within the larger refutation of the eternity of the world. It follows a series of

direct refutations of arguments given by Aristotle and his followers in II.15-II.18. These chapters deal with individual attempts to demonstrate the eternity of the world that rely on the showing that creation in time is incompatible with what we know of the nature of space, time, and God. The argument from particularization, found in II.18-19, on the other hand, addresses the failure of Aristotelian physics to account for the observed motions of the heavenly bodies.

Because of its secondary place in the order of the refutation of Aristotle, the argument from particularization seems like a mere amplification of the earlier chapters. If the thesis that the world is created in time entails self-contradictions, then the world is eternal, whether or not a complete cosmology is available on the basis of eternity. If creation in time could be demonstrated, then the completed cosmological account would be based on traditions of the revealed truth about the heavens, whatever that might be. However, if neither the arguments for the eternity of the world nor those for its creation in time are demonstrative, cosmology becomes important because then there is a weight of pre-supposition in favor of whichever theory could provide a complete cosmology. Although the argument from particularization properly begins in II.19, its basic premises about divine wisdom and divine will are first exposed in II.18. The nature of divine will is laid out there in an argument offered against creation in time.

The first such argument goes as follows: Suppose that the world were not eternal; then God would have had some motive or incentive to create it, or some obstacle to God's action must have been removed. But God, by definition, is not subject to incentives or obstacles; therefore his action must be eternal since there could be no source of change in him (II.18). Maimonides' response (which he warns us will be "subtle") is

that only an act that is consequent on a purpose outside of the will is subject to supervening incentives or obstacles. But if an act "has no purpose whatever except to be consequent upon will, that will has no need of incentives." Such a pure will might change from willing to not willing without requiring an external motivation or obstacle. Let us grant that this is true of God's will to create the universe.

An objection remains: "Does not the supposition that one wishes at one time and does not wish at another time imply in itself a change?" Maimonides' reply to this objection is puzzling. First, he clarifies the "true reality and the quiddity of will:" it is the capacity either "to will [or] not to will" without any force necessitating affirmation or negation. That is, willing as such is indifferent to motivating forces such as perception, desire, or reason in the being that wills. In a material being, velleities are determined by externals, whereas in a non-material being, i.e. God, velleities have no cause external to the faculty of willing. In other words, God's wisdom is not to be conceived of as participating in His will.

Furthermore God, qua willing being, is not changing, even though his will understood as a proposition changes: "The fact that it [God or God's will] may wish one thing now and another thing tomorrow does not constitute a change in its essence and does not call for another cause." What it is to will is to have indifferently the power to will and not will, and in a being that is not subject to motivation or obstacle, the will can move between willing and not willing without any external determination, since such a change is compatible with the essence of will. In this part of his response, Maimonides seems to be making use of the act of pure willing referred to a few lines earlier, an act that "has no purpose whatever except to be consequent upon will, that will has no need of

incentives." If the act in question has no purpose other than to be an act of will, then the essence of will alone is responsible for the change, without any external input. Maimonides defends this position with the claim that the word "will" is merely equivocal when used to refer to God's will and the human will. Only by advocating for a radical distinction between human will and divine will can Maimonides defend the argument that divine will is more free the more it is not determined by wisdom (II.18).

The implication of this argument is troubling: the creation of the world had no end other than to be an act consequential only on the will of God. Where is God's wisdom, or concern for creatures, in this equation? Perhaps Maimonides doesn't mean that creation is an example of an act of the will, the only purpose of which is to be an act of will; rather, he is using this formula to argue that in principle one could understand God's will as unaffected by motivations or obstacles. At any rate, it appears that an act that is only intended to be an instantiation of the quiddity of will is an act open only to God. Since the human will is only equivocally related to God's will, it is open to question whether this pure act of willing is even intelligible to mere human beings. Essentially, Maimonides has argued that the creation in time is in principle possible, but at the cost of making God's will a completely unintelligible notion. Does this render creation in time unintelligible, and thus impossible to believe?

Just as the previous objection to creation in time hinged upon the question of the nature of God's will, the following one hinges upon the nature of God's wisdom. The Aristotelian argues that the world must be eternal, since the world is consequent upon God's eternal wisdom, and whatever proceeds from God's eternal wisdom would likewise be eternal (II.18, 301). Maimonides' response to this argument relies on

attributing a mysterious character to God's wisdom just as in the previous argument he relied on the mysterious difference between God's will and human will. We do not know why God's wisdom dictated that the universe should have been created at a certain instant, just as we do not understand why God's wisdom dictated the particulars of the cosmos, e.g. the quantities and sizes of the spheres and the stars.

If you assume God created the world, then the unintelligible particularities of the world would have to be dictated by God's wisdom, and if one already accepts that the particularities of the world are due to God's wisdom, then one must accept that God's wisdom dictated creation at a particular time as well, and not subsequent or prior to that time. If we charitably overlook this circle, we see that Maimonides has declared that God's wisdom and will are to be understood as almost one and the same. We would have to understand God's wisdom on an entirely different basis than we understand human wisdom; if human wisdom is essentially related to external reality, God's wisdom would have to be understood as free and undetermined, just as his will was to be understood as a willing that was fully complete in itself. The phrase "free will" makes some sense to us, so we can perhaps imagine God's will, but the phrase "free wisdom" is perhaps an oxy-moron.[2]

Having completed these arguments, Maimonides claims to have shown in principle that it is possible for the world to have been created. But, the price is to make the nature of God radically unintelligible. If creation, as a possibility, is dependent on consistent accounts of God's will and wisdom, it seems that it is a very strange kind of consistency, since God's will and wisdom are only consistent as far as they are believed to be unlike human will and wisdom. Maimonides' strategy seems to be based on the

principle that the internal consistency of a theological concept can be compatible with that concept's unintelligibility.

It is easy to see how the claim that God's will and wisdom are radically undetermined compared to human will and wisdom leads naturally to the argument from particularization. Indeed, at the end of II.18, Maimonides identifies his most powerful argument for the existence of a Maker as "the indication deriving from the heavens," meaning their particularization (II.18). Maimonides' proof begins by pointing out how strange it is that the stars exist, and that they are placed so haphazardly in the sphere. Assuming that the material of the sphere of fixed stars is homogeneous, why do some areas of it receive clusters of stars, while others are barren? It is "unlikely…or near being impossible [to believe] that all this proceeded obligatorily and of necessity from the deity, as is the opinion of Aristotle." But no astonishment or unlikelihood attends the hypothesis that the stars were deliberately placed "in virtue of the purpose of one who purposed" (II.19).

As he wraps up the argument, Maimonides makes a particularly cogent statement about the dialectical superiority of belief in the creation of the world over belief in the eternity of the world. After listing the many perplexities that attend accounting for the heavens through Aristotelian physics, Maimonides writes, "If however, we believe that all this has been produced through the purpose of one who purposed, made and particularized it –as his wisdom which cannot be grasped, required – none of these questions affect us, whereas they do affect him who claims that this has come through necessity and not through the will of one who wills" (II.22). In this statement Maimonides uses "purpose," "will," and "wisdom" interchangeably with one another.

This equivalence confirms that the argument from particularization renders God utterly mysterious by making God's will and wisdom have become so unlike our own as to be identical with one another.

The Radical Denial of Teleology and its Effect on the Law (II.25, III.25, III.26, III.31)

Through a comparison between the law and creation in the third book, we get a vivid display of the damage done by the tendency of the argument from particularity. In III.25, Maimonides addresses "that sect among the people of speculation that holds that God does not do a thing because of another and that there are no causes and no effects, but that all His actions correspond to His will so that one should not seek an end for them or say: Why did he do this? As He does what He wills…" This sect has thought through the position of creation in time to its logical conclusion: They assert of necessity what everyone asserts who maintains that the world was created in time: He willed it so, there being no other cause…" On these grounds they go so far as to deny seemingly obvious examples of an intelligible necessity in created things, for example, they deny that the cornea is transparent and the uvea perforated for the sake of sight. Rather, God willed it so, and if He had wished for the cornea to be opaque then sight would still exist (III.25).[3]

Why would anyone take a position so apparently perverse? "Know that those who put up with this incongruity [that divine actions are vain, futile, or frivolous] so that His acts, may He be exalted, became in their opinion like futile acts that aim at no end at all, abhorred making His acts consequent upon wisdom in order that this should not pass into the assertion maintaining the eternity of the world; accordingly they shut the door upon this opinion" (III.25, 505) Some of those who deny the intelligibility of creation do so voluntarily, in order to keep themselves far away from asserting the eternity of the world.

In other words, the eternity of the world is a consequence if divine wisdom is higher than, rather than equivalent to, divine will.

Maimonides does not endorse the view that the order of the world is a purposeless act of pure will. He maintains that "the opinion of our law" can be seen in Biblical expressions such as "*And God saw everything that He had made, and behold, it was very good."* It is possible to affirm that God's wisdom made the world as long as it is acknowledged that "we are ignorant of many of the ways in which wisdom is found in his works" (III.25) Perhaps this is a satisfactory answer in the case of cosmology, seeing how little success Aristotle and his followers have had at producing an account of the structure and motion of the heavens. Maimonides saves the thesis of creation in time from the radical denial of teleology by appealing from a cosmos that is mysterious in itself to a cosmos that is shaped by a wisdom unavailable for deficient human reason.

In the following chapter, III.26, Maimonides makes a clear reference to III.25: "Just as there is disagreement among the men of speculation among the adherents of Law whether His works, may He be exalted, are consequent on wisdom or upon the will alone without being intended toward any end at all, there is also the same disagreement among them regarding our Laws, which he has given to us…" (III.26). It appears that the same sort of person who denies teleology in the cosmos would also deny teleology in the law.

To refute those who deny teleology in the case of the law, Maimonides draws a distinction between two kinds of laws: the "statutes" and the "commandments." Commandments are those laws that have a utility obvious to the multitude, while the multitude consider statutes to be devoid of utility (III.26).[4]

There is a clear difference between this refutation of those who deny teleology in the law versus those who deny teleology in the cosmos. Whereas in the case of the cosmos it seemed that we had to take it on faith that the mysterious features were products of unfathomable wisdom, in the case of the law the statutes are only mysterious to the *many*; the wise, e.g., Solomon or Maimonides, know the utility of the laws.

There is one exception to this rule: the purifying sacrifice of the red heifer (III.26). This law is analogical to the mysterious features of the cosmos: a troubling enigma in an otherwise orderly whole. The presence of "red heifers" in the law and in the cosmos gives an opening to those who believe that God is better understood as willful than as wise. Maimonides tries to deprecate the importance of the red heifer by identifying a useful element in the general purpose of a given law and an arbitrary element in the details of a law. For example, it is useful that the people offer animal sacrifices to god, but there is no rational necessity why God demands the sacrifice, say, of three lambs or two rams. The number and nature of the sacrifice could always be otherwise; the precise determination of the sacrifices is therefore not a proper object of knowledge. Perhaps something similar could be said about the particularization of the heavens, or about the creation in time (e.g., in reply to the question, why is the universe 5775 years old, rather than 5776?)

This purpose of this argument seems to be to soothe the perplexity of those who deny purpose to God. If all the details of the cosmos and the law were precisely determined through God's wisdom, then God's kingly exercise of free will would be unduly curtailed. Those who see majesty in arbitrary power can rest easy knowing that God has exercised his kingly prerogative in deciding between two or three lambs. In

other words, Maimonides has made a fool out of those who deny all teleology to God's legislative and creative acts. To see how much contempt Maimonides has for this point of view, one need look no further than III.31, where he writes that:

> There is a group of human beings who consider it a grievous thing that causes should be given for any law; what would please them most is that the intellect would not find a meaning for the commandments and prohibitions. What compels them to feel thus is a sickness that they find in their souls, a sickness to which they are unable to give utterance and of which they cannot furnish a satisfactory account. For they think that if those laws were useful in this existence and had been given to us for this or that reason, it would be as if they derived from the reflection and the understanding of some intelligent being. If, however, there is a thing for which the intellect could not find any meaning at all and that does not lead to something useful, it indubitably derives from God; for the reflection of man would not lead to such a thing (III.31)

Maimonides' caustic presentation of the radical point of view in III.31 differs from his sympathetic presentation in III.25. In III.25, Maimonides explained at length why a well-meaning theologian might be driven to deny God's purposiveness in order to save the belief in creation in time. How could Maimonides do otherwise, considering that he himself did nearly the same thing in his argument from particularization in II.19! Yet in III.31, he harshly condemns those who extend their doubts about teleology from the cosmos to the law. Why does Maimonides come down so hard on them now, when earlier he gave a very similar argument a decent hearing?

The reason seems to be that those deny teleology to the law in order to save the law have actually destroyed its foundation. In both of his discussions of the purpose of law, II.40 and III.27-28, Maimonides says that the law is created for the utility of human beings: to eliminate reciprocal wrong-doing, promote noble opinions, and furnish true opinions about God and the angels. The opinion that divine law is devoid of teleology defends divine omnipotence at the cost of denying the utility of the law. Someone might

be tempted to take such a step if they thought that divine omnipotence was the true foundation of the law – they would be tempted to destroy the law in order to save it.[5] Maimonides comes dangerously close to doing exactly that in II.25, a chapter where the argument from particularization was actually applied to divine legislation.

In II.25, Maimonides discusses why precisely the belief in the eternity of the world comes into conflict with the belief in revealed religion. The belief in the eternity of the world is a shorthand for the demand that all events in the world answer to philosophic reasoning about necessity.

> …the belief in eternity the way Aristotle sees it - that is, the belief according to which the world exists in virtue of necessity, that no nature changes at all, and that the customary course of events cannot be modified with regard to anything- destroys the Law in its principle, necessarily gives the lie to every miracle, and reduces to inanity all the hopes and threats that the Law has held out… (II.25, 328)

Philosophic reasoning calls into question all of the particulars of God's historical relationship with man:

> Why did God give prophetic revelation to this one and not to that? …Why did God give this Law to this particular nation, and why did He not legislate to the others? …Why did He legislate at this particular time, and why did He not legislate before it or after? (II.25, 329)

If the world is created in time, then the answer to all these questions is:

> He [God] wanted it this way; or His wisdom required it this way. And just as He brought the world into existence, having the form it has, when He wanted to, without our knowing His will with regard to this or in what respect there was wisdom in His particularizing the forms of the world and the time of its creation - in the same way we do not know His will or the exigency of His wisdom that caused all the matters, about which questions have been posed above, to be particularized. (II.25 329)

In this final quotation, Maimonides nearly connects the argument from particularization to the Law, although he only goes so far as to apply the principle of particularization to

the circumstances surrounding the revelation of the law. However, it is not a big jump to extend the argument here to include the particulars of the law itself.

The first sentence of this final passage makes it clear that the argument involves eliminating the boundary between God's will ("God wanted it this way") and God's wisdom ("His wisdom required it this way"). In the chapters leading up to II.25, Maimonides stopped short of saying that God's will and wisdom are fully equivocal, preferring to say these qualities are mysteriously united in God's inarticulable unity yet still somehow separable. Did God's wisdom collapse into His will, or vice versa? Chapter II.25 details what is problematic for revelation if God's wisdom is a kind of natural necessity, totally commanding God's will.

Thanks to II.25, we are now in a better position to understand why a believer might deny that God acted wisely, that is, purposively. Such an individual wishes to safeguard the most effective answer to any religious query, "God wished it so." Earlier I argued that Maimonides seems to be accusing those who deny that God acted teleologically when He made the law of destroying the law in order to save it. However, after referring back to II.25, we can see that those who take this route are sacrificing one principle, that the laws are intelligibly good for human beings, for another principle, that God is the omnipotent creator of the universe and the law. When arguing for the creation of the world, against the philosophers, Maimonides leans on the latter principle; when he defends his project of giving the reasons for the laws, he relies on the former principle.

Rather than try vainly to reconcile these two principles, it is better to reflect on the meaning of their dissonance. The "sick" theologians whom Maimonides dismissed because they deny teleological intentions to God nevertheless seem to grasp a genuine

problem. God must be creator of the world in order to be the source of divine law; to take God's unbounded creativity seriously requires that nature and the divine law cannot be totally intelligible. We should not draw any conclusions about the whole of the world and the Law from their intelligible parts e.g., the structure of the eye or the laws detailing reparations for personal injury. If God had wished it, these parts could have been otherwise, and some parts are indeed unintelligible: the red heifers and the contrary movements of the spheres. In the *Guide,* Maimonides tries to downplay the anomalies in the cosmos through his exegesis of a line from the 115th psalm, "*The heavens are the heavens of the Lord, but the earth hath He given to the sons of man"* (II.24, 326-327). Humans can understand the natural necessity that rules the sublunary sphere, but the Heavens are ruled by God the particularizer. However, to someone who desires to understand the whole, it cannot be satisfying to regard the Earth as an intelligible kingdom within a kingdom. How could a natural philosopher ever be certain that the order of the sublunary world was radically independent of the order of the rest of the cosmos? The coherence of the "sick" theologians comes from their discovery that a mysterious element, in law or in the cosmos, cannot be contained in an isolated sphere.

Nevertheless, the impulse to defer to God as creator and lawgiver probably exists side by side in the thoughtful believer with the impulse to make sense of the world and the Law. To investigate which of these impulses ought to be authoritative is as difficult as to ask whether God's wisdom or will is authoritative. Maimonides gives both sides a hearing in the *Guide*, although the reader has to remain on guard against Maimonides' shifting arguments, ad hominem attacks, and appeals to scripture.

Chapter 4: Prophet as Legislator

In the previous chapter, the miracle of creation underwrote the miracle of divine legislation, at the cost of intelligibility in the cosmos and the law. We have now seen that the promotion of God's will over his wisdom in the account of creation can lead to the adoption of the perspective of the sick theologians who deny purpose to law and all teleology to the cosmos. To put the two halves of this account together, we bypassed the discussion of prophecy in the second book of the *Guide* and the account of the purpose of law in the third book. In this sub-chapter, and the following one, we will return to the sections that were skipped.

The following sections of the Guide are held together because they address the purpose of divine law, and how prophecy and revelation accomplish that purpose. I am returning to these discussions because the investigation of divine law in my previous chapter ended in an impasse: about whether fear of God or love of God ought to predominate. The "sick theologians" held that his world and his law are the products of an all-powerful ruler; the law must be obeyed and the oddities of the world accepted or ignored. Yet much of the *Guide* seems to suggest that God's law and his world are the intelligibly good works of a benevolent monarch. In this chapter, we will look at the case Maimonides makes for the intelligible, benevolent God who acts as lawgiver who through the medium of prophecy.

In the first half of this chapter, which covers half of the *Guide*'s treatise on prophecy (*Guide* II.32-40), I focus on pointing out some perplexing inconsistencies in

Maimonides' treatment of Mosaic legislative prophecy. As those chapters progress, the presentation becomes more political, casting doubt on whether the prophet is truly an individual who is distinguished by their unique intellectual gifts, as Maimonides initially claims. In the second half of this chapter, which covers the introduction to the *Guide*'s treatise on law, (*Guide* III.26-III.34), I show how the earlier account of prophecy undermines what Maimonides calls the primary task of divine law: providing knowledge about God.

Epistemic Prophecy vs Legislative Prophecy (II.32-II.38)

In II.32, Maimonides initially centers his account around its epistemic superiority to human speculation. The prophet, through the divine overflow, is made aware of truths that are unavailable to speculation (presumably the truth of the creation of the world, although he does not specify this).[1] Thanks to II.25, which was the centerpiece of my previous chapter, we already know that a certain indemonstrable truth, the God created the world, is actually the fundamental premise of the divine law; therefore, any presentation of prophecy will already be politicized insofar as prophecy exists to secure for humanity some awareness of a humanly unknowable yet politically central truth. However, in the chapters that deal with prophecy, the political essence of prophecy is disclosed only gradually, through a series of discussions that address the theme of the prophet par excellence, Moses. At first his prophecy is described as unique because of his superior apprehension of the divine. It quickly becomes apparent that Moses' legislative prophecy is the true grounds of his importance, yet Maimonides is reserved about articulating the relation between Moses' superior apprehension and his legislative mission Later, once the discussion of prophecy has turned towards considering prophecy

as a political phenomenon, Maimonides provides his first explanation of the nature of political life as such and why there is a need for prophetic legislation. The examination of political life as such and the place of legislation, especially divine legislation, within political life leads Maimonides to lay out in outline what criteria must be satisfied for any law to be considered divine. (The concrete discussion of the Torah according to these criteria is postponed until the 3rd book of the *Guide,* which will be the subject of my next sub-chapter).

Following this outline of the Guide's discussion of prophecy, let us turn to the first chapter of that section, II.32.[2] Maimonides begins this chapter, as he does several others by laying out three basic opinions about the matter at hand. He explains that the "opinion of our Law"[3] about prophecy stands in contrast with two other accounts of prophecy: the opinion found among the "multitude of pagans...and [the multitude]among those professing our Law" and the opinion of the "philosophers."[4] The opinion of the multitude is that God can turn anyone with a "certain goodness"[5] or "upright habits" into a prophet, whether he is a "man of knowledge or ignorant."[6] The philosophers maintain that prophecy is a "certain perfection in the nature of man,"[7] specifically of the rational and moral virtues as well as the imaginative faculties. According to the philosophers, prophecy is one of the natural perfections of man and necessarily comes to whoever is prepared for it. The "opinion of our Law" concurs with the "opinion of the philosophers," but the Law adds the qualification that God can withhold prophecy even to one who would receive it by nature.

The opinion of the philosophers is farther from the opinion of our law then Maimonides lets on. If, as the philosophers hold, prophecy occurs naturally, then it will

necessarily be present whenever its conditions are present. If prophecy can sometimes be miraculously withheld according to the will of God, then God must be above nature. Since the philosophers identify God as the unchanging source of the natural order, their opinion diverges fundamentally from the opinion of the Law, even though the Law seems to grant that the philosophers are correct for the most part about the workings of prophecy. However, their single point of disagreement touches the very core of the debate between the Law and the philosophers, since the philosophic belief in natural necessity stands or falls with the impossibility of miracles and the thesis of the eternity of the world. We can see how far apart the philosophers stand from the Law on the question of prophecy if we consider what Maimonides will later define as the intellectual content of prophecy: indemonstrable truths such as the creation of the world in time. Inasmuch as the philosophers have an opinion about prophecy, they might be thinking of intellectual apprehension, referring to either the mode of access to indemonstrable first principles (axioms), or to some kind of direct apprehension of intellectual form or species—these inarticulable experiences are akin to perception because they provide matter for reason. "Prophecy," for the philosophers, would stir reason, rather than contradict it.[8]

Maimonides first puts the cognitive status of divine law into doubt in *Guide* II.33. Most of chapter II.33 is devoted to exploring the *midrashim* concerning the revelation at Sinai. The purpose of this chapter seems to be to rectify the discrepancy between the true account of prophecy, which limits the prophetic inspiration only to the very few who have the proper body and soul, and the Biblical account of the Sinaitic revelation, which was granted indiscriminately to all of the children of Israel.

The first two commandments delivered at Mt Sinai, "I am the Lord thy God" and "Thou shalt have no other gods before me," are "knowable by human speculation."[9] These commandments, are available to the unaided human intellect without any special prophetic dispensation, insofar as they require only the demonstration of God's existence and oneness. All of the other 8 commandments belong to the class of "generally accepted opinions"[10] or to the "traditions"[11] and are not among the objects of the intellect—they are indemonstrable. The generally accepted opinions do not admit of demonstration because they are not universal and infallible guides for action, while the traditions are limited they are particularistic, not to say provincial. Of course, legislative prudence is not necessarily absent from the generally accepted opinions and traditions, but the judgments of prudence do not admit of universality, and cannot be demonstrated. However, rather than attribute the generally accepted opinions and traditions to legislative prudence, Maimonides says that they are available only as revealed prophecy.

Chapter 35 concerns the extraordinary and unique character of Moses' prophetic apprehension and his miracles.[12] Moses' prophecy is so different from all the other prophets that the term prophecy applies only amphibolously to them. Moses knew God "face to face" (Deut 34:10) while to all other prophets God made himself known "in a vision," and spoke with them "in a dream" (Num. 12:6).[13] However, Moses' prophecy is not so different that it evades Maimonides naturalistic explanation for when prophecy is withheld. For all prophets, in times of great despair, the prophetic well dries up. Jacob could not prophesize while he was preoccupied with the loss of Joseph, and Moses experienced a diminution of his power of prophecy after the Israelites were condemned to wander the desert for forty years. In Maimonides' own days, he says that prophecy has

ceased to exist because of despair over exile from the land of Israel. Maimonides attributes this despair to "being a thrall slave in bondage to the ignorant," but keeping in mind the primarily political nature of prophecy, we might also note that since the Jewish people had lost their political sovereignty, they no longer had the capacity or the need for prophecy.

It is very intriguing that Maimonides provides a naturalistic explanation for the withholding of prophecy because three chapters earlier (II.32), he stated that prophecy was miraculous precisely when it was withheld, rather than when it took place. It would appear that Maimonides is retreating from his view of prophecy as a miraculous phenomenon. Soon, he will diminish the element of super-human knowledge from prophecy as well, leaving it as primarily a vehicle for transmitting law that are ambiguously sub or supra rational.

The next chapter, II.36, delves further into the natural mechanism of prophecy: it is an overflow from God, through the active intellect, into the rational faculty and from there into the imagination. A prophet is an ascetic individual who despises the pleasures of the flesh and has rid himself of any desire for domination or honor. Such an individual is solitary and regards other humans as "like domestic animals or like beasts of pray." He will only associate with other human beings in order to avoid being harmed by them or to benefit himself. When the perfected individual receives into his imagination the overflow from the intellect he only sees "God and his angels, and will only be aware of and achieve knowledge of matters that constitute true opinions and general directives for the well-being of men in their relations with one another."

This passage seems to indicate that prophecy is the vehicle by which the perfect individual participates in political life. The human being with perfected moral and intellectual faculties wants nothing to do with others except in the case of danger or need. However, once a perfected individual becomes a prophet and "apprehends divine and most extraordinary matters," he "sees God and the angels," and learns of "general directives for the well-being of men in their relationship with one another."[14] Since the perfect individual is already an ascetic, the directives he delivers are meant not for his own self-governance but rather are intended to create a harmonious society that would be a safe and useful environment for the ascetic should he require its aid. Also, because the perfect individual apprehends divine matters with the intellect, he would not need to "see" them with the imagination unless it were for the purpose of presenting images of God and the angels to ordinary mortals. A question presents itself: do the images of God and the angels serve the same end as the moral directives—creating a political community that can accommodate the learned ascetic?

Maimonides emphasizes the connection between prophecy and political life in the next chapter, II.37. Those who receive the overflow of the intellect only, without the involvement of imagination, men of speculation. Those who receive the divine overflow both into the imagination and the rational faculty are the prophets. A third class comprises those who receive the overflow only into their imagination; "these are the class of those who govern cities, while being the legislators, soothsayers, augurs, and dreamers of veridical dreams." The account of the political men in this chapter seems to imply that they only function through the medium of imagination. Their only sound ability is to divine future events because of their great interest in them. Maimonides does not say that

their actions are just or wise because of the overflow; we might call them clever. He does admit they have the power to judge of future particulars thanks to the divine overflow.

Maimonides distinguishes between the effect of the overflow in the prophet and the man of speculation. The divine overflow works against the grain of the perfected individual as discussed in the previous chapter (II.36), who wished only to be left alone and would only associate with his fellows in order to save himself from immediate danger or bodily need. Now, both the man of speculation and the prophet receive an overflow that leads each to present their knowledge to others. The prophets experience a compulsion to address a call to the people to seek truth, a call that urges the prophet on even to the point of being killed. However, the man of speculation, when moved by the overflow, only writes books—Maimonides certainly doesn't imply that the man of speculation is willing to go to his death in order to present his learning.

Beyond his intellectual and imaginative perfection, the prophet must also be extremely courageous and gifted in divination—the prophet's perfection in this regard is the subject of II.38. As we saw in II.37, once again the faculty to divine the future seems to be a power to quickly draw conclusions, born of long experience and great concern with particulars. The prophet must be courageous and perspicuous about future events because he is to be a heroic political leader, such as Moses, who Maimonides describes in this chapter, without mentioning him by name: "the lone individual, having only his staff, went boldly to the great king in order to save a religious community from the burden of slavery, and had no fear or dread, because it was said to him, I will be with thee."[15]

The Need for Divine Law (II.38-II.40)

Following on the obvious allusion to Moses in II.38, II.39 takes up the uniqueness of Moses as its theme. Before Moses, there was no legislative prophecy of any kind—no one came to the people saying "God has sent me to say to you such and such things; He has forbidden you to do such and such things and has commanded you to do such and such things." Abraham, who called the people towards monotheism and who received a commandment to circumcise himself and his sons, might be regarded as a prototype of Moses. However, Maimonides comes close to suggesting that Abraham was not a prophet in the most profound sense. Abraham "taught the people and explained to them speculative proofs." Yet earlier, in his description of the revelation at Sinai in II.33, Maimonides noted that whatever can be demonstrated speculatively is not the proper topic for prophetic revelation. With respect to circumcision, that commandment was incumbent only upon Abraham and does not constitute a call to the people.

Maimonides gives a naturalistic explanation of why Moses' legislative prophecy is unprecedented and unrepeatable. His faculties were "equibalanced" and perfect. In a given species there can be only a single instance of perfection—all other instances of that species must miss the mark. Thus no other prophet like Moses could arise. Maimonides elaborates on this point further by remarking that the Law given by Moses is also perfectly equibalanced, so cannot admit of replacement or alteration.

The equibalance of the Mosaic Law distinguishes it from all other "*nomoi* of the religious communities of the past."[16] Those *nomoi* were either to ascetic or too lax in the moral demands they made. The "Law of the Lord is perfect" (Ps 19:8) because its demands are appropriate for the capacities of the "perfect" or the "virtuous." The Law is burdensome for those who are "unjust, violent, and tyrannical" or "greedy and vile." The

Law has to be understood in light of the "man who is perfect among the people [f]or it is the aim of the Law that everyone should be such a man." The Torah is the divine law because it directs its adherents toward perfection, while the "political regimens," which lack this aim, such as "*nomoi* of the Greek" or "ravings of the Sabians," are due to non-prophetic rulers.

It seems obvious that the perfect law would be easy to obey for perfect, virtuous individuals. But Maimonides says that the "aim" of the Law is that everyone should be perfect. However, the law must be followed by those who are virtuous, those who hope to become virtuous, and those who are hopelessly vicious. Could a single law adequately serve the needs of these three sorts of citizens? The law is equibalanced from the perspective of the perfect and virtuous—but could the same be said for the perspective of the other citizens? Furthermore, does the perfect individual even require a law to live his life, or is he a law onto himself? A law perfectly equibalanced for the perfect one would be easy for him to follow since it would superfluously command what he would do anyway. As we shall see in the following chapter, II.40, law really exists for the sake of the deficient and vicious, not for the sake of the virtuous and perfect. This conclusion was hinted at earlier, in II.36, where the perfect human shunned humanity for the most part, although he might become a prophet and take up law-giving for the sake of taming his fellow citizens who are no better than wild beasts.

II.40 begins with the Aristotelian commonplace that "man is political by nature and that it is his nature to live in society." However, unlike the other social animal species, which form colonies of nearly identical individual members, human beings are extremely diverse. Their temperaments cover a vast range—one individual is so cruel he

would kill his youngest child in a rage, while another is too tender to even harm an insect. Society would never be perfected, and perhaps could not exist at all, without a "ruler, who gauges the actions of individuals, perfecting what is deficient and reducing that which is defective, and who prescribes actions and moral habits that all of them must always practice in the same way, so that the natural diversity is hidden through the multiple points of conventional accord and so that the community becomes well-ordered."

This ruler has a self-contradictory pair of functions—on the one hand, he regulates the excesses and deficiencies found in *individuals*; on the other hand, he prescribes actions that *all of them* must practice *in the same way*. The Eleatic Stranger in the *Statesman* asked a similar question about the ruler: is he to be understood as a doctor who makes unique prescriptions to each individual, or as a gymnastics instructor who prescribes a regimen for everyone that fits no one in particular? The latter possibility is the paradigm for law. Maimonides must have been on the same track, because by the end of the above quoted sentence, he describes the end result of the ruler's activity as hiding the natural diversity through multiple points of conventional accord. In the very next sentence, he says, "Therefore I say that the Law, although it is not natural, enters into what is natural." "The Law" has replaced "the ruler" as the subject of this discussion. The political problem par excellence for Maimonides is the natural diversity among human beings, and it admits of two solutions: a ruler who regulates each individual, or a law that commands the same actions for all. Maimonides seems to elide the difference between these two solutions.

In his explanation for why the Law enters into what is natural, Maimonides avoids choosing between the alternatives of rule by a doctor-like statesman and rule by law. Instead, he argues for a divinely ordained division of political labor. He explains that part of God's providence for the human race is that certain individuals have a faculty for ruling. The rulers come in two varieties—Maimonides doesn't name them but I will call them legislators and the sovereigns who adopt the legislation. The legislator is "the one to whom the regimen mentioned has been revealed by prophecy directly; he is the prophet or the bringer of the *nomos*." This formulation is very strange because hitherto, and henceforth, Maimonides uses *nomos* as a synonym for human law, as opposed to divine law. In this very chapter, Maimonides will define a deficient and faulty human law that professes to be divine as merely a "*nomos*." The "*nomos*" is a law that is directed only to ordering the city and the abolition of injustice, without any care for speculative matters. The divine law that is truly divine will be concerned both with justice as well as supplying correct opinions about the divine.

Why does Maimonides initially conflate divine law with human *nomos*, and then reverse the conflation? Perhaps the implication is that the bringer of the merely human *nomos* appears to be a prophet to his followers no less than the bringer of the divine law. When Maimonides proposes a criterion for separating *nomoi* from divine laws, his criterion is immanent to the *nomoi* and divine laws themselves--whether or not these laws promote correct opinions about the divine. He does not say that the *nomoi* lack a concern with the divine, although they might; rather he describes their approach to the divine in three separate ways:

> ...If in that Law attention is not at all directed toward speculative matters, no heed is given to the perfecting of the rational faculty, and no regard is accorded to

> opinions being correct or faulty—the whole purpose that Law being, on the contrary, the arrangement...of the people in their relations with one another and provision for their obtaining...a certain something deemed to be happiness [by their chief].

According to this description, a merely human law might not attend at all to speculative matters, or it might do so without perfecting the rational faculty, or it might mandate opinions without concern whether they are true or not—rather, the opinions are mandated based on whether they promote whatever idea of happiness the regime seeks for the citizens.

The slippage we have observed between *nomos* and divine Law in II.40 requires us to ask what Moses himself and his divine Law have in common with the *nomoi* and those who bring them, and in what respects they differ as well. Moses, then could be regarded as a member of the class that includes prophets who bring the divine regimen, as well as naturally gifted individuals who become "bringers of the *nomos*." The divine law and the human *nomoi* are essentially interchangeable in terms of promoting civil peace. The key difference between divine law and the *nomoi* is that the divine law aims to "inculcate correct opinions with regard to God and the angels," and seeks to "make man wise, to give him understanding, and to awaken his attention, so that he should know the whole of that which exists in its true form."

In II.39, the unique prophetic perfection of Moses made the practical element of the divine Law completely superior to the *nomoi*. In truth, the perfected prophecy of Moses produced the images of divine things that the adherents of the law are enjoined to believe in, while II.40 indicates that the moral and practical elements of the divine law are not necessarily superior to the other laws. In this respect, II.40 continues the trend that began in Maimonides' account of the revelation at Sinai (II.33) when he stated that the

commandments, other than belief in God and his oneness, fall into the categories of generally accepted opinions and traditions.

At this point, it would be helpful to summarize how the series of chapters from II.32 to II.40 has disclosed the political nature of prophecy. In II.32, prophecy was described primarily as a type of special intellectual apprehension. II.33, a discussion of the revelation on Sinai, indicated that at least of some of the theoretical content of the Law was available through speculation, while the practical portion of the law depended exclusively on prophecy. This distinction between the non-revealed theoretical truths and the revealed practical commandments pointed the way towards a political account of prophecy. Chapter II.35 reiterates the uniqueness of Moses' prophetic apprehension, apparently returning to the non-political, epistemic account of prophecy in II.32. However, II.35 details several of Moses' unique miracles, all of which relate to his political role as liberator of the Hebrews from Egyptian slavery. The discussion of Moses' miracles points to a political conception of Moses. II.36 describes the individual who can become a prophet as a sort of hermit who devotes himself only to the perfection of the intellect and who only associates with his fellow humans in a case of extreme need. The prophecy that comes to the hermit is images of God and the angels and moral directives that the hermit presumably uses to harmonize society to his own views for his own benefit. There is no indication in this chapter that the hermit needs prophecy for his own intellectual perfection—the divine overflow that constitutes prophecy serves to activate the hermit's latent practical faculties. II.37 presents the philosopher as part of a larger genus of individuals who experience a special divine overflow. In some individuals, who have a perfected imagination but not perfect intellect or morals, the

divine overflow makes them statesman or legislators. In the men of science, who lack a well-developed imagination, the divine overflow encourages them to write books that spread the sciences. In prophets, who have a powerful intellect and imagination, the divine overflow compels them to address a call to the people.

Chapter 5: The Two-Fold Purpose of Divine Law

*Statute (*hok*) vs Judgment (*mishpat*) Revisited (III.26)*

In *Guide* II.32 through II.40, Maimonides set up an account of the prophet as a philosopher-legislator-poet, an individual who has perfected his moral and rational capacities, and who is capable of creating or conveying images of the divine. However, Maimonides' presentation left unanswered the question of how the prophet's theoretical wisdom informed the law. We also were left with some questions about whether and how the prophet's theoretical wisdom could be transferred to the multitude through the medium of law. In order to see how Maimonides thinks through these two questions, I now turn to the *Guide*'s account of law in III.26-34, which revisits many of the key issues in the discussion of prophecy from the second book. In the first half of my chapter about the *Guide,* I touched on Maimonides discussion of II.26, but did not fully flesh out its argument. Here, I begin with a more full account of this chapter because it poses very clearly the question of the rationality of the actions prescribed by the divine law.

In III.26, Maimonides enumerates the different opinions among the men of speculation among the adherents of the Law about investigating into the intention of the Law: "There are people who do not seek for any cause of the Law at all, saying that all Laws are consequent upon the will alone; others say that every commandment and prohibition in these laws is consequent upon wisdom and aims at some end, and that all Laws have causes that were given in view of some utility." Maimonides contrasts these two opinions with the doctrine that is found among "us" and shared by the many as well

as the elite: that "all the Laws have a cause, though we ignore the causes for some of them and we do not know the manner in which they conform to wisdom." The Laws that do not have a clear cause or end are called "statutes"[1] by the sages. Maimonides says that the sages do not think the "statutes" are things "for which there is no cause at all or which and for which one must not seek an end;" instead, he asserts that they generally agree that these laws have a "cause," i.e. "a useful end," but "it is hidden from us either because of the incapacity of our intellects or the deficiency of our knowledge." To defend this assertion Maimonides quotes a line from the Talmud where the Sages define the "statutes" as "Things which I [God, in this context] have prescribed for you, about which you have not the permission to think, which are criticized by Satan and refuted by the Gentiles." This passage does not exactly support the statement that the Sages believed that the "statutes" are intelligible in principle if not in practice, and they have some obscure utility. Rather, the thrust of this passage is that the "statutes" are mysterious directives from God that simply must be obeyed. In the continuation of the Talmudic passage that he cites here, the sages contrast the "statutes" with the "judgments":[2] "such commandments which, if they were not written [in Scripture], they should by right have been written" such as prohibitions against "idolatry, immorality and bloodshed, robbery and blasphemy." Maimonides does not quote that part of the Talmudic passage, although he does make use of the class of "judgments" in our chapter and defines them as "those commandments whose utility is clear to the multitude." The key phrase here is "clear to the multitude;" Maimonides now re-defines "statutes" as those commandments whose utility is "not clear to the multitude." These definitions may be contrasted with the initial definition of statutes as laws whose utility is hidden from us "because of the incapacity of

our intellects or the deficiency of our knowledge." This first definition seemed to claim that the statutes are beyond the human as such; now the statutes are defined as beyond the multitude. It is important to note that the earlier definition of the statutes was attributed to "the multitude among the Sages," the same word for "multitude" that Maimonides often uses to mean the "vulgar" as opposed to the elite and generally to the learned.[3]

After making the point that for a sufficiently wise individual, the distinction between the "statute" and the "judgment" would vanish, Maimonides gives an example of such an individual. He cites a tradition about Solomon to the effect that the causes of all the commandments were known to him, except for the law of the "red heifer" (the ashes of that animal can remove ritual impurity from contact with a dead body [*Numbers* 19:2]). He also cites a different Talmudic story about Solomon's knowledge of the laws that cuts against his argument and suggests that the "statute"-"judgment" distinction might nevertheless hold. According to Maimonides, "[The sages have a dictum that] God hid the causes of the commandments in order that they should not be held in little esteem, as happened to Solomon with regard to the three commandments whose causes are made clear."

The dictum of the sages to which Maimonides refers is the following Talmudic gloss on Deuteronomy 17:16-17:

> Rabbi Isaac also said: Why were the reasons of Biblical laws not revealed?—Because in two verses reasons were revealed, and they caused the greatest in the world [Solomon] to stumble. Thus it is written: He shall not multiply wives to himself [lest his heart be turned away] (Deut. 17:17), whereon Solomon said, 'I will multiply wives yet not let my heart be perverted.' Yet we read: "When Solomon was old, his wives turned away his heart" (I Kings XI, 4). Again it is written: "He shall not multiply to himself horses [nor shall he cause the people to return to Egypt to multiply horses, since the LORD has said to you, 'You shall never again return that way.'] (Deut. 17:16)"; concerning which Solomon said, 'I will multiply them, but will not cause [Israel] to return [to Egypt].' Yet we read:

> "And a chariot came up and went out of Egypt for six [hundred shekels of silver]" (1 Kings 10:29). (Sanhedrin 21b)[4]

In this gloss, we see why there are some who refuse to reason about the laws, and why the sages of the Talmud at times imply it is forbidden to do so. When the Torah does provide an explanation of causes of the laws, it detracts from its own majesty. An individual who thinks he understands the cause of a certain law is in danger of becoming an educated scofflaw. Because Solomon thought that he knew the purposes for which the Law was promulgated (even if he was correct in that assumption), he consequently believed that he was licensed to break the Law so long as he avoided bringing about the evil that the Law was meant to prevent. If, in the eyes of the Rabbis, the proverbial wisdom of Solomon was not sufficient to replace obedience, then how much more so would anyone else require a law for guidance! This passage suggests that obedience to the Law is not derived from understanding the rationality of the Law, but is actually a non-rational deference to authority. Reasoning about the laws weakens the habit of awe that gives the Law its force. Returning to our chapter in the *Guide*, Maimonides does admit that there is one Talmudic passage which seems to indicate that some of the commandments at least "have no other cause than merely to prescribe a law, without there having been in view in them any other end or any real utility." The passage he cites runs as follows

> What does it matter to the Holy One, blessed be He, that animals are slaughtered by cutting their neck in front or in the back? Say therefore that the commandments were only given in order to purify the people, for it is said: "the word of the Lord is purified" (Ps. 18:31) (*Genesis Rabbah* XLIV.1)[5]

He remarks that this passage is isolated and "has no parallel," although I hope I have shown that the passages Maimonides has cited in this chapter so far actually do agree

with this quotation. However, Maimonides promises that he can interpret even this seemingly unambiguous passage in order support the "universally agreed upon principle" that "one should seek in all the Laws an end that is useful in regard to being."

At this point, it appears that our distinction between "judgments," laws with a utility understood by the multitude, and "statutes," laws with a utility known only to the elite, has been replaced by a distinction between "commandments having [a cause other] than to prescribe a law" and commandments with a "real utility" or an "end that is useful in regard to being." A law that is prescribed "to purify the people" seems to be identical with law that exists merely for the sake of having a law. Maimonides does not seem to think that purification is of "real utility" or "useful in regard to being." Since Maimonides has set out to provide reasons for as many laws as he can, it seems that he wishes to exclude mere purification as a purpose as far as his project is concerned. The obvious inference one can make from this project is that Maimonides regards purification as an explanation that ought to be shunned in seeking for an answer to the question of why a given law exists. Perhaps he believes that purification is a spurious notion, compared to the concrete moral and intellectual purposes he finds within the law (i.e., elimination of reciprocal wrongdoing and promotion of sound opinions about the divine).

Since he appears to discount the mysterious "purification" as a purpose, Maimonides' method for making sense of the laws is limited to separating between the intelligible good intended by a law and the contingent particulars that attend the translation of the intelligible good into a practical law. In other words, Maimonides approach is parallel to that found in the first book of the *Laws*: in those terms, he wishes to show how the intelligible, eidetic structure of divine and human goods may come into

being in time and space through the medium of the law.[6] He in effect answers the rhetorical question posed by the Talmud, "What does it matter to the Holy One, blessed be He, that animals are slaughtered by cutting their neck in front or in the back?" While the Rabbis took this mysterious command to be a method by which God purifies man, perhaps from the pollution incurred of killing His creatures, Maimonides points out that slaughtering animals is useful in general in order to nourish human beings. Not only is meat an excellent source of protein, but Maimonides, briefly acting as a natural philosopher, notes that the practice of slaughtering an animal by severing the esophagus and windpipe at a certain spot serves to "bring about the easiest death in an easy manner." It should be noted that here Maimonides shows how little he credits the idea that a law may be intended to "purify the people"—the rabbinic example par excellence of a purifying law actually turns out be of manifest utility once it is understood through the lens of anatomy and physiology.

The Two Aims of the Divine Law: Health of Body and of Soul (III.27-III.34)

Having thoroughly, but subtly, taken the knife to the Talmud's account of Law, in III.26 Maimonides restates his own definition of Law from II.40 in the following chapter, III.27. Law looks after the health of the body and the soul: it cares for the body through the abolition of reciprocal wrongdoing and the promotion of moral qualities that are useful for society; it cares for the soul by providing the multitude with correct opinions, which must be set forth in parables because "it is not within the nature of the common multitude that its capacity should suffice for apprehending that subject matter as it is." Part of the difficulty of this chapter as well as the ones that follow it will be determining

what opinions he has in mind here, and whether the opinions that the law inculcates through images and parables is truly identical with the welfare of the soul.

Of these two aims, the health of the body and health of the soul, Maimonides tells us that these two aims have a complex nature. The perfection of the body comes first in time, and it is necessary for the perfection of the soul, but the perfection of the soul is "greater in nobility." The Law's care for the body is only instrumental to its care for the soul, insofar as the perfection of the soul is nobler than yet dependent on the good condition of the body. Maimonides identifies justice and the virtues with care for the body because they are necessary for society, which in turn is necessary for the provision of the bodily needs. The ultimate perfection of the human being is perfection of the soul, defined as possession of "opinions toward which speculation has led and that investigation has made necessary." Ultimate perfection is purely speculative and non-moral; Maimonides tells us that "to this ultimate perfection there do not belong actions or moral qualities."[7]

At this point, it is hard to see how the Law really can succeed at providing ultimate perfection, since ultimate perfection comes from speculation and investigation, rather than from receiving opinions from authority. The Law can provide correct opinions to the multitude, but that does not mean the Law provides ultimate perfection to them. Furthermore, the Law is very much concerned with eliminating reciprocal wrongdoing and promoting virtue, but these practical ends are not parts of ultimate perfection, but rather promote the harmony of society. Maimonides notes that even though the perfection of the soul is nobler, "this second aim," the perfection of the body through "governance of the city" is the aim in which "every effort has been made precisely to expound it in all

its particulars." But the well-governed society is only necessary because a person cannot learn or discover the intelligibles, "if he is in pain or is very hungry or is thirsty or is hot or is very cold." Since society only exists to provide for the needs of the elite who can reach ultimate perfection, why is there need for a code as extensive and thorough as the Torah?[8] Further, as Maimonides admits, the opinions are only included in a very summary way, compared to the lavish detail invested in the laws.

Maimonides now reiterates that the Law of Moses is the "true Law" and it provides "both perfections," namely "the abolition of reciprocal wrongdoing," and the "acquisition of noble and excellent character." Here we are told that "both" perfections are moral perfections, but in this context we might have expected "both" to refer to moral and theoretical; for a brief moment, "ultimate perfection" seems to have dropped out. Of course, at this point we no longer can simply accept that "soundness of beliefs" and "correct opinion" are the same as "ultimate perfection" that consists in theoretical activity of the highest order. Perhaps the hint conveyed by the brief confusion about what "both" perfections are indicates that "ultimate perfection" of the theoretical faculties is not truly the goal of the Law. Immediately after this jarring reference to "both perfections," Maimonides brings theoretical perfection back in, after saying that the moral perfections bring about "the preservation of the population of the country and their permanent existence in the same order." On account of this political stability, "every one of them achieves his first perfection," which Maimonides defines as "the soundness of the beliefs and the giving of true opinions through which ultimate perfection is achieved."

At this point, the meaning of "first perfection," "second perfection" and "ultimate perfection" have become somewhat muddled, especially so since this chapter also

discusses “two aims” of the Law, moral and theoretical perfection, among which aims moral perfection is itself doubled (elimination of reciprocal wrongdoing and promotion of virtue). Initially, the two aims of the law were first, the health of soul and second, the health of body. The health of the soul is of greater nobility, but it is second in nature and time after the health of the body. Maimonides then switches the order and refers to the perfection of the body as first, and the perfection of the soul as ultimate perfection. This step is followed by a reference to “both perfections,” which excludes intellectual perfection while including elimination of reciprocal wrongdoing and promotion of virtue. In the immediately following sentence, Maimonides refers to sound beliefs and correct opinions as the “first perfection,” which leads to “ultimate perfection.” Neither here nor elsewhere in this chapter does Maimonides define “ultimate perfection” in particular as mere possession of correct opinions—whenever he mentions it ultimate perfection is defined exclusively as the “perfection of the soul” or “opinions toward which speculation has led and that investigation has rendered compulsory.” Here, ultimate perfection somehow depends on the correct opinions or sound beliefs but it is not identical to them. Having defined “first perfection” as perfection of the body and then redefined it as possession of correct opinions and sound beliefs, Maimonides refers to it as “the first and corporeal preservation, which last for a certain duration and which can only be well ordered through political association” at the very end of the chapter. What, then, does the “first perfection” refer to, opinions or the body? Is Maimonides identifying the correct opinions with the health of the body and with correct political association?

In the following chapter, III.28, Maimonides confirms that many of the opinions enjoined by the law are intimately related to the political stability that Maimonides all but

identifies with the health of the body. In the beginning of this chapter, Maimonides distinguishes between opinions that are "ultimate ends" and those that are necessary "for the sake of political welfare." In the former category are beliefs in the existence of God, His unity, knowledge, power, will, and eternity. These beliefs and the arguments for them are discussed in the Torah in only a very general way, compared to the opinions in the latter category. In the latter category of beliefs necessary for political life is the belief, for example, that God "is violently angry with those who disobey him and that it is therefore necessary to fear Him and to dread Him and to take care not to disobey." At the end of the chapter, Maimonides adds another example of a necessary yet mistaken belief: "the belief that [God] responds instantaneously to the prayer of someone wronged or deceived: And it shall come to pass when he crieth unto me, that I will hear; for I am gracious." This Biblical passage refers to the prayer of a poor man whose cloak was taken for a pledge and not returned to him. The implication of Maimonides' statement is that God does not hear this man's prayer, and the biblical passage is intended to strike fear into the hearts of a credulous multitude that would not act charitably without this threat.

If the actions and character traits prescribed by the Law require false opinions and beliefs for their support, then Law cannot be understood simply as commands to be obeyed apart from the necessary beliefs. In his previous discussion of Law, in II.39-40, Maimonides obscured the relationship that holds in the Law between the required opinions and actions. In II.39, Maimonides presented the Law as perfectly equibalanced in terms of its actions alone without referring to opinion in that context. The equibalanced character of the Law follows from its demand that everyone perform actions that come easily only to the one who is "perfect among the people." How the "greedy and vile"

would be made to follow this law is not stated in II.39, but II.40 provides the answer: there are individuals "with the faculty to compel people to accomplish, observe, and actualize" the Law. All laws, including the Torah, have in common that their ordering of society must be both promulgated as well as enforced. What distinguishes the Torah and any other divine law from ordinary law in the view of chapter II.40 is that they "inculcate correct opinions with regard to God...and the angels, and desire to make man wise...so that he should know the whole of that which exists in its true form." Now we see that opinions about God and the angels, alongside of mere force, also form part of the enforcement structure of the Law, to the detriment of the correctness of these beliefs.

We are also led to wonder if a truly secular law could exist that does not make any effort to inculcate opinions about the divine. What lawgiver would wish to do without this valuable tool? Perhaps this is why in II.40 Maimonides discussed divine law as a genus without insisting that there is in in principle only one such law.[9]

The discussion of law and its purpose in *Guide* II.39-40 must be compared with these later discussions of the same topic in order to see Maimonides' fuller teaching about this subject. In Book II, he discussed the Law in light of the unique prophecy of Moses, which had two unique elements: his apprehension of the divine was nearly unimpeded and his prophecy was legislative. Maimonides does not explain how Moses' profound intellectual awareness produced the actions enjoined by the Law. Rather, Moses' prophecy was responsible for the correct opinions about God and the angels that are found in the Law. Of course, in respect of demonstrable truths, prophecy is not superior to unaided human reason, as Maimonides noted in II.34. Rather, prophecy

provides parables and images of the truth, as well as correct opinions about matters that are not verifiable by reason, such as the eternity or creation of the world.

Much of the explanation of political life in II.40 and in III.27 leads us to regard the specific contents of the Law as somewhat beside the point—they must provide a harmonious society in a general way. The Law is said to go beyond the ordinary laws by providing perfect moral guidance, however. Yet the thrust of the argument leads us to question whether moral guidance admits of perfection. The Law is also said to extend beyond ordinary laws by providing correct opinions about God and the angels, thus leading men to their ultimate perfection. However, ultimate perfection involves understanding truth, but the law only provides very summary teachings about intellectual matters, compared to its detailed presentation laws governing civil conduct. Further, the law enjoins many opinions because they are salutary to the well-being of society, not because they are correct opinions about God and the angels. Some of these opinions are images that corporealize God in order to present him as an avenging sovereign who rules through particular providence.[10] We may wonder whether among these opinions is the belief in the creation of the world, which is necessary for the Law but not demonstrable or necessarily true.

Chapters III.33 and III.34 are the last chapter of the introductory section before the explanation of the laws commences. III.33 explains that very many of the Torah's more mysterious laws are devoted to producing asceticism among the Hebrews. In that chapter, Maimonides argues that widespread asceticism is the sine qua non of a peaceful society. In III.34, Maimonides revisits the relationship of the divine Law to the solitary or unique human being that he discussed in II.38. In that previous chapter, the perfect

human being was said to live by himself, and only was driven to participate in society because of need. Maimonides explained that this individual was a prophet, and he indicated that the laws (actions and opinions) brought by this prophet were designed to make society peaceful in order to accommodate his own needs. In III.34, Maimonides again discusses the solitary or rare individual, but does not refer to this individual as perfect or self-governing.

In III.34, Maimonides admits that the Law addresses human beings in general, and that rare or unique human beings may not be perfected through the Law's governance. He contrasts the Law with the prescriptions of doctors, which are particularized for the treatment of an individual. The Law would be "corrupted" if it were rendered changeable; thus all its commandments must be "absolute and universal," unchanging with respect to time, place, or person. Maimonides thus comes very close to "the problem of law" that was a major element of Plato's *Statesman.* Yet rather than use the inability of the Law to address particulars as grounds for a critique of Law, Maimonides asserts that the Law must be general in order to exist at all. Maimonides' position in this chapter harmonizes with his description of Law in II.40 as artificially concealing the differences between individuals in order to produce a harmonious society. In II.40, we were led to believe that these differences were vast, especially in terms of spiritedness. However, our previous chapter, III.33, which concerned the need for asceticism, implied that in terms of desire for pleasure, most humans are of a piece with one another. In that case, the individuals damaged by the law will be those who are moderate on their own and for whom the asceticism of the Law is excessive. Perhaps the

opinion of the Law is that there are no such individuals, although Maimonides alluded to their existence in II.39 and presented them as the model for the commandments!

Perhaps all human beings are so tilted toward pleasure that ascetic laws are universally beneficial. We would still be left with the problem of the damage that the Law would inflict on another minority group: those who are intellectually rare, i.e., those not given to corporealism and who can follow demonstrative reasoning. The corporealism of the Torah might throw these individuals into perplexity, torn between their sacred book and what reason tells them. Indeed, was this not the purpose of the *Guide of Perplexed* as a whole? Of course, this very perplexity might be ultimately liberating. But these individuals would also be in danger if their skepticism about the corporealism of the Bible offended their co-religionists. They might appear heretical, and risk suffering excommunication or worse. If, as Maimonides claims in II.40 and III.27, the purpose of the Law is to help human beings to reach their ultimate perfection, the perfection of the intellect, then how do we understand his admission in III.34 that the Law is directed towards human beings in general and might damage rare individuals?

Epilogue: Statesman and Law in Book 1 Albo's *Book of Roots (Sefer Ha'iqqarim)*

Joseph Albo (1380–1444) lived in Christian Spain about two hundred years after Maimonides. Not much is known about his life, but his *Book of Roots* (known in Hebrew as Sefer-Haiqqarim) has remained in circulation since it was written in the 15th century. The purpose of the *Book of Roots* is to explain the "roots" or fundamental principles of Jewish law. This text appears to be an apologetic text directed towards establishing Judaism as a true divine law against the rival claims of Christianity and Islam. However, I will argue that Albo is actually most concerned with investigating the possibility that an apparently divine law might actually be the product of philosophical legislation. This question is an indirect way of asking in what way a divine law is superior to a wise human law that was produced by superlative prudence and directed toward contemplation as the true human end. In the introduction to the first book Albo says that it is simultaneously easy and difficult to explain the roots of "laws in general."[1] This is because every human being known to us possesses some kind of law. Therefore everyone must possess at least superficially some understanding of the roots of their own law. Nevertheless the wise differ among themselves about the nature and number of the roots of laws especially with respect to the divine laws of Moses. Remarkably, what Albo is seeking is an account of the roots of divine law[2] in general, without which a divine law[3] may not exist. Usually, adherents of a monotheistic religion simply treat the other religions as spurious and their own as genuine. Albo's investigation is into the roots of divine law in general is different because his theoretical approach to the subject matter

requires us to put aside our prejudices and consider divine law as such, without partisan attachment to one or another divine law.

Albo also wants to know whether there is only one divine law, or if there can be others, and if there are, how are they differentiated. This question imposes itself especially if we consider the roots as defining the class character of divine law. There may be other divine laws that are members of the class, in which case each member would have its own defining characteristic that would distinguish it from the other divine laws.

First, let's get Albo's conclusions on the table without going into detail about them. His three roots are the existence of God, revelation, and spiritual reward and punishment. His reasoning is pretty straightforward: for there to be divine law, there must be a divinity, that divinity must communicate laws to humans, and must hold accountable the subjects of the law in this world and the next. From these three roots he derives various secondary roots that mostly map on to Maimonides' thirteen principles of faith, minus a few that he thought were either too particular to the law of Moses or were too general and belonged to law as such rather than divine law. Beyond this basic framework, Albo mentions that there are particular roots found in Judaism, Islam and Christianity that distinguish the different communities from one another and divine law as such. The Jewish religion stands or falls with the belief in the mission of Moses, Christianity requires belief in a Messiah and the trinity, and Islam requires belief in Muhammad's mission, fate and predestination.

Although all divine laws known to us have their own peculiar beliefs, Albo leaves open the possibility that there might be an actually existing but still generic divine law

that lacks roots that are peculiar to itself. Why would he suppose that there could be a divine law without any unique roots, if all peoples that we know of are divided into communities based on their peculiar laws? How could there be a generic religion? And if there can be a generic religion, what is the theoretical significance of this possibility?

The first reason to suspect there could be a divine law without particular beliefs is that Albo's version of Judaism approximates this standard. In the case of Islam and Christianity, Albo would consider their characteristic theoretical beliefs to be erroneous – he thinks that the belief in the trinity and in predestination are self-contradictory. Judaism alone teaches correct theoretical beliefs, so Judaism comes close to being the generic religion. The exceptions are the contingent belief in Moses's prophecy, and some other beliefs that are ancillary to the roots and their derivatives but, crucially, do not contradict them.

The existence of a generic religion is also implicated in Albo's suggestion that a legislation resembling divine law might be instituted by the wise. The legislation of the wise would possess all the requisite primary and secondary roots. This possibility is raised by the very idea of seeking the roots of divine law as they would be determined a priori. If the theoretical framework thus provided could be arrived at by human inquiry, then the wise could put forth a divine legislation that would be genuinely worthy of the name divine, and we would need to ask in what way such a legislation would be any worse than a "genuinely genuine" law.

Albo formally introduces the possibility that the wise might be responsible for legislation in his theoretical account of law in general that goes from chapters five through seven. In chapter five, Albo explains that human beings naturally live in

associations, and cannot live otherwise. Natural law (דת טבעית) and conventional law (נימוס) provide the framework for the human associations. Albo's version of natural law comprises only the most basic prohibitions against murder, theft, and the like.[4] In his view, conventional law is more comprehensive than natural law and contains more specific regulations about human affairs and business. Conventional law cannot exist without a ruler who enforces it.

In the sixth chapter, Albo explains why the conventional law must be supplemented by divine law that is revealed through a prophetic legislator. The great diversity of human types means that not all, or even most human beings could achieve human perfection on their own. To help the ordinary, defective human beings, God has provided superior classes of individuals, the rulers(ראשים) and the wise (חכמים), who are instruments through which the human race is led to its perfection. The wise (Albo subsequently drops the rulers) help to order the affairs of the human race, and this ordering is called conventional law. The divine law (תורת אלוהית) is the guidance (הישרה) human beings receive when an individual is divinely inspired (שפע אלוהית). This inspired individual helps his fellows to achieve their perfection either by directly acting on them during his life or, after his death, by influencing the wise men who follow him to guide the human race according to his speeches or writings. Albo does not say that the inspired individual is wise, only that he is suited for the divine influence

If Albo's view of natural law is very limited, comprising only the minimum requirements for society, then his view of conventional law is positively expansive. It can include everything from the well-known laws of the nations, such as the Roman laws, to the laws devised by the wise. In chapter seven, Albo reiterates that conventional law is

produced by the wise, and that examples include the laws and statutes of the ancient idolaters as well as the "those who worship God as human reason[5] dictates without any divine revelation (הערה אלוהית)." It seems that conventional law can include what Halevi calls the rational *nomoi* of the philosophers, i.e., the self-governance of the solitary enlightened individual.[6] In chapter eight, Albo even discusses Plato's *Republic* under the heading of conventional laws. Conventional law is Albo's catch-all for human laws, and is named after its lower limit, the arbitrary imposition of the merely conventional law.

In his eighth chapter, Albo explains that divine law is superior to conventional law because human legislators are insufficiently wise and human rulers are insufficiently powerful. Conventional law fails to instruct the many in theoretical truths about the divine; it cannot determine what is noble and what is base definitively; it does not provide satisfactory certainty (שמח לב) to its followers; it can only provide general rules, not specify correct conduct; it cannot punish and reward with exactitude, certainly not in the afterlife; it cannot know the inner hearts of men. The first four deficiencies are directed most of all, it seems to me, at the laws propounded by the wise. Albo refers specifically to Plato as a legislator who failed to correctly determine the noble and base, and he refers specifically to Aristotle as one who failed to specify laws and only provided general advice to follow the mean.

However, these deficiencies don't seem to be sufficient to sink the law of the wise either if it is the philosophic way of life or a law devised by a wise man or men for others to follow. When he blames Plato for instituting something base as noble, the community of women and children, in his eighth chapter he mentions that Aristotle found fault with Plato for this. But Aristotle was not at all divinely inspired, so perhaps divine revelation

is not necessary in order to grasp the noble and base. Third, Aristotle might fail to provide specific guidance, but he claims that prudence will serve this role, and both he and Plato argue that no law could ever specify what is correct in every situation.

In the rest of my paper, I will focus on the third deficiency in Albo's list, the inability of the conventional law, even the law of the wise, to provide satisfactory certainty. The full force of this accusation can really only be seen by jumping ahead almost to the end of the book, to ch. 24. This chapter is relevant because it addresses the question of whether it is permitted for believers in revealed laws to investigate those laws. In the course of looking into this question, Albo brings in Maimonides' two criteria from Guide II.48 for judging whether a divine law is genuine or spurious: first, does the law teach true ideas about God, and the angels? Second, what are the moral qualities of the founder, especially with respect to sexual behavior? Albo says that these two criteria are not enough, because "this is not sufficient to enable us to differentiate a law laid down by a wise man containing true roots such as a divine law might have, the founder himself being a man of noble character and conduct, from a divine law. There is no way to tell if it really is a divine law or a human law which resembles a divine law." According to Albo, a law may seek to suppress wrongdoing as well as remove the superstition of the masses, and indeed aim at the highest perfection, "yet it is still possible that is the work of a wise man or wise men." Given that the wise may fabricate a divine law, the presence of the roots which are the subject of this whole text are necessary, but not sufficient to authenticate a divine law. Revelation is the sine qua non of divine law; only the manner in which the messenger brings the divine law may distinguish the genuine from the spurious divine law.

Based on this passage, I argue that the religion promulgated by the wise is actually a much more serious problem for Albo than the rivalry of the three monotheistic religions. Those religions are distinguished from Judaism because they have additional, false roots that allow Albo to reject their divinity out of hand on a priori grounds. But the religion of the philosophers is not deficient in the way the other monotheistic religions are. Indeed, it might possess all the primary and secondary derivative roots. It is important to recall here that one of those roots is revelation. The religion of the philosophers would be an imposture, insofar as it would pretend to be revealed but would actually be the invention of human beings, albeit wise ones.

Since it is possible for a human law to include all the roots of divine law, and to feign a revelation, Albo focuses on how reason can verify the revealed character of genuine divine law. His thematic approach to the sources of belief can be found earlier, in Chapter 18. Belief for us is based on a reliable and continuous transmission of testimony from father to son. Albo says that beliefs passed down from a father are "worthy of belief almost as much as that to which the believer's own senses testify, though he cannot prove it by reason." The caveat that tradition is *almost* as worthy of belief as the senses is important. The tradition from father to son is reliable because "no one loves a person more than his father. Hence a matter which has been continuously handed down from father to son properly takes such a firm hold upon the mind of the son that he cannot imagine it not be so, as if he himself perceived it with his own sense, for it is clear that no father desires to leave falsehood behind to his children." A son is naturally disposed to believe whatever his father tells him, even if it is unprovable or unlikely according to reason, because the son already believes in the benevolence and thus the truthfulness of

his father. The father does not desire to leave falsehood behind to his children. Two possibilities present themselves: (1) common sense and Plato's *Republic* both teach that a benevolent father or ruler may lie for the good of his subjects and (2) The father may not desire to lie to his son; but he may do so out of his own ignorance.

In response to this line of argument, one might turn to Albo's defense of the Sinaitic revelation on the grounds that it was very public. In the following chapter, he writes that diverse people of all kinds, the fools as well as the wise, the noble as well as the base, were witnesses to the same event. However, the wise and noble are a very small group, as Albo implied earlier when he explained that the serious deficiency of most human beings was why there needs to be divine law at all. Only the testimony of the wise and noble is reliable, and they constituted a small minority of the witnesses at that time. As I mentioned earlier, truth-telling is not necessarily a sign of beneficence and wisdom, and sometimes truth telling is not even compatible with them.

Albo thus relies on revelation as the decisive proof that a given law is divine. This conclusion harmonizes with my earlier argument that the enumeration of the roots of divine law is not a sufficient key to distinguishing genuine divine law from philosophic conventional law. The need for revelation is the necessary limit to the project of rationally explicating divine law.

End Notes

Notes to Pages 13-21

CHAPTER 1: *THE STATESMAN*

1. In his commentary, Seth Benardete makes the very sensible point that, "even the tyrant cannot rely on force to control his on bodyguards." Benardete also notes that the "out-of-office politikos" would not need strength of soul, thus casting doubt on whether knowledge alone can truly make an individual a statesman. See *Plato's Statesman* (Chicago: University of Chicago Press, 1986) III.79.

2. See Benardete, "The Plan of Plato's Statesman" in *The Argument of the Action* (Chicago: University of Chicago Press, 2000) 359.

3. To place the political art in the category of self-commanding is to banish the sacred. However, the Stranger does not fully explain his justification for this step. In Benardete's formulation, " In order to set aside soothsayers and priests, the Stranger takes advantage of the vestigial traces of the priest-king in Athens and elsewhere, but he does not justify his dismissal of them before the bar of reason. A theoretical diairesis rests on the mysterious withdrawal over time of the sacred from political life." See *Argument* 359.

4. Mitchell Miller has an interesting discussion about why young Socrates made his error: he is thoughtlessly anthropocentric, perhaps due to the influence of the Protragorean epigram that "man is the measure of all things." While I think Miller correctly regards young Socrates' mistake as a teachable moment that shed light on his character and on the distance between the Eleatic Stranger and non-philosophical opinion, in my discussion of this point I try to show that young Socrates' commonsense separation of man from the animals is a truly "Socratic" moment in the dialogue. See *The Philosopher in Plato's Statesman* (Las Vegas, NV: Parmenides Press, 2004)19-28.

5. Benardete takes an opposite conclusion from this passage: "Young Socrates' manliness is that element of the human which most resembles something in the beastly; it either contradicts or qualifies his own distinction between men and beasts." This intriguing observation leads me to wonder why in human beings the bestial element of θυμος insists on the distinction between man and beasts. See Plato's Statesman, III.85.

6. Aristotle makes this point in *Politics* II.8, "...the laws of ancient times were overly simple and barbaric (βαρβαρικούς). For the Greeks used to carry weapons and purchase their wives from one another..."

7. A favorite example is male nudity. According to Herodotus, "among the Lydians and most of the foreign peoples it is felt as a great shame that even a man be

seen naked" (*Histories*, 1.10). In the *Republic*, Socrates mentions that the Greeks have only recently adopted the practice of male nudity, while the barbarians still regard it as shameful (*Republic*, V.452c).

8. In the *Politics*, Aristotle distinguishes between the slavish way of life of the barbarians and the freedom of the Greeks—the non-Greeks "lack political governance (1.2 1252b5-10, 7.7 1327b23-30). The Carthaginians, however, have a free regime that comparable to the Spartan or Cretan regimes (II.11 1272b25-35). The Greeks and the barbarians are meaningfully different, yet the difference is not inescapable, climactic influences notwithstanding.

Notes to Pages 22-31

9. Catherine Zuckert points out that the Stranger's method is a vehicle for launching a sub-Socratic critique of the opinions of Theaetetus and young Socrates. His goal is to cause them to gradually give up some of their opinions rather than to attack them head-on as the elder Socrates would. As Zuckert puts it, "As we examine the way in which [the Stranger] leads [his interlocutors] to the final definition...it becomes increasingly clear that he is trying to get them to jettison common partial or contradictory notions they share without challenging them or the adequacy of their opinions directly, as Socrates would." See *Plato's Philosophers* (Chicago: University of Chicago Press, 2009) 712.

10. It is very likely that this term is Plato's own coinage, although its parts quite literally mean "herd-care."

11. See the similar discussion in Plato's *Laws* I 628b: Socrates: Which of these sets of circumstances would someone prefer: civil peace brought about by the destruction of some and the victory of others, or friendship as well as peace brought about through reconciliation...? Kleinias: Everyone would prefer the latter rather than the former.

12. The language of this comment comes from a very similar observation made in *Guide of Perplexed* II.40. The idea that law is a covering that obscures what is beneath it will be very important for my discussion of how Maimonides understands the purpose of law.

13. Benardete's discussion of "lawlessness" in the perspective of the *Statesman* is quite revealing: "Law is the trace of the unscientific and pre-political past with which the city of arts can never dispense. Even the young Socrates, who as a mathematician believes that life without arts is not worth living (299c5-9) , draws the line at ruling without laws (283e6-7). 'Lawless' (anomos) does not look like 'beast' and 'barbarian' with their concealed negatives, but it too fails to distinguish between the arbitrariness of lawless rule and unlawful prudence." Benardete's point here is that law is a relic of the era of the rule of the divine shepherd found in the age of Cronos, which was superseded in the Stranger's account by the Age of Zeus. In the Age of Zeus, the arts and prudence took over for the direct guidance of super-human shepherds. Since the city holds the law to be the direct guidance of divinely inspired legislators, the law is at odds with the prudence of the wise statesman. See *Argument and Action* 369.

14. This observation is pointed out by Miller. See *Philosopher in Plato's Statesman* 95.

15. This moment is very important to Zuckert's overall argument that the *Apology* is an answer to the charges against Socrates that the Eleatic Stranger makes in the *Statesman*. She writes that "The fact that [Socrates] has been indicted shows, the Eleatic intimates, that he did not understand the obstacles imposed by popular ignorance and experience on the attainment of knowledge about politics. The interrogations of individuals [which Socrates practiced] appeared to his fellow citizens to amount to a claim that he is wiser than the laws." See *Plato's Philosophers* 730.

16. In the *Politics*, Aristotle entertains the idea that laws must be subject to change for reasons very similar to what the Eleatic Stranger sketched out. However, Aristotle also argues that the laws must not be tampered with, because "the law has no power to compel obedience beside the force of custom, and custom only grows up in long lapse of time, so that lightly to change from the existing laws to other new laws is to weaken the power of the law." See *Politics* II.8, 1269a20-23.

CHAPTER 2: *THE LAWS*

1. Using this line, among other moments, Zuckert argues that The Athenian Stranger is quite different from Socrates because he does not initiate the conversation about law with a "what is" question. See *Plato's Philosophers* 62. However, Mark Lutz convincingly argues for the similarities between Socrates and the Athenian Stranger in his own book about the Laws. About the opening of the dialogue, he suggests that the question of "what is law" is particularly dangerous, especially in the context of the Laws. Instead of asking "what is law" directly, Lutz argues that the Athenian Stranger tries to test his own analysis of law that he has arrived at prior to the dialogue by attempting to persuade Megillus and Kleinias to take part in his own legislation-in-speech. For Lutz's treatment of Zuckert's arguments, see *Divine Law and Political Philosophy in Plato's Laws* (De Kalb, IL: NIU Press, 2012) 47-51.

2. Leo Strauss makes this observation in his book about the *Laws*: "The Athenian Stranger makes tacit use of the critique of law as such which another stranger develops in Statesman and which is indeed, not immediately intelligible to the old law bred Dorians." See *Argument and Action of Plato's Laws [AAPL]* (Chicago: University of Chicago Press, 1975) 5. The rest of the first book of the *Laws* may be the Athenian's indirect attempt to bring the Dorians around to an understanding of the critique of law as such.

3. Strauss writes, "the Athenian does not question the divine origin of the Cretan laws." Rather, the Athenian approaches the divinity of the Cretan laws from "a different angle: if those laws are divine their end must be the proper end." This is a very

succinct account of the Stranger's procedure in the rest of the first book of the *Laws*. See *AAPL* 3-4

4. The appearance of death as the end of the legislation puts paid to any notion that the Athenian believes a code of law could truly be directed toward wisdom. In his commentary Strauss writes that even though the divine goods are said to be oriented towards mind,

> Yet the Athenian calls death the end of the whole polity (politeia): what is deathless transcends politics. From this we understand that the whole legal order must, according to the Athenian, be subservient to justice and moderation, i.e., not to good sense, let alone Intellect. Good sense and Intellect must be effective in legislation and to some extent even in the execution of the laws, but they are not that to which legislation is ordered. In legislation the higher is in the service of the lower, and this is strictly speaking against nature. This is a fundamental crux of the city (*AAPL* 9).

Seth Benardete also expresses this point very neatly in his commentary on the *Laws*. There, he describes the legislation as a way of translating the timeless divine goods into the world of becoming where they must exist within time. However, the movement towards wisdom "is replaced by burial as the end of the regime, and the guardians of the laws are only partly chosen for their good sense." The overall effect of this change is to highlight how "the perspective of the law transforms the good and bad into the noble and base, on the one hand, and, on the other, into just and unjust" See *Plato's "Laws"* (Chicago: University of Chicago Press, 2000) 21.

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5. Strauss points out that in this passage the Athenian makes clear the principle he had been acting on the whole time: "The questionable premise of the divine origin of the Dorian laws, which allegedly makes certain the goodness of those laws." In Strauss's reading, Kleinias himself makes clear the full implication of the Athenian's "divination" of the Dorian law that permits old men to question the law when they are alone: "Minos himself ascribed the laws to Zeus in order to protect himself from hasty blame." See *AAPL* 10-11. From this point onwards, the putative divinity of the Cretan laws has been replaced with an investigation into their goodness.

6. The symposium-in-speech is presented as though it were the "idea" of a symposium, a being beyond experience in comparison to which all human symposia fall short. Strauss contrasts this approach with the city-in-speech of the *Republic*, which is presented as a utopia constructed by the participants in the dialogue, and he claims that this distinction is representative of the distinction between the *Republic* and the *Laws*. He ascribes this difference to the presence of philosophy in the *Republic* and its absence in the *Laws*. See *AAPL* 14.

7. Strauss shows how the Athenian's presentation of law as reason that has been somehow transformed into the doctrine of the city creates a dilemma for his two interlocutors. If a policy was already reasonable, what can be added to it by the transformation into law? And if laws are based in reason, what do we make of laws that are obviously irrational? See *AAPL* 18.

8. At a later point in the dialogue, in the discussion of injury as it differs from injustice, the Stranger will go so far as to say justice in a city depends only on some ruling opinion about the good, even if it is a mistaken idea. See *Laws* 864a "Stranger: The tyranny in the soul of spiritedness, fear, pleasure, pain, feelings of envy, and desires, whether it does some injury or not, I proclaim to be in every way injustice, When, on the other hand, the opinion about what is just, however a city or certain private individuals may believe this will be, holds sway in souls and brings order to every man, then, even if it is in some way mistaken, what is done through this...must be declared to be merely just and best for the whole of human life..."

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CHAPTER 3: CREATION OF THE WORLD AND THE DIVINE LEGISLATION

1. At the end of his article about medieval theological arguments that use the concept of particularization, Herbert Davidson calls attention to the oddity of this argument: "[Maimonides] thus completes a peculiar form of teleological argument. Instead of evincing phenomena that are so well designed and ordered that no human observer can deny a plan behind them, Maimonides' argument evinces phenomena that no human observer can organize into an orderly pattern" ("Arguments from Particularization in Arabic Philosophy," Philosophy East and West 18.4 (1968): 313.) He also notes that the argument from particularization depends on the prior proof for the existence of God. However, the God whose existence was proven earlier is the Aristotelian prime mover, the God of the eternal world, and not the willful God who particularizes as he wishes. Davidson's excellent article situates the Maimonidean use of the argument from particularization in the context of his contemporary Ghazali as well as the earlier Arabic Kalam.

2. This was already accomplished in the first book of the Guide in the discussion known as the "negative theology." In those chapters, Maimonides argued that there is no likeness between God's life, knowledge, power, and will compared to the human forms of these notions. In fact, no separation can be made between God's life, knowledge, power, and will—they are inseparable aspects of God's unitary essence (I.56,130-131).

3. In his book Maimonides & Spinoza, Joshua Parens refers to this position as "fideism" and points to Plato's *Euthyphro* as a very important classical precursor to this point of view (23n12). He discusses fideism again at the end of his chapter "Teleology vs Imagined Ideal." There, he claims that fideism can be seen in the "Biblical argument that the rest of creatures are created for man's sake and man is created for the sake of worshipping God, though such worship is simply required by divine will" (161). He notes that Maimonides creates a dilemma—either the heavens are ruled by necessity, in which case they are "rehabilitated" for philosophy, or they are ruled by the divine will, in which case philosophy cannot make any progress in an account of the heavens, no matter how many smaller pieces of the puzzle astronomy seems to discover. See *Maimonides and Spinoza: Their Conflicting Views of Human Nature* (Chicago: University of Chicago Press, 2012.)

4. Maimonides uses Hebrew terms for the statutes (חוקים) and the commandments (משפטים).

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5. In the chapters discussing providence and free will, Maimonides describes two groups of Islamic theologians known as the Mu̓tazilites and the Ashʿarites. The Mu̓tazilites are so concerned with preserving god's justice that they believe he has a place in the afterlife for an unjustly squashed bug. The Ashʿarites preserve God's justice by arguing that God is as utterly indifferent to human beings as he is to gnats—it is his will to destroy or save whom he wishes. It is exactly the same reasoning there as here—affirming god's total freedom is necessary in order to prevent the paradoxes that come from limiting God's power. In an excellent footnote to his own discussion of the Ashʿarites and Mu̓tazilites, Parens calls attention to a discrepancy in how Maimonides refers to these two groups: "It is worth noting that although Maimonides ascribes both 'incongruities and contradictions' to the Mu̓tazilites, he ascribes only 'incongruities'—even if great ones—to the Ashʿarites. Even though the views of the Ashʿarites are more abhorrent, they appear also to be more consistent..." See *Maimonides and Spinoza*, 121n19. I believe that in the passages I have discussed in this essay, Maimonides takes a similar view of the "sick theologians" as he did og the Ashʿarites—he admits that they are consistent, although there may still be something objectionable to their procedure.

CHAPTER 4: PROPHET AS LEGISLATOR

1. Strauss explains that the superiority of the prophet to the philosopher is due to the prophet's ability to arrive at conclusions without reasoning about the intermediate steps: "Consequently, he can have at his disposal insights that could not be attained by the man whose knowledge is merely philosophic. So it understandable that, with regard to the central question that man is incapable of answering scientifically, (the question whether the world is eternal or created), Maimonides can instruct the philosopher to follow the prophet." See *Philosophy and Law* (Albany, NY: SUNY Press, 1995) 106.

2. All of my Judaeo-Arabic definitions come from Israel Efros's amazingly helpful dictionary, *Philosophical Terms in the Moreh Nebukim* (New York: AMS Press, 1966).

3. "our law" שריעתנא. This word is used for divine law, in opposition to human law, for which the term nomos is often used. In my writing, following Pines and Strauss' translation of the *Guide*, I use Law with a capital L to translate it.

4. "The philosophers" אלפלאספה. In Maimonides' writings, the "falasifa" can refer to either Plato and Aristotle or the Aristotelian philosophical tradition. In this context, the term probably refers to philosophers such as Farabi, since the Greek philosophers generally discuss prophecy in the Biblical sense of a pious man on a mission from God.

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5. "Goodness" כּיריּה. In Guide I.2, Maimonides uses this term for "good" as opposed to "noble," similar to the Greek distinction between αγαθον and καλον.

6. "Man of knowledge" עאלמא. The term for knowledge (ʿilm) can be used for secular as well as religious learning. In Maimonides' term for metaphysics, "divine science," it is the word for science.

7. "Perfection" כמאל. This term is used throughout the Guide for the Aristotelian τελειον, as in "complete virtue."

8. In his very through discussion of this point, Lawrence Kaplan describes in depth how this passage perplexed medieval commentators on the Guide. They saw clearly that the difference between the position of "our laws" and the position of the philosophers was drastic, despite the fact that according to Maimonides agreed on almost all points. Kaplan concludes his article with the wise suggestion in the voice of Maimonides that "If you wish, therefore, to determine whether my qualification of the philosophical position on prophecy is to be taken seriously or not, you cannot determine that on the basis of my discussion here; but must carefully examine my entire discussion of the question of creation or eternity and determine whether my affirmation of the position of creation in time reflects my true esoteric position or whether I really agree with Aristotle that the world exists eternally through necessity." See "Maimonides on the Miraculous Element in Prophecy" (Harvard Theological Review, Vol 70, No. ¾ (Jul-Oct 1977)) 256

9. "Human speculation" באלנטר אלאנסאני.

10. "Generally accepted opinions" אלמשהורות

11. "Traditions" אלמקבולות

12. It is not obvious how chapter II.34 fits into the argument that seems to be woven through II.32 through II.40. but it is still a very intriguing chapter. It concerns a verse that enjoins the multitude to obey an angel once they have reached Canaan. Maimonides explains that this verse actually means that an angel will give orders to a prophet who will convey the angel's message. This explanation is necessary because on Maimonides' premises, the multitude could never have direct contact with an angel. Thus, another discrepancy between the true account of prophecy and a biblical statement about public revelation can be reconciled.

13. The idea in this verse from *Numbers* that Moses knew God "face to face" is at variance with an incident recorded in *Exodus*, in which God shows Moses his back, refusing to show him his face.

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14. "Directive" תדביר. This word means governance in a sense that can range from the governance of an individual over himself to the rule over a political community to God's providence for the whole world.

15. A strange feature of the prophecy discussion as a whole is Maimonides' claim that he will not discuss Moses at all in these chapters, though he mentions him frequently; indeed, the account seems to revolve around Moses as paradigmatic prophet.

16. "nomos", נמס. This word is an Arabic transliteration of the Greek term "nomos".

CHAPTER 5: THE TWOFOLD PURPOSE OF DIVINE LAW

1. "statutes" חוקים.

2. "judgments" משפתים

3. "multitude" גמהור

4. Soncino translation accessed from http://halakhah.com/sanhedrin/sanhedrin_21.html 7/7/2015.

5. *Genesis Rabbah*, Soncino Edition, accessed from https://archive.org/details/RabbaGenesis 7/7/2015

6. *Laws* I, 631b4-632c3.

7. "ultimate perfection" אלכמאל אלאכיר

8. The Rabbis admitted this in a way in the proverbial expression "'Great matters' mean the Ma'aseh merkabah (Account of the Chariot); 'small matters' mean the discussions of [Rabbi] Abaye and Raba" (Sukkah 28a). The meaning of this expression is that the truth about the divine, expressed in the mystical phrase "account of the chariot," a reference to the chariot of God from Ezekiel, is of far more importance than the jurisprudential debates of two scholars, named Raba and Abaye. In his Introduction, Maimonides states that part of his purpose is to esoterically discuss the divine science found in "Account of the Chariot," a discussion found in the *Guide* III.1-7. Towards the end of the *Guide*, Maimonides shows how he ranks legal scholarship against knowledge of divine science in a parable (III.51): the whole of humanity are represented as petitioners at a royal palace. He places outside the wall of the castle all those who pursue rabbinic legal studies without attending to natural science or metaphysics. At the center of the king's court, living as his companions, are those who are thoroughly versed in the highest sciences.

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9. Such an impression is confirmed by the argument of III.29, in which the original religious community of the Sabians possessed the whole world. At that time, there was a divine law of a sort, and in our time this religious community has been replaced by other divine laws, those of the three monotheistic religions. In III.51 we find out that only the nations of the farthest north and south lack a religious tradition of any kind, and Maimonides barely considers those nations to be human.

10. Most of the first book of the Guide is a series of lexicographical chapters that are designed to show how passages of the Bible that attribute bodily existence to God may be re-interpreted. The corporealization that Maimonides rejects includes such Biblical commonplaces as God's anger, his pity, etc. Maimonides explains these passages by using a Talmudic dictum that the Torah speaks in the "language of man." Later on in the Guide, this dictum is expanded to explain why the Torah requires animal sacrifices and the like—the Torah makes many concessions to the pagan customs of the early Hebrews, for the purpose of gradually weaning them off of idolatry and the belief in a corporeal God.

EPILOGUE: STATESMAN AND LAW IN BOOK 1

1. "Laws in general "דתות בכלל. This word for law, dat, shades from law into the divine law of a religious community.

2. "Divine law" דת אלוהית. See the discrepancy between this term and the term in the following note.

3. "Divine law" תורת אלוהית . Why does Albo use two different terms for divine law here, within the same sentence?

4. Most of the commentary on Albo's political theory is about his definition of natural law, for example, Ralph Lerner in his careful and illuminating essay "Natural Law in Albo's *Book of Roots*." Lerner's basic argument, following Strauss in his essay "Law of Reason in the Kuzari," is that Albo reduces natural law to social utility in order to distinguish merely human governance from divine law, which alone perfects the human intellect. Lerner's essay may be found in the festschrift for Leo Strauss: *Ancients and Moderns* (New York: Basic Books. 1964) 132-147.

5. "Human reason" שכל אנושי. The term *sekhel* has a meaning that is in between *sophia* and *nous* in Greek.

6. For a more full account of Halevy's view of the issue of nomos, see Strauss, "Law of Reason in the Kuzari" in *Persecution and the Art of Writing* (Chicago, University of Chicago Press, 1952) 137n133.

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Biography

After attending St John's College, Annapolis (BA 2009) I spent the following six years as a graduate student at Tulane University in the Department of Philosophy (MA 2013). Most of my course-work was done with either Prof. Ronna Burger or Prof. Richard Velkley. I have also audited numerous courses in Hebrew with Prof. Yehuda Halper. In 2014 I was a fellow at the NEH institute on Medieval Political Philosophy.