

Understanding the Role of the Laws in Plato's *Statesman*

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ABSTRACT: In the *Statesman*, Plato seems to be advocating that in the absence of a true king who will rule independently of laws, the next best thing as far as just rule is concerned is to adhere rigidly to existing laws, whatever they are. The rule of the true king is given as an example of virtuous rule in the sense that virtue politics or jurisprudence holds that laws cannot always deal justly with particular cases. But Plato's view of what we must do when there are no true kings forthcoming seems to preclude a virtue theoretical understanding of politics and laws. In this paper I will investigate the view that the image of the true king, who relies on written laws for convenience only, provides a model for a more realistic appeal to virtue in jurisprudence, that is, a respect of laws that is compatible with equity, in the sense understood by Aristotle.

KEY WORDS: Aristotle, equity, jurisprudence, Plato's *Statesman*, virtue ethics.

1. Two Attitudes to the Laws

In the last few decades, moral philosophy has seen a renewed interest in the ancients' concept of virtue, to the extent that some writers now posit Virtue Ethics as an alternative to consequentialism and Kantian ethics.¹ There have been debates as to whether the many views centered on virtues that are being put forward deserve to be put together under the category of 'virtue ethics'² and there are big differences in the way moral philosophers use the virtues. In particular, Michael Slote has brought to our attention the difference between agent-focused and agent-based virtue ethics.³ An agent-focused virtue ethics, such as Aristotle's, puts

¹ See Baron, Slote and Pettit (1997).

² Nussbaum (1999)

³ Slote (1997).

more emphasis on agents and their character traits than on actions. We do not say that an action is right regardless of why it is done, and who it is done by. In order to work out whether a particular act was right or wrong, we need to look to the character of the agent who performed it. Telling a hurtful truth, for example is admirable only when the person who tells it has no vested interest in harming the person it is hurtful for. If a neighbour who enjoys malicious gossip informs you that she has seen your husband with another woman, there is nothing admirable about her doing so. But if your best friend passes that information on to you, when she knows that she risks angering you and losing your friendship, then it is an act of courage. To some extent, all virtue ethicists believe this to be the case. But, some like Aristotle, will go on to say that whereas the best friend perceives that telling the truth in this case is the right thing to do, the malicious neighbour does not. She is blind to the intrinsic value of this particular truth telling, and she only sees the pleasure of hurting you. So agent-focused virtue ethics does not claim that moral values are derived from virtue, but that a virtuous agent is better at perceiving what is valuable.

Agent-based virtue ethics, on the other hand, claims that what makes an act valuable is simply the fact that it was performed by a virtuous agent. Acts only have value that is derived from the character of the agent. This is the type of virtue ethics that Slote is defending.

The distinction between agent focused and agent based virtue ethics comes into play if we try to apply virtue theory to jurisprudence. In general terms, virtue jurisprudence appeals to the virtues with respect to the law, that is, with respect to legislation or judging. For example, an advocate of virtue jurisprudence could claim that a good legal system is one which promotes virtue and eliminates vice, which is more or less what both Plato and Aristotle seem to think.⁴

A proponent of virtue jurisprudence, Lawrence Solum proposes something less threatening, that virtue should play a role, if not in legislating, at least in judging.⁵ He claims that what makes a judgment good, is that

⁴ As far as Plato is concerned, I have in mind the analogy between the laws and parents given in both the *Crito* and the *Menexenus*, where Plato argues that the purpose of the law is to provide an environment in which citizens may flourish, i.e. live virtuous lives. I have argued elsewhere that we should take the parent analogy in both dialogues seriously as a proposal for a virtue ethical conception of the role of laws. Berges (2009). For Aristotle, see *Nicomachean Ethics* X.8 1179b20ff, where he argues that laws are needed to encourage the habituation process in children, parental authority being insufficient for that purpose, and *Politics* VIII, where he gives a detailed description of the legislator's role in education.

⁵ Solum (2003).

it should be brought by a virtuous judge. In that sense, his claim is agent based. The judgment derives its value from the character of the judge, it is not simply the case that the virtuous judge perceives that this particular judgment is the right one to make. Duff, replying to an article in which Solum propounds this view objects that a judgment may be good even though it was given by a corrupt judge. For example if I was a millionaire who cared to see that justice was done, I may bribe a judge to look into a case fairly and not to accept other bribes. If the judge accepts my bribe and honours its terms, we may be able to say that the judgment he or she arrives at is just, while remaining in no doubt that the judge himself or herself is not. One may not be entirely persuaded by this objection, maybe because the example Duff uses to illustrate it is somewhat implausible – would one rely on such a corruptible judge to come up with the right judgment in a difficult case? In any case, it may still cast reasonable doubt on the possibility of coming up with an agent based account of judging, and on the whole idea of virtue jurisprudence. It seems that a small window of opportunity for applying virtue ethical thinking to the law is being shut by Duff's doubts. In this paper, I want to argue that there is in fact scope for making interesting and plausible claims about virtue and the laws, both in terms of legislation and jurisprudence. But in order to make this possible, we need to go back to Plato, and in particular, a dialogue in which he discusses the dilemmas facing those who would try to understand legislating and judging in terms of virtue.

In the *Statesman*, Plato puts forward two views of law that raise serious questions as to what kind of account of laws a virtue ethicist should or can aim for. Laws are meant to be universal and stable. We rely on laws to deal with different individuals in the same way, and to remain the same for substantial periods of time. From the point of view of virtue ethics, however, laws are too rigid to be able to deal satisfactorily with particular cases. One important premise of virtue ethics is that human goodness is first of all personal growth, and character change. This means that human life is never at rest, but always changing – from person to person, and from time to time. So in order to find the virtuous solution to a problem, one must exercise *phronesis*, or practical reason, i.e. judge the problem on its own merits, without referring it to general laws. As the Stranger from Elea puts it in the *Statesman*:

That the law could never accurately embrace what is best and most just for all at the same time, and so prescribe what is best. For the dissimilarities between human beings and their actions, and the fact that practically nothing in human affairs ever remains stable, prevent any sort of expertise whatsoever

from making any simple decision in any sphere that covers all cases and will last for all time. I suppose this is something we agree about?⁶

The *Statesman* is generally understood to have three main parts – the division, the myth, the paradigm – in which the Stranger from Elea and Socrates the Young attempt to define the role of the Statesman or more generally of political science.⁷ The emphasis in each part seems to be at least on the demonstration of the method used as it is on the conclusions it reaches. In this sense the dialogue is as much (or more) a debate on philosophical methodology as it is on political philosophy.⁸ That said, the part I propose to concentrate on has clearly philosophical content and seems to be intended as a contribution to political philosophy, i.e. a contribution to the debate on the art of political science.

The first part of the dialogue (258b–268d) attempts to define the role of the statesman as shepherding. A statesman is a king who has pastoral duties and responsibilities towards herds of ‘free bipeds’, that is, human beings. However, this king has to fight for his title against several competitors who also pretend to the function of ‘caring’ for human beings, that is, feeding, doctoring, teaching, etc. The Stranger from Elea and his interlocutor, Young Socrates, therefore decide that, as it cannot distinguish the statesman from these other professionals, there is something amiss with the definition.

They hope that what is amiss will become apparent and be resolved with their second attempt at definition, the Myth of the second part (268d–277c). The Eleatic Stranger tells a creation myth according to which the cosmos was first ruled by Kronos and his demiurges in a very pastoral manner. Everything, even reproduction, is organised for the free bipeds so that they have nothing to worry or think about. By contrast, when Zeus takes over the ruling of the cosmos, he learns to delegate. First, human beings are put in charge of their own reproduction; second, they are given the *technai*, or the arts, so that they may care for themselves in everyway. The second part of the myth, the rule of Zeus, is then shown to be a better

⁶ 294b. See Lane’s (1995: 284) comment on this. This passage is offered as a reply to Young Socrates’ objection at 293e that true statesmanship must be guided by laws. One of the points of the Stranger’s reply is to exclude the possibility that any existing constitution could count as a ‘true statesmanship’.

⁷ Although towards the end of the dialogue it is not clear whether it is the role of the *Statesman* in particular, or political science in general that is being discussed – see Luc Brisson and Jean Francois Pradeau’s (2003) introduction to their translation *Le Politique*, p.18, and also Dratwa (2003: 31). It seems that the dialogue is about both: the *Statesman* representing political rule at its best, and political science being a necessary pursuit in the absence of a statesman, like laws.

⁸ Rosen (1995: vii) and Brisson and Pradeau (2003: 20).

model for political rule, as unlike shepherding, it depends on there being a more active involvement on the part of those who are being ruled.⁹

The weaving paradigm of the third and last definition (277d–311c) completes this thought by arguing that ruling is nothing but the harmonising of the strengths and weaknesses of citizens, binding them together so they can rule themselves. Several writers have commented that this conclusion was somehow at odds with most interpretations of the *Statesman* as offering a paternalistic view of the rule of law.¹⁰ I agree with them that the *Statesman's* picture of ruling and laws is neither absolutist nor totalitarian. However, in order to defend this interpretation, one first has to make sense of the several apparently contradictory claims that Plato makes about the role of laws in the dialogue. I shall argue that when these contradictions are resolved what we get is a plausible and attractive account of the role of laws from a virtue ethical perspective.

The two controversial and apparently contradictory claims about laws are made in the third part of the dialogue. The Stranger from Elea argues the following:

- 1) That a true king will not rely on laws except as convenient shorthand to avoid having to review each individual case, and as a reminder on occasions when he has to go away.¹¹
- 2) That in the absence of a true king, states must do their best to imitate the rule of the true king and that to do so, they must stick to their written laws, whatever they are, and not attempt to change them or write new ones.¹²

These two claims are each problematic in themselves – neither is *prima facie* wholly acceptable for reasons I will discuss below and in the following section. But also, there appears to be a stark contradiction between these two views, the first promoting a virtue political understanding of laws as rigid and unlikely to lead to just rule, the second claiming that only

⁹ A similar myth is told in the *Laws* (713b–714a) but with a different conclusion, that we should imitate the rule of Kronos and organise our lives according to immortal and godlike reason, and its social expression, law. This is in keeping with the different conception of the role of law put forward in the *Laws* more generally, and the belief that it is always better to be ruled by laws than by men (751b, and *Epis.* 7 334c). On this see also Kahn (1995: 52).

¹⁰ 311a. See also Dratwa (2003: 31) and Lane (1995: 281–284) for comments on the role of autonomy in this passage.

¹¹ 294a–297b.

¹² 297b–300c. At 296a it is suggested that when someone knows better laws, then he should persuade the city to change their laws. But this statement seems to be rejected at 299c–d when the stranger says “If he is found guilty of influencing young or old against the laws and written enactments, he shall suffer the utmost penalty, for there can be no claim to possess wisdom greater than the wisdom of the laws.”

rigid obedience to laws *qua* laws (i.e. regardless of whether they are good laws) is likely to yield justice. This leads to a paradox. Plato presents us with a set of propositions: 1) that just rule is virtuous rule, i.e. it depends on the correct appraisal of and appropriate response to each situation; 2) that only a perfectly just ruler is capable of ruling in this way; 3) that it is unlikely that a perfectly virtuous ruler should ever come forward; 4) that the exercise of the virtues, and in particular *phronesis*, the ability to judge what the right thing to do for each situation is, should be kept entirely separate from just rule. In other words, the paradox states first the desirability and then the impossibility of a virtue led understanding of the role of laws.

The first claim, although apparently outrageous, is a natural implication of a certain kind of virtue ethical thinking. A virtue ethicist believes that to be a good person is to have certain character traits which enable us to perceive for each situation what the proper thing to do is, without having to rely on moral rules, because reliance on moral rules prevents us from perceiving special, morally relevant features of a situation. It seems a natural progression to believe that reliance on written laws cannot yield justice in all cases as ‘justice is blind’ and laws fail to take into consideration aspects of situation which may be relevant to its justice or injustice. As Aristotle famously put it:

And this is the nature of the equitable, a correction of law where it is defective owing to its universality. In fact this is the reason why all things are not determined by law, *viz.* that about some things it is impossible to lay down a law, so that a decree is needed. For when the thing is indefinite, the rule also is indefinite, like the leaden rule used in making the Lesbian moulding; the rule adapts itself to the shape of the stone and is not rigid, and so too the decree is adapted to the facts.¹³

So Aristotle describes the perspective that virtue ethics will almost inevitably take on laws, and at the same time outlines a possible solution to the problem which faces the virtue ethical account. Laws, because they are universal and do not pay heed to the particular, cannot ensure that justice will be done. Therefore they must be supplemented with decrees or judgments that will adapt themselves to the particulars of a situation just as the Lesbian rule adapts itself to the shape of the stone.

I will return to Aristotle’s short account of equity (in Book V of the *Nicomachean Ethics* and Book I of the *Rhetoric*) in Section 3 of this paper, as it casts some light on my interpretation of the *Statesman*. First, I shall look at some responses to the Stranger’s two claims that, I shall argue, are unsatisfactory, because they fail to make sense of the apparent paradox.

¹³ *Nicomachean Ethics* V.10 1137b26–32. See also *Politics* III.15 1286a9–10.

Plato, like Aristotle, fully acknowledges that laws, written or unwritten, are fundamentally incapable of dealing with each and every individual case in a just way. Yet, again like Aristotle, he does not want to conclude that justice can or should go beyond respect of the law. He simply believes that respect of the law must include the ability to exercise equity in cases where the universality of the law fails to deal fairly with a particular situation. By setting up the paradox in the *Statesman*, Plato shows that it is in fact possible and desirable at the same time to respect the laws, and not set oneself as a legislator unless one is actually qualified to be one, and ensure that justice is done by exercising one's judgment as to what the spirit of the law would entail in a particular case where the letter of the law fails to do justice.

It has not been my aim in this paper to show *how* the *Statesman* can contribute usefully to virtue jurisprudence. Rather, it seemed to me that as a dialogue that discusses the law from a virtue ethical perspective, it would be useful to determine what the conclusion it reached were, so that it may, in a subsequent paper, be used to discuss the philosophical issues involved in virtue jurisprudence. Briefly, here is how I think my analysis of the *Statesman* might turn out to be useful. It is not clear whether virtue jurisprudence as a whole is desirable,¹⁴ i.e. whether one should want to 'moralize' the law by taking its aim to make citizens virtuous, as opposed to a simple peace keeping institution enabling citizens to pursue their own conception of the good.¹⁵ What is clearer, is that some aspects of virtue ethics may be applied to jurisprudence without forcing the adoption of a complete virtue jurisprudence. One of these aspects may well be the concept of equity which arose from my discussion of Plato's *Statesman*. In particular, in the *Statesman*, more clearly than in any of Aristotle's writings on equity, it is made apparent that equitable judgment and legislation must be separate, and why this must be so. The conclusion of the *Statesman* is that while we must never be legislators if we are not 'true kings', we can exercise equity. Equity is dependant on full respect of the law, not a way of changing or overriding the law. Thus an account of equity drawn from the *Statesman* would be very different from a legal positivist account according to which the exercise of equity amounts to legislation.¹⁶

¹⁴ See Duff (2003) for a discussion of the limitations of virtue jurisprudence.

¹⁵ I have in fact argued in another paper (2007) that a conception of the law that can be extracted from Plato manages to 'make citizens virtuous' without the paternalistic implications one might expect from such a view.

¹⁶ See Shiner (1994: 1245).

2. The Anti-Democratic Justification for the Second Attitude

When the Stranger brings up the question of whether the true king should govern without laws, Young Socrates is quick to reply “All the rest, sir, I believe to have been spoken in due measure – but the saying about ruling without laws is a hard saying for us to hear.”¹⁷ But if the suggestion that the true king should rule without laws is hard to stomach – because we would have to take a serious gamble with the character of the king and assume that he was both capable and willing to rule us fairly –¹⁸ the second one, that we should never attempt to change existing laws in any way, seems absurd and insulting. It is absurd because it means that we will be bound by laws that clearly no longer apply, because the kind of situations they were designed to deal with no longer occur, and, if we are not allowed to create additional laws (which is not clear), we will have no way of dealing with new types of situations. It is insulting because it claims that we are in no way capable of organising our own lives. It puts us in the position of children who are not allowed to touch anything while their parents are absent – in this case the true king. And it is absurd again, because in this case, the Stranger makes it clear that the parents will not return, and that we will have to learn to fend for ourselves.

Various commentators have attempted to make sense of the Stranger’s proposition so that it seems less absurd and insulting. Christopher Gill sees the Stranger’s second claim as a ‘theoretical reconstitution’ of the constitutionalist position apparently held by the Young Socrates and refuted by the Stranger at 291–299.¹⁹ Laws should be respected, but not for the reasons that apparently led the Young Socrates to express reservations about lawless rule.²⁰

There are two reasons why Gill’s response to the Stranger’s second claim is unsatisfactory. First, there is little evidence in the text that the Young Socrates holds any particular view about why we should respect the laws. All he does is to express reservations about lawless rule, in one

¹⁷ 293e.

¹⁸ Incidentally, Rosen’s suggestion that the Young Socrates finds this claim difficult to accept is because of his mathematical training is a bit far fetched – who would not be uncomfortable at the thought of being at the mercy of a lawless king? See Rosen (1995: 156).

¹⁹ There is little evidence, because little said, that the young Socrates is in fact defending a constitutionalist position. But Lane (1995: 151) notes that this is not an accurate representation of how the Athenians understood the role of law, i.e. as a restraining framework for politics.

²⁰ Gill (1995: 293).

short sentence at 293e!²¹ Secondly it is not clear how Gill's view accounts for the more extreme claims that the Stranger makes – he does not after all simply say that we should respect the law. Gill's explanation of the Stranger's claim that it is better that we should not be allowed to change our laws is simply a reiteration of what the stranger himself argues: we do not have 'true' knowledge, therefore our understanding of what would constitute a 'better' law is necessarily flawed and unreliable. This, however, in no way mitigates what the Stranger says, nor does it render it more acceptable.

Melissa Lane offers an explanation of the Stranger's totalitarian claim that is *prima facie* more satisfactory than Gill's, but still leaves some questions unanswered. She argues that the state in which laws remain unchanged imitates the rule of the true king in that laws are not to be changed when the true king is absent, with the proviso that members of imperfect states should be prepared to welcome the true king, were he to appear, and accept that any changes he would make as being for the better.²² This has at least the advantage that we are not relinquishing the very possibility of virtuous rule, and that we are keeping in mind the fact that such rule would be better than what we are presently forced to accept.

But Lane also emphasises that human government imitates the rule of Zeus, rather than the rule of Kronos, as they are presented in the Myth.²³ Kronos ruled the universe as a shepherd, providing everything for its herds, so that they did not have to be autonomous in any way. The rule of Zeus introduced autonomy, first in self-generation, human beings were no longer born from the earth and were responsible for finding a mate and producing children, and self-rule – Zeus gave human beings the arts and left them to organise their own lives. The art of Statesmanship imitates the rule of Zeus, rather than the rule of Kronos, in that its ultimate aim is to hand over the administration of the city to the people (311a). Because of this, we should expect that if the actual states imitate the rule of the true king, they also imitate the rule of Zeus, and there must be a certain amount of autonomy in the way they are ruled. This autonomy is absent from the scenario proposed as 'second best' by the stranger, and also from the interpretation Lane gives of it. Unless, that is, the autonomy is limited to the willingness to welcome the true king if he were to arrive. But this is not enough, I think.

²¹ See Pradeau and Brisson (2003: 255 n. 291) on the relative importance of Young Socrates' comment.

²² Lane (1998: 163).

²³ 268d–277e.

At least one recent commentator, Rosen, has argued that the Stranger's proposition is in fact absurd and insulting – that it is not a logical consequence of the Stranger's discussion of the true king and the role of law, but of Plato's anti-democratic tendencies that are reflected in the Stranger's views on what we should do in the absence of the true king.

According to Rosen, a significant aspect of the Stranger's second claim is that he emphasises that existing laws are the result of long experience and that this is one good reason for not changing them. The Stranger gives no reason why we should believe this to be the case, and, moreover, he had earlier attributed the laws to the many and ignorance.²⁴ The Stranger is therefore playing fast and loose with his argument, modifying premises without giving reasons so as to get to the conclusion that we should respect laws. However, Rosen points out, the conclusion itself is strongly linked with the Stranger's criticism of democracy and self-rule by the many, thereby helping to fulfil an anti-democratic agenda not unlike that of the *Republic*.²⁵ The many are not capable of ruling themselves, therefore, we should limit the extent to which they are autonomous in states such as Athens by forcing them to respect tradition.

Rosen's interpretation makes sense of the apparent contradiction between the Stranger's two claims by retaining it. The second claim is not a logical implication of the first, it contradicts it in order to fulfil a political agenda. Rosen's position is attractive for its honesty, and for its refusal to try just anything in order to erase some apparent absurdity in Plato.

It seems that if we take Rosen's proposition seriously, it might lead us to the following implication. We need not take seriously what the Stranger says about laws when there is no true king and we can go ahead and apply the model he suggests earlier for virtue jurisprudence.²⁶ This would enable us to make sense of Plato's claims, as noted by Lane, that human rule must be autonomous. But before we jump to this solution, I want to express two strong reservations.

First, it is not clear that this model is in fact a good idea. We do not want anyone who is not perfect (or even someone perfect) to rule without laws – this is an even scarier prospect than the authoritarian view suggested by the Stranger. The possibility that this might lead to abuse, or the thought that we have to trust implicitly decisions concerning our lives without being able to predict what they will be, or even maybe without

²⁴ Rosen (1995: 175).

²⁵ 555b–558c. See also Vlastos (1993).

²⁶ This is not an implication that Rosen (1995: 149) considers as he believes that for Plato the true king, who can rule without laws, is *phronesis* itself, and therefore not something that a human being can imitate.

understanding them can only bring on terror on the part of citizens subject to this kind of rule.

Secondly, although the Stranger does put forward strongly anti-democratic views, it is also the case that there is a great emphasis on self-rule, and autonomy in both the myth and later, the weaving paradigm.²⁷ So it is not clear that we have enough evidence to read the conclusion of the dialogue as authoritarian and anti-democratic reliance on laws.

3. Virtue and Equity in the *Statesman*

In the Section Two I reached two conclusions: first that it would be no victory for virtue politics if the *Statesman* concluded that rule by law was harmful, and secondly that it is not the case that the *Statesman* draws a conclusion that is a priori incompatible with virtue political views (i.e. as an authoritarian anti-democratic claim that we should rely solely on laws and not change them would be). So is there a third way, something that avoids rejection of virtue political perspective but does not adopt a naive one either? The only conclusion that we can draw with confidence is that Plato thought there must be, as he rejected the other two answers. The 'true king' is declared inexistent and unlikely ever to come forth,²⁸ and the dialogue concludes with the necessity of giving over the running of the city to the citizens in common, thus supposing that the citizens have a strong degree of autonomy and self-rule, and not that they are slaves to sacred and unchanging laws.²⁹

It will be harder to show that Plato knew what this third way was, and even harder, that he defended it in the *Statesman*. Consequently, I will limit my conclusions in the following manner. I will suggest that there is a third way, and that this third way is compatible with what Plato says in the *Statesman*, that this third way is at least mentioned by Aristotle, and that it has become a feature of virtue jurisprudence. I realise that this falls short of saying what Plato actually concludes in the *Statesman*, but if the question is 'what can we learn from reading the *Statesman*?' rather than 'what does Plato say?' then this conclusion ought to be satisfactory.

It is not clear that the Stranger from Elea is claiming that the perfect king should govern without laws. Young Socrates worries that governing without laws is something that the Stranger is indeed considering, but his intervention at 293e makes it sound as though the Stranger is propos-

²⁷ See Dratwa (2003: 31), who comments that the myth and the weaving paradigm point to an argument for self-rule.

²⁸ 301e.

²⁹ 311a.

ing that the perfect king should systematically do without laws (except as reminder and shorthand). Not only does this not fit what the Stranger actually says before Young Socrates' intervention (he gives a list of ways in which a king might rule, without laws is simply one of these possible ways), but it is also contradicted by the final definition of the statesman as legislating king at 305b.³⁰

If the Stranger is not defending the view that the perfect king should govern without laws, then his view is better interpreted as claiming, less dramatically, that laws may be insufficient as far as justice is concerned, but they are not dispensable. The king must attempt, whenever possible, to judge individual cases on their own merits, but he cannot possibly sit by every citizen and teach them what life would be fitted to their character and situation³¹ – so he must use laws as 'shorthand', and 'reminder'.³² This is only possible because laws are general enough that they benefit a large majority of citizens. This being the case, it makes more sense to rule everyone by laws, and then deal with exceptions, or problem cases separately.³³ This resolves the practical impossibility to deal with each citizen on an *ad hoc* basis, without sacrificing the benefit they receive from the rule of the perfect king.

If the Stranger does indeed believe that the true king will rule partly through laws, then the role of laws in the perfect constitution and the role of law in actual constitutions need not be that different, i.e., the Stranger does not contradict himself when he says that in order to imitate the perfect king, actual rulers should respect existing laws. The true king also has to rule according to laws that he cannot, presumably, change at the drop of a hat – for if he did, they would not have the authority of laws.

Nonetheless, it remains true that in the absence of a true king, the Stranger recommends that we do not attempt to modify existing laws, whatever they are, and whoever made them even if we truly believe we can improve them. But how can we imitate the wise king if we cannot use our reason to improve the way we rule ourselves? Although the rule of

³⁰ Pradeau and Brisson discuss this in (2003: 255 n. 291). They suggest that Young Socrates misunderstands the Stranger and that it is wrong to place a great emphasis on his comment at 293e.

³¹ 295b.

³² 295c.

³³ The Stranger uses an analogy with a physical trainer who chooses to train everybody according to the same rules, starting and finishing at the same time under the assumption that this will benefit the largest number of people at once. Presumably, if one person were to respond badly to this group training, he or she would be easy to pick out among the people who trained successfully. Arrangements can then be made for that person to train differently. 294a–295a.

the true king now seems somewhat closer to the rule of actual constitution described at the end of the dialogue, this does not solve the problem which was that it is not possible for citizens to be at once autonomous and respectful of laws to the point where they never change them. If anything has changed with this *rapprochement* of the perfect and the imperfect rulers, it is that the former has lost a degree of autonomy, but not that the latter has gained any.³⁴

I suggest that there is nonetheless more to be learnt about what the Stranger has in mind for actual, imperfect constitutions by studying the rule of the wise king. The previous paragraphs have shown that these two kinds of rule are not, despite appearances, opposites, but that the first truly is an imitation of the second. In particular, a certain feature of what the wise king does strikes me as highly relevant to an understanding of what the Stranger has in mind for actual constitutions, namely that there is no evidence that the wise king sees that justice is done simply by changing laws. On the contrary, the Stranger emphasises that what is specific to the wise king is that he promotes justice sometimes by decrees that go against existing laws.³⁵ He is capable of dealing with particular cases without appealing to laws. In other words, he exercises equity.³⁶

In a recent piece on Virtue Jurisprudence, Lawrence Solum, notes the centrality of the concept of equity in a virtue centred theory of law, and claims that this concept is rooted in Aristotle's *Ethics*, quoting 1137b9–24.³⁷ According to Solum, the two significant characteristics of equity, or justice as fairness are first, a departure from the rules, with the intention of correcting the generality of the rule by allowing exception in cases where the rule leads to unjust results; secondly, particularism, i.e. tailoring of the law to the demands of particular cases.³⁸ But because the wise king does

³⁴ The belief that laws should never be changed is not typical of Plato. In the *Laws*, certainly, the Athenian claims that any law-maker is bound to make some mistakes, even if they are only minor, and that these mistakes will only become apparent to those who experience the laws in practice. Therefore, rulers should regularly amend the laws, even when they were not the original legislators (772a). One might think that this shows that, by the time he wrote the *Laws*, Plato had acquired a more relaxed view about the role of laws, and accepted that citizens could intervene and modify them. However, I will argue that the contrary is true. In the *Statesman*, Plato believes we should not change the laws because it is possible to rule partly outside the laws, whereas in the *Laws* he refuses the very thought of lawless government (cf. *Epis.* 7 334c).

³⁵ 295d.

³⁶ Equity in this sense, i.e. doing justice in the particular case, is to be distinguished from equity as a distinct body of legal rules (equity laws) or as a consideration of distributive justice. See Solum (1994).

³⁷ Solum (1994: 104–105). See also Shiner (1994), and Kraut (2002: 108–111).

³⁸ Solum (1994: 205–6).

not rule entirely without laws, and at the same time, what is specific about his ability to promote justice is to act according to the demands of the particular case, then it is fair to say that the wise king practices equity, and that the concept is rooted in Plato's *Statesman*, rather than in Aristotle's *Ethics*.

Arguably, the concept of equity is rooted in neither Plato nor Aristotle, but in the practice of Athenian democracy. The Athenians, it seems, tended to prefer judgment over laws, and regarded laws more as general guidelines than absolute dictators. This may certainly have influenced what Plato suggests in the *Statesman*, i.e. that the very best thing is to judge without laws. It may also have led him to believe that in the absence of a perfect government – and he certainly did not think of the Athenian government as perfect – the laws should be respected at all costs. As far as Aristotle is concerned, he too seems to be in two minds about the Athenian practice. On the one hand, it is highly likely that this practice suggested to him the concept of equity, but on the other, in *Rhetoric* I.1, 1354b he does criticise the tendency to use the laws as mere guides.³⁹

Although Aristotle does not offer a complete account of equity – he talks about it briefly in Book V of the *Nicomachean Ethics* and in Book I of the *Rhetoric* – as is often the case, what he has to say is useful in order to understand Plato's own views.⁴⁰ First, as we saw in the passage quoted in Section One from the *Ethics*, Aristotle regards the laws as necessarily failing to deal fairly with each and every particular case. The laws are by nature general, and generality by nature is blind to particularity. That the laws are general and not particular is a good thing, as it prevents judgment from being arbitrary and clouded by private likes or dislikes, and for this reason it is better to rule by law than by decree.⁴¹ Moreover, the law commands justice. By doing what the law bids us do, we act in a virtuous manner, i.e. temperately, courageously, justly.⁴² Aristotle is firm on this point: 'all lawful acts are in a sense just acts'.⁴³ Yet, because of the general char-

³⁹ On the Athenians' attitude to laws and reliance on equity see Allen (2003) and Bers and Lanni (2003).

⁴⁰ Shiner (1994) believes that a theory of equity can be extracted from the texts mentioned, and he has written on how the theory in question differs from most jurisprudential accounts of equity, in particular, that it does not fit in the natural law vs positive law divide. However, as he himself notes (1994: 1247), to extract a theory from those short texts amounts to analyzing a few very dense remarks. Because of this it is not clear that we are better off looking at Aristotle than Plato in order to get an idea of what a virtue theory of law would look like.

⁴¹ *Rhetoric* I.1 1354a–b.

⁴² *Nicomachean Ethics* V.1 1129b20–24.

⁴³ *Nicomachean Ethics* V.1 1129b13.

acter of the law, it can also be just to go beyond the law: “For the equitable is held to be right, and equity is right going beyond the written law.”⁴⁴

Given that the law is just and by nature incapable of dealing justly with all particular cases, it follows for Aristotle that equity is also just, not as a ‘moral supplement’ to a morally neutral law, but rather as a way of supporting the law in the spirit in which it was originally conceived. For Aristotle, the equitable judge seeks to act in the spirit in which the legislator created the law that is seen to fail in a particular case.⁴⁵ This may be for one of two reasons. First, the legislator may have overlooked some possible cases that the law would have to deal with. Secondly, he may have realised that the law would not be able to deal with all cases, even be aware of what some of the cases in which it would fail would be, but nonetheless wished to create a general law that would deal justly with most cases.⁴⁶ In the second case, the legislator is explicitly relying on the practice of equity, in the first, implicitly.

Short of a theory of equity, we can certainly attribute the following conclusions to Aristotle. First, laws are valuable because they are general, and consequently, the exercise of equity in no way presupposes that we are justified in violating laws on grounds that they fail to cover certain cases. Secondly, even though equity goes beyond the written law, it is not a way of compensating from an external moral point of view for the failings of a morally neutral law, but a way of supporting the legal system in the spirit in which it was created.⁴⁷ These conclusions, I believe, can equally be applied to the apparent paradox of the *Statesman*, and clarify Plato’s views.

The true king, if he relies both on a legal system (305b) and goes beyond it when he perceives that the law is unable to deal with the particular, exercises equity in the sense in which Aristotle understood it. That is, equitable judgments are judgments that depend on their being a system of just laws that are necessarily incapable of dealing fairly with each and every case. If actual rulers are to imitate the wise king, and they are to rule according to whatever laws they happen to have, then it is reasonable to suppose that they should also exercise equity in that sense. That this is what Plato thinks is strongly compatible with the claim, suggested in the myth and the weaving paradigm, that actual rulers should be autonomous. The practice of equity, as understood here, enables us to exercise a certain independence of judgment *vis à vis* the laws, while at the same time hav-

⁴⁴ *Rhetoric* I.13 1374a.

⁴⁵ *Nicomachean Ethics* V.10 1137b23 “what the legislator would have said himself, had he been present.”

⁴⁶ *Rhetoric* I.13 1374a.

⁴⁷ See Kraut (2002: 108–110) for a discussion of these points.

ing full respect for the authority of those laws. The practice is rooted in the belief that laws both ought to be general in order to be just and that because they are general, they will necessarily fall short in certain particular cases and will have to be supplemented by equity. If Plato in the *Statesman* is not as explicit as Aristotle in telling us why the law should be general, he does give something like an argument at 294e. The legislator's concern for generality is similar to that of the trainer. General instructions can reach and benefit a larger number of people and are therefore superior to decrees directed at a small group of individuals. Thus, the true king, even if he will rely on decrees to correct the shortcomings of general laws, will nonetheless start off with a system of general laws.

Thus, for an actual ruler to imitate the true king as far as possible, that is, short of legislation, he or she must rule both according to a legal system and allow for the practice of equity to take place.

There is an apparent contradiction between the claim that rulers should exercise autonomy and the claim that they should not attempt to modify laws even when those appear to be bad, and when they have a clear idea of what would constitute an improvement. But if they are expected to exercise equity, then the contradiction disappears, as equity requires a degree of autonomy at least equal to that required by legislation. Of course, it would not do to interpret Plato as saying that it is fine to disregard the laws, and that the only reason why we should not change them is that they are ineffective when it comes to practice anyway. If Plato thinks that legislation in the wrong hands is dangerous, then he must also think that lawless judgment in the wrong hands is a bad thing. So we must make sure that by equity, here, we do not understand licence to act in any way proscribed by our laws whenever we feel that the laws are inappropriate. In other words, the laws must remain binding, and there must be very strong limits to the exercise of equity.⁴⁸

To this we may add a point made by Solum that since equity requires fine judgment about what is required to bring about justice in a complicated particular situation, judging at the same time that the available laws are incapable of bringing it about in this case, equity should only be practiced by a *phronimos*.⁴⁹ But if this is right, then why expect that actual, imperfect rulers will be able to exercise equity any more than they would

⁴⁸ Of course these worries would not apply in the case of the true king, as he would simply not make mistakes. As Sharples (1994: 52) notes, Plato holds that good rulers are experts and their judgements are always right and well grounded. But this is clearly not the case where the true king is absent. Even if they are well educated about the laws and justice real rulers are vulnerable to errors in a way that the true king isn't.

⁴⁹ Solum (1994: 206).

be competent law makers and reformers? In a situation in which they had to do both, i.e. legislate and practice equity, there would indeed be no reason to expect them to perform well in either. Equity requires skills that are as uncommon as legislation, and that arguably only a *phronimos* would master perfectly. But this is not the situation under scrutiny here. Plato's actual rulers are not required to practice equity *and* legislate. Indeed, they are required not to legislate and to stick closely to the laws that have been transmitted to them. In other words, they are not practicing equity from scratch, having to work out what justice is, and how to recognise it in each particular situation. They can assume that their laws are for the most part just, and that in most cases they bring about justice. Here it is helpful to refer back to what we identified as Aristotle's view of equity. The very possibility of equitable judgment as Aristotle understands it relies on the assumption that the laws are just, and that when they fall short in a particular case, to exercise equity is to recommend an action that the original legislator would have understood as just. So, to come back to the *Statesman*, it is not the case that an actual ruler who is an equitable judge ought to be such a rare animal as a true king, or a good legislator. What the equitable judge needs to do is to observe what it is that the existing laws generally bring about, identify it as justice, and to learn to recognize cases in which the laws fail to bring about justice. It is only in these cases only that they should practice equity. This also enables us to confirm the last thought of the previous paragraph. Yes, there must be strong limits to the practice of equity, and these limits must be set by a general respect of the laws, and the belief that in many cases, there is no need to practice equity as the laws bring about justice. Under these circumstances, it is possible and desirable for an actual ruler who is not a *phronimos* to practice equity.

4. Conclusion: The *Statesman* and Virtue Jurisprudence

In conclusion, it is not the case that the particularity of the wise king is that he rules without laws, but that his laws are supplemented by equity, judgments tailored to the needs of particular situations. It follows that the ban on legislation imposed by the Stranger on actual rulers does not preclude their imitating the wise king. Like him, they can supplement the existing laws with the exercise of equity, within certain, very strict, limits. This seems, on the whole, a reasonably satisfactory resolution of the paradox outlined at the beginning of this paper, and at the same time a plausible proposal for a virtue ethical account of the role of laws in government.

Solum has argued that virtue based jurisprudence could give a better account of the practice and theory of equity than existing jurisprudences that see equity as the filling of gaps in the law, eventually to be remedied

by more laws, whereas in fact it seems that no amount of amendments could eliminate the need for equitable judgment.⁵⁰

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⁵⁰ See Shiner (1994) for a discussion of the current state of the debate on equity in legal positivism.

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