

Notes

Between Natural Law and Legal Positivism:

Plato's *Minos* and the Nature of Law

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Plato's Minos is the only Platonic dialogue in which a character asks the question "What is law?" Yet the Minos has been largely neglected by modern philosophers of law; indeed, it has been all but expunged from the Platonic corpus due to concerns about its lack of sophistication and coherence. This Note offers a novel interpretation of the dialogue, demonstrating its coherence and bringing the Minos back into the clarifying light of scholarship. Moreover, the Note argues that Plato has, through the person of Socrates in the Minos, suggested a novel account of the nature of law that has the potential to advance a natural law-legal positivism debate that many have viewed as stalled on semantics. That is, Plato argues through the Minos for a view of law wherein law aspires to conformity with the true, but is not always able to achieve that conformity. In arguing for this quasi-natural law view, Plato develops trenchant critiques of positivism not yet answered by modern positivistic philosophers of law.

INTRODUCTION

A. The Authorship Question

Of the thirty-six works that come down to us in the Thrasyllan canon, modern scholarly opinion casts doubt on the Platonic authorship of at least ten. Among these is the *Minos*, the only dialogue in the Platonic (or pseudo-Platonic) corpus directly to pose the question "What is law [νόμος]?"¹ Unlike the many dialogues that scholars have rejected as spurious for linguistic reasons, the main charge against the *Minos* seems to be that it is simply not a good enough dialogue – lacking profundity and grace, and containing some embarrassingly bad arguments – to be truly Platonic.

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1. PLATO, *Minos*, in 5 PLATONIS OPERA 313a (1907) (unless otherwise specified, all translations to the English are my own).

Loeb translator W.R.M. Lamb mocks its “laboured solemnity,” proclaims that its “sequence of thought is awkward and none too clear,” and claims the dialogue as a whole is “destitute of those graceful or lively touches of characterization which distinguish [Plato’s] first memorials of Socrates.”² D.S. Hutchinson, in his introduction to a recent translation, observes that the work, although presumed to be written after the *Laws*, “adopts an earlier conception of politics.”³ William Arthur Heidel, in his *Pseudo-Platonica*, explains his decision to cut the *Minos* from the Platonic corpus with reference to the “spirit of the Alexandrian age which pervades it,” its “pedantry,” and its posing of questions that are “wholly unplatonic.”⁴ And yet, both Lamb and Hutchinson have praise for the efforts of the “Pseudo-Platonist,” with Lamb calling the dialogue “a fairly able and plausible imitation of Plato’s early work”⁵ and Hutchinson admitting that “the assumptions and techniques of argument in *Minos* are thoroughly Platonic.”⁶

Nonetheless, the total effect of these allegations of inauthenticity has been to remove the *Minos* from the clarifying light of scholarship. Although all anthologies of Platonic dialogues that include it take pains to inform us that the (pseudo-Platonic) *Minos* is valuable for the study of Platonism, a cursory search reveals that while over a hundred scholarly articles have been published on the *Crito* in the past thirty years, only a handful have been published on the *Minos*.⁷ This deficit should serve as a catalyst to scholarship, rather than chilling it. So, too, should the fact that a great many anthologists and scholars dealing with pseudo-Platonica as a whole have found parts of the *Minos* “none too clear.” The genius of even indisputably Platonic dialogues is not always readily apparent, as illustrated by the 19th century tendency to excise dialogues now thought to be paradigmatically Platonic from the canon. Consider, for example, renowned 19th century Platonic scholar G.A.F. Ast’s proclamation that “[o]ne who knows the true Plato needs only to read a single page of the *Laws* in order to convince himself that it is a fraudulent Plato that he has

2. W.R.M. Lamb, *Introduction to the Minos*, in 12 PLATO IN TWELVE VOLUMES 386-87 (1979).

3. D.S. Hutchinson, *Plato*, in PLATO: COMPLETE WORKS 1307 (John M. Cooper & D.S. Hutchinson eds., 1997).

4. WILLIAM ARTHUR HEIDEL, PSEUDO-PLATONICA 41 (1896).

5. Lamb, *supra* note 2, at 386.

6. Hutchinson, *supra* note 3.

7. They are: CHRISTOPHER BRUELL, *Minos, or About Law*, in ON THE SOCRATIC EDUCATION: AN INTRODUCTION TO THE SHORTER SOCRATIC DIALOGUES 7 (1999); Judith Best, *What is Law: The Minos Reconsidered*, 8 INTERPRETATION 102 (1980); William S. Cobb, *Plato’s Minos*, 8 ANCIENT PHIL. 187 (1998); V. Bradley Lewis, *Plato’s Minos: The Political and Philosophical Context of the Problem of Natural Right*, 60 REV. METAPHYSICS 17 (2006); Todd Lindberg, *The Oldest Law: Rediscovering the Minos*, 137 TELOS 43 (2007); David Mulroy, *The Subtle Artistry of the Minos and the Hipparchus*, 137 TRANSACTIONS AM. PHILOLOGICAL ASS’N 115 (2007); Christopher Rowe, *Cleitophon and Minos*, in CAMBRIDGE HISTORY OF GREEK AND ROMAN POLITICAL THOUGHT 303 (Christopher Rowe & Malcolm Schofield eds., 2000); Leo Strauss, *On the Minos*, in THE ROOTS OF POLITICAL PHILOSOPHY: TEN FORGOTTEN SOCRATIC DIALOGUES 67 (Thomas L. Pangle ed., 1987).

before him here.”⁸

The scholarly status of the *Minos* – understudied, yet with a claim to Platonic authorship – thus renders the *Minos* exciting interpretive territory. Indeed, the prospective pay-off from redeeming the work – whether by discovering it to be Platonic or merely by revealing it to possess an inner coherence of its own – is greater than merely the understanding of one short dialogue. A rehabilitated *Minos* could shed light on the *Crito*, the *Statesman*, and especially on the *Laws* – the dialogue to which it is most clearly related – to name only the most relevant dialogues.

Further, the *Minos* has implications not only for the classicist, but for the modern philosopher of law. Plato’s approach to the question of law’s nature in the *Minos* – and, indeed, throughout his corpus – differs strikingly from the approach of modern legal philosophy. As such, the *Minos* has the potential both to demonstrate a way of approaching the question “What is law?” by other than analytic routes and to emphasize that law’s nature cannot be understood without an underlying understanding of the nature of man. This Note will seek first to provide an exegesis of the *Minos* strong enough to redeem it from those critics who deem it spurious solely on the basis of internal incoherence. Then, it will explain how the *Minos* can inform debates in modern philosophy of law both about the nature of law and about how the nature of law is best investigated.

B. Overview of the Dialogue

The *Minos* is a brief dialogue between Socrates and an unnamed Companion [ἑταῖρος]. In the dialogue, the Companion puts forth several positivist definitions of law, or νόμος – as “those things held customarily” [τὰ νομιζόμενα], as “the resolution of the city” [δῶγμα πόλεως],⁹ and as “political opinion” [δόξα πολιτικῆ].¹⁰ He then undertakes in vain to defend against Socrates’s rival conception of νόμος as possessing the ability to “discover reality,” and hence as more rooted in the natural.

In combating the Companion’s legal positivist definition of νόμος, Socrates puts forth two arguments, a series of extended analogies, and a lengthy tribute to King Minos of Crete. The first and last of these come under harsh criticism from those who think the dialogue spurious, while the second is largely ignored. Such critics claim that the two arguments fail in indefensible ways. Heidel goes so far as to say of the second: “The author

8. W.K.C. GUTHRIE, 5 A HISTORY OF GREEK PHILOSOPHY: THE LATER PLATO AND THE ACADEMY 322 (1978) (quoting J. HARWARD, THE EPINOMIS OF PLATO 34 (1928)). Guthrie also notes that during the 19th century, serious doubts, based largely on evaluations of which texts were ‘unworthy of the great man,’ were cast upon the authenticity of, inter alia, *Euthyphro*, *Apology*, *Laches*, *Lysis*, *Charmides*, *Hippias Minor*, *Menexenus*, *Meno*, *Euthydemus*, *Cratylus*, *Parmenides*, *Sophist*, *Politicus*, *Philebus*, *Critias*, and *Laws*, all of which are now considered integral Platonic texts. W.K.C. GUTHRIE, 4 A HISTORY OF GREEK PHILOSOPHY: PLATO, THE MAN AND HIS DIALOGUES 40 (1975).

9. PLATO, *Minos*, *supra* note 1, at 314c.

10. *Id.* at 314c.

does not even seem to be aware how sophisticated this reasoning is.”¹¹ The paean to Minos comes under fire as a non-sequitur,¹² a mere excuse for the Alexandrian pseudo-Platonist to praise kingship extravagantly. The extended analogies, by contrast, are left to one side as neither wholly new nor overtly offensive.

This Note, however, will take the position that the extended analogies section of the dialogue is both the crux of Socrates’s argument and the key to understanding the other two parts of the dialogue; it is in this section that Socrates develops his conception of the law-giver’s art as reflective of the fact that both man and politics possess unified natures. Further, although Socrates’s first two arguments do fail, this Note will argue that their failures both instruct the reader about the nature of law and point the reader to the middle extended analogies section where their missing and/or controversial premises are expounded and ably defended.

Parts I and II of this paper will explore the fallacies in the first and second arguments respectively and suggest what the author of the dialogue could be trying to teach us through those arguments’ flaws. Part III will connect the two arguments’ failings with the neglected analogies section that follows them, attempting to show how what was learned from the failure of the two Socratic arguments is supplemented by the notion of law put forth by the extended analogies section. Part IV will address the homage to King Minos of Crete; far from being a non-sequitur, the praise of Minos and ancient law flows from and extends the concept of law as intrinsically connected with the nature of man, rendering the *Minos* a subtle and nuanced whole. Finally, the paper will conclude by attempting to synthesize the lessons of the *Minos* into a teaching on the deficiencies of both legal positivism and natural law theory.

I. THE LAW-ABIDING AND THE JUST

Let us turn to the first of the two arguments that have so failed to impress readers of the *Minos*. In this argument, Socrates attempts to refute the Companion’s paradigmatically legal positivist statement that νόμος is the resolution of the city [δόγμα πόλεως],¹³ and thus, that νόμος could be whatever politicians decide.

A. An Untenable Argument: Law-Abidingness and the Good

Critics of the authenticity of the *Minos* take the first argument to be unsound. As we will see, their assessment is correct. The text of the argument is as follows:

[314D] Socrates: Then, the wise are wise through wisdom?

11. HEIDEL, *supra* note 4, at 49 n.9.

12. Best, *supra* note 7, at 103.

13. PLATO, *Minos*, *supra* note 1, at 314c1-314e5.

Companion: Yes.

Socrates: And again, the just are just through justice?

Companion: Indeed.

Socrates: And then, the lawful are lawful through law?

Companion: Yes.

Socrates: And the lawless are lawless through lawlessness?

Companion: Yes

Socrates: And the lawful are just?

Companion: Yes.

Socrates: And the lawless are unjust?

Companion: Unjust.

Socrates: Then, justice and law are most noble?

Companion: Just so.

Socrates: And injustice and lawlessness are most base?

Companion: Yes.

Socrates: And the former is the savior of cities and all other things, but the latter destroys and overthrows them?

Companion: Yes.

Socrates: Thus we must look upon law as something noble, and seek after it as a good.

Companion: How could this not be so?

The argument begins with a typical Socratic induction: The Companion is asked and agrees to the statements that the wise are wise by wisdom and the just by justice.¹⁴ Socrates then extends the induction to include the propositions that “the lawful [οἱ νόμμοι] are lawful through law [νόμωι]”¹⁵ and that “the lawless [οἱ ἄνομοι] are lawless through lawlessness [ἀνομία].”¹⁶ So far, Socrates’s argument seems plausible. Socrates

14. *Id.* at 314c5-7.

15. *Id.* at 314c7-8.

16. *Id.* at 314c9-314d1. While the necessary English translation – and even a cursory glance at the

then moves on, however: “And the lawful are just? . . . And the lawless are unjust?”¹⁷ This third line of questioning is neither necessitated nor supported by the previous premises. As such, it has no claim to being a legitimate conclusion from the first two question-premises of the argument. It must then be an additional premise, and a controversial one at that. Yet the Companion agrees without argument, thereby consenting to the eventual debunking of his view of law.

With the addition of this questionable premise, the rest of the argument flows validly but bumpily – the Companion, with Socrates’s prompting, agrees that justice (and hence law) is most noble and injustice (and hence lawlessness) is most base.¹⁸ Socrates here proceeds validly by taking the just and unjust as noble and base respectively – a fairly uncontroversial additional premise. The presence of law and lawlessness in the argument seems fair as well, given the previously accepted premises.¹⁹ The next Socratic statement to which the Companion assents, that justice and law “preserve cities and everything else, while [injustice and lawlessness] destroy and overturn them,”²⁰ is both uncontroversial and superfluous to the argument as a whole. The result that follows it, that “we must regard law as something noble, and seek after it as a good,”²¹ follows directly from the proposition that law and justice are superlatively noble and beautiful [κόλλιστον]. Socrates has only to finish his *reductio*: if law is good and the resolutions of cities are sometimes bad, law cannot simply be the resolution of a city.²² Thinking does not make it so, saith Socrates, even if the thinker is the city.

Socrates’s triumph against νόμος as τὰ νομιζόμενα, however, relies on the undemonstrated, unquestioned, and highly controversial assertion that the law-abiding are just (or, said differently, that the law is noble and following it good). As Socrates has not proved or supported this assertion, the dialogue’s critics are right to question the argument’s persuasive power: while valid, the argument is of very dubious soundness. Indeed, Socrates’s additional premise actually begs the question at hand: positivism’s central tenet is that law’s essence *qua* law is its origin, rather than its connection to the good. Modern philosophers of law, following Joseph Raz,

Greek – seems to denote an imperfect parallel between ‘law’ on the one hand and ‘lawlessness’ on the other, I would argue that this does not invalidate the argument (insofar as it is otherwise valid). Greek has, of course, no word for ‘lawfulness’ (such as νομιμία, perhaps). If one reads ἀνομίαι in the sense of ‘by being without law,’ emphasizing the alpha as privative, a parallel does indeed exist between νόμοι and ἀνομίαι.

17. *Id.* at 314d1-2.

18. *Id.* at 314d3-5.

19. That is, if lawful men are just, and these lawful, just men are both lawful and just precisely in virtue of their relation to law and justice, law too must be in accord with justice (and not injustice), and hence also be noble.

20. PLATO, *Minos*, *supra* note 1, at 314d5-6.

21. *Id.* at 314d6-8.

22. *Id.* at 314d9-e5.

have called this proposition the Sources Thesis.²³ The proposition, by contrast, that the validity or essence of law is connected with morality is the central tenet – commonly referred to as the Overlap Theory – of positivism’s rival school of thought, Natural Law Theory.²⁴ To challenge a legal positivist definition of law by showing that it is inconsistent with the major premise of a rival school of thought is not a very trenchant critique, to say the least.

It is perhaps worthy of note that the Companion, although never withholding assent from any part of the argument, does not seem entirely persuaded by the argument either. Thus, when Socrates offers his own counter-definition of νόμος, as that which “tends to be [βούλεται εἶναι] a discovery of reality,”²⁵ the Companion bristles at the degree of objectivity attributed to law by the formulation and responds, “How then, Socrates, if law is [ἐστίν] the discovery of reality, do we not always use the same laws about the same things, if we have discovered reality?”²⁶ If he presents even the rather docile ἑταῖρος as not convinced by Socrates’s argument, the dialogue’s author cannot expect his readers to be convinced either.

Is there an affirmative defense to be mounted in favor of Socrates’s argument, however? What – if anything – has the argument taught the ἑταῖρος or the reader? First, as mentioned above, it has shown that the Overlap Theory, if true, defeats the Sources Thesis. This, in itself, is not surprising, perhaps. However, upon examination, we see that it is a very particular form of the Overlap Theory that is put forth in this argument and that manages to “vanquish” legal positivism. That is, Socrates’s questionable additional premise has not posited that law itself is just, but rather that “the law-abiding are just.”²⁷ Curiously, he draws our attention here not to law itself, but to law-abiding people and their contrary, the law-

23. See Joseph Raz, *Legal Positivism and Sources of Law*, in *THE AUTHORITY OF LAW: ESSAYS ON LAW AND MORALITY*, 37, 47-8 (1979) (“A law has a source if its contents and existence can be determined without using moral arguments. . . . The sources of a law are those facts by virtue of which it is valid and which identify its content.”).

24. The Overlap Theory has found many expressions. Most famous, perhaps, is Augustine’s statement that “An unjust law is no law at all.” ST. AUGUSTINE, *ON FREE CHOICE OF THE WILL* 8 (Thomas Williams trans., Hackett Pub. Co. 1993) (388-395). Blackstone held a strong form of the Overlap Thesis: “This law of nature, being co-eval with mankind and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, and at all times: no human laws are of any validity, if contrary to this; and such of them as are valid derive all their force, and all their authority, mediately or immediately, from this original.” 1 WILLIAM BLACKSTONE, *COMMENTARIES* *41. Modern natural law theorists have put forth a thinner view of the Overlap Thesis: “[T]he principles of natural law explain the obligatory force (in the fullest sense of ‘obligation’) of positive laws, even when those laws cannot be deduced from those principles.” JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* 23-24 (1980). An Overlap Theory of a different color is found in LON FULLER, *THE MORALITY OF LAW* (1964) (expounding a procedural Overlap Theory whereby the rule of law is inherently good insofar as it fulfills certain procedural requirements).

25. PLATO, *Minos*, *supra* note 1, at 315a1-2.

26. *Id.* at 315a4-6.

27. *Id.* at 314d3.

less.²⁸

To what end? Socrates's emphasis on law-abiding and lawless citizens – rather than on particular laws or on Law in the abstract – allows us to use something familiar to us (law-abiding and lawless people) to reason about something more foreign (the nature of Law). This is a particularly apt approach, since the question at the heart of the dialogue—the connection between law and the good—corresponds with a potential uncertainty about the connection between law-abidingness and human virtue. That is, the open question of the nature of law is directly related to the almost equally open question of the status of the law abiding man. Is the most truly law-abiding person that specter of the Third Reich who obediently refuses to stray from the positive law, no matter how unjust? Or, is the law-abiding man the conscientious objector who follows the law when it is in accord with justice, but not when it is unjust?²⁹

Yet, as the syllogism nudges us to realize, despite this apparent ambiguity, our tendency is generally to view law-abidingness as a virtue. Or, perhaps more immediately, to view lawlessness as a vice. When Homer calls Polyphemos “the monstrous Cyclops lawless of mind,”³⁰ we have an intuitive sense that the Cyclops is not just physically monstrous, but also lacking in an essential human virtue. So, even if we are unwilling to grant a necessary overlap between the legal and the just (and, hence, the noble), we are perhaps more sympathetic to a potential link between law-abidingness and justice or nobility.

But of course, once we concede that there is something presumptively admirable about the lawful man, it is dodging the issue to trace our admiration merely to the virtue of lawfulness. Lawfulness is only, after all, the habit of following law. If we admire the lawful man, then, we have intellectually obligated ourselves to count adherence to law as a good. Therefore, we either think that obeying a sovereign's commands is a good thing, or we think that law is in some way related to the good in and of itself.

The real merit in the argument Socrates offers, then, is that it draws our attention to the important question of why one follows law. More pointedly, it implicitly challenges the legal positivist – the true adherent of the Source Thesis, who believes that law is law insofar as it is a command of the sovereign³¹ – to explain why we ought to follow the law and why any

28. *Id.* at 314d4.

29. Interestingly, while the “law-abiding citizen” has positive connotations, neither of the two figures cut here is particularly appealing. Perhaps this indicates that in order for law-abidingness to be a virtue, law must gain some validity both from its Source and from its Overlap with the good. That is, the man who slavishly follows positive law seems a mere sheep, while the man who follows only his conception of right seems a law unto himself. Perhaps the properly law-abiding man must have allegiance both to the good and to the positive law.

30. HOMER, ODYSSEY, ch. 4, line 428 (D.B. Munro & T.W. Allen eds., Oxford Classical Texts 1922).

31. Or, potentially, the command justified by the Rule of Recognition. See generally H.L.A. HART, THE CONCEPT OF LAW (1961). That is, the Rule of Recognition would need to be finally be

moral stigma should result from refusing to follow the law. Put differently, it challenges the positivist to account for the origin of law's binding force – if law derives its force from its source, why are we bound by that source? Can the virtue of law-abidingness ever be justified on purely positivist grounds? Thus, although Socrates's argument is unsound, it is nevertheless fruitful for the reader's – and the Companion's – consideration, as it establishes the burden that the legal positivist must meet.

B. The Argument's Aftermath: Law as Aspirational

There may, however, be further insight to gain from this argument. Let us examine the syllogism in light of what follows it. In addressing the *ἐταῖρος*'s concern about the seeming diversity of allegedly objective laws, Socrates repeats his initial definition of law: "Law tends nonetheless to be discovery of reality."³² The repetition is not completely faithful to the original statement, however – Socrates first formulates his statement as *ὁ νόμος ἄρα βούλεται τοῦ ὄντος εἶναι ἐξεύρεσις*.³³ His second statement is slightly different: *βούλεται μὲν οὐδὲν ἧττον ὁ νόμος εἶναι τοῦ ὄντος ἐξεύρεσις*.³⁴ Several differences are worthy of remark: most noticeably, the second formulation adds the insistent phrase *οὐδὲν ἧττον*, "none the less." Socrates is responding to his interlocutor's doubt of his formulation with insistent vigor. More subtly and more interestingly, the syntax of the parallel wording has changed: whereas the initial formulation begins with the invocation of *νόμος*, the second, insistent formulation moves the "hedging" word *βούλεται* ["tends"] to the very beginning of his sentence. This positioning puts three-fold stress on the word *βούλεται*. First, Greek's flexible syntactic system uses word order to indicate stress – in the Greek sentence structure, the initial word holds a place of particular emphasis.³⁵ Second, as in English, the use of the phrase "none the less" [*οὐδὲν ἧττον*] both causes the reader/speaker to pause and throws emphasis backwards; its use here thus further highlights the importance of *βούλεται*.³⁶ Finally, Socrates's emphatic use of *βούλεται* comes immediately after the Companion's omission of the word in his parroting of Socrates's formulation.³⁷ With the syntactical emphases exaggerated, their conversation runs as follows:

[315A] **Socrates:** Law tends [*βούλεται*] to be the discovery of reality.

Companion: . . . if law is the discovery of reality, [Companion objects to

justified by reference to some sovereign, lest law's validity be premised on recursion.

32. PLATO, *Minos*, *supra* note 1, at 315a7.

33. *Id.* at 315a3.

34. *Id.* at 315a7.

35. HARDY HANSEN & GERALD QUINN, *GREEK: AN INTENSIVE COURSE 30* (1998).

36. *Cf.* H.W. SMYTH, *GREEK GRAMMAR 630* (1920).

37. PLATO, *Minos*, *supra* note 1, at 315a4-5.

law's variety] . . .

Socrates: [It] *tends* [βούλεται] none the less, the law, to be the/a discovery of reality, but . . . [Socrates answers objection.]

Given the stress laid upon it by the author of the *Minos*, this word's meaning and its import as used by Socrates both merit our attention. Although certainly correct, Lamb's translation of βούλεται as "to tend" may mislead the reader into interpreting the author's use of the word βούλεται as adding a probabilistic element to Socrates's statement (as when we say "it tends to rain in March," meaning that it often rains in March). In fact, the central meaning of the verb βούλομαι is "to will, wish, be willing." Lamb's "tends" then is more properly the "tends" of Dr. Johnson's "To be happy at home is the ultimate result of all ambition, the end to which every enterprise and labor tends. . ." ³⁸ The emphasis laid on βούλεται, then, underscores that law's relationship with "the discovery of reality" is an aspirational one.

As Socrates explains, law's "wish" to conform to reality may sometimes be in vain. That is, he gives the obvious rejoinder to the Companion's objection that law – if it truly conforms to objective reality – should be uniform, rather than diverse: men are not always *able* to discover that which the law wishes to discover – reality – and hence there is variation in law. This emphasis on law's diversity – and on that diversity as a consequence of the failure to discover reality – accords beautifully with Socrates's syntactic emphasis on law's "wish"; law is unified not by its discovery of reality, but only by its aspiration to discover reality.

Though they appear in the aftermath of a failed syllogism, Socrates's restatements of his definition of law serve both to clarify his first argument and to foreshadow more robust argumentation later in the dialogue. To set the stage for this elaboration, we should consider how the notion of law as aspirational – as something that "wishes" – could possibly aid in the rebuttal of legal positivism.

What does it mean for law to be aspirational? To aspire is to tend towards some end (even an un-reached or unreachable end). To tend towards an end, a thing must have an end. Only things that are unified – things that have natures – have ends [τέλοι]. That is, the kind of thing that has a nature is the sort of thing that can fulfill that nature better or worse; things with natures "aspire to" (in the non-anthropomorphic sense of "being ordered to") fulfill those natures.

By way of example, the growth of an apple is ordered towards the fulfillment of its apple nature – all manner of bruising, worms, and misshapeness may get in the way, but as it grows, an apple tends towards the round redness (or greenness) that is the fulfillment of apple nature. Any deviation from that end will be seen as just that: a deviation or missing of

38. Samuel Johnson, *Rambler* #68 (Nov. 1750).

the mark. Things with a nature, then, “aspire” towards the fulfillment of that nature – a goal which they may or may not achieve. Not all sorts of things have a nature – or, at least, a nature *qua* that thing; some sorts of things are, rather, categories. Such things do not aspire: the set of all objects that weigh three pounds includes objects that – without any inner coherence or any other similarity between the objects – have a certain mass. There is no manner in which these objects can excel or fail in their weighing of three pounds. Objects that weigh a little over three or a little under three pounds are not deficient three-pound objects (unless, like the bag of flour sold to the customer as containing precisely three pounds of flour, they have an external reason to “aspire” to that category) – they are simply not members of the category.

The distinction between law as envisioned by the Companion and law as envisioned by Socrates tracks this distinction between kinds with natures and mere categories. In Socrates’s view, law is tethered to the good and, hence, aspirational: it has the unified nature that comes from its being ordered towards the discovery of reality. When it fails to discover reality, it is somehow deficient as law. Law as envisioned by the *ἐταῖρος*, however, is a category – it is the *δόγμα πόλεως* or *δόξα πολιτικῆ*.³⁹ It takes its “unity” not from any internal coherence, but only from a source: the City. Thus, it does not aspire and cannot fail – any purported “law” that actually stems from the City simply falls into the category of law. Any seeming “law” not stemming from the City falls outside that category and hence fails as law.

Socrates’s focus on aspiration thus brings to light a key difference between his view of law and the Companion’s. Indeed, however incomplete Socrates’s arguments may be, his concept of law as having a nature defined by an aspirational end seems more tenable than the Companion’s conception of law as a category of statements defined by their source. For if law is defined solely by its source in the City, how should it be distinguished from other emanations from the City?⁴⁰ If the City passes a resolution saying the sky is blue (or, as sometimes happens, condemning the conduct of another sovereign, without taking or calling for any action), is such a law? The problem becomes starker in the case of a monarchy: which utterances of the King are law and which are simply his speaking without law-making?⁴¹

39. *Id.* at 314c1-3.

40. Nor is Socrates free from this criticism: if law tends to discover reality, how should it be distinguished from other things – most obviously, philosophy – which tend to discover reality?

41. I take this objection to be closely akin to one of H.L.A. Hart’s critiques of John Austin’s primitive command-and-sanction positivism, namely, that the person of the sovereign seems less the sovereign than does his office: “Finally, the analysis of law in terms of the sovereign, habitually obeyed and necessarily exempt from all legal limitation, failed to account for the continuity of legislative authority characteristic of a modern legal system, and the sovereign, person, or persons could not be identified with either the electorate or the legislature of a modern state.” H.L.A. Hart, *Law as the Union of Primary and Secondary Rules*, in *PHILOSOPHY OF LAW* (Joel Feinberg & Jules Coleman eds.,

That the *Minos*'s author is aware of this tension becomes clear when we notice a key linguistic shift: Socrates reframes the Companion's δόγμα πόλεως as δόξα πολιτική. The former, the Companion's formulation, is well-suited to glossing over the difficulty: δόγμα can mean both "opinion" and "resolution," thereby allowing the Companion to incorporate both law's source and the idea of law as directive in a single word. Socrates's gloss, however, does not maintain the same dual function: "δόξα" can connote no sense closer to directive than "judgment," and even that is in the sense most akin to "a philosophic opinion." His word choice subtly suggests the difficulty of defining law purely as a sovereign pronouncement without regard to the aim or purpose of that pronouncement.

Thus, while the Dialogue's first argument is flawed, Socrates's suggestion that the concept of law is predicated on the existence of some unifying end seems sound. Of course, not all positivists need join the Companion in taking law to be a category rather than a kind. A more sophisticated positivist could instead maintain that law has a unified end — to order society, perhaps — analytically independent of the good or noble. Nonetheless, the first argument of the Dialogue, however fallacious, succeeds in reframing the debate about the nature of law around two key questions: (1) what unifying end, or τέλος, is definitive of law's nature? and (2) what property of law explains the virtue of lawfulness? We will see that Socrates answers both questions over the course of the *Minos* by developing a conception of law's nature as unified around an end that is deeply interconnected with man's (fixed) nature.

Let us now turn to Socrates's second argument.

II. THE GOOD, THE BAD, AND THE HEAVY

In answer to the Companion's objection to Socrates's characterization of law as a (unified) whole tending towards the discovery of truth, Socrates proposes further study of the question of whether there are, in fact, variations in law. On Socrates's suggestion that they explore whether law actually varies, the Companion expounds at length on the differences in burial customs and attitudes towards human sacrifice between Greek and non-Greek cities, among Greek cities, and even between current Athenians and the Athenians of the past. Socrates reprimands him for making long speeches and suggests a joint inquiry [κοινὸν σκέμμα] to which the

2008). Joseph Raz has attempted to solve the dilemma of when the sovereign's speech constitutes law through what others have termed his "Instantiation Thesis," whereby a law must be the kind of thing that is "capable of possessing authority." See Joseph Raz, *Authority, Law and Morality*, 63 THE MONIST 300 (July 1985). Regardless of the merits of the Instantiation Thesis, Raz's formulation changes law from a category to a kind of thing possessing a nature. Under his theory, law *qua* law must at least "claim that it possesses legitimate authority" in order to serve as a reason for action. *Id.* Insofar as that claim may be convincing and justifiable to a greater or lesser degree, law may succeed or fail as such.

ἐταῖρος accedes.⁴² This joint inquiry becomes Socrates's second argument.

A. A Second Fallacious Argument

The text of the argument, which has received little praise from critics, is as follows:

[315E] **Socrates:** Come then, do you consider just things to be unjust and unjust things just, or, rather, just things to be just and unjust things unjust?

Companion: I consider just things to be just and unjust things unjust.

[316A] **Socrates:** And they are considered so among all men elsewhere as they are here?

Companion: Yes.

Socrates: Among the Persians as well?

Companion: Also among the Persians.

Socrates: Always?

Companion: Indeed.

Socrates: Are things that weigh more considered to be heavier here, and things that weigh less to be lighter, or the opposite?

Companion: No, the things that weigh more are considered to be heavier, and the things that weigh less lighter.

Socrates: And is it thus both in Carthage and Lycaea?

Companion: Yes.

Socrates: And noble things, it would seem, are everywhere considered noble and shameful things shameful, not shameful things noble and noble things shameful?

[316B] **Companion:** Quite.

Socrates: Thus, to generalize to all cases, what is so is accepted as being so, not what is not so, both among us and among all other people.

Companion: It seems so to me.

Socrates: Whoever fails to attain reality, fails to attain accepted law.

Companion: When you put it thus, Socrates, the same things seem to be accepted as lawful by us and by other men always, but when I consider that we

42. PLATO, *Minos*, *supra* note 1, at 315e.

do not stop changing our laws, I cannot be persuaded.

Socrates begins with the question: “Do you consider just things to be unjust and unjust things just, or, rather, just things to be just and unjust things unjust?”⁴³ The Companion acquiesces to the latter, presumably assuming Socrates to be asking for a relatively uncontroversial restatement of the law of non-contradiction: just is just and unjust unjust. We should note, however, that his question could easily be construed as raising the more substantive issue of whether the Companion is able to correctly identify just things and unjust things as just and unjust, respectively. With prompting, the Companion further affirms the just to be the just always and everywhere. Socrates moves on to ask whether things that weigh scales down more are considered heavier, and things that weigh less lighter, or the contrary.⁴⁴ Again, the Companion acquiesces and affirms the statement to be true everywhere.

Socrates has now found two examples of truths that seem – both to the ἑταῖρος and to us – to hold universally, regardless of time and place. The first of these, about just and unjust things, is an abstract (and tautological) principle, while the second, about the heavier and lighter things, is both a principle that could be applied abstractly and a concrete means of discerning a property in a particular object – a means of tethering a principle to a particular. Socrates continues: “And noble things, it would seem, are everywhere considered noble, and shameful things shameful; not shameful things noble or noble things shameful,”⁴⁵ making the substantive and bold assertion that all men everywhere can unerringly identify the noble and the shameful.

Socrates thus concludes from the fact that all men everywhere acknowledge the principle that just things are just and the fact that all men everywhere can tell that the heavier thing is heavier, that all men everywhere can agree which things are noble. The argument as written is fallacious; it holds if and only if nobility is a quality that is both as objective and as easily and universally discernible as heaviness, an assertion that Socrates does not prove, though it calls for proof. The argument’s problems only become more grievous as he goes on to his final steps: “Thus, to generalize to all cases, what is so is accepted as being so, not what is not so, both among us and among all other people”⁴⁶ and, finally, “Whoever fails to attain reality, fails to attain accepted law.”⁴⁷ Socrates has thereby moved

43. *Id.* at 315e7-9.

44. *Id.* at 316a4-5.

45. *Id.* at 316a8-316b2.

46. *Id.* at 316b1-4. William Cobb’s translation of this passage, “So, to sum it all up, it is recognized as lawful, both by us and by everyone else, that what is is not what is not” (Cobb, *supra* note 7, at 196), is simply not possible, since the negation οὐ precedes τὰ μὴ ὄντα and not εἶναι. SMYTH, *supra* note 36, at 609.

47. PLATO, *Minos*, *supra* note 1, at 316b5.

from the (already contestable) proposition that the identity of the noble is agreed upon by all men to the conclusion that the truth is both known and agreed upon by all men, increasing the gap between what his premises actually prove and what he infers from them. In the end, his missing premise is the ambitious one that all of reality is objective and both knowable and known by all men at all times.

Without this premise, the whole argument fails. Why, then, does the author leave the argument as is? Is it because, as Heidel suggests, the author does not even realize how sophistic his argument is? This seems unlikely. Once again, as after the previous argument, the Companion does not fully assent to the conclusion that Socrates reaches from the premises already affirmed: “When you put it thus, Socrates, the same things seem to be accepted as lawful by us and by other men always, but when I consider that we do not stop changing our laws, I cannot be persuaded.”⁴⁸ Moreover, this comparison between the heavy [τὸν βαρὺ], the just [τὸν δίκαιον] and the noble [τὸν καλὸν] is not an isolated instance in the Platonic corpus; rather, it has an almost exact parallel in the *Euthyphro*. There, Socrates explicitly draws a distinction between the heavier, about which disputes can easily be solved by weighing,⁴⁹ and the just and unjust, noble and shameful, and good and bad, about which we “cannot reach any satisfactory agreement” when we disagree.⁵⁰ Plato, then, would have recognized the argument as fallacious, as would any Platonic imitator as “able” as even the *Minos*’s detractors take its author to be.

B. The Argument’s Import: Fair-Handedness and an Invitation to Philosophy

Why, then, does the author present this argument and why does he present it in this way? Perhaps because, as in the case of the first argument, the second argument points both the reader and the ἑταῖρος down a particular path of thinking. Two potential objectives manifest themselves. First, the particular missing premise to the second argument – to which the author draws our attention by its absence – is the very one which would be necessary to support a strong natural law theory. That is, if all men always and everywhere always completely comprehended the fullness of objective reality, the proposition that positive law is valid only when in conformity with reality would become workable as a political reality. By throwing this premise into relief, Socrates is in effect fair-handedly highlighting potential problems with the alternative to the ἑταῖρος’s conception of law, as well as problems with the ἑταῖρος’s own conception.

Second, through its ambiguity, the second argument acts as an invitation to philosophy and a bridge to the second – I will argue – more seriously

48. *Id.* at 316b6-316c2.

49. PLATO, *Euthyphro*, in 1 PLATONIS OPERA 7c (1967).

50. *Id.* at 7d1-3.

philosophical portion of the dialogue. That is, the very format of the second argument leads one to ponder to what degree the missing premise is true. Each of the argument's three premises (about the just, the heavy, and the noble) is ambiguous. Without the Companion's ready assent, we could easily think that the first statement should be construed not as "Do you consider that it is true that just things are just?" but rather as "Do you correctly identify the just things as being just things?" If the argument's conclusion did not follow from a more substantive reading of the third statement, that statement could just as easily be read not in the sense of "Does everyone everywhere know which things are noble?" but in the sense of "Does everyone everywhere know that it is true that noble things are noble?" Indeed, it must be this ambiguity in each of the statements which leads the Companion to agree so readily to a fallacious argument, for if the statements were construed in their tautological sense, the argument they produced would be valid, if trivial. The tautological sense of the propositions thus lends the argument a certain plausibility until the two senses of each statement are carefully disambiguated. In reading and re-reading the argument to judge in which sense each statement should be taken, the reader is led as surely as the Companion to consider what understanding of the just, the heavy, and the noble would be necessary to render not only the tautological version of the argument, but also a more substantive reading, valid. The reader is led to ponder the degree to which τὸν δίκαιον and τὸν καλὸν are like τὸν βαρὺ, and thus the degree to which justice is objective and easily knowable. It is this concept that Socrates will address in the rest of the dialogue, along with the missing premise of the first argument – that law is good and the law-abiding are just.

Indeed, that this point marks the dialogue's turn towards serious argument is indicated by Socrates's shift in tone as he responds enigmatically to his Companion's objection that law must change: "Perhaps you are not considering that when pieces at checkers are moved they are still the same pieces."⁵¹ The time has come to analyze law in a more profound way.

III. LEGISLATION AS A KINGLY ART

In the neglected middle portion of the dialogue, Socrates engages in a series of extended analogies. While this extended analogies section has been largely ignored by the few scholars who have written on the *Minos* (save those few who have criticized its approval of kingly rule as "Alexandrian"),⁵² I will argue that the extended analogies – while hardly an apodictic proof – are in fact the crux of the dialogue, and that the dialogue's aims cannot be understood without understanding their import.

51. PLATO, *Minos*, *supra* note 1, at 316c3-5.

52. See HEIDEL, *supra* note 4.

A. *Extended Analogies*

In order to defend the many controversial premises he put forth during the arguments section of the dialogue, Socrates argues, as usual, from what is better known to what is less well-known. That is, he starts with other kinds of law-giving or governance and argues by analogy about the nature of the law governing man. Specifically, he analogizes governance of a city [πόλεων ἀρχεῖν] to medicine,⁵³ gardening,⁵⁴ and cookery.⁵⁵ All three of these arts are governed by internal laws. We can only conjecture, but the laws of medicine [ιατρικοὶ νόμοι]⁵⁶ might include the proposition that antibiotics are useful in combating bacteria-based infections, the law of gardening [κηπουρικοὶ νόμοι]⁵⁷ that dahlias need lots of water, and the laws of cooking [μαγειρικοὶ νόμοι]⁵⁸ that chocolate chip cookies should bake until their edges are golden brown. In each case, the one who knows these internal laws is the one who is able to perform the art, thereby govern its subject correctly. In each of these cases, the performing of the art is a matter not of will but of skill, of knowing how the object of the art works and acting in accordance with that knowledge.

Socrates then makes the analogical leap from plants and cooking to humans: “Insofar as governance of a city, too, is an art, the success of any governor will depend on whether his governance is based on the internal logic – the laws, if you will – of men and of the πόλις.”⁵⁹ The idea that certain laws simply better fit the nature of the πόλις or human nature (laws against murder, traffic laws, etc.) and that the natures of these beings suggest those laws is perhaps the strongest argument that can be made against legal positivism. Without offering an argument, then, Socrates has powerfully challenged the Companion’s notion of law. Just as a doctor who did not understand the body would not be able to make his patients flourish and might cause death rather than health, and a gardener who did not understand plants would not be able to cause them to flourish and would produce brown gardens rather than green ones, so too a monarch who legislated contrary to the nature of his subjects would produce a non-functioning πόλις. Socrates’s leap from this argument to kingly rule⁶⁰ should not be taken as overly Alexandrian, but rather as suggesting to us the *Philosopher King* – even if he does not explain the concept of the *Philosopher King* to his unphilosophical Companion. Socrates’s emphasis on the kingly art expresses his esteem for wise rule, not his favor for the prac-

53. *Id.* at 316c.

54. *Id.* at 316e.

55. *Id.* at 317a.

56. *Id.* at 316e2.

57. *Id.* at 316e6.

58. *Id.* at 316e10-11.

59. *Id.* at 317a4.

60. *Id.* at 317a8.

tice of one-man rule based on dynastic birth.

Yet an analogy is not an argument. Has Socrates begged the question in analogizing οἱ νόμοι πόλεως with the laws of medicine, gardening, and cookery? We noted that the concept Socrates needed to defend in order to validate his previous arguments was three-fold: law as noble (or the law-abiding person as just), man and the πόλις as having a fixed nature, and that nature as being objectively discernible. But hasn't Socrates assumed that men, like plants and cakes, have a fixed, easily discernible nature by positing (without proving) that νόμος (in the sense of *legislation*, the laws governing men) is a direct parallel to νόμος (in the equivocal sense of the internal *logic* of a substance, like the "laws" governing plant growth)? Further, isn't he assuming that ruling men is in accordance with their nature and hence good?

B. The Unity of Human Nature

Perhaps he is. But this, too, is part of Socrates's argument: we all recognize that most substances known to us have a fixed nature (among these are the human body, the garden, and the pastry) and that anyone seeking to rule such a substance in the sense of cultivating it or causing it to flourish would have to act in full knowledge of and in accord with that nature. By showing that so many other kinds of rule presuppose a knowledge and predicate their claim to rule on the possession of that knowledge, Socrates claims common sense as an ally and shifts the burden of proof onto the defender of legal positivism: man would indeed be radically different from all other substances if he and his political community were the sort of things whose governance required no attention to be paid to the kind of things they are. Man would be markedly different from plants and the human body if the laws governing him (politically) were recognizable by virtue of their source, rather than by their aspiration to suit human nature.

We see, too, how this notion of law ties in to the themes brought forth by the two preliminary fallacious arguments: once law is viewed as part of the art of governance of a being with a fixed nature – rather than as isolated directives of a sovereign – law gains an aspiration. That is, its goal is to discover, and govern according to, man's flourishing. Insofar as it does that well, it will be successful law. Insofar as it disregards or mistakes man's nature and needs, it will fail as law. Indeed, it will be impossible to judge the merits of any individual law apart from a consideration of how it would advance the flourishing of the humans governed by the law.

Further, it suggests a preliminary answer to the question of why one should follow the law, by gesturing towards the possibility of a natural law system – or, at least, a system governed by the Overlap Theory – in which the citizenry would nonetheless be obliged to follow the positive law. That is, if law is part of a system of governance ordered towards human flourishing, we who wish to flourish have a *prima facie* compelling reason to obey it. While there will, of course, be laws that don't truly tend towards

flourishing – because of a defect of some kind on the part of the legislator – the legal system as a whole will, in most cases, be ordered towards the flourishing of the citizenry. And, in general, the citizenry will flourish better in the presence of law than in its absence. This natural law defense of following the law will not lead to slavish obedience; in situations where a particular law is so out of accord with nature as to truly harm human flourishing, or – as in the case of the Third Reich – when the entire legal system has been so subverted away from the natural as to inhibit flourishing, civil disobedience could still be warranted. But, knowing that law is ordered towards flourishing, the citizen could plausibly take obedience as a rule of thumb.

Does Socrates’s defense of governance as a kingly art settle the question entirely, then? It seems not. Socrates’s analogies address the question of whether man and politics have fixed natures, and make a preliminary defense of the idea that those natures are objectively discernible. However, that preliminary defense is not so extensive that it can even pretend to demonstrate that the nature of man is so immediately understandable as for νόμος to be universally and unerringly correct. Indeed, this proposition is too broad to be finally defensible. As we shall see, however, Socrates engages in one further defense of it at the end of the *Minos*.

IV. MINOS OF CRETE AND ANCIENT LAW

The final section of the dialogue, and the section dismissed by critics as both a non-sequitur and overly Alexandrian, comprises an homage to King Minos of Crete as “a good lawgiver” based on his having established the most ancient laws still in existence.⁶¹ At first glance, the connection between the final section and the rest of the dialogue is not clear – praise for law on the grounds that it is ancient seems not to accord with the thought that law ought to be judged on whether it discovers reality. And yet, the foregoing analysis prepares the way for a coherent reading of the dialogue.

The dialogue’s transition into its discussion of Minos of Crete provides the key. First, Socrates and the Companion discuss the lawmakers with true knowledge [οἱ ἐπιστάμενοι], and decide that such men would always write the same things and never change what was lawful.⁶² Further, they decide that if a ruler ever did change the content of the law, this would be

61. *Id.* at 318c.

62. *Id.* at 317b. We should assume that the Platonic author is referring to laws relating to matters intrinsically connected to man’s nature. He cannot be unaware that knowledge (and hence law) about changeable objects must also be changeable. Throughout the *Minos*, he stresses the unchanging parts of law and reality both, I take it, because he wishes to bring his limited interlocutor closer to the truth and because the *Minos* is the dialogue specifically ordered towards determining the degree to which law has access to reality. Perhaps the *Minos*’s author shares Aristotle’s opinion that there is no knowledge of changeable things. ARISTOTLE, *METAPHYSICS*, Bk. VII, Ch. 15. Indeed, in some sense, I have argued that that is precisely what is at stake in the dialogue: must law be connected to the (coherent) nature of the thing governed, and hence, must it in some measure pertain to the unchanging?

evidence that that ruler lacked true knowledge.⁶³ Later, Socrates discusses the best flute-players, decides on Marsyas and Olympus, and says of their flute-tunes: “And even now they alone remain, as being divine.”⁶⁴ In each case, the quality of the art in question is tied to its longevity. While neither is a proof that ancient law is good law, these two statements can indicate the path our argument should take: the first reminds us that sometimes stability indicates that a thing has found the truth (and hence no longer needs to seek for it). The second tells us what every building contractor insists: quality can, on occasion, prevent decay.

Combining these two clues with the conception of law garnered from the extended analogies section of the dialogue yields a potential reconciliation between ancient law and good law in the form of a “legal natural selection” of sorts. If Socrates is right that legislation is a kingly art fitted to those who know the nature of men and their governance (as gardeners know the nature of gardens), laws (like gardening techniques) will alert their practitioners when they go horribly wrong by not “working” – by not producing a functioning or flourishing society. By implication, laws that endure will be laws that have correctly accessed some part of the reality about man and the πόλις, whether by luck or by skill. This natural selection would not guarantee that only good laws endure. Rather, it would suggest that any law lasting through the centuries had a certain claim to accord tolerably well with human nature or with the nature of politics.

The *Minos*'s defense of νόμος as good and as a discovery of reality, then, is the product of a much larger and more ambitious view: that man and politics are both κόσμιον, both the sort of well-ordered things possessing a fixed nature with which νόμος can either be in accord or in defiance. In this view, νόμος's access to reality would come both from a sort of “natural selection” away from false or bad νόμοι (when their contradiction with man's or the πόλις's nature becomes clear) and from the fact that man's and the πόλις's natures – like the nature of animal bodies, plants, and cakes – are not hidden, but merely constitute the sort of beings that man and the πόλις are, and thus are observable. Praise of νόμος as the discovery of reality and praise of ancient νόμος are thus both of a piece with a particular view of the nature of man and the nature of politics as fixed, intelligible, and coordinated with one another. This view is the one advocated by Socrates in his discussion of lawmaking as a kingly art and foreshadowed by his two fallacious arguments.

CONCLUSION

We are now finally in a position to understand the aims of the author of the *Minos*. First, we can understand the role of the two fallacious argu-

63. PLATO, *Minos*, *supra* note 1, at 317b.

64. *Id.* at 318b7-318c1.

ments put forth by Socrates in the beginning of the dialogue, neither of which seems quite so fallacious when supported by his later discussion of law-making as a kingly art. The first argument tried to demonstrate that νόμος could not be simply the resolution of the city, δόγμα πόλεως, by arguing that the lawful, οἱ νόμιμοι (and hence the law, or νόμος) are just, while some resolutions of cities are evil. The argument seemed fallacious because of the question-begging, rather than proven, premise that οἱ νόμιμοι are just. We now see, however, that the entire dialogue is an argument against the position that νόμος is merely what man decides it is and in favor of the idea that νόμος has a unified nature that is intimately connected with man's nature, and hence with reality. Under the theory of "legal natural selection," enduring law is more or less in accord with justice – if it weren't, it would fail to "work" and would fall – and those who live "lawfully" are, more or less, just. Law is, then, not merely aspirational, but has a built-in mechanism for self-correction when it errs too far from accordance with human nature. The argument is far from airtight, but it is stronger than it once appeared. More importantly, the argument shows us the stakes raised by the question of whether law has a coherent unity (as opposed to merely being the name of a category).

The second argument failed to establish the noble [τὸν καλὸν] and the shameful [τὸν αἰσχρὸν] (and indeed, all of reality) as considered to be the same by all men everywhere because it assumed τὸν καλὸν was as objective and obvious as the heavy [τὸν βαρὺ]. If we construe τὸν καλὸν as a quality that makes men flourish, however, the dialogue will have supported this argument to some degree by arguing analogically that man's flourishing is objective. However, even granting the premise that nobility and baseness in man are objective, Socrates has in no way demonstrated that this objective (but complicated) property will be as readily discernable as the objective (but simple) property of heaviness. Perhaps we should not judge Socrates too harshly, however: his definition of νόμος was, after all, that which "tends to be a discovering" [βούλεται τοῦ ὄντος εἶναι ἐξεύρεσις], and he has succeeded in showing through his extended analogies section that he views law as part of a larger system of governance which is ordered towards the fulfillment of man's nature. He views law, then, as *striving* to understand and correctly govern man's nature – not as always *succeeding*. In any case, we see that the two arguments dovetail with the later discussion of legislation as a kingly art. That is, both arguments serve to prepare the way for the later analogical discussion and its corollaries by indicating to the reader which aspects of that argument to focus on.

More broadly, the two arguments demonstrate the logical connection between law's source of authority and reality's status as well-ordered. If man and the πόλις lack ordered, fixed natures, law can derive authority only from its source, from the lawmaker's power or claim to rule. In that case, law is not a coherent kind of a thing with a goal it can obtain or fail

to obtain, but is, rather, a category – that which the sovereign wills. If, on the other hand, man and the universe are the sorts of things that can be the objects of knowledge [ἐπιστήμη], law must share in that knowledge to merit ruling and, according to the *Minos*, to be able to rule successfully. In this case, law is aspirational – it is ordered towards the discovery of man’s nature and of human flourishing.

Socrates has tried in the course of the *Minos*, then, to expand the distinction between legal positivism and its alternative into two broader worldviews. In his view, the legal positivist sees law not as a coherent whole, but merely as a category: that which the sovereign ordains. Socrates challenges this view on the grounds that it does not adequately explain why people are bound to obey law (why law-abidingness is a virtue). Further, he faults legal positivism for its inability to explain why we evaluate laws as better or worse according to their contribution to (or derogation of) human flourishing. If laws are really just a category, it seems odd that they would show a sort of inner coherence and striving that would indicate that there might be such a thing as “good law” with a definition wholly divorced from “law.” Finally, Socrates thinks that legal positivism simply does not take account of the degree to which actual laws are reflective of human nature, as a result of the inevitable failure (through “legal natural selection”) of laws in defiance of that nature. In Socrates’s view, only if it were true that man had no discernible political nature could legal positivism offer a satisfactory account of law.

On the other hand, Socrates offers a vision of what an alternative to legal positivism would look like. Under this natural law alternative, law regulating human conduct in political community would be analogous to other familiar systems of governance. Just as those who tend plants must tend them in accordance with their nature lest they die, so those who govern human beings must legislate in accordance with the nature of men, lest the societies they govern fail. Ancient laws will often have a special claim to truth precisely because they will have endured for such a length of time without causing a failure of human flourishing.

According to the *Minos*, then, laws are not merely individual instances of a category. Rather, they share a common nature unified by their aspiration of knowing about and being in accordance with reality. Law is an attempt to pattern the man-made after reality, grafted onto the societies of men to aid them in their flourishing. This teaching is both subtle and coherent. Given that it seems to weave the three sections of the *Minos* into a compelling narrative, the burden now shifts to those who doubt the authenticity of the dialogue to make their case.