RESIDENT ALIENS

Anyone who wishes may come to live in the state on specified conditions. (a) There will be a community of foreigners open to anyone willing and able to join it. (b) The alien must have a skill and (c) not stay longer than twenty years from the date of registration. (d) He need pay no alien-tax, even a small one (apart from behaving himself), nor any tax on any purchase or sale. (e) When his time has expired, he is to collect his possessions and depart. (f) If during this period he has distinguished himself for some notable service to the state, and is confident he can persuade the council and the assembly to grant his request for an official extension of his stay, either temporarily or for life, he should present himself and make out his case; and he must be allowed to enjoy to the full whatever concessions the state grants him. (g) Children of resident aliens must be craftsmen, and (h) their period of residence must be deemed to have started when they reach the age of fifteen. On these conditions they may stay for twenty years, after which they must depart to whatever destination they like. If they wish to stay longer, they may do so provided they obtain permission as already specified. (i) Before a departing alien leaves he must cancel the entries that he originally made in the records kept in the custody of the officials.

§16. CAPITAL OFFENCES

It now occurs to the Athenian that the presence of alien workmen and traders in the state may lead to serious crime, because foreigners have not enjoyed the benefits of Magnesian education. He therefore passes to a discussion of major crimes such as sacrilege and treason, for which the penalty is death. There are two important points here:

(a) the elaborate and scrupulously fair trials to be held for capital offences: the Athenian criticizes what he considers to be the hit-and-miss methods of Athenian courts;

(b) slaves and foreigners are probably curable, and although their punishment is severe, it falls short of death; but if after education in Magnesia a citizen commits such a crime, he must be hopelessly wicked: he should be reckoned incurable and executed. This prepares us for the discussion, in the next section, of 'cure for injustice' as the aim of punishment, and the attempt to define what 'injustice' really is.

PRELIMINARY DISCUSSION

ATHENIAN: Next, in accordance with the natural arrangement of our legal code, will come the legal proceedings that arise out of all the occupations we have mentioned up till now. To some extent, so far as agricultural affairs and related topics are concerned, we have already listed the acts that should be prosecuted, but the most serious have yet to be specified. Our next task is to enumerate these one by one, mentioning what penalty each should attract and to which court it should be assigned. BE IX 853

CLEINIAS: That's right.

ATHENIAN: The very composition of all these laws we are on the point of framing is, in a way, a disgrace: after all, we're assuming we have a state which will be run along excellent lines and achieve every condition favourable to the practice of virtue. The mere idea that a state of this kind could give birth to a man affected by the worst forms of

wickedness found in other countries, so that the legislator has to anticipate his appearance by threats – this, as I said, is in a way a disgrace. It means we have to lay down laws against these people, to deter them and punish them when they appear, on the assumption that they will certainly do so. However, unlike the ancient legislators, we are not framing laws for heroes and sons of gods. The lawgivers of that age, according to the story told nowadays, were descended from gods and legislated for men of similar stock. But we are human beings, legislating in the world today for the children of humankind, and we shall give no offence by our fear that one of our citizens will turn out to be, so to speak, a 'tough egg', whose character will be so 'hard-boiled' as to resist softening; powerful as our laws are, they may not be able to tame such people, just as heat has no effect on tough beans. For their dismal sake, the first law I shall produce will deal with robbery from temples, in case anyone dares to commit this crime. Now in view of the correct education our citizens will have received, we should hardly want any of them to catch this disease, nor is there much reason to expect that they will. Their slaves, however, as well as foreigners and the slaves of foreigners, may well make frequent attempts at such crimes.
854 For their sake principally – but still with an eye on the general weakness of human nature – I'll spell out the law about robbery from temples, and about all the other similar crimes which are difficult or even impossible to cure.

ROBBERY FROM TEMPLES

Following the practice we agreed earlier, we must first compose preambles, in the briefest possible terms, to stand at the head of all these laws. Take a man who is incited by day and kept awake at night by an evil impulse which drives him to steal some holy object. You might talk to him and exhort him as follows:

'My dear fellow, this evil impulse that at present drives you to go robbing temples comes from a source that is neither human nor divine. It is a sort of frenzied goad,

innate in mankind as a result of crimes of long ago that remained unexpiated; it travels around working doom and destruction, and you should make every effort to take precautions against it. Now, take note what these precautions are. When any of these thoughts enters your head, seek the rites that free a man from guilt; seek the shrines of the gods who avert evil, and supplicate them; seek the company of men who have a reputation in your community for being virtuous. Listen to them as they say that every man should honour what is fine and just – try to bring yourself to say it too. But run away from the company of the wicked, with never a backward glance. If by doing this you find that your disease abates somewhat, well and good; if not, then you should look upon death as the preferable alternative, and be quit of life.'

These are the overtures we make to those who think of committing all these impious deeds that bring about the ruin of the state. When a man obeys us, we should silently omit the actual law; but in cases of disobedience, we must change our tune after the overture and sing this resounding strain:

41. If a man is caught thieving from a temple and is
(a) a foreigner or slave,
a brand of his misfortune shall be made on his face and hands, and he shall be whipped, the number of lashes to be decided by his judges. Then he shall be thrown out beyond the boundaries of the land, naked.

(Perhaps paying this penalty will teach him restraint and make him a better man: after all, no penalty imposed by law has an evil purpose, but generally achieves one of two effects: it makes the person who pays the penalty either more virtuous or less wicked.)

(b) If a citizen is ever shown to be responsible for such a crime – to have perpetrated, that is, some great and unspeakable offence against the gods or his parents or the state,
the penalty is death.

The judge should consider him as already beyond cure; he should bear in mind the kind of education and upbringing the man has enjoyed from his earliest years, and how after all this he has still not abstained from acts of the greatest evil. But the very tiniest of evils will be what the offender suffers;[1] indeed, he will be of service to others, by being a lesson to
855 them when he is ignominiously banished from sight beyond the borders of the state.[2] And if the children and family escape taking on the character of the father, they should be held in honour and win golden opinions for the spirit and persistence with which they have shunned evil and embraced the good.

In a state where the size and number of the farms are to be kept permanently unaltered, it would not be appropriate for the state to confiscate the property of any of these criminals. But if a man commits a crime and is thought to deserve to pay a penalty in money, then provided he possesses a surplus over and above the basic equipment of his farm, he must pay his fine. The Guardians of the Laws must scrutinize the registers and discover the precise facts in these cases, and make an exact report to the court on each occasion, so as to prevent any farm becoming unworked because of a shortage of money. If a man appears to deserve a stiffer fine, and if some of his friends are not prepared to bail him out by contributing the money to set him free, his punishment should take the form of a prolonged period of imprisonment (which should be open to public view), and various humiliations. But no one, no matter what his offence, is ever to be deprived of his citizen rights completely, not even if he has gone into exile beyond our frontiers for it. The penalties we impose will be death, imprisonment, whipping, or various degrading postures (either standing or sitting), or being rusticated and made to stand before temples on the boundaries of the state; and payments of money may be made in certain cases which we have just mentioned, where such a punishment is appropriate.

1. A man should cut his spiritual losses: if he goes on living he will become even more wicked and the ultimate fate of his soul will be even more dreadful. Cf. pp. 191 and 511.

2. See pp. 387 and 390–91.

PROCEDURE IN CAPITAL CASES

In cases involving the death penalty the judges are to be the Guardians of the Laws, sitting in conjunction with the court, whose members are selected by merit from the officials of the previous year. The method of bringing these cases to court, the serving of the summonses and similar procedural details must be the concern of the legislators who succeed us; what *we* have to do is legislate about the voting. The vote should be taken openly, but before this our judges should have ranged themselves according to seniority and sat down close together facing the prosecutor and defendant; all citizens who have some spare time should attend and listen carefully to such trials. First, the prosecutor should deliver a single speech, then the defendant; the most senior judge should follow these addresses by cross-questioning, and continue until he has gone into the arguments in sufficient detail. One by one, the other judges should follow the most senior and work through any points on which either litigant has left him dissatisfied by some kind of error or omission. A judge who feels no such dissatisfaction should hand on the interrogation to his colleague. All the judges should endorse those arguments that appear pertinent by appending their signatures and then depositing the documents on the altar 856
of Hestia. The next day they must reconvene in the same place, and after similar interrogation and examination again append their signatures to the depositions. Having followed this procedure three times, after giving due consideration to the evidence and witnesses, each judge should cast a sacred vote, swearing in the name of Hestia to give, as far as lies in him, a judgement just and true. In this way they should conclude this category of trial.

SUBVERSION

We come next, after these matters of religion, to cases of political subversion. We should treat as the biggest enemy of the entire state the man who makes the laws into slaves, and the state into the servant of a particular interest, by subjecting

them to the *diktat* of mere men. This transgressor of the law uses violence in all that he does and stirs up sedition. Second in the scale of wickedness, in our estimation, should come the holder of some high state office, who while not an accessory to any such crimes, nevertheless fails to detect them and exact the vengeance of his fatherland (or, if he does detect them, holds back through cowardice). Every man who is any good at all must denounce the plotter to the authorities and take him to court on a charge of violently and illicitly overthrowing the constitution. The court should consist of the same judges as for robbers from temples, and the procedure of the entire trial should be the same as it was for them, a majority vote being sufficient for the death penalty.

As a rule, penalties and disgrace incurred by a father should not be passed on to any of his children, except where a man's father, grandfather and great-grandfather have all in turn been sentenced to death. The state should deport such cases to the state and city from which their family originally came; and they should take their property with them, apart from all the basic equipment of their farm. Next, sons of citizens who have more than one son over ten years of age should be nominated by their father or grandfather on either the mother's or the father's side. Ten of them should be chosen by lot, and the names of those whom the lot selects should be reported to Delphi. The god's choice should then be installed as heir to the abandoned property – and he, we hope, will have better luck.

CLEINIAS: Splendid.

TREASON

ATHENIAN: The same regulations about the judges that should try the case, and the procedure to be followed at the trial, will apply in yet a third instance, when a man is brought to court on a charge of treason. In the same way, a single
857 law should apply to all three cases and decide whether the children of these criminals (traitor, temple-robber, and the violent wrecker of the laws of the state) should remain in their fatherland or leave it.

§17. THE THEORY OF PUNISHMENT

'A single law', then, covers these three capital crimes. But now we learn, rather unexpectedly, that another 'single law' covers all cases of theft: all thieves are to repay twice the value of what they have stolen. Clearly, thieves will in one sense pay different penalties, because different thieves will have to find different amounts from their own pocket according to the value of their theft. But in another sense, all thieves will pay the 'same' penalty – twice the value of what they have stolen. Cleinias seizes on the idea that all thieves will suffer the same penalty and protests that on the contrary different thefts require different punishments according to circumstances. Cleinias has to be shown that in fact the penalty for all thieves really ought *to be the same, because the object of the punishment is the disposition to rob,* which is the same in all thieves. *If punishments vary, it should not be according to the amounts stolen, but according to how far the soul of the criminal is infected by the desire to steal. Punishment is concerned with the spiritual state of the criminal, not the gravity of the crime (even though the latter may tell you something about the former).*

There then intervenes a rather long-winded section justifying the consideration of such philosophical matters in a conversation devoted to producing a code of law.

After this, the Athenian makes the simple point that merely because the punishments we impose are often disgusting or shameful (for instance, we whip or execute), we are not entitled to say they are unjust and not 'good', or to think we have blundered into some inconsistency. A punishment may be disgusting as an action, or shameful to the person being punished, but as a punishment *it will be just and 'good'. In short, we may apply contradictory words to the same action, provided we are referring to different 'aspects' of it. This point becomes vital, as we shall see, for the understanding of the Athenian's penology.*

THEFT: SHOULD ALL THEFTS ATTRACT THE SAME PUNISHMENT?

Again, a single law and legal penalty should apply to every thief, no matter whether his theft is great or small:

42. (a) *he must* pay twice the value of the stolen article, if he loses the day and has sufficient surplus property over and above his farm with which to make the repayment.

(b) if he has not,

he must be kept in prison until he pays up or persuades the man who has had him convicted to let him off.

43. If a man is convicted of stealing from *public* sources, *he shall* be freed from prison when he has either persuaded the state to let him off or paid back twice the amount involved.

CLEINIAS: How on earth can we be serious, sir, in saying that it makes no odds whether his theft is large or small, or whether it comes from sacred or secular sources? And what about all the other different circumstances of a robbery? Shouldn't a legislator vary the penalties he inflicts, so that he can cope with the various *categories* of theft?

PHILOSOPHICAL LEGISLATION JUSTIFIED

ATHENIAN: That's a good question, Cleinias: I have been walking in my sleep, and you have bumped into me and woken me up. You have reminded me of something that has occurred to me before, that the business of establishing a code of law has never been properly thought out – as we can see from the example that has just cropped up. Now, what am I getting at? It wasn't a bad parallel we made, you know, when we compared all those for whom legislation is produced today to slaves under treatment from slave doctors.[1] Make no mistake about what would happen, if one of those doctors

1. See pp. 181–2.

who are innocent of theory and practise medicine by rule of thumb were ever to come across a gentleman doctor conversing with a gentleman patient. This doctor would be acting almost like a philosopher, engaging in a discussion that ranged over the source of the disease and pushed the inquiry back into the whole nature of the body. But our other doctor would immediately give a tremendous shout of laughter, and his observations would be precisely those that most 'doctors' are always so ready to trot out. 'You ass,' he would say, 'you are not treating the patient, but tutoring him. Anybody would think he wanted to become a doctor rather than get well again.'

CLEINIAS: And wouldn't he be right to say that?

ATHENIAN: Perhaps he would – if he were to bear in mind this further point, that anyone who handles law in the way we are now, *is* tutoring the citizens, not imposing laws on them. Wouldn't it be equally right to say that?

CLEINIAS: Perhaps so.

ATHENIAN: However, at the moment, we are in a fortunate position.

CLEINIAS: How do you mean?

ATHENIAN: I mean the lack of any necessity to legislate. We are simply carrying out our own review of every kind of 858
political system and trying to see how we could put into effect the absolutely ideal kind, as well as the least good sort that would still be acceptable. This is particularly true of our legislation, where it looks as if we have a choice: either we can examine ideal laws, if we want to, or again, if we feel like it, we can look at the minimum standard we are prepared to put up with. So we must choose which course we want to take.

CLEINIAS: This is a ridiculous choice to give ourselves, my friend: it's not as if we were legislators forced by some irresistible necessity to legislate at a minute's notice, without being allowed to put the business off till tomorrow. We, God willing, can do as bricklayers do, or workmen starting some other kind of erection. We can gather our materials in no particular order and then select – and select at leisure –

the items which are appropriate for the forthcoming construction. Our assumption should be, therefore, that we are constructing something, but not under any constraint; we work at our convenience and spend part of the time preparing our material, part of the time fitting it together. So it would be quite fair to describe our penal code as already partially laid down, while other material for it lies ready to hand.

ATHENIAN: At any rate, Cleinias, this will be the more realistic way to conduct our review of legislation. Well then, may we please notice this point that concerns legislators?

CLEINIAS: What point?

ATHENIAN: I suppose literary compositions and written speeches by many other authors are current in our cities, besides those of the legislator?

CLEINIAS: Of course they are.

ATHENIAN: To whose writings ought we to apply ourselves? Are we to read the poets and others who have recorded in prose or verse compositions their advice about how one should live one's life, to the neglect of the compositions of the legislators? Or isn't it precisely the latter that deserve our closest attention?

CLEINIAS: Yes, it certainly is.

ATHENIAN: And I suppose the legislator, alone among writers, is to be denied permission to give advice about virtue and goodness and justice? Is he alone to be prevented from explaining their nature and how they should be reflected in our conduct, if we aim to be happy?

CLEINIAS: No, of course not.

ATHENIAN: Then is it really more scandalous in the case of Homer and Tyrtaeus and the other poets to have composed in writing[2] bad rules for the conduct of life, but less so for Lycurgus and Solon, and all others who have turned legislator and committed their recommendations to writing? The

2. For Tyrtaeus, see note on p. 51. Lycurgus was the traditional founder of the Spartan constitution; for a discussion see W. G. Forrest, *A History of Sparta, 950–192 B.C.* (London, 1968), pp. 40 ff. Solon legislated for Athens in 594 and wrote poems justifying his measures; the surviving fragments can be read in Greek or English in J. M. Edmonds, *Elegy and Iambus* (London and New York, 1931; Loeb edition), 1, pp. 114 ff.

proper view, surely, is this: a city's writings on legal topics should turn out, on being opened, to be the finest and best of all those it has in circulation; the writings of other men should either sound in harmony with them, or provoke 859
ridicule by being out of tune. So what *is* the style in which a state's laws ought to be written, in our opinion? Should the regulations appear in the light of a loving and prudent father and mother? Or should they act the tyrant and the despot, posting their orders and threats on walls and leaving it at that? Clearly, then, at this stage, we must decide whether we are going to try to talk about laws in the right spirit. Succeed or no, we shall at any rate show our good intentions. If we take this course and have to face some difficulties *en route*, then let's face them. Good luck to us, and God willing, we shall succeed.

CLEINIAS: You've put it splendidly. Let's do as you suggest.

ATHENIAN: In the first place, we must continue the attempt we've just made: we must scrutinize our law about robbers of temples, theft in general, and every variety of crime. We should not let it daunt us if in the full spate of our legislation we find that although we have settled some matters, our inquiry into others has still to be completed. We are still aiming at the status of legislators, but we haven't achieved it yet; perhaps eventually we may succeed. So now let's look at these topics I've mentioned – if, that is, you are prepared to look at them in the way I have explained.

CLEINIAS: Certainly we are prepared.

A 'TERMINOLOGICAL INEXACTITUDE'

ATHENIAN: Now, on the whole subject of goodness and justice, we ought to try to see quite clearly just where we agree, and where there are differences of opinion between us. Again, how far do ordinary men agree? What differences are there between *them*? (Naturally, we should claim that we wanted there to be at least a small 'difference between' us and ordinary men!)

CLEINIAS: What sort of 'differences between us' have you in mind when you say that?

ATHENIAN: I'll try to explain. When we talk about justice in general – just men, just actions, just arrangements, we are, after a fashion, unanimous that all these things are 'good'. One might insist that even if just men happen to be shocking in their physical appearance, they are still pre-eminently 'good' because of their supremely just character. No one would think a man was talking nonsense in saying that.

CLEINIAS: Wouldn't that be right?

ATHENIAN: Perhaps. But if everything that has the quality of justice is 'good', we ought to note that we include in that 'everything' even the things done *to* us, which are about as frequent, roughly speaking, as the things *we* do to others.

CLEINIAS: What now, then?

ATHENIAN: Any just action we do has the quality of being
860 'good' roughly in proportion to the degree to which it has the quality of justice.

CLEINIAS: Indeed.

ATHENIAN: So surely, anything done *to* us, which has the quality of justice, is to that extent agreed to be 'good'? This wouldn't involve our argument in any contradiction.

CLEINIAS: True.

ATHENIAN: If we agree that something done to us is just, but at the same time shocking, the terms 'just' and 'good' will be in conflict with each other – the reason being that we have termed 'just' actions 'most shameful'.

CLEINIAS: What are you getting at?

ATHENIAN: It's not difficult to understand. The injunctions of the laws we laid down a little while ago would seem to be in flat contradiction to what we are saying now.

CLEINIAS: How so?

ATHENIAN: Our ruling was, I think, that the temple-robber and the enemy of properly established laws would suffer a 'just' death. But then, on the brink of establishing a great many such rules, we held back. We saw ourselves becoming involved with penal suffering of infinite variety and on a grand scale. Of all sufferings, these were particularly

just; but they were also the particularly shocking ones. Thus, surely, one minute we shall find 'just' and 'good' invariably turning out to be the same, and the next moment discover they are opposites.

CLEINIAS: Likely enough.

ATHENIAN: This is the source of the inconsistency in the language of the ordinary man: he destroys the unity of the terms 'good' and 'just'.

CLEINIAS: That is indeed how it looks, sir.

What follows now is one of the most difficult passages in the Laws*; the argument is far from lucid and the reader should be warned that its interpretation is controversial. I give here my own view.*

The Athenian asserts, as an article of faith, the thesis that 'the wicked man is wicked against his will'. This paradox, attributed in earlier dialogues to Socrates, amounts, baldly stated, to this: it is simply not in the nature of things that a man should choose *evil; if he does wrong, it must be because for some reason he was mistaken or was compelled to do wrong and could not help himself. But as the Athenian points out, this thesis would seem to cut the ground from under a legislator's feet: a legislator provides for punishment of crimes on the assumption that they are voluntary, and that it makes sense to punish a man for choosing to do wrong (except in cases of 'involuntary crimes' committed under compulsion or by accident). Without arguing the truth of his paradox, the Athenian resolutely refuses to accept the customary distinction between voluntary and involuntary crimes.*

A new distinction is put forward to help solve the difficulty. Any crime can be seen under two 'aspects': (a) the actual physical harm or damage done, or the criminal act itself; (b) the 'injustice' which prompted the commission of the crime, and which is a psychological state*: against my will, my soul has become 'unjust', and has led me to choose to commit a crime. I have chosen to do a particular (criminal) act, and to that extent my crime is 'voluntary'; but in so far as the psychological state of injustice which led to my committing the crime can never have been chosen by me (according to the Socratic paradox), my crime is 'involuntary'. We can now see the relevance*

of the preceding discussion about the application of contradictory adjectives to the same object; such an application can make sense only if we see the object under different 'aspects'. At first sight the Socratic paradox ('crime is involuntary') and the popular view ('crime is voluntary') seem to conflict: as the Athenian says (p. 369), 'to suppose that a voluntary act is performed involuntarily makes no sense'. No sense, that is, until we see a crime under two aspects, (a) the (criminal) act itself ('voluntary' – I chose to do this act rather than to refrain); (b) my 'unjust' psychological state ('involuntary').

In the remainder of this section the Athenian first develops his view of the proper purpose of punishment, and then describes what he means by 'injustice' more fully. (1) Punishment. *The prime aim is to 'cure' the injustice in the soul, but in addition the criminal must be made to recompense his victim for the damage done. Recompense and cure must be kept distinct.* (2) Injustice. *This is analysed at some length. The details need not be rehearsed here, but it is worth noting that the three 'causes of crime' range from the purely emotional (anger) to the intellectual (ignorance), with the desire for pleasure coming somewhere in between (see note on p. 373).*

Some comments should be made about this ingenious theory. (1) *The Athenian does not feel inhibited from producing a penal code constructed in the normal way, with a list of crimes and conventional punishments. But the punishments are to be seen as 'cures for injustice', not as devices for retribution. We have to assume, to judge from his penal code, that the conventional kind of penalty, consisting essentially of the infliction of suffering, happens also to be the best 'cure'. It is quite a large assumption.* (2) *The distinction between 'voluntary' and 'involuntary' crime is still perfectly in order in the Magnesian code. As in conventional codes, 'involuntary' more or less amounts to 'by accident'; 'voluntary' means 'deliberately chosen,* but as a result of involuntary injustice in the soul'. *'Voluntary' crimes in the Magnesian code, as in others, deserve punishment, but punishment is to be seen as 'cure'.* (3) *This apparently enlightened view of the purpose of punishment should not blind us to some unbelievably barbarous punishments prescribed in the code; the Athenian has to explain that the death penalty is really 'good' for the criminal (pp. 357–8 and 372).* (4) *The whole theory seems to do away with the*

notion of free will and to make man a puppet at the mercy of various forces (see pp. 74 and 372); yet from another point of view, it seems to be a resounding vote of confidence in the fundamental soundness of the human will.

THE ATTACK ON THE DISTINCTION BETWEEN 'VOLUNTARY' AND 'INVOLUNTARY'

ATHENIAN: Now, Cleinias, we ought to examine our own position again. How far is it consistent in this business?

CLEINIAS: Consistent? What consistency do you mean?

ATHENIAN: Earlier in our discussion I think I have said quite categorically – or if I haven't before, assume I'm saying it now – that . . .

CLEINIAS: What?

ATHENIAN: . . . all wicked men are, in all respects, *unwillingly* wicked. This being so, my next argument necessarily follows.

CLEINIAS: What argument?

ATHENIAN: That the unjust man is doubtless wicked; but that the wicked man is in that state only against his will. However, to suppose that a voluntary act is performed involuntarily makes no sense. Therefore, in the eyes of someone who holds the view that injustice is involuntary, a man who acts unjustly would seem to be doing so against his will. Here and now, that is the position *I* have to accept: I allow that no one acts unjustly except against his will. (If anyone with a disputatious disposition or a desire to attract favourable notice says that although there *are* those who are unjust against their will, even so many men do commit unjust acts voluntarily, I would reject his argument and stick to what I said.) Well then, how am I to make my own arguments consistent? Suppose the two of you, Cleinias and Megillus, were to ask me, 'If that's so, sir, what advice have you for us about laying down laws for the city of the Magnesians? Do we legislate, or don't we?' 'Of course we legislate', I'd say, and you'd ask: 'Are you going to make a distinction for the Magnesians between voluntary and involuntary acts of injustice? Shall we

impose stiffer penalties on voluntary wrong-doing and acts
861 of injustice, and smaller penalties on the involuntary? Or shall we treat them all on an equal footing, on the grounds that there simply is no such thing as an act of voluntary injustice?'

CLEINIAS: You are perfectly right, sir. So what use shall we make of this position we have just taken up?

ATHENIAN: That's a good question. First of all, we shall make this use of it –

CLEINIAS: What?

ATHENIAN: Let's cast our minds back. A few minutes ago we were quite right to say that in the matter of justice we were in a state of great muddle and inconsistency. With that in mind, we may go back to asking questions of ourselves. 'We have not yet found a way out of our confusion in these things. We have not defined the difference between these two categories of wrongs, voluntary and involuntary. In all states, every lawgiver who has ever appeared treats them as distinct, and the distinction is reflected in his laws. Now, is the position we took up a moment ago to overrule all dissent, like a decision handed down from God? Shall we make just this one assertion and dismiss the topic, without adducing any reasons to show that our position is correct?' Impossible. What we must do, before we legislate, is somehow make clear that there *are* two categories, but that the distinction between them is a different one. Then, when one imposes the penalty on either, everybody will be able to appreciate the arguments for it, and make some kind of judgement whether it is the appropriate penalty to have imposed or not.

CLEINIAS: We think you state the position fairly, sir. We must do one of two things, either stop insisting that unjust acts are always involuntary, or, before going any further, demonstrate its validity by means of a preliminary distinction.

ATHENIAN: The first of the two alternatives, denying the proposition when I believe it to represent the truth, is absolutely unacceptable to me. I should be breaking the laws of both God and man. But if the two things do not differ by virtue of being 'voluntary' and 'involuntary', how *do* they

differ? What other factor is involved? That is what we have to try, somehow or other, to show.

CLEINIAS: It is surely impossible, sir, to approach the problem in any other way.

THE NEW DISTINCTION, AND THE PURPOSE OF PUNISHMENT

ATHENIAN: So this is what we shall try to do. Look: when citizens come together and associate with each other, they obviously inflict many *injuries*; and to these the terms 'voluntary' and 'involuntary' can be freely applied.

CLEINIAS: Of course.

ATHENIAN: But no one should describe all these injuries as acts of injustice, and conclude that therefore the unjust acts committed in these cases of injury fall into two categories, (a) involuntary (because if we add them all up, you see, the involuntary injuries are no less numerous and no less great than the voluntary ones), and (b) voluntary *as well*. Rather than do that, consider the next step I am going to take in my argu- 862
ment: am I on to something or just drivelling? My position, Cleinias and Megillus, is not that, if someone hurts someone else involuntarily and without intending it, he is acting unjustly but involuntarily. I will not legislate so as to make this an involuntary act of injustice. Ignoring its relative seriousness or triviality, I shall refuse to put down such an injury under the heading of 'injustice' at all. Indeed, if my view is sustained, we shall often say of a benefactor that 'he is committing the injustice of conferring a benefit' – an *improper* benefit. You see, my friends, in effect we should not simply call it 'just' when one man bestows some object on another, nor simply 'unjust' when correspondingly he takes it from him. The description 'just' is applicable only to the benefit conferred or injury inflicted by someone with a just character and outlook. This is the point the lawgiver has to watch; he must keep his eyes on these two things, injustice and injury. He must use the law to exact damages for damage done, as far as he can; he must restore losses, and if anyone has knocked something

down, put it back upright again; in place of anything killed or wounded, he must substitute something in a sound condition. And when atonement has been made by compensation, he must try by his laws to make the criminal and the victim, in each separate case of injury, friends instead of enemies.

CLEINIAS: So far, so good.

ATHENIAN: Now to deal with unjust injuries (and gains too, as when one man's unjust act results in a gain for someone else). The cases that are curable we must cure, on the assumption that the soul has been infected by disease. We must, however, state what general policy we pursue in our cure for injustice.

CLEINIAS: What is this policy?

ATHENIAN: This: when anyone commits an act of injustice, serious or trivial, the law will combine instruction and constraint, so that in the future either the criminal will never again dare to commit such a crime voluntarily, or he will do it a very great deal less often; and in addition, he will pay compensation for the damage he has done. This is something we can achieve only by laws of the highest quality. We may take action, or simply talk to the criminal; we may grant him pleasures, or make him suffer; we may honour him, we may disgrace him; we can fine him, or give him gifts. We may use absolutely *any* means to make him hate injustice and embrace true justice – or at any rate not hate it. But suppose the lawgiver finds a man who's beyond cure – what legal penalty will he provide for this case? He will recognize that the best thing for all such people is to cease to live – best even for themselves. By passing on they will help others, too: first, they will constitute a warning against injustice, and secondly they will
863 leave the state free of scoundrels. That is why the lawgiver should prescribe the death penalty in such cases, by way of punishment for their crimes – but in no other case whatever.

CLEINIAS: In one way, what you have said seems eminently reasonable. However, we should be glad to hear a clearer explanation of two points: first, the difference between injustice and injury, and secondly the various senses of

'voluntary' and 'involuntary' that you distinguished so elaborately in the course of your argument.

A FULLER ACCOUNT OF INJUSTICE

ATHENIAN: I must try to meet your request and explain these points. Doubtless in the course of conversation you make at least this point to each other about the soul: one of the constituent elements (whether 'part' or 'state' is not important) to be found in it is 'anger', and this innate impulse, unruly and difficult to fight as it is, causes a good deal of havoc by its irrational force.

CLEINIAS: Yes, indeed.

ATHENIAN: The next point is the distinction we make between 'pleasure' and 'anger'. We say Pleasure wields her power on the basis of an opposite kind of force; she achieves whatever her will desires by persuasive deceit that is irresistibly compelling.[3]

CLEINIAS: Quite right.

ATHENIAN: Thirdly, we would be saying nothing but the truth if we named ignorance as a cause of wrong-doing. The lawgiver would, in fact, do a better job if he divided ignorance into two: (1) 'simple' ignorance, which he would treat as the cause of trivial faults, (2) 'double' ignorance, which is the error of a man who is not only in the grip of ignorance but on top of that is convinced of his own wisdom, believing that he has a thorough knowledge of matters of which, in fact, his ignorance is total. When such ignorance is backed up by strength and power, the lawgiver will treat it as the source of serious and barbarous wrong-doing; but when it lacks power, he will treat the resultant faults as the peccadilloes of children and old men. He will of course regard these deeds as offences, and will legislate against these people as offenders, but the laws will be of the most gentle character, full of understanding.

3. Pleasure (here personified) suggests specious reasons why one should do what one wants to do; desires thus reinforced by reasoning are very difficult to resist.

CLEINIAS: Your proposals are perfectly reasonable.

ATHENIAN: Most of us agree that some people are 'conquerors of' their desire for pleasure and feelings of anger, while others are 'conquered by' them. And that is in fact the situation.

CLEINIAS: It certainly is.

ATHENIAN: But we have never heard anyone say that some people are 'conquerors of' their ignorance, while others are 'conquered by' it.

CLEINIAS: Very true.

ATHENIAN: But we do say that each of these influences often prompts every man to take the opposite course to the one which attracts him and which he *really* wishes to take.

CLEINIAS: Yes, times without number.

ATHENIAN: May I now clearly distinguish for you, without elaboration, what in my view the terms 'just' and 'unjust' mean. My general description of injustice is this: the mastery of the soul by anger, fear, pleasure, pain, envy and desires,
864 whether they lead to any actual damage or not. But no matter how states or individuals think they can achieve the good, it is the conception[4] of what the good is that should govern every man and hold sway in his soul, even if he is a little mistaken. If it does, every action done in accordance with it, and any part of a man's nature that becomes subject to such control, we have to call 'just', and best for the entire life of mankind – and this in spite of the popular belief that damage done in such circumstances is an 'involuntary' injustice. However, we are not engaging now in a captious dispute about terminology. But since it has become clear that there are three kinds of basic faults, we ought first to impress these upon our memory even more firmly. Our first kind is a painful one, and we call it anger and fear.

CLEINIAS: Yes.

ATHENIAN: The second kind consists of pleasures and desires. The third, which is a distinct category, consists of hopes and opinion – a mere shot at the truth about the

4. I.e. the *correct* conception, on my interpretation of this murky paragraph.

supreme good. If we divide this last category twice,[5] we get three types; and that makes, according to our present argument, a total of five in all. We must enact different laws for the five kinds, and we must have two main categories.

CLEINIAS: And what are these?

ATHENIAN: The first category covers every occasion when crimes are committed openly with violence; secondly, we have crimes that take place under cover of darkness, involving secrecy and fraud. Sometimes we find a combination of both methods, in which case our laws will have to be very harsh indeed, if they are going to do their job.

CLEINIAS: Of course.

5. See p. 373: 'ignorance' is divided into a 'simple' and a 'double' form, and then the latter is divided into ignorance 'with power' and 'without power'.