§7. THE CORRECT WAY TO LEGISLATE: LAWS AND PREAMBLES

It was noticed (p. 158) that the initiative for framing the constitution and laws of the new state comes entirely from above; the colonists themselves have no say in the matter. But the Athenian is not so authoritarian as to be indifferent to the feelings of the citizens: he insists that they must welcome and accept the laws that will be framed for them. They must not be browbeaten into obedience like a slave-patient being treated by a slave-doctor. Just as a 'free' doctor explains the patient's illness to him, and tries to make him understand the reasons for the measures to be prescribed, in order to gain his co-operation, so the legislator must explain and justify his laws. Hence every law must be headed by a preamble justifying its provisions; further, the preamble must be rhetorical in character: it must not only instruct, but persuade. Only if a man ignores the preambles must the sanction of actual law be applied.

We shall interpret the doctrine of this section in accordance with our overall approach to Plato's political philosophy. We may feel that it shows a praiseworthy awareness of the importance of public opinion and a desire that the government should carry the people with it. On the other hand we may think that an efficient authoritarian regime will naturally prefer, if it can get away with it, to use the carrot rather than the stick.

THE LEGISLATOR MUST JUSTIFY HIS LAWS

ATHENIAN: The laws themselves will explain the duties we owe to children, relatives, friends and fellow-citizens, as well as the service heaven demands we render to foreigners; they will tell us the way we have to behave in the company of each of these categories of people, if we want to lead a full and varied life without breaking the law. The laws' method will be partly persuasion and partly (when they have to deal with characters that defy persuasion) compulsion and chastisement;

and with the good wishes of the gods they will make our state happy and prosperous. There are a number of other topics which a legislator who thinks as I do simply must mention, but they are not easily expressed in the form of a law. So he should, I think, put up to himself and those for whom he is going to legislate an example of the way to deal with the remaining subjects, and when he has explained them all as well as he can, he should set about laying down his actual code of laws. So what's the particular form in which such topics are expressed? It's none too easy to confine one's exposition of them to a single example, but let's see if we can crystallize our ideas by looking at the matter rather like this.

CLEINIAS: Tell us what you have in mind.

ATHENIAN: I should like the citizens to be supremely easy to persuade along the paths of virtue; and clearly this is the effect the legislator will try to achieve throughout his legislation.

CLEINIAS: Of course.

ATHENIAN: It occurs to me that the sort of approach I've just explained, provided it is not made to totally uncouth souls, will help to make people more amenable and better disposed to listen to what the lawgiver recommends. So even if the address has no great effect but only makes his listener a trifle easier to handle, and so that much easier to teach, the legislator should be well pleased. People who are anxious to attain moral excellence with all possible speed are pretty thin on the ground and it isn't easy to find them: most only go to prove the wisdom of Hesiod's remark that the road to vice is smooth and can be travelled without sweating, because it is very short; but 'as the price of virtue', he says,

> 'the gods have imposed the sweat of our brows,
> And long and steep is the ascent that you have to make
> And rough, at first; but when you get to the top, 719
> Then the rugged road is easy to endure.'[1]

CLEINIAS: It sounds as if he hit off the situation very well.

ATHENIAN: He certainly did. But after this discussion I'm

1. Hesiod, *Works and Days*, 287–92.

left with certain impressions which I want to put forward for your consideration.

CLEINIAS: Do so, then.

ATHENIAN: Let's have a word with the legislator and address him like this: 'Tell us, legislator, if you were to discover what we ought to do and say, surely you'd tell us?'

CLEINIAS: Of course.

ATHENIAN: 'Now didn't we hear you saying a few minutes ago[2] that a legislator ought not to allow the poets to compose whatever happened to take their fancy? You see, they'd never know when they were saying something in opposition to the law and harming the state.'

CLEINIAS: You're quite right.

ATHENIAN: Well, then, if we took the poets' side and addressed the legislator, would this be a reasonable line to take?

CLEINIAS: What?

ATHENIAN: This: 'There is an old proverb, legislator, which we poets never tire of telling and which all laymen confirm, to the effect that when a poet takes his seat on the tripod of the Muse, he cannot control his thoughts. He's like a fountain where the water is allowed to gush forth unchecked. His art is the art of representation, and when he represents men with contrasting characters he is often obliged to contradict himself, and he doesn't know which of the opposing speeches contains the truth. But for the legislator, this is impossible: he must not let his laws say two different things on the same subject; his rule has to be "one topic, one doctrine". For example, consider what you said just now. A funeral can be extravagant, inadequate or modest, and your choice falls on one of these three – the moderate – which you recommend with unqualified praise. But if I were composing a poem about a woman of great wealth and how she gave instructions for her own funeral, I should recommend the elaborate burial; a poor and frugal character, on the other hand, would be in favour of the cheap funeral, while the moderate man of moderate means would recommend accord-

2. See pp. 91 ff.

ingly. But you ought not to use the term "moderate" in the way you did just now: you must say what "moderate" means and how big or small it may be. If you don't, you must realize that a remark such as you made still has some way to go before it can be a law.'

CLEINIAS: That's quite right.

TWO CATEGORIES OF DOCTORS

ATHENIAN: So should the legislator whom we appoint skip any such announcement at the beginning of his laws? Is he to say without ceremony what one should and should not do, and simply threaten the penalty for disobedience before 720
passing on to the next law, without adding to his statutes a single word of encouragement or persuasion? It's just the same with doctors, you know, when we're ill: one follows one method of treatment, one another. Let's recall the two methods, so that we can make the same request of the legislator that a child might make of its doctor, to treat him as gently as possible. You want an example? Well, we usually speak, I think, of doctors and doctors' assistants, but of course we call the latter 'doctors' too.

CLEINIAS: Certainly.

ATHENIAN: And these 'doctors' (who may be free men or slaves) pick up the skill empirically, by watching and obeying their masters; they've no systematic knowledge such as the free doctors have learned for themselves and pass on to their pupils. You'd agree in putting 'doctors' into these two categories?

CLEINIAS: Of course.

ATHENIAN: Now here's another thing you notice. A state's invalids include not only free men but slaves too, who are almost always treated by other slaves who either rush about on flying visits or wait to be consulted in their surgeries. This kind of doctor never gives any account of the particular illness of the individual slave, or is prepared to listen to one; he simply prescribes what he thinks best in the light of experience, as if he had precise knowledge, and with the self-

confidence of a dictator. Then he dashes off on his way to the next slave-patient, and so takes off his master's shoulders some of the work of attending the sick. The visits of the free doctor, by contrast, are mostly concerned with treating the illnesses of free men; *his* method is to construct an empirical case-history by consulting the invalid and his friends; in this way he himself learns something from the sick and at the same time he gives the individual patient all the instruction he can. He gives no prescription until he has somehow gained the invalid's consent; then, coaxing him into continued co-operation, he tries to complete his restoration to health. Which of the two methods do you think makes a doctor a better healer, or a trainer more efficient? Should they use the *double* method to achieve a *single* effect,[3] or should the method too be single – the less satisfactory approach that makes the invalid more recalcitrant?

CLEINIAS: The double, sir, is much better, I think.

TWO CATEGORIES OF LAWS: AN EXAMPLE

ATHENIAN: Would you like us to see how this double method and the single work out when applied to legislation?

CLEINIAS: Yes, I'd like that very much.

ATHENIAN: Well then, in heaven's name, what will be the first law our legislator will establish? Surely the first subject he will turn to in his regulations will be the very first step that
721 leads to the birth of children in the state.

CLEINIAS: Of course.

ATHENIAN: And this first step is, in all states, the union of two people in the partnership of marriage?

CLEINIAS: Naturally.

ATHENIAN: So the correct policy for every state will probably be to pass marriage laws first.

CLEINIAS: No doubt about it.

ATHENIAN: Now then, to start with, let's have the simple form. It might run more or less like this:

A man must marry between the ages of thirty and thirty-five.

3. That is, I take it, the patient's health.

If he does not,

he must be punished by fines and disgrace –

and the fines and disgrace will then be specified. So much for the simple version of the marriage law; this will be the double version:

A man must marry between the ages of thirty and thirty-five,[4]

reflecting that there is a sense in which nature has not only somehow endowed the human race with a degree of immortality, but also planted in us all a longing to achieve it, which we express in every way we can. One expression of that longing is the desire for fame and the wish not to lie nameless in the grave. Thus mankind is by nature a companion of eternity, and is linked to it, and will be linked to it, for ever. Mankind is immortal because it always leaves later generations behind to preserve its unity and identity for all time: it gets its share of immortality by means of procreation. It is never a holy thing voluntarily to deny oneself this prize, and he who neglects to take a wife and have children does precisely that. So if a man obeys the law he will be allowed to go his way without penalty, but

If a man disobeys, and reaches the age of thirty-five without having married,

he must pay a yearly fine

(of a sum to be specified; that ought to stop him thinking that life as a bachelor is all cakes and ale),

and be deprived too of all the honours which the younger people in the state pay to their elders on the appropriate occasions.

When one has heard this law and compared it with the other, one can judge whether in general laws should run to at least twice the length by combining persuasion and threats, or restrict themselves to threats alone and be of 'single' length only.

MEGILLUS: The Spartan instinct, sir, is always to prefer brevity. But if I were asked to sit in judgement on these

4. These figures are perhaps only *exempli gratia*: see pp. 251 and 269.

statutes and say which of the two I'd like to see committed to
722 writing in the state, I'd choose the longer one, and my choice would be precisely the same for every law drafted in the alternative versions of which you've given us specimens. Still, I suppose Cleinias here too must approve this present legislation, seeing that it's his state that is contemplating the adoption of laws modelled on it.

CLEINIAS: You've put it all very well, Megillus.

ATHENIAN: However, it would be pretty fatuous to spend our time talking about the length or brevity of the text: it's high quality that we should value, I think, not extreme brevity or length. One of the kinds of laws we mentioned just now is twice as valuable for practical purposes as the other, but that's not all: as we said a little while ago, the two types of doctors were an extremely apt parallel.[5] A relevant point here is that no legislator ever seems to have noticed that in spite of its being open to them to use two methods in their legislation, compulsion and persuasion (subject to the limitations imposed by the uneducated masses), in fact they use only one. They never mix in persuasion with force when they brew their laws, but administer compulsion neat. As for myself, my dear sirs, I can see a third condition that should be observed in legislation – not that it ever is.

CLEINIAS: What condition do you mean?

PREAMBLES ESSENTIAL

ATHENIAN: Providentially enough, the point is brought out by the very conversation we've had today. Since we began to discuss legislation dawn has become noon and we've reached this splendid resting-place; we've talked about nothing but laws – and yet I suspect it was only a moment ago that we really got round to framing any, and that everything we've said up till now has been simply legislative preamble. Now

5. The point seems to be that in the case of the doctors, one kind of treatment was '*much* better' (p. 182) than the other (not simply twice as good). In other words, if you double the length of your laws, you *more* than double their value.

why have I pointed this out? I want to make the point that the spoken word, and in general all compositions that involve using the voice, employ 'preludes' (a sort of limbering up, so to speak), and that these introductions are artistically designed to aid the coming performance. For instance, the 'nomes' of songs to the harp, and all other kinds of musical composition, are preceded by preludes of fantastic elaboration. But in the case of the real 'nomes',[6] the kind we call 'administrative', nobody has ever so much as breathed the word 'prelude' or composed one and given it to the world; the assumption has been that such a thing would be repugnant to nature. But in my opinion the discussion we've had indicates that it is perfectly natural; and this means that the laws which seemed 'double' when I described them a moment ago are not really 'double' in the straightforward sense the term suggests: it's just that they have *two elements*, 'law' and 'preface to law'. The 'dictatorial prescription', which we compared to the prescriptions of the 'slavish' doctors, is the law pure and 723
simple; and the part that comes before it, which is essentially 'persuasive' (as Megillus put it), has an additional function, analogous to that of a preamble in a speech. It seems obvious to me that the reason why the legislator gave that entire persuasive address was to make the person to whom he promulgated his law accept his orders – the law – in a more co-operative frame of mind and with a correspondingly greater readiness to learn. That's why, as I see it, this element ought properly to be termed not the 'text' of the law, but the 'preamble'. So after all that, what's the next point I'd like made? It's this: the legislator must see that both the permanent body of laws and the individual sub-divisions are always supplied with preambles. The gain will be just as great as it was in the case of the two specimens we gave just now.[7]

CLEINIAS: As far as I'm concerned, I'd certainly instruct our lawgiver, master of his art though he is, to legislate in no way but that.

6. I.e. laws, the Greek word *nomoi* meaning both 'laws' and 'melodies'. Cf. pp. 153 and 255.

7. I.e. the two marriage laws on pp. 182–3.

ATHENIAN: Yes, Cleinias, I think you're right to agree that all laws have their preambles and that the first task must be to preface the text of each part of the legal code with the appropriate introduction, because the announcement it introduces is important, and it matters a great deal whether it is clearly remembered or not. However, we should be wrong to demand that both 'major' laws and minor rules should *invariably* be headed by a preface. Not every song and speech, after all, needs this treatment. (They all have introductions in the nature of the case, but it's not always appropriate to use them.) Still, the decision in all these cases must be left to the discretion of the orator or singer or legislator.

§8. GENERAL PREAMBLE TO THE LEGAL CODE

Cleinias now asks that the earlier remarks (pp. 174–7) about religious duties should be repeated and followed up in specifically preamble form. The Athenian more than obliges, and delivers a long sermon (as we might want to call it) on the whole moral basis of the coming detailed legislation. This preamble serves as the general *preface (mentioned on p. 185) to the entire legal code as opposed to the* individual *prefaces to the various sections of it.*

The preface is very earnest, and sounds quite Victorian. It is chiefly concerned to extol the virtues of thrift, piety, honesty, restraint, etc., and to condemn their opposites. The Athenian deals with a man's duties under three main headings: duties to the soul, the body and one's fellow-men. Today we are apt to be somewhat mystified by the first two of these: what does the Athenian mean by 'honouring' the soul and the body? The Greek terms are somewhat emotive and not at all precise; equivalent modern English expressions are hard to come by. 'Giving priority to spiritual values' gets something of the sense of 'honouring the soul', and 'treating the body as it deserves' roughly expresses 'honouring the body'. Even though the literal translation sounds a trifle odd to modern ears, I have thought it best to keep it: even today we have by no means lost the notion that we consist of body and soul and that there is somehow an 'I' who can (say) ruin or do good to either. (Compare 'I owe it to myself'.) A literal translation reflects this popular and non-philosophical point of view. But the central point the Athenian wants to make is that the 'honour' of the soul is paramount, and that of the body secondary, while external goods come last: he insists on a scale *of value, and the literal translation has the added advantage of clarifying this, as he speaks of 'honouring' not only the soul and the body but possessions too. The modern reader has simply to make the slight effort required to adapt himself to the Athenian's conceptual framework.*

The closing topic ('Virtue and Happiness') is an elaborate and fascinating attempt to show that the virtuous life offers us the