

PLEASURE AND PAIN AND THE PENAL THEORY IN PLATO'S LAWS

JAKUB JINEK

Faculty of Arts

University of Pardubice (Czech Republic)

jakub.jinek@upce.cz

ABSTRACT

The paper searches for the systematic link between the psychological doctrine of Plato's *Laws* and its theory of punishment. This link can be seen in the ability of emotions (i.e., pleasure and pain) to be harmonized in an individual soul; this ability forms the precondition for the soul's compliance with education and punishment. The penal law contributes to the proper individualization of the soul by unifying emotions of pleasure and pain; in the case of the rare philosophical nature, however, there is no need of punishment at all since it already presents a well-ordered unity.

KEYWORDS

Plato; Pleasure and pain; Moral psychology; Punishment; Law

INTRODUCTION

Pleasure and pain play a central role in the project of the second best constitution in Plato's *Laws*. As dominant determinants of human conduct, they represent the chief source of motivation for human beings and thus also the main focus of any discussion of lawgiving (*Leg.* I,636d). To be more specific, pleasure and pain serve as an instrument for the educational purposes of the lawgiver of the new colony of Magnesia (*Leg.* I,647c-d), and this idea also seems to underline the penal code of the second best city: The Athenian presupposes that pleasure and pain should be imposed on wrongdoers in order to cure their wicked character, which is conceived of as an illness (*Leg.* V,735d; IX,860b, 862d).

It belongs to the nature of Plato's philosophical writings, however, that many central concepts are not directly discussed here and this is also the case with our topic; the nature of the link between emotions or, more generally, the soul, and punishment is never made fully explicit in the *Laws*. This fact has provoked criticism in a part of the scholarly literature.¹ Among several problems cited in this

¹ See Stalley (1983), pp. 145-146; Gagarin (1993), p. 83; Stalley (1995), pp. 473; Lewis (2011), p. 26, 29. Authors usually point out the discontinuity or tension between Plato's penal theory based on

regard, one deserves our special attention: since pleasure and pain are supra-individual principles in Plato² it is obscure how the lawgiver could *effectively* direct such a power by a positive law in order to meet the needs of an individual soul.

Another issue that evoked much attention in the literature is how the link between emotions and penalties could be the source of a *legitimate* penal theory. Such a formulation of the question implies that the theory of punishment should be understood as the legitimation of a certain problematic practice, namely causing pain and harm to the individual, which then implies certain legitimization *strategies* corresponding to particular *functions* of punishment: retributive, deterrent or reformative.³ Plato's efforts are often associated with the last mentioned function, because his theoretical aim is directed to the future, whether his theory is conceived as curative or educational.⁴ However, as some critical responses have already pointed out, the attempt to separate one of the functions in Plato's theory and focus on it is quite misleading both from a systematic and from a historical point of view.⁵ The key to understanding Plato on this point is to avoid reductionism and to include all the necessary context, both epistemological and metaphysical,⁶ or political and institutional.⁷

In what follows, I would like to build on this intuition and reconsider the relationship between the psychology of Books I and II and the penology of Book IX from this expanded perspective, including not only Plato's cosmology and metaphysics, but also his doctrine of metempsychosis. I hope then to be able to reconstruct the possible link between the two realms that will be able to answer both the problem of the effectiveness, and also the problem of the legitimacy, of Plato's penal theory.

1. PLEASURE AND PAIN

That pleasure and pain are conceived as primarily supra-individual factors in the *Laws* emerges from two famous passages of Book I, which compare pleasure and pain either to "two fountains which gush out by nature's impulse"⁸ or to

his innovative psychology (and radical presuppositions such as that no one does wrong willingly or that punishment provides a cure for the soul) and actual punishments prescribed by the laws of Magnesia that are basically retributive and thus rather traditional. Special criticism has been addressed to the assumption that punishment should cure the crime.

² Besides the passages of the *Laws* (I,636d, 644d–e) discussed below, see *Philb.* 26b, 61c, 62d, 65d; *Tim.* 86b–e.

³ Mackenzie (1981); see esp. pp. 2, 205–206; Adams (2019), pp. 3–8.

⁴ See Saunders (1991), pp. 164–195, for the former, and Mackenzie (1981), pp. 202–204, for the latter.

⁵ See Taylor (1982), pp. 198–199, and works in two following notes.

⁶ Rousseau (1983), p. 942.

⁷ Rosen (1995), pp. 477, 484–487.

⁸ δύο γὰρ αὐται πηγαὶ μεθεῖνται φύσει ῥεῖν, *Leg.* 636d8; cf. *Phil.* 61c5, 62d4, 7.

“some sinews or cords” in “each of us living creatures who are puppets of the gods”.⁹ Both metaphors depict a structurally similar relation between the emotional aspects of the soul and their rational control¹⁰ that subordinates emotions to a norm.¹¹

Puppets: Autonomous dynamism of emotions

In the latter metaphor, the soul is conceived as a complex plurality of parts:¹² besides pleasure and pain, it also includes fears and confidences that form a counterpart to reason (λογισμός, 644d2)¹³ which – when expressed as a common teaching of the city (δόγμα πόλεως) – receives the title *nomos*. The relation of the parts is described by the Athenian as follows:

these inward affections of ours, like sinews or cords, drag us along and, being opposed to each other (*enantíai*), pull one against the other to opposing actions (*ep' enantías praxeis*); and herein lies the dividing line between goodness and badness. For, as our argument declares, there is one of these pulling forces which every man should always follow and nohow leave hold of, counteracting thereby the pull of the other sinews: it is the leading-string, golden and holy, of calculation (*logismos*).¹⁴ (644e1–645a1, transl. Bury¹⁵)

⁹ θαῦμα μὲν ἕκαστον ἡμῶν ἡγησόμεθα τῶν ζώων θεῖον, *Leg.* 644d7–8; ἐν ἡμῖν οἶον νεῦρα ἢ σμήρινθοί τινες, 644e1–3; cf. νεύρων ἐπιτόνους, XII,945c5. The fact that the dynamism of emotions is of supra-individual, probably cosmological origin can lead to some misunderstandings concerning their nature and their relation to the rational part. A widespread interpretation claims that their relation is that between a physical substrate and its rational organization, which is imposed on it subsequently: Jaeger (1989), p. 1180; Krämer (1959), p. 148; Sandvoss (1971), p. 25; Bravo (2003), p. 104. This picture only underlines doubts as to whether such a scheme with two fundamentally distinct elements can inform any penal theory at all. Nevertheless, a closer look at the moral psychology of Books I and II reveals a more subtle picture that, on the one hand, allows for influence of the hedonic-emotional elements on the soul and, on the other hand, assumes a specific notion of their individualization (see below).

¹⁰ For the first passage, see negatively: ἀνεπισημόνως, 636e2; for the second: λογισμός, 645a5.

¹¹ For the formulation of the norm in the first passage, see ὅθεν τε δεῖ καὶ ὅποτε καὶ ὅπσον, 636d8 f., cf. Lisi (1985), p. 111. For the latter passage see νόμον, 645b7. This model is closely connected to the legislative context of the dialogue, where one of the main tasks of the lawgiver is to assume control over the emotions (I,636d, 645b, 648b–c; cf. II,653b–c, 659c–660a).

¹² It is important for the overall understanding of the aim of the dialogue that this plurality is observed against the background of the *oneness* of every person (ἓνα μὲν ἡμῶν ἕκαστον αὐτὸν τιθῶμεν, 644c4). See below, footnotes 29 and 30.

¹³ The structure of the soul is thus threefold (cf. 632c5–6, 644c9, 653a7, 689b, 864a), similarly as in the *Republic* or *Phaedrus*. For more details to this point, see Hentschke (1971), p. 208, note 91; cf. 199–200; Morrow (1960), pp. 557–558. Recent arguments against trichotomy: Görgermanns (1960), pp. 120–121; Stalley (1983), pp. 47–48; Schöpsdau (1994), pp. 228–230; Robinson (2001), p. 117; Bobonich (2002).

¹⁴ ταῦτα τὰ πάθη ἐν ἡμῖν οἶον νεῦρα ἢ σμήρινθοί τινες ἐνοῦσαι σπῶσίν τε ἡμᾶς καὶ ἀλλήλαις ἀνθέλκουσιν ἐναντία οὔσαι ἐπ' ἐναντίας πράξεις, οὗ δὴ διωρισμένη ἀρετὴ καὶ κακία

The key to this central passage lies – in my view – in two different meanings of the word “opposition” (*enantion*). The text does not imply that the opposing emotions drag us to *correspondingly* opposing actions:¹⁶ While the first opposition seems to refer to the contradictory relation of pleasure and pain mentioned a few lines earlier (644c6–7),¹⁷ the other opposition of actions related to the distinction between *areté* and *kakia* might rather describe a subtler opposition between acts tending to extremes and actions seeking a moderated mean.

This subtler opposition has been indicated in the previous discussion. The interlocutors have spoken about the variety of actions directed towards pleasure so far: about shunning pleasures (φεύγειν, 634a8, 636e6) or abstaining from them (ἀπέχεσθαι, 635b6), which has been contrasted to tasting them (γεύεσθαι, 634a7, 635b6) and bringing in the midst of them (ἄγοντα εἰς μέσας, 634a9); further, they mentioned falling into them (προσπίπτειν, 637a3). This catalogue of acts with respect to pleasure provides us with an entirely intelligible model of *enantiai praxeis* (see the figure below): *abstaining* from pleasures is naturally opposed to *falling* into them; at the same time, insofar *tasting* pleasures is explicitly opposed to *shunning* them, it forms an *enantion* to both parts of the previous opposition. All in all, there are three pairs of opposing actions: shunning and falling (636e f.), shunning and tasting (634a, 635b), and finally falling and tasting. And since the opposition in question should be formative for the distinction between virtue and vice, the only relevant contradiction here seems to be the “Aristotelian” one: that between the blamable extremes and the tempered middle action. Thus what we encounter here is a model of the mean between two contrasting extremes.¹⁸

This is perfectly in accord with the way the role of *logismos* is described in our passage. The formulation implies its parallel acting against two opposing emotions simultaneously (cf. τοῖς ἄλλοις)¹⁹ and thus against their contradictory tendency. As a result, *logismos* supports the mean between the emotions.

κεῖται. μιᾷ γάρ φησιν ὁ λόγος δεῖν τῶν ἔλξεων συνεπόμενον ἀεὶ καὶ μηδαμῇ ἀπολειπόμενον ἐκείνης, ἀνθέλκειν τοῖς ἄλλοις νεύροις ἕκαστον, ταύτην δ' εἶναι τὴν τοῦ λογισμοῦ ἀγωγὴν χρυσῆν καὶ ἱεράν.

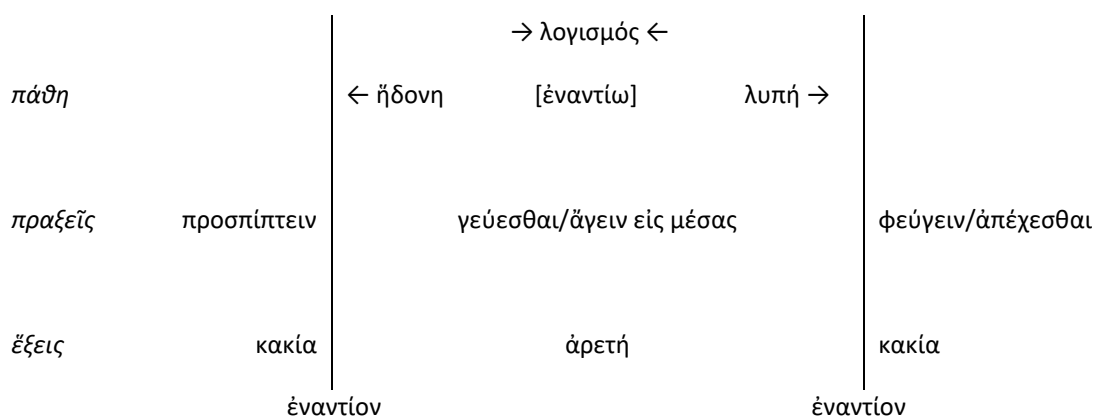
¹⁵ I prefer using the older translation of Bury (1967–1968) for its superiority over Saunders (1970), Pangle (1980) and Schofield–Triffith (2016) in terms of the accuracy of the overall image; for the sake of unity, I also use the same translation in further cases below.

¹⁶ Despite Saunders' mistranslation (1970, p. 74).

¹⁷ Δύο δὲ κεκτημένον ἐν αὐτῷ συμβούλω ἐναντίω τε καὶ ἄφρονε, ὧ προσαγορεύομεν ἡδονὴν καὶ λύπην.

¹⁸ Those interpreters, who reject this model for the *Laws* (Frede [2010], p. 120), entirely ignore this elaborate terminology.

¹⁹ Cf. the interpretation of the words ἐπὶ δὲ πᾶσι τούτοις as „zusätzlich zu/neben diesen [d. h. den vier genannten Kräften: Lust/Schmerz, Furcht/Zuversicht]“ in Schöpsdau (1994), p. 236.



It is obvious that the relation between the rational and the emotional described here is not that of an external organization of chaotic material.²⁰ Rather, virtue as a good state of the soul is produced by a complex interaction of the parts: emotions with their naturally oppositional dynamism limit each other while reason directs them towards a norm. In this model reason presents a necessary but not sufficient condition for virtue. As its guidance is mild and non-violent (πράου δὲ καὶ οὐ βιάου), it needs assistance (ὑπηρετῶν, 645a6) from another part. Given that at the same time our passage does not mention any further internal or external factor, this help might possibly be provided by the “middle” emotional faculty of the soul, namely fear and confidence – which are, however, closely connected to their respective emotions of pain and pleasure (644c10–d1). Maybe, we have to do with a model similar to that of the spirited part providing assistance to reason against desire in the *Republic*.

Education: Emotional virtue without logos

The picture of the relatively independent role which emotions play in the moral psychology of the *Laws* is further developed in the passage at the beginning of the second book that defines education (653a–c). The Athenian claims that *aretē* and *kakia* are firstly given to children by means of pleasure and pain before *logos* comes into the soul (653a6–7, b7, cf. 643e3–6). This state of the soul can be seen as a provisional virtue conceived as a good association of pleasure with love and of pain with hatred. This pre-virtue, called *paideia* by the Athenian (653c3), is responsible for the fact that children follow the right measure and mean (see VII,792d2) and therefore they can be said to be virtuous already as children. Though the active role in education falls to habituation which arises from proper customs (εἰθίσθαι ὑπὸ τῶν προσηκόντων ἐθῶν, 653b5–6), i.e. due to a form of *nomos*, which ensures that the coupling of pleasure with love and suffering with

²⁰ Frede (2010), p. 116, stresses that according to this picture, the soul is not determined by any higher external factor but only by the working of its own “strings”.

hate is in harmony (συμφωνία, b4, 6) with *logismos* (as soon as it is given to the soul), pleasure and pain themselves clearly play a significant role in this process and therefore cannot be conceived as mere disordered input, to be tamed by reason. In an individual soul, not only do they become receptive to a rational guidance, they in fact *co-form* the nature of the virtuous soul. The particular soul of a person seems to be a place²¹ where the supra-individual sources of pleasure and pain transform – with the assistance of *nomos* – into the form of an individual virtue.²²

But what exactly is the type of cooperation between emotions and *nomos* qua education, i.e. between non-rational and rational elements, and what particular role do they play in the process of establishing an individual virtuous soul? It seems that in the *Laws*, a response to this question – a response which has especially intrigued scholars of Plato's *Republic*²³ – is indicated, which differentiates between types of persons under consideration.

Testing by wine: artificial state of soul without logismos

Shortly after the metaphor of puppets, the Athenian defends – surprisingly enough for his interlocutors – the educational role of wine (645b ff.). Wine can help with moral training since it provides a necessary *test* of the citizens (τῶν πολιτῶν βάσανον, 648b1)²⁴ indicating whether or not they can cope with their natural inclinations. The mechanism of the test, based on a complete neutralization of reason (along with other cognitive faculties) such that it is no longer able to provide the controlling and tempering role, is achieved by means of wine, which brings the soul into a state comparable to that of a child (645e). Now, the Athenian presupposes that the virtue or wickedness of one's character is recognizable in this artificially imposed state. What is to be investigated during the test is the disposition of the soul (cf. τὴν τῆς ψυχῆς ἕξις, 645e5) deprived of its internal guidance, that is, in a situation of an absolute dominance of the natural *pathê* (pleasure, pain, love and hatred); if someone in this state succeeds in passing the test it must mean that his emotions *taken for themselves* are already well-organized.

²¹ For the metaphor of „spot“ see Frenzel (2000); for the „place“ of pleasure see Carone (2003).

²² Therefore it is misleading to suggest that the emotions themselves “make every human being an individual, before he is a citizen” (Sassi 2008, p. 147). There is no true individuality without the law since emotions themselves are supra-individual, cosmological forces – with the exception of the philosophical natures, which are individual merely on the basis of their “virtuous” emotions alone (see below).

²³ See *Resp.* 4;13b–c, 440e, 452c–d; Williams (1973); Annas (1981), pp. 129–131.

²⁴ Along with another hypothetical drink that is employed – obviously not without comical intent – as a parallel instrument that can better explain the mechanism of the test that both wine and the hypothetical drink effect.

It is important to notice that now, differently from the previously discussed passage, the “individuality” of such a psychic scheme (see ἀσχημοσύνη, 648e1–2) by which the person knows how to ward off the evil, is not based on *nomos*; for the Athenian distinguishes clearly the test that focuses on individual nature (cf. ἑαυτῷ ... φύσει, 648d5) from education that must be legally promoted.²⁵ It turns out that the lawgiver has in fact *two contrasting* tasks: while the goal of education is the *unity* of the state, the education itself presupposes the test which *differentiates* among the citizens since only a few can possibly pass it.²⁶ It is this second perspective that the Athenian has in mind when he speaks about the *physeis* and *hexeis* of the souls that the lawgiver should know (650b7).²⁷

Let us remind that the differentiation of citizens by testing them with temptations is a crucial part of the project of the best city of the *Republic*. At the end of the third book (412b ff.), Socrates claims that only those who successfully pass a series of periodically recurring tests can be raised as rulers; thereby the hitherto unified group of guardians is differentiated into two groups: real rulers and their auxiliaries. But the appearance of philosophically educated rulers turns out to be central also for the city of Magnesia (XII,962a–c); and in Book IV, in a direct connection to the question of who should actually rule in the new colony, the Athenian explicitly mentions the need for an incorruptible individual whose *sophrosynē* is that “which by natural instinct springs up (σύμφυτον ἐπανθεῖ) at birth (εὐθύς) in children and animals, so that some are incontinent (ἄκρατῶς ἔχειν), others continent (ἐγκρατῶς), in respect of pleasures” (IV,710a5–8; transl. Bury). It is probably *this* particular human nature which can emerge from the tests of drinking parties and can be promoted to the rulers (XII,961b2).²⁸

The philosophical soul

When we ask how the stability of emotions is achieved by such individuals and what exactly such a state of the soul looks like, we can return to the image of

²⁵ πρῶτον μὲν 648b1– δέ 648b8, πρῶτον μὲν ... πείραν – εἶτα εἰς τὸ μελετᾶν, 649d8–9; cf. 648d5.

²⁶ This drinking test in which a drinker should prove to be actually sober is – despite its comical meaning – a clear hint at the philosophical figure of Socrates as described in the *Symposium*. For Socratic traits of the Athenian in the *Laws*, see Pangle (1980), pp. 378–379. See also the “rarity principle” that holds for philosophers in the *Republic* (II,379c; IV,428e, 431c–d; X,605c).

²⁷ For the recent interpretation that acknowledges the fundamental (and hierarchical) difference between various types of persons in the *Laws*, see Kraut (2010), p. 64–65; Prauscello (2014), pp. 57–101.

²⁸ In the course of following discussion, a systematic significance is repeatedly given to this particular human nature in respect to pleasure: It forms the criterion of the good pleasures for the whole city (II,658e–659b) and demonstrates the unity of the pleasant, the just, the good and the beautiful in a happy human life (II,660b–664b); also, it presents the background on which the famous calculus of pleasure and pain can be made to show that a good life is at the same time the most pleasant one (V,732d–734e).

puppets for an answer. Here we have been told that the basis of the virtuous state of the soul and the corresponding virtuous action is the ability to withstand the natural opposing dynamics of pleasure and pain and to balance them towards the middle. This role is usually played by *logismos* but, as we have seen and as is now confirmed, the emotional side of the soul itself can also do the job. The resulting emotional state, in which opposing *pathê* actually come to the middle, then takes the form of a *unified duality* corresponding to the status of being in Plato, which – as we learn from the indirect tradition and as a few hints in the dialogues also confirm – is *generated* out of the highest principles of the One and the Dyad.²⁹ In other words, the soul of the philosopher – precisely as it is envisaged also in the *Republic* (*Resp.* VI,490b) – mirrors the highest level of Platonic metaphysics.

This human type basically transcends the general context of education, in which the emotions representing super-individual sources become “individualized” at the spot of a concrete soul by *nomos*. This picture is pertinent for the majority of people who are to be educated by the laws of the city, but it is only secondary with respect to emotionally stable *physis* of the individual who is morally flawless from his very birth and thus, with respect to the legal code of the city, morally self-sufficient. For this prominent nature, pleasure and pain are no temptations that should be normatively limited, but phenomena which can themselves be employed moderately for the good of the soul.

The dialogue never makes explicit the origin and the reason for the emergence of such stable – and exceptional – *physeis*. But in the context of *metempsychosis*, which is repeatedly mentioned in the last third of the dialogue (see IX,872d–873a, 881a–b; X,903d–e; XI,934a–b), it seems that the emotional stability of a person who is good since his/her very birth can be referred to the life that the person lived before the current incarnation. This metaphysical context, along with the fact that the whole conception presupposes two different types of *hexeis* of the emotional soul, a corruptible and an incorruptible one, is highly relevant for our next topic – punishment.

2. THE THEORY OF PUNISHMENT

Dialectics of punishment

Similarly as with education, where the lawgiver’s task comprises both unification and differentiation of people, legislation concerning punishment, too, must consider two principles that seem to stand in tension with each other. On the

²⁹ See Aristotle, *Met.* 987b18–21, 980a10 ff., 1080b6 ff., 1081a14 f., 25, 1081b18, 24 ff., 31 f., 1083b23, 1085b7, 1091a4 f., 9 ff.; Alexander of Aphrodisias, *In Arist. Met.* 987b33, 56,35 Hayduck; Simplicius, *In Arist. Phys.* 187a12, pp. 151,6–19 Diels; 202b36, pp. 453,22–30, 455,1–11 Diels; Sextus Empiricus, *Adv. mat.* X,277; Xenocrates fr. 68 Heinze, Speusippos, fr. 88 Isnardi Parente; see further Plato, *Philb.* 26d; cf. 54c; *Polit.* 283c; cf. *Soph.* 219c.

one hand, the penal code of Magnesia shows a tendency to unity (IX,856e5, 856e8-857a1; X,885a7, 909d; XI,934a; XII,941b-942a). An expression of this tendency is the Athenian's suggestion that all thefts should be punished by "one law and one punishment for all" (εἷς αὖ νόμος κείσθω καὶ μία δίκης τιμωρία σύμπασιν, 857a3-4) which provokes Cleinias' critical response and subsequently the whole theoretical discussion of punishment in Book IX (857b ff.). The principle that the Athenian seems to follow here can be called, for the purposes of our interpretation, the *unity of law principle*.

On the other hand, any penal code seems to require a differentiation of punishments in proportion to the gravity of the crime. This opinion is widely shared, not only by ordinary people, represented here by Cleinias, or by "all lawgivers" in the cities (861b), but also - at least partly - by the present project of Magnesia itself (860e2 f.): The penal legislation proposed so far has in fact differentiated between punishments and the Athenian indicates that the lack of differentiation could be in conflict with his own *logos*. Let us call it the *penal differentiation principle*. The situation concerning punishment thus seems to be a dialectical one and the corresponding theory will have to combine unity with multiplicity.

From the point of view of Plato's metaphysics, it is noteworthy that the Athenian reformulates the multiplicity in terms of bipolarity: the necessary differentiation can follow a simple scheme of "bigger" or "lesser" penalties (μείζονες, 860e9, ἐλάττωνες, 861a1).³⁰ What is needed is to find out the systematic background for this binary distinction consisting in "two things" (ἔστων δύο, 861d5; cf. ταῦτα, 861b1, 2) which can justify appropriate differentiation (861c3-6).³¹ With reference to the Socratic principle that "all bad men are unwillingly bad" (860d ff.; cf. V,731c), the Athenian disproves the conception held by all lawgivers that there are "two kinds of wrongdoings" (δύο εἶδη τῶν ἀδικημάτων, 861b4), voluntary and involuntary (ἐκούσια - ἀκούσια). His own strategy is to find an alternative eidetic background for penal differentiation, i.e. the other "two things".

First of all, the Athenian points out an alternative bipolar distinction between *injury* and *injustice*, or, more precisely, between involuntary injury (ἀκούσια βλάβη) and voluntary injury (ἐκούσια βλάβη), which is injustice (ἀδίκια).³² This

³⁰ This surely can remind us of "more and less" (μᾶλλον καὶ ἥττον) as the "mark" of the Unlimited which in Plato's *Philebus* (*Phil.* 24e) stands for Plato's indefinite metaphysical principle of the Dyad of which the indirect Platonic tradition informs us (see above, n. 29). See Seyr (2006), pp. 149-159.

³¹ Cf. τό τε πρεπόντως τεθέν ... κρῖναι καὶ τὸ μή.

³² And injustice is in turn - on the Socratic principle - involuntary as injustice (ἄκων ... ἀδικεῖν ὁ ἀδικῶν, 860d6-7). In the literature it has been correctly observed that we have to do with two different concepts of the involuntary here (Lisi 2008; Schüttrumpf 2013). While in connection ἀκούσια βλάβη, "involuntary" denotes external action, in the case of ἄκων ἀδικεῖν it refers to the

distinction is not the solution to the problem of penalty differentiation yet, but a preliminary step which shows that only *adikia* as a state of the soul (see ἥθος καὶ τρόπος, 862b3) can in fact be the subject of differentiation of penalties; in case of involuntary injury, on the other hand, the legislator should make use of laws “to make good the injury inflicted”,³³ in other words, he has to compensate for injury by legal means and restore the initial state of affairs. Since this compensation logically corresponds to the amount of injury inflicted, it is probably the instantiation of “one law and one punishment” (857a3–4) envisaged at the very beginning of the whole discussion by the Athenian. The concept of *injury* therefore reveals the field in which the *unity of law principle* might find its application and represents the aspect of unity within Plato’s dialectical penology.

Consequently, the distinction relevant for penal differentiation is to be sought in a subdivision of *injustice*, namely between its curable and incurable (ἰατὴ – ἀνίατη) forms. These are the “two kinds” that provide the conceptual background of punishment differentiation. In the former case, the soul should be healed by instruction and compulsion, i.e. by words or deeds, and also by both pleasure and pain (862d).³⁴ In the latter case, however, the only reasonable response is the death penalty (which is a healing too, after all; see XII,958a1).

The whole structure of Plato’s dialectical penology can be summarized as follows:

Punishments	μείζονες	ἐλάττονες
wrong conception	δύο εἴδη	
	ἐκούσια ἀδίκια	ἀκούσια ἀδίκια
the Athenian’s alternative	δύο ἐστόν	
auxiliary distinction	ἀδίκια	ἀκούσια βλάβη
final distinction	ἀνίατη	ἰατὴ

inner state of the soul. In this difference, corresponding to the most basic distinction of Socrates’ ethics, the external involuntary abides to ordinary moral language (if we say, for example, that we didn’t mean to do something), while the inner kind presupposes a philosophical reformulation of common intuitions and the discovery of a central concept of true self-interest (see below).

³³ On line 862b6, along with Bury (1967–1968), Saunders (1970) and Schofield–Griffith (2016), and against Burnet (1907) and Pangle (1980), I accept Ritter’s (1896, p. 282) emendation of the text and read: καὶ τὸ μὲν βλαβὲν ἀβλαβές.

³⁴ And further by a series of parallel pairs of instruments which correspond to the basic opposition of pleasure and pain: honors and disgraces, fines and gifts (ἢ μεθ’ ἡδονῶν ἢ λυπῶν, ἢ τιμῶν ἢ ἀτιμιῶν, καὶ χρημάτων ζημίας ἢ καὶ δώρων, 863d5–6). On *atimia*, see Hunter (2011).

The Athenian explains the matter in more detail to rather slow-witted Cleinias (863a) by distinguishing various causes of wrong-doing (τῶν ἀμαρτημάτων αἰτίων, 863c1 f.) that correspond – and this is especially interesting for our subject – to different psychic powers.³⁵ These consist, according to the somewhat unusual Athenian systematics, which can be taken from two parallel passages of the dialogue (863b–d, 864b), of the following five kinds (see πέντε εἶδη, 864b8): 1. pain called anger and fear (λύπης..., ἦν θυμὸν καὶ φόβον ἐπονομάζομεν, 864b3, 863b3), 2. pleasure and desire (...δονῆς ... καὶ ἐπιθυμιῶν, 864b6), of an opposite kind of force (ἐξ ἐναντίας... ῥώμης); 3. ignorance (ἄγνοια, 863c1) or wrong opinion about the supreme good (δόξης τῆς ἀληθοῦς περὶ τὸ ἄριστον, 864b6–7) which is “easy”, i.e. the cause of trivial faults, and further “double” ignorance, connected with conviction of one’s own wisdom, which in turn can be a double kind, namely 4. backed up by strength and power, which is the source of serious and barbarous wrong-doing, or 5. lacking power which results in the peccadilloes of old man and children (863c–d). For these five εἶδη, the Athenian assumes that different laws (νόμους διαφέροντας ἀλλήλων, 864c1) must be enacted, and these *eidê* are further subject to another division into two γένη, namely crimes that are committed openly with violence and those committed under cover of darkness, involving secrecy and fraud. The proposed complex system of laws against curable injustice,³⁶ corresponding to the variety and multiplicity of previously mentioned methods of punishment (862d),³⁷ completes the task of penal differentiation, which complements the “one law and one punishment” for injuries; at this point the Athenian ends the debate and returns to giving laws (864c).

The unity of universals and of the soul

By incorporating the technical terminology of Platonic dialectics (εἶδη – γένη; ἐναντίον), psychological analysis strongly reminiscent of the trichotomy model from earlier discussion³⁸ and of course by including pleasure and pain as two opposite (cf. ἐξ ἐναντίας, 863b6) causes of wrong-doing, a clear connection with the psychological doctrine of Books I and II is established. However, to fully understand this connection, one has to see the philosophical background of the given differentiations and how they have been arrived at.

³⁵ They are called feelings (πάθος, 863b3), parts (μέρος, *ibid.*) or kinds (εἶδη, 864b8). The terminology varies here and the Athenian indicates that he does not care much about it (863b2 f.).

³⁶ While in the case of incurable injustice which deserves death, it is actually another case of “one law and punishment” and thus the unity of law principle.

³⁷ See above, footnote 34.

³⁸ See above, footnote 13.

First of all, the resulting conceptual distinction between injury and injustice is anticipated by a rather longer passage (857c–859b) whose link to the main argument might seem rather obscure at first glance. This passage reintroduces the most crucial and innovative distinction of the whole dialogue (firstly in *Leg.* IV,722d), namely that between the prelude to the law and the law itself³⁹ or, in another words, between persuasion and compulsion, which systematically corresponds to what is perhaps the most prominent distinction in Platonic philosophy, namely that between soul and body. This series of fundamental oppositions that prefigures the binary scheme of the resulting penal theory with its key distinctions (injury – injustice, curable – incurable) is transformed, in our present passage, to the difference between a) education and legislation (857e) or between b) “the best and the most necessary concerning the laws” (τὸ βέλτιστον ... τὸ ἀναγκαιότατον περὶ νόμων, 858a4–5).

The current legislative work in *logos* was incomplete according to the Athenian (857c, 859b–c), having omitted the first, educational or “best” aspect of the matter that corresponds to the prelude to the law (as opposed to the coercive law itself). Precisely this is to be supplemented now. And it is in the context of “the best” that the Athenian introduces the statement of identity of the just and the beautiful (859c–e, cf. 858d7). This statement is accompanied – similarly to Plato’s other works – by the main interlocutor’s call for agreement (*homologia*) concerning this question (859c7).⁴⁰ The identity of the universals has already been referred to in the previous course of the dialogue, always in connection with pleasure and with the soul of a virtuous person: The Athenian claimed that it is the virtuous person whose pleasure forms the criterion of the rightness and beauty of musical art (II,658e–659b), whose soul displays the unity of the pleasant, just, beautiful and good (II,660b–664b), and who unifies virtue, pleasure and happiness (V,732d–734e). We may assume that this state of the soul as such is an instantiation of the unity of the universals.

However, this unity seems to be rendered questionable now by the fact that, as the Athenian puts it, some punishments, though being just, are far from being beautiful (859d–860b). At this very point, the discussion becomes strongly personalized. While “others”, i.e. the multitude of ordinary people (οἱ πολλοί), do not believe in this identity, “we”, i.e. the interlocutors, must insist on it.

As a solution to this problem, the Athenian introduces, surprisingly, the Socratic principle that no one is willingly bad (860d).⁴¹ This principle, too, is submitted to agreement (860d8) and personalized: the interlocutors seem to

³⁹ See the hint to two types of medical doctors at 857c5.

⁴⁰ Cf. e.g. *Euthyphr.* 10e2; *Phil.* 49e6; *Lach.* 198b2; *Gorg.* 496c3, 498e10; *Hipp. Ma.* 294c; *Resp.* III,392b; IV,485a.

⁴¹ This principle is further elaborated into a complex identification of four terms: bad character (κακόος), injustice (ἄδικος), doing injustice (ἀδικεῖν) and unwillingness (ἄκων). The identity of these concepts can be seen as a negative counterpart of the identity of the universals.

generally agree on it (861a3); but a closer look reveals a slight disparity: while the Athenian fully embraces the Socratic principle and repeatedly stresses his personal consent to it (σύμφημι, 860d9, 860e2),⁴² Cleinias expresses his consent only formally, without really understanding the question (861a3 f.). He is even prepared to withdraw from the agreement, if the Socratic principle proves to contradict the penal differentiation principle (861c–d).⁴³

The Athenian does not address the lack of true agreement with Cleinias concerning the identity of the unwilling and the unjust. But he keeps on personalizing his solution to the problem of punishment: He emphasizes with his personal authority⁴⁴ the reform of ordinary moral language against the wrong moral terminology of *hoi polloi* (see 864a7–8) that presupposes the existence of voluntary injustice; at the same time, by the usage of the 1st person plural (φήσομεν, “we shall say”, 862a8), he might seek the agreement of Cleinias, who should drop the opinion of *hoi polloi* and join the Athenian as his ally against “them”.

“We” include not only those who have been convinced of the systematic connection between the unity of the transcendentals and the absence of voluntary injustice in the soul but also those whose soul can be said to be a manifestation of this connection. This is the *dramaturgical* reason why the Athenian urged Cleinias so much to accept these insights. Given that this is an exclusive type of insight that is inaccessible to ordinary people, the question of Cleinias’ affiliation with a privileged group of moral champions, whose soul is, as we have seen, the embodiment of unity, is probably at stake here. It is a soul which, so to speak, does not accept into itself anything that is not in harmony with beauty, justice and goodness, e.g. the ugliness of diverse punishments (860b), which would disrupt its genuine aiming at the good. This is the ultimate *philosophical* reason for distinguishing between *injury* manifested by *external* action, which nevertheless is not injustice, and *injustice*, which is based on the intent to harm, but which is involuntary in the soul and might be accepted only as a certain epiphenomenon. From this point of view, the metaphor of disease (and thus also of healing) is perfectly appropriate.⁴⁵ Merely from the point of view of such an afflicted soul is it necessary to differentiate and multiply punishments.

⁴² Cf. the stress on his personal position is expressed by the plenitude of the use of “I” in the passage: 860e1, 2, 3, 861d2.

⁴³ He even formulates conditions for this principle to be sound: δυοῖν γὰρ θάτερον ἡμᾶς χρεῶν, ἢ μὴ λέγειν ὡς πάντα ἀκούσια τὰ ἀδικήματα, ἢ τοῦτο ὡς ὀρθῶς εἴρηται πρῶτον διορίσαντας δηλῶσαι. By this dramaturgy, the author makes clear that the Socratic principle in fact constitutes no digression in the argument, but rather a systematically significant test for the interlocutor, since it challenges the general expectation that different wrongdoings are to be punished differently.

⁴⁴ See “if my view prevails”, ἐὰν ἢ γ’ ἐμὴ νικᾷ (862a8 f.).

⁴⁵ See above, footnote 1.

The soul and its healing

But what exactly is the state of such a soul and what is the status of the punishments inflicted on it? When the Athenian announces that he intends to define – “clearly and without complication” – injustice, he focuses on the inner state of the wrongdoer’s soul:⁴⁶ injustice is a tyrannical rule of “anger, fear, pleasure, pain, envy and desires” in it (863e f.).⁴⁷ These *pathê* (cf. 863b3) are an expression of some plurality inside the soul. But while on the refuted assumption of voluntary injustice they could possibly be seen as parts of a *bad nature* of a corrupted man, the Athenian’s present formulation reveals that they are conceived just as traits *of* the soul. In Aristotelian terminology, of which the present terminology is reminiscent, *adikia* as *hexis* is just *poion*, not *ousia* of the soul: Injustice in this sense would not express the substance of one’s soul, it is just an acquired quality.

While injustice is a series of psychical affectations, justice is described as the situation in which “belief in the supreme good” (τοῦ ἀρίστου δόξα, 864a1; cf. δόγμα πόλεως, 644d3), imposed by “the state or some individuals” (πόλις εἴτε ἰδιῶταί τινες, 864a2 n.), rules the whole soul.⁴⁸ In other words, justice and injustice are contrasted as unity to multiplicity.

In the present context, the guarantee of this unifying belief producing justice (864a4–8) is the city and its legislation. *Nomos* is also necessary here, just as in the realm of education, since the multitude of ordinary citizens are not able to regulate themselves. And again, the penal law unifies the existing plurality and turns injustice into justice; it does so by imposing not only pain but also pleasure and other instruments (862d) on the soul momentarily overrun by an opposing element.⁴⁹ It thus substitutes for the proper equilibrium present in a healthy soul where, as we have seen in the first section, pain or fear function as natural *enantia* to pleasure and hope and vice versa. By doing this, the law contributes to the uneasy process of the individuation of the particular soul.

Yet there are again some individuals (cf. ἰδιῶταί τινες, *Leg.* 864a2 f.) who have this sort of unity already in their souls. As we have seen, it is the unity of the universals: *kalon*, *agathon*, *dikaion* and *hedy*. Consequently, we may assume that

⁴⁶ Knoch (1960), p. 27, is right in claiming that the internal perspective has priority over the external one.

⁴⁷ τὴν γὰρ τοῦ θυμοῦ καὶ φόβου καὶ ἡδονῆς καὶ λύπης καὶ φθόνων καὶ ἐπιθυμιῶν ἐν ψυχῇ τυραννίδα.

⁴⁸ We agree with Lisi (2008), p. 94, that πάντα ἄνδρα should be read not as „each man“ but as „whole man“.

⁴⁹ That the binary psychological logic we have observed in *Leg.* I–II is employed here again is further indicated by the fact that the Athenian enumerates four *pairs* of opposing instruments for healing the soul (862d4–6).

their view is based not on commonly held *doxa* (or *dogma* of the city) but on the true *epistêmê*⁵⁰ that is – as the Athenian keeps stressing (e.g. 875d) – rare among humans and that is expressed in the description of the curriculum for the members of the Night Assembly (XII,965b–968b). Once again, we encounter the fundamental distinction between two different human types.

What is important, however, is that even outside of this privileged group there is no true injustice *of* the soul, but, at most, injustice *in* a soul. People who are not able to follow the philosophical curriculum find their “external reason” in the *nomos* of the city. And even those who do not abide the law are not bad themselves. There is no such thing as a “bad man” in Plato. Justice is not contradictory (*enantion*) to injustice; their relation is asymmetrical: whereas justice forms the nature of a good soul, injustice is a mere series of character traits.

From the perspective of the penal code reflecting the practical needs of the actually existing colony, a soul can either be curable or incurable; however, from a philosophical perspective, “incurable soul” is just a shorthand applicable to the limited period of the current incarnation. After the theological lesson given in Book X, the Athenian repeatedly admits that, besides this limited view, there is another perspective in which the soul is curable at any time – namely, the perspective of life after the body’s death (see XI,934a–b; XII,958a). This clarifies what the soul substantially is: an immortal being. This is the last reason why it – as such – does not accept injustice willingly.

CONCLUSION

Since punishment can work with both pleasure and pain, i.e. with both sides of emotional polarity, it is obvious that the operation of the penal law is much more complex than might be expected on modern presuppositions;⁵¹ it in fact resembles the way how the educational law works.⁵² From the point of view of philosophical psychology which has been shown to be pertinent for the whole legislation of Magnesia, both education and punishment aim at a common goal: the true belief that produces the harmony and unity of the soul. It is therefore evident that such a theory, which in fact does not systematically distinguish between different subject areas and methods, but seeks a kind of overall moral-psychological reform on the basis of the metaphysical priority of unity and oneness, is far from modern penal theories with their distinction of various “functions” of punishments and focus on their impact on the individual.

⁵⁰ On the systematic meaning of this distinction in the *Laws* see Scolnicov (2003), p. 124.

⁵¹ See above, footnote 3.

⁵² That there is, strictly speaking, no substantial difference between education and punishment, since the proper punishment for an adult person in fact *is* an education, can be supported by an important passage in Plato’s *Apology* (26a). See Pangle (2009), p. 461.

When the Athenian mentions pleasure and pain among the instruments for healing the curable soul (IX,862d5), he indicates that this theory of pleasure and pain from the initial books is relevant for the penal code of Magnesia. The link of the two topics can be seen in the underlying notion of the soul that comprises two models. On one hand, the soul is a plurality of parts limited by the external law that helps to shape the supra-individual sources of pleasure and pain on the particular soul, which thereby acquires its own form. As a synthesis of the two basically external elements, *pathê* and *nomos*, the particular soul presents a relatively unstable unity (cf. 653c). This stimulates the need for periodically repeated attempts at its re-shaping in the form of education and penalties, i.e. two basic instruments of legislation that correspond to the crucial division between persuasion and compulsion. In a situation of such relative instability, one can hardly speak about individuation of the soul in the true sense; for the ordinary soul, only an improper “individuation” is thinkable in the form of excessive “drawing off” of sources of pleasure and pain with their opposing dynamism. It is obvious that such “individuation” is quite unwelcome – it must be prevented by the lawgiver and punished by the judges.⁵³ Through the cooperation of both (XI,934b–c), it is possible, first, to determine the distance of a wrongdoing soul from its healthy state and, secondly, also the appropriate amount of pleasure or pain needed for its healing.

On the other hand, in the case of some exceptional natures, a true individuation takes place in the form of the permanent *unity* and *identity* of the soul in the course of repeating incarnations. On their way through various ages and bodies, the prominent souls do not take up much from outside. This is the reason why they have no trouble in abiding by any positive law, since even wrong external norms are not in a position to truly affect them. The philosopher is able to live legally in any city, insofar it is still a city with its own laws. But when it comes to his own attempt at legislation the purpose of which is to create souls with the same stability he himself has over the series of incarnations, then his project transcends any specific polis. Capital punishments are tricky not primarily because they seem ugly (860b) but because they reach into the realm of eschatology. By

⁵³ From this point of view it is also clear why it is misleading to judge the legitimacy of Plato’s penal theory from the point of view of the individual (see above, footnote 3). This perspective is completely foreign to Plato, who lacks a modern awareness of the legal problems connected with causing pain to an individual and who does not accept the Hobbesian assumption that law and politics have their source in the individual, from which the questions of obligation, legitimacy and authority arise. Not that he didn’t know this type of thinking at all (see *Tht.* 153c). Rather, he deliberately turned against it. The metaphor of punishment as healing might be intended precisely to reject this assumption. If we look at punishment only from the perspective of the individual and his feelings, it is as wrong as looking at the doctor’s operations only in terms of causing us pain. This solipsistic perspective makes it impossible to see the true nature of healing. And exactly the same applies to punishment – if we look at it only from the point of view that it is unpleasant to us, we will not understand its meaning for ourselves and for the community.

embracing them, the legislator not only imitates God (IV,713e f.) but in fact adopts a godlike position.

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