



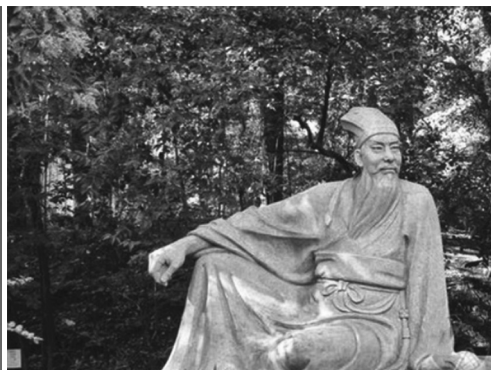
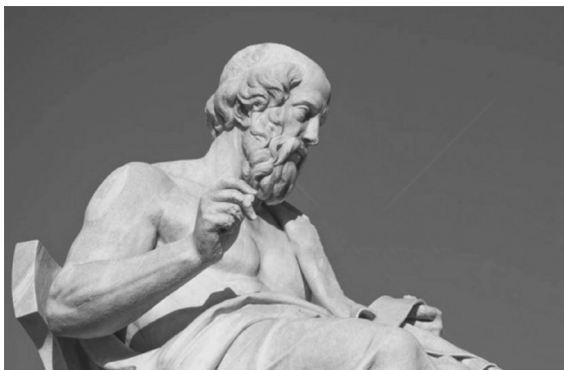
Part I

Foundations of Law

Unit

1

What Is Law?



No law or ordinance is mightier than understanding.

—*Laws* by Plato

人胜法，则法为虚器；法胜人，则人为备位；人与法并行而不胜，则天下安。

——苏轼《应制举上两制书》

What is the true nature of law? Is law an external system of rules, an internal human faculty, or a mechanism for social control? This unit examines core tensions between law as authority-imposed command versus collective belief, and as universal ideal versus culturally specific practice. How does law both shape and reflect society? Can it balance order with justice? Explore these enduring questions through contrasting philosophical perspectives on law's essence and purpose.

Text A

Lead-in

- 1 What is the fundamental distinction Socrates draws between the comrade's understanding of law and his own, and how does this distinction lead to a deeper exploration of the nature of law?
- 2 How does Socrates's use of the analogy between law and the senses (e.g., sight, hearing) contribute to his argument about the nature of law, and what implications does this analogy hold for our understanding of law's relationship with human belief and perception?

The Soul of the Law¹



1 Plato's *Minos* is not a difficult dialogue to summarize. It begins when Socrates asks an unidentified comrade (he seems to be an Athenian) what law is. The comrade tries to answer

1 This passage is adapted from "Plato's *Minos*: The Soul of the Law" written by Michael Davis, *The Review of Politics*, Vol. 78, No. 3 (Summer 2016), 343–363.

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that law, **nomos**, is the things held or believed, **ta nomizomena**—he takes advantage of the fact that both the noun, *nomos*, and the participle, *nomizomena*, stem from the verb *nomizein*—to believe, not in the sense of an inner belief, but in the sense of holding something to be the case. Socrates then tells him he wants not examples of laws but the common thread that makes them all law—in the language made famous by Plato, their form or idea. Socrates gradually moves the comrade to accept a rather strange definition—that “law wants to be the finding out of what is”. The comrade then asks why, if this were true, and all law were the same, there would be so many different laws in different places and different times. Socrates responds that this is because human beings **err** in various ways with regard to what law is¹ and then exemplifies this sort of error by introducing a powerful and dangerous Athenian mistake: Under the influence of the tragic poets, they have been **induced** to blame Minos of Crete, perhaps the greatest of all lawgivers. The dialogue ends with this example, from which it also receives its name. So far, so simple. However, things are not what they seem; a closer look reveals difficulties **galore**.

2 What is perhaps the most startling of these difficulties comes to light in Socrates’s response to the comrade’s first definition of *nomos* as *ta nomizomena*.

3 Does speech [*logos*], too, seem to you to be the things said, or sight the things seen, or hearing the things heard? Or is *logos* one thing while the things said are different? And is sight one thing while the things seen are different? And is hearing one thing while the things heard are different? And law [*nomos*], in fact, one thing but the things believed [*ta nomizomena*] different?

4 This, however, seems a very strange claim, for it would mean that we are to take *nomos* to be something in us in the way the senses are in us. This strange view, that law is in some sense a faculty in us, is hinted at by Leo Strauss, who sees law as an “act of the soul”. What on earth could this mean?

5 Let us return to the beginning of the dialogue—the abrupt, if **ambiguous**, question: What is law?² Socrates’s precise question in the first sentence of the *Minos* is, “The law for [or perhaps, in] us what is it?” It is not altogether clear what he means. The phrase *hēmin nomos* might mean “one of our laws” (e.g., the marriage law), or “our law generally” (i.e., Athenian law), or “law according to us”, or perhaps most peculiarly, “law in us”. And this is all before we even consider the ambiguity of the term *nomos*, which may mean law understood as custom (i.e., what influences us behind our backs and without our knowing) or law as **explicit (posited law)**—not to mention the other meaning of *nomos*, song. So, at the very least, Socrates could mean “What are our traditional ways?” Is he asking, “What makes us?” or “What do we make?” (Are we **melancholy** because we hear a sad song, or do we listen to a sad song because we are melancholy?)

1 Or rather, what law wants—i.e., being.

2 This beginning poses yet another puzzle: The *Minos* opens with an expression of the longing to find out what law is, but the being of law turns out to be a longing to find out what is.

6 The various meanings make for an extraordinarily complex **array** of possibilities. Still, perhaps fundamental to all of them is the distinction between law as something **external** to us, however much it rules us (say, traffic laws), and law as in some way in us. The comrade's response, "And what sort of laws are you asking about?" points to the former (Socrates had asked about law in the **singular**; the comrade makes it plural); Socrates seems **intent** on getting at the latter—he wishes to understand law as what constitutes, or at least identifies, a "we", so that "What is law?" is a way of asking after the universal principle that particularizes a people—what it is that ensures that we will all bow down to something. Socrates's **initial** intention might then be understood to ask, "What is the law that unifies us and makes us a recognizable 'we'?"¹

7 By asking what sort of laws Socrates has in mind the comrade opens the door for what seems the standard **Socratic** move. Socrates asks, "Is it [possible] that law differs from law with respect to this very thing, in being law?" Now, the comrade is clearly meant to think the question **rhetorical**, for with respect to being law, how could one law possibly differ from another? But perhaps the question is serious and means to call our attention to the fact that *nomos*, like language, seems always to appear in a particular form—it is idiomatic. If the **multiplicity** of laws is not an accidental feature of the existence of law, **Babel** would be our natural state. And so, in this way law would differ from law **precisely** with respect to its being law (that the power of a universally **binding** claim should show up not in a universal form but in a form that is particular and **contingent** is another of the puzzles of *nomos*). Law would be like language—curiously the animal with speech, never speaks speech but always **Hebrew** or Persian, Latin or Greek, just as the political animal, never obeys law but always the Twelve Tables or the Laws of Solon—particular laws often at odds about practices as fundamental as how we treat dead bodies.

8 Here, Socrates only hints at this problem and quickly moves on to correct the comrade by initiating an imagined dialogue (it is worth noting that dialogue too constitutes a "we"):

9 For I am asking just as if I had asked "What is gold?" and you had asked me likewise what sort of gold I in fact mean, I think you would not have asked correctly. For I suppose gold differs not at all from gold nor stone from stone, at least in being a stone and in being gold.

10 If, as Socrates claims, law, like gold, "differs in no way from law, but all are the same" (that is, if law always makes its particular claim as though it were universal), it is reasonable to remark on this extraordinary confidence of the law. The comrade's first "definition" of law is therefore not as superficial as it first seems. Law, *nomos*, is nothing other than the things that are held or believed—*ta nomizomena*. We do not believe things because of the law; rather the law is what it is because it is believed.

11 *Nomos* as **faculty** is what provides us with that distance from the world that allows us to **opine** about it. That human beings are the rational or speaking animals would then be in

1 See S. Benardete. *Plato's "Laws"*. Chicago: University of Chicago Press, 2000, 195.

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their way **identical** to their being political animals.¹ Human beings as universally local are divided by place into we's. This proves to mean that it is not altogether true that fire burns the same in Greece as in Persia, for what we sense is informed by what we expect to sense.

12 What this might mean begins to emerge in the **sequel**. Socrates asserts that *nomos* is the faculty by which *nomizomena*, things held or believed, are held or believed. Following the models of sight and hearing, he then suggests that *nomos* too is a kind of perception or **clarifying** and asks, just as in the case of sight the clarification is through the eyes and in the case of hearing, the ears, through what the clarification of law takes place. Had he stopped here, Socrates would seem to have asked the comrade to identify an organ of the body through which the “sense” of law operates. But, not waiting for an answer, he rushes ahead to **elaborate** his question:

13 Is it by some **sensation** or by a making clear, just as the things learned are learned by knowledge making clear or as the things found are found by some finding, such as the healthy and sick things by the art of medicine and whatever the gods think about, as they say, the prophets [make clear] by some art of **prophecy**? For art is, I suppose, for/in us the finding of the **pragmata**, isn't it?

14 In answer to Socrates's question the comrade now concludes that law must be the opinions (**dogmata**) and **decrees** of the city and then settles on the definition of law as a dogma of the city. The comrade always seems to think of law as primarily something we produce and not something that produces us. Accordingly, Socrates immediately, and without comment, edits this definition and dubs *nomos* “political **doxa**”.

15 The **refutation** of the definition of law as political *doxa* seems once again typically Socratic. It has a number of **peculiarities**, but perhaps the most important is the introduction of the word **nomimos**. It may simply mean lawful, and in this sense we often think of it as like a virtue—that is, in the sense in which we find lawlessness a vice. But it may also just mean what is customary. In this sense it reflects the fact that the lawful is beautiful and good only when viewed from within the realm of a particular “we” established by the law. In defining the law as political *doxa*, insofar as the comrade is “speaking beautifully”, Socrates takes advantage of the fact that he speaks from within a context of *nomos*. This is what allows him to **elicit** the conclusion first that the lawful are just and then that the law is beautiful and good. These conclusions are perfectly reasonable from within the perspective of the law, the hidden ground of which is the need to **preserve** the city—the “we”. Socrates can therefore say, “One ought to think about the law as about something being beautiful, and to **seek** it as good.”

(1,690 words)

¹ It is therefore perhaps not altogether surprising that Aristotle should make natural right a species of political right (see *Nicomachean Ethics*).

Words and Expressions

Minos	/ˈmamnɒs/	<i>n.</i>	Greek mythological king of Crete 米诺斯 (古希腊神话中克里特岛的国王); (斜体时意为)《米诺斯》(据传为柏拉图的作品)
nomos	/ˈnəʊməʊs/	<i>n.</i>	(in ancient Greece) a law or custom of a people 法律; 习俗; 惯例
ta nomizomena	/tə nɒmɪˈzəʊmənə/	<i>n.</i>	(<i>pl.</i>) (Greek) things established by law or custom < 希腊语 > 法定事物; 由法律或习俗确立的事物
err	/ɜ:(r)/	<i>v.</i>	to make a mistake or be incorrect 犯错
induce	/ɪnˈdju:s/	<i>v.</i>	to persuade or influence sb. to do sth. 诱导
galore	/gəˈlə:(r)/	<i>a.</i>	in abundant supply; plentiful 大量的
ambiguous	/æmˈbɪɡjuəs/	<i>a.</i>	having more than one possible meaning; unclear 含糊不清的
explicit	/ɪkˈsplɪsɪt/	<i>a.</i>	(of a statement or piece of writing) clear and easy to understand 明确的
posit	/ˈpɒzɪt/	<i>v.</i>	to suggest or accept that sth. is true so that it can be used as the basis for an argument or discussion 假定; 认定
melancholy	/ˈmelənkəli/	<i>a.</i>	grave or even gloomy in character 忧郁的
array	/əˈreɪ/	<i>n.</i>	an orderly arrangement or display 一系列
external	/ɪkˈstɜ:nl/	<i>a.</i>	existing or coming from outside 外部的
singular	/ˈsɪŋɡjələ(r)/	<i>a.</i>	being or existing alone; unique 单独的; 独特的
intent	/ɪnˈtɛnt/	<i>a.</i>	showing strong interest and attention 专注的; 热切的
initial	/ɪˈnɪʃl/	<i>a.</i>	occurring at the beginning 最初的
Socratic	/səˈkræɪk/	<i>a.</i>	of or relating to Socrates or his method of teaching 苏格拉底式的
rhetorical	/rɪˈtɒrɪkl/	<i>a.</i>	of or relating to rhetoric; (of a speech or piece of writing) intended to influence people, but not completely honest or sincere 修辞的; 善于辞令的; 花言巧语的

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multiplicity	/ˌmʌltɪˈplɪsəti/	<i>n.</i>	a great number and variety of sth. 多样性
Babel	/ˈbeɪbl/	<i>n.</i>	(in the Bible) the city where the Tower of Babel was built 巴别（圣经中巴别塔所在的城市）
precisely	/priˈsaɪsli/	<i>ad.</i>	exactly; with great accuracy 精确地
binding	/ˈbaɪndɪŋ/	<i>a.</i>	executed with proper legal authority 有法律约束力的；必须遵守的
contingent	/kənˈtɪndʒənt/	<i>a.</i>	dependent on or likely to change according to circumstances; not fixed or certain 视情况而定的；不确定的
Hebrew	/ˈhiːbruː/	<i>n.</i>	the language of the ancient Hebrews 希伯来语
faculty	/ˈfæklti/	<i>n.</i>	a particular ability or skill that sb. has, especially one that he or she is born with 才能；能力；技艺
opine	/əʊˈpaɪn/	<i>v.</i>	to express an opinion 发表意见
identical	/aɪˈdentɪkl/	<i>a.</i>	similar in every detail 完全相同的
sequel	/ˈsiːkwəl/	<i>n.</i>	a book, movie, etc. that continues the story of an earlier one 续集
clarify	/ˈklærəfaɪ/	<i>v.</i>	to make sth. clearer or easier to understand 澄清
elaborate	/ɪˈlæbəreɪt/	<i>v.</i>	to explain or describe sth. in a more detailed way 详尽阐述
sensation	/senˈseɪʃn/	<i>n.</i>	a feeling or impression produced by sth. affecting the senses 感觉
prophecy	/ˈprɒfəsi/	<i>n.</i>	a prediction of what will happen in the future 预言
pragmata	/præɡˈmɑːtə/	<i>n.</i>	(Greek) practical matters or affairs < 希腊语 > 实务
dogmata	/dɒɡˈmɑːtə/	<i>n.</i>	(Greek) fixed or authoritative beliefs or doctrines < 希腊语 > 权威的信仰或教义；教条
decree	/dɪˈkriː/	<i>n.</i>	an official order or decision made by a government or court 法令
doxa	/ˈdɒksə/	<i>n.</i>	(Greek) opinion or belief that is commonly accepted < 希腊语 > 普遍接受的观点或信仰
refutation	/ˌrefjuˈteɪʃn/	<i>n.</i>	the act of proving that sth. is false or wrong 反驳

peculiarity	/pɪˈkjuːliˈærəti/	<i>n.</i>	a strange or unusual feature or habit 特性
nomimos	/nɒˈmiːmɒs/	<i>a.</i>	(Greek) lawful or according to law < 希腊语 > 合法的
elicit	/ɪˈlɪt/	<i>v.</i>	to draw out or bring forth (information, a reaction, etc.) 引出; 诱出
preserve	/prɪˈzɜːv/	<i>v.</i>	to maintain (a situation, tradition, etc.) unchanged 保持 (状态、传统等)
seek	/siːk/	<i>v.</i>	to try to find or discover; to make an effort or attempt 寻求; 谋求

Notes

1. Plato's *Minos* 柏拉图的《米诺斯》

Plato's *Minos*, subtitled "On Law", is a short philosophical dialogue attributed to Plato (c. 428 B.C.–348 B.C.) but now widely believed to be a pseudepigraphon (托名之作) written by an anonymous author in the 4th century B.C. The dialogue features a conversation between Socrates (c. 470 B.C.–399 B.C.) and an unnamed companion, discussing the nature of law. Socrates argues that law should be based on objective natural laws rather than subjective opinions or arbitrary decisions. He uses the legislation of Minos, the legendary king of Crete, as an example of wise lawmaking, emphasizing the importance of discovering and embodying the eternal truths in legal codes.

2. *nomos* 法律; 习俗; 惯例

Nomos in Greek philosophy denotes both written laws and unwritten social norms, contrasting with *Physis* (自然; 本性). It encompasses legal statutes, customs, and moral codes that structure societal order. Philosophers debated its artificial nature as human-made rules versus natural law, highlighting its role in maintaining justice through collective values.

3. Socratic move 苏格拉底问答法

The Socratic move, also known as the Socratic dialogue, is a teaching method founded by the ancient Greek philosopher Socrates. It involves guiding learners through questions and discussion, rather than direct instruction. In a legal context, the standard Socratic move can be used to explore the intricacies of a case, challenge assumptions, and uncover potential weaknesses in arguments.

4. *form or idea* 理型; 理念; 形式

The forms, according to Plato, are just ideas of things that actually exist. They represent