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# SYNTHESIS

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# SYNTHESIS

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## Ancient Philosophy in Dialogue

*Edited by*

*Erminia Di Iulio & Francesco Aronadio*

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## List of contributions

Epistemology of Testimony in Early Greek Thought by Erminia Di Iulio (Università di Roma "Tor Vergata") .....	7
Socrates and the Epistemology of Testimony by Nicholas D. Smith (Lewis & Clark College) .....	37
Intentionality and Referentiality in Plato's Conceptual Apparatus by Francesco Aronadio (Università di Roma "Tor Vergata") .....	61
Plato and Raz on Rule of Law by Susan Sauvé Meyer (The University of Pennsylvania) .....	91
Peripatetic Grounding by Maddalena Bonelli (Università di Bergamo) .....	111
Il <i>Commento</i> al primo libro della <i>Metafisica</i> di Alessandro di Afrodisia come fonte del trattato II 4 [12] delle <i>Enneadi</i> by Livia Blundo (Università di Roma "La Sapienza") .....	131
<i>Tradere</i> / <i>Tradire</i> Gamma 1-2: spunti per una nuova interpretazione dell'ontologia in epoca moderna by Alice Ragni (Universität Münster) .....	161



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## Plato and Raz on Rule of Law

**Abstract:** Plato's *Statesman* offers an epistemic critique of law while at the same time defending the rule of law as an important safeguard against tyranny. The thesis of rule of law that Plato defends is qualified with the implicit proviso that the laws in question are in the interests of the population. Plato is not, however, vulnerable to the critique articulated by Joseph Raz of theorists who conflate the rule of law with the rule of good laws, or who indiscriminately credit rule of law with every virtue of a political system. While Plato would agree with Raz that robust protection against tyranny requires not just rule of law but good laws, the same can be argued for Raz's own proposal that the rule of law respects human dignity.

**Keywords:** Rule of Law; Plato; Raz; Tyranny; Autonomy

**Abstract:** *Le Politique* de Platon présente une critique épistémique de loi, tout en défendant la souveraineté de loi comme garantie importante contre la tyrannie. La doctrine de souveraineté que défend Platon est nuancée par la condition implicite que les lois en question soient dans l'intérêt des gouvernés. Platon n'est cependant pas vulnérable à la critique formulée par Joseph Raz à l'encontre des théoriciens qui confondent la souveraineté de loi et la souveraineté de bonne loi, ou qui attribuent au principe de souveraineté de loi toutes les vertus d'un système politique. Alors que Platon serait d'accord avec Raz sur le fait que toute protection efficace contre la tyrannie nécessite non seulement la souveraineté de loi mais aussi de bonne loi, il en va de même pour la propre proposition de Raz selon lequel un régime respecte la dignité humaine dans la mesure où la loi y est souveraine.

**Mots clefs:** Souveraineté de Loi; Platon; Raz; Tyrannie; Autonomie

### Introduction

The philosophical defense of the rule of law in the European tradition is typically traced back to Aristotle, with Plato listed as a critic rather than a

## SYNTHESIS

defender of the principle<sup>1</sup>. However, Plato gives an unambiguous endorsement to rule of law in the *Laws*; and even in the *Statesman*, where he argues that in the one true constitution expert rulers will have the authority to override the law, he insists that the rule of law is many times better than the alternative, if expert rulers are not available. One might worry that, in the *Statesman*, the critique of law is so effective that it undermines the defense<sup>2</sup>. However, the *Laws* presents the defense without the critique, so there is no question that Plato counts among the defenders of the rule of law.

My focus in this paper will be on the defense of rule of law offered in the *Statesman*. Once we disentangle the defense from the critique, which I undertake in §2 through §4, it may appear that Plato is vulnerable to an influential critique formulated by Joseph Raz<sup>3</sup>, even though Raz did not have Plato in mind as his target. In §5 and §6, I explore the critique and defend Plato against it. Finally, in §7, I propose that Raz's own account of the value of rule of law is not as far from Plato's as it might appear. To begin with, let us clarify what we mean by rule of law.

### 1. Two Principles of Rule of Law

The thesis of rule of law under discussion in the *Statesman* is a principle of constitutional design. It concerns the limits placed by law upon the exercise of political authority (*archē*— literally 'rule') and prohibits those who wield such authority (*archontes*)<sup>4</sup> from issuing directives to citizens which either conflict

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<sup>1</sup>For example, Waldron (2020) traces that tradition back only to Aristotle. For simplicity of exposition, I shall sometimes attribute to Plato the views expressed by the main speaker in Plato's dialogues, e.g., Socrates in the *Republic*, the Eleatic Stranger in the *Statesman*, and the unnamed Athenian in the *Laws*.

<sup>2</sup>See, for example, Rowe (1995: 230–231) and (2000).

<sup>3</sup>Raz (1977). I am grateful to Meir Rosenzweig for help with this framing.

<sup>4</sup>Translated literally, *archontes* are 'rulers', but 'officeholders' is often the more appropriate translation. On the significance of 'office' and 'officeholders' as renderings of *archē* and *archontes* in contexts of constitutional governance, see Lane (2023: § 2).



with the law or which the law does not authorize them to make<sup>5</sup>. Where rule of law obtains, law is the ultimate political authority. Rule of law so construed may be characterized as *sovereignty of law*. It should be distinguished from a different but related principle, which to which we may give the label *law and order*. The latter concerns not political authorities (rulers or *archontes*), but political subjects (*archomenoi*), mandating that they comply with the laws of the polity<sup>6</sup>.

### Two Principles of Rule of Law

- LAW & ORDER  
Subjects must follow the laws of the polity.
- SOVEREIGNTY OF LAW  
Political authority must be exercised within the limits of the laws.

We find both principles articulated in Plato's dialogues. In the *Protagoras*, for example, they are expressed in tandem as a piece of conventional wisdom:

**T1:** The city writes down the laws discovered by good lawgivers in the past and compels [people] to both rule and be ruled (*kai archein kai archesthai*) in accord with them (*kata toutous*). (*Protag.* 326d5-7)

In the *Laws*, Plato deploys the slogan of 'servitude to the laws' (*douleia tois nomois*) to express both principles. In some contexts, the slogan is a metaphor for the law-abiding behaviour of political subjects (e.g. 'we lived in willing service to the laws of the time' 698b6; cf. c1-3, 700a5; 762e4-5), described earlier as 'the

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<sup>5</sup> Under directives I would include both commands and permissions. Rule of law so construed does not forbid authorities to exercise their own judgment when carrying out their duties, but it does demand that any scope for discretion be authorized by law. I thank Rupert Sparling for pressing for clarity on this point.

<sup>6</sup> These two principles correspond roughly to the two 'meaningful' senses of rule of law identified by Raz (1977: 212), who labels them, in reverse order, the (1) 'law and order' sense and (2) 'political and legal' sense.

## SYNTHESIS

rule of law over willing subjects...' (*tēn tou nomou hekontōn archēn* - 690c3). In such cases, it stands for the principle of law and order. In other contexts, it characterizes the subordination of rulers or officeholders (*archontes*) to the laws ('[law] is master over the rulers, and the rulers are slaves of the law' 715d4-5)—in which case it captures the principle of sovereignty of law. In the *Statesman*, for example, when the Eleatic Stranger shocks his interlocutor with the suggestion that a ruler can govern correctly 'without laws' (292a5-10, 293e7-9) he frames the question as whether an expert ruler, or the laws, should 'prevail' (*ischuein*, 294a7), or whether the expert ruler should be 'more powerful than' or 'superior to' (*kreittō*, 297a5) the laws. Expressed in those terms, it is a dispute about the sovereignty of law. Henceforth when I refer to the rule of law, I shall use it in the sense of sovereignty of law.

### 2. Plato's Epistemic Critique of Rule of Law

When the Eleatic Stranger in the *Statesman* discusses the merits of the rule of law, he offers first a critique and then a defense of the principle. In the critique, he argues that law, due to its generality and stability, is a poor fit for the variable and changing world to which it applies (294a10-c8). As a result, there will inevitably be cases where what the law mandates will be different from, and deliver worse governance than, what an expert would command in light of the specific particulars of the situation (295b-296a).

As a matter of practical necessity, expert rulers will typically employ written laws, since they can't issue individually tailored instructions to every citizen (295a10-b5). Still, such general rules can only imperfectly approximate the directives of an expert ruler. In distinctly Platonic language, laws are 'imitations' of that expertise (300c5; cf. *Laws* 713e6-714a2). For this reason, the Stranger argues, the best constitution—indeed the only 'true' or 'correct' constitution—will not conform to rule of law. Surely it would be ridiculous, from an epistemological standpoint, to forbid an expert in governance to make exceptions to the (epistemologically imperfect) laws (295d8-e3, 296a1-3). Or so the argument goes.

We may call this line of argument Plato's *epistemic critique of the rule of law*. It is initially presented at 294a10–c8 and 295b10–296a3, and later developed at considerable length and with evident glee (perhaps also some hyperbole) at 298a11–299e10. But paired with that critique, and immediately following on its heels (297d3–e7, 300a1–301c5), is a full-throated *endorsement* of the rule of law. While interpreters of the *Statesman* disagree about whether the endorsement is undercut or undermined by the critique<sup>7</sup>, the endorsement itself is stated emphatically and unequivocally.

### 3. Plato's Anti-Tyrannical Defense of Rule of Law

In the parts of the *Statesman* where Plato is endorsing rather than critiquing rule of law, he contrasts it not with credentialed experts making exceptions to the law, but with inexperienced and unprincipled scoundrels abusing public office for personal gain. We are invited to consider the scenario in which an official elected or appointed to execute a city's laws (300a1–4) fails to carry out that public trust:

**T2:** [What then] if this person disregards what is written down and—for the sake of some profit or to do a personal favour—he undertakes to do something different and contrary, even though he knows nothing: wouldn't this be an even greater evil than the previous one? (Plt. 300a4–7, trans. Rowe)<sup>8</sup>

'Surely we must call such a person a tyrant' the Eleatic Stranger will later say (301c3–4). Here in T2 he asserts that the scenario in which such a ruler is authorized to make exceptions to the laws would be 'an even greater evil' than

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<sup>7</sup> The defense of the sovereignty of law announced at 297d–e proceeds by first developing an even more elaborate version of the epistemic critique in the context of a democratic constitution with strict rule of law (298a–299e), and only then stating the reasons why allowing rulers to make exceptions to the law 'would be many times worse' (300a–301c).

<sup>8</sup> Translations from the *Statesman* are from Rowe (1995), sometimes slightly adapted. All other translations are my own. Line references to the Greek text of Plato will be to the most recent Oxford Classical Text, except the *Laws* will be cited according to the Budé text of Des Places and Diès.

## SYNTHESIS

the scenario in which expert rulers are bound by laws<sup>9</sup>. On this basis, he concludes that the rule of law, while not the *best* constitutional principle, is still a strong second-best:

**T3:** The second-best method of proceeding, for those who establish laws and written rules about anything whatever, is to allow neither individual nor mass ever to do anything contrary to these—anything whatsoever. (*Plt.* 300c1-3)

It is important to recognize that T3 states a constitutional principle<sup>10</sup>. The ‘individual’ and ‘mass’ invoked here (*mēte hena mēte plēthos*, 300c2-3) and a few lines later (*anēr hostisoun heis ē plēthos hotioun*, 300d4) are the rulers or office holders (*archontes*) in a monarchical and democratic constitution, respectively<sup>11</sup>. So T3 forbids *rulers* to issue directives that are contrary to the laws. The principle invoked is sovereignty of law, not law and order<sup>12</sup>.

In sum, Plato ranks the following three scenarios in the *Statesman*, urging that the second is inferior to the first, but that the third is far worse than the second:

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<sup>9</sup> The Eleatic Stranger asserts this claim at 300a-b, but does not there defend it. I take it that his subsequent argument that rule-of-law constitutions are better imitations than their non-rule-of-law counterparts (300c-301c) and his further reflections on legislative practice (301c-302a) are intended to support the claim at 300a-b.

<sup>10</sup> When elaborated at 300c4-301a4, the context of T3 explicitly concerns which constitution best imitates the ‘true constitution of one man ruling with expertise’ (300e12-301a1).

<sup>11</sup> In the classification of constitutions by number of rulers (*archontes*): one, few, or many (292a6-7; cf. 293a3, 297c1-), democracy is rule by the *plēthos* (291d7-8, 300e8; cf. 292a1, 297b7) or by the *polloi* (292a7).

<sup>12</sup> Similarly for the earlier statement ‘that no one in the city should dare to do anything contrary to the laws, and that the person who dares to do so should be punished by death and all the worst punishments’ (297e1-3) as the second-best scenario (e4). It is not a mandate of the death penalty as a one-size-fits all penalty for all law-breaking, but a statement that *archontes* seeking to rule in disregard of the law are to be given the ultimate penalty.

### Three Constitutional Scenarios

1. BEST                      *Epistocracy:*  
Expert rulers who employ laws, but can issue directives contrary to the laws.
2. SECOND BEST           *Rule of law:*  
Rulers who cannot issue directives contrary to the laws.
3. WORST                   *Tyranny:*  
Inexpert and corrupt rulers who can issue directives contrary to the laws.

How well does this ranking serve as a defense of the rule of law? One might object that Plato fails to consider the possibility that the ruling experts might be scoundrels (a less attractive version of the first scenario) or that inexperienced officials might be nonetheless honest and civic minded (a more attractive version of the third scenario). This set of objections is not, however, fatal—if we are concerned with Plato's *defense* of rule of law, rather than his critique of it.

Plato addresses the first possibility (scoundrel experts) when he states that popular advocates of rule of law (mistakenly) consider it best, rather than second best, because they think anyone entrusted with unchecked ruling power will abuse it for corrupt ends:

**T4:** They have no trust that there would ever be anyone worthy of such authority, someone willing and able to rule with virtue and knowledge, correctly meting out justice and sanctity to all. Rather, they think anyone of us in such a position will invariably savage and kill and mistreat whomever they wish. (*Plt.* 301c10-d3; repeating concerns raised at 298a1-b7, and in T2)

The concern here is not with petty corruption on the part of minor officials, but with tyrannical government, a point made explicitly a few lines earlier (301c3-4). This 'popular' argument for rule of law may be analysed into two elements: a concern to avoid tyranny coupled with a pessimistic theory of

## SYNTHESIS

human nature—the latter distilled two millennia later in the famous dictum of Lord Acton that absolute power corrupts absolutely.

In Plato's last dialogue, *Laws*, he endorses that pessimism about human nature, arguing that human nature is corrupted by great and unchecked power (691c5-d4, 693b2-6). However, a legislative prelude later in that work, like the present context in the *Statesman*, seems to allow at least the possibility of benevolent ruling expertise (875c3-6). That is why the Eleatic Stranger says that the popular praise for rule of law is mistaken in ranking it best rather than second-best (Plt. 297d3-e5). In any case, the possibility of scoundrel experts only counts as an objection to Plato's epistemic critique of rule of law. It poses no problem for his anti-tyrannical defense of rule of law. Indeed, it strengthens rather than undermines that defense, since it opens the route to an argument that rule of law is not just second-best, but best *tout court*.

As for the possibility that the rulers in the third-ranked scenario might be decent and public-spirited rather than corrupt, Plato also has a response. At 300c9-e2, he gives an argument for his earlier thesis that constitutions that fail to mandate rule of law are 'bad imitations' of the one true constitution specified in the first scenario (293e1-6, 297b9-c4). We may summarize his argument as follows: Rulers who make exceptions to the laws either have the expertise to make exceptions that will *improve upon the law*, or they do not. If they do, then those rulers belong the first-ranked scenario, not the third (and he has already argued for the superiority of the first). If, on the other hand, the exception-making rulers are inexpert, then they are trying to do what the expert ruler would do (improve upon the laws), but will do it badly—since they lack expertise. That is, the decent-ruler version of the third scenario lacks the epistemic advantages of the first scenario, even if it avoids the evils of the tyrannical version of the third.

We may conclude that while the three scenarios Plato ranks best, second best, and worst do not exhaust the logical possibilities, they do capture what we might call the *decision space* for defenders of rule of law. The first scenario captures the strongest reasons counting against the rule of law (the epistemic considerations), and the third scenario captures the strongest reasons in favour of it (the anti-tyrannical reasons). In another idiom, we might say that the first

highlights the (potential) epistemic costs of rule of law, while the third highlights the (potential) anti-tyrannical benefits. Rule of law, the second scenario, is defensible as long as the potential benefits of the first are *outweighed* by the potential harms introduced in the third. This is what I think Plato means when claims that the third scenario embodies a ‘an evil still greater’ than the second (300b6).

#### 4. Rule of Law, or Rule of Good Law?

At this point an objector might raise concerns about the goodness of the laws in the three scenarios. Is it Plato’s position that the third-ranked scenario is much worse than the second *no matter how good or bad the laws are*? That is, *no matter how well or badly the laws serve the interests of those who are subject to them*? If so, his defense of rule of law would be considerably weakened. While one might still plausibly argue that a polity’s well-being is never *improved* by the introduction of tyranny, the claim that the third scenario is obviously worse than the second seems less plausible in cases where the laws in force in the second scenario are horribly exploitative of the population. Moreover, the more egregious the laws in the second scenario, the less plausible it is to assume, as the Stranger does in the argument at 300c9–e2, that an inexperienced but public-spirited ruler is unqualified to make exceptions that will be beneficial to the city.

Interpreters of Plato are divided on how strong a principle of rule of law he is defending in the *Statesman*. The issue here is not what degree of conformity to rule of the law Plato requires<sup>13</sup>. Rather, it is whether the principle of rule of law is intended to apply no matter what the content of the laws, or only to a restricted class of lawcodes, i.e., those that are good, or good enough<sup>14</sup>. The interpretive options range between:

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<sup>13</sup> Raz states that conformity to the principle of rule of law comes in degrees, and that it is possible to have too much of it: ‘maximal possible conformity [with rule of law] is on the whole undesirable (some controlled administrative discretion is better than none)’ (Raz 1977: 222).

<sup>14</sup> The issue tends to be framed in the philosophical scholarship as the question, what is it about ‘law abiding’ constitutions that makes them good imitations of the expert constitution, as claimed at 293e3–6, 297c1–4? The traditional interpretation, e.g. Skemp/Ostwald (1957: xxiv), Brisson/Pradeau

## SYNTHESIS

### UNQUALIFIED Sovereignty of Law:

Political authority must be exercised in accordance with a polity's laws, no matter how good or bad the laws are.

and

### QUALIFIED Sovereignty of Law:

Political authority must be exercised in accordance with a polity's laws, provided the laws are good (or good enough).

My own view is that Plato intends to defend the weaker, qualified, principle. To be sure, some statements of the principle in the *Statesman* may, in isolation, sound like statements of unqualified Sovereignty of Law (i.e. not qualified by a restriction to *good* laws). For example, when the third-ranked scenario is introduced (300a1-7) there is no caveat about the content of the laws<sup>15</sup>. But the first time rule of law is claimed to be second best (297d-e) after expert rule—the thesis for which 300a-c functions as the argument—the laws in the rule-of-law scenario are explicitly identified as ‘the written documents [i.e. laws] that the [genuine constitution] would employ’ (297d6-7). That is, they are laws that an expert ruler would formulate as the best approximations of governing expertise. And that governing expertise, we are consistently told in the *Statesman*, is an expertise of care (*epimeleia*, 265e7, 305e2-6); like the craft of medicine, to which it is regularly likened (293b1-c3, 295b10-296c3, 297e11-13, 298c3-e3), it is

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(2003: 261-262), newly defended by Sørensen (2016) and Horn (2021), is that Plato has in mind laws that, even if not formulated by a political expert, are nonetheless good ones. By contrast, Rowe (1995: 227, 230-31) and (2000: 249), Lane (1998: 158), and El Murr (2014: 255) have argued that the beneficial features of the rule-of-law constitutions are purely formal. I count the latter as attributing to Plato the unqualified version of sovereignty of law, while the traditional interpretation takes Plato to be defending the qualified version.

<sup>15</sup> Although many readers read the characterization of those laws at 300b1-4 as an endorsement: ‘established on the basis of much experiment, with some advisers or others having given advice on each subject in an attractive way, and having persuaded the majority to pass them.’ See Sørensen (2016: 88, 96), against Rowe (1995: 230).



expertise in promoting the interests of the governed (not of the ruler) (296e2-297b3)<sup>16</sup>. These passages are therefore evidence that the *Statesman* defends a qualified version of rule of law, on which the laws in question are ‘good laws’— a qualification made explicit in the description of monarchic version of a rule-of-law constitution: ‘monarchy yoked in good written rules, which we call laws’ (302e10-12).

Of course one might worry that the epistemic critique, especially as it is deployed in the hyperbolic caricature of democratic rule of law at 298a1-299e10, is incompatible with the thesis that the laws in the second scenario are good ones (or good enough to support Plato’s claim that the third scenario is a greater evil than the second). I set this interpretive controversy aside, however, in order to focus on a philosophical critique to which Plato’s defense of rule of law seems to be vulnerable, if he is in fact defending the qualified version of the principle. If that is his position, then he must take the three ranked scenarios in the *Statesman* to involve the same set of laws, or at least equally good laws. His defense of rule of law would presuppose that the laws to which political authorities are subordinate are at least a rough approximation of expert governance. His claim would be that, given such a body of law, rule of law delivers governance that is considerably better than tyrannical government. If that is Plato’s position, then he appears to be a perfect target for an influential critique articulated by Joseph Raz.

### 5. Raz’s Critique of the Anti-Tyrannical Defense

While the epistemological critique of rule of law in the *Statesman* is distinctively Platonic, the anti-tyrannical defense of that principle is neither

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<sup>16</sup> Political expertise is also characterized as knowledge of what is just and good and fine for the citizens (294a10-b2, 295e4-6, 296c5-7, 297a7-b1, 301d1-2). It is wisdom about what will preserve (*sōzein*) the polity (293d9, 297b2) or prevent its destruction, modelled on a shepherd’s care for their flock (275b4-7)—the shepherd as on model of the 23<sup>rd</sup> Psalm, or the Homeric figure of the *poimēn laōn*, rather than on Thrasymachus’ model of the shepherd as exploiter of the flock (*Rep.* 343b; cf. 345c-d). On ruling as a form of *epimeleia* in Plato, see Lane (2021: 210-216) and Lane (2023: 118-120, 389-397).

## SYNTHESIS

original to nor distinctive of Plato. It was widespread among Greeks, especially Athenians, of the fifth and fourth centuries BCE. Consider, for example, the famous lines of Euripides:

**T5:** Nothing is more hostile to a city than a tyrant—where what is supreme (*prōtiston*) is not common laws (*nomoi koinoi*), but a single person who on his own holds power and prevails (*kratei*) over the laws. (Eur. *Suppl.* 429–32)

What Greeks of Plato's era called 'tyranny' might today be called authoritarianism (or in Raz's formulation, 'arbitrary rule'—where rule is arbitrary if it is exercised without regard to the interests of the ruled)<sup>17</sup>. Plato thus is part of a long line of theorists who defend rule of law as a safeguard against what Raz calls arbitrary rule.

In an elegant and influential criticism of that tradition, Raz has argued that rule of law is a purely formal feature of a legal system and provides only limited protection against arbitrary rule. The specific principle of rule of law on which we have focussed (sovereignty of law) corresponds roughly to what Raz calls rule of law 'in the political and legal sense'—the principle 'that government should be ruled by the law and subject to the it' and that is expressed in the slogan 'a government of laws, not men' (Raz 1977: 212). This is the principle of rule of law that Raz is concerned to elucidate in this essay<sup>18</sup>.

In Raz's precise formulation, rule of law is the principle that 'the making of any particular laws [i.e. directives by the state or its agents] should be guided by open and relatively stable general rules' (1977: 213). Such rules correspond to what Raz dubs law in the 'layman's sense'<sup>19</sup>, which is narrower than the legal

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<sup>17</sup> Arbitrary rule, as demarcated roughly by Raz (1977), would be a broader notion (including incompetent rule), but it includes what I am calling tyrannical rule.

<sup>18</sup> 'I shall proceed on the assumption that we are concerned with....the conception of rule of law which applies to government and to law and is no mere application of the law and order conception' (Raz 1977: 212)

<sup>19</sup> Here I am using 'laws' in what Raz (1977) calls the informal layman's sense, where laws are general and stable principles, as distinct from the particular regulations and executive or judicial decisions that execute or enforce those Laws, the latter being included along with the former in the category of law in the formal theorist's sense, according to Raz, where any *command* meeting the formal requirements of validity with a legal system counts as law.

theorist's conception of law, on which any edict meeting the formal conditions of validity in a legal system would count as law. Raz's 'open, stable and general rules' corresponds to what Plato has in mind by laws in the *Statesman*, where the generality of the laws is what exposes them to epistemological critique.

What Plato in the *Statesman* calls the *sungrammata* or *gegrammena* of a polis in T2 and T3 would count as law in this layman's sense. Applied to the Greek city states known to Plato, Raz's version of rule of law would require that any directives from the assembly, the lawcourts, and any officials (*archontes*) comply with the written laws (*sungrammata*, *gegrammena*). Thus Razian rule of law coincides with the principle of rule of law defended in the *Statesman*.

Raz allows that in a polity where the open, stable, and general laws are not themselves arbitrary—that is, if they are not indifferent to the interests of the laws' subjects—the requirement that all state authorities execute and enforce those laws without exception will protect citizens from arbitrary rule. So the rule of law does importantly *reduce the scope for arbitrary rule*, according to Raz. In Jeremy Waldron's paraphrase, it 'takes the edge off the power that is necessarily exercised over [subjects] in a political community'<sup>20</sup>.

Nonetheless, Raz insists, the principle of rule of law—being a purely formal principle—places no constraints on the content of the laws [*sungrammata* for Plato], and so does nothing to prevent the laws themselves from being 'arbitrary.' Where those laws are arbitrary, Raz allows, conformity to rule of law would protect against any *additional* arbitrariness being added to the legal system by subordinate officials or organs of the state; however, adherence to the rule of law has no power to ensure that the laws themselves serve the interest of the citizenry rather than a self-interested lawgiver (or a lawgiver captured by special interests).

Raz's specific critique here is an instance of a more general critique that he levels against theorists who credit rule of law with protecting human rights, equality, freedom, and so forth— all of the 'many virtues a legal system should

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<sup>20</sup> Waldron (2000: §6).

## SYNTHESIS

possess' (1977: 219)<sup>21</sup>. As Raz notes, it is perfectly possible to enshrine into law gross abuses of human rights and to institutionalize inequality: for example laws instituting slavery, apartheid, and segregation. Thus rule of law, as a formal feature of a legal system, is compatible with systematic violation of human rights, gross inequalities, and so forth. Such over-promise for rule of law amounts to what Raz diagnoses as a failure to distinguish *rule of law* from *rule of good law*.

Raz does identify a second virtue of rule of law which he claims is independent of the content of the laws, to which we will return below. But for now, let us focus on Plato's anti-tyrannical defense of rule of law in the *Statesman*. Is he guilty of conflating *rule of law* with *rule of good law*?

### 6. Plato's Methodological Disagreement with Raz

One observation to make here is that Plato's concern with laws in the *Statesman* is rather different from that of Raz's in 'The Rule of Law and its Virtues'. Raz is giving an abstract analysis of rule of law with a view to distinguishing it from other valuable features of a political system. Plato, by contrast, is taking the perspective of a legislator or constitution framer, someone tasked with framing a lawcode and the structure of political authority for a polity (this is a familiar ancient model of the lawgiver, exemplified by Lycurgus in Sparta or Solon and Cleisthenes in Athens, rather than by members of a present day legislature). A lawgiver, so conceived, must face the constitutional question: are the political authorities to be bound by the laws, or shall they be given the authority to substitute their own judgment for the laws? But as lawgivers, they also are charged with framing *good laws*. A legislator's task, so conceived, is to figure out rules for conducting the affairs of the polity well. This is because, for Plato, legislation is an expression of political expertise (*Plt.* 294a6-8), which is itself, as we noted above, a discipline of care (*epimeleia*).

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<sup>21</sup> For a recent example, see the four principles of rule of law articulated by the World Justice Organization: <https://worldjusticeproject.org/about-us/overview/what-rule-law>.

Raz, by contrast, takes the perspective not of the legislator but of the legal theorist who conceives of law as an instrument for guiding the behaviour of citizens. If we were to take such an instrumental stance toward medicine, Plato's paradigm of a discipline of care, it would yield the conception of medical directives as instruments for directing the behaviour of patients—which would be ridiculous, because as a kind of *epimeleia* (care) medicine is in the business of issuing directives for the sake of the patient's health. From Plato's perspective, it is equally ridiculous to conceive of law (and the political expertise that it expresses) in such instrumental terms.

From the Platonic perspective—on which law is not just for guiding behaviour, but for guiding that behaviour to good ends—good law and rule of law are part of a 'package deal'. Rule of law is evaluated as an add-on to good law, and is approved as a feature of a constitution that protects law's ability to perform its function of benefitting the population. Rule of law, if observed, prevents the subversion of that function by unscrupulous rulers or office-holders. Plato therefore does not share Raz's methodological presupposition that rule of law, if it is a virtue of a political system, must be valuable in isolation from other virtues of that system.

This is not to concede that Plato is engaging in the lax thinking, rightly criticized by Raz, that uses 'rule of law' promiscuously to apply to 'all the virtues of a state' (1977: 214). 'One of the merits of the doctrine of rule of law I am defending,' states Raz, 'is that there are so many values it does not serve' (1977: 219). On the interpretation I am offering, Plato is concerned with rule of law in as precise and restricted a sense as Raz invokes, one that substantially coincides with what Raz classifies as rule of law in the political sense. Nor is Plato guilty, on this interpretation, of confusing or conflating rule of law with some other virtue of the state. From the point of view of the legislator, the value of rule of law is not independent of the goodness of the Laws.

### *7. Rule of Law and Respect for Human Dignity*

Raz, by contrast, is interested in distinguishing rule of law from other ideals of a political system and then identifying its virtues as such. In his view, there

## SYNTHESIS

are two. The first is the limited protection against arbitrary rule that we considered above—limited because of the essentially instrumental nature of law, in Raz’s view. The second and more important virtue of rule of law, for Raz, is also integral to that instrumental nature. The point of *law as such*, he argues, is to guide human behaviour<sup>22</sup>. And in order for law to succeed at this task, individual agents must know what the law requires of them. And if they know this, and the laws are open, stable, and general, individuals will be able to engage in long-term planning. Rule of law delivers this stability and predictability:

**T6:** [T]here are more reasons for valuing the rule of law. We value the ability to choose styles and forms of life, to fix long-term goals and effectively direct one’s life towards them. One’s ability to do so depends on the existence of stable, secure frameworks for one’s life and actions. (Raz 1977: 220)

Rule of law, Raz claims, ‘help[s] to secure’ such ‘fixed points of reference’ (1977: 220). In so doing, Raz claims, it respects human dignity:

**T7:** [R]ule of law is necessary if the law is to respect human dignity. Respecting human dignity entails treating humans as persons capable of planning and plotting their future. (Raz 1977: 221)

Changing the rules without notice ‘insults’ that dignity (Raz 1977: 221) and fails to respect autonomy:

**T8:** A legal system which does in general observe the rule of law treats people as persons at least in the sense that it attempts to guide their behaviour through affecting the circumstances of their actions. It thus presupposes that they are rational autonomous creatures and attempts to affect their actions and habits by affecting their deliberations. (Raz 1977: 222)

Raz is clearly right that predictability and stability in the ‘circumstances of [one’s] actions’ (T8) are necessary conditions of autonomous agency. Thus we might agree that rule of law provides the predictability that is a necessary condition for the exercise of autonomy by political subjects. But is it a sufficient

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<sup>22</sup> Raz (1977: 213, 214, 218, 221, 222, 225, 226).

condition for that autonomy? As Raz notes, ‘the law can violate people’s dignity in many ways’ (1977: 221). Indeed, laws that institutionalize chattel slavery effectively deprive the enslaved of their ‘ability to choose styles and forms of life, to fix long-term goals and effectively direct one’s life towards them’ (T6). The stability and predictability yielded by the statutes regulating the institutions of slavery would do nothing to mitigate the offense against human dignity committed by those statutes.

Still, one might defend Raz’s claim by distinguishing the massive offence to human dignity entailed by the institution of slavery—which puts out of reach of the enslaved all the desirable ‘styles and forms of life’—from the additional indignity that a chattel slave would suffer by being subject to capricious and unpredictable command and punishment. To the extent that an orderly and predictable condition of servitude is preferable to the capricious and unpredictable alternative, it is arguably because of the minimal scope for agency that the orderly scenario affords. (Knowing what behaviour is expected and the penalty for not performing it, one can navigate the least miserable path through the hazards and degradations that circumscribe such a life). And to the extent that there is dignity in agency, we must agree with Raz that rule of law as a purely formal feature of a system does respect that dignity.

Still that agency, and the attendant dignity, is extremely thin; it is agency one can exercise even under conditions of extreme coercion and exploitation. If a rule of law regime is to provide the laws’ subjects the broader scope of agency suggested by Raz’s formula—‘ability to choose styles and forms of life, to fix long-term goals and effectively direct one’s life towards them’ (T6)—then it must provide the conditions for the more robust (and more dignified) level of agency and self-direction involved in uncoerced behaviour. In Plato’s vocabulary, this would be a regime in which ‘law rules over willing subjects...’ (*Laws* 690c2-3, also quoted above)<sup>23</sup>. Both Plato and Raz can agree that to achieve this more robust political ideal, a regime must have not only rule of law but good laws.

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<sup>23</sup> While the Eleatic Stranger in *Statesman* notoriously claims that willing subjects are not a criterion of expert rule, (293a6-b1, c5-d2), the Athenian in *Laws* insists that a genuine politeia will have willing subjects (832c2-4). Trivigno (2021) proposes to reconcile the apparent tension between these two views with the proposal that willing subjects are a ‘mark’ rather than a ‘criterion’ of correct rule.

## SYNTHESIS

Where does this leave the Platonic defense of rule of law and the Razian critique? Raz is right that any robust anti-tyrannical benefits from rule of law depend on the goodness of the laws in question, but this is a point on which Plato would agree. On the other hand, Plato would also be right to charge Raz with over-stating the degree of dignity and autonomy afforded by the rule of law when it is divorced from good laws. If citizens are to have the dignity compatible with being willing subjects to the law, the laws must be ones they can endorse as good.

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Lane (2023: 392) proposes that *Statesman* 293a-e treats the operations of expert rule from a 'black box standpoint' that focusses on the goal of expert rule (benefit to the ruled) rather than the detail of how it will be implemented.



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## SYNTHESIS

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