

Two Related Contradictions in *Laws IX*¹

Roslyn Weiss

In Book IX of the *Laws*, the Athenian takes note of two contradictions. The first, which is found at 859d-860c and which he attributes to the many, may be formulated as follows: since (1) all just things are beautiful; but (2) just sufferings are ugly; it follows that (3) not all just things are beautiful. The second, which is found at 860d-861a and which he attributes to himself, I shall formulate so that it parallels the first: Since (1') all who do injustice do so involuntarily; but (2') penalties for voluntary injustices are (rightly) more severe than for involuntary ones; it follows that (3') not all injustices are involuntary.²

At first glance, these two contradictions seem unrelated: the first appears to address the question of whether or not all just things, including just sufferings, are beautiful; the second, the question of whether or not all injustices (*ἀδικήματα*) can be involuntary if legislators are right to punish voluntary injustices more severely than involuntary ones. Yet, the Athenian suggests that both are about 'these same matters' (*περὶ αὐτὰ ταῦτα*)³ and, in addition, that whereas the many do indeed speak discordantly (*ἀσυμφώνως*),⁴ the Athenian (and Kleinias) do not: 'Let us look again, Kleinias', the Athenian says, 'to see how our view *has a harmony about these same matters*', *περὶ αὐτὰ ταῦτα ἔχει τῆς συμφωνίας* (860c5). Once the Athenian resolves the *apparent* contradiction in his position on punishment, he will then, it seems, have consonance about justice and beauty as well. More precisely, what he will have is the warrant to deny the second proposition of the many's view, the proposition that just sufferings are ugly.

In this paper, I shall do four things: (1) elucidate the way in which the contradiction concerning the involuntariness of injustice is related to the contradiction concerning the just and the beautiful; (2) explain why the resolution of the punishment-difficulty by

¹ Except where noted, translations are mine, although I have frequently consulted and benefited from the translations by Pangle, Bury, and Taylor. References to passages in Book IX of the *Laws* omit both the dialogue's name and the book number. Most (though not all) references to passages in the *Laws* contain the book number but not the dialogue's name.

² The Athenian recognizes that if all injustice is committed involuntarily, there might be no place for punishment at all: 'Should we legislate or not?' (860e6-7), he asks. (2') could equally well, then, be put as follows: Penalties are (rightly) imposed for and only for voluntary injustices.

³ See Saunders, 423: 'The Stranger may mean only "That was one confusion; now here is another". But *περὶ αὐτὰ ταῦτα* surely indicates a more intimate connection'.

⁴ Oddly, Bury, Taylor, and Pangle all mistranslate the *πρὸς αὐτοὺς* at 859d1 as 'among themselves'. Yet, it is clear that the Athenian, having set as his goal to see 'to what extent we now agree and to what extent we disagree with ourselves' (*ὅπη ποτὲ ὁμολογοῦμεν νῦν καὶ ὅπη διαφερόμεθα ἡμεῖς τε ἡμῖν αὐτοῖς* — 859c7-8), wishes also to see with respect to the many the extent which they agree and disagree 'with themselves' (*αὐτοὶ πρὸς αὐτοὺς αὐῶ*).

way of a new distinction between injustice and injury is all-important to resolving the contradiction concerning the just and the beautiful; (3) show that the practice of imposing harsher penalties for harmful acts that are voluntary and lighter ones or none at all for those that are involuntary is not only compatible with, but is mandated by, the view that all injustice is committed involuntarily; and (4) identify what it is about just punishment that the Athenian does, after all, find ugly.

1. How the contradiction concerning the involuntariness of injustice is related to the contradiction concerning the just and the beautiful.

The text at 860c5 cited above leaves little doubt that the only way Kleinias and the Athenian can justify as consonant their views regarding δίκαιον and καλόν, viz. the view that all just things, including just sufferings, are beautiful, is by dispelling the apparent contradiction in their other view, the one concerning punishment and the involuntariness of injustice. Nevertheless, commentators have been singularly unable to see just how this challenge is met. One, Bury, simply avoids the problem altogether by inaccurately translating the phrase περὶ αὐτὰ ταῦτα: instead of ‘how our view has a harmony *about these same matters*’, Bury has, ‘how far it [our view] is consistent *in this respect*’. For him, the juxtaposition of the two contradictions is apparently philosophically insignificant.

Stalley and Saunders both attempt to connect the two contradictions, suggesting that they can both be solved in the same way: the same strategy that succeeds in dispelling the contradiction in the many’s view of the relationship between δίκαιον and καλόν will work, they think, for dispelling the contradiction in the Athenian’s view on punishment and the involuntariness of injustice.

Stalley suggests that the contradiction concerning the just and the beautiful can be solved simply by insisting a priori (as in the *Gorgias*) that what is just is necessarily beautiful, so that, insofar as the punishments in question are just punishments, they are necessarily beautiful, that is, beneficial for the individual punished (152). Put another way, what Stalley recommends is that proposition (2), ‘Just sufferings are ugly’, be denied outright. In the matter of the involuntariness of injustice, the solution he recommends to the Athenian is to distinguish two senses of ‘voluntary’, the one to concern whether or not the agent *actually* wanted to commit the offense, the other to concern whether or not the agent *would* have wanted to commit the offense had he known what was good for him and been in control of his passions (156). Presumably, once this distinction is in place, punishment could be justifiably applied to the extent that the answer to the first question, ‘Did the agent actually want to commit the offense?’, is yes, even if the answer to the second question, ‘Would the agent have wanted to commit the offense had he known what was good for him and been in control of his passions?’, is always no. It is difficult to see how Stalley’s respective solutions to the two contradictions treat them in ‘the same kind of way’ (152), when for him the solution to the first

contradiction lies in denying one of its premisses outright, but the solution to the second involves distinguishing two senses of the term ‘voluntary’.⁵

Saunders, like Stalley, sees the connection between the two contradictions in that in both, as he puts it, ‘the same logical or linguistic point is involved’ (423). For Saunders, just as just punishment indeed *is* both beautiful and ugly, depending upon which ‘aspect’ of it is being considered, so, too, wrongdoing is both voluntary and involuntary, depending upon which ‘aspect’ of it is being considered. Just as just punishment, when considered in terms of its aspect as δίκαιον, is καλόν (in the moral sense), yet, when considered in terms of the aspect of what it involves, viz. ‘whipping or branding or something of that sort’, is αἰσχρόν (in the physical and aesthetic sense — 422), so wrongdoing is voluntary when considered in terms of the act itself (‘no one forcibly guides my hand’ — 424), and involuntary when considered in terms of the disposition to act, that is, in terms of the state of mind, ἀδικία, from which the act stems (‘it is not in the nature of things that I could ever have chosen *that*’ [emphasis added] — 424). ‘The act and the disposition to act’, Saunders contends, ‘are thus the two ‘aspects’ of a crime that may attract contradictory adjectives ...’ (424).⁶

I see two problems with Saunders’ view. First, on his account, the first contradiction, like the second, turns out to be a merely *apparent* contradiction. Yet there is no indication in the text that the many’s view that just punishment is both beautiful and ugly is no more than an apparent contradiction. On the contrary, those who maintain that just punishment is something that is both δίκαιον and αἰσχρόν are said to create discord between the just and the beautiful (860a5) as well as to speak dissonantly (860c1-2). It

⁵ Stalley (152) recognizes the presence of ‘some kind of logical point’ that the Athenian means to be making in connection with the first contradiction, but in seeking to identify it he does little more than defer to Saunders.

⁶ It is likely that, by citing and rebuffing the contentious lover of victory or honor who claims that ‘while men *are* unjust only unwillingly, there are many who *commit* injustice willingly’ (ἔνεκα ἄκοντας μὲν ἀδίκους εἶναι ... ἀδικεῖν μὴν ἐκόντας πολλούς — 860e1-2), the Athenian means to block the very move that Saunders makes, viz. that of allowing for the possibility of someone’s *committing* injustice willingly but not of his *being* unjust willingly. See Shorey, 404-5, who rightly rejects Bury’s translation, ‘while there are some who are unjust against their will, yet there are also many who are unjust willingly’, insofar as ‘this overlooks the hair-splitting antithesis of the distinction of the contentious opponent between ἀδίκους εἶναι and ἀδικεῖν’ (404-5). See also Stalley, 155. Pangle’s translation is one that does preserve the ‘hair-splitting’ character of the opponent’s contention. The Athenian’s position is that not only is the bad man involuntarily bad, but ἄκοντας ἀδικεῖν πάντας, all who *commit* injustice do so unwillingly as well: ἀδικεῖν is the *commission* of unjust acts. Saunders compounds his error by taking the commission of a crime (rather than ‘the result of the act’ [424]), when it stems from injustice (ἀδικία) in the soul, as ἐκούσιος βλάβη as opposed to ἀδικεῖν, only the latter of which he thinks is in no way voluntary. Insofar, however, as for the Athenian ἐκούσιος βλάβη is the equivalent of ἀδικεῖν, both are for him in fact ‘involuntary’. The entire passage 860d5-9 I render as follows: ‘That the unjust man is presumably bad, but the bad man is involuntarily so. But, it is never reasonable that what is involuntarily done is a voluntary thing. Therefore, to someone for whom ἀδικία is something involuntary, the man who commits injustice will appear involuntary, and indeed this is what must be agreed to by me now. For I agree that everyone commits injustice involuntarily’.

seems that Saunders misunderstands the Athenian's point at 859d-e. What Saunders thinks the Athenian means is that just as a person may be beautiful in one respect and ugly in another, so can a punishment be beautiful in one respect and ugly in another. But what the Athenian in fact means is that just as just people, qua just, are utterly beautiful (πάγκαλοι), and the ugliness of their bodies threatens not in the least their complete beauty, so acts that are just are perfectly beautiful, and this is so whether the acts are done or suffered.⁷ It is clear that, in insisting that if the argument is not to sound discordant (οὐκ ἂν διαφωνοῦντα), then any suffering that shares in justice must, to that extent, be beautiful (859e11-860a2), and in characterizing as dissonant (διαφωνήσει) the view that justice when suffered is αἰσχρόν, the Athenian rejects the idea that just punishment is beautiful in one respect, ugly in another. For him, just as someone who is just is perfectly beautiful despite having an ugly body, so, too, a deed that is just ought to be perfectly beautiful whether imposed or suffered. Insofar as the many think that a just person who has an ugly body is not wholly beautiful or that a just punishment when suffered is not wholly beautiful, they are, from the perspective of the Athenian, deeply mistaken and out of harmony with themselves.⁸

Second, and from my point of view more problematic, Saunders implies that the resolution of the consonance problem in the relationship between justice and beauty is independent of the resolution of the relationship between punishment and the involuntariness of injustice and does not await that resolution. Indeed, both Stalley and Saunders seem to think that, if anything, it is the solution to the contradiction concerning justice and beauty that holds the key to solving the problem posed by the involuntariness of injustice. Yet the text makes clear that the Athenian hopes to relieve the tension in the relation among δίκαιον, καλόν, and αἰσχρόν, a tension that indeed exists in the many's outlook and that might *seem* to exist in his and Kleinias's as well,⁹ by revealing the

⁷ The Athenian is somewhat circumspect in urging the view that the just things and the beautiful things completely coincide, thrice qualifying his affirmation of their coincidence with σχεδόν: at 859d8, 859e5, and 859e7.

⁸ I found it initially somewhat puzzling that the two 'aspects' of just punishment that Saunders identifies are not those actually specified in the text, viz. punishment as imposed and punishment as suffered, but rather two others, viz. punishment as just and punishment as brutal. But it is clear to me now that since what Saunders is after is a way out of the contradiction, he actually has no choice. Indeed, if one accepts as the two 'aspects' those actually specified in the text, there is no way out: just punishment is just both in its imposed aspect and in its suffered aspect and so, on Saunders' account, would be in both its aspects simultaneously καλόν and αἰσχρόν — καλόν in its moral sense and αἰσχρόν in its physical and aesthetic sense.

⁹ 'For the laws established by us a little earlier would seem to pronounce things totally opposed to the things now being said' (860a8-10). The view that the just things and the beautiful things are actually distinct from one another is attributed to the many (860c1-2); the view from which this view derives, however, viz. that the beautiful things *seem* at times completely the same and at times completely opposed (860b6-7), is attributed to 'us'. It is 'our', that is, the Athenian's and Kleinias's, task to show that despite how things 'seem' — even to them — just things are always beautiful. If the Athenian was stopped earlier in his lawmaking endeavor by the apparent ugliness of just sufferings, his task now is to explain how it is possible for him and Kleinias — though not for the many — to repudiate the

consistency in the relationship between his own seemingly inconsistent statements concerning the involuntariness of injustice and the institution of punishment. The matter of the apparent inconsistency between the involuntariness of injustice and penal practice is introduced just so that the Athenian can show how *we*, that is, how he and Kleinias, unlike the many, do have a consonance with respect to the δίκαιον-καλόν relationship.

A more fruitful way of connecting the matter of the involuntariness of injustice to the matter of the just and beautiful is Pangle's.¹⁰ Pangle (497-8) recognizes that the involuntariness of evil, as he calls it, is supposed to contain the solution to the contradiction in the many's view of justice and beauty. If all evil is seen to be involuntary, Pangle says, then the penal law would be neither retributive nor preventive but educative, a way of 'guiding perplexed men back to the path that is good for them' (498). Since, moreover, punishment as educative is beautiful both for the educator and for the one educated, there are no grounds for saying, as the many do, that suffering just punishment is αἰσχρόν. (Pangle is not quite as explicit as this but I think this is what he means.) The advantages of Pangle's view over Saunders' are clear: whereas Saunders sees only a logical or strategic parallel between the matter of the just and the beautiful and the matter of involuntary injustice, and whereas he thinks that the solution of the former holds the key to the solution of the latter, Pangle understands that the connection between the matter of the just and the beautiful and the matter of involuntary injustice is substantive, and he rightly sees that it is the involuntariness of injustice that holds the key to resolving the difficulty in the relationship between the just and the beautiful.

If there is a deficiency in Pangle's view, it is that although it does indeed offer an explanation of how the involuntariness of injustice might warrant the rejection of the many's proposition (2), 'Just sufferings are ugly', it offers no account of how it is the *resolution* of the apparent inconsistency in the Athenian's view concerning the involuntariness of injustice and penal practices that provides that warrant. Yet the text is explicit on this point: according to the Athenian, what needs to be made clear if he and Kleinias are to show that their view, unlike the many's view, is free of dissonance with respect to justice and beauty is that the Athenian has no dissonance 'in my own statements' (τοῖς ἑμαυτοῦ λόγοις — 860e3-4). If we hope to understand the way in which the resolution of the inconsistency in the Athenian's own statements justifies his rejection of proposition (2), we must first understand the resolution itself. The resolution

apparent ugliness of just sufferings and hence to resume their lawmaking efforts. Although 854b ff. is easily identified as the place in the text where, according to the Athenian, 'we established that the temple-robber should die — justly — and the same for the enemy of well-made laws' (860b1-2), it is not similarly obvious where it was that 'we stopped, seeing that these sufferings were limitless in severity, and that while they were the most just of all sufferings, they were also the ugliest' (860b3-5). The only text that seems even a remotely viable candidate for the place where 'we stopped' is 857b, where Kleinias's demand that punishments be made to respond to the differences among crimes stems the flow of the discussion.

¹⁰ Crombie, I, 280, holds a view similar to Pangle's.

involves the introduction of a new distinction, a distinction between injustice and injury (βλάβη), to which we now turn.¹¹

2. The new distinction between injustice and injury

Why does the Athenian insist on the distinction between injury and injustice? And why does he insist on substituting a distinction between voluntary and involuntary injury for the distinction between voluntary and involuntary injustice?¹² As commentator after commentator has noted, the distinction between voluntary and involuntary bad and harmful acts continues to be pivotal in Book IX in the Athenian's determination of the penalty to be levied. Why, then, does it matter whether one says that there is voluntary and involuntary injustice or that there is voluntary and involuntary harm or injury (βλάβη)?¹³ The Athenian seems clearly to think it does matter, insisting that the distinction is more than merely verbal, more than a mere matter of names, *ὀνόματα* (864a8-b1). What, then, is its significance?

¹¹ When at 861b-c the Athenian appears troubled that his pronouncement that all injustice is involuntary will seem oracular, especially if it departs without having offered a supporting argument and if it is prepared to legislate in defiance of existing practice, the remedy he proposes comes in the form of making clear how, despite the involuntariness of all injustice, the distinction between voluntary and involuntary can nevertheless be preserved: whereas injustice is never voluntary, the infliction of harm is frequently involuntary but no less frequently voluntary (861e3-4, 861e8-862a1). In the exchange between Kleinias and the Athenian at 861c-d, Kleinias offers the Athenian two alternatives — either retract the pronouncement that all injustice is involuntary or provide a new distinction; the Athenian feels constrained to reject the first alternative because he believes the pronouncement to be true; he therefore chooses the second. The new distinction constitutes in itself the heretofore missing supporting argument for the pronouncement that all do injustice involuntarily: note how the *ὡς ὀρθῶς εἴρηκεν* of 861b7-c1 reappears in Kleinias's second alternative: *ὡς ὀρθῶς εἴρηται* (861d1). Indeed, with the new distinction in place, the Athenian will be able to legislate in a new way, for he will not have to regard unintended injury as injustice (862a). Furthermore, since the new distinction *justifies* the Athenian's institution of new legislative practices, he is absolved of the charge of having dogmatically 'laid down the law' (*κατανομοθετήσει* — 861c1) in defiance of the old practices.

¹² The new distinction that is to replace the old and mistaken one between voluntary and involuntary injustice is one that preserves them as distinct types (*δύο τε ὄντα* — 861c3), but no longer as distinct types of *ἀδικήματα*. They are now distinct types of βλάβη, the intentional ones being *ἄδικα*, the unintentional ones not being *ἄδικα* at all. The matters of whether there is to be punishment at all and the degree of its severity are to be determined henceforth by this distinction. Voluntary injury is to be the equivalent of injustice, and involuntary injury will, when done in a just way and from a just character, emerge as just. Both voluntary injury and wrongful benefit are forms of injustice. What the Athenian proposes to do is to introduce a distinction between voluntary and involuntary that is 'other' (*ἄλλην*) than the standard one between voluntary and involuntary injustice. (There is no need for Hermann's emendation of *ἄλλην* to *ἀλλήλων* at 861c3. [Bury follows him.] The emendation is rejected by England, Ritter, and Stallbaum. Taylor and Liebes translate, respectively, 'other than supposed', and 'ורבבש חממ הונה'.)

¹³ See, e.g., Stalley, 153-4.

Many interpreters of the *Laws* think that the substitution is indeed worthless. If, on the one hand, the notion that all injustice is involuntary is either exculpatory in some sense or at least renders all crimes equal (860e-861a), then it cannot be right to supplant it by a distinction between voluntary and involuntary injury that restores culpability and renders crimes decidedly unequal. And if, on the other hand, the notion that all injustice is involuntary neither excuses nor equalizes crimes and criminals, what exactly is to be gained by replacing the presumably impossible voluntary injustice with the decidedly possible — and indeed frequent (861e3-4, 861e8-862a1) — voluntary injury?

Some scholars seem to think that the Athenian simply abandons his notion of the involuntariness of injustice when it comes time to set forth actual punishments.¹⁴ But it is hard to see why the Athenian would insist so firmly on the involuntariness of injustice and even introduce a new distinction between injustice and injury to shore it up if he has no intention of sticking with it when it matters most. Moreover, the Athenian is quite adamant in his assertion that he means to be acting in consonance with his own statements when, despite asserting that all injustices are involuntary, he not only persists in issuing penalties but is prepared to issue unequal ones (860e-861a). He must, it seems, have a reason for maintaining his commitment to the involuntariness of all injustice at the same time that he advocates distinguishing voluntary from involuntary injurious acts.

What I wish to do in this section is (a) explain what the Athenian means by the involuntariness of injustice; (b) explain the distinction between injustice and injury; and (c) show how the distinction between injustice and injury that renders the Athenian's own statements consistent provides the Athenian with the justification he needs for rejecting the many's proposition (2), 'Just sufferings are ugly'.

(a) What does the Athenian mean by the involuntariness of injustice?

There can be no doubt that the Athenian equivocates on the terms 'voluntary'/'involuntary' in *Laws* Book IX, whether he uses ἐκῶν/ἄκων or βουλόμενος/μὴ βουλόμενος.¹⁵ When he says that all injustice is involuntary, he uses the term in what might best be called its Socratic sense; on all other occasions, he uses the terms voluntary and involuntary in their ordinary sense.¹⁶ When the Athenian proclaims that 'Everyone does injustice involuntarily', ἀκοντας ἀδικεῖν πάντας (860d9), and derives it from the more

¹⁴ Pangle, 500: 'It appears that in practice the Athenian must abandon his theorizing and give in to the naive view of punishment rooted in human anger, which always tends to assign responsibility to the agent who inflicts hurt'. Also Gulley, 306: '... for the purposes of his penal code Plato substantially abandons the Socratic thesis'.

¹⁵ Perhaps there is a bit of irony in the Athenian's declaration at 860d1 'that all bad men are *in all respects* (εἰς πάντα) unwillingly bad', when in fact they are unwillingly bad only in the special Socratic sense. The point of the εἰς πάντα is most likely to forbid emphatically the utterance that *injustice* is voluntary, restricting the term 'voluntary' to *injury*. The Athenian's view would then be that (1) voluntariness can and often does characterize the infliction of injury; (2) the infliction of injury, when and only when voluntary, is injustice; but nevertheless (3) injustice is itself always completely ('in all respects') involuntary. The Athenian does once come dangerously close to uttering the forbidden words, 'voluntary injustice', at 862d1-4. See n. 58.

¹⁶ Adkins, 306.

basic maxim, ‘the bad are all bad involuntarily’, οἱ κακοὶ πάντες [εἰς πάντα] εἰσὶν ἄκοντες κακοὶ (860d1),¹⁷ the force of the ‘involuntarily’ is that the act is not something the agent wants *really*. The reasoning that underlies this dictum is as follows: no one wants to be wretched; having an unjust soul (which is the equivalent of being a bad man) is what in fact makes one wretched;¹⁸ acting unjustly makes one’s soul unjust and hence makes one a bad man;¹⁹ hence, no one really wants to act unjustly; hence, all acts of injustice are involuntary. When, by contrast, the Athenian speaks of the voluntariness or involuntariness of harmful or beneficial acts, as opposed to the voluntariness or involuntariness of injustice, he reverts to the ordinary sense of voluntary and involuntary. In the ordinary sense, an act is voluntary as long as the agent is aware of the nature of what he is doing, and/or does what he does in accord with what he quite consciously wishes to do at the time. When a person commits an act that he wants to commit, even if in committing it he knows he is committing an injustice,²⁰ that person has acted voluntarily; indeed, he has committed an injustice voluntarily. Nevertheless, the injustice that he has committed voluntarily in the ordinary sense is an involuntary injustice in the Socratic sense: insofar as, in committing injustice — no matter how consciously, deliberately, and willfully — a person fails to achieve what he truly wants, namely, to live a genuinely good life and be a genuinely good man, he fails to act voluntarily. When the Athenian says that all injustice is involuntary, he means no more than that it puts the agent in a state that is, qua objectively undesirable, also both undesirable to and undesired by *him*. A state of being that is objectively bad for one is a state of being that one does not want to be in, no matter how much one deliberately chooses the acts that put one in that state. Insofar as being unjust is in fact not good for anyone, no one’s deliberate and intentional pursuit of injustice is voluntary — in the Socratic sense.

(b) *The distinction between injustice and injury*

There is, I believe, a small but serious misunderstanding that has found its way into the ‘standard’ conception of the Athenian’s distinction between injustice and injury as laid out at 861e6-862c4. According to the standard conception, injustice (as ἀδικία) is taken to be a state of the soul, a state of character, that breeds a malicious intent and gives rise to the commission of unjust acts (ἀδικεῖν); and injury is thought of either as the bare act that causes harm (setting considerations of *mens rea* aside) or as the harm itself that is

¹⁷ See also V.731c2-3: ‘the unjust man is not willingly unjust’ (ὁ ἀδικος οὐχ ἑκὼν ἀδικος); also, 734b4-6: ‘... every unrestrained man must necessarily be living this way involuntarily; the whole mob of humanity lives with a lack of moderation because of their ignorance, weakness of will, or both’ (πᾶς ἐξ ἀνάγκης ἄκων ἐστὶν ἀκόλαστος· ἢ γὰρ δι’ ἀμαθίαν ἢ δι’ ἀκράτειαν ἢ δι’ ἀμφότερα, τοῦ σωφρονεῖν ἐνδεής ὢν ζῆ ὁ πᾶς ἀνθρώπινος ὄχλος).

¹⁸ See II.660e: No matter how rich a person is, if he is unjust, he is wretched and lives a life of misery.

¹⁹ Acting unjustly is also, of course, what a bad man, or a man with an unjust soul, typically does.

²⁰ If the Athenian regards as the task of the most noble laws to induce men to hate injustice and to love, or at least not to hate, justice (862d4-e1), it is clear that he recognizes that some men do love injustice, though, of course, for him, as for Socrates, they nevertheless do, in some deeper sense, ‘truly’ hate it. Such persons, the Athenian contends, are ignorant of the ugly way in which they mistreat their souls. See V.728a-b.

caused by the act. So, for example, if someone damages the property of another (breaks his fence, say, as in Saunders' example, 423-4), his action is unjust if and only if it springs from an evil intention expressive of the nasty disposition of his soul (he is jealous, perhaps, or spiteful); and the injury-element in the action is identified either as the damage itself (the broken fence) or as the act that causes damage (breaking the fence). So far, so good. Things begin to go awry, however, when it is assumed, as it frequently is, that the Athenian divides injurious acts into but two categories, and that these are both mutually exclusive and jointly exhaustive. The first category of harmful acts is believed to contain unjust acts that emanate from a malignant soul and are maliciously intended to cause harm to others; the second is thought to contain just acts that emanate from a benign soul and are well-intentioned, meaning to cause no harm to others. The fact is, however, that the Athenian identifies (if only implicitly) *three* categories of injurious acts (as well as three corresponding categories of beneficial acts); these are: (1) unintentional injurious (or beneficial) acts that are not unjust (or not just); (2) injurious (or beneficial) acts that are wrongly committed and hence unjust; and (3) injurious (or beneficial) acts that are rightly done and hence just. (We note that in the second and third categories, whether there is injury or benefit is essentially irrelevant to the determination of the acts' justness or unjustness.) It is the third category of harmful acts, the one that contains acts that are actually just and not merely not unjust, that helps account for how the Athenian can later regard even harmful acts committed by people with well-ordered souls as 'just and best for the whole of human life', δίκαιον ... καὶ ἐπὶ τὸν ἅπαντα ἀνθρώπων βίον ἄριστον (864a4-6), — high praise indeed.

The Athenian begins by identifying acts of the first category: 'If someone injures somebody in some way, not wishing to do so, but involuntarily', μὴ βουλόμενος, ἀλλ' ἄκων, this is not a case of doing injustice involuntarily but rather a case of not doing injustice at all (862a3-7).²¹ It would seem that the Athenian could easily complete the thought and say: 'If someone benefits somebody in some way, not wishing to do so, but involuntarily, this is not a case of doing justice involuntarily but a case of not doing justice at all'. The Athenian then goes on to identify the second category: '... when a benefit (ὠφελίαν) that is not correct (οὐκ ὀρθήν) comes to pass,²² the one responsible for the benefit *is* committing an injustice' (862a7-8). It would seem that here the Athenian could supplement his words with the following: 'When a harm (βλάβην) that is not correct comes to pass, the one responsible for the harm is committing an injustice'. In other words, it is when a person acts *wrongly* that, regardless of whether in doing so he confers benefit or harm, he is properly said to commit an injustice.²³ But the Athenian does not stop here. He goes on to identify yet a third category; he says: '... if someone gives something to somebody else or, on the contrary, takes something away, this sort of thing should not be called simply just or unjust, but what the legislator should see is whether the person, in doing a benefit or injury to somebody else, employs a [just] disposition

²¹ These are frequently referred to as accidental. See, e.g., Mackenzie (201): '... some acts, whether they benefit or injure, are done on purpose and others by accident'.

²² At *Gorg.* 488a2, as here, μὴ ὀρθῶς has the sense of wrongdoing, of improper behavior.

²³ This interpretation of the second case is confirmed by what follows immediately in the text: 'On the other hand, in the case of unjust injuries, and gains as well — when someone makes somebody gain by doing him an injustice ...' (862c).

(ἤθει) and a just way (δικαίῳ τρόπῳ) (862b3).²⁴ In order, then, for an injurious act to be regarded as just, it is not sufficient that it be unintentional; it must be done both from a just disposition and in a just way. Moreover, if, as the Athenian goes on to explain, what he means by an *unjust benefit* is that ‘someone makes someone else profit by doing him injustices’, ἐάν τις ἀδικῶν τινα κερδαίνειν ποιῆ, (862c6-7), it is reasonable to assume that what he means by a *just harm* is that someone causes someone else to suffer a loss by doing him justice. When, then, is harm not merely not unjust but positively just, that is, ‘just and best for the whole of human life’? Surely it is when someone does *right* by another, even though in so doing he causes him harm.

Let us turn now to the second text in which the distinction between injustice and injury is drawn, 863e-864a, and where a similar misunderstanding prevails. There is scholarly disagreement as to how precisely to understand this passage and, in particular, how to understand the words κἂν σφάλῃται τι at 864a4 — whether as ‘even if it be somewhat mistaken’ or as ‘even if some damage be done’. On the former and apparently more widely favored translation,²⁵ the Athenian is thought to hold what has come to be known as the ‘good conscience’ view,²⁶ seeing justice as a matter of conforming behavior to a belief concerning what is best — whether one’s own belief or that of the city — even if that belief is mistaken; moreover, he is thought to hold that what determines whether or not an act is just is solely whether or not it is the work of a properly ordered soul. On the latter translation,²⁷ by contrast, the Athenian is thought to attribute the justness of an act to its conforming to an opinion, whether one’s own or the city’s, about what is best, an opinion that is presumed *not* to be *incorrect* — even if the act results in untoward consequences.

I favor the reading ‘even if some damage be done’ over ‘even if it be somewhat mistaken’ for several reasons. First, insofar as this passage (863e-864a) recapitulates the

²⁴ This reading of the passage shields Plato from the charge that what he holds here (using the Athenian as his mouthpiece) is that it is only one’s intention that matters, that, regardless of how heinous one’s crime might be, as long as it stems from an innocent intention, it is just. See, e.g., Ritter, 282-4. Also Levinson: ‘... only in the Ninth book of the Laws (860ff.) does Plato assert unequivocally that an ignorant and objectively wrong act, indeed “a great and savage wrong”, may be a just act, if only it proceed from an agent acting under the control of reason and in light of his “opinion of the best”’ (678). Also Adkins, 309. On the reading I suggest, although the Athenian forgives accidents (since they are not unjust) and approves of right actions that harm no less than he disapproves of wrong actions that benefit, he regards as positively just only those injuries (or benefits) committed by good people that result from doing right. Several translators take δικαίῳ τρόπῳ to mean ‘a just character’, which is certainly acceptable, but considering the οὐκ ὀρθῆν of 862a7, it is probable that ‘a just way’ is intended.

²⁵ Among those who take the clause in the sense of ‘even if it be somewhat mistaken’ are Pangle, Strauss, Saunders, Stallbaum, Adkins, and Rosenmeyer.

²⁶ Among its supporters is Adkins, 308. O’Brien argues against the ‘good conscience’ view, contending that in *Laws IX*, no less than elsewhere in Plato, wisdom is the source of justice and ignorance ultimately the source of injustice. For him, therefore, what emanates from a good but misguided conscience can only be *injustice*.

²⁷ Among those who take the clause in the sense of ‘even if some damage be done’ are England (403), O’Brien (85), Bury, and Taylor.

earlier one at 861e-862b, it may be assumed to be making the same point: just as earlier the point was that an act that flows from a proper disposition of the soul and is done in the right way but nevertheless *causes injury* is just, so here the point must be that an act that issues from a rightly governed soul is just regardless of any injury it might cause. Second, only on the ‘even if some damage be done’ reading does the discussion of justice perfectly parallel the discussion of injustice: injustice is the tyranny of emotions and desires in the soul ‘whether it does some injury or not’, *ἐάντε τι βλάβπη καὶ ἐάν μή* (863e8); justice is the soul’s obeying an opinion about what is best ‘even if some damage be done’, *κἂν σφάλληται τι* (864a4). On this reading, moreover, the passage is seen to emphasize, as earlier, the strict irrelevance to both injustice and justice of the presence or absence of injury. Third, unless *κἂν σφάλληται τι* refers to injury done, there is no discernible referent for *τὴν τοιαύτην βλάβην* (‘such injury’) at 864a7-8. Finally, unless it can be presumed that the opinion about what is best to which the well-ordered soul conforms is not a mistaken one, the Athenian’s contention that everything done in obedience to that opinion constitutes not only what is just but also what is ‘best for the whole of human life’ seems on its face rather implausible.²⁸

The reading of *κἂν σφάλληται τι* as ‘even if it be somewhat mistaken’ is, by contrast, fraught with difficulties: (1) it introduces a new and different component — viz. false opinion about what is best — into the distinction between justice and injustice, something not found in 861e-862c where the justness of an act is determined by both whether the agent acted from a just disposition and whether he acted in the right way and where it is specifically the injury or benefit that is deemed irrelevant to such determination; (2) it spoils the neat contrast between injustice and justice, according to which they diverge with respect only to the state of the soul to which they correspond while sharing in common their indifference to injury; (3) it fails to supply a referent for *τὴν τοιαύτην βλάβην*; and (4) it cannot account for why what is done in accordance with even a mistaken belief that rules the soul is not only just but is furthermore ‘best for the whole of human life’. The rendering of *κἂν σφάλληται τι* as ‘even if it be somewhat mistaken’, then, not only introduces a foreign and jarring element into a discussion that would otherwise have simply clarified the already-familiar distinction between the matter of injury and the matter of justice or injustice, but, worse, it implies that acting in ignorance, that is, conforming one’s behavior even to incorrect opinions about the most important matter — what is best — counts as justice.²⁹ Moreover, in view of the fact that the Athenian just established ignorance as the third cause of *ἀμαρτήματα* (863c), is

²⁸ The main ground upon which scholars reject the rendering of *κἂν σφάλληται τι* as ‘even if some damage be done’ is that the more common meaning of *σφάλλιν* is ‘to stumble’ or ‘to trip up’. See *Gorg.* 461c-d and *Rep.* 361b. It is also used in the sense of making mistakes, at, e.g., *Laws* VI.771e4, *Theaet.* 196b2. Yet *σφάλλιν* carries the meaning of doing damage at *Laws* VI.769c4, where *ἐάν τι σφάλληται τὸ ζῶον ὑπὸ χρόνων* means ‘if the painting should be damaged somewhat over time’.

²⁹ It is in order to avoid such a conclusion that Mackenzie (249) takes the error to be a mistake in the agent’s ‘practical assessments’ rather than a moral mistake. See also Görgemanns (139-40) who thinks the mistake is about means.

it not unreasonable that he would now regard what is done in ignorance, however well-ordered the soul that does it, as both just and best for the whole of human life?³⁰

One may, of course, wonder on what grounds the claim can be sustained that the opinion to which the well-ordered soul conforms is in fact *not* mistaken,³¹ and also why, if what the Athenian means by justice is the soul's being governed by a *true* opinion about what is best, he does not simply say so.

With regard to why the Athenian does not simply say that the just soul is one governed by *true* opinion, it may be noted that since the Athenian's aim in this passage is, as he himself says, to contrast injustice with justice, injustice being the state in which the soul is tyrannized by desires and emotions and justice the state in which a belief concerning what is best holds sway, the distinction between injustice and justice, as the Athenian sees it, has to do in the first instance with which element in the soul is in charge — not with whether the belief that is dominant in the just soul is or is not a true one.

With respect to the matter of the *grounds* for the claim that the belief to which the well-ordered soul conforms is not a mistaken one, I think it is fair to say that the *Laws* generally puts its trust in the collective wisdom of legislators and in the cultivated reason of an individual properly raised and properly educated, and therefore assumes that the opinion of a well-ordered soul, as well as that of a well-governed *polis*, is as close to true as can reasonably be expected.³²

There are, then, it would seem, no compelling reasons to read *κἂν σφάλληταί τι* as 'even if it be somewhat mistaken' and far better reasons to read it as 'even if some damage be done'. Moreover, those scholars who endorse the 'even if it be somewhat mistaken' reading steer the argument wildly off course, maintaining that for the Athenian a good but ignorant soul is not only never the source of injustice but is actually the source of what is just and best. They mistakenly suppose that *ἀμαρτήματα* committed out of ignorance, unlike those committed out of tyranny of the soul, are certainly not unjust and hence fall under the legal heading of tort (*βλάβη*) — when indeed they do damage — as opposed to that of felony (*ἀδίκημα*). They cite in support of their view, first, the Athenian's use of the term *ἀμαρτήματα*, as if it were broad enough and neutral enough to encompass both full-blown injustices and the most innocent of injuries,³³ and, second, the distinction the Athenian drew at 863d-e between pleasure and *θυμός*, on the one hand, as things in comparison to which it may be said that one is 'stronger' or 'weaker', and ignorance, on the other, with respect to which that cannot be said.

The term *ἀμάρτημα*, however, is not sharply distinguished from *ἀδίκημα* in the *Laws*. See 860e8-9, and earlier, V.727b5-6. *Ἀμάρτημα* may well be a broader term

³⁰ This, in part, is O'Brien's question (85).

³¹ O'Brien's (86) attempt to render *ἡ τοῦ ἀρίστου δόξα* not 'the opinion as to what is best', but rather, 'the conviction that has the best for its object', besides being rather strained, fails to yield the desired result: it does not guarantee that the conviction one has is not itself misguided.

³² The *Laws* does not dwell on the worry expressed briefly at 875c-d that genuine and full-blown wisdom is not likely to be found anywhere and that law must serve, therefore, as a second-best substitute for it. See also I.644c-d, I.645c, III.688b2-3, III.689b, and V.728a-b.

³³ See, e.g., Gould, 127; Grube, 228ff.; Ritter, 286.

than ἀδίκημα, one that can include offenses that are not strictly ἀδικήματα. But all ἀδικήματα are certainly ἀμαρτήματα and, in our passage, all the ἀμαρτήματα in question are also ἀδικήματα, that is, culpable crimes. Moreover, even if the characteristic most definitive of ἀμαρτήματα is that they are committed in ignorance, we may note that for Plato moral ignorance, that is, ignorance of what is right or what is best, is no excuse — not in the *Laws* and not anywhere else in Plato.³⁴ Ignorance is subject to reproach in the *Laws* no less than in the *Apology*,³⁵ and the *Laws* makes it quite clear that one who fails to hold himself responsible for his ἀμαρτημάτων as for his τῶν πλείστων κακῶν καὶ μεγίστων, ‘the most and gravest evils’ (V.727b4-6) dishonors his soul.

Although the Athenian certainly does distinguish between the aggressive forces of pleasure and θυμός (both of which are forms of violence),³⁶ on the one hand, and

³⁴ Saunders, 428-9, thinks that *Laws* X.908b constitutes a refutation of the ‘good conscience’ view because it advocates punishing the holding of mistaken beliefs about the gods even when those who hold them have well-ordered and temperate souls. Yet the fact is that such people are liable to punishment not because their mistakes do not excuse their injustice but because despite their justness their mistakes amount to impiety: they both subscribe to and are purveyors of false beliefs about the gods. For O’Brien’s view, see n. 26.

³⁵ *Ap.* 29b1-2: ἀμαθία ἐπονειδιστος — most reproachful ignorance; *Laws* III 689c: καὶ ὡς ἀμαθέσιν ὀνειδιστέον — they are to be reproached as ignorant. See also *Ap.* 30a1, where Socrates says he would reproach (ὀνειδιῶ) anyone who, though claiming to have acquired ἀρετή, does not seem so to Socrates. The cause for Socrates’ reproach in this case would be the person’s mistaken priorities, that is, the errors he makes because of his ignorance concerning what is truly of importance. Even the *Timaeus*, in which (1) madness (μανία) and ignorance (ἀμαθία) are identified as diseases of the mind (86b) that cause men to commit injustice (86e), and (2) it is regarded as inappropriate to reproach men (οὐκ ὀρθῶς ὀνειδίζεται — 86d7) for their incontinence (ἀκράτεια) with respect to pleasure, what is said to be inappropriate is not the reproach itself but rather the reproach when grounded in the idea that these men are bad men voluntarily (ὡς ἐκόντων ... τῶν κακῶν — 86d6-7). The *Timaeus* does not excuse misconduct; it merely recognizes the unreasonableness of reproaching men for becoming bad — badness is not, after all, a state that anyone would willingly choose. That it would be unreasonable to reproach men for becoming bad hardly entails, however, that wrongdoing is not culpable on other grounds — specifically on the grounds that one has done nothing to eradicate one’s madness or ignorance. The *Timaeus* indeed makes it clear, though this is not its present concern, that people are required to make the effort to reverse the effects of their miseducation and to teach themselves to avoid vice and to attain ἀρετή. (The *Timaeus* is a work that seeks to explain how the natural world came to be as it is; it is not its primary business to recommend ways of changing it. The program of instruction by which people might learn to avoid vice and attain ἀρετή is, as the dialogue therefore explicitly states, the subject for another discussion [ταῦτα μὲν οὖν δὴ τρόπος ἄλλος λόγων — 87b8-9]).

³⁶ I see no reason to emend the text here to eliminate the violence of pleasure’s trickery, as England, and Bury following him, do. Also Taylor, 252, n. 1. What the Athenian wishes to contrast is not the violence of θυμός with the persuasion of ἥδονή, but the uncalculating and open physical violence of θυμός with the clever, calculating, secretive verbal force of persuasion. Violence and persuasion do not in Plato always stand in opposition to one another. See, e.g., *Ap.* 35d2-3: ‘if I should persuade (πειθοῦμι) and force (βιαζοίμην) you by begging’.

ignorance, on the other, it is nevertheless not the case that for him pleasure and θυμός are a source of injustice and ignorance a source of mere βλάβη. All three are sources of ἀμαρτήματα and none of them is benign; indeed, the way in which the Athenian characterizes ignorance makes at least one form of it particularly egregious (863c7): μεγάλων καὶ ἀμούσων ἀμαρτημάτων, ‘great and monstrous instances of going wrong’.³⁷ Indeed, we may wonder why, if the Athenian regards those ἀμαρτήματα whose source is ignorance as mere βλάβαι and those whose source is pleasure or passion as injustices, (1) he never affixes the term βλάβαι to those instances of going wrong whose origin is ignorance, and (2) he does not withhold punishment in those cases. It is in his discussion at 864b of the third source of ἀμαρτήματα, viz. ignorance, that it would be most natural for the Athenian to say, if indeed he so believes, that those ἀμαρτήματα whose source is ignorance differ from those whose source is passion and pleasure in that only the former are mere βλάβαι and hence are the only ones not subject to punishment. Yet he says no such thing. Moreover, one would surely expect the Athenian to distinguish the two kinds of laws that are to deal with the five kinds of ἀμαρτήματα by saying that ἀμαρτήματα of the first two kinds are to be punished, but for ἀμαρτήματα of the last three kinds there is to be only compensation. Yet, again, he says no such thing. What he says instead is that the two kinds of law as they apply to all five kinds of ἀμαρτήματα are to be distinguished by whether the crimes in question were committed violently but openly or deviously and secretly (864c).

We may then confidently conclude that the Athenian’s reason for setting ignorance apart from passion and pleasure is surely not that he regards the latter but not the former as sources of injustice. His more modest aim in so doing is to explain to his audience in advance why ignorance will be excluded from the list he is about to present of things that tyrannize the soul: since ignorance is a kind of impotence rather than a power that dominates, it cannot be said to tyrannize the soul in the way that θυμός, fear, pleasure, pain, envy, and desire do. That ignorance does not dominate, however, hardly means that it cannot lead one astray: ignorance, the Athenian assures us, no less than pleasure and passion, leads its victims in a direction opposite to their βούλησις, to their true preference (863e2-3).³⁸ As a *bona fide* cause of injustice, ignorance will need to be dealt with by law. Yet, since it cannot be said to tyrannize, it will need to be considered separately from the tyrannical causes. And so it is: it is taken up, just a bit later, at 864b6-7. Indeed, as we have seen, the discussion of the third source of injustice concludes with

³⁷ Cf. *Gorg.* 525d5-6, where the incurables are said to have ‘done wrong things that are the greatest and most impious’ (μέγιστα καὶ ἀνοσιώτατα ἀμαρτήματα ἀμαρτάνουσι), an expression which is the equivalent of ‘committed the ultimate crimes’ (τὰ ἔσχατα ἀδικήσωσι — 525c1). See also *HMi.* 372d, where Socrates makes no distinction between those who ‘go wrong’ (ἀμαρτάνοντες), on the one hand, and those who harm people (βλάπτοντες), commit injustice (ἀδικούντες), lie (ψευδόμενοι), and deceive (ἐξαπατῶντες). Moreover, all of these are things that can be done voluntarily (ἐκόντες). The *Hippias Minor* assimilates going wrong to wrongdoing and to the commission of injustice also at 375b7-c3, 375c5, d74d1-2, and 376b4-5.

³⁸ Since for Plato it is injustice that stands in opposition to one’s βούλησις, one’s true wish, one may assume that ignorance, insofar as it turns one from one’s βούλησις, is a source of injustice — not of a merely innocent misstep.

the Athenian's stipulation that for all five classes of ἀμαρτήματα — those done from passion, those done from pleasure, and the three subclasses of those done from ignorance — the laws will adjust the level of harshness in their response depending on whether the acts are committed violently, deceitfully, or both. The laws' response to ignorant acts is, then, no different from their response to acts driven by pleasure or passion.

The passage in which the third source of ἀμαρτήματα is finally discussed, 864b6-c2, is, however, unfortunately, most obscure. The text, to be sure, leaves no doubt that what this passage means to review is the third source of ἀμαρτήματα, namely, ignorance (ἄγνοια): (1) the τρίτον ('third') at 864b7 unmistakably echoes the τρίτον at 863c1, (2) the division of the third form of ἀμαρτήματα into three at 864b8-c1 recalls the earlier division of ἄγνοια first into simple and double ignorance and then the double ignorance into a more and a less egregious form at 863c-d, and (3) our passage is introduced at 864b1-2 with a reminder that the three forms of ἀμαρτήματα have already been made clear (δεδήλωται) — thus preparing us for a repetition of what was said earlier — and with an insistence that the first order of business is to bring them back to mind even more (μᾶλλον): now that θυμός and fear (864b3) were enumerated as the first form, thereby recalling the earlier discussion of θυμός at 863b2-4, and pleasure and desires (864b6) as the second, thereby recalling the earlier discussion of ἡδονή at 863b6-9, the third and distinct (ἕτερον — 846b7) form of ἀμαρτήματα cannot but be ignorance, the ἄγνοια of 863c-d. (This third kind is distinct, of course, in that, as we have seen, it does not tyrannize the soul.)

Yet despite the certainty that the passage 864b6-c2 recapitulates the third source of ἀμαρτήματα identified at 863c-d, viz. ignorance, it assigns neither the term ἄγνοια nor even the term ἀμαθία to what it identifies as the third 'form' of ἀμαρτήματα. Instead, the manuscripts have: ἐλπίδων δὲ καὶ δόξης τῆς ἀληθοῦς περὶ τὸ ἄριστον ἔφεις, 'expectations and the striving for true opinion concerning what is best'. On neither interpretation of the earlier passage just discussed (863a5-864a8) should the third source of ἀμαρτήματα be anything but ignorance. For if the Athenian defines justice (as I have argued he does) as having a well-ordered soul obedient to a belief that is *not* mistaken about what is best, one would expect the third source of ἀμαρτήματα to be not the striving for true opinion about what is best but the absence of true opinion or the presence of false opinion about what is best. But even if the Athenian thinks that justice is having a well-ordered soul obedient to any opinion, mistaken or not, about what is best, is it not still odd — indeed, is it not particularly odd — for him to identify the third source of ἀμαρτήματα as the striving for true opinion about what is best? Would not the striving for true opinion count for him as justice rather than as a source of ἀμαρτήματα?

Whereas some scholars labor to maintain the integrity of the text as it is,³⁹ many others have resorted to emending it — some quite radically.⁴⁰ One thing, however, seems clear: the third source of ἀμαρτήματα must turn out to be ignorance. And, as long as

³⁹ See O'Brien, 87, n. 15, and Saunders, 433.

⁴⁰ The more radical emendations are offered by Ast and by Ritter, followed by Bury. More moderate emendations are proposed by England, Diès, Grou, and H. Jackson (cited in England [1921], II, 404).

that is so, the recapitulation and amplification of the three sources of ἀμαρτήματα is now complete. Injustice comes from the tyranny in the soul of either θυμός or pleasure, both of which prevent obedience to the opinion of what is best — whether it be the city’s opinion or the individual’s own opinion — or, alternatively, from ignorance, and especially from the kind of ignorance that convinces people that they are already wise and thus keeps them from seeking the truth about what is best. Justice may be contrasted with injustice in all its forms: it consists of conforming one’s conduct to the settled and seasoned opinion of a well-governed *polis* or a well-ordered soul.

What our passage says, then, is that everything that is done by a soul when it is properly ordered and governed by an opinion regarding what is best is just and best for the whole of human life — even though most men characterize such things as involuntary injustice when injury (βλάβη) results. What the many see as involuntary injustice, the Athenian sees not simply as no injustice at all but as positively just — indeed, as best for the whole of human life. Accidental injury done by a good and well-intentioned person would hardly merit such praise.⁴¹ Acts that the Athenian regards as just and best are those that, stemming from a properly governed soul obedient to the well-formed opinion of *polis* or self concerning what is best, are themselves right and good even if they cause injury.

Much is at stake for the Athenian in sorting out the distinctions between injustice and injury, on the one hand, and voluntariness and involuntariness, on the other. For if those distinctions are confused with one another, the legislative practices that depend on them will be similarly confused. For the many (and for Kleinias as well), if there is injury there must be punishment, the nature and severity of which should reflect whether the injury was inflicted voluntarily or involuntarily. The Athenian, however, would use the criterion of voluntary/involuntary to determine whether or not there should be punishment at all, and would have the nature and severity of the punishment depend on other factors: the curability or incurability of the criminal (862e; XII.957e) and whether or not the criminal resorted to violence or deception (864c). For the Athenian, the committing of injustice, even if it brings benefit, merits punishment, but justice, even if it brings harm, merits praise.

What I hope to have shown in this section is that the Athenian, in distinguishing between injustice and injury, seeks, first, to protect unintended injury from being called unjust; second, to fashion punishments so that they are imposed only upon culpable agents and so that the degree of their severity turns on the presence or absence of deception and/or violence and on the curability or incurability of the criminal; and, third, to decry as unjust those acts that are wrong and spring from a corrupt disposition and bad character even if they bring benefit, while lauding as just and best those acts that are right and flow from a noble disposition and character even if they cause harm.

⁴¹ We note that the involuntary and accidental crimes discussed beginning at 864d are not called ‘just’ and ‘best’.

(c) *How the Athenian's distinction between injustice and injury warrants his dismissal of proposition (2), 'Just sufferings are ugly'*

As I argued in section (b) immediately above, the Athenian's distinction between injustice and injury enables him to praise most highly — as both just and best — those acts that are done rightly and from a good character but that nevertheless bring harm in their wake. And it is hardly by chance that the Athenian makes this point. For insofar as the distinction between injustice and injury makes it possible to praise harmful acts that are right and well-intentioned, it also provides the warrant for regarding just punishment — even when suffered — as beautiful. If harmful acts that are done rightly and proceed from a good character are just and best, then just *punishment*, though harmful, is just and best.⁴² Given that all injustice is involuntary, that is, that those who willfully commit injustice bring upon themselves a state of their soul that they really do not want, it follows that punishment, insofar as it either improves their bad state or puts an end to it (862e3-4: '... it is not better for them to live longer'),⁴³ may be said to move them closer to or at least not further away from what they really do want.⁴⁴ That punishment benefits criminals in this way does not mean, of course, that it comes without harm. Indeed, harm, whether physical or social, is integral to punishment. But now that the Athenian has distinguished between harm and injustice, the case can readily be made that rightful punishment, that is punishment that is deserved because the criminal willfully chose the crime out of a bad disposition and character or out of wrong opinions about what is good, is just and best for the whole of human life — despite the harm it brings. The distinction between injustice and injury makes it possible for the harm to be kept separate from the just act of punishment, thereby leaving the latter all beautiful. Like the just person at 859d who is perfectly beautiful (πάγκαλος) despite having an ugly body, so is just punishment perfectly beautiful despite inflicting harm on the criminal. Insofar as there is no admixture of injustice in rightful punishment — it is fully just and only incorrectly thought of as involuntarily unjust — there is *no* element of ugliness in it.⁴⁵

⁴² It follows, of course, too, that dispensing justice as a favor, that is, acquitting someone ('benefiting someone') who is guilty, is unjust and bad for the whole of the criminal's life. See *Ap.* 35c. See also *Laws* II.659a6-b2: 'Nor, again, should lack of manliness and cowardice make him contradict what he knows, and pronounce a soft-spirited judgment, lying through the very same lips that just finished swearing an oath to gods' (trans. Pangle).

⁴³ See XII.957e, where death is a 'cure' (ἰαμα) for those whose opinions are not otherwise curable but are fixed by fate.

⁴⁴ Indeed, unless all injustice were involuntary, it could not be assumed that all punishment is beneficial or at least not harmful. The supposition that the wrongdoer himself spurns the condition he is in (see V.731c-d) is what makes punishment — certainly when it cures the criminal of his ἀδικία (862c, XII.957d-e) — something he must actually want.

⁴⁵ It is possible that we have here a diagnosis of the dissonance of the many, who believe that all just things are beautiful but find themselves nevertheless asserting that just suffering is ugly. Since they do not distinguish harm from injustice, they must believe that just suffering, insofar as it involves harm, contains in itself an element of involuntarily injustice — involuntary because the judges mean no harm, injustice because they nevertheless inflict harm.

Whether inflicted or suffered, just punishment is beautiful.⁴⁶ The harm it brings can no more detract from the beauty of the just act than an ugly body can detract from the beauty of a just person.⁴⁷ As the Athenian says at 854d5-6: 'For no judicial punishment that takes place according to law aims at what is bad' (οὐ γὰρ ἐπὶ κακῷ δίκη γίγνεται οὐδεμία γενομένη κατὰ νόμον).

3. The involuntariness of injustice and the legitimacy of punishing involuntary crimes less harshly than voluntary ones or of not punishing them at all

The notion that all injustice is involuntary in no way removes culpability or equalizes crimes — nor was it ever intended to do so. It is not because injustice is caused by uncontrolled passion or by false beliefs about what ultimately matters that it is called involuntary;⁴⁸ crimes for which these are the causes are completely voluntary: they are deliberate and intentional. People *can* control their passions but do not expend the requisite effort to do so; people *can* expel their false beliefs but prefer not to.⁴⁹ At V.727b and 731d the Athenian rails against those who excuse themselves and blame others when they fail to do as they ought. At V.728a-b a person is required to be willing 'to use every means' to avoid what is αἰσχρόν and κακόν and 'to use all his powers' in the practice of what is ἀγαθόν and καλόν. And at V.728c-d (cf. X.904c) the soul is said to be supremely suited for the avoidance of evil and the pursuit of what is best. Indeed, at 854a-b, he who is moved by a bad desire (ἐπιθυμία κακή — 854a6) to engage in temple-robbery is admonished to 'guard against it' (εὐλαβεῖσθαι — 854b5) with all his strength.

Plato scholars too often succumb to the misapprehension that Plato excuses wrongdoers. Saunders, 434, for example, thinks that, according to Plato, the wrongdoer, 'because of the tyranny of the emotions etc. in his soul', emotions by which 'he is unwillingly dominated', acts against his better judgment in going wrong; his unjust state

⁴⁶ See V.728, where the τιμωρία that one suffers (πάθος — 728c2) by way of associating with and becoming like bad men while avoiding the company of good men cannot be considered a judicial punishment (δίκη) because what is just — including punishment — is beautiful (καλὸν γὰρ τό γε δίκαιον καὶ ἡ δίκη — 728c2-3). τιμωρία in Plato refers sometimes to the official punishment bestowed by a judge or judges (see, e.g., *Gorg.* 525b1-3), but not always (see, e.g., the τιμωρία at *Ap.* 39c4, which denotes the unwelcome consequences that await those who condemned Socrates to death: 'those who will refute you will be much harsher' than Socrates was [39d2]).

⁴⁷ What makes the case of just but harsh punishment more resistant than the case of the just but physically ugly to the notion of 'just, therefore perfectly beautiful' is that in the case of punishment the making-ugly of the body is willful. There is something repugnant about intentional making-ugly from which the Athenian, too, cannot help but recoil.

⁴⁸ Some, like Görgemanns (134-42), think crimes caused by θυμός or pleasure are punishable because voluntary, but that crimes caused by ignorance are not subject to punishment because not voluntary. Moreover, ignorance, he thinks, leaves 'unsullied' the character of the man who commits injustice. In the *Laws*, however, ignorance, no less than θυμός or pleasure, needs to be combated and reversed.

⁴⁹ The Socratic exhortation to lead the examined life (*Ap.* 38a) is a demand he makes of all to challenge their acquired beliefs and substitute better ones for current ones. Ignorance is reproachable because it can and ought to be eradicated. See n. 35.

is involuntary and he carries, therefore, no ‘individual responsibility’. Consider also Bury, 227: ‘... as the slave of un-reason, the unjust man is never a free agent’; or Pangle, 455: ‘Plato’s Athenian — like his Socrates — contends that crime is due to ignorance rather than willful choice ... The unjust man is not responsible ... In questioning the moral responsibility of most men, philosophy threatens to subvert not only penal law but virtue and human dignity itself’; or Strauss, 130-1: ‘This conclusion [viz. that all crimes (unjust acts) are committed involuntarily] seems to be destructive of all penal law, which must attach greater penalties to voluntary than to involuntary crimes, not to say that involuntary crimes are not crimes at all’. Mackenzie puts the point as follows (214): ‘... those who pursue this evil do so involuntarily and so are not to be blamed, but pitied, since they are actually involved in the greatest misfortunes despite themselves’.

Much of the confusion surrounding Plato’s view of punishment derives from a failure on the part of Plato’s readers to appreciate the distinction between pity and pardon. Whereas Plato surely does think that those who are dominated by their emotions — indeed, those who pursue evil for any reason — are to be pitied, for they are wretched (see V.731c7-8: ‘So the unjust man, like the man who possesses bad things, is pitiable [ἐλεεινός] in every way’),⁵⁰ he nevertheless avoids absolving them of blame.⁵¹ He requires of all people that they honor what is noble and just: ὡς δεῖ τὰ καλὰ καὶ τὰ δίκαια πάντα ἄνδρα τιμᾶν (854c1-2). Those who act unjustly and immoderately are, therefore, fully blameworthy, and those who celebrate and promote injustice and immoderation — no matter how firm in their convictions — are dangerous and contemptible. The kind of involuntariness that is exculpatory is the kind, for example, that attaches to the crimes of madmen (864d), who are, because of their madness, held responsible only for damages. People who are dominated by their emotions, however, are not insane.⁵² We may note that the Athenian regards crimes that are caused by impulsive, as opposed to long-simmering, anger as being closer to involuntary than to voluntary crimes. Because anger of this kind erupts suddenly and is regretted immediately,⁵³ the crimes that it gives rise to are unlike the injustices that arise from the tyranny in the soul of the emotions (anger, fear, pleasure, pain, envy, and desires). People are

⁵⁰ See *Gorg.* 469b, where the man who kills unjustly is said to be wretched (ἄθλιος) and pitiable (ἐλεεινός), besides being unenviable, as the man who kills justly is.

⁵¹ See *Ap.* 39d4, where Socrates says that he reproaches (ὀνειδίζειν) those who claim to have acquired ἀρετή but have not; and the end of the *Apology* (41e1), where Socrates says of his accusers and of the jurors who voted for his conviction that ‘they are worthy of blame’ (ἄξιον μέμφεσθαι) because their intention was to harm him. Also see Weiss, ‘Ignorance, Involuntariness, and Innocence’, 19-22.

⁵² An exception to this Platonic rule is *Timaeus* 86, where unjust people are considered mad and where, anomalously in Plato, their madness is quite literally — and not merely metaphorically as in the *Gorgias* and the *Republic* — a bodily disease. If, then, even in the *Timaeus* bad men are expected to abandon their evil ways and pursue ἀρετή, it follows a fortiori that bad men in the *Laws*, men whose badness is not assimilated to madness, must do so. See n. 35.

⁵³ Note the distinction drawn at 863b between pleasure’s ‘persuasion and forceful trickery’, πειθοῖ μετὰ ἀπάτης βίαιου, through which she accomplishes whatever her βούλησις (a word frequently associated with a settled and rational aim) wishes, on the one hand, and the ‘uncalculating violence’, ἀλογίστω βία, of θυμός, on the other.

expected to prevent such emotional tyranny and are blameworthy when they succumb to it (863e-864a). Thus the sort of anger that, along with fear, pleasure, pain, envy, and desire, dominates the soul is different both from anger that arises spontaneously and from anger that arises in response to deliberate and unwarranted provocation. Although one needs to learn to control these latter sorts of anger as well, neither of them is as culpable as the anger that tyrannizes the soul. Even deliberate, premeditated retribution concerning which one is unrepentant is not quite as 'voluntary' as acts that flow from corruption that has been permitted to take root in the soul.

All that is meant by the involuntariness of injustice is that when a person *is* purposely unjust and *acts* deliberately unjustly he renders himself and his life bad — a condition that is not one that human beings can want for themselves. One thing that is most certainly *not* meant by the involuntariness of injustice is that no one willfully chooses either to be bad or to do bad. Indeed, if no one willfully chose to be bad or do bad no one at all would be unjust; no one would be a 'bad man'. Yet it is precisely people who are unjust that punishment targets, people who deserve to be punished, people, that is, who choose to do wrong deliberately, whether because they have bad characters, do not control their passions, or think they are improving their lot when they are actually sabotaging their only chance for happiness.⁵⁴ Ignorance and tyranny by pleasure or passion help account for how it is that people voluntarily (in the ordinary sense) make choices that are antithetical to their true interests. That people are ignorant or are tyrannized by pleasure or passion hardly makes their vicious acts less deliberate, nor, for that matter, does it excuse such acts. Punishments are not imposed for accidental wrongdoings or for wrongdoings that arise because of mistakes about facts (for example, not knowing that the white granules in the sugar bowl are poison rather than sugar). Only when crimes are willful are punishments deserved; only when punishments are deserved are they just;⁵⁵ and only when they are just are they beautiful.⁵⁶ People who do wrong

⁵⁴ Mackenzie (145) introduces a distinction between responsible and culpable. She believes that Socratism exculpates criminals since the state of their soul that is responsible for their wrongdoing is not their fault; but it does not free them of responsibility for wrongdoing because they do wrong deliberately. As far as I can tell, there are no grounds in Plato for this distinction, nor are there grounds for the view that Socratism exculpates wrongdoing. No matter how unruly one's character and no matter how misguided one's beliefs, one can and ought to get one's soul in order and replace one's incorrect beliefs with correct ones. The Socratic project is otherwise futile and foolish.

⁵⁵ Platonic punishment, contrary to what is widely believed, is reserved for unjust action; it is not levied for the mere possession of an unjust soul. Even though punishment aims to benefit the criminal, it is the appropriate response only to vicious action. It is the 'paying of the just penalty', that is, of what is deserved, for the *commission* of injustice. (See *Gorg.* 476a7-8: 'Do you then call paying the just penalty [τὸ δίδοναι δίκην] and being justly punished for wrongdoing [τὸ κολάζεσθαι δικάως ἀδικούντα] the same thing?') Thus, when Plato speaks of incurables who are to be punished for the sake of others since they themselves are beyond help, there is no reason to think that he does not regard their punishment as first and foremost deserved. This is probably true not only in the *Laws* but in the *Gorgias* myth as well, where the incurables in Hades who are made to suffer in order to set an example for others are said to have 'committed the ultimate crimes' (τὰ ἔσχατα ἀδικήσωσι — 525c1). Indeed, the incurables are drawn for the most part from the ranks of

accidentally or by mistake have not harmed their souls and do not need to be put in a better state. It is people who do wrong on purpose who do harm their souls and who do need, therefore, to be put in a better state.⁵⁷ Since only voluntary injuries are injustices, it follows, paradoxically, that only voluntary injuries are involuntary. And since only voluntary injuries are involuntary (that is, they put one's soul in an undesirable — and therefore undesired — state), only voluntary injuries require punishment.⁵⁸ That the Athenian would levy the same penalty for theft (double the amount stolen) regardless of how much was stolen and from where (857b) is perfectly consistent with his view that punishment's aim is to improve the state of the criminal's soul.⁵⁹ And that he would

tyrants, kings, potentates, and politicians who are said to be guilty of having 'done wrong things that are the greatest and most impious' (μέγιστα καὶ ἀνοσιώτατα ἀμαρτήματα ἀμαρτάνουσι — 525d5-6). The *Gorgias* makes it quite clear that punishment, though it counts among its purposes that the person punished be an example for others, must in the first instance be levied rightly (ὀρθῶς — 525b1), that is, justly. Plato provides ways other than punishment to help those who have unjust souls but who have as yet committed no crime: reproach, refutation, and education. And the means of instruction, if not of compulsion, that he prescribes for those curables who have already committed a crime — speech, pleasure and pain, honors and dishonors, money fines and gifts (862d) — may be presumed to be no less applicable to those who have not yet violated the law.

⁵⁶ Pangle contends (379) that the *Laws* introduces 'an unprecedented penal code based on the premise that no one ever voluntarily does wrong', and in this way departs from the Athenian penal code of which Socrates disapproves in the *Apology*, since that code is one 'which assumes men can do wrong voluntarily and therefore punishes rather than educates the criminal' (378). Socrates, however, in the *Apology* is not generally critical of the penal code (except in certain of its details such as the provision for a one-day trial for capital cases) and finds it quite reasonable for the law to punish voluntary ἀμαρτήματα. There is, in fact, no departure in the *Laws* from the approval expressed by Socrates in the *Apology* of punishment for voluntary wrongdoing: at *Ap.* 26a6-7, Socrates makes it clear that those in need of punishment are those who voluntarily go wrong; the involuntary are in need only of instruction. The *Laws*, no less than the *Apology*, advocates punishment for harms willfully inflicted, that is, for injustice. That in the *Laws* the purpose of punishment is primarily reformative does not negate its insistence that punishments require that the crime be voluntarily committed. Indeed, it is only the perpetrators of such crimes who are in need of reform.

⁵⁷ In X.908, those who are impious, even if just, are subject to punishment. So, aside from the commission of injustice, the only other offense that incurs punishment is impiety, the holding and disseminating of false views about the gods. The aim of punishment, with respect to the impious as with respect to the unjust, is to improve the condition of those punished: in the case of the impious, the aim of punishment is to rid them of their false beliefs about the gods.

⁵⁸ See *Laws* 862d: The Athenian's cure for injustice proceeds 'toward making it so that whatever injustice, great or small, someone might commit, the law will teach and compel him in every way either never again to dare *voluntarily* to do such a thing or to do it much less'. 'Such a thing' can only refer to doing injustice, large or small, ἀδικήση μέγα ἢ μικρόν. See n. 15.

⁵⁹ Judicial punishment 'for the most part accomplishes one of two other aims: it makes the one who receives the judicial punishment either better or less wicked' (854d-e). Also: The 'task

vary the severity of the punishment in accordance with whether the crime involved violence, deception, or both (864) is similarly consonant with this penal aim.⁶⁰

4. The ugliness of punishment

If, according to the Athenian, just sufferings are not *αἰσχροῖα* — they are decidedly *πάγκαλα* — what is it about punishment that the Athenian does regard as ugly? This is a question that the Athenian himself answers for us, both at the beginning of Book IX at 853b-c and again near its end at 880e. What is ugly, ‘in a certain sense’ (*τινα τρόπον* — 853b4; 853c3), about punishment, he tells us, is the fact that there have to be, even in a regime as excellent as the one he describes, any just sufferings at all. What the educational program in his *polis* should ideally accomplish is the eradication of voluntary injury. It should teach people to want, consciously and actively, that is, to want in the ordinary sense, what they all want, consciously or not, in the Socratic sense. In other words, it should teach men to see and seek as their good that which is really good and not some sham good.⁶¹ It should inculcate a love of justice and a hatred for injustice (862d7-e1). Moreover, it should properly educate the passions so that one is free to follow what one believes is best. To this *polis*’s great shame, however, people *will* continue to do in it, out of ignorance or weakness, what they do not really want to do: voluntary wrongdoings that damage their souls.⁶² Given the fact that people will still commit even the most heinous crimes, the *polis* cannot dispense with punishments — even most terrible ones. Punishments must try to compensate for what education fails to do, namely, make the people wise enough and strong enough to refrain from doing the things they really do not want to do. Although for the Athenian, these punishments, despite the harms they bring, are, when just, certainly *καλά*, it remains in his eyes an utter disgrace that no *polis* can do without them.⁶³

Lehigh University

of the noblest laws’ is ‘to bring about hatred of injustice and desire, or lack of hatred, for the nature of the just’ (862d-e).

⁶⁰ The severity of the penalty varies directly with the degree of evil in the criminal’s soul, the latter becoming manifest in the way in which the crime is committed. This direct relation between penalty and crime, however, applies only to curables and breaks down in the case of incurables. For those who are incurable death is mandated, but death, according to the Athenian is ‘the least of evils’ (854e7): ‘... union is in no way better for soul and body than dissolution’ (828d4-5). See *Gorg.* 512a-b.

⁶¹ See *Rep.* VI.505d: ‘Nobody is satisfied to acquire things he merely believes to be good, however, but everyone wants the things that really *are* good and disdains those that are merely believed to be so’ (trans. Grube; emphasis in original).

⁶² They are not, after all, ‘heroes or sons of gods’ (853c).

⁶³ I gratefully acknowledge the generous and patient help I received from Ivor Ludlam, Joe Sachs, and Diskin Clay.

Bibliography

- Adkins, Arthur W.H. 1960. *Merit and Responsibility*. Oxford: Clarendon Press.
- Ast, D. Fridericus. 1814. *Platonis Leges et Epinomis*. Leipzig: Weidmann.
- Burnet, John. 1907. *Platonis Opera*. Vol. V. Oxford: Clarendon Press.
- Bury, R.G. 1926. *Plato, Laws*. London: Loeb.
- Crombie, I.M. 1962. *An Examination of Plato's Doctrines*. Vol. I. London: Routledge and Kegan Paul.
- Diès, A. 1956. *Platon, Les Lois*, Vol. III: Livres VII-X. Paris: Budé.
- England, E.B. 1921. *The Laws of Plato*. 2 vols. Manchester: Manchester University Press.
- Görgemanns, H. 1960. *Beiträge zur Interpretation von Platons Nomoi*. München: Beck.
- Grou, Jean. 1769. *Loix de Platon*. Amsterdam: M.-M. Rey.
- Grube, G.M.A., trans. 1992. *Plato: Republic*. Revised by C.D.C. Reeve. Indianapolis: Hackett.
- Gulley, Norman. 1962. 'Review of Winfried Knock: *Die Strafbestimmungen in Platons Nomoi*. *Klassische-Philologische Studien* 23. (Wiesbaden: Harrassowitz, 1960)'. *Classical Review* 12: 306.
- Levinson, R.B. 1940. 'Moral Obligation in Platonic Ethics'. *Journal of Philosophy* 37: 677-8.
- Liebes, Y. 1997. *Kitvei APlaton*. 4 vols. Tel Aviv: Schocken.
- Mackenzie, Mary Margaret. 1981. *Plato on Punishment*. Berkeley: University of California Press.
- McGibbon, D. 1964. 'Plato's Final Definition of Justice', *Proceedings of the African Classical Association* 7: 19-24.
- O'Brien, Michael. 1957. 'Plato and "Good Conscience": Laws 863E5-864B7'. *Transactions of the American Philological Association* 88: 81-7.
- Pangle, Thomas L., trans. 1980. *The Laws of Plato*. Chicago: University of Chicago Press.
- Ritter, C. 1896. *Platos Gesetze: Kommentar zum griechischen Text*. Leipzig: Teubner.
- Rosenmeyer, T.G. 1961. 'Review of Paul Rabbow, *Paidagogia*. Göttingen 1960'. *Gnomon* 33: 1-6.
- Saunders, Trevor. 1968. 'The Socratic Paradoxes in Plato's *Laws*', *Hermes* 96: 421-34.
- Shorey, Paul. 1928. 'Review of Bury. *Plato with an English Translation. The Laws (1926)*'. *Classical Philology* 23: 403-5.
- Stallbaum, G. 1859-60. *Platonis Leges et Epinomis*. Leipzig: Teubner.
- Stalley, R.F. 1983. *An Introduction to Plato's 'Laws'*. Indianapolis: Hackett.
- Strauss, Leo. 1975. *The Argument and the Action of Plato's 'Laws'*. Chicago: University of Chicago Press.
- Taylor, A.E., trans. 1934. *The Laws of Plato*. London: J.M. Dent.
- Weiss, Roslyn. 1985. 'Ignorance, Involuntariness, and Innocence: A Reply to McTighe'. *Phronesis* 30: 14-22.
- _____. 2001. *Virtue in the Cave: Moral Inquiry in Plato's 'Meno'*. New York: Oxford University Press.