I am grateful to Xavier Marquez for his careful, thoughtful response to my article (Klosko, 2008), and so for leading me to re-examine the textual evidence concerning central themes in Plato’s political theory. I believe Glenn Morrow’s Plato’s Cretan City is a monumental scholarly achievement and an indispensable work on the Laws and Plato’s political theory more generally. But this of course does not mean that I agree with all Morrow’s interpretations. I believe his view of the nocturnal council is important to consider once again, given the institution’s centrality to Plato’s political theory and the general consensus that Morrow is correct, which has more or less closed off consideration of alternative views (see Klosko, 1988; 2008). In this brief response, I will focus on the nocturnal council. The passages in the Statesman are difficult and convoluted and cannot also be discussed.

Briefly, as it seems to me, the main issues between Marquez and myself turn on how one construes the fact that Plato did not discuss particular subjects in certain contexts in the Laws. While I believe this indicates changes in Plato’s views, Marquez generally believes that, by introducing various distinctions into the text, one may read into these contexts material discussed elsewhere in the dialogue. As criticism of my position this is effective, because it is hard to show that the moves Marquez makes are explicitly ruled out by the text. I believe they are not explicitly ruled out, because Plato did not contemplate them and so of course could not disallow them. Moreover, building on Morrow’s contribution, Marquez presents an account of the nocturnal council that is plausible and commonsensical. One reason Morrow’s view has garnered so much support is that many readers feel it is what Plato should have said. Students of Plato’s political theory have long been puzzled by the apparent gap between his faith in philosophical intelligence, untrammeled by law, on the one hand, and unrevisable laws, on the other (e.g. Annas and Waterfield, 1995, p. 68, n. 65). Thus Marquez’s contention that Plato was ‘very much aware’ of ‘a potential space’ between these poles (Marquez, forthcoming, p. ••) is obviously attractive. His position receives strong support from the fact that, in Book XII of the Laws, the nocturnal council is assigned the function of studying the laws of other cities with an aim to improving those of Magnesia (951b–c, 952b). This is evidence that, at some point, Plato felt the need to address this gap. But standing in the way of Marquez’s and Morrow’s interpretation is troubling textual evidence.
Before proceeding, I should say something about standards for interpreting this evidence. As I say in my article, I believe one should normally approach a text with an attitude of charity and assume it is consistent, unless there is strong evidence that it is not. But in the case of the *Laws*, the usual presumption of consistency should be relaxed somewhat. According to long-standing tradition, this was Plato’s last dialogue, left unfinished at his death, while this circumstance helps to explain an entire list of problems and inconsistencies in the text.¹ The possibility of major inconsistency in the *Laws* cannot be ruled out, although strong evidence must be provided to support it.

In my article, I discuss two main bodies of textual evidence: concerning the irrevisability of the laws and procedures for changing the laws. I begin with irrevisability.²

In a series of contexts, the Athenian Stranger discusses the need for the laws of Magnesia to remain unchanged. Most notably, in regard to education, he says that, as in Egypt, these laws should remain unchanged for ten thousand years, ‘literally ten thousand’ (656d–57b). The Athenian makes a broad claim concerning the benefit of unchanging laws. In general, ‘nothing is more perilous than change in respect of everything’ (797a). Innovation in children’s games is a great danger, leading eventually to desire to change the laws, which is the greatest evil for city states (*megistou kakou polesin*). Ideally laws should remain ‘unaltered for many centuries, so that there exists no recollection or report of their ever having been different from what they are now’ (798a–d).

In other passages, he discusses specific areas of the law that are explicitly to remain forever unchanged, *akinêta*. These include rules for choruses (772a–d), legal procedures for agricultural cases (846b–c) and legal procedures more generally (957a–b). In numerous additional contexts, the Athenian says the *nomophulakes* should fill in the details of other aspects of the law, although these passages do not explicitly say that, once drawn up, these laws should remain unchanged. Three such areas are regulations concerning festivals (828b), rhapsodes and choral competitions (835a–b) and certain penalties (855d). Similarity of procedures discussed in these contexts and those in regard to the laws explicitly described as *akinêta* suggests that these other areas of the law are also to remain *akinêta*, although this is not stated explicitly. There are also numerous additional areas in which the *nomophulakes* are to fill in details of the legal code (see Morrow, 1960, p. 200).

If, as a rule, the laws of Magnesia are to be immutable, Morrow’s interpretation is obviously incorrect. There would be no need for a body charged with revising and improving the laws. One important point that Marquez makes is that general irrevisability is too strong. He calls attention to passages in the *Laws* that discuss continuous revision of laws, while there is also a procedure for making changes. We will return to these passages below. Marquez contends that the specific laws described as irrevisable are exceptions. For different reasons, these laws are to remain unchanged, while others are subject to review and revision. His main reasons are that education is especially important while the other laws are relatively insignificant, and so not revising them will do little harm (Marquez, forthcoming, pp. 122–128). This reasoning strikes me as *ad hoc* and unpersuasive. A motivated scholar could produce equally persuasive reasons why virtually any other category of laws should or should not
remain forever unchanged. But if the nocturnal council is to head an ongoing inquiry into the laws in general, why these particular laws should be exempt from such scrutiny is difficult to explain.

The procedure for changing laws is discussed at 772a–d. This is the only discussion of such a procedure in the *Laws*, although it is apparently presented only in regard to laws concerning choruses. But if we accept the likelihood that something like this procedure is what Plato had in mind for all laws (Morrow, 1960, p. 571; Schöpsdau, 1994–2003, II, p. 449; Samaras, 2002, p. 291), we are left with a ten-year period during which laws are revised, after which they are *akinēta*. The Stranger uses strong language against changes beyond this point: ‘In these [laws] they must never make any change voluntarily; but if some necessity for change (*anankê doxee pote katalabein*) should ever seem to happen’, then the oracles, the people and the officials should be consulted. General consent by all these bodies is necessary. Change is allowed ‘under no other conditions at any time’, and those objecting to change ‘shall always prevail according to law’ (772c–d).

As we will see below, in additional passages the Stranger discusses changing laws. Although there is tension between these passages and a general presumption against change, a reasonable reconciliation is forthcoming. As the Stranger says in many contexts, details of the law should be filled in, after which the laws should remain unchanged, although the Stranger generally does not explicitly say they are to remain unchanged. But given the presumption of stability, this seems a reasonable general assumption. Accordingly, the procedure may be assumed to apply generally and may be used to make necessary changes once the ten-year period has passed. If we accept this line of argument, then it is possible to reconcile the general presumption in favor of unchanging laws with a role for the nocturnal council in changing them. But even if we grant the council such a role, in view of the strong presumption against changing laws, its role seems somewhat modest, given the inflated language with which Plato describes it (on which, more below).

The second body of evidence concerns the role of the nocturnal council in changing laws. It is here, I believe, that we find the strongest evidence against the views of Morrow and Marquez. Not only is the nocturnal council never mentioned in regard to filling in the details of or otherwise changing laws, but an alternative body of officials is explicitly assigned to oversee these processes, the *nomophulakes*. Personnel of course overlap between these two bodies, as the ten senior *nomophulakes* are members of the nocturnal council. But this does not alter the fact that, in these passages, the job of supervising revisions of the law is assigned to the former body rather than the latter. Morrow believes the nocturnal council is intended to play an advisory role in this process, but admits this is only a ‘conjecture’, although he thinks it ‘a plausible one’ (Morrow, 1960, p. 200, p. 571; see also Samaras, 2002, pp. 298–301). Given the text, W. K. C. Guthrie, a judicious scholar, posits an ‘organizational change’ in the *Laws* in this regard (Guthrie, 1962–81, V, p. 369, n. 2).

Marquez explains away these problems by introducing a distinction between the ‘initial period of ten years’ and ‘the long run revisability of the laws’ (Marquez, forthcoming, p. ••, emphasis in original). While the *nomophulakes* are in charge during the former period, the nocturnal council is responsible for the latter. He claims there is good reason for this
distinction as, until the state has been up and running for some time and the council
members properly educated, they would not possess the knowledge necessary for long-run
changes (Marquez, forthcoming, p. ••).

While this may be a reasonable position for Plato to have assumed, it confronts a theoretical
difficulty and is directly contradicted by textual evidence. The theoretical problem is that
Marquez’s distinction turns on a significant difference in cognitive capacity between the
nomophulakes and the nocturnal council. It is in part because of the latter’s greater
philosophical sophistication that long-run changes are assigned to them. But if this is the
case, it makes little sense for Plato to mandate that the work of the nomophulakes in filling
in the laws is to remain forever unchanged. If the nomophulakes are to give way to the more
qualified nocturnal council, the former’s handiwork should be reviewed by the latter, not
explicitly placed off limits.

More important is the textual evidence. In two contexts in which the Athenian Stranger
discusses long-run revision of laws, oversight is explicitly assigned to the nomophulakes. Once
again, the nocturnal council is not mentioned. These passages clearly concern what
Marquez describes as long-run revisions of the laws. Indeed, the two passages I discuss are
cited by him as evidence of long-run changes (Marquez, forthcoming, p. ••).\(^3\) At 840e, the
Stranger says that if it turns out that sexual regulations for the Magnesians are unworkable,
‘then the nomophulakes, acting as lawgivers (nomothetas), must devise for them a second law’.
These regulations concern changing the laws rather than filling them in, and there is little
reason to suppose that revisions are confined to a ten-year period. More important is the
passage in Book VI in which the Stranger introduces the subject of changing the laws. He
compares the lawgivers to painters. Because the process of improving paintings is never
ending, a painter should leave a successor, who will continue to repair the picture and
improve it, so it always (aei) gets better over time after the painter is gone (769b–c). The
lawgiver too should appoint a successor. In spite of his efforts at precision, the passing of
time will reveal many deficiencies, so a successor is necessary, to makes sure that the state
‘may always (aei) grow better and never in any way worse’ (769d–e). The successors are the
nomophulakes. We must make ‘the very same men lawgivers as well as guardians of the laws
(toutous autous nomothetas te kai nomophulakas)’ (770a).

This is direct evidence against Marquez’s position. There is no doubt that Plato did not
assign the nomophulakes only the task of revising laws during the initial ten-year period.\(^4\) The
fact that the job Morrow assigns to the nocturnal council is explicitly given to other officials
raises an additional problem: justifying the council’s exalted position in the state. One reason
Morrow’s view of the council is intuitively appealing is that it provides the body a role
that could be viewed as in accord with the exalted language with which Plato describes it
(Klosko, 1988, pp. 79–81). This language is apparently central to the traditional but now
largely dismissed view that, at the end of the dialogue, Plato has the nocturnal council
assume a role along the lines of the philosopher-kings in the Republic.\(^5\) With this possibility
set aside, what justifies the exalted language? While Plato does not give the council a formal
role (aside from interrogating imprisoned atheists [908a–09a]), he does not explicitly rule
out possible roles. Thus we may feel justified in reading responsibilities into the text,
although they are not explicitly discussed. This is essentially what Morrow and Marquez
have done. But their attribution to the council of a general, informal, advisory role is less persuasive if we recognize that central components of this responsibility are repeatedly and explicitly given to other officials. Once again, I believe this indicates a change in Plato’s plans. Morrow and Marquez may well be right about what Plato would have said, had he lived to reconcile conflicting aspects of his text. But this would have required revision of the earlier books of the *Laws* to eliminate the conflicts noted here. 6

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Notes


2 For translation of the *Laws*, I use Bury, 1942, occasionally modified slightly. Stephanus pagination is used.

3 840e is cited ‘compare’. It is not clear what Marquez means by this designation in this context.

4 The address to the *nomophulakes* at 770b–c focuses on filling gaps in the laws, but 770e–71a concerns changing laws.

5 This is apparently the view of Aristotle, *Politics*, 1265a3–4. For discussion and references, see Klosko, 1988.

6 I am grateful to Jon Mikalson, Dan Devereux and Ryan Pevnick for comments on a previous draft.

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