

THE CONCEPT OF LEGAL OBLIGATION IN PLATO'S *CRITO*

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ABSTRACT

In the *Crito*, Socrates is presented an offer by his friends to escape from prison before his execution. To the surprise of his interlocutor Crito, he rejects the offer, making the startling claim that fleeing would breach an unconditional obligation to obey the law. In a famous speech, Socrates personifies The Laws of Athens and speaks in its voice, advancing three arguments justifying why one should always obey the law even to one's injury or disadvantage. These may be referred to as the Argument from Gratitude, the Argument from the Social Contract, and the Argument from the Destruction of the Laws.

The objective of this article is to provide a conceptual analysis of legal obligation as presented by Socrates using the resources of contemporary legal and political philosophy, and to argue that each argument falls short of justifying an *unconditional* obligation to obey the law. The article concludes that with an examination of the apparent contradiction between Socrates' arguments in the *Crito* and his speech in the *Apology* where he openly defies the court by explaining that he will continue doing philosophy even if he will be found guilty of corrupting the youth and failing to worship the gods of Athens. It is hoped that a closer and critical look at the arguments presented in the *Crito* will elucidate the nature of law and legal obligation.

Keywords: Authority, Fair Play, Legal Obligation, Rule of Law, Social Contract

Introduction

The objective of this article is to analyze the concept of legal obligation as presented in Plato's *Crito*. Two clarifications should immediately be made. First, conceptual analysis is nothing more than the logical clarification of concepts (Flew 1979,7), which means that our purpose is to investigate what is logically pre-supposed in, implied by, or follows from a certain conception of legal obligation. Second, a legal obligation is defined as a duty to act or refrain from acting in

accordance with the requirements of law (Green 2002, 516). On this definition, someone who has a legal obligation to Φ has a binding reason to Φ .

This article shall examine three arguments raised by the *Crito*'s protagonist Socrates to defend what seems to be his view that there is an absolute obligation to obey the law. These may be referred to as the Argument From Gratitude, the Argument From The Social Contract, and the Argument From The Destruction Of The Law. It shall be argued, however, that each argument fails to justify an unconditional duty of obedience. This article shall conclude by examining the apparent contradiction between Socrates' arguments in the *Crito* and his defense in the *Apology* where he defies the court by saying that he will continue doing philosophy even if he will be found guilty of the charges of corrupting the youth and not worshipping the gods of Athens (24b), after which he is sentenced to death (38b).

I. The Arguments of Crito

The *Crito* takes place in prison on the day before Socrates' execution. Crito visits his cell and reveals that he and his friends plan to bribe the guards to allow him to escape and flee to Thessaly. Crito offers four arguments why Socrates should accept his offer. The first is that if Socrates dies, then he will be deprived of a friend, the likes of whom he shall never find again. The second is that his own reputation will suffer if it is discovered that he possessed the resources to help Socrates escape but seemingly chose his money over the life of his friend, given that people will not believe that Socrates had willingly declined his offer. The third is that Socrates would be acting unjustly if he forfeits his life, playing into the hands of his enemies who wish to destroy him. The fourth is that he will be abandoning his sons to orphanhood when he can bring them up and educate them instead (44c-45d).

Socrates never responds to Crito's first argument. He replies instead to the second by explaining that one should not be concerned with his reputation so much as he should be concerned with justice, implying that allowing Crito to bribe his way out of jail would be an act of injustice that would corrupt them both (47d-e). Later on, Socrates gives Crito his own prudential reasons for refusing the offer, pointing out that Crito and his friends will be placed in danger of exile, disenfranchisement, and loss of property for aiding and abetting a criminal (53b). Socrates even considers the ramifications of escaping upon his own reputation, predicting that he will be viewed with suspicion wherever he goes, making him an outcast whom nobody will philosophically engage with (53c).

Socrates then moves onto the rebuttal of Crito's third argument. He never directly explains why

it would not be unjust to accept his fate to the satisfaction of his enemies, but he does imply that it would be unjust to run from it and thereby disobey the law. At this juncture, Socrates lays down a very important principle: that even if one is treated unjustly by his enemies, one must never—under any circumstances—inflict wrong in return (49b-d). Finally, Socrates reply to Crito's fourth argument is lumped together with his reply to the second, explaining that matters of money, reputation, and the upbringing of children are only considered by shallow people "who easily put men to death and would bring them to life again if they could, without thinking" (48c). While it is difficult to swallow how Socrates trivializes the welfare of his own children, he does point out that he would be unable to raise them anyway were he to flee to Thessaly, and even if he were to bring them with him, he would only make strangers out of them in a foreign land. Furthermore, he explains that if his friends are indeed genuine, then they will look after his children even after his death (54a-b).

After dispensing with Crito's arguments, Socrates commences with the constructive portion of his speech. His main agenda is to argue why the obligation to obey the law is absolute and why escaping from prison would constitute a breach of that obligation. To this end, he introduces a metaphorical device wherein he personifies the law of Athens (hereinafter referred to as 'The Laws') and speaks to Crito in its voice. It is generally assumed that the sentiments of The Laws were the sentiments of Socrates himself (Hermann 1981, 669):

SOCRATES: Look at it this way. If, as we were planning to run away from here, or whatever one should call it, the laws and the state came and confronted us and asked: "Tell me, Socrates, what are you intending to do?" (50b)

Socrates then raises three arguments that shall be the subjects of Sections II, III, and IV.

II. The Argument From Gratitude

The first argument proceeds as follows:

SOCRATES: Then what if the laws said: "...Come now, what accusation do you bring against us and the city, that you should try to destroy us? Did we not, first, bring you to birth, and was it not through us that your father married your mother and begat you? Tell us, do you find anything to criticize in those of us who are concerned with marriage?" And I would say that I do not criticize them. "Or in those of us concerned with the nurture of babies and the education that you too received? Were those assigned to that subject not right to instruct your father to educate you in the arts and in physical culture?...[A]nd after you were born and nurtured and educated, could you, in the first

place, deny that you are our offspring and servant, both you and your forefathers? If that is so, do you think that we are on an equal footing as regards the right, and that whatever we do to you it is right for you to do to us? You were not on an equal footing with your father as regards the right, nor with your master if you had one, so as to retaliate for anything they did to you, to revile them if they reviled you, to beat them if they beat you, and so with many other things. (50d-51a).

This rich passage generates two striking images of The Laws: that of a father who has raised, nurtured, and educated his child, and that of a master who claims unlimited authority over his servant. The former appeals to Socrates' better nature by reminding him of his indebtedness to The Laws who made social life in Athens possible. The latter suppresses his base instinct to seek revenge against it despite its injustice towards him. Each image expresses a different ground of legal obligation. The Argument From Gratitude thus consists of two distinct but related arguments that require separate treatment. The first may be referred to as the Argument From Fair Play whereas the second may be referred to as the Argument From Authority.

1. The Argument From Fair Play

The Argument From Gratitude has a past-regarding aspect that grounds legal obligation on previously conferred benefits. The Laws then introduces a new dimension to the argument:

SOCRATES: "We have given you birth, nurtured you, educated you; we have given you and all other citizens a share of all the good things we could." (51d)

According to The Laws, not only is Socrates bound by his personal gratitude, but he is also bound to fellow Athenians who have likewise benefitted from the legal system and have expressed their own gratitude by obeying it in return. On this view, law is a collective enterprise that functions on mutual cooperation. Should Socrates disobey The Laws by escaping, he would be acting unfairly not only towards The Laws of Athens, but also towards his fellow citizens who sustain it through their obedience (Marcou 2020, 6). This variation of the Argument From Gratitude is known as the Argument From Fair Play. Its most famous formulation is attributed to H.L.A. Hart who argued that (a) when a group of persons conduct a joint enterprise and restrict their individual liberties according to its rules and (b) others benefit from their submission, then the latter incur obligations to submit their own liberties as well (1955, 185). There are thus two things that Socrates should be grateful for: the first are other citizens' acts of surrender that make the legal system possible, and the second are the benefits that consequently arise. In other words, Socrates had already acquired an obligation to obey the law even before he benefitted from the legal system. It would thus be egregiously unjust for Socrates to fail to contribute his fair share in

the spirit of reciprocity.

How sound is this argument? It presumes not only that obligations can be involuntarily incurred, but that any group of persons can impose obligations on those whom their actions benefit. This premise, unfortunately, rests on a defective understanding of the concept of obligation. Robert Nozick invites us to imagine a group of people who decide to institute a system of public entertainment in their neighborhood using a public address system. According to its rules, one community member will be assigned each day to manage it. His responsibilities include playing musical records, announcing news bulletins, and sharing amusing stories. One person—let us call him Jones—has benefitted from the system by occasionally listening to his favorite song through the window, tuning in to breaking news, and laughing heartily at some anecdotes. How could he have not? The public address system is situated right outside his house and he has no choice but to hear whatever is shared. But when Jones is told that it is his turn to manage the system on a particular day, which entails either taking a leave from work or giving up his free Sunday, can it be said that he has an obligation to manage the system out of gratitude to the rest of the neighborhood? He might feel compelled to participate as an act of goodwill, but he would hardly be said to be under an obligation, especially given the fact that he could not have avoided “benefitting” from the system even if he wanted to. Similarly, can someone place a book in another person’s hands—let us call him Smith—and then grab his money as payment (Nozick 1974, 93-95)? The answer seems to be ‘no’ because the transaction is essentially an act of emotional blackmail. In order for Smith to incur an obligation, his consent must be secured in advance; he cannot be presented with a *fait accompli* demanding that he pays his “fair share” just because he has benefitted from an act of kindness. He received the benefit, but he did not accept it. Similarly, the obligation to obey the law cannot be grounded on past receipts of benefits alone, for it is difficult to imagine how anyone can avoid incurring obligations so widely construed. Essentially, anyone who is born into society is born into debt. Although it is theoretically possible to renounce one’s citizenship and live as a hermit outside the jurisdiction of any legal system, it would constitute such a grave inconvenience that it would be an unreasonable price to pay in exchange for being free of obligations. The Argument From Fair Play thus leaves each citizen in a double-bind: either one must accept the benefits of living in a law-governed society and incur a life-long debt, or one must leave society altogether. While most choose the former, it hardly seems to be a free choice at all.

A further problem with the argument is that it measures the extent of one’s obligation in terms of a contingent and empirical standard—namely, the degree to which the legal system has benefitted him. In fact, the very concept of fair play entails that one’s debt may increase or

decrease in proportion to how many benefits one has received. But this implies that it is conceptually possible for someone to have no obligations whatsoever if the law has inflicted far greater harm unto him than good. Otherwise, the cooperative enterprise would be cheating him and failing to live up to its promise of fair play if it still required his submission (Simmons 1979, 138). This objection becomes even more powerful in the case of Socrates.

As far as we know, Socrates was generally a good citizen who had always obeyed the law. At his trial in the *Apology*, Socrates, already seventy years of age, explains that it was his first appearance in a court of law (17d), which must mean that he had never committed any crime prior. He also reveals that he had once served as a public official as a member of the Council of Athens, once voting against a motion that was clearly in violation of the law (32b). The point is that Socrates seemed to have kept his end of the bargain with The Laws, but for the latter to insist that he had an obligation to forfeit his life in compliance with an unjust verdict does not appear to be a fair or commensurate request. The argument not only fails to justify Socrates' obligation, but it may even be plausibly used to argue the opposite: that Socrates had no obligation to obey the law whatsoever. This would not, however, have been a compelling rebuttal for Socrates, especially given his principle that one should never inflict wrong, even against one's enemies.

2. The Argument From Authority

Socrates merges the Argument From Authority with the argument that laws, like parents, are owed obedience in return for the benefits that they confer upon citizens.

SOCRATES [AS THE LAWS]: "...and after you were born and nurtured and educated, could you, in the first place, deny that you are our offspring and servant, both you and your forefathers?"

Unfortunately, Socrates does not develop this point any further. He does describe law as the "commands of one's city and country" (51c), and he also likens himself to the "meanest type of slave" if he tries to run away (52d), complementing the imagery of The Laws as an absolute authority figure. In truth, The Argument From Authority appears to be nothing more than an invocation of an asymmetrical relationship of power. A more charitable reading is possible if one assumes that the hypothetical legal system that Socrates had in mind was that of an enlightened authoritarian government ruled by philosopher-kings as presented in *The Republic* (5.473d). Provided that The Laws expresses its will in a way which it believes to be wise and just, although it may be to the disadvantage or injury of a subject, he has a duty to

remain obedient and forego retaliation. But even on this interpretation, the argument as it stands is not a good one for it assumes that law is binding *qua* law; that law is binding for its own sake and nothing more. It collapses into a threat of brute force and a naked display of power.

The argument is no sounder than John Austin's Command Theory of Law, which defines law as a set of general commands that are issued by the sovereign of a state (e.g. the King, Parliament, or Congress) whom the bulk of the population is habitually obedient and that are backed by the threat of credible sanctions (1998 [1832], 23). Both of these suffer the same defect: they equate legal obligation with the efficacy of the legal system, which, in turn, is associated with the use of force to instill obedience among the populace. Surely this conception of obligation is mistaken. The main objection to Austin's Command Theory is that it likens law to the commands of a gunman who robs a bank and orders his victims to hand over their money. At this point, his victims may feel *obliged* to comply out of fear for their lives, but they could certainly not be described as being *under an obligation*. There is an important conceptual distinction between the two. For when the gunman flees, the threat of force disappears along with him, and his victims will no longer be subjected to his supposed authority (Hart 1961, 20-25). The normative force of law does not function in this manner, however, for it is binding even in the absence of imminent punishment. The Argument From Authority is guilty of committing the same error by assuming that authority alone is sufficient to ground the legal obligations of servants. While authoritativeness is undoubtedly an essential feature of law that has something to do with obligations, the argument is not persuasive.

III. The Argument From The Social Contract

The second argument of The Laws is that Socrates would be in violation of an implicit agreement with the city of Athens if he escaped from jail, a cruder version of the more sophisticated social contract theories that were to be developed by the likes of Hobbes, Locke, and Rousseau several centuries later. Early on in its speech, The Laws reminds Socrates that he had agreed to "respect the judgments of the city" (50c) but only develops this point later on:

SOCRATES [AS THE LAWS]: ...by giving every Athenian the opportunity, once arrived at voting age and having observed the affairs of the city and us the laws, we proclaim that if we do not please him, he can take his possessions and go wherever he pleases. Not one of our laws raises any obstacle or forbids him, if he is not satisfied with us or the city, if one of you wants to go and live in a colony or wants to go anywhere else, and keep his property. We say, however, that whoever of you remains, when he sees how

we conduct our trials and manage the city in other ways, has in fact come to an agreement with us to obey our instructions. (51d-e)

The passage stipulates two pre-conditions for an agreement between The Laws and a citizen to be valid: first, that a citizen must be making an informed choice by virtue of being of the age of consent and being knowledgeable of the affairs of the city, and second, that The Laws must not coerce him to enter into an agreement nor obstruct him from declining it. The Laws then provides the substantive basis of an agreement:

SOCRATES: [The Laws] might well say: "Socrates, we have convincing proofs that we and the city were congenial to you. You would not have dwelt here most consistently of all the Athenians if the city had not been exceedingly pleasing to you. You have never left the city, even to see a festival, nor for any reason except military service; you have never gone to stay in any other city, as people do; you have had no desire to know another city or other laws; we and our city satisfied you... First then, answer us on this very point, whether we speak the truth when we say that you agreed, not only in words but by your deeds, to live in accordance with us... [Y]ou are breaking the commitments and agreements that you made with us without compulsion or deceit, and under no time pressure of deliberation. You have had seventy years during which you could have gone away if you did not like us, and if you thought our agreements unjust. You did not choose to go to Sparta or to Crete, which you are always saying are well governed, nor to any other city, Greek or foreign." (52b-e)

The Laws now reveals its hand: Socrates has entered into an *implicit* agreement to obey it by virtue of being given every opportunity to leave Athens but constantly foregoing the option. His continued residence is proof that he agrees to abide by its laws. In this sense, the Argument From Gratitude bleeds into the Argument From The Social Contract because the receipt (or implicit acceptance) of the benefits of living in Athens constitutes the ultimate foundation of their agreement (Weinrib 1982, 99). This argument foreshadows an important concept that modern social contract theories eventually introduced: the doctrine of *tacit consent*. According to this doctrine, it is not always necessary for someone to give their *express consent* to enter into a social contract. Rather, given that men are born naturally free, their constant enjoyment of the benefits of citizenship under a particular government constitutes their tacit acquiescence to its laws (Locke 1980 [1689], 64). Socrates is prevented by estoppel from opting out of his agreement with The Laws because he has tacitly expressed his consent in word and in deed.

The problem with this argument is that it confuses the act of choosing to reside in a city (even if

one is free to go) with the act of consenting to obey its laws. The former, however, does not logically entail the latter. For instance, someone who is dissatisfied with the oppressive laws of his city may have legitimate reasons for deciding to stay. He might enjoy its convenient location, appreciate its aesthetic appeal, or value the fact that his friends and relatives live nearby. He may also have no idea about where he can move to, be financially incapable of transferring residences, or be unwilling to invest the time and effort necessary to change his lifestyle. He may even find another city but learn that its laws are even more oppressive. These possibilities are compatible with the fact that he refuses to “obey” the law in the theoretical sense of the word. It cannot be inferred with certainty that someone who chooses to stay in his city is pleased with its laws (Woozley 1979, 82-83).

A more palatable reading of the argument might interpret it hypothetically: that if one would agree to engage in a certain form of conduct ϕ under ideal conditions, then one is bound to ϕ even if there was no actual agreement. After all, how can it be reasonable for someone to refuse to ϕ if he admits that he would have ϕ had he been in that position? This reading may justify the inference that someone who chooses to stay in his city continuously implies his agreement to obey; one *ought* to obey the law because one *would* have obeyed the law under different circumstances. Otherwise, he would surely have moved away by now. This hypothetical situation is akin to John Rawls’ veil of ignorance, a thought experiment in which a group of perfectly rational individuals who know nothing about their stations in life must deliberate upon the fundamental principles that will govern their society (1971, 136- 142). In Rawls’ view, they will eventually decide upon principles derived from a conception of justice as fairness and agree to be bound by them. Analogously, the same individuals might agree to obey the laws of their city under these conditions in the name of justice, fairness, and order—a hypothetical but perfectly rational agreement that grounds legal obligations.

This rejoinder underestimates the force of agreements that are *actually* forged. Consider a group of friends who are watching a football game together on a Friday night. They each decide to place a five-dollar bet on the team that they think will win. It just so happens that one of their friends—let us call him Brown—is unable to join them, so they decide to place a hypothetical bet on his behalf. After all, they are absolutely certain about which team he would have bet on had he been there. Not only is it his favorite team, but he is known to regularly place bets on them with oddsmakers. Now let it be assumed that Brown’s team loses the game. Imagine his shock and indignation when he is told that he owes the winners of the bet five dollars. He would deny having agreed to participate in the bet; even if his friends correctly reason that he *would* have made the same bet had he been present, he could counter that he still did not place an *actual*

bet. Brown is undeniably correct here, for the very concept of betting necessarily implies that someone has agreed to participate. But a “hypothetical agreement” is not an agreement; one has to actually agree to something in order for the agreement to be binding. The hypothetical reading of the Argument From The Social Contract commits the same mistake. A hypothetical, implied, or tacit agreement to obey the law that is inferred from someone’s choice to stay in a city is not good enough to ground the obligation to obey the law. There is a higher burden of proof to establish that someone accepts the agreement that binds him to this obligation. This is not to say that the concept of tacit agreement can never be used to this end, only that one must be careful to not infer too much from hypothetical actions.

IV. The Argument From The Destruction Of The Law

The Argument From The Destruction Of The Law makes a rather fantastic claim:

SOCRATES [AS THE LAWS]: “Tell me, Socrates, what are you intending to do? Do you not by this action you are attempting intend to destroy us, the laws, and indeed the whole city, as far as you are concerned?” (50a-b)

Additionally, The Laws asks Socrates whether he thinks he has a right to destroy it in retaliation for his being wronged (51a) and warns that he will come to be known as a “destroyer of the laws” if he flees (53b). Apart from these passing statements, however, the argument is not developed much further, so what could it mean to “destroy” the law? As an empirical claim, it might be taken to suggest that the actions of one man who breaks the law may set in motion a chain of events that results in other people breaking the law, which, in turn, may bring about widespread civil disobedience within the legal system. And because this would only bring about chaos and disorder, then there must be a general obligation to obey the law. The problem, however, is that this causal reasoning is blatantly false. Just as prisoners who escape from jail do not “destroy” the law by triggering mass jailbreaks, Socrates would have come nowhere close to dismantling The Laws of Athens had he accepted Crito’s offer. He possessed neither the reputation nor resources to inspire mass protests against injustice, even comparing himself in the *Apology* to an irritating gadfly (30e) who never endeared himself to Athenians. This objection applies to other people and infractions. Most individuals do not wield enough influence to singlehandedly motivate an attitude of disrespect towards the law, and even if they did, many offenses actually revolt people who naturally avoid committing them. Moreover, several crimes go undetected; small tax offenses and traffic violations are not reported frequently enough for their perpetrators to set bad examples for society. Even crimes of more gravity—such as murder, corruption, or election-rigging—do not “destroy” the law or “the whole city” in the dramatic

sense. On the contrary, they are often prosecuted in sensational, publicized trials to reaffirm the rule of law.

The conclusion that there is a *general* obligation to obey the law is misguided as well. This is not only because the consequential reasoning that underlies the argument is faulty, but because the possibility of setting a bad example only constitutes a *prima facie* reason to obey, not a pre-eminent reason that amounts to a general obligation. In order to establish that a general obligation to exist, the Argument From The Destruction Of The Laws has to prove that it necessarily applies to every act of disobedience. But as it has been established, although it applies to many cases, it fails in many others. Moreover, a general obligation to obey the law would have to be based on the intrinsic good of *being* law-abiding, not on the contingent desirability of rendering some aspects of the legal system inefficacious (Finnis 2011, [1980], 361). It needs to be established that there is an inherent good in following the law unconditionally, irrespective of the actual consequences of doing so. But the strength of the argument is too variable for it to assume universalizability.

A slightly different interpretation of the argument highlights the moral consequences of breaking the law rather than the social ones. On this interpretation, there is an obligation to obey the law because doing so upholds the moral fabric of society, encouraging citizens to treat the law with respect, deference, and humility. On the other hand, disobeying the law accelerates the moral decay of society, encouraging a culture of defiance, which, in turn, leads to immorality and disorder. This interpretation is akin to the argument of Lord Devlin when he criticized the recommendation of the Wolfenden Report of 1957 that the law should not intervene in matters of private morality such as prostitution and homosexuality. He claimed that if men engaged in such sexual deviances, then the moral foundations upon which society is built would come apart (Devlin 1965, 1-24). In response, Hart (1963, 50) and Ronald Dworkin (1966, 989-992) accused Lord Devlin of peddling mere rhetoric, exaggerating the impact of sexual taboos upon conventional morality. The Argument From The Destruction Of The Law is guilty for a similar reason. There is no reason to believe, at least in Socrates' case, that his escape in jail would have triggered moral deterioration on a grand scale. More importantly, the argument is question-begging because it assumes that the law is inherently moral and must therefore be obeyed. This might be true in some cases, but not all of them. There are instances when breaking the law is permissible and reforming it is necessary. In short, the moral decay interpretation takes the argument for granted without proof.

A new dimension is added to the Argument From The Destruction Of The Laws:

SOCRATES [AS THE LAWS]: "Or do you think it possible for a city not to be destroyed if the verdicts of its courts have no force but are nullified and set at naught by private individuals?" (50b)

On this version, the destruction of the law is not taken to mean the plunging of the city into disarray, but the loss of the efficacy of the courts. If this is correct, then the destruction of the law is synonymous with the destruction of the *rule* of law. Broadly construed, the ideal of the rule of law refers to the conditions that law must meet in order to be legitimate, such as the existence of democratic procedure (Tasioulas 2020, 117-118). Accordingly, a society in which law does not rule is one whose citizens act as if they are not bound by anything and free to act as they please. This is a principled rather than consequential argument; it is wrong to disobey not because it brings about negative consequences, but because the rule of law itself is a virtue.

Some interpretations of the Argument From The Destruction Of The Law (e.g. Hatzistavrou 2019, 376-377) emphasize law's claim to moral authority. In the *Crito*, The Laws presents ideological constructs to illustrate its legitimacy and right to rule: they identify themselves with the city and the fatherland (51c), which, in turn, they analogize with parents and masters who claim authority over children and slaves respectively. It is therefore just to yield to its commands and impious to disobey them (51b). There is no room for even morally permissible acts of disobedience. The duty to obey is absolute and cannot be defeated by substantive moral considerations. In Socrates' case, even if the verdict against him were unjust, it would not outweigh his moral duty to obey. At this point a paradox arises: how can The Laws claim to be just if some of its judgments may be unjust? The answer is that when The Laws claims moral authority, it does not imply that its directives are always morally right, only that its authoritative determinations are final. It can change the balance of reasons simply by virtue of its saying so, even though it may err. On this view, then, the moral duty to obey the law does not derive from the justice of its individual directives, but the legitimacy of the system as a whole. In spite of its flaws, it would be better that it were obeyed so the rule of law is upheld.

This kind of rejoinder exemplifies what is referred to as a "premature and/or unhealthy veneration" of the law (Dickson 2015, 227). It assumes that just because law generally promotes the common good as a whole, then it is never justified to disobey its individual directives. However, there is no reason to believe, as Richard Wasserstrom points out, that a democratic society will be better off if some laws are never challenged. The justness of the legal system as a whole does not guarantee that of its individual parts. Some laws *should* be disobeyed and struck down especially when blind obedience leads to the neglect of important moral issues (1968, 303-304). Even if one argues that laws are good in the vast majority of cases, it still does

not follow that there is a general legal obligation. If a law requires or prohibits certain forms of behavior, it is often the case that there is an independent moral reason to engage in or refrain from that behavior. For example, if there is a social practice within a community of refraining from polluting a river that is eventually enshrined into law, then the obligation to conform to this practice derives from the moral value of that practice, not from the law itself. In this scenario, the function of law is to designate and enforce through the threat of sanctions a desirable form of behavior that already exists, not to create an obligation that previously did not exist. (Raz 1979, 245-249). This means that even where the rule of law holds, there are non-legal reasons and duties to conform to behavior required by law. There is thus no general obligation to obey the law for its own sake, even in a just legal system.

V. The Apparent Contradiction Between The *Crito* And The *Apology*

There is a wealth of literature comparing Socrates' arguments for absolute obedience unto the law in the *Crito* and his speech in the *Apology* where he swears that he will defy any official order to cease doing philosophy:

Men of Athens, I am grateful and I am your friend, but I will obey the god rather than you, and as long as I draw breath and am able, I shall not cease to practice philosophy...(29d)

Listen to what happened to me, that you may know that I will not yield to any man contrary to what is right, for fear of death, even if I should die at once for not yielding. (32a)

He even recounts a past experience where he disobeys the direct orders of the Thirty Tyrants:

...the Thirty summoned me to the Hall...and ordered [me] to bring Leon from Salamis, that he might be executed. They gave many such orders to many people in order to implicate as many as possible in their guilt. Then I showed again, not in words but in action, that, if it were not rather vulgar to say so, death is something I couldn't care less about, but that my whole concern is not to do anything unjust or impious. (32c-d)

It is generally agreed that the *Apology* is an accurate record of what Socrates said at his trial. Not only does Plato make it clear that he was physically present (34a), but it was too public an occasion for him to put words in Socrates' mouth. The jury alone numbered five hundred and one Athenians, and hundreds of spectators would have been in attendance. Plato would thus have been aware that many of his eventual readers would have been present to hear the original speech; making Socrates talk out of character would have thwarted his purpose of clearing his

master's name (Vlastos 1971, 3). The same cannot be said of the *Crito*, which was likely based off an uncorroborated oral report. Even if it were an accurate retelling of their conversation, there is no indication in the text that Socrates defended anything less than an unconditional obligation to obey the law. Plato could conceivably have embellished it by inserting a line to the effect of, "We should obey the law provided that it obligates us to do what is right." But even the careful writer, he never adds any escape clause (Stephens 1985,7).

How can this inconsistency be reconciled? Some commentators have suggested that Socrates did not, in fact, agree with the arguments of The Laws and, as in the *Apology*, maintained that it is occasionally justified to disobey it. In their interpretation, he only played the devil's advocate and rationalized the opposing view in order to dissuade Crito from pursuing his plan any further. Surely, it is argued, The Laws of Athens was presumably more awesome and endowed with higher authority than Socrates in his eyes (Young 1974, 12). But even if this were true, it fails to explain why Socrates still assented to his execution if he believed that he might have been justified in disobeying the law. There is more promise in the notorious "Persuade or Obey" Doctrine that recurs a number of times throughout the *Crito*.

SOCRATES [AS THE LAWS]: You must either persuade [us] or obey [our] orders, and endure in silence whatever it instructs you to endure...(51b)

[O]ne must obey the commands of one's city and country, or persuade it as to the nature of justice (51c).

We say that one who disobeys does wrong...because, in spite of his agreement, he neither obeys us nor, if we do something wrong, does he try to persuade us to do better (51e).

While this is not the place to pursue a detailed analysis of this doctrine, suffice it to say that, in Socrates' view, the absolute obligation to obey the law is not activated automatically. Before it is triggered, citizens are given opportunities to persuade officials about what The Laws should be. They are allowed to participate in decision-making processes and empowered to shape political outcomes, be it through participating in direct democracy, engaging in public discourse, or in Socrates' case, defending himself at his trial. Mark Howenstein describes this form of persuasion as "personal justification"—the act of giving one's reasons for disobedience in a manner that is both self-affirming and socially responsible, insofar as it entails presenting alternative ways of remaining faithful to law despite disobeying its directives (2009, 68). In this light, the act of persuasion is not a purely self-interested one. It has the secondary function of improving The Laws by tempering it with a common sense of justice and reason, though citizens must keep in mind that its rule must prevail in the end. Towards the end of the

Crito, however, The Laws makes the startling admission that it is doing some persuading of its own:

SOCRATES [AS THE LAWS]: Will you then not now stick to our agreements?

You

will, Socrates, if we can persuade you...(53a).

Be persuaded by us who have brought you up, Socrates. Do not value either your children or your life or anything else more than goodness...(54b).

In short, The Laws gives its own input just as much as citizens do. It seems, therefore, that the activity of persuasion is a discursive one; it involves the rational exchange of ideas until opposing parties come to a shared understanding about what the law ought to be in a just society. It is in this manner that legal obligation arises: by giving each citizen an equal opportunity to participate in lawmaking, and by being open to the possibility that it can be changed through democratic procedure, The Laws claims that it has done all that can be expected of it and should therefore be obeyed (Soper 1996, 110-111). Ultimately, then, the Persuade or Obey Doctrine works on good faith. It requires citizens to give The Laws the presumption of sincerity in its pursuit of justice, to believe that it takes the entire balance of reasons into account, and to trust in its final judgment as its best and honest determination of how disputes should be decided. In other words, it is *assumed* that the law has already been made just by virtue of this democratic procedure, and hence, the obligation to do what justice requires becomes identical with the obligation to do what the law requires. Perhaps Socrates' speeches in the *Apology* and the *Crito* can be reconciled in this manner, for it might be said that Socrates did not disobey any law at his trial for they were only at the stage of persuasion where The Laws—through the jury—was open to hearing arguments and being convinced of Socrates' innocence. But once the final verdict had been laid down, a new law had been enacted; the time for persuasion had ended and the stage of unconditional obedience had begun. This is obviously an oversimplification of the doctrine as a solution to an apparent inconsistency, but suffice it to say that it sheds some light on one way of dissolving the paradox.

Conclusion

The Laws imparted powerful insights into the nature of legal obligation that laid the foundations of political debate for centuries thereafter. As they stand, however, they fail to justify an *unconditional* obligation to obey the law. A careful analysis of legal obligation suggests that it

should not be confused with gratitude, fair play, authority, agreement, or moral obligation. More must be said to establish The Laws' startling claim.

References

Austin, John. (1998) *The Province of Jurisprudence Determined*. 1832. Indianapolis: Hackett Publishing Company, Inc.

Devlin, Lord Patrick. (1965) *The Enforcement of Morals*. London: Oxford University Press.
Dickson, Julie. (2015) "Ours is a Broad Church: Indirectly Evaluative Legal Philosophy as a

Facet of Jurisprudential Inquiry." *Jurisprudence: An International Journal of Legal and Political Thought*. 6:2. 207-230.

Dworkin, Ronald. (1966) "Lord Devlin and the Enforcement of Morals." *The Yale Law Journal* 75:6 (May). 986-1005.

Finnis, John. (2011) *Natural Law and Natural Rights*. 1980. 2nd Ed. New York: Oxford University Press.

Flew, Antony. (1979) *Philosophy: An Introduction*. New York: Prometheus Books.

Green, Leslie. (2002) "Law and Obligations." *The Oxford Handbook of Jurisprudence and Philosophy of Law*. Ed. Jules Coleman and Scott Shapiro. New York: Oxford University Press. 514-547.

Hart, H.L.A. (1955) "Are There Any Natural Rights?" *The Philosophical Review* 64:2 (Apr.) 175-191.

----- (1961) *The Concept of Law*. Oxford: Clarendon Press.

----- (1963) *Law, Liberty, and Morality*. California: Stanford University Press.
Hatzistavrou, Antony. (2019) "The Authority of Law in Plato's *Crito*." *Canadian Journal of Law & Jurisprudence* XXXII No. 2 (Aug.). 365-387.

Hermann, Donald H. J. (1981) "Socrates on Justice and Legal Obligation." *Seton Hall Law Review* 11:4. 663-678.

Howenstein, Mark. (2009) "Socrates and the Moral Limits of Legal Obligation." *Law, Culture, and the Humanities* 5:1. 55-76.

Locke, John. (1980) *Second Treatise of Government*. 1689. Ed. C.B. Macpherson. Indianapolis: Hackett Publishing Company, Inc.

Marcou, Andreas. (2020) "Obedience and Disobedience in Plato's *Crito* and the *Apology*: Anticipating the Democratic Turn of Civil Disobedience." *The Journal of Ethics*. 1-21.

Nozick, Robert. (1974) *Anarchy, State, and Utopia*. Great Britain: T.J. Press Ltd.

Plato. (1991) *The Republic*. Trans. Allan Bloom. 2nd Ed. United States of America: Basic Books.

----- (2002) *Five Dialogues: Euthyphro, Apology, Crito, Meno, Phaedo*. 2nd Ed. Trans.

G.M.A. Grube. Rev. John M. Cooper. Indianapolis: Hackett Publishing Company, Inc.

Rawls, John. (1971) *A Theory of Justice*. Cambridge: The Belknap Press of Harvard University Press.

Raz, Joseph. (1979) *The Authority of Law*. Oxford: Clarendon Press.

Simmons, A.J. (1979) *Moral Principles and Political Obligations*. New Jersey: Princeton University Press.

Soper, Philip. (1996) "Another Look at the *Crito*." *American Journal of Jurisprudence* 41.103-132.

Stephens, James. (1985) "Socrates on the Rule of Law." *History of Philosophy Quarterly*. 2:1 (Jan). 3-10.

Tasioulas, John. (2020) "The Rule of Law." *The Cambridge Companion to the Philosophy of Law*. Ed. John Tasioulas. Cambridge: Cambridge University Press. 117-134.

Vlastos, Gregory. (1971) "The Paradox of Socrates." *The Philosophy of Socrates: A Collection of Critical Essays*." Ed. Gregory Vlastos. New York: Palgrave Macmillan.

Wasserstrom, Richard. (1968) "The Obligation to Obey the Law." *Essays in Legal Philosophy*. Ed. Robert Summers. Oxford: Basil Blackwell. 274-304.

Weinrib, Ernest J. (1982) "Obedience to the Law in Plato's *Crito*." *American Journal of Jurisprudence* 27. 85-108.

Woozley, A.D. (1979) *Law and Obedience: The Arguments of Plato's Crito*. Chapel Hill: The University of North Carolina Press.

Young, Gary. (1974) "Socrates and Obedience." *Phronesis* 19:1. 1-29.