

## Rule of Law in Plato's *Crito* and *Apology*

BRETT BENSON

THE POSITIONS that Plato presents Socrates as taking in the dialogues *Crito* and *Apology* seem to be contradictory. In the *Crito* Socrates seems, on the one hand, to be in support of *prima facie* duty to absolute obedience to the law. Socrates' language in the *Apology*, on the other hand, seems to represent an acceptable defiance to authority, a *prima facie* obligation to disobey any unjust law, order, or command.

Over the years, many scholars have contributed possible solutions to this apparent contradiction. I intend to represent the arguments from a few of these studies. These interpretations will give the reader a general feel for the nature of the contradiction as well as an idea of the types of solutions being presented. I will point out the weaknesses and strengths of these scholars' positions as necessary to illustrate my own argument.

I intend to show that Socrates sets forth arguments in the *Crito* and the *Apology* that espouse a system of rule of law. After elucidating the popular notion of rule of law and how it represents Socrates' own understanding of rule of law, I will show how my rendition of Socrates' position reconciles the disparity between the two dialogues.

### I. Arguments and Controversy

In response to *Crito's* appeals to Socrates to escape from prison, Socrates presents basically three accepted arguments for obligation to

*Brett Benson is a senior majoring in philosophy and Chinese at Brigham Young University. This fall he plans to begin graduate work in political philosophy. This essay was awarded first place in the 1998 David H. Yarn Philosophical Essay Competition.*

obey the law.<sup>1</sup> Each argument rests on Socrates' assertion that "one must never do wrong" (Cr. 49b).<sup>2</sup> Since "injuring people is no different from wrongdoing," therefore, it is never right to do wrong or injure another (Cr. 49c). Some commentators have translated the Greek for "wrongdoing" as "injustice" and "injury" for "harm."<sup>3</sup> Thus, it is never right for one to do injustice or harm. Since any form of injustice would be wrongdoing, we can safely proceed with either rendering without having to consider the faithfulness of such a translation to the original Greek. Also, for the purposes of my argument, the term "harm" can replace "injury" without considerably altering the outcome of the argument. Each of Socrates' arguments in the *Crito* attempts to show that breaking the law does some harm and injustice. Assuming that Socrates' arguments are sound, he, and presumably all citizens of Athens, have an obligation to obey the law. In a hypothetical conversation with the personified laws of Athens, Socrates sets forth these three arguments—argument from harm, argument from analogy, and argument from agreement.

The argument from harm maintains that the law orders that court verdicts be carried out (Cr. 50b). However, disobedience to court verdicts nullifies the force of the court, thus harming the authority of the laws. Since it is never right to do any harm, one should never disobey

<sup>1</sup>Here I am not proposing that Socrates is setting forth exactly three separate arguments. Whether Socrates presents one, two, or three distinct arguments against disobedience to the law is not the question at issue, nor does knowing how many separate arguments are being presented bear significantly on Socrates' conclusion(s). Since the discussion surrounding the apparent contradictions between the language in the *Crito* and the *Apology* agree, for the most part, on some variation of a general, straightforward representation of Socrates' arguments in the *Crito*, I am concerned here mostly with representing an interpretation of Socrates' argument(s) that would be acceptable to most of the scholars involved in this discussion.

<sup>2</sup>All quotations from the *Apology* and the *Crito* are taken from Plato's *Five Dialogues*.

<sup>3</sup>See, for example, Woozley, *Law and Obedience: The Arguments of Plato's Crito*; and Santas, *Socrates: Philosophy in Plato's Early Dialogues*. Woozley even takes the Greek for "injury" to mean "treat others badly."

court verdicts. If Socrates were to escape from prison, he would be disobeying the court verdict that sentenced him to death. Hence, Socrates would be harming the laws of Athens if he escaped (*Cr.* 50b).

In the next argument Socrates advances an analogy wherein the laws stand in relation to the subject in a similar way that a parent does to a child. Offspring, the personified laws imply, owe their existence, nurturing, and education to their parents (*Cr.* 50d–e). Children depend upon their parents for survival, and, for this reason, parents possess rights over their children that children do not hold over their parents. Socrates is invoking a concept of filial piety (*Cr.* 51c), a familiar notion to the Athenians; children are obligated to be grateful to their parents for their education and upbringing. It is pious, then, for children to obey their parents.

Laws are like parents, only worthier (*Cr.* 51a). And so the laws' claim over their citizens is even more legitimate than parents' claims over their biological children (*Cr.* 50e–51b). Citizens have a duty to obey the laws. To disobey the laws would be impious, and impiety is wrong. Therefore, one should not disobey the laws.

In the third argument, the argument from agreement, the personified laws contend that Socrates (as well as all other Athenians) has entered into an agreement, even if only tacitly, with them. Socrates—by taking advantage of an Athenian education, by raising his own children in Athens, and by enjoying the other good things of Athens—has shown that he approves of the Athenian way of life (*Cr.* 51c–d). Furthermore, the Athenian laws “do not issue savage commands to do whatever [they] order” (*Cr.* 52a). Instead, they are open to persuasion (*Cr.* 51b, 51e, 52a) and permit anyone to leave Athens at anytime (*Cr.* 51d–e). Socrates has seen how the Athenians conduct trials and manage the city (*Cr.* 51e), and, seeing this, he neither chooses to leave nor tries to persuade the laws. By showing that he is aware of the conditions placed on living in Athens and that he is pleased with Athenian law (*Cr.* 52b), Socrates indicates his willingness to abide by an agreement to obey the laws. Moreover, by continuing to take advantage of a share of the good things of Athens (*Cr.* 51d), Socrates affirms the justness of his agreement with Athenian law. According to Socrates, one should never violate a just agreement (*Cr.* 49e). Disobedience to Athenian law would be unjust and would harm the laws. Therefore, one should not disobey the laws.

According to these three arguments in the *Crito*, the laws, except for allowing citizens to emigrate or endeavor to persuade them to change, seem to provide *prima facie* reasons for demanding unqualified obedience. Yet in the *Apology*, Plato presents a more defiant Socrates. Socrates expresses to the court his determination to oppose them if they release him on the condition that he cease practicing philosophy: "I would say to you: 'gentlemen of the jury, 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, to exhort you'" (*Ap.* 29d).

Further challenging civil authority, Socrates reminds the Athenian jury of two incidents wherein he disobeyed orders. Socrates tells of the time when he served as a member of the Council. The court wanted to try ten Athenian generals as a body for failing to rescue the survivors of the battle of Arginusae. Although the court insisted that the generals be tried together, Socrates alone defiantly opposed, claiming that each general, according to Athenian law, should be tried alone (*Ap.* 32b). On another occasion, during the reign of the oligarchy in Athens, the Thirty ordered Socrates, along with four others, to bring Leon from Salamis to be executed. Socrates refused to obey (*Ap.* 32c-d).

Most agree that the character of Socrates in Platonic dialogue either represents the historic Socrates or Plato himself. The only possible alternative is that Plato's Socrates is a fictional character or many fictional characters that differ from dialogue to dialogue. If Plato's character is actually a representation of the historic Socrates, then the *Apology* depicts Socrates being tried in the Athenian court. The *Crito* presents Socrates, at most, only a few of weeks later in prison awaiting his execution. Surely, Socrates had not changed his principles in the interim between his trial and his final conversation with Crito. Socrates declares at least three times in his conversation with Crito that he values and respects the same principles as before (*Cr.* 46b-d, 49a, 49e). So, if Socrates' beliefs have not changed and if Plato has not represented a different Socrates in each dialogue, which we have no reason to believe he has, then either the disparity between the two dialogues can indeed be reconciled or the inconsistency stands as a flaw in Socratic philosophy or in Plato's rendition of Socratic philosophy.

If Plato's Socrates is a reflection of Plato himself or of Plato's own philosophical views, then we still have no reason to believe that the

contradiction is irreconcilable. Unless Platonic philosophy is itself inconsistent, Plato's philosophy, as given through the mouth of Socrates, should be consonant from dialogue to dialogue.

The last alternative is somewhat problematic for readers of Platonic dialogues. If Plato's Socrates is actually some fictional character, then the reader is left to determine whether the character is the same in all the dialogues, some of the dialogues, or whether he differs from dialogue to dialogue. If the former is the case, then we can still assume that the apparent discrepancy between the *Crito* and the *Apology* is resolvable. If, however, Plato's Socrates changes from one dialogue to the next, then we have no sure method for determining anything to be definitively Platonic or Socratic. Since most scholars agree that early Platonic dialogues most accurately depict the historic Socrates and that late Platonic dialogues represent Platonic thought, one can at least safely assume that the thought represented by Socrates in the early dialogues is consistent and the thought represented by Socrates in the late dialogues is consistent. Without trying to determine here whether the thought represented by Socrates in the early dialogues is consistent with those in the late dialogues, I will proceed on the supposition that at least the Socrates in the *Crito* and the *Apology*, both early dialogues, is representative of the same person, whoever he may be. Hence, the apparent contradiction between the *Crito* and the *Apology* should be reconcilable.

Several scholars have focused studies on the conflict between the *Crito* and the *Apology*. Among the many contributions to this discussion, I will concentrate on the insightful commentaries of Gerasimos Santas and Richard Kraut.<sup>4</sup> While I believe each of these studies to be informative and plausible attempts to render a consistent interpretation of the two dialogues, I think each falls short of illustrating an adequate reconciliation that accurately characterizes Socratic philosophy without compromising Socrates' views either in the *Apology* or in the *Crito*.

<sup>4</sup>For other studies attempting to reconcile the two dialogues, see Allen, *Socrates and Legal Obligation*; McLaughlin, "Socrates and Political Disobedience: A Reply to Gary Young"; Vlastos, "Socrates on Political Disobedience"; Wade, "In Defense of Socrates"; and Woozley, *Law and Obedience: The Arguments of Plato's Crito*.

In responding to these interpretations, I will draw upon a study by Darrel D. Colson, who has argued, persuasively I think, that Socrates' commitment to the philosophical life governs his conception of just laws.

## II. Attempts to Solve the Problem

Santas believes that Socrates presents only two arguments for obligation to obey the law. He uses the argument from analogy to show that justice requires Socrates to obey the laws of the city just as justice requires a child to obey his parents. Having then determined that justice is obedience to the laws of the city, Santas thinks that Socrates' *agreement* to obey the laws of the city is just. For Santas, the argument from analogy does not stand alone as an argument for obedience. Rather, it supports the argument from agreement. With the argument from harm and the argument from agreement as Socrates' only two reasons to obey the law, Santas tries to resolve the inconsistency of these arguments with Socrates' position in the *Apology*.

According to Santas, the *Apology* contains a conflicting order: obey god's command to practice philosophy and obey man's law to cease the practice of philosophy. Santas takes the passage in the *Apology*, "I do know, however, that it is wicked and shameful to do wrong, to disobey one's superiors, be he god or man" (Ap. 29b) as constituting justifiable grounds for Socrates to choose obeying god over man. He believes that this statement means that one should always obey the better person. And since god is better than man, Santas argues, in the event of conflicting orders, one should always obey god before man. Hence, Socrates is justified in defying the jury's hypothetical order to cease practicing philosophy.

Could the same be argued for Socrates to defy the court's order and escape execution? Indeed, for Socrates to be executed would mean that he would no longer be able to obey the god and practice philosophy in Athens. Moreover, would not Socrates be in effect committing an injustice by bringing about his own unjust death? Furthermore, as Kraut has perceptively pointed out, not only is it doubtful that Socrates actually intended *Apology* 29b to arbitrate between conflicting orders, but, more significantly, Socrates has reasons independent of god's commands to believe what is good and right (Kraut, "Two Recent Studies" 654-55). Interestingly, Santas himself acknowledges this view (Santas 300).

Santas provides two other clever but equally problematic solutions to the problem. He claims that Socrates respects the laws, and this respect is even evident in his defiance of the Athenian jury in *Apology* 29b. Although Socrates is prepared to disobey a ban on the practice of philosophy, he is willing to do so at the cost of accepting his punishment of the death penalty. So long as his defiance is open and so long as Socrates is willing to accept the punishment attached to the defiance, then Socrates is not attempting to subvert the laws. This explanation, however, instead of showing Socrates' respect for the laws, actually shows Socrates' respect for philosophy. What if the ban on Socrates' practice of philosophy, instead of being a condition ordered by the court for Socrates' freedom, was actually Meletus' original proposed penalty to the Athenian court? Would Socrates still respect the law and obey? I do not think there is any reason to believe that Socrates would ever cease practicing philosophy. Accordingly, since Socrates shows that he will pick and choose the laws he will obey, there is no reason to believe that Socrates, according to Santas's explanation, has any more respect for the law than he does for the Athenian jury, which he seems to openly defy at will.

Finally, Santas suggests that since philosophy is the greatest good (*Ap.* 38a), any harm that his disobedience of the laws would incur would be outweighed by the good that Socrates' philosophy would bring about in the city. While Santas may very well be right in making this claim, he still has not reconciled the disparity between the *Crito's* absolute proscription on harm and Socrates' determination to practice philosophy in the *Apology*. That Socrates' defiance of the court's command would bring about *any* harm to the laws still contradicts Socrates' proscription on harm in the *Crito*, regardless of how beneficial Socrates' practice of philosophy is to Athens.

Kraut recognizes that disobedience must sometimes be allowed, and so he attempts to soften the seemingly absolute and unqualified demand for obedience in the *Crito*. Socrates implies that since it is never right to do injustice, then there must be an absolute standard of justice. That being the case, not every man-made law could possibly be just. Hence, since it is never right to do injustice and since the law, which can sometimes be unjust, demands unqualified obedience, therefore, there must be some allowance for tolerable disobedience.

Kraut suggests that Socrates' position maintains that "the state must be disobeyed whenever it commands evildoing, and whenever its

orders make a virtuous life impossible" (Kraut, "Two Recent Studies" 659). Kraut denies that anyone is obligated to obey unjust agreements. He seems to be saying that each law can be taken as an individual agreement. One's obedience to the law as a whole, then, would be entirely contingent upon whether or not the individual perceives each law as being just. That is, since only just agreements should be respected, then when one is faced with a seemingly unjust law, as when Socrates was ordered to arrest Leon, he or she is personally justified in disobeying it. Although the laws might find that person guilty of disobedience and might force the person to suffer injustice, the person himself has not committed an unjust act. While the law demands that any disobedience be punishable, Kraut claims that the "persuade-or-obey doctrine" (Cr. 51b) provides a "loophole for disobedience" without punishment (Kraut, *Socrates and the State* 57).

As long as one openly disobeys the law and tries to persuade it, then one is justified in disobeying. The point of persuasion, according to Kraut, is not to encourage legislation that would change the law. The purpose of persuasion is to justify oneself in front of the jury. When brought before a jury one can exercise his option to persuade, under which circumstance the accused is not obliged to accept the penalty assessed by the court.

Socrates' death sentence, according to Kraut's position, could justifiably be perceived by Socrates as being unjust. That is, since Socrates can choose to disregard particular laws as long as he believes the law to be unjust, his punishment, insofar as Socrates is concerned, is also unjust. All Socrates has to do, under Athenian law, is persuade the jury and he would not be obligated to accept his punishment. Kraut claims that Socrates chose not to persuade the jury at his trial, a choice which extended to Socrates the only other alternative—to obey.

While I think Kraut is on the right track here, I think there are some shortcomings in his argument. According to Kraut's position, one can negotiate himself through the many laws in Athens, either choosing to obey or disobey, without ever committing an unjust act. One need only to persuade the laws when faced with the imminent consequences of disobedience. If law is so easily persuaded, then law has no binding power over its citizens. Based upon Kraut's version of the persuade-or-obey concept, each man is a law unto himself.



There is, however, another problem that Kraut fails to recognize. Based upon his argument, if one foregoes his right to persuade, then he must obey. As Socrates chose not to persuade the jury, he must necessarily obey the court's order. The court order requires that Socrates accept the death penalty. Accordingly, none of those associated with the court's order are unjust in the carrying out of Socrates' sentence. However, we recall that Socrates refused the order of the Thirty to arrest Leon. He refused on the grounds that such an act would be "wrong-doing," or unjust. Similarly, just as Leon's arrest and subsequent execution was unjust, Socrates' arrest, trial, and execution is also unjust from Socrates own point of view. However, unlike Leon's arrest and subsequent execution, Socrates obeys the Athenian court and even carries out his own execution. If Socrates were forcibly executed by some executioner, then it perhaps could be argued that Socrates merely suffered injustice. However, Socrates carried out his own unjust execution himself, making himself party to injustice. Clearly, the inconsistencies remain in spite of Kraut's efforts.<sup>5</sup>

Darrel Colson, as I mentioned before, sets forth a convincing solution to the problem at issue. As I will be referring to several of his ideas, I will briefly set forth his argument here. Socrates declares that the practice of philosophy is the greatest good, and the unphilosophical life is not worth living (*Ap.* 38a). Furthermore, "the most important thing is not life, but the good life" (*Cr.* 48b). Athens is the only city-state in Greece that provides an environment conducive to the philosophical life. Hence, Socrates pledges his obedience to Athens only because Athens provides an environment in which Socrates can practice philosophy. If Socrates chose to escape from prison, he would have to flee Athens to a neighboring country and would not be able to practice philosophy—a lifestyle, according to Socrates, not worth living. Death, ironically, offers Socrates the opportunity to continue practicing philosophy (*Ap.* 41c), and so he prefers death to exile.

While Colson's argument focuses primarily on Socrates' commitment to philosophy, he also discusses, if only briefly, the impliedly necessary environment that the polis must provide for the philosophical

<sup>5</sup>A. D. Woozley makes the same criticism against Francis D. Wade, who argued basically the same thing (see Woozley 56).

life to be possible. He claims that the "*polis* must provide...both the basic moral education that furnishes the raw material for reflective examination and a legal order that effectively balances the needs for stability and for free expression" (Colson 52). I pick up Colson's argument from here and further argue that an interpretation of rule of law can be found embedded in the *Crito* and *Apology*.

### III. Rule of Law

A clear depiction of rule of law occurs in Letter VII of Plato's *Letters*. Assuming that the *Letters* were indeed written by Plato, then this compilation of personal statements, especially Letter VII, is the only known explicit account of Plato's personal political views.

Let not Sicily nor any city anywhere be subject to human masters—such is my doctrine—but to laws. Subjection is bad both for masters and for subjects, for themselves, for their children's children, and for all their posterity. The attempt to enslave others is altogether disastrous. (Letter VII 334c-d)<sup>6</sup>

Plato not only repudiates tyranny, but he also clearly affirms the legitimacy of rule of law. Letter VII contains several passages that support Plato's commitment to rule of law, including his use of the term *isonomos*, a form of the word *isonomia* or the equality of rights.

If we could establish the *Letters* as being authentically Platonic and if we could determine Plato's early dialogues as accurately reflecting Plato's own views, then we could conclude our discussion here knowing for certain that Plato is advocating rule of law in the *Crito* and the *Apology*. However, we cannot be assured of the veridicality of either of these two suppositions. Therefore, we must determine what rule of law is and then see if elements of rule of law occur in the *Crito* or the *Apology*. Fortunately, Letter VII confirms that, at least, the notion of rule of law is an idea extant in antiquity.

<sup>6</sup>G. R. Morrow's translation reads: "Do not subject Sicily nor any other state to the despotism of men, but to the *rule of laws*" (my italics). See Plato, *Epistles*.

The concept of rule of law is mostly a product of modern Anglo-American political thought. However, it has its origins in the ancient Greek notion of *isonomia*.

What were the main characteristics of that freedom of the "freest of free countries," as Nicias called Athens on the same occasion, as seen both by the Greeks themselves and by Englishmen of the later Tudor and Stuart times?

The answer is suggested by a word which the Elizabethans borrowed from the Greeks but which has since gone out of use. "Isonomia" was imported into England from Italy at the end of the sixteenth century as a word meaning "equality of laws to all manner of persons"; shortly afterward it was freely used by the translator of Livy in the Englished form "isonomy" to describe a state of equal laws for all and responsibility of the magistrates. It continued in use during the seventeenth century until "equality before the law," "government of law," or "rule of law" gradually displaced it. (Hayek 164)

*Isonomia* is the most fundamental part of rule of law. It requires equal obligation to law, a prescription that entails rulers and subjects alike. As the notion of rule of law takes shape in institutions, *isonomia* remains at the very heart of it.

In the Roman Republic, the concept of equality under the laws was expanded to include an absolute proscription of any arbitrary laws. The Romans also explicitly advocated general laws which would be enforced by an impartial judicial system (Hayek 166–67). Not until modernity, with the introduction of a written constitution and the separation of powers (Hayek 169), has law supremely and effectively governed the state. While constitutionalism may indeed assist in making rule of law successful, "rule of law does not itself specify any particular constitution or [legislative] procedure" (Oakeshott 138). Michael Oakeshott takes the expression of rule of law to stand "for a mode of moral association exclusively in terms of the recognition of the authority of known, non-instrumental rules (that is, laws) which impose obligations to subscribe to adverbial conditions in the performance of the self-chosen actions of all who fall within their jurisdiction" (Oakeshott 136).

The concept of rule of law, then, presupposes a relationship amongst subjects of the law wherein each agrees to cede certain rights to a common sovereign. Oakeshott affirms that in order for subjects to be legitimately bound by rule of law, laws must be general and adequately promulgated. The implicit relationship involved in rule of law rests upon the supposition that the subject, by agreeing to accept the obligation of imposed laws, is protected from the coercion of other individuals.

Hayek claims that the rule of law secures personal freedom, which he describes as the state of being free, as much as possible, from coercion. However, because of human nature,<sup>7</sup> perfect freedom is not possible. Since absolute freedom would inevitably result in purposive coercion on the part of some and since the only way such coercion can be avoided is through the threat of coercion, therefore, society relegates to the state the sole right to coerce (Hayek 21). Insofar as law is a function of voluntary consignment of certain liberties for the purpose of mitigating against coercion, "law is a product of human artifice" (Reynolds 5).<sup>8</sup>

While there are many different conceptions of rule of law, most agree that for rule of law to be successfully binding upon those whom it rules, it must contain certain principles. Of these, some of the most fundamental are generality, that is, absolute equal and non-arbitrary rule; promulgation, that is, laws must be known; they must be founded upon reciprocity, that is, they must be grounded in voluntary agreement; the relationship must be reversible; and laws must be constant yet also subject to appeal.<sup>9</sup>

While rule of law was not as prevalent a system in antiquity as it is in modern Anglo-American institutions, we have seen that certain elements of rule of law, especially *isonomia*, were known. That rule of law was perhaps not practiced in full is not reason enough to believe that ancient thinkers did not conceive of most if not all of the

<sup>7</sup>For a discussion on human nature as it applies to rule of law, see Hobbes chapter 13. See also Reynolds 5.

<sup>8</sup>See also Hobbes chapter 16, on sovereigns and commonwealths as artificial human constructions.

<sup>9</sup>For a list of principles of rule of law, see Fuller 46-80.

principles of rule of law. In what follows we will see that Socrates did in fact understand rule of law.

#### IV. Rule of Law in the Crito and Apology

As has already been illustrated, Socrates is clearly committed to the philosophical life. Socrates perceives himself as being gods' gift to Athens (*Ap.* 30d–31b). His divine commission is to try to bring about excellence in others' souls (*Ap.* 30a–b). Socrates does this by constantly examining himself and others in matters of virtue, for the unexamined life is not worth living (*Ap.* 38a). He believes that his responsibility is to go to each individual privately and persuade them to care only for wisdom, goodness, and the city (*Ap.* 36c). Indeed, according to Socrates, this is the greatest benefit of all, and “it is the greatest good for a man to discuss virtue every day” (*Ap.* 38a). As noted in the *Gorgias*, a true statesman is one who is concerned that the citizens are as good as possible (*G.* 515c).<sup>10</sup> Since Socrates is the only who always aims for what is best and strives to bring himself and others to a virtuous life, he alone is the only Athenian that can be called a true statesman (*G.* 521d).

In addition to Socrates' three arguments affirming necessary obedience to the laws, I believe Socrates is subtly advancing another argument that qualifies the other three. Socrates gently reprimands Crito for being concerned about the opinions of the majority. He declares that because the majority does things haphazardly, or by chance, they are not capable of either achieving the greatest good nor afflicting the greatest evil (*Cr.* 44d). Since philosophy, or the pursuit of virtue, is the greatest good for a society, the majority, left on their own, are incapable of becoming virtuous. As Socrates points out, one should pay more attention to the “most reasonable people” as opposed to the majority (*Cr.* 44c). Socrates cites a familiar analogy, the professional physical trainer, to illustrate the importance of only relying on good opinions (*Cr.* 47a–c).

Since those given to chance or lack of reason are incapable of bringing about good, only those experts whose opinions are based upon

<sup>10</sup>All quotations from *Gorgias*, *Hippias Major*, and *Letters* come from *The Collected Dialogues of Plato*.

reason can be relied upon. The majority, then, should be feared. Therefore, in seeking answers to questions regarding justice and injustice, one should fear the majority and only be concerned with "what he will say who understands justice and injustice, the one, that is, and the truth itself" (Cr. 48a).

Socrates then proceeds to state that the "most important thing is not life, but the good life," which is the same as the just life (Cr. 48b). Since we already know that the good life is the philosophical life which pursues virtue of the soul everyday, then the just life must be the same. At this point the argument from harm begins as an attempt to discover if disobedience to the law is justified as part of the good and just life. Significantly, Socrates, one whom we have already determined as a statesman and authority on living the good life, defers to *the* one who "understands justice and injustice"—Socrates, in the following passages of the *Crito*, defers to the personified laws themselves.

In the *Apology*, Socrates declares "that it is wicked and shameful to do wrong, to disobey one's superior, be he god or man" (Ap. 29b). This statement now has a context in which it can be understood. Instead of meaning that Socrates will obey those who are superior in rank, he means that he will obey those who are better. Surely he believes that god is better, and he also believes that the laws are better, but other than those two there is not any reason to believe that he avows allegiance to any man unless he is expressly ordered to do so by god or the laws. Hence, Socrates believes that the laws are experts on law and justice which, based upon reason, are implemented for the purpose of supplanting the fearful, haphazard opinions of the majority.

When Socrates first introduces the laws as his interlocutor, he introduces them as "the laws and the state" (Cr. 50a). Colson translates "state" as "commonwealth" or "commonality of the state." He states: "I think his [Socrates'] conception of the personified laws is in harmony with their vision of a polity in which law is a common covenant by which people bind themselves together in partnership, in a communal quest for the advantageous and the right" (Colson 45). This conception of human convention seems to be consistent with the personified laws' argument from agreement. The laws are clear about the subjects' side of the agreement: he is either to persuade or obey. What does the laws' side of the agreement entail?

The laws provide an education (Cr. 50d), property rights (Cr. 53a), and free speech. Indeed, there is more free speech in Athens than any other place in Greece (G. 461e). That Socrates prefers Athens over the well-governed cities of Sparta or Crete indicates that the Athenians enjoy a civic order, intellectual freedom, and legal stability conducive to the philosophical life to which Socrates is committed.

Perhaps something can even be made of the persuade-or-obey doctrine. It seems plausible that since the laws "only propose things" and "do not issue savage commands to do whatever [they] order" (Cr. 52a), therefore, they are open to constant appeal; citizens may persuade with reason to either amend laws already enacted or repeal those yet to be enacted. Nobody or nothing, then, is exempt from scrupulous examination by philosophy. All subjects and rulers alike are equal under the law. Even the laws themselves can be persuaded and examined.

The laws, then, agree to provide a secure atmosphere in which the rule of law is supreme. Laws are general rules, "proposals," that govern all equally. Because they secure civic and legal order, people know what to expect. Their purpose is to protect each citizen from the danger of the majority or anarchy. Majority rule is to be feared, because laws under such rule are arbitrary and do not protect citizens from coercion of others. Hence, the citizens covenant with each other to relegate certain coercive powers to the body politic, and, in turn, the body politic agrees to provide the citizens with rule of law. Under rule of law the people share a realm wherein each is free to pursue a virtuous life. Socrates said in *Hippias Major* that "when, therefore, would-be legislators miss the good, they have missed law and legality" (*Hma.* 284d).

It is clear that Socrates' notion of rule of law is consistent with rule of law as we generally understand it. Socrates recognizes and fears majority rule. This fear necessitates a relationship with others wherein each consigns certain rights to an agreed-upon authority. Socrates' argument from agreement establishes reasons for entering into this agreement and upholding it. Moreover, Socrates has made it clear that he is free to leave Athens if he desires to abandon his agreement. Additionally, the persuade-or-obey doctrine allows for appeals, another fundamental element of rule of law.

Socrates affirms that laws must be general. Woolzley distinguishes between laws and commands or orders. He says that laws are general and

apply equally to all under the law. Commands or orders, on the other hand, apply only to one person or group of persons (Woozley 41-42). Unless commands or orders derive their authority directly from a law, they are arbitrary, illegitimately coercive, and, therefore, unjust. Socrates recognizes this principle; referring to the laws and state synonymously he said: "this law [that] we are destroying...orders that the judgments of the courts shall be carried out" (Cr. 50b). The law, then, is that which governs the entire state and is enforced by legal procedure. Contrasted with the *order* of the Thirty to arrest Leon, we can clearly see the important distinction between laws and commands or orders.

In light of this distinction, it is important to recognize that Socrates' agreement with the state is made with the supreme rule of law and not to various individual laws themselves. The fundamental principle to which the citizens are agreeing is that they will obey the law as long as the law provides a realm wherein each individual is free to pursue a virtuous life. Commands and orders are merely extensions of law, but they are never to be taken as laws themselves. Now, when considering the three examples of Socrates' defiance in the *Apology* and the unqualified demand for obedience in the *Crito*, a reconciliation is possible.

The court's hypothetical order to cease practicing philosophy, if it could be construed as having a legitimate grounding in law,<sup>11</sup> would then violate the fundamental objective of rule of law. Since the good life is the philosophical life and since rule of law provides a framework wherein citizens might pursue the good life, Socrates would be justified in defying such a law.

The trial of the ten generals and the arrest of Leon, then, would follow the same pattern. Since the commands do not follow the stated objective of rule of law and, furthermore, since they are arbitrary orders that do not have a legal grounding in rule of law, Socrates cannot be expected to have a *prima facie* duty to obey them.

<sup>11</sup>Woozley maintains that the court's ban on philosophy can, at most, be taken as a conditional warning, since Socrates is being set free and admonished not to practice philosophy (44). Kraut argues that the court cannot acquit a man and then sentence him after his acquittal, nor can the court legally determine an alternative punishment to the prosecutor's proposed punishment ("Two Recent Studies" 657-58).



Citizens have agreed to be subject to rule of law. But what about unjust laws written into the corpus of laws constituting the laws to which we are obligated? How can one possibly adhere to rule of law, knowing that there are injustices contained therein, when all are held to the absolute proscription against committing any injustice? Although Socrates may have believed that a standard of justice existed, he may also have believed that that standard only existed relative to human experience. That is, in making decisions, I, like Socrates, can only listen "to the argument that on reflection seems best to me" (*Cr.* 46b).

Socrates is familiar with relative comparisons. He speaks of obeying the better person, be he god or man. He does not say that one should only follow the best person, but that one should, based upon reflection on the arguments available to him or her, obey the better person. Moreover, Socrates claims that the virtuous life is one wherein one is constantly testing himself and others. One's knowledge is developing but never full, as Socrates goes to great lengths to show in the *Apology*. Socrates means exactly what he says—it is never right to do injustice—but one must do only what he can based upon reflection of the arguments available to him.

Rule of law is just insofar as it subverts the dangerous anarchy of the majority. Even though there might be injustices contained within the system, one would be more unjust to argue that the system be abolished. There is a relative quality involved here, a pragmatic choice to mitigate against injustice. But one of the stated purposes of rule of law is to enable philosophy to persuade all toward the good, even the laws themselves.

#### IV. Conclusion

Kraut argued that only those agreements that are just should be respected. From this he decides that each law must be taken on its own account. While his position is similar to mine, I think I have shown that his is somewhat over-simplified. We both agree that unjust agreements should not be respected, but he has not ventured a definition of injustice. If each law is to be evaluated based upon some personal moral conception, then we have nothing more than anarchy of the majority. However, if, as I have attempted to show, one agrees to rule of law, then one's decisions regarding obedience to each individual law, command and order is governed by a common conception of the purpose of law,

viz., to secure a realm wherein one can pursue virtue. As illustrated, rule of law's conception of obedience and disobedience to law presupposes some common agreement or human convention between the members of the body politic. Kraut's conception, however, is individualistic and would regress into haphazard rule.

That Socrates is advancing rule of law theory is evident by the way he managed his own prosecution, indictment, and execution. In the *Apology* Socrates is dealing with an unruly jury; they are loud and disrespectful. In short, they are the epitome of the haphazard majority discussed in the *Crito*. Their opinion is to be feared and is surely bound to be unjust, yet Socrates accepts their verdict and executes himself.

One could argue that Socrates' execution of himself was as unjust as the Thirty's command to arrest Leon. However, as already illustrated, Socrates chose to obey the former and disobey the latter. Why? The personified laws of Athens affirm that Socrates was not wronged by them, but he was wronged by men (Cr. 54b-c). The court verdict that condemned Socrates was extended authority by the laws that satisfied Socrates for most of his lifetime. The orders of the oligarchy that ordered Socrates to arrest Leon were arbitrary commands deriving their authority, not from law based upon human convention, but from the coercive will of some ruler or group of rulers. Because of his preference for an ordered and secure society, Socrates sealed his conviction to rule of law with his own death.

## Works Cited

- Allen, R. E. *Socrates and Legal Obligation*. Minneapolis: University of Minnesota Press, 1980.
- Colson, Darrel D. "Crito 51A–C: To What Does Socrates Owe Obedience?" *Phronesis* 34 (1989): 27–55.
- Fuller, Lawton L. *The Morality of the Law*. New Haven: Yale University Press, 1969.
- Hayek, Friedrich A. *The Constitution of Liberty*. Chicago: University of Chicago Press, 1960.
- Hobbes, Thomas. *Leviathan*. Cambridge: Cambridge UP, 1984.
- Kraut, Richard. *Socrates and the State*. Princeton: Princeton UP, 1984.
- . "Plato's *Apology* and *Crito*: Two Recent Studies." *Ethics* 91 (1981): 651–54.
- McLaughlin, Robert J. "Socrates on Political Disobedience: A Reply to Gary Young." *Phronesis* 21 (1976): 185–97.
- Oakeshott, Michael. "The Rule of Law." *On History and Other Essays*. Oxford: Blackwell, 1983. 119–64.
- Plato. *Epistles*. Trans. Glen R. Morrow. New York: Bobbs-Merrill, 1962.
- . *Plato's Five Dialogues: Euthyphro, Apology, Crito, Meno, Phaedo*. Trans. G. M. A. Grube. Indianapolis: Hackett, 1981.
- . *The Collected Dialogues of Plato*. Ed. Edith Hamilton and Huntington Cairns. Princeton: Princeton UP, 1989.
- Reynolds, Noel B. "Grounding the Rule of Law." *Ratio Juris* 2.1 (March 1989): 1–16.
- Santas, Gerasimos. *Socrates: Philosophy in Plato's Early Dialogues*. London: Routledge, 1979.
- Wade, Francis J. "In Defense of Socrates." *The Review of Metaphysics* 25 (1971): 311–25.
- Woozley, A. D. *Law and Obedience: The Arguments of Plato's Crito*. London: Duckworth, 1979.
- Vlastos, Gregory. "Socrates on Political Disobedience." *The Yale Review* 62 (1974): 517–34.