

## SOCRATES AND THE PUBLIC LAWS OF ATHENS

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In this paper, I will show that there is not an inconsistency between the *Apology* and the *Crito*. I will outline the alleged contradiction, present some previous answers to the dilemma, and offer my own possible solution to the problem. I will show that Socrates acted consistently and that his behavior can be explained by his vow to obey established laws.

Briefly stated, the alleged contradiction is this: In the *Apology*, Socrates tells the jury that he will not obey any verdict acquitting him of Meletus's charges that carries the condition that he cease philosophizing in the city (*Apology* 29d). However, in the *Crito*, through the mouth of the Public Laws of Athens (hereafter PLA), Socrates claims that he cannot escape because doing so would be breaking the law (*Crito* 51c). According to Aristotle, the juries of Athens did not just apply the law to the cases of certain individuals. Their verdicts had the force of law, or, in other words, the judgments of the jury were similar to the passage of a law through the legislative body (Santas 18). Thus, in the *Apology*, Socrates is willing to disobey an order of the court, whereas in the *Crito*, he argues that it would be wrong to disobey an order of the court. In order to get clear on this alleged contradiction, it is necessary to reconstruct the arguments that Socrates uses to justify his position in both cases.

Socrates begins his argument in the *Apology* by claiming that one should do only what is just. It is not right to consider the results of actions as possible reasons for performing the action. Rather, one must consider only whether the action is just:

You are wrong, sir, if you think that a man who is any good at all should take into account the risk of life or death; he should look to this only in his actions, whether what he does is right or wrong. (*Apology* 28b)

Socrates then states that when one has been placed in a position by his commander, he needs to stay at his "post" regardless of the possible harmful effects his obedience may bring him. It would not be right, for example, for Socrates to abandon his watch in a military engagement (*Apology* 28d-e). Socrates believes that he has been placed by the god in the city in order to philosophize. He states several times that he is acting on the god's behalf and is, in fact, performing a great service for the city.

The logical conclusion to this argument comes in the hypothetical court sentence that Socrates considers. If the court were to release him on the condition he cease his philosophical pursuits, Socrates would have no choice but to disobey the court. To cease philosophizing would be to run away in the face of danger, to disgrace himself by abandoning his leader, and to base his actions not on just principles of behavior, but on fear of the possible results of his disobedience.

Socrates strengthens his argument by claiming he would gladly suffer death many times rather than disobey the god (*Apology* 30c). Socrates did not fear death (*Apology* 41d). Xenophon states explicitly that Socrates preferred death to life (41). Xenophon also states that Socrates was much more afraid of becoming a burden to the state, and of no longer being of service to the god:

Now, if my years are prolonged, I'm sure that I shall have to pay the penalties of old age: impaired vision and hearing, and increasing slowness at learning and forgetfulness of what I have learned. . . . God in his kindness may even have my interests at heart and be arranging for me to be released from life not only at exactly the right age, but also the easiest way possible . . . [and] also the least trouble to friends. (42)

Before we move on to the arguments of the *Crito*, there is one more point that needs to be made. When Socrates talks of a conditional release, he is not talking about a release that is subject to his approval. According to A. D. Woozley, the court is pronouncing a judgment that is legally binding upon Socrates, regardless of whether he likes or dislikes the judgment: "In the first case, the discharge is not made, unless and until the conditional offer is accepted; in the second case the discharge is made, but it holds good for only as long as the man meets the condition" (303). Socrates offers two arguments in the *Crito* as to why he should not defy the will of the Athenians and escape from jail. Santas labels them "the argument from harm" and "the argument from just agreements" (Santas 48–49).

Socrates begins the argument from harm by helping Crito recall certain principles they have held throughout life. Socrates reminds Crito that they had formally agreed that one should never do wrong willingly. They also agreed that regardless of what the majority says, wrongdoing is "in every way harmful and shameful to the wrongdoer" (*Crito* 49b). Furthermore, they had both previously agreed that not only should one not commit a wrong willingly, but one must not do wrong in retaliation

for wrongdoing (*Crito* 49c). Socrates ensures that he and Crito agree on this point as it is essential to the argument that follows.

With these principles in mind, Socrates makes a utilitarian argument. The PLA question Socrates regarding his motives:

"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? 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?" (*Crito* 50a-b)

The argument is best explained by Santas: 1. If Socrates were to leave the jail without the permission of the Athenians he would be nullifying the court's order. 2. By nullifying the decisions of the court, Socrates is destroying the laws, as far as it is in his power. 3. If Socrates were to destroy the laws he would be doing harm to the city. 4. It is wrong to do harm to anyone. Therefore: 5. Socrates ought not to escape from prison (Santas 15).

It is not necessary that Socrates' actions actually harm the city. All that is required, in the view of the PLA, is that he intend to destroy the law. Woozley correctly points out that for the argument to be true the PLA would in fact have to assert that it is wrong for all people to disobey all laws (317). The principle is very Kantian (Kant 91-92). Socrates seeks to make himself an exception to the general rule (Woozley 316). Socrates ought not to disobey the law, even if his escape may actually help the city.

The other argument presented in the *Crito* is the argument from just agreements. In this argument Socrates does two things. Not only does he present another argument against escaping, but he explicitly sets forth the relationship he has with the city.

When Socrates came of age in Athens, the city presented him with a choice: Either he must obey the laws, or he must leave the city and seek residence elsewhere (*Crito* 51d). If Socrates decided to stay, the laws gave him two options: Either he must persuade the state of the unjustness of its laws, or he must obey: "one must obey the commands of one's city and country, or persuade it as to the nature of justice" (*Crito* 51b-c) The laws claim that Socrates agreed to this decision willingly. He even had as much time as he pleased to consider his options (*Crito* 52e). Socrates' presence in the city implies that he agreed to abide by the laws, placing him under the obligation stated above. He must now either persuade or obey.

According to Richard Kraut, there is some ambiguity as to the meaning of "persuade." In Kraut's view, Socrates is not claiming that

the PLA demand blind obedience. All that the PLA demand is that Socrates "try to obey":

Imagine a government official telling his subordinate, "You must persuade Mr. Jones to vote for our bill." Nothing in this command suggests that the subordinate will be blamed for anything less than success. There is only the smallest of differences between "you must persuade" and "you must try to persuade." The latter expresses the speaker's awareness that persuasion is not entirely in the hearer's power, and it signals a willingness to tolerate honest failure. (71-72)

Spiro Panagiotou offers a convincing argument that shows this interpretation to be incorrect (101). The citizens have agreed to either persuade or obey. There may be those who have not yet tried to persuade, and the laws give allowances for those people to do so. The PLA cannot force obedience and humble submission at the same time. The laws therefore must have in mind those people, like Socrates, who have voiced their objections and yet have not convinced the state. "The reminder 'holding your peace' must therefore be directed to those citizens who have already voiced their objections but who have failed to move the state. It is these citizens who must now obey without demur; who must obey despite their objections" (Panagiotou 101). Furthermore, Socrates must convince the PLA that the nature of their command is unjust and that the law must change. He cannot just "try" to persuade and then disobey quietly if the state refuses to change. Socrates must persuade or obey, even if the command given is unjust (*Crito* 50c).

Socrates also claims that he and the state exist in an unequal relationship and that he agreed to this when he first decided to stay in Athens. Just as the child is unequal to the parent, the citizens are unequal to the state. The citizens cannot, once they fail to convince the state otherwise, randomly disobey its orders (*Crito* 51e). Like our parents, the state has brought us up and allowed us to live under its protection. The state has legally married us and given us the other advantages of lawful citizenship. Socrates seems to be making a distinction between duty and obligation (Woozley 312-13). It is our duty to obey the state because of the state's kindness towards us. We owe it to the state. The laws actually go so far as to claim that failure in this duty would be an extreme act of impiety (*Crito* 51c).

In summary, Socrates' relationship with the state is one that he agreed to take upon himself. He knows he must either persuade the

laws or obey them. He has given a sub-argument listing duty as one of the reasons why he must obey their command. Santas shows how Socrates now directly uses these principles to advance the argument from just agreements: 1. To abide by the laws of the state is just. 2. Socrates has agreed to abide by the verdicts of the court even if the verdicts seem unjust. 3. One must do what one agrees to do, provided it is just (*Crito* 49e). Therefore: 4. Socrates must abide by the verdicts of the court. 5. Socrates has been sentenced to death by the jury. 6. If Socrates were to escape he would not be abiding by the verdict of the court. Therefore: 7. Socrates must not escape (Santas 21).

It may appear on first reading that premises 2 and 3 contradict each other. However, a closer reading of the text makes it clear that this is not the case. Socrates does indeed agree that one must abide by agreements made provided they are just. "S: When one has come to an agreement that is just with someone, should one fulfill it or cheat on it?—C: One should fulfill it" (*Crito* 49e). But the context of this passage indicates that the agreement made is an original agreement: namely, to abide by the verdicts of the court. It is just to abide by all agreements of the court, whether or not the individual agreements reached are just. Socrates agrees with Crito that the actual decision of the court is unjust to him, but that does not discharge him of the responsibility of abiding by its verdicts:

S: Shall we say in answer, "The city wronged me, and its decision was not right." Shall we say that, or what—

C: Yes, by Zeus, Socrates, that is our answer.—

S: Then what if the laws said: "Was that the agreement between us, Socrates, or was it to respect the judgments that the city came to?" (*Crito* 50c).

The contradiction between the two dialogues is now generally clear. In the *Apology* Socrates has advanced an argument claiming that one must stay where his commander has placed him. Thus, Socrates must not obey any decision of the court that he cease philosophizing. Yet, in the *Crito*, Socrates has advanced two arguments stating why he must not disobey the laws of the state. First, he will be a destroyer of the laws, causing harm to the city. Second, he will be breaking a just agreement made by him with the state. I will now present some of the possible solutions made by Panagiotou and Santas. I will discuss why these solutions may be faulty and then offer an alternative explanation.

While discussing these alternative solutions, we must keep in mind the two times on record when Socrates went against the rulers of the city. We need to explain the contradiction in light of the two previous situations in order to avoid charging Socrates with inconsistency. The first situation occurred under the Athenian Democracy. Socrates, a member of the council, was the only one who refused to try the ten generals who did not pick up the dead soldiers during the battle of Arginusae. Socrates explicitly states the reason he was prepared to go against the state:

This [trying the generals at the same time] was illegal, as you all recognized later. I was the only member of the presiding committee to oppose your doing something contrary to the laws, and I voted against it. The orators were ready to prosecute me and take me away, and your shouts were egging them on, but I thought I should run any risk on the side of law and justice rather than join you, for fear of prison or death, when you were engaged in an unjust course. (*Apology* 32b–c)

The second act was during the reign of the Thirty. The Tyrants summoned Socrates and ordered him to bring them Leon of Salamis so that they could execute him. Socrates refused to perform this action as well, stating again his reasons for disobedience:

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 about, but that my whole concern is not to do anything unjust or impious. That government, powerful as it was, did not frighten me into any wrongdoing. (*Apology* 32 c–d)

Socrates gives three reasons for disobeying the state. In the first situation the command was illegal and unjust. The second was unjust and impious. Any explanation would have to account for all these reasons, or else explain why some may be subordinate to others (e.g., why it is justifiable to be unlawful as long as one is just and pious).

One explanation is given by Panagiotou. His thesis states that it is a mistake to identify the PLA's beliefs with those of Socrates. In other words, Socrates does not believe in the arguments presented by the PLA (at least not all of them). His main contention is that you cannot explain the contradiction between the two dialogues if you accept the view that Socrates and the PLA are one and the same (Panagiotou 96). Plato's

purpose, Panagiotou states, is to identify Socrates as holding the middle ground between Crito's view (that there may be a conflict between morality and law) and the view of the PLA (that there cannot be such a conflict) (Panagiotou 94). Instead, Socrates believes that it is just to disobey unjust laws provided that one "treats the state neither 'unjustly' nor 'badly'" (Panagiotou 95).

Panagiotou insists that Socrates and the PLA disagree on one fundamental point: The laws of the state may sometimes be unjust. As shown above, Socrates admits to Crito that what the state is doing to him is unjust. Panagiotou states that the PLA agree with Socrates only temporarily, in order to show him later that what the state does is, by definition, always just (Panagiotou 107). All that the state admits is a theoretical possibility that some of its actions are unjust (Panagiotou 109). Regardless of whether the state accepts the view of the objector, the final outcome will always be the just outcome. The PLA allow only the claim that the state's actions are unjust.

The PLA then argue that Socrates has agreed to this position, which is impossible because Socrates disagrees that the verdict is just. The problem, Panagiotou states, is in the dialectical stance that Socrates has taken. The state assumes that if Socrates does not persuade the state that its actions are unjust, and yet decides to disobey anyway, then he is somehow forcing the state, which does violence to it (Panagiotou 115). Socrates, however, does not place absolute value on persuasion, but on trying to persuade. If Socrates cannot persuade his interlocutor, he will continue to do what he knows to be just:

Socrates, on the other hand, seeks to persuade and wishes, in return, to be persuaded. If the persuasive enterprise fails, then one must act as one sees fit, provided one treats others neither unjustly nor badly. To act without convincing others is not to force them but to act as they would not. This means simply that they and you no longer have a common project. Socrates would not deny the state's claim to obedience from the unpersuaded citizen, but he would also grant the citizen the right to refuse it. (Panagiotou 115)

Panagiotou is right when he speaks of Socrates' dialectical project. Socrates obviously does not place full value on trying to persuade his interlocutor (Euthyphro, for example) (*Euthyphro* 14c). However, the rest of Panagiotou's argument is not convincing. The PLA do, in fact, give an example of why certain commands given by the state would be unjust. The PLA explicitly state that they only propose laws, they do not

issue savage commands (*Crito* 52a). This is an important statement by the PLA. At the very least, the PLA admit that the relation a citizen stands in to savage commands is different than the relation the citizen stands in to duly constituted laws. As such, it is reasonable to assert that the obligation to obey savage commands is not the same as the obligation to obey other laws. With this admission, the PLA imply that there are some laws that are not constituted in a proper manner, and thus are not properly regarded as laws. In fact, the PLA and Socrates would probably agree that savage commands are, by their nature, illegal, since they do not allow the citizen the right to attempt to persuade—a right affirmed by both Socrates and the PLA. This would account for Socrates' refusal to obey the Council of Thirty, for they did not (presumably) give Socrates an opportunity to convince them of their unjust request. The problem of the disobedience of Socrates harming the state will be answered below (Panagiotou's answer is identical to Santas's in this regard.)

The bigger question is whether Socrates agrees with the position of the PLA. Santas helps to answer this question by making certain textual claims. Santas points out that there is a great deal of similarity between the two dialogues. Not only are the views very similar but the central way in which Socrates conceives the issue is similar (31). It may be true that Socrates need not agree with the PLA's reasons to agree with its outcome. But it leads one to wonder why Socrates would use arguments he does not agree with to convince Crito of his position. Why not use his own views to convince Crito? Surely he has reasons for holding those views.

Furthermore, there are certain passages which seem to indicate that Socrates does agree with what the PLA are claiming about the state. Near the beginning of the *Crito*, Socrates makes the point that he is the kind of man who "listens only to the argument that on reflection seems best to me" (*Crito* 46b). This language suggests that what is to follow is an argument that seems best to Socrates. He never suggests that the argument that the PLA give is not suited to his liking. Socrates also makes the beginning of the just agreement argument *before* he uses the PLA as a tool to teach Crito (*Crito* 50a). Finally, at the end of the dialogue, Socrates exclaims how loudly the arguments of the PLA ring in his ear (*Crito* 54d).

One more piece of evidence is warranted. There is at least one time when Socrates presents an argument (when it was reasonably certain he was not being ironic) in which he does not fully believe. In the *Meno*, Socrates advances an argument which he admits, after he has given it,

may not be "right in all other respects" (*Meno* 86b). However, no such qualifier can be found in the *Crito*.

Santas's answer is much clearer than that of Panagiotou. Santas's argument involves a crucial distinction between "all things considered" and "all things equal" (Santas 45). When one speaks of "all things considered," that person is taking into account all aspects of the case and is deciding upon a principle that will always guide his or her actions. Socrates' statement in the *Apology* that he will "obey the god rather than you" (*Apology* 29d) is such a principle. It is the supreme principle of his life. "All things equal," however, "[indicates] that we have so far only taken certain principles into account. That we are making a judgement based on only a subpart of the larger scheme of reasons" (John Rawls, as cited in Santas 46). In other words, when deciding to obey the laws of the state, Socrates assumes that it is the god's will that he do so. Thus, Socrates can prioritize his arguments. This distinction can handle the argument based on just agreements (Santas 51). The argument Socrates gives in the *Apology* (namely, that the god has placed Socrates in this position) can be applied to the *Crito*, with conflicting results, only if one does not use this distinction (Santas 47). If we assume that the god is better than the state, then we can reach a conclusion which satisfies the contradiction. However, there is one catch. Santas must also show that by disobeying the law, Socrates is not harming the state. In the *Crito*, Socrates seems to offer another principle which he holds "all things considered":

So then consider very carefully whether we have this view in common, and whether you agree, and let this be the basis of our deliberation, that neither to do wrong nor to return a wrong is *ever* right, not even to injure in return for an injury received. Or do you disagree and do not share this view as a basis for discussion? I have held it for a long time and still hold it now, but if you think otherwise, tell me now. (*Crito* 49d–e; my emphasis)

Santas must show that Socrates, by disobeying the law, does not harm the state. I believe his answer is insufficient. Santas proposes that there is a fundamental difference between secret disobedience and open disobedience. The former harms the state while the latter does not:

[Socrates'] being willing to accept the penalty and not trying to evade it by escaping it shows that by deciding to disobey the order he does not intend to subvert and destroy the laws of his city, but

rather has respect for the laws and recognizes that he must, in general, obey the laws. (Santas 50)

Suppose I have some moral reason to disobey all traffic laws. If a policeman pulls up behind me, I can either attempt to evade (secret disobedience), or pull over and gladly pay the penalty (open disobedience). Do my actions, by openly disobeying, necessarily not harm the state? If all people were to disobey openly, could the state function? Woozley makes a similar point while talking about a thoroughly evil legal system: "But against that [all people disobeying all laws] it can be objected that a 100 per cent pernicious legal system could not exist, for it could not meet one of the necessary conditions of being a legal system, viz., *that of actually regulating men's conduct*" (Woozley 317; my emphasis). It does not necessarily follow that a willingness to accept the penalty does not harm the state. In fact, this is not the argument the PLA make. The state is destroyed not by the unwillingness to accept the penalty but by the refusal to be regulated by laws (*Crito* 50b). Socrates, by openly disobeying, is still, as far as it is in his power, trying to change the laws. As was said previously, the principle of harm depends upon the individual's making himself or herself the exception to the laws, even if in fact all persons must disobey all laws in order to destroy the state. As far as the PLA are concerned, a single individual's action of disobedience is enough to cause the harm. Thus, the argument from harm still stands. If, in some sense, even open disobedience harms the state (which I think cannot be denied) then it is still wrong for Socrates to disobey the jury: 1. All things considered, it is always wrong to inflict injury. 2. By breaking the law openly you are inflicting an injury. 3. The court has hypothetically commanded Socrates to cease philosophizing. 4. If Socrates were to disobey the court order, he would be breaking the law. 5. By breaking the law, Socrates is inflicting injury. 6. It is wrong to inflict injury. Therefore: 7. Socrates must obey the court order.

The problem with the previous interpretations is the way that Santas and Panagiotou try to subordinate Socrates' principles: To obey god is better than the court, etc. While I admit that this is a very reasonable interpretation, it suffers from possible contradictions with Socrates' other long-standing beliefs (e.g., the argument from harm). Is there another way to reconcile the god's command with those beliefs? We do know, for example, that the gods believe that lawful living is an example of piety (*Crito* 31b-c). We can also safely assume the god commanded Socrates to obey the PLA (at least before the trial). Hence Socrates finds himself with conflicting obligations. He knows he needs to obey the

laws for two reasons: First, because it is pious to do so. Second, if he does not he will harm the city. He knows he needs to philosophize because he has been placed in that position by the god. But he has been put in a situation where he cannot do both. What should he do? Socrates makes the only decision that he can make. Socrates freely chooses to die in order to avoid breaking either command. We know from Xenophon that he is willing to accept this alternative (see previous discussion).

One question that arises continually when we read the *Apology* is why Socrates uses the defense he does. It is obviously not suited to getting him acquitted from the charges. Santas even points out that some of the arguments Socrates gives in his defense are not valid.<sup>1</sup> What is going on here? Xenophon may be of some help. He states that the god purposely stopped Socrates from trying to gain an acquittal (42–43). The god, at previous times, always provided a negative check on Socrates' behavior. But the god did not try to prevent his execution. Socrates himself believes that death was where the god was leading him (*Crito* 54e). Perhaps Xenophon was correct in claiming that the god purposely took him? If this is the case, then perhaps the entire *Apology* should be read not as a defense, but as Socrates' last attempt to instruct the Athenians. If this is true then an alternate interpretation of the dialogue is justified.

I propose that the passage that speaks about the hypothetical sentence can be seen as a speech meant to persuade. Certain textual inferences can be made to this point. The jury could pick only from punishment "A" (advanced by the prosecution) or punishment "B" (advanced by the defense) (Teloh 100). One must wonder why Socrates would even make such a speech if he were never going to offer the penalty. The only plausible interpretation is that Socrates was attempting to teach and persuade the Athenians about why it would be wrong for him to offer silence as a penalty. Threats are not usually made by those who have no reason to make threats. Socrates could very well have used the argument from harm to convince the jury why such a sentence would be unjust, provided an extra assumption (number 2, which seems very plausible) be applied. 1. It is never right to do wrong. 2. It is never right to force others to do wrong. 3. To disobey god is wrong and impious. 4. Socrates has been commanded by the god to philosophize. 5. Socrates has agreed to abide by the PLA. 6. The

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<sup>1</sup>"Therefore, even if believing in spiritual beings entails believing in gods, it remains possible that these gods are not the gods the city believes in" (32).

hypothetical sentence would force Socrates to either disobey the god or disobey the laws. 7. To disobey the god is wrong. 8. To disobey the state causes harm. 9. It is wrong to force others to do wrong or harm. 10. Therefore, the jury ought not to sentence Socrates to stop philosophizing. Socrates is faced with death, exile, or silence (*Crito* 54e). He cannot choose silence, will not accept exile, and thus chooses death (which is really not a penalty in his view).

If we can rightly interpret the *Apology* in this way then we solve the contradiction of the hypothetical sentence. All we must now show is why disobeying the order of the Thirty Tyrants was an act of lawful behavior. Xenophon points out several instances in which Socrates refused to break established law, and emphatically states that the order of the Thirty was one of them:

He [Socrates] disobeyed the illegal orders of the Thirty: first, when they forbade him to converse with the young, and second, when they instructed him, with some others, to arrest a citizen for execution, he alone disobeyed on the ground that what he was ordered to do was illegal. When he was facing prosecution by Meletus, he rejected as illegal the usual practice in courts of law. . . . But although Socrates might easily have been acquitted if he had made even a moderate concession to common practice, he chose to abide by the law and die, rather than break it and live. (195)

Whether what the Thirty asked him to do was illegal under Oligarchichal law, was illegal because the government itself was illegal, or was illegal under Athenian law does not matter.<sup>2</sup> If Socrates had agreed to abide by laws only, and not by the savage commands of men, he was justified in disobeying the command of the Tyrants.<sup>3</sup>

If we adopt this view, all three of the situations above can be construed under one principle: Socrates has agreed to abide by estab-

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<sup>2</sup>Santas 38. Santas states that Socrates may have believed that properly constituted laws occur only under a democratic regime. How these statements can be brought into harmony with Socrates' other antidemocratic statements is unclear.

<sup>3</sup>An argument could be made that Socrates never agreed to abide by the Tyrants' laws as he did under the Democracy. After a change in the type of government, all previous agreements with the government are no longer valid. Socrates may never have agreed to abide by laws that could be issued at the whim of dictators.

lished law. When this principle came in conflict with the others, he freely chose death to escape contradiction.

In conclusion, I have argued for the position that Socrates believed in following established laws. I have also outlined the arguments of the two dialogues and discussed possible solutions to the contradiction. There are many unanswered questions as well as possible problems with my account (i.e., Xenophon's credibility). I offer this solution only as a possibility, finding the others to be insufficient both textually and logically. Socrates seems to recognize that certain political systems are unjust and that political obligations are taken on by the public only through contractual agreement. Others who developed the Social Contract theory obviously looked to Socrates as a forerunner.

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