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What Rules and Laws does Socrates Obey?

¿Qué reglas y leyes obedece Sócrates?

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Abstract

Socrates' thought of justice and obedience to laws is motivated by a will to avoid the destructive effects of Sophistic criticisms and theories of laws. He thus requires—against theories of natural law—an almost absolute obedience to the law, as far as this law respects the legal system of the city. But, against legal positivism, Socrates would not admit that a law is just simply because it is a law: he is looking for the true Just. However, as often in Socratic philosophy, Socrates cannot accept that two equally justified and legitimate rights or moral values conflict.

Keywords: Socrates; disobedience; laws; justice; *Crito*; *Apology*.

Resumen

El pensamiento de Sócrates sobre la justicia y la obediencia a las leyes trata de evitar los efectos destructivos de las críticas y teorías sofísticas de las leyes. Así, él requiere, en contra de las teorías de ley natural, una obediencia casi absoluta de la ley, en tanto esta ley respete el sistema legal de la ciudad. Sin embargo, en contra del positivismo legal, Sócrates no admitirá que una ley es justa solo porque es una ley: él busca la verdadera Justicia. Aún así, como es común en la filosofía socrática, Sócrates no puede aceptar que dos derechos o valores morales igualmente justificados y legítimos estén en conflicto.

Palabras clave: Sócrates; desobediencia; leyes; justicia; *Critón*; *Apología*.

Traditionally, the constitutions and laws of Greek cities were believed to be inspired by the gods: the constitution of Sparta was a gift from the Delphic Apollo¹ and Clisthenes himself received the names of the tribes of Athens from the Pythia.² But the Sophists shattered this accepted order. Their cunning arguments showed that man cannot be satisfied to obey the law as an external authority and necessity but that he must convince himself, by his own reflection, of what is right or, at least, imperative. Facing the Sophistic offensive against traditional values, Socrates and his followers' first assignment was to restore the respect due to the laws. The principle of obedience defended by Socrates in the *Crito* and in several texts of Xenophon is explicit and imperative. But the practical application of this principle, which is apparently without ambiguity and perfectly clear, raises numerous problems.

In different situations, Socrates *actually* disobeyed orders of the rulers or mocked their decisions. However, his sarcastic answers when he opposes the Thirty Tyrants or his resolute attitude in front of the Athenian Assembly are not, as one could believe, in contradiction with the principle of obedience he constantly defends. Indeed, this principle is submitted to precise conditions that are stated in different texts. Whenever the conditions are fulfilled, Socrates upholds his principle: the law should be obeyed as such, not as being just. This attitude should be understood mainly as a reaction to the dangers that Socrates perceived in Sophistic thought.

But the issue of obedience in Socratic thought becomes perplexing when one considers that human laws are not the only rules that men must obey. Socrates, admittedly, did not limit his thought about justice to legality. Two different issues are to be distinguished, for Socrates himself does not confuse them: (1) the conflict between the divine order and an *hypothetical* injunction of the court in the *Apology*, (2) the more general distinction between divine and human laws which appears in other dialogues and in Xenophon's works.

¹ Tyrtaeus 4; cf. Xen. *La.* VIII. Her. I, 65 gives this version, as well as a rational one: the Sparta constitution was inspired by the Cretan one.

² Ar. *AP* XXI, 6. Similar stories are told about other lawgivers, whether mythical or real, Greek or barbarian: Zaleucus of Locri (Plutarch. *De laude ipsius* 11 543A: Athena), Demonax of Cyrena (Her. IV, 161, 1-2: Apollo), or even Minos, Zoroaster and Numa (Plutarch. *Numa* 4, 7).

These questions, especially that of the seeming contradiction between the *Apology* and the *Crito*, have been discussed extensively and gave rise to varied and often unsatisfactory interpretations.³ To understand Socrates' attitude toward the laws, I will pursue three lines of inquiry: 1. use Xenophon's testimony as it is most often compatible with Plato's on that issue, 2. keep in mind what Socrates opposes –Sophistic conclusions–and thus characterise negatively the position of the philosopher, 3. make, as far as possible, clear distinctions between laws,⁴ orders, decrees, court judgments, divine mission and divine or natural laws, for even if he followed only the one-drachma course of Prodicos (Plat. *Crat.* 384b-c), Socrates himself clearly distinguishes different levels of rules.

1. Obedience and the City

1.1. Obedience and its conditions

Socrates affirms a principle of absolute obedience to the laws in Plato as well as in Xenophon. Scholars who hope to discover a defence of civil disobedience in Socratic thought tend to trivialise those texts and generally offer two arguments, taken from Socrates' life, in order to justify their claim: Socrates' refusal to obey the Thirty Tyrants and his attitude during the trial of the generals of Arginusae. But those examples do not diminish the value of the principle of obedience advocated by Socrates; they rather allow us to clarify this general principle, for it is always on the basis of the law, or of the legal system, that the philosopher justifies his actions.

The general principle of obedience

In Xenophon as in Plato, Socrates emphasises the necessity of laws and obedience of the citizens in order to ensure social order, not to say the very existence of the city.

³ The *Apology-Crito's* problem is one of the most discussed issues in ancient philosophy and it would be impossible to go through all previous interpretations. Out of concern for clarity, important ones will be discussed only in notes.

⁴ In the course of the article, I use the term "law" in the restrictive sense of a written enactment of the *legislative authority* (see *infra* pp. 406-408).

Even if laws are inaccurately interpreted by those who should enforce them, even if their application can thus lead to injustice, even if obedience can result in losing one's own life, it is still necessary to comply with them. Such seems to be the creed of Socrates in the *Crito*: after he vainly tried to clear himself of the charges made against him, and even after he was sentenced to death, he refused his friends' offer to help him escape because the cohesion of the city and its whole existence depends on obedience to laws (Plat. *Cri.* 50b): "Are you not intending by this thing you are trying to do, to destroy us, the laws, and the entire state, so far as in you lies?"⁵

It is not only because of its possible consequences that violating the law or escaping punishment is wrong:⁶ the philosopher claims that such an act would be unjust in itself (Barker, 1977: 14). As a citizen of Athens, a "contract" (συνθήκη; *Cri.* 52d, 54c; ὁμολογία: 49e, 50a, c, 51e, 52a, c, d...) binds him to his city and he does not have the right to violate his contractual obligations: not only would it be the ruin of what constitutes the very foundation of society (*Cri.* 51c-54d) but it would be to commit injustice.

In the *Memorabilia*, Socrates—who does not speak of a "contract" but rather mentions an "oath" (Xen. *Mem.* IV, 4, 16: ὄμνυμι) to the city—specifies that even if what laws prescribe or forbid is not absolutely just, it is right to obey them (Xen. *Mem.* IV, 4, 13-16), because "what is legal is just" (Xen. *Mem.* IV, 4, 12: τὸ νόμιμον δίκαιον εἶναι). In the same text, Hippias points out that, as laws can be amended or revoked by those who enacted them (Xen. *Mem.* IV, 4, 14), their value is relative. Socrates replies that it does not matter: it is not because peace will follow war that one does not have to take part in battle as a disciplined soldier (Xen. *Mem.* IV, 4, 14). To the Sophists who claimed that law is only a convention, and thus of relative value, Socrates retorts: it is indeed a convention, a contract, in other words a mutual obligation, an indenture, and this is precisely why the citizen is held to respect it.

⁵ Compare to Xenophon's Socrates: the "city in which the citizens are most obedient to the laws has the best time in peace and is irresistible in war" (Xen. *Mem.* IV, 4, 15-16); see Morrison, 2001.

⁶ Even if it seems an attractive possibility, it is inappropriate to affirm, as J. de Romilly (2001) does, that Socrates is thinking, in a Kantian way, of the "universalisation of his maxim" in order to make obedience a "categorical imperative;" see also Martin, 1970: 26.

Conditions of obedience (a): Legality and Tyranny

The principle seems clear enough, but when faced with an order of the Thirty to arrest Leon of Salamines, Socrates seems to have followed his personal conception of justice rather than the rules enacted by the sovereign of the moment: he simply refused to obey. Proof of the incredible courage and of the unerring justice of Socrates' character, this historical fact, related both in Plato and Xenophon, would invalidate the general principle of obedience stated above. But not all decisions of the rulers are laws or made in accordance with the law and Socrates submits only to what is legal. Such may be the first limitation to the obedience defended by the philosopher. It does not depend on the content of the rulers' prescriptions but on their lawfulness.

The issue was certainly discussed among Sophists in their constant polemic against the laws.⁷ In this respect, one cannot overlook the problem raised by the objections of the young Alcibiades in the *Memorabilia* (Xen. *Mem.* I, 2, 41-46). In his dialogue with Alcibiades, Pericles is led to define the law in a formal way: in democracy, the law is the rule adopted by the majority of the Assembly; in oligarchy, as in despotism, the rule enacted by the rulers is also law. To that statement, Alcibiades replies that force (βία)—which is ἀνομία, negation of legality or absence of law—precisely consists in forcing the weaker to do what the stronger decides. Therefore, when a government, whatever its form, legislates without persuading the whole political body of the justice of its laws, isn't it similar to the rule of force? Consequently, when the despot, or the oligarchic minority, or even the majority of the *demos*, establishes a law without persuading its opponents, the law is only the expression of force. The conclusion of Alcibiades is almost similar to Thrasymachus' thesis in the *Republic* (Plat. *Resp.* I, 338e-339a): "The just is nothing else than the advantage of the stronger." But Alcibiades is not arguing with Socrates, and Pericles—who agreed to the dialectical demonstration of the young man until his paradoxical conclusion—does not refute the argument and confines himself to rebuking him for "making a jest and

⁷ Antiphon 87B44A and B DK; Hippias 86C1 DK and Xen. *Mem.* IV, 4, 14; Callicles in Plat. *Grg.* 483e-484a; Thrasymachus in Plat. *Resp.* I, 338e-339a... etc.

a sport of mere contradiction.”⁸ Alcibiades’ demonstration is skilful and seems relevant. But what the young aristocrat misses is that there is a fundamental difference between a system of legality and tyrannical *anomia*. Pericles is wrong to agree to call “laws” the decisions of the tyrant, because the tyrant is subject to no law.

It is quite clear that Socrates would have refused to call “laws” the rules enacted by a tyrant, for it is precisely by means of the notion of legality that he defines tyranny—in opposition to monarchy (*Mem.* IV, 6, 12): “Government of unwilling subjects and not controlled by laws, but imposed by the will of the ruler, [is] tyranny”—τὴν δὲ ἀκόντων τε καὶ μὴ κατὰ νόμους, ἀλλ’ ὅπως ὁ ἄρχων βούλοιο τυραννίδα.⁹ Plato’s Socrates, in the *Republic*, similarly describes the tyrannical constitution as a state of *ἀναρχία* and *ἀνομία* (*Resp.* IX, 575a). Though it appears most clearly for the first time in Xenophon’s definition, this view on tyranny is not unusual and reflects a most common Greek conception.¹⁰ In the time of the Persian Wars, the opposition between written laws and the arbitrary will of one man was one of the fundamental ideological elements used to justify the unity of the Greek cities against the Persian’s threat. While the laws of Athens, Sparta or Corinthia were most certainly different, as were their political regimes, Greeks were said to be free, for they lived under the rule of law, while Barbarians were slaves to a despot.¹¹ Neither Aeschylus, nor Herodotus, had they been asked to define terms properly, would have called “laws” the changing desires of the tyrant.

Thus, Socrates’ refusal to carry out the *tyrannical order* of the Thirty Tyrants¹² to arrest Leon of Salamis “so that he was put to death” (*Plat. Ap.* 32c-d) cannot be used as an argument to unveil a defence of civil

⁸ Alcibiades’ attitude is similar to the one of the young man learning and misusing dialectic, described by Plato in the *Republic* (539b-c).

⁹ The same criterion enables aristocracy to be distinguished from oligarchy. For tyranny, see also the end of the *Oeconomicus* and *Cyropaedia* I, 3, 18.

¹⁰ See Solon (Gerber, frag.4, v.30-39; cf. Dem. XIX, 254-256), Hdt. VII, 104, Eur. *Supp.* 429.

¹¹ Esch. *Persae* 241-2; Hdt. VII, 135, 3; VI, 44, 1; Eur. *Hel.* 276. The link between slavery and despotism in general appears also in Democritus 68B251 DK.

¹² Even its leader, Critias (*Xen. Hel.* II, 3, 16), designates the regime of the Thirty as a tyrannical regime, not as an oligarchic one.

disobedience in Socratic thought. At the very least, it does not contradict the principle of obedience *to the law*. For in order to know if an order or rule shall be obeyed, one must first examine if it is *legal*, if the rule was enacted by a power legally instituted and acting in conformity with the law.

Conditions of obedience (b): An intuition of the hierarchy of rules?

This first limitation is not yet sufficient to show the consistency of Socrates' principle of obedience with his actions: we know that Socrates did not only disobey tyrannical orders, but also that he opposed Athenian democracy when, in spite of pressures and threats, he had resolutely contested—alone—the will of the Assembly when it wanted to indict and condemn to death—collectively—the ten generals of the Arginusae. But the reason of his opposition was precisely to preserve, as a Prytane, the legal system of Athens: the accusation of the generals was a *violation of the law*,¹³ which required that the generals be tried separately.

Socrates' attitude implies that the power of the Assembly of the People, which is in theory sovereign, is—or should always be—limited. It would certainly be adventurous to see in this attitude a prescience of a constitutional legal system, but Socrates seems at least to differentiate between laws and decrees. The distinction was already known to the Greeks: Hyperides¹⁴ even traces it back to Solon. Andocides reports that during the radical recasting of laws that followed the restoration of democracy, in 403 B.C., it was written—undoubtedly in reaction to past excesses (*Myst.* 86-87):

Laws. In no circumstances shall magistrates enforce a law which has not been inscribed. No decree, whether

¹³ Plat. *Ap.* 32b-c: "At that time I was the only one of the Prytanes who opposed doing anything contrary to the laws (μηδὲν ποιεῖν παρὰ τοὺς νόμους), and although the orators were ready to impeach and arrest me, and though you urged them with shouts to do so, I thought I must run the risk to the end with law and justice on my side, rather than join with you when your wishes were unjust, through fear of imprisonment or death;" Xen. *Hell.* I, 7, 15: "οὗτος δ' οὐκ ἔφη ἀλλ' ἢ κατὰ νόμον πάντα ποιήσειν;" Mem. I, 1, 18: "ἐν ᾧ ἦν κατὰ τοὺς νόμους βουλευσείν," "παρὰ τοὺς νόμους;" IV, 4, 2: "παρὰ τοὺς νόμους ψηφισασθαι." On the Arginusae: Cloché, 1919 and Hatzfeld, 1940.

¹⁴ *Adv. Athenogenes* 22: "Solon did not consider that a decree (ψηφισμα), even when constitutionally proposed, should override the law (νόμος)."

of the Council or Assembly, shall override a law. No law shall be directed against an individual without applying to all citizens alike...¹⁵

Νόμοι. Ἀγρόφω δὲ νόμῳ τὰς ἀρχὰς μὴ χρῆσθαι
μηδὲ περὶ ἑνός. ψήφισμα δὲ μηδὲν μήτε βουλῆς
μήτε δήμου νόμου κυριώτερον εἶναι. μηδὲ ἐπ' ἀνδρὶ
νόμον ἐξεῖναι θεῖναι, ἐὰν μὴ τὸν αὐτὸν ἐπὶ πᾶσιν
Ἀθηναίοις...

Admittedly, such a distinction was difficult to implement in Athens because of the direct exercise of popular sovereignty.¹⁶ But Socrates seems to refer to it, even at the worst moment of Athenian democracy, even if it imperils his life: among the decisions of the rulers, some are not laws and could even be in violation of law. Socrates submits only to what is legal: such is the implicit limitation to the obedience required by the philosopher.

The arrest of Leon of Salamis and the case of Arginusae (Plat. *Ap.* 32b-d) are often quoted as examples of Socrates' disobedience, in contradiction with the general principle of obedience he upholds in different texts. But these two acts of "resistance," no matter how dangerous and brave, are not, as one might think, incompatible with his constant defence of an absolute obedience. They rather show its strict application: it is not laws that Socrates disobeyed but illegal decisions of the judicial authorities or tyrannical decrees of the executive one.¹⁷ The

¹⁵ Tr. Heinemann 1968. Cf. *Dem. Adv. Timoc.* XXIV 30, *Adv. Aristo.* XXIII 86; *Arist. Pol.* IV, 4, 1292a5.

¹⁶ L. Gernet (2001: 115-6) points out that "the idea that the sovereign power of the people is not subjected to a strict respect of a legality which besides it promulgates and defines appears intermittently: the law, not only the people takes over its institution, but at certain times of crisis, he does not admit being restricted by it and finds it "monstrous if the people were to be prevented from doing whatever it wished."" Gernet is quoting *Xen. Hell.* I, 7, 12. According to Gernet (2011: 116): "Théoriquement, le peuple ne vote que des *psèphismata*, des "décrets": mais ces "décrets" peuvent avoir un objet général et permanent et en particulier définir le droit en matière criminelle (par exemple, le décret de Cannonos, *Xen. Hell.* I, 7, 20)."

¹⁷ Those distinctions, which should be made in a Greek context (see Andocides' quote), although known, seem to be often dismissed

philosopher always sides with the written law,¹⁸ against the arbitrary will of the Sovereign, whether embodied in one man or many. Thus Socrates' attitude is always consistent with the principles of legality and of the hierarchy of rules: he also accepts the death penalty inflicted on him (wrongfully¹⁹), because the sentence is pronounced in accordance with the law.

Conditions of obedience (c): The explicit conditions of the Crito

After he was sentenced to death, Socrates claims that his duty as an Athenian citizen is to accept the verdict. To understand this attitude, one must remember that, in the *Crito*, the Laws gave Socrates two "rights." First, the Laws remind him that he was allowed to emigrate at any time if he did not find the laws of his own city appropriate. If such a possibility did not exist, his engagement with the city, his contract with the Laws, would have been null and void (because it would have been made under constraint) and thus, disobedience legitimate. Secondly, the Laws specify on several occasions that one can try "to persuade" them if he estimates that they are mistaken (*Cri.* 51c).²⁰ And we know

or underestimated. The lack of interest for those distinctions, by some commentators, probably arise partly from the tradition of the common law legal system, where the court decisions could be considered "law" with the same force of law as statutes. Such an authority is never given to the courts in civil law jurisdiction and judicial precedent is always given less weight. The Napoleonic code, for example, expressly prohibited a judge from passing general provision (*Code Civil des Français*, 1804, Titre préliminaire, article 5) "Il est défendu au juge de prononcer par voie de disposition générale et réglementaire sur les causes qui leur sont soumises." This provision is still in effect. To use indiscriminately terms such as "rules," "commands," or even "laws" to discuss the issue of Socratic obedience and disobedience is not likely to aid the understanding of Socrates' attitude.

¹⁸ The problem may be slightly different in Plato's later texts, cf. *Leg.* 793a-b, 838b, 841b.

¹⁹ *Cri.* 54b-c: the Laws concede that Socrates is being wronged, though not by them, but by men.

²⁰ This condition seems clear enough; there is no need to discuss it further and make things more complex. Kraut, 1983, for example, gave a specific interpretation of the "persuade or obey" doctrine in order to explain the *Crito* disobedience. For him (1983: 57), it is possible for "the phrase persuade or obey to mean that if one does not obey then one must persuade" and that

that Socrates did not refrain from criticizing the politics of the Athenian democracy.²¹ The duty of obedience to the law and the right to discuss its contents both inhere in citizenship.

To obey one law and to want it changed are *not* contradictory as some scholars seem to believe: discussing or criticising the law, while obeying it, is perfectly consistent and may even be the necessary condition of true active citizenship.²²

The principle of obedience to the law is thus subject to several conditions:

- The rule to which it applies has to be an actual law, not a decree, an order, nor any other decision of the Sovereign or of the court, which would be contrary to the law,²³
- the citizen shall always²⁴ have freedom to leave the City and thus to put an end to the contract,

“the alternative to obedience involves disobedience.” According to that view, Plato would thus mean both (1) that one can disobey and try to persuade the court of the justice of his disobedience and (2) that one should obey and try to persuade the Assembly to amend the law (1983: 71-72). The text does not support this interpretation which is more in conformity with a modern view of civil disobedience, as a public conscientious political act contrary to the law done with the aim of bringing a change in the law. This is not the “persuade or obey” described in the *Crito*; see Irwin’s discussion of Kraut (1986: 402-4); cf. already Woozley, 1979: 25. Most discussions are distorted by such modern bias while Plato’s texts show on the contrary that “Socrates himself had little, if any, interest in the question of whether civil disobedience can be justified” (Johnson, 1990: 720).

²¹ See, for example, Xen. *Mem.* I, 2, 9, Plat. *La.* 184c-e, *Crito* 47a-48a, *Grg.* 521e-522a, 515c-e, *Resp.* VIII, 558c.

²² And there is absolutely no reason to think that (Miller, 1996: 130): “For Socrates, therefore, the option “to persuade” is unreal.” It may however be impossible without philosophy: see *infra*, part 2.1.

²³ That excludes *de facto* tyranny and oligarchy, which is defined as an aristocracy with no laws (*supra*, n. 9).

²⁴ When the Laws state this possibility for the first time by (Plat. *Cri.* 51c-e), it is not clear if they affirm that Socrates *always had* that right or if they say that he had it *before the contract*: “whoever of you stays here, seeing how we administer justice and how we govern the state in other respects, has thereby

- the citizen shall have an absolute right to discuss the laws.

Although Socrates stresses more the duties than the rights attached to citizenship, those rights are essential to a correct understanding of his thought: Socrates certainly requires an absolute obedience, but an obedience which one could describe as “critical.”²⁵

1.2. Laws, Obedience and Justice

Thus, the apparent contradiction between the principle of obedience stated in Plato and Xenophon, and the attitude of Socrates at different moments of his life, could be solved by understanding that this principle does not apply to any rules or orders enacted by any authority, but only to those enacted in conformity with the laws. This formal solution is without regard to the content of the order or of the law²⁶ and leaves out of consideration the question of justice. It conflicts with the fundamental intuition that guided most commentators: Socrates would never obey an unjust law.²⁷

For Allen (1980: 109sq), for example, the city is never entitled to command Socrates “to do anything unjust”. This kind of statement is often used in order to explain the inconsistency between the *Crito* and

entered into an agreement with us to do what we command.” However, when the Laws summarise the various conditions, they are obviously “thinking of” the first possibility (Plat. *Cri.* 52e): “you were not forced to make up your mind in a short time, but had seventy years, in which you could have gone away, if we did not please you and if you thought the agreements were unfair.”

²⁵ This right to discuss the law opposes Socrates to all the tradition of “passive obedience,” represented, for example, by Berkeley, making him what the defenders of that tradition feared so much: a potential, even if not actual, dissident.

²⁶ It is not laws that are just, but “the lawful” or “the legal.” In the dialogue with Hippias in the *Memorabilia*, the expression νόμους πόλεως is used only once (IV, 4, 13). In IV, 4, 12, and in almost the totality of the text, the interlocutors rather oppose δίκαιον and νόμιμον, not νόμοι: Socrates speaks of “the legal” or “legality,” not of “laws.”

²⁷ Or that by doing so, he will not actually be committing injustice. See Brickhouse and Smith (1994: 152-3): since Socrates seems to think of the relation of the citizen to the State on the model slave-master or child-parent (*Crito*), the citizen would be neither morally nor judicially responsible.

the *Apology*. But the claim that “there is for Socrates no obligation that overrides the obligation to act in accordance with what is right and just” (Stephen, 1985: 6), if not entirely false, is ambiguous and often misunderstood.²⁸ If that were true, why does not Socrates (in Plato as in Xenophon) explicitly state it but, on the contrary, emphasises obedience to the law? And what would be the point of stressing obedience to “just laws” only? “Obey laws that are just” hardly needs to be supported by the arguments of the *Crito* and of the *Memorabilia*! Moreover, Socrates does not claim he knows what is right and just, except when he explicitly states that what is just is to obey the law of one’s city (*Mem* I, 3, 1 and IV, 3, 16, *Crito*)—and nowhere is Socrates’ “knowing ignorance”²⁹ displayed more clearly than in the *Apology*. Finally, because he does not know what is Just, this position—refusing to obey a law that one considers unjust—is precisely the one Socrates wished to avoid by defending an almost absolute obedience to the law. If Plato had presented Socrates in the self-righteous attitude of the man certain of knowing better than the laws what justice is, Socrates would be the legitimate target of the allegation of the Nephew of Rameau: “With his contempt for a bad law, didn’t he [Socrates] encourage fools to disregard good laws?”³⁰ But

²⁸ For Vlastos (1974: 519-20), it is impossible that Socrates advocated unqualified obedience if we keep in mind his fundamental assumption that it is better to suffer injustice than to commit it. But, for Socrates, breaking the law, whatever its contents, is unjust in itself. In a similar way, Allen (1972: 566; cf. 1980: 109) thinks that Socrates was not under obligation to obey Athens rather than the god, because this would have involved the specific form of injustice which is impiety. But the distinction between doing and suffering injustice is not relevant. Woozley (1979: 58), for example, notes rightly that: “Socrates nowhere says anything about others, i.e. acting unjustly to others and treating others unjustly. What he does say is that one must in no circumstances act unjustly... If the death sentence on Socrates was unjust, and as the method of execution was by self-administration, it is not farfetched to say that he would be acting unjustly to himself in carrying it out.” Santas (1979: 40-41) adds that, in the specific case of the *Apology*, it would be better to disobey men than gods since gods are better than men. This is a slightly different interpretation, which seems to imply “levels” of justice (or injustice); but this idea is foreign to Plato’s early dialogues. On Santas and Vlastos, see Colson, 1989: 31-35.

²⁹ On Socrates’ knowledge in the *Apology*, see Brancacci, 1997.

³⁰ Diderot, *Le Neveu de Rameau*: “MOI. --De Socrate, ou du magistrat qui lui fit boire la ciguë, quel est aujourd’hui le déshonoré ? LUI.-- Le voilà bien avancé !

this is precisely one of the accusations Socrates tried to avoid at all cost and that he could have himself made against some Sophists: he knows, like Aristotle (*Pol.* II, 8, 1269a20) that “the law has no power to compel obedience beside the force of custom,”

Socrates’ position regarding laws and obedience should be first understood in respect of the theses he fights: Sophistic theories and their criticisms of laws. The Sophistic movement initiated two opposed “schools” of thought, one based on the intuitions of Protagoras, the other on those of Hippias. Little is left from the views of these two authors, but their influence was large, on the whole Sophistic Movement as on Athenian culture in general. One finds an echo of their theses in classical tragedy or comedy, as well as in the political speeches of the *Peloponnesian War*.³¹

If, as the fathers of the Sophistic movement (Gorgias and Protagoras) professed it, nature is not at all a source of values, if nature is unknowable and if nothing can be said of the gods, there only remains man and his capacity to make a selection among indeterminate phenomena. It is the basis of Protagoras’ legal positivism, as described in Plato’s *Theetetus*.³² It is more generally, in practice, the view of (most) Athenians: the law may

en a-t-il été moins condamné ? en a-t-il moins été mis à mort ? en a-t-il moins été un citoyen turbulent ? *par le mépris d’une mauvaise loi, en a-t-il moins encouragé les fous au mépris des bonnes ? en a-t-il moins été un particulier audacieux et bizarre ? Vous n’êtes pas éloigné tout à l’heure d’un aveu peu favorable aux hommes de génie.*”

³¹ There is no need to study the precise theory of law of each sophist for our purpose, but only to perceive the new problems raised by the Sophists’ interrogations—at least from a Socratic point of view. For a general account on the Sophists: Dupréel, 1980; Guthrie, 1995; Kerferd, 1981; Romeyer Dherbey, 1985; Cassin, 1995; Untersteiner, 1996. For the specific and problematic case of Antiphon’s thought of law and justice: Gargarin, 2002 and LévyStone, 2014.

³² See 79 A13, A14, A23, B1 DK and Plat. *Tht.* 167c: ἐπει οἷά γ’ ἂν ἐκάστη πόλει δίκαια καὶ καλὰ δοκῆ, ταῦτα καὶ εἶναι αὐτῆ, ἕως ἄν αὐτὰ νομίζῃ. The sentence allows two different interpretations depending of the meaning given to δοκῆ (which could mean ‘seem’ or ‘decree’) and ‘νομίζῃ’ (either ‘believe’ or ‘legislate’). Therefore: (a) ‘For what seems to be just and honest to a city, is indeed just and honest for it, as long as it believes it’ or (b) ‘For what a city decrees to be just and honest, is indeed just and honest for it, as long as it makes it a law’. The two interpretations are not incompatible: the source of the laws and of the Just is found in the agreement of the city.

certainly change but it is written and must be respected as the choice of the assembled people.³³

One could also, like Hippias in contradiction with his Sophistic elders, seek in nature the foundation of a justice superior to the contingent rules of men (Plat. *Prt.* 337d, Xen. *Mem.* IV, 4).³⁴ The idea of unwritten laws is certainly not, in spite of what he asserts in the *Memorabilia*, an invention of the sophist of Elis—"for their life is not of today or yesterday, but for all time, and no man knows when they were first put forth" (Soph. *Ant.* 456-7). Hippias, however, does not receive them from the gods, nor from tradition: he believes he may "find them," "discover them," through the study of nature and human societies.

But without a sure foundation, Sophistic thought diversifies *ad infinitum*. Even when nature is said to be a principle of justice, it remains an empty principle which can accept any type of determination: unwritten laws, if they are not revealed, have not defined contents and each one can find in "nature" what he wishes. Since nothing is posed as an Absolute, any particular determination, any "point of view" on Being or Justice, can claim to universality and, by means of rhetoric, triumph. As Gorgias (82 A25, B3, B11, B26) and Protagoras (79 A1, A21, B6 DK) had brilliantly shown, various points of view exist on any subject and the truth or justice of each one depends only on the discourse that supports it.

This is why Sophistic theses, of which the common starting point was to attack the sacred and given character of laws, were perceived as threats by advocates of a more traditional order. Aristophanes scoffs at the legal positivism of those who can "make the unjust speech just" as much as he condemns the naturalistic justification of those who take for model animal brutality. He presents the two arguments combined in the violent attack of Philippides against the laws (Aristoph. *Nub.* 1421-9):

Was it not then a man like you and me, who first proposed this law, and by speaking persuaded the ancients? Why then is it less lawful for me also in turn to propose henceforth a new law for the sons, that they should beat their fathers in turn? But as many blows as

³³ See Cleon's speech in Thuc. III, 37, 3-5 and Plato's quote of the democratic saying: "Nothing, they say, ought to be wiser than the laws" (*Stat.* 299c)

³⁴ On Hippias and this text of Xenophon: *infra* n. 54.

we received before the law was made, we remit: and we concede to them our having been thrashed without return. Observe the cocks and these other animals, how they punish their fathers; and yet, in what do they differ from us, except that they do not write decrees?³⁵

Facing the Sophistic criticisms of laws and their destructive effect on civic virtues, Socrates wants to avoid two dangers:

- Legal positivism³⁶ that leads to relativism and makes man the “measure of all things,” including justice;
- Natural laws theories, which cannot give a sure content to Justice, but simply weaken the authority of laws and finally the city itself.

On the other hand, he seeks to keep: (a) from legal positivism, the principle of obedience to the laws despite their contingency and (b) from natural laws theories, the belief in the existence of a greater Justice. By giving specific conditions to obedience, especially the right to discuss the law, Socrates escapes the dangers of legal positivism (the claim that whatever is legal is just). Protagoras initiated this last thesis, which finally gave birth to Alcibiades’ paradoxes in the *Memorabilia* (I, 2, 41-46), and maybe to the cynical view of Thrasymachus in the *Republic*: if whatever convention is just, there is no justice at all, only the interest of those who enact the laws (Plat. *Resp.* 338e). By emphasising obedience to the laws, Socrates avoids the dangers of the naturalistic thesis, initiated by Hippias (human laws are changing, nature is source of higher values) which ultimately leads to Callicles’ thesis (laws are unjust conventions; nature dictates that the strong dominates; cf. Plat. *Grg.* 490-491).³⁷

³⁵ Tr. Hickie, 1853.

³⁶ I mean here by ‘legal positivism’ the simple idea that there is no other source of justice than the changing rules of men (see *supra* n. 32 for Protagoras), which should therefore be obeyed.

³⁷ I do not want to make Protagoras nor Hippias responsible for these “perversions” of natural right thesis on the one hand and legal positivism on the other. I do believe however that these are the dangers that both Socrates and Aristophanes discerned in their theses—whether rightly or not.

If this is the general intuition that guided Socrates' attitude towards the law, we must assume that Socrates would always obey the laws, for it is not because they are just that one shall obey them, but simply because they are laws. This thought of Pascal could well be appropriate to Socrates:

He who obeys them [the laws] because they are just, obeys a justice he imagines, and not the essence of law; it is quite self-contained, it is law and nothing more. He who will examine its motive will find it so feeble and so trifling that if he be not accustomed to contemplate the wonders of human imagination, he will marvel that one century has gained for it so much pomp and reverence. The art of opposition and of revolution is to unsettle established customs, sounding them even to their source, to point out their want of authority and justice. We must, it is said, get back to the original and fundamental laws of the State, which an unjust custom has abolished. It is a game certain to result in the loss of all; nothing will be just on the balance.³⁸

Thus, Martin (1970) rightly interpreted the *Crito* as teaching that the justice or injustice of a law is irrelevant to the question of obedience.³⁹

2. Obedience and “higher” rules

Socrates aspired to develop an original position by dissociating the question of obedience from that of justice. But conflicts between human

³⁸ *Pensées* 56, trans. Trotter, slightly modified. Of course, Pascal goes further than Socrates: he refuses the very possibility of discussing the law. But for Socrates, considering a law unjust, does not in any case justify disobedience.

³⁹ Despite Wade, 1971 and others after him. In order to show the limits of a positivist interpretation based on the *Crito*, Vlastos (1974: 522-3, cf. Stephens 1985: 5-6) took the example of the crisis of Mytilene—when the Athenian Assembly decided to kill all men and to enslave the women and children of the city (before changing its mind the day after)—and wondered what could have been Socrates' attitude if he had been given the “lawful order” to cooperate with the criminal actions of the Athenian empire. Vlastos answered that, *obviously*, Socrates would not have participated in such a crime. We will see later that such imaginary examples are meaningless. In any case, there is no reason to believe that Socrates

laws and higher orders of justice are obvious: they are exemplified in the “divine mission” of Socrates and in the more general issue of non-written laws.

2.1. God’s order and the judges of Athens

On several instances in Plato’s *Apology*, Socrates affirms in front of his judges that he has been given a divine mission. Only one sentence of the *Apology* is actually problematic: when Socrates claims, that, if he was to be released in return for his promise to renounce philosophy, he would answer (Plat. *Ap.* 29d): “*I shall obey the god rather than you.*”

From this short sentence, many commentators regarded Socrates as a precursor to Thoreau, as a defender of civil disobedience.⁴⁰ The text of the *Apology* seems indeed to contradict the one of the *Crito*. One easy solution, acknowledged by different scholars, is to consider only one dialogue as “truly Socratic” and the other as more specifically Platonic. This kind of interpretation evades the problem rather than solve it. Many acknowledge their ignorance while others consider the *prosopopeia* of the laws a simple rhetoric trick adapted to “the simple mind” of *Crito*⁴¹ and

would not have obeyed a law or a “lawful order”. There is nothing surprising here, for this is the *normal* attitude of a citizen in any (democratic) society: even if he does not agree with and try to change a specific law, it does not follow that he is entitled to disobey it. And every day, most of us obey laws or rules, they do not fully agree with. A more relevant, and this time non-fictional, example could be Socrates’ attitude towards Athenian politics: he obviously found unjust the democratic system of elections and lot, he criticised it often, as well as he denied any competence to the great leaders of his city, but he always fulfilled his duty as a citizen at the Assembly when laws required him to do so (Xen. *Mem.* I, 1, 18, Plat. *Grg.* 474a, *Ap.* 32b, Diod. Sic. XIII, 620...). Of course, by taking such an extreme and criminal example as Vlastos does, one can show the dangers of the ideology of legal positivism *in itself*. But, it is one thing to denounce the criminal consequences of a theory, and another to refuse it as a Socratic view on that sole ground. Finally, it is necessary to ask for whom is such an order obviously unjust, if not for Vlastos and his contemporary readers? And to wonder, with Pascal, if in imagining the “perfect” attitude of Socrates in such situations, one does not make Socrates obey the justice he imagines, or wishes Socrates to resemble the virtuous man he imagines.

⁴⁰ For example, Barker, 1951: 112; Sinclair, 1953: 92; Gulley, 1968: 175-7.

⁴¹ *Crito* is then considered a simpleton, unable to understand anything of Socratic thought. At best, the *prosopopeia* of laws would be an “adaptation”

turn the obedience defended by Socrates into an argument *ad hominem*. But one can take the two texts equally seriously and accept that the *Crito* admits the possibility of such disobedience.⁴²

The contradiction may initially be solved if one remembers that a decision of the court prohibiting the practice of philosophy would have been illegal: the trial of Socrates is, indeed, an ἀγών τιμητός, a specific institution of the Athenian judicial system, in which the penalty is not predetermined by law.⁴³ The jury had initially to decide on the culpability of the defendant. If he was found guilty, the jury had to choose between two penalties, defined beforehand: the one required

of Socratic ethics, according to more traditional premises accepted by *Crito*, in order for Socrates to justify his choice not to escape (for example, Young, 1974; Weiss, 1998; Harte, 1999 and Colaiaco, 2001). That would make, so to speak, of the *Crito* a pure rhetorical artifice. Colaiaco, 2001: 191: "... this rhetorical argument, which constitutes the second half of the *Crito*, should not be interpreted as the view of the historical Socrates. Indeed, to accept literally the argument for absolute obedience presented by Plato's Socrates is to destroy the integrity of the historical Socrates." Similarly, Allen, 1972 stresses the rhetorical character of much of the *Crito*. In defense of *Crito* himself, see Brickhouse and Smith, 2004: 196, and of the speech of the Laws see Dasti, 2007. This kind of interpretation has the unfortunate consequence of making Xenophon as stupid as Plato's *Crito*, for he clearly took the principle of obedience defended by Socrates seriously.

⁴² The *Crito* / *Apology* opposition gave birth to such an abundant literature that it would be impossible to deal with each specific interpretation in this article. The contradiction has called forth different responses: (a) There is no contradiction in Socratic thought because there is no such thing as Socratic thought. Whether Socrates believed the thesis of the *Crito* or the *Apology* is irrelevant: the dialogues present two different *characters*: Plato had different purposes in mind when writing his dialogues (Grote, 1875: I, 300-2); (b) The two theses reflect Socratic thought but there is no real contradiction, because they apply to different situations, one (generally the thesis of the *Apology*) is limiting the application of the second (Woozley, 1971: 306-8); (c) The two theses reflect Socratic thought and we have to admit Socrates holds contradictory views (Zin, 1968: 28); (d) One must explain the inconstancy relatively to Socrates' audiences and purposes in the two dialogues (Young, 1974)—there is no contradiction: the discourse of the Law is entirely ironic (Miller, 1996). Those different points of view have been defended with more or less success in recent publications.

⁴³ On the trial and the accusations, see Hansen, 1995; Brisson, 2001 or Brickhouse and Smith, 2002; on the general issue of the trials of philosophers: Derenne, 1930 or Dover, 1975.

by the accuser and the other suggested by the defendant. The indicter did not have the right to change its requisitions and the jury could not impose another sanction. Thus Socrates never could have been subjected to such a choice: to die or to renounce philosophy.⁴⁴

But this answer is not fully satisfying: such an interpretation limits the justification of Socrates' claim for disobedience not only to a specific kind of trial (where the penalty is defined in advance), but to a specific case or moment of the trial (where another penalty had already been required and cannot therefore be changed). It implies thus that if the indicter had required beforehand the prohibition of philosophy rather than death, Socrates would have been obliged to comply. It is also worth noticing that if the basis of disobedience in the *Apology* resides solely in such a procedural defect—which has nothing to do with his mission to practice philosophy—he would have been as justified to disobey any other injunction of the court in a similar situation (no matter if the god ordered him otherwise or not). Thus, this solution appears at the same time too broad—it may apply to any penalty—and too narrow—but only at a specific time on that specific kind of trial.

It is true however that Socrates does not, in the *Crito*, oppose two systems of values, but *one* hypothetical *injunction* of the court and *one* (personal) *divine order*: to practice philosophy. To see in the *Apology* a conflict between *jus naturalis* and positive law is betraying the text: what is important here is not so much the divine origin of the order as its content: the practice of philosophy.⁴⁵

⁴⁴ See Brickhouse and Smith, 1984b and 1985, and discussion in Colson, 1985.

⁴⁵ In the *Apology*, Socrates does not mention *divine laws*. One could certainly insist on the divine origin of his very personal mission. In this case, it should be accepted that Socrates truly feels invested with a mission by an external power, that he “heard voices”—which, after all, is historically possible, but does not appear to be the object of Plato's report. One might ask the following question: if the god had enjoined Socrates to write poetry, and the judges (legally) prohibited it, what would the philosopher have done? According to my interpretation—if it is the content of the order of the *Apology* that justifies disobedience—Socrates would obey the judges; but if it is the divine origin of the order which matters and not its content, he should obey the god. But this second interpretation faces a textual problem: the text does not say that the philosopher will choose the god *on any occasion*, but only poses—and still as an assumption—the question of the practice of philosophy: it does not even suppose the possibility of another

For Socrates indeed, the practice of philosophy is a necessary requirement to the practice of the true political art. He states it explicitly in the *Gorgias*, where he opposes the practice of “legislative art”—which is here precisely philosophy—to Sophistic, which is only a flattery disguised in politics (Plat. *Grg.* 463e-466e).⁴⁶ The same identification of true politics with philosophy is expressed later, in the same dialogue, in a more provocative way (521d): “I think I am one of few, not to say the only one, in Athens who attempts the true art of statesmanship, and the only man of the present time who manages affairs of state.” This strange conception of politics, the politics of a private man—“a man who really fights for the right, if he is to preserve his life for even a little while, must be a private citizen, not a public man” (*Ap.* 32a)⁴⁷—also determines Socrates’ attitude towards the State and the laws.

Thus, for Socrates, prohibiting philosophy amounts to foreclosing the possibility of a true practice of politics, i.e. any real discussion on (one could say “with”) the laws of the city. Now, one of the explicit conditions of the *Crito* was to give citizens—who subject themselves freely to the laws—the possibility to “show [the city] by persuasion what is really right” (Plat. *Cri.* 51c). Only with philosophy can this goal be

opposition between a divine and a human order. It seems more relevant to insist on the content of the order than on its origin. The problem is slightly different if one accepts the seriousness of the divine order (in defense of that thesis: Brickhouse and Smith, 1984a). But, in that case, one should accept Mulgan’s conclusion. Mulgan (1972: 210-1) considers that there is no reason to believe that Socrates does not really think that the divine order was actually divine, nor to see in the oracle of Delphi, an expression of its “conscience”—and I agree with him against a psychological interpretation of the *daimon*. From those premises, and his own analysis, Mulgan draws the only possible consistent conclusion: that Socrates regarded himself as a “single” specific case, and that the argument that he develops in the *Apology* is of worth only for him.

⁴⁶ The *Gorgias* may seem a late dialogue to demonstrate the view of the historical Socrates, but it is clear that the practice of philosophy appears as a necessary condition of a true practice of politics (as it implies a knowledge of Justice) in different Socratic texts: (Ps.?) Plat. *Alc. I* 132b, 134b-c; Xen. *Mem.* I, 6, 15; II, 1, III, 6, 2; III, 7, 6-9; Aeschines of Sphettos *SSR VIIA* 41-54.

⁴⁷ On this Socratic conception of a “private” politics, see Guthrie, 1997: 96-7; Coby, 1987: 181-7; Brickhouse and Smith, 1994: 139; Yunis, 1996: 154 and 121.

achieved.⁴⁸ The solution thus appears simple and there would be no conflict between the *Apology* and the *Crito*. The prohibition of philosophy could only emanate from a tyrannical power, from a city that does not respect the contract described in the *Crito*.⁴⁹ Thus Socrates justifies, on a legal ground, disobedience, not only for himself who received a divine mission, not only in the specific case of his trial, but for any men facing the iniquitous injunction to cease the practice of philosophy.⁵⁰

⁴⁸ To be more accurate: (a) only with philosophy can one discover what is truly right; (b) only with philosophy can one truly persuade the laws, according to the Socratic principle that “true” persuasion involves a knowledge of the object discussed (see for example *Prt.* 312d-e, *Grg.* 449-451).

⁴⁹ In the *Memorabilia* (I, 2, 31), Xenophon relates that the Thirty had indeed prohibited “to teach the art of words” (ἐν τοῖς νόμοις ἔγραψε λόγων τέχνην μὴ διδάσκειν). This passage is to my knowledge the only testimony on the existence of such a “law.” The fact may be true but the explanation of Xenophon is doubtful: according to him, the ‘law’ was explicitly directed against Socrates (which would make it illegal anyway: *And.* 1.87), and originated in Critias’ desire for personal revenge. It is more likely that the decree was aimed at all Sophists and orators. In Xenophon, Socrates does not answer that he does not “teach” (διδάσκειν) anything. Charicles came to see Socrates with a decree to forbid him “to speak with young people” (*Mem.* I, 2, 33: τοῖς νέοις ἀπειπέτην μὴ διαλέγεθαι). Socrates answers that he is ready to obey but requests explanations “not to violate the laws by ignorance.” He thus manages to ridicule the decree, by showing that it is at the same time stupid and unpracticable: he asks, for example, to specify the limit legal age of his interlocutors, or if it would be possible for him to talk to a young man in order to buy goods at the *agora*... etc. Socrates makes a fool of his interlocutor, while trying to “understand” the order, but he does not say at any moment he will disobey.

⁵⁰ To summarise: according to the interpretation based on a procedural violation (*supra*), Socrates would claim: (i) I am entitled to disobey, for *this* court cannot impose (on me or anyone else in the *same* situation) *any penalty* other than the one which has *already* been fixed beforehand. According to the ‘divine’ interpretation (*supra* n. 45), Socrates would claim: (ii) I am entitled to disobey, for *no* court can *at any time* pronounce a ruling against *whatever* the god told *me* to do. According to my interpretation, Socrates claims: (iii) I am entitled to disobey, for *no* court can *at any time* forbid *any man* to *practice philosophy*. In other words, (i) justifies disobedience to any sentence other than the one required by the indictor in an ἀγών τιμητός; (ii) justifies Socrates’ (and only Socrates’ or maybe the one who received a similar divine mission) disobedience to any order contrary to the will of the gods; (iii) justifies disobedience to any state authority issuing a prohibition of philosophy.

That is precisely why the main part of the *Apology* tries to justify, not the acts of Socrates himself, but essentially the practice of philosophy. For those reasons, topics expected—or perceived—by most contemporary commentators (conflict between positive law and divine order, problem of civil disobedience and right of resistance) are not crucial in Socratic thought. This thought is still eminently political: through this defense of philosophy and not of an individual man, it is the well-being of the entire community which is at stake in the *Apologia* and not the revolt of an individual against an authoritarian State.⁵¹

2.2. Human laws & non-written laws

But, though he advocates an absolute obedience to the laws of the city, Socrates seeks what the “good laws” are. He believed that if justice was to be found, it should be looked for on higher standards: justice is not necessarily expressed in the legal institutions of the city, but is “inscribed” in the order of nature.⁵²

In the *Memorabilia*, as well as in the final part of the *Crito*, Socrates calls upon higher laws. But the texts evoking those non-written laws are surprisingly short: hardly an allusion in Plato⁵³ and only a few paragraphs out of the twenty that constitute the dialogue with Hippias in the *Memorabilia*. The lack of articulation between the discourses on positive and non-written laws is even more surprising.

⁵¹ Strauss (1989: 61-2), for example, describes most ancient political texts as “attempt[s] to supply a political justification for philosophy by showing that the well-being of the political community depends decisively on the study of philosophy” (cf. Strauss, 1959 and 1983). The “defence” of Socrates is a perfect illustration of that thesis. One can find a similar idea in Coby (1987: 180): “Political philosophy refers here to the relationship between philosophy and politics, and not to any specific set of conclusions about the nature of political life. That relationship, to put a finer point on it, concerns the philosophical study of politics and the status of the philosopher in the city.”

⁵² In the *Gorgias*, *Respublica*, *Theaetetus*, *Leges*. Plato’s vocabulary could be confusing. For example, in the *Gorgias* (505d), one can find this paradoxical statement of Socrates that the natural order of human soul is called “law” (νόμος) or “just” (δικαίον).

⁵³ In the early dialogues, see *supra* n. 18 for the *Laws*.

In the *Memorabilia*, the mention of natural laws even appears as a disruption in the course of the dialogue.⁵⁴ After Socrates tried to convince Hippias that justice consists in obedience to the laws of one's city, he asks him abruptly (IV, 4, 19): "Do you know what is meant by 'unwritten laws,' Hippias?" Socrates does not even try to account for their relation to human laws. Admittedly, he describes the main features of those "non-written laws" (IV, 4, 19: ἀγράφους νόμους): they are made by the gods (θεοὺς), they are universal (IV, 4, 20: πανταχοῦ) but non-necessary (IV, 4, 21): one might transgress them, but they "involve in themselves punishment meet for those who break them" (IV, 4, 25). Their specificity is their perfection: the gods necessarily do what is good and right and one cannot escape the punishment that their transgression involves. But singularly, Socrates' point in this dialogue is not at all to exhort to seek those higher rules. If Socrates addresses Hippias—advocate of natural laws—this way, it is *only* in order to show him that the Just (δίκαιον) is the Legal (νόμιμον), as natural law is precisely the νόμος, the legal system, of the gods (IV, 4, 25)!

In the *Crito*, those higher rules are simply alluded to as the "laws of Hades." Plato makes it clear that they have a "kinship" (54c: ἀδελφοί) with human laws, but he does not clarify further what could be their connection. Perhaps one should understand that, in the same way that men are related to the gods and must seek to develop that kinship by the use of reason, human laws, when they are rightly-framed, tend towards those of the gods. One could also compare the link between human laws and divine laws to the one described in several instances by Plato between ἀρετή ("true" virtue) and δημοτική ἀρετή ("popular virtue"). The latter is certainly not the true virtue "of divine essence", made of "reason and philosophy", but coincides with a political virtue ("δημοτικὴν καὶ πολιτικὴν"), made of habits and exercise ("ἔθους τε καὶ μελέτης"). It is assuredly imperfect, but still necessary to the

⁵⁴ This is a difficult dialogue in which neither Socrates' nor Hippias' arguments are clearly expressed and which has recently attracted the interest of different commentators: Morrison, 1995; Buzetti, 2001; Dorion, 2001; Johnson, 2003; Gray, 2004; Stavru, 2008; Danzig, 2009; Dorion, 2010. The details of those discussions are however unnecessary for the simple point I want to put forth here.

existence of a political community.⁵⁵ But, none of those interpretations is explicitly supported by the text. As in Xenophon when he faces Hippias, it is *only* in order to convince Crito that the decision of the court must be accepted that Socrates states that “the laws in Hades’ realm will not receive graciously” (54c) those who tried to destroy their human “brothers.”

Thus, it appears that Socrates’ purpose in introducing higher laws is not to discover in them what should be the prescriptions of the “good laws” or a sure foundation to the laws, but only to establish firmly the principle of obedience, which is the common principle to both. Twice in the *Memorabilia*, Socrates states that the first order of the oracle of Delphi is: “Obey the laws of your city.”⁵⁶ Lévy (1976: 185), was right to emphasise the issue of “obedience” rather than the one of “justice” when describing the relation between human and divine laws in the *Crito*: “obedience” to the laws of the city is (to Socrates) “in some way preparatory to obedience to [those] true laws (en quelque sorte préparatoire de l’obéissance [à ces] vraies lois).”

For Socrates, obedience is not a relative value, but an absolute one: it is not to be judged in respect of what is obeyed, but is *in itself* a good. It is precisely for that reason that Xenophon’ Socrates praises Lycurgus: *not because he promulgated just laws* in Sparta, but because he established firmly *the principle of obedience* in the mind of its citizens (*Mem. IV, 4, 15*).⁵⁷

3. Conclusion. The Tragedy of Socrates

Socratic thought is of a remarkable originality. While asserting the existence of higher non human laws, besides the laws of the city,

⁵⁵ Plat. *Phaedo* 82a-b; cf. *Resp.* 500d. One could say with Bostock (1990: 20) that the laws are not perfect but, as no one possesses true political virtue, they are the best “experts” in political matters available to us.

⁵⁶ *Mem.* I, 3, 1 and IV, 3, 16. Though the insistence of Xenophon may be motivated by his desire to rehabilitate Socrates’ reputation by portraying him as a law-abiding citizen, it is nonetheless the *only* general rule of divine origin in all the Socratic’s texts.

⁵⁷ The importance of obedience is not unique to Socrates but is constant in Greek thought and is clearly expressed in the concept of *eunomia* (often translated mistakenly as good government). 4th century philosophy still emphasises this notion. For Aristotle (*Pol.* IV, 8, 1294a), *eunomia* “consists first in the laws being obeyed”, and then only, “in the laws being well enacted.”

Socrates does not make one order prevail on the other, because his first priority is to avoid hazardous Sophistic conclusions: to choose human laws over the gods' ones rules out the possibility of a true Justice; to defend natural laws over the laws of the city ruins, or at least weakens, the principle of obedience.

This principle is discussed in Plato's dialogues, but mainly through a reflection on the nature of law and on the conditions of legality: obedience is due to the law, but to the law only, not to decrees, administrative rules, judicial rulings, which could be contrary to the law. A law cannot emanate from a tyrannical power. A legal system must always give the citizen the freedom to leave his city and the right to discuss the law (or "with the law"), that is, ultimately, the right to practice philosophy. If those conditions are fulfilled, it is the ineluctable duty of the citizen to obey the laws: all laws and not only the ones that he arbitrarily feels fit his subjective conception of what is good. These reflections seemed first to get rid of the question of the justice of laws. But the constant and always renewed questioning of Socrates on the nature of justice and the fact that he admits, though without any clear contents, a system of right (divine or natural) higher than the laws of the city which should also be obeyed, leaves him in an ambiguous situation.

His position could indeed appear weak or inconsequent: admittedly, human laws—especially for Socrates, those of Athens that he often criticised—are not perfect and, theoretically at least, could be in opposition with divine or natural laws. Thus, to understand, or rather *guess*—for Socrates does not claim to know what justice is—what *could* have been Socrates' attitude regarding a possible conflict between human laws and divine justice, scholars had no other choice but to put him in imaginary or anachronistic situations. But those *fictions* try to answer a question that is not even hinted at in the Socratic texts. Ultimately, this attitude amounts to the view that neither Plato nor Xenophon were able to perceive such an obvious issue and that it was *involuntarily* that they omitted it. And because those thought experiments are applied not to a general philosophical issue, but to a historical one (not "what is or should be the right attitude?" but "what *could have been* Socrates' attitude?"), they are always at risk leading the scholar to find in Socrates'

attitude and thought a logical consistency and a virtue adapted to the *doxa* of the scholar's time or to his own ethical standards.⁵⁸

Rather than wondering what could be Socrates' position in such or such circumstances, we shall rather admit the surprising fact that there is no example of a conflict in any of Plato's or Xenophon's texts, assume that this absence is *wilful* and thus try to understand the meaning of this omission rather than fill in the blanks with our own preconceptions. That the omission is voluntary, there can be no doubt: Socrates and his disciples could not but be aware of a potential opposition between divine and human laws: the possibility of conflict is undeniable and a perfect example could be found in Socrates' contemporary play of *Antigone*.

It is another imaginary commonplace to compare Socrates (in the *Apology*) to the character of Sophocles, by portraying the philosopher as a resistant to the "authoritarian" regime of the Athenian democracy. But Socrates is not Antigone, nor was Athens a tyranny. The analogy with Antigone could however be of use, if we do not simplify the complexity of both the *Antigone* and Socrates' trial. Hegel showed the true meaning of the tragic character of the *Antigone*: not a confrontation between good and evil but a conflict between two equally justified goods. He believed he could apply this idea to Socrates' life:

The fate of Socrates is hence really tragic, not in the superficial sense of the word and as every misfortune is called tragic. [...] In what is truly tragic there must be valid moral powers on both the sides which come into collision; this was so with Socrates. His is likewise not merely a personal, individually romantic lot; for we have in it the universally moral and tragic fate, the tragedy of Athens, the tragedy of Greece. Two opposed rights come into collision, and the one destroys the other. Thus both suffer loss and yet both are mutually

⁵⁸ *Supra* n. 39 for the example of Vlastos. Vlastos' article "Socrates in Vietnam" (Vlastos, 1994: 127-133), where the author regrets that Socrates would have been a "greater and better man, wiser and *more just*" (Vlastos emphasises) if he had strongly manifested his disagreement during the crisis of Mytilene, like the American campuses during the Vietnam War, is also characteristic of such a way of thinking. One could also think of comparisons between Socrates and Thoreau (Anastaplo, 1975) or Socrates and Martin Luther King (West, 2000). For Socrates and Antigone, see Colaiaco, 2001.

justified; it is not as though the one alone were right and the other wrong.⁵⁹

For Hegel, the trial of Socrates illustrates the tragic conflict between “the Spirit” of the Athenian People and Socrates, figure of “subjective morality being born.” But Socrates does not oppose the “objective morality” of the Athenian State, which, on the contrary, he had perfectly integrated, more than any of his fellow-citizens. And we should rather say that the conflict is present in Socrates’ thought, in Socrates himself, when he admits simultaneously two distinct orders which both require obedience.

The fact that there is no solution to a (*hypothetical*) conflict between human and divine laws, but only an *aporia*, is neither surprising nor inconsistent *from a Socratic point of view*. Whereas the Sophists emphasised oppositions and excelled at manipulating contradictions, it is a general characteristic of Socratic philosophy to deny the possibility of a conflict of values. The most obvious example of this Socratic denial appears of course in the thesis of the unity of the virtues: the just cannot not be brave, pious, temperate and wise (Plat. *Grg.* 507a-c). It is partly from this constant, though unstated, Socratic hypothesis—that two equally good things cannot be opposed—that most of the paradoxes and *aporias* of the first Platonic dialogues spring. Justice and laws are not exceptions: how could a just man be at the same time a disobedient—thus a bad—citizen?⁶⁰ It is that same denial of the tragedy of life that partially explains the absence of serious discussions on natural and human laws in Plato’s or Xenophon’s dialogues: for Socrates, there cannot be any opposition between two good things, there should not be any *dissoi logoi* on justice, or at least on obedience. This does not mean that Socrates is holding conflicting beliefs, which would require from him contradictory actions and would thus make him “out of tune” (*Grg.* 482b-c; *Lach.* 193d-e), or that he admits an *aporia* built into the very nature of moral values. His conviction that moral values do not conflict drives him to further the search for justice, but with one starting premise: justice prescribes

⁵⁹ *Vorlesungen über die Geschichte der Philosophie*, Griechische Philosophie, Sokratiker, tr. Haldane 1892-6, modified.

⁶⁰ This is a common Greek interrogation; Aristotle will have to deal with that same problem—the good citizen and the good man—in several passages of his *Politics* (see VI, 5, 1293b1-5).

obedience to the laws of one's city—the only thing that Socrates claims to know for certain about divine laws. To question the obedience to the laws to which the city itself owes its very existence is not the way to find justice; on the contrary, "it is a game certain to result in the loss of all" (Pascal, *Pensées*, 56).

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