

SOCRATES ON JUSTICE AND LEGAL OBLIGATION

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Socrates lives in history partly because he gave his life for the conviction that duty of obedience to secular law does not presuppose consent to its enactment or belief in its virtue.

—Justice Frankfurter¹

The lesson of Socrates is perplexing, as his actions are exemplary both of archetypal civil disobedience and consummate civil obedience. The incident is well-known and simple. Socrates, a teacher, was charged with crimes against the city.² At trial, he admitted the facts of the allegation, yet denied the criminality of his conduct.³ He was motivated in his actions by justice.⁴ He was found guilty and sentenced to death.⁵ While in prison, a friend tried to persuade him to escape and thereby avoid punishment. Socrates refused and submitted to the city's sanction.⁶

The *Apology* is Socrates' defense before the Athenian court; the *Crito* contains the discussion of his rejection of escape. It has been argued that the character of the individual's obligation to the law differs between the dialogs and is in fact inconsistent.⁷ It has been

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¹ West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624, 655 (1942) (Frankfurter, J., dissenting). *Barnette* was a first amendment challenge to a school's flag salute requirement; the liberty to abstain from such a ritual was upheld, not on the basis of freedom of religion, but rather on grounds of freedom of expression. *Id.* at 624 (Jackson, J.).

² See *Apology*, 24 b-c, 26 b. Socrates was accused of corrupting the youth and teaching false gods. *Id.* In the course of his defense, he debunked these charges as both fraudulent and inconsistent. See *id.* at 24 d - 27 d.

In this paper, citation to the Platonic dialogs is in standard form, that is, according to the pagination of the 1578 Stephanus edition. Quotations are taken from E. HAMILTON & H. CAIRNS, *THE COLLECTED DIALOGUES OF PLATO* (1961), which includes both the *Apology* and *Crito*, translated by Hugh Tredennick. For a discussion of the Socratic source problem, see note 9 *infra*.

³ *Apology*, 26 a.

⁴ See notes 41 & 46 *infra* and accompanying text.

⁵ *Apology*, 36 a & 38 c-d.

⁶ *Crito*, *passim*. Execution was via forced suicide, by drinking hemlock. See *Phaedo*, 117 e - 118 a.

⁷ See, e.g., I G. GROTE, *PLATO AND THE OTHER COMPANIONS OF SOCRATES* 428-29 (1888). Grote's position is that Plato wrote the *Apology* as a true apologetic, merely to defend Socrates against the charges of having been arrogant and having placed himself beyond the law. *Id.* The

further argued that, to the extent that Socrates accepted the sentence in his trial and refused to escape, he took a position that the duty to obey law is absolute, and that it mattered not whether the particular law be just or unjust.⁸ The overall coherence of the Socratic theory⁹ of the nature of legal obligation has consequently been doubted.¹⁰ This article, in providing an account of Socrates' treatment of the matter of legal obligation, will show the misunderstanding of these interpretations. An effort will be made to reconcile the accounts given in the *Apology* and *Crito*, first by distinguishing the contexts in which the issue is raised in the two dialogues, and then by providing an account of a unifying principle underlying the different results in the two instances.¹¹ An examination of Socrates' notion of legal obligation

result in the *Apology* is compared with an interpretation of the *Crito*, that the obligation to obey the law is qualified only by the vocation to philosophy. See Young, *Socrates and Obedience*, 19 *PHRONESIS* 1, 29 (1974).

⁸ E.g., Martin, *Socrates on Disobedience to Law*, 24 *REV. Metaphysics* 21 (1970). Martin concludes that Socrates

argued that all laws should be obeyed (not, of course, obeyed when they are unjust *because* they are unjust, but in spite of their being unjust). They are to be obeyed simply because they are duly enacted laws. So it would appear that the question whether a law should be obeyed is not to be answered with regard to whether it is just or unjust. That consideration is ultimately irrelevant.

Id. at 37-38. It will be argued in this article that this conclusion is based on a fundamental misreading of the *Apology* and the *Crito*.

⁹ In this paper it is assumed that the *Apology* and *Crito* are approximate statements of Socrates' actual position; thus are ignored considerations of the biographic accuracy of the historic Socrates and the relationship of the *Apology* and *Crito* to the remainder of the Platonic corpus. See generally, e.g., Chroust, *Socrates—A Source Problem*, 19 *NEW SCHOLASTICISM* 48 (1945). This is a traditional and accepted reading. The early dialogues—which include the *Crito* and *Apology*—are thought to be transcriptions of incidents in Socrates' life by his student, Plato. Later dialogues such as the *Republic* or *Symposium*—which also feature Socrates as a character—are thought to represent the mature thought of Plato himself, with little basis in historical fact.

¹⁰ This is, for example, Martin's conclusion. Martin, *supra* note 8, at 38. Accord, D'Amato, *Obligation To Obey The Law: A Study Of The Death Of Socrates*, 49 *S. CAL. L. REV.* 1079 (1976).

¹¹ One effort at such a reconciliation is to draw a distinction between a law in general and the law as applied. The argument is made that the only issue is whether the law in general is just; if so, it must be obeyed. While the particular application may be unjust because of the failings of the humans in whose hands the law is placed for administration, such failings are to be expected, and any concomitant injustice in administration will not serve as a basis for disobedience. See Hall, *Plato's Legal Philosophy*, 31 *IND. L.J.* 171 (1956). Hall notes that

[t]he gist of Socrates' position comes to this: Athenian law is right law.

But the specific application of such law to human affairs, the administration of law, the decisions and sentences are sometimes erroneous and, therefore, unjust. But since laws are applied only in particular decisions, those judgments must be obeyed even if they are unjust. Any other view leads to anarchy.

Id. at 173.

will reveal further that he did not require one to act on an unjust law.¹² Rather, a complete and coherent paradigm of the relation between the individual and the law can be delineated.¹³

In the *Apology*, Socrates admitted to three instances when he would not or did not obey a law or follow a command. Firstly, he indicated that he would not stop teaching philosophy even if ordered to do so as a condition for his release.¹⁴ Secondly, he acknowledged that he had refused to agree to a mass trial for ten commanders who had failed to rescue their men lost in a naval engagement, even though the leaders in Athens were ready to denounce and arrest him for his opposition.¹⁵ Thirdly, he refused to follow the instruction of the Thirty Commissioners who ordered him to bring Leon of Salamis from his home for execution.¹⁶ In the *Crito*, however, Socrates was adamant in his refusal to breach what he viewed as his legal obligation to accept the judicially imposed sentence of death by escaping from prison, even though he had been unjustly convicted.¹⁷ While Socrates seems to have taken a position of subjectively selective obligation to the law without any principle of choice, an examination of each instance wherein the issue was raised will reveal not only a factual ground for reconciling any apparent inconsistency but will

This effort at reconciliation must, however, be rejected on three grounds: it misconstrues the nature of law and the function of law in Athenian courts, it fails to account for the specific instances raised in the dialogs, and it fails to provide a coherent guide for human conduct according to an ideal of justice requiring one to do no wrong.

¹² See, e.g., Wade, *In Defense Of Socrates*, 25 REV. METAPHYSICS 311 (1970). Father Wade's article was in response to Martin, *supra* note 8.

¹³ It has been argued that Socrates' theory is coherent only within his own cultural context, and not generally applicable to society and more particularly, most emphatically inapplicable to contemporary society. E.g., James, *Socrates On Civil Disobedience*, 11 S.J. PHILOSOPHY 119 (1973). James reasons that

[Socrates'] arguments are cogent only within his own cultural framework. Athens was a small, close-knit society, not far removed from tribal origins, with citizenship based on kinship. Socrates' attitudes toward the state, therefore, were quite different from our own. It was natural for him to think of the state as prior to, and more important than, the individual. We cannot think of the state in either of these ways.

Id. at 126.

The position taken in this paper is that Socrates' theory of legal obligation was not only cogent but coherent; moreover, it is asserted here that the theory propounded by Socrates is not limited to any particular cultural or political context.

¹⁴ *Apology*, 29 c-d, 30 c. See note 22 *infra* and accompanying text.

¹⁵ *Apology*, 32 b.

¹⁶ *Id.* at 32 c.

¹⁷ E.g., *Crito*, 54 d. Socrates finally concluded discussion of the point by saying simply, "as my opinion stands at present, it [is] useless to urge a different view." *Id.*

also provide a basis for developing a general principle which underlies Socrates' behavior.

Socrates described an incident which occurred during his term on the Council of the City of Athens. A proposal had been made to try en bloc ten military officers who had failed to rescue their men following a naval action.¹⁸ Socrates admitted that he was the only member of the executive group who had insisted that such a mass trial was unconstitutional, and hence illegal, and so had voted against it. While this action by Socrates generated some popular opposition and caused the leaders of Athens to consider denouncing and arresting him, Socrates himself was not involved in any refusal to obey a law or command of a ruler. Socrates argued that he was in fact standing firm in his obligation to the law by maintaining that its procedures be followed and its constitutional requirements met. He summed up his position by observing, "it was my duty to face it on the side of the law and justice rather than support you, through fear of prison or death, in your wrong decision."¹⁹ Thus, Socrates argued that he had acted not only on the basis of justice but also in obedience to law in opposing the illegal action of a mass trial.

Whether Socrates continued to oppose the action of the Council after it proceeded to conduct the mass trial is not known. If he did continue such opposition the matter would be more complex. There would then be questions of whether the Council's action was law resulting from the mere fact that it took a particular action, or whether procedures such as those proscribing mass trials had a legal priority over the particular actions of the Council. If the latter alternative were to hold, then Socrates could continue to oppose the Council's action without violating any legal obligation and indeed would be bound to oppose such a course on the basis of the proscription. If the former were the case, then there would be an issue of whether Socrates' continued opposition constituted a breach of a legal obligation and whether such breach was justified. While these issues cannot be resolved within the terms of the dialog, a consideration of the occasion of the order to arrest Leon of Salamis does provide an opportunity to consider Socrates' opinion on the question of obligation to official action couched in mere commands.

The Thirty Commissioners had "summoned" Socrates along with four other persons and "instructed" them to arrest Leon of Salamis at his home to deliver him for execution.²⁰ The motive of the Commis-

¹⁸ *Apology*, 32 b.

¹⁹ *Id.* at 32 c.

²⁰ *Id.* at 32 c-d.

sioners was suspect, as their effort was probably to implicate as many citizens as possible in their tyranny. Socrates simply did not obey the command and said, "I again made it clear not by my words but by my actions that death did not matter to me."²¹ He made it clear that he regarded the command as "wrong" and "wicked," but did not make it clear whether he regarded the command as proper or as constituting law in and of itself. Questions arise as to whether this command to arrest Leon was made in conformity with necessary procedures. Even if the command had been given in accordance with legal procedures, a question remains whether Socrates as a citizen was legally obligated to perform the arrest. If the command was not lawful or if Socrates was under no duty to carry out the arrest, his action contrary to the command would involve no breach of a legal obligation. But if the instruction or command did constitute a legal order and if Socrates were under a duty to carry out the order, one would need to face the issue of whether such conduct involved a refusal to obey an unjust law. The position taken in the *Crito* must then be considered; this will be discussed below.

In the *Apology*, Socrates discussed whether he would stop practicing philosophy and stop teaching, if so directed by the jury.²² This seems to be a bare refusal to conform to a lawful order, but a very particular context surrounds this defiance. Socrates was actually discussing the issue of whether he would accept a discharge on condition that he stop practicing philosophy, and it was a discharge on such a condition that he refused. It was not an actual offer, but rather a

²¹ *Id.* at 32 d.

²² *Id.* at 29 c-d. This assertion suggests both the vocational aspect of philosophy as well as the abstraction of the philosopher from the conventions of society.

Socrates' famous search for a person possessed of wisdom led ultimately to the oracle of Delphi, who asserted that there was no-one wiser than Socrates. *Id.* at 20 e - 21 a. At first this would seem to indicate that Socrates was the wisest man, *id.* at 21 b, but Socrates denied having any true wisdom. *E.g.*, *id.* at 23 b. Upon finding only arrogant, unrecognized ignorance in his fellow citizens, Socrates concluded that his "wisdom" lay in not having any delusions. *Id.* at 22 d-e. His chore, pursuant to divine mandate, consisted of philosophizing, by which was meant the debunking of false wisdom. *Id.* Cf. *International Harvester Co. v. Ruckelhaus*, 478 F.2d 615, 650 (D.C. Cir. 1973) (Bazelon, C.J., concurring) ("Socrates said that wisdom is the recognition of how much one does not know").

This insight and duty serves to separate Socrates, the philosopher, from the rest of the citizens. As Socrates himself noted, "[y]ou will not easily find another like me." *Apology*, 31 a. The indictment was indeed brought against him in response to his philosophic activities. *Id.* at 23 c-e. *Accord*, *id.* at 30 c-e.

Socrates is consequently referenced as an example of the philosopher, simultaneously divorced from society and immersed therein. *E.g.*, 1 H. ARENDT, *THE LIFE OF THE MIND* 167-71 (1978). This tension between solitude and involvement has been suggested as the core of philosophy. Pruffer, *The Philosophic Act*, 2 INT'L PHILOSOPHY Q. 591 (1962).

hypothetical one.²³ In response thereto, Socrates invoked his greater obligation to God, which in turn had imposed on him the duty to teach and philosophize. "Gentlemen, I am your very grateful and devoted servant, but I owe a greater obedience to God than to you, and so long as I draw breath and have my faculties I shall never stop practicing philosophy and exhorting you and elucidating the truth to everyone that I meet."²⁴ Socrates was, thus, not faced with a need to consider the possibility of disobedience to a law, but rather merely acceptance of a particular condition which might facilitate his release. The question is raised, however, whether Socrates would stop teaching and philosophizing if he had been mandated to do so by a law or direct legal order. Certainly the possibility that he would have refused to obey such an order is suggested.²⁵ This possibility is germane to the view of the obligation of law as unconditional; this too will be discussed below.

In the *Crito*, Socrates considers the obligation to law on the occasion of his friends urging him to escape from prison to avoid the death sentence which had been imposed on him. Socrates framed the issue as "whether or not it is right for me to try to get away from here without an official discharge."²⁶ Socrates was faced with a legal verdict of guilty and a sentence of death imposed in conformity with the legal procedures of Athens.²⁷ While there was a complaint about the injustice of the jury's determination, there is no challenge either to the procedural lawfulness of his trial, or the procedures under which the sentence was imposed.²⁸ Nor were the laws which served as the basis of the indictment criticized in terms of any internal injustice.²⁹ Socrates was squarely confronted with a choice of whether or not to violate the laws of the city for his own benefit by saving his life. While prudential considerations in favor of escape were mentioned and rejected,³⁰ the important issue is whether Socrates was committed to not

²³ *Apology*, 29 c. The verb therein, "suppose," would seem to indicate a subjunctive usage, of a contrary-to-fact suggestion.

²⁴ *Id.* at 29 d.

²⁵ *Id.*

²⁶ *Crito*, 48 b.

²⁷ See *id.* at 50 c, 52 c. See generally Allen, *The Trial of Socrates*, in *COURTS AND TRIALS* 1-21 (M. Friedland ed. 1977).

²⁸ Allen observes that "[n]o irregularity in the proceedings was remarked either at the time or afterward." Allen, *supra* note 27, at 5.

²⁹ "At no point during the proceedings did Socrates deny that corrupting the young was a criminal act punishable by death." D'Amato, *supra* note 10, at 1080. Likewise, Socrates did not deny the propriety of punishing the irreligious.

³⁰ *Crito*, 44 b-c, 45 a - 46 a. *Crito* attempted to point out to Socrates the futility of his death, the ease with which exile could be arranged, and *Crito's* own pain at the loss of a friend. *Id.*

violating his legal obligation even if such violation would have rebounded to his benefit.³¹ The answer given is clearly in the negative. Socrates assented to the proposition that, "[b]oth in war and in the law courts and everywhere else you must do whatever your city and your country command, or else persuade them in accordance with universal justice."³² The question arises whether this obligation is unqualified, and in particular, what the terms of this obligation are. It is further necessary to determine whether the obligation to law is subject to an obligation of justice, and the relation of the duties of justice and law. To answer these questions and to provide a reconciliation of apparently conflicting duties, it is necessary to consider Socrates' conceptions of law and legal duty.

In the *Crito*, Socrates carried on a dialog not only with his friend, Crito, but also an imaginary dialog with the laws of Athens. The sentiments of the laws are generally assumed to have been the view of Socrates himself.³³ On the nature of the law as a directive to the individual for the regulation of conduct, it was noted that "all [such] orders are in the form of proposals, not of savage commands, and we give . . . the choice of either persuading us or doing what we say."³⁴ From this it follows that the obligation to law entails either conformity with its dictates or an effort to persuade those responsible for the laws to change or apply them in accordance with a proffered argument.³⁵ The alternative to doing as the law says is made quite explicit: "if you cannot persuade your country you must do . . .

After principled analysis, Socrates too addressed the possibility of escape, and found it, if nothing else, unworkable for a person of his age and reputation. *Id.* at 53 b - 54 b.

³¹ *Id.* at 48 d. As one writer notes:

By any standards this is a hard case, and one which raises a simple question: Can it conceivably be true that a man ought to abide by his own death sentence, given that the sentence was rendered according to law and that he is not guilty?

Allen, *Law And Justice In Plato's Crito*, 69 J. PHILOSOPHY 557, 558 (1972).

³² *Crito*, 51 c.

³³ See, e.g., J. BURNET, *PLATO: EUTHYPHRO, APOLOGY OF SOCRATES, CRITO* 279-80 (1924).

Burnet observes:

The personification of the Laws [who are of course to be pictured as august *male* figures] allows Socrates to invest the declaration of his principles with a certain emotion. It thus fulfills the same function as the myths of the more elaborate dialogues.

Id.

³⁴ *Crito*, 52 a.

³⁵ See Woolzley, *Socrates and The Law: the Apology and the Crito Again*, 1976 PAIDEIA 103. Woolzley concludes that "[i]n the *Crito* the only permitted alternative to obedience is persuading, or trying to persuade, the authorities that the law in question is in some respect bad." *Id.* at 109.

whatever it orders, and patiently submit to any punishment that it imposes, whether it be flogging or imprisonment.”³⁶ From this it can be seen that an individual faces a choice of obeying the command or of persuading the authorities of the injustice of the command. The term is not “convince” but “persuade”; from the nature of “persuasion” it follows that efforts at persuasion may be either successful or not successful. It is when the efforts at persuasion have not been successful that one must accept the consequent punishment for failure to do what the law commands.

Socrates’ own experience conformed to this mandate. He attempted in his speech to the jury, in the *Apology*, to persuade the jury of his innocence³⁷ and to convince them not to impose sentence on him for his teachings.³⁸ His efforts at persuasion failed and so he was then required to accept the punishment imposed by the court.³⁹ The obligation itself is provided in the alternative: do what the laws say or attempt to persuade the lawful authorities that the laws should be to the contrary, with the consequence of failing to persuade being imposition and acceptance of punishment for failure to do what the law says.

It should not be supposed that the alternative of attempting to persuade can be based on any objection, legitimate or not.⁴⁰ The alternative of persuading the authorities that the law should be otherwise is limited by a standard of justice. This limitation is made clear in the *Apology* where Socrates first noted the overriding criterion to be met in choosing to act in any way, including challenging the substantive content of a legal rule: “[there is] only one thing to consider in performing any action—that is, whether [one] is acting rightly or wrongly, like a good man or a bad one.”⁴¹ Socrates later specifically applied this criterion to determine the appropriate character of efforts to persuade a jury when he concluded that such arguments should be

³⁶ *Crito*, 51 b.

³⁷ See *Apology*, 19 b - 36 d.

³⁸ See *id.* at 35 e - 38 b. This passage was Socrates’ presentation to the Athenian jury after they found him guilty and as they were about to decide his sentence. Socrates’ arrogance in his argument is questionable as a trial tactic; as the punishment should fit the crime, he suggested that he be given a reward, as the improvement of the city was always his goal. *Id.* at 36 c-d.

³⁹ *Apology*, 38 c - 42 a. Accord, *Crito*, 54 b-e.

⁴⁰ Woolzley views the option of persuasion as one requiring very strong moral objection.

[I]f the situation is such that it seems to him that it would be absolutely wrong to behave in the way required by law, e.g., because it is an unjust discriminatory law, then he is not going to see himself as having a problem: the moral claim of the situation is a moral demand.

Woolzley, *supra* note 35, at 105.

⁴¹ *Apology*, 28 b.

rational arguments for justice rather than mere emotional appeals; Socrates reasoned, “[a litigant] ought to inform them [, the jury,] of the facts and convince them by argument. The jury does not dispense justice as a favor, but to decide where justice lies, and the oath which they have sworn is not to show favor at their own discretion, but to return a just and lawful verdict.”⁴²

The relationship of law to justice is not merely one of limits of persuasion, but in fact, justice places the boundaries on what the individual can do in conformity with commands and on the degree to which one can blindly act in accordance with the letter of the law. This is the lesson of the three examples taken from the *Apology* which were discussed above. Socrates was unequivocal that the obligations of justice are prior to those of the law.⁴³ The obligation of justice corresponds to the obligation to the law itself,⁴⁴ even to the necessity of accepting punishment upon the failure of an attempt at persuasion. “[I]t matter[s] all the world . . . that [one] should do nothing wrong or wicked. [A] government [should] not terrify [one] into doing a wrong action. . . .”⁴⁵ In reviewing the three occasions in his life which Socrates felt raised questions of conformity to laws or commands, he made it clear that the ultimate standard for his conduct in both private and public life had always been justice. In the *Apology*, Socrates asserted, “[y]ou will find that throughout my life I have been consistent in any public duties that I have performed, and the same also in my personal dealings. I have never countenanced any action that was incompatible with justice on the part of any person. . . .”⁴⁶ In the *Crito* as well, Socrates maintained that he had to act in accordance with justice. His refusal to escape and his willingness to suffer imposition of his sentence was based not merely on the law but on the fact that the duty to obey the law is rooted in justice. Socrates asked *Crito* rhetorically, “[o]ught one to fulfill all one’s agreements, provided that they are right, or break them?”⁴⁷ Further, “[i]f we leave this place without first persuading the state to let us go, are we or are

⁴² *Id.* at 35 c.

⁴³ *Id.* at 29 d.

⁴⁴ *Id.* at 32 c.

⁴⁵ *Id.* at 32 d. Socrates was, of course, speaking both personally, of how he individually acted, and normatively, of how people in general should act.

⁴⁶ *Id.* at 33 a. Socrates also said:

Do you suppose that I should have lived as long as I have if I had moved in the sphere of public life, and conducting myself in that sphere like an honorable man, had always upheld the cause of right, and conscientiously set this end above all other things? Not by a very long way, gentlemen; neither would any other man.

Id. at 32 e.

⁴⁷ *Crito*, 49 e.

we not doing an injury, and doing it in a quarter where it is least justifiable?"⁴⁸ At the end of the dialog, Socrates, speaking through the voice of the laws, made it clear that both justice and law required that he not escape and that he accept his sentence.⁴⁹ Justice is prior to the law in that its claims prevent one from acting improperly even if commanded to do so by public authority. Simultaneously, justice is the foundation of law and gives laws and lawful commands their binding character. It is necessary to determine the manner in which the laws obtain their binding character, to in turn determine whether Socrates had a complete and coherent theory of law and legal obligation.

Socrates, speaking through the laws, did attempt to provide a theoretical basis for legal obligation in the *Crito*. The *Crito* can be viewed as providing three principal bases for concluding that one is obligated to obey the law; these are the argument from injury,⁵⁰ the argument from agreement,⁵¹ and the argument from piety.⁵² Each of these arguments have been subjected to critical study by commentators with the result that some commentators find one argument more convincing than others,⁵³ while other commentators find no one of the arguments a sufficient basis for concluding that law impairs a binding obligation.⁵⁴ Rather than viewing each of these arguments as an independent basis for legal obligation, it is the present contention that

⁴⁸ *Id.* at 49 e - 50 a.

⁴⁹ *See, e.g., id.* at 54 c.

⁵⁰ *See Crito*, 49 a-c.

⁵¹ *See id.* at 49 c - 50 d.

⁵² *See id.* at 50 d - 51 d.

⁵³ *See, e.g., Allen, supra* note 31. Allen views Socrates' theory of legal obligation as based on the argument from injury. Nevertheless, the injury at issue is seen to arise from breach of the agreement which is the basis of civil society and which is supposed by the obligation to act justly. Allen sees the arguments of Socrates as principally limited to those of injury and agreement: "[t]he two premises on which the argument of the Laws turns are that it is wrong to do injury or return it, and right to abide by agreements, given that they are just." *Id.* at 565. The argument from agreement, however, might be seen as derivative of the argument from injury. Allen writes, "[a]greement, then does not serve as an independent ground for refusing to escape: it is rather an essential link in a concatenated argument which rests on the primacy of justice." *Id.* at 563. He concludes "that this argument is not primarily contractual, but delictual: its gist lies, not in breach of agreement, but in claim of injury." *Id.* While it is the view of this article that the obligations of justice underlie the whole inquiry by Socrates, and while it is admitted that the arguments are interrelated, it is further asserted that the arguments from injury, agreement, and piety each make independent contributions to the theory of legal obligation and that without the contributions of each argument the theory is neither complete nor coherent.

⁵⁴ *See, e.g., Martin, supra* note 8. Martin maintains that the three arguments of agreement, injury, and piety lead to a conclusion that all laws must be obeyed. This conclusion he objects to in the face of the possibility of unjust laws, and so he argues that Socrates has failed to establish a principled basis for any obligation to law. Martin begins by claiming the following: "[i]t should be noted, first, that in none of the three arguments for obedience to law—(1) injury to the Laws and the commonwealth, (2) the 'agreement' with the Laws, and (3) piety to the state parent—

the three arguments jointly give rise to an obligation to obey the law when taken against and qualified by the fundamental obligation to act justly. The argument from justice is of course prior to the other three arguments, and is infused within the terms of the other three arguments. Limits are also set on the implications and consequences of conclusions reached within each of the arguments from agreement, injury, and piety.

In the *Crito*, Socrates began his discussion of legal obligation by stating that the standard for establishing such an obligation is not popular opinion but rather the rule of justice, the criteria of "right" and "wrong"; "what we ought to consider is not so much what people will say about us but how we stand with the expert in right and wrong, the one authority, who represents actual truth."⁵⁵ With reference to the specific factual issue under consideration, that is, whether he should have escaped from prison without an official discharge Socrates concluded that "[i]f it turns out to be right, we must make the attempt,"⁵⁶ however, "[i]f it becomes clear that such conduct is wrong, I cannot help thinking that the question whether we are sure to die . . . ought not to weigh with us at all in comparison with the risk of doing what is wrong."⁵⁷ Ultimately then, the nature and limits of legal obligation will not rest directly on any utilitarian ground but on the basis of justice itself.⁵⁸ Nevertheless, while it may be asserted that justice requires obedience to law, it is not clear on the face of the assertion why this is so. Further inquiry must be made into the ethical basis of legal obligation and the moral consequences of disobedience of just law.

Obligation to law initially grows out of one of Socrates' moral postulates, mainly, that "one ought not to return a wrong or an injury to any person whatever the provocation is."⁵⁹ There is a tautological quality to this postulate since in the *Apology* a just man by definition

did Socrates or the Laws assert that they applied only to just laws." *Id.* at 37. This leads to his assertion that "the three arguments hold true for all laws—both just and unjust," *id.*, and to Martin's ultimate doubt of any viable Socratic theory of legal obligation. *Id.* at 38. Such a reading fails to note the overriding obligation to do justice, and further the internal qualification of justice in each of the arguments.

⁵⁵ *Crito*, 48 a.

⁵⁶ *Id.* at 48 c. *Cf. id.* at 46 b-c (consideration of escape rather than outright rejection).

⁵⁷ *Id.* at 48 d.

⁵⁸ See also Woolzley, *Socrates on Disobeying the Law*, in *THE PHILOSOPHY OF SOCRATES* 299-318 (G. Vlastos ed. 1971). Woolzley concludes that legal obedience is determined by fairness and utility. *Id.* at 316 & 318.

⁵⁹ *Crito*, 49 c-d. Similarly Socrates asserted that "it is never right to do a wrong or return a wrong or defend oneself against injury by retaliation." *Id.* at 49 d.

has only one inquiry to make, mainly, "whether he is acting rightly or wrongly, like a good man or a bad one."⁶⁰ In the process of obtaining Crito's assent to these propositions—that "in no circumstances must one do wrong"⁶¹ and that "one must not even do wrong when one is wronged"⁶²—Socrates suggested that this is a critical postulate, agreement to which may already entail agreement to the duty to obey law. He warned, "be careful . . . that in making these single admissions you do not end by admitting something contrary to your real beliefs."⁶³ What injury would Socrates have done by disobeying the law ordering his confinement and execution? In disobeying a legal obligation one undermines the force of law by serving as an example of law-breaking and by challenging the authority of the law and the state one weakens that authority. Finally, by disobeying the law in the specific case one has turned the specific law into a nullity and to that extent one has nullified for oneself a part of the total fabric of the law. Socrates considered these injuries to be necessary results of escape on his part: "Can you deny that by this act which you are contemplating you intend, so far as you have the power to destroy us, the laws, and the whole state as well?"⁶⁴ In Socrates' individual case the issue was whether he could do wrong because he had suffered wrong at the hands of the jury—whether criminality would be justified because of the unjust misapplication of the laws.⁶⁵ The manifest answer is in the negative.

⁶⁰ *Apology*, 28 b.

⁶¹ *Crito*, 49 b.

⁶² *Id.*

⁶³ *Id.* at 49 d.

⁶⁴ *Id.* at 50 a-b. Socrates next asked, "[d]o you imagine a city can continue to exist and not be turned upside down, if the legal judgments which are pronounced in it have no force?" *Id.* at 50 b.

⁶⁵ *Id.* at 50 b-c.

In two federal criminal cases from the Vietnam era, the example of Socrates was invoked to affirm the convictions of defendants who had in various ways harassed the selective service authorities. *United States v. Kroncke*, 459 F.2d 697 (8th Cir. 1972); *United States v. Moylan*, 417 F.2d 1002 (4th Cir. 1969). The defendants asserted that their belief in the wrongness of America military involvement in southeast Asia prevented them from forming the requisite mens rea to commit the charged crimes, or in the alternative that such belief constituted justification for their acts. The courts observed "that the exercise of a moral judgment . . . does not carry with it legal justification or immunity from punishment for breach of the law." 417 F.2d at 1008 (footnote omitted). *Accord*, *United States v. Kroncke*, 459 F.2d 697, 703 (8th Cir. 1972) (quoting *Moylan*). It was further noted that "[o]ne need only allude to Socrates . . . whose actions supported this proposition." *United States v. Moylan*, 417 F.2d 1002, 1008 n.21 (4th Cir. 1969). *Cf.* *United States v. Kroncke*, 459 F.2d 697, 703 n.9 (8th Cir. 1972) (similar wording). As a federal district judge for the district for Massachusetts commented, this interface between disobedience to law and submission to its sanctions is exemplified in Socrates, who "swallowed hemlock pursuant to an arbitrary Athenian decree rather than refuse obedience to the laws of the city-state which had formed and protected him." Wyzanski, *On Civil Disobedience*, ATLANTIC, Feb. 1968, at 58, 59.

This was not an instance where the law would compel or authorize an unjust act by Socrates; such an act would be wrong and forbidden by justice. On the contrary, Socrates was faced with suffering a wrong; at the same time Socrates' moral postulate prohibited him from performing the wrong of escape merely because he had been wronged by the jury.⁶⁶ In a sense Socrates was faced with the dilemma of suffering a wrong or doing a wrong. His moral sense struck the balance against doing a wrong. It is necessary to show why escaping and violating the law would have been doing a wrong. The argument from injury creates an obligation of legal obedience qualified by the obligation to justice. Disobeying a just law injures or destroys the law, but for that injury or destruction to be wrong, the law itself must have some claim as right. This claim of right may rest either in an assertion that the law embodies just rules of conduct to which obedience is required or in the assertion that the system of law provides a framework for a social order in which one may, on the whole, act justly. These claims in turn are established through the arguments from agreement and piety.

The argument from agreement begins with assent to the proposition that one "ought . . . to fulfill all one's agreements, provided that they are right."⁶⁷ The duty to fulfill one's agreements is immediately limited by the standard of justice. One's agreements must be right. Why does justice require that one fulfill one's agreement, particularly one's agreement to obey the law? And even prior to this, what is the origin or source of the agreement to obey the law?

The establishment of the agreement to obey the law finds its basis in consent of the citizen.⁶⁸ Alternatively, a citizen is estopped from denying consent by the fact of having remained in the state, in Socrates' case by having remained in Athens after reaching maturity.⁶⁹ "[A]ny Athenian, on attaining to manhood and seeing for himself the political organization of the state and its laws is permitted, if he is not satisfied with us, to take his property and go away wherever he likes."⁷⁰ Denial of one's obligations to the law and under the law is not allowed one, having submitted to the city's jurisdiction and

⁶⁶ Some commentators have argued that suffering a wrong is to be distinguished from doing a wrong, and that justice only required Socrates not actively do wrong. *E.g.*, Wade, *supra* note 12. This distinction is untenable even in terms of the examples raised in the *Apology*, most particularly with reference to Socrates' refusal to give up philosophy even if commanded to do so.

⁶⁷ *Crito*, 49 e & 52 e.

⁶⁸ *Id.* at 50 c.

⁶⁹ *Id.* at 51 d.

⁷⁰ *Id.*

power.⁷¹ The second basis of the obligation to fulfill an agreement to obey the law is derived from the consideration and receipt of benefits from the state. The laws ask rhetorically, “[d]id we not give you life in the first place? Was it not through us that your father married your mother and begot you?”⁷² As a result of having received the benefit of birth legitimized by the state, as a result of having received education, and as a result of having received the protection of the laws both within the state and as against external enemies, the individual is bound by the reciprocal nature of agreement to give fidelity to the laws.⁷³

The argument from agreement is nonetheless not entirely satisfactory since consent to abide by the laws suggests that one “by so doing has in fact undertaken to do anything we tell him.”⁷⁴ This obligation to obey the law is qualified by, once again, the duty to justice. Even the laws recognize the alternate forms of compliance, by “doing what we say” or by “persuading” the authorities to the contrary, with the qualification that binding sanctions attach upon the failure of persuasion.⁷⁵ This formulation permits the conclusion that one may refuse to do what the law says when it would require one to do injustice, but does not provide a reason for suffering a wrong under the laws. This is Socrates’ case: he was faced with suffering a wrong in the application of the law, and the need to find a principled basis why such injustice should be suffered rather than resisted.

An answer in the case of Socrates may be found in the nature of his agreement to obey the laws, and the fact that in accordance with the laws of Athens he decided to stand his ground and defend himself. By the terms of the “agreement,” he was either to persuade the jury or to accept punishment if he failed. The laws were made so that “even at the time of your trial [,Socrates,] you could have proposed the penalty of banishment, if you had chosen to do so.”⁷⁶ A still more general question of the nature of the agreement to obey the laws is raised by an inquiry into the nature of the burden of suffering a wrong at the hands of the authorities. The character of the agreement to obey the law when faced with a threat of injustice in one’s own particular case is complicated by the fact that the laws in an ongoing

⁷¹ *Id.* at 51 d-e.

⁷² *Id.* at 50 d.

⁷³ *Id.* at 50 d-e.

⁷⁴ *Id.* at 51 e.

⁷⁵ *Id.* at 51 b.

⁷⁶ *Id.* at 52 c.

society are open-ended; the terms of the agreement, as far as the duty of the citizens are concerned, remain unspecified. How can one be bound by such an open-ended agreement?⁷⁷ The answer lies in the argument from piety, subject to the duty to justice.

The argument from piety supplements the argument from agreement. The argument from piety analogizes the authority of the state and the duty to obey the law to the authority of natural parents and the duty to obey parental commands. It is asserted "that compared with your mother and father and all the rest of your ancestors your country is something far more precious, more vulnerable, more sacred, and held in greater honor both among gods and among reasonable men."⁷⁸ From the greater authority and dignity of the state and its laws follows "that you are even more bound to respect and placate the anger of your country than your father's anger."⁷⁹ It is observed that one does "not have equality of rights with your father" and that one was "not allowed to answer back."⁸⁰ One might similarly suffer wrong from the state and laws to which one owes allegiance. This follows not only from the receipt of benefits and thus from an imputed agreement,⁸¹ but as a requirement of obedience and respect for authority.⁸² While nature may necessitate one's submission to natural parents, one's own decision to remain within a state gives rise to a duty of obedience to lawful authority as a matter of justice.⁸³ Justice gives rise to a duty through piety to obey lawful authority, and justice in turn qualifies that duty. Justice serves as the originating source of the duty to obey the law but also qualifies that obligation by providing that one may not do as the law says and rather attempt to persuade authorities to the contrary.⁸⁴ Yet justice requires one who recognizes the legitimacy of a state to accept lawful punishment where efforts to persuade authorities fail.⁸⁵

⁷⁷ The open-ended nature of the agreement to obey the laws has been argued to be the major flaw in Socrates' theory of legal obligation, *e.g.*, D'Amato, *supra* note 10, but the standards of justice would qualify any terms of the agreement. *See, e.g.*, Allen, *supra* note 31, at 565. While justice may limit the terms of the agreement so as not to require one to do injustice, this analysis does not suggest the reason why the open-ended terms of the agreement may require one to suffer injustice. It is not enough to say that breach of the law where one is made to suffer injustice would weaken the laws' authority, since breach of the law where one is ordered to do injustice also weakens the law. The duty to obey the law, even when one suffers injustice, is rooted rather in the requirements of piety, which give rise to a duty to respect authority.

⁷⁸ *Crito*, 51 a-b.

⁷⁹ *Id.* at 51 b.

⁸⁰ *Id.* at 50 e - 51 a.

⁸¹ *See id.* at 50 d.

⁸² *Id.* at 51 b.

⁸³ *Id.* at 51 d.

⁸⁴ *Id.* at 51 b.

⁸⁵ *Id.*

As can be seen, within the *Apology* and the *Crito* Socrates took a consistent position towards the obligations of the individual towards the law, and enunciated a cohesive theory of legal obligation. Justice gives rise to the obligation to obey the law; justice also qualifies this obligation. Thus, Socrates did not argue for a duty to obey an unjust law. Justice requires obedience to law, since justice requires that one do no wrong, that one keep one's agreements, and that one obey lawful authority; any obedience to law is subject to the prior, superior obligation that one always act justly. Subject to a law, the individual has a choice, of persuading the polity otherwise, or of submitting to its fiat.