

APPRAISAL OF “RULE OF LAW” IN SOCRATES

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Abstract

The aim of this paper is to examine the rule of law in Socrates. This examination is with particular reference to the scholarly divergence regarding whether Socrates advocated for unconditional obedience to law or pioneered civil disobedience. Through critical analysis of Plato's Apology and Crito, this study investigates Socrates' arguments for legal obligation and reconciles apparent contradictions between the two dialogues. The scope of the study encompasses Socrates' controversial vow in the Apology to continue philosophizing despite judicial threat, his defiance of the Thirty Tyrants, his opposition to the illegal trial of the Arginousai generals, and the comprehensive arguments for obedience presented in the Crito including the personification of laws, the parent-child analogy, and the agreement argument based on continued residence. On appraisal, it is obvious that Socrates consistently maintained that all laws must be obeyed, even unjust ones, not because they are just, but because they are duly enacted laws necessary for the state's survival. However, this doctrine of exceptionless obedience is critically evaluated as morally unrealistic and potentially dangerous, particularly given historical atrocities committed under legal sanctions. The paper concludes that while Socrates successfully reconciles his actions in the Apology with the Crito's obedience principle by demonstrating the illegality of orders, hence he defied his uncompromising stance on legal obedience. Legal obedience in Socrates remains philosophically problematic because of its inadequacy in addressing situations where laws themselves perpetuate injustice and at the same time offering limited guidance for contemporary challenges to legal authority.

Keywords: Socrates, rule, law, obedience, Apology, Crito, and civil.

Introduction

Given the Plato's Apology and Crito, many commentators have read in Socrates an impression of an uncompromising hard-liner on the subject of legal obedience. Yet, from the same books mentioned, has come the tendency of some modern writers to enroll Socrates among the pioneers of civil disobedience. This double tendencies or divergence of opinions arise from the seeming cloud on the position of Socrates with respect to the Law.

For instance, a one-time Federal judge, C.E. Wyzanski, sees Socrates as a man, dedicated to keeping the law, "who swallowed hemlock pursuant to an arbitrary Athenian decree rather than refuse obedience to the law of the city-state which had formed and protected him."¹ but

VanDausen L.H offers an altogether opposing picture. According to him, "Socrates believed that reason would dictate a conscientious disobedience of state law, but he has also believed that he had to accept the legal sanctions of the state." He equates Socrates with Thoreau and Gandhi as exponents of "conscientious law breaking"².

A third group has gone ahead to combine the above two remarks on Socrates and impute serious inconsistency on his part, characterising him as an inconstant, "having refused to obey the law abridging his freedom of speech, but also refusing to evade the law by escaping from Athens, he peacefully drank the hemlock."³

I intend to show in this essay the fact that Socrates was intensely against disobedience to law, a point which would make the divergence of opinion cited about appear all the more strange. This shall be clear when we shall have examined the arguments of Socrates in Crito as well as his dispositions towards the law in Apology, which some writers cite incidentally to show support for civil disobedience. The arguments of Socrates are important, not only because of their historical interest but also for their intrinsic value. They advance reasons for obedience to law, rather against disobedience, intending to convince the rational man at any time and any place. They have been repeated, perhaps unwittingly, not just in the councils of statesmen but also in texts of political philosophers. They have become a part of the perennial political wisdom, of the common sense justification of obedience to law. And insofar as these arguments have continued to be cited and widely accepted, I personally consider them therefore a deserving elaboration and critical assessment.

The Cited Problematic Passages in "Apology"

It is in the Apology that commentators have not ceased to point out the controversial vow of Socrates as a star example of his arrogant defiance of the jury's order to end his philosophical career or be put to death. First, it is important to recognize the legal setting under which this controversial vow was made: he was on trial for impiety and for corrupting the youths of Athens. Socrates imagined that the jury was not entirely persuaded by the prosecution's argument, and was also not convinced that Socrates was blameless and harmless. Given this suspense, the jury decided to let Socrates go but on condition that he does not continue philosophizing, less he would be re-arrested and put to death. At that point, Socrates declared to the jury that if they release him on the condition that he ceases practicing philosophy, he would defy that condition. He said;

Men of Athens, I hold you in high regard and love you, but I will obey the gods more than you, and just as long as I breathe and am able, I will never cease from philosophizing or from exhorting you and from declaring my views to any of you I should ever meet... (Ap. 29d)

This was not the only instance he appeared defiant of authority, for illustrating that his vow was not an idle threat, Socrates immediately reminded the jury the previous occasion on which he found it necessary to defy civil authorities. These were when he alone opposed the plan to try 'en bloc' the delinquent generals after the battle of Arginousai (Ap. 32a-c), and also when the government of the so-called 'Thirty Tyrants' directed him to arrest Leon of Salamis and bring him to Athens for execution (Ap. 32c-e).

Obedience to Law in Crito and Apology

In the Crito, Socrates insistently maintained that one must always submit to the laws of the state. The main issue in this dialogue is that the laws of the state are always right, and so it is unjust to disobey the laws of the state. Barker, interpreting Socrates here held that "there was no rule of natural justice outside the law: law is justice... and what is just is simply what is commanded in the Laws. Socrates imagined the laws of Athens as personified, and as putting to him the obligation of obedience. This personification of the laws is shown clearly from some of his statements like:

"Suppose, as we are about to run away from here (or whatever else it should be called) the laws and state of Athens were to confront us and say: 'tell us, Socrates, do you intend to do anything else by this exploit to which you are putting your hand than to destroy both ourselves the laws and the entire city-at least as far as you can? Or do you think it is possible for that city to exist and not to be overthrown in which the decisions of courts do not prevail, but by the actions of individuals are set aside and made ineffective? (Cr. 50a-b).

In the above argument, Socrates presents the personified Law as asking whether a state could exist in which the laws are of no effect ie. Where the laws are disregarded and consequently undermined by individual citizen. The answer that is extracted is that, of course, a state could not exist under such conditions. Thus, disobedience to law renders the state ineffective (non-existent). In short, using Socrates' terminology, one could say that the Laws (which he also equated with the state) would be "injured" or "harmed" and that in consequence, an "unjust" act had been done to the state. The conclusion is that it is, therefore, unjust to disobey the laws of the state. Socrates believes that a citizen must always obey the law of the state, even

when the citizen thinks that the state has not been just. He said that in such cases, he is still obliged to continuous obedience until he is able to persuade the state to realize her injustice: "... in both war and in the courts and everywhere (you) must do whatever the city and the fatherland... commands, or persuade it as to the nature of justice." (Cr. 51b)

He maintains that even when the state has done one injustice, it does not justify the citizen's disobedience. He must suffer it rather than return injuries [to the Law by disobedience, after all, justice is not equal between the state and the individuals:

"Do you suppose that justice is equal for you and for us, and do you believe that whatever we try to do to you it is just for you to do in return? Yet justice was not equal for you in relation to your father or to your master, if you happened to have one. (Cr. 50)

It is at this asymmetry of justice that Socrates evoked the parent-child analogy. The state, like parents to children, has rendered immense services to its citizens that it demands obedience at all time from them. As justice is unequal between parents and children, so it exists between the state and its citizens. Children for instance, cannot give back to their parents whatever treatment they receive from them this amounts to not talking back when being reviled, not hitting back when being beaten, and many other similar things' (Cr: 50e-51a). If the laws at anytime makes one suffer unjustly, he should take it like a child would bear such things from his parents without retaliating. Vlastos has tried to give this doctrine a more generous construal saying that the asymmetry of the relationship between the state and citizen is derived from a principle of gratitude: 'those who in times past have rendered us enormous benefits have put us under an obligation of gratitude which entitles them to special forbearance on our part' (15). The proper relationship between child and parent is such that obedience is expected to a high degree. The same applies to the state and citizen, or even more in this later case said Socrates:

our country is more precious and more to be revered and it holier and in higher esteem among the gods and among men of understanding than your mother and your father and all your ancestors, and ... you ought to show to her more reverence and obedience and humility when she is angry than your father, and ought to ... do whatever she commands and to suffer if she commands you to suffer, in silence, and if she orders you to be scourged or imprisoned or if she leads you to war to be wounded or slain her will is to be done, and this is how justice is disposed (Cr. 511- b).

The Laws require a privileged status for the city in relationship to any given citizen. They expect that their status and the benefits they provide entitle them to ask citizens to undergo risk and even unjust treatment without seeking revenge against the city. Seeking revenge would involve a failure on the citizen's part to recognize not only the true nature of justice, but also the nature of proper relationship between a city and its citizens. Finally, Socrates called in also what has been regarded as the 'agreement' argument to show how the law requires obedience on the basis of the fact that the citizens have made a fair and just agreement to abide by the laws of the city. It is a compressive claim that one has implicitly agreed to obey the laws of the city by virtue of continued residence there, after having come of age and acquired knowledge of the city's working. For a citizen could emigrate to anywhere he pleases if he is not satisfied with the city's laws, more especially as no Athenian law forbids anyone who wishes to emigrate to any colony. Thus, "whoever of you remains, seeing how we decide trials and administer the other affairs of the city, we say that he has thereby, by his act of staying already agreed with us in deed, that he will do whatever we command, and we say that he who does not obey us is doing injustice in three ways." (Cr. 51e).

The problem that may be raised here is that a given city to which one chase agreed to abide by its laws after observing its workings may under unforeseen circumstance command afterwards some acts of injustice. How would one adjust to them? Would one at that time emigrate or must he submit to that law? Perhaps, one may easily suffer the injustices, like in the parent-child analogy wherein the child has the obligation to submit to pains and risk. But, what of when it requires the citizen committing the acts of injustice? Brickhouse and Smith resolved this problem by distinguishing the justice of obedience to the law and obedience to the laws that are just, and believed that for Socrates, the citizen should in such cases carry out the action. It is the city not the citizen that is responsible for the perpetration of injustice, since if a slave for instance, commits an offence under the orders of his master, it is the master who is prosecuted according to Athenian law (6). This then explains the action of Socrates who, aware that the city was unjust in his trial and condemnation, yet drank the hemlock than wait that it be forced on him. He did it because the state commanded him to do it. It is for the state to take the blame.

Socrates' commitment to legal obedience is not something unique to the *Crito*, for the *Apology* as well offers amplest testimony to Socrates' belief that obedience to the law is a

matter of moral obligation. Certainly there is some difference in emphasis between the Apology and Crito, but they both agree on the moral obligation of obeying the law. It is important remarking that the Socrates who hypothetically vowed to disobey his jury at (Ap. 29) d also said only moment before that a man must never leave the post he is assigned by his commander:

"When a man post himself, thinking it is the best place for him to be or wherever he is posted by a commander, there he must, as seems to me, stay and face the risk; taking no account either of death or of anything else as against what is disgraceful" (Ap. 28d).

Socrates regards disobedience as that thing which is disgraceful. He said: "to do what is unjust and to disobey one who is better than myself, whether he is god or man, that I know to bad and disgraceful;. "(Ap. 29b). It was Socrates also who in Apology exhorted his adversary in the name of the law (Ap. 25d0), and who made at least some suggestion of a claim to being 'one who obstructed many unjust and illegal things from coming to be in the state' (Ap. 31e). In addition to these, he had also reminded his jurors of the grave risks he had taken to uphold the law (Ap. 32b) and had offered his defence (at least partly) in view of the fact that 'the law must be obeyed' (Ap. 10a). if all these are true as they incontestably stand, how then can we understand yet his hypothetical vow in the same Apology to disobey the court order that would prevent him from philosophizing in Athens (Ap. 29d), and also the two other previous instances we have already pointed out?

The "Apology" and the "Crito" Reconciled

Indeed, one could hardly get elsewhere or more emphatic and unequivocal statement of the citizen's obligation to abide by the state laws, than what we see in the Crito. But then what of the 'Apology'? in the crucial passage there (29c- d), Socrates might seem to e doing the exact opposite of what we see in the Crito. How do we explain the situation?

There have been recent attempts to reconcile 'Apology' and Crito', and most of these attempts seem to deny that Socrates in the Apology promises to disobey a legitimate court order. One of such attempts is the proposed solution of Woozley. For him, Socrates nowhere promised to disobey a court order in the 'Apology' because the court in that dialogue is nowhere depicted as issuing Socrates order at all. According to him, what the court actually says is that they are releasing Socrates, provided that he no longer spends his time in his previous pursuit of philosophizing. Thus, "the condition which the court imposes is not a condition for freeing

him, but a condition for leaving him free afterwards,... a condition of his continuing to be free." Woozley believes in effect, that when Socrates seems to contemplate defying the court at Apology (29bff), we should imagine instead a situation in which the court has decided to let Socrates go, regardless of anything that Socrates has to say about the matter, while warning him that he will be re-arrested and put to death if he is found philosophizing again. Now, in saying that he would die many times before "going along with" the court, Socrates was not promising to disobey anything but merely announcing that he would not heed to such a warning. 10 In other words, he explained further, "ignoring a warning, or announcing one's intention not to fulfill a condition of being at liberty is not the same thing as disregarding an order; and other would thus be no inconsistency with the line taken in the Crito."!!

Brickhouse and Smith have also thought in similar lines as did Woozley. They showed convincingly that the jury's hypothetical order was illegal: "there was not slightest historical evidence that Athenian juries were empowered to enact any such conditional acquittals, nor is there any sense in supposing that there should have been provisions for this". Thus, Socrates' refusal to accept it at 29d can hardly be constructed as disobedience to the law (13).

They further argued that even if we suppose that the jury did have the authority to enact the conditional acquittal and consequently "opted to exercise it in Socrates' case, his failure to cease philosophizing would not even be a violation of law, but rather the choice of death over silence, a choice provided by the terms of the suspended sentence" (24). Alian in his book entitled 'Socrates and Obligation' has also argued that Socrates had no moral obligation whatever to obey the court's decision in the Apology (15). He argued along the same lines as Brickhouse and Smith on the illegality of the jury's order, but his argument on illegality is in relation to the quality of the action, which Socrates was required to abandon. In his view, the state has no authority whatever to require that Socrates do anything unjust. Any command requiring such a thing would be, he thinks, 'ultra vires'. Socrates then can disobey the court in Apology because its decision would require impiety of him and because the court would exceed its authority in requiring this of him. Comparing that with the court's decision in the Crito where Socrates was condemned to die by hemlock, he said that the court's sentence did not require that Socrates perform any unjust act, and while the state cannot legitimately order him to commit injustice, it can legitimately order him to suffer it." Thus, Socrates had to fulfill in that case his obligation to obey the state and its laws.

If we take into account our previous resolutions, however, this argument will then run into trouble because Socrates will be reciprocating injustice by disobeying, a thing which he condemned by his argument of inequality of justice between state and citizen. In addition, as the Athenian law placed responsibility upon the master, not the slave who performs an unjust act on the orders of his master, Socrates should have executed the unjust order if it was in accord with the law, leaving the blame of the impiety on the state. Socrates was aware of all these and indeed, they have been his principles. Thus, his failure to comply with the orders of the *Apology*, showed that the fundamental problem there was the illegality of the jury's decisions as Brickhouse and Smith indicated. Or again, given the structure of the conditional acquittal, Socrates' decision could only be a choice than disobedience.

As for the other instances cited by Socrates, we also see some traces of illegality either on the side of the jury or on the side of the state. In the *Apology* (32a.), Socrates reminds the jury of the time he opposed the plan to try en bloc" the delinquent generals after battle of Arginusas. These were the generals who out of joy for their victory, but in rough weather and confusion had departed for home with the victorious fleet without picking up the crews of their other ships that had been lost and the disabled such that so many men were lost. In this case again, and just like in the former, Socrates' defiance causes no problem of contradiction to his commitment of obedience to the laws, because it was at least his view of the matter that in resisting the trial of the generals, he was upholding Athenian law against the rest of the Athenians that wanted the group trial of the generals. The Athenian law did not permit actions against groups, but rather required that each individual be tried separately. The mass trial therefore was illegal. Consequently, Socrates' defiance was in keeping with the Law. Finally, the Leon of Salami's episode also brings out the evidence of Socrates' attitude towards obedience? Certainly, Socrates defied the government of the so-called 'thirty tyrants who directed him to arrest Leon and bring him to Athens for execution (Ap. 32c). But, we see that he disobeyed not only because the order was unjust, but many people believed that very government was an illegitimate regime. Few writers seem to disagree with this latter reason for the defiance presumably because the allegiance Socrates argues is owed to the state is never suggested by any of his arguments to be limited only to democratic regime." Woolzley (1979), for his part concludes that Socrates disobeyed the "Thirty Tyrants not only because their order was unjust, but that it was merely an order, not a law. He thinks that the Thirty

were lawfully appointed government, but their conduct and orders were not lawful. Thus, Socrates' defiance of their order cannot be seen as an act of disobedience to law.

Criticisms!

We have tried to argue up to this moment the exceptionless obedience of Socrates to the laws as portrayed in *Crito*, and attempted to reconcile some apparently contrary postures of *Apology* in respect to the argument in *Crito*. However, much as we may think we have succeeded, one must admit that the defended attitude to the laws is unnecessarily unrealistic. For example, how can we explain that the historical Socrates or Plato for that matter, have defended the sort of unconditional obligation to obey the state which the *Crito* defines? This question really demands attention, for, as one recent commentator puts it, "Many readers of *Crito* feel... that while Socrates decision to die rather than to attempt escape is somehow correct, the political theory on which that decision is ostensibly based is open to serious criticism.

Socrates must come down to concrete reality. He makes the Laws say only the fact that we must carry out agreements justly entered into and that we must obey and refrain from harming the state which like our parents, have given us good things in the past. The laws nowhere add the condition that we are obligated to obey provided that they require of us only what is right. They make no mention of any that could be invoked against the commands of the state. This is what makes the points of the *Crito* very uncomfortable. Vlastos (1974:73) puts it this way "Why does [Socrates] leave us with that inflexible universal 'on the battlefield, and court of law, and everywhere, one must do as one's state and fatherland command'? Why not qualify?"

The Laws arguments in *Crito* do not therefore address themselves to the question "should every citizen of every state in any circumstances whatever obey the law"? this is just the problem and it is really surprising because Plato is hardly known as a careless writer. If he had added a clause or two to especially the arguments of the *Crito*, like 'provided that we are obligated to do only what is right' etc, it would definitely have left philosophers without debate. But Plato included no such escape clauses in the *Crito*. This lack of escape clauses is what, I think, is disturbing about the *Crito*. Grote (1965), for instance, criticizing Socrates here, said that it must have been an attempt to restore himself into harmony with his fellow citizens by making him "express the feelings and repeat the language of a devoted democratic

patriot". DeFilippo J. (1991) blames him for having "accorded the city the right under certain circumstances to inflict injuries on its citizens, without leaving them the right to resist.

It is the contention that Socrates was in fact committed to the justice of obedience even when the law in question is unjust. Now, if one believes, as Socrates does also believe, that he has an obligation never to do injustice though might suffer one, there is no consistent way in which he can also adopt a political philosophy which requires him to perform whatever actions his city might command. He may take recourse to the claim that in the unjust commands it is the state not the citizen that take the responsibility for the perpetration of the injustice, but this does not so easily resolve the problem. For, if we can so easily personify the impersonal state that way the question will be: why then could the state not carry out the actions which it calls on the citizens to execute on her behalf? Let us face the face of the metaphysical principle that the good must always be done and evil avoided (*bonus faciendum, malus vitandum*).

Conclusion

We have seen that throughout our investigations, Socrates nowhere asserted that our obedience to laws is restricted only to just laws. Socrates stated that the "agreement" between himself (as a citizen) and the Laws held without respect to whether 'the state has injured him by judging his case unjustly'. Indeed, any question as to the justice of a law appears to be beside the point where the basic agreement is to abide by whatever judgements the state should pronounce'. This same attitude is discernible in his discussion of the piety that the citizen/son owes the state/parent. The notion that only just laws should be obeyed is imply not there, explicitly or implicitly. The conclusion we draw in this work therefore, is that Socrates did not think that all laws were just or that only the just ones should be obeyed, rather, he argued that all laws should be obeyed, even the unjust laws, not because they are unjust, but in spite of their being unjust. They are to be obeyed simply because they are duly enacted laws. The question of whether they are just or unjust is ultimately irrelevant. And the reason is that the state may continue to exist. It is of course, this set of opinions of Socrates and of the Laws that I personally take exception. Any doctrine that requires exceptionless obedience to a political institution is morally suspect. It is simply too easy to think of cases in which atrocities have been committed in the name of obedience to a legally sanctioned superior. Its inadequacy has been recognised, for instance, in contemporary military law. It is

true that the state would be overthrown when her laws are arbitrary and unjust. Given therefore the problems associated with this doctrine of Socrates, we say that its contribution to political thought is not a coherent and convincing rendering of the reason for obedience to law. In short, whether Socrates was guilty of corrupting the youths of Athens with his teaching, a charged, we can leave that to the more charitable verdict of history. But that the youths of Nigeria my country for instance, will be corrupted by the doctrine of laws in favour of unconditional obedience to law, a doctrine, which Socrates approved, I sincerely take exception.

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