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## **THE VOICES OF LAW IN PLATO'S *CRITO***

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\*This essay owes much to my students at the University of Toronto, where I taught the *Crito* in the late 1990s, and especially to Michal Gal and Zvi Kahana. With few exceptions, this first draft does not address the massive secondary literature on the *Crito*, but I have had constantly in mind the interpretations of my colleague J.B. White and my former colleague, Ernie Weinrib, as well as that of Leo Strauss.

## Introduction

The theme of Plato's *Crito* is, apparently, obedience to law. Socrates discusses this subject with a man who has just admitted to corrupting a law-enforcement official-- the dialogue begins with Crito's admission (or perhaps even boast) that he obtained access to Socrates through doing something for the prison guard.

Crito's expressed purpose in coming to see Socrates is to persuade him to escape from prison and go into exile, thereby avoiding the sentence of death. As we shall later learn in the *Crito*, there were options available to Socrates to avoid the sentence of death at the time of his trial, options of which Crito himself is fully aware. Had Socrates acted earlier, he could have avoided death without acting against the laws of Athens.

Thus, if his intent were to persuade Socrates to escape, Crito would have to change Socrates' mind in a very dramatic manner—he would have to convince Socrates to avoid now, at a cost of breaking the law, what he did not want to avoid before, when it did not entail breaking the law. Why should Socrates' mind be capable of being changed? What considerations could Crito bring to bear now, that would not have been thoroughly weighed by Socrates already?

When Crito arrives at the prison, Socrates is sleeping soundly—Crito himself is perceptive enough to draw the appropriate psychological insight: unlikely other men, including other men his age, Socrates is not frightened or panicked by the imminence of death. Thus, the mere fact that the date of his execution is drawing near, would not be a sufficient consideration for second thoughts. Crito is under the impression that Socrates

will be executed tomorrow, if he does not escape. To say the least, this is a tight time frame in which to plan an adequate escape; Crito has some ideas about how to do it, but as he presents them to Socrates, the ideas leave many questions unanswered. This raises doubts about whether Crito has come to Socrates with a genuine, realistic expectation that escape remains a viable possibility. Socrates, however, recounts a dream to Crito, which suggests to Socrates that the execution will not happen at least for one more day. “I dreamed that a beautiful and attractive woman in white dress approached me and said “Socrates on the third day you would come to fertile Phthia”. Crito initially regards this dream as odd (*atopon*, “out of place”). Then, he instantly agrees when Socrates replies that its’ meaning is clear. Crito’s purpose has little to do with the investigation with Socrates of his dream life; he is in a hurry or must appear to be so, since the instant aim must be to make the best effort to convince Socrates to let his life be saved.<sup>1</sup>

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<sup>1</sup> Ernie Weinrib makes much of the content of the dream itself, which is an allusion to the *Illiad*, and ultimately to Achilles. In the *Illiad*, Achilles resists the entreaties of his friends to keep fighting, instead deciding to return to his home Phthia after the third day. Then, after his true friend Patroclus is slain, he decides to remain to fight in order to avenge Patroclus’s death. Having explicated the allusion very clearly, Weinrib’s interpretation of it is obscure. He says that in staying at his station, unlike what Achilles was prepared to do, Socrates was showing is superiority to Achilles. My own reading is different. The example of Achilles shows that while Achilles was not moved by the *entreaties* of his friends, or the kind of friends who came to him in a delegation, he was far from incapable of being moved by friendship itself. The dream suggests that we should not judge the importance of friendship in Socratic morality by the way in which Socrates responds to *Crito’s* entreaties based on friendship. J.B. White also places some emphasis on the dream, suggesting that the dream indicates that for Socrates death is a homecoming (in implicit contrast to the case of Achilles, for whom the homecoming is the alternative to continuing to risk his life). What White’s reading reminds us, is that Crito could easily have interpreted the dream as a sign to Socrates that his fate is to *escape* death, if Crito were truly convinced in his mission to change Socrates’ mind: after all, what Achilles was supposed to be doing after the third day, was taking himself *away* from mortal danger, to understand the homecoming as death is as White suggests Socratic, but it is not Homeric. This would have led into a debate about the meaning of the dream between Crito and Socrates, which Crito is quick to accept Socrates’ invitation to avoid by accepting that the meaning is clear. Deep down Crito is resigned to Socrates’ acceptance of death. The irony is that as I have suggested Crito might be concerned not to *appear* to be wasting crucial time by having a conversation with Socrates about his dreams, while on the other hand someone truly convinced about the continuing possibility of escape would have precisely contested the interpretation of the dream. Finally, perhaps there is yet another level in this dream. Achilles had to chose between coming home and avenging his friend Patrocles. Because for Socrates death (in these circumstances, i.e. at his age and in his situation) is itself a homecoming, he need not make such a choice—by going to his death Socrates both comes home and avenges his true friends, by punishing the city of Athens for unjustly condemning him for philosophizing. He shames Athens for its unjust verdict by

At the same time, Crito had *hesitated* to bother waking up Socrates from this very dream in order to make his pitch. We can suspect that Crito does not really believe that he can change Socrates' mind, and is inconsistent in presenting himself as urgently seized with that task. But, to preserve his reputation, he has to give it the old college try. While Crito's first appeal to Socrates is that he does not want to lose an irreplaceable friend, the second appeal concerns reputation, Crito's not Socrates'. Crito must surely know that if Socrates' much closer friends and associates have not dissuaded him from accepting the death penalty, Crito himself has no chance. Having weighed all other considerations and so far stuck to his decision, would Socrates really be inclined to change his course of action to save Crito from the reputation of putting money above friendship? Crito would have to be both enormously egotistical and stupid to believe any such thing.

But there may be another way for Socrates to solve Crito's problem: Socrates could give to Crito a response to Crito's entreaties that makes it plain that Socrates is going to his death for reasons that have nothing to do with Crito's lack of generosity. To take suspicion off of Crito (who is instinctively minded to think in terms of preserving money—he makes a point of how cheap it would be to facilitate Socrates' escape), those reasons would have to be comprehensible to the people among whom Crito cares about his reputation. Thus, Crito is asking Socrates, in all probability, not to change his course of action, but to provide a rationale for that course of action that absolves Crito of all suspicion in the eyes of those whose opinion he cares about. The performance of

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proving, through obeying the death sentence, that he and his friends (who might have conspired with him in escape) are not the lawless persons that the prosecutors depicted them as. This last possibility is explored in the conclusion to this paper as the culmination of the argument of the dialogue. But the varying interpretations of the dream illustrate that how we read the dream depends on how we read the dialogue as a whole, the basic "hermeneutic" circle. It may also depend on more systematic scholarly attention to the hermeneutic challenge posed by dreams in Plato: see for example C. Tarnopolsky, "Fantasy, Dreams and the Logic of Mimesis in Plato's Republic", unpublished manuscript, Department of Government, Harvard University (on file with the author).

Socrates—and Crito—is for *others*. Is it possible that, given the notoriety of and fascination with Socrates, not to mention the probable rumors about an escape, the prison guard is eavesdropping on the conversation between Crito and Socrates? In the absence of a witness, would the associates of Crito among whom Crito's reputation is a stake be inclined to believe Crito's own self-serving account of the conversation between himself and Socrates? We know, in any case, that the prison guard has already been bribed by Crito, and has previously been acquainted with him. There is every reason to believe that the guard may well talk to others about what he has heard. At least, we have to be alive to the possibility that both Crito and Socrates know that what they are really doing is performing a drama for the ears of others--in the first instance for those of the prison guard, and ultimately for the ears of those among whom Crito wishes to bolster or assure his reputation.

Those among whom Crito cares about his reputation turn out to be “the many” (oi polloi). Crito provides Socrates with a reason for caring about one's reputation among the many that goes to Socrates' circumstances, not Crito's: the many are capable of putting one to death. While Socrates apparently attempts to convince Crito that it is a mistake to care so much for the opinion of the multitude, Socrates ends his entire examination of that question by repeating Crito's reason why one *should* care about the opinion of the many: “But it might, of course, be said that the multitude can put us to death”. Socrates does not answer or refute this one reason for caring about the opinion of the many. The common ground that emerges between Crito and Socrates is that, *after* the critical examination of the question of whether one should care about the opinion of the many, this reason for doing so is left standing.

### **Justice, Harm, and Retribution**

Socrates now goes on to exhort Crito to examine the issue of whether Socrates should escape exclusively from the perspective of justice. While Socrates contrasts considerations of justice with the considerations that Crito raises (spending money, and reputation, and bringing up children), Crito and Socrates had just agreed that their previous exchange had left standing a reason that might be said or invoked for caring about the opinion of the many concerning justice—that is, the capacity of the many to exercise coercive indeed deadly force. Socrates might have said that, however valid this reason, it no longer applies in his case, since he has already been condemned to death. However, Socrates is emphatic that he is interested not only what it is just for Socrates to do in this situation but for Socrates together with those who might help him to escape. Socrates presents himself as in a community with Crito and other potential accomplices—and that he and they should be bound by the same considerations of justice. This is a good reason for surmising that the discussion of the just that follows is not indifferent to the opinion of the many concerning the just. Socrates bids Crito that they inquire into the justice of the matter “*koine*”—“in common”, but *koine* can also carry the implication of “common” or “vulgar”.

In the brief dialogue that follows Socrates, as it were, plays himself—he makes the kind of statements about good and bad, right and wrong that are characteristic of Socrates, that people who have heard of Socrates would expect him to say. This little dialogue instructs whoever might be listening (we already know of at least one who

might be—the prison guard), that the characteristic beliefs or teachings of Socrates inspire lawful behavior, even when the cost of behaving lawfully is one’s life. But can this make us forget, let alone make the prison guard forget, that Socrates attracted the kind of men willing to bribe a law-enforcement official in order to pursue companionship with Socrates?

Socrates proposes the rule that one should never act unjustly. Crito immediately assents. But Crito is less sure of Socrates’ second proposition, which is it that it therefore follows that one must never do an injustice to avenge an injustice that one has suffered (“as the many think”). Crito’s hesitation suggests an intuition that there is a problem with this formula, but also that Crito isn’t able or willing to put his finger on it. The faultiness of the formula is this: the many do not *really* believe (or should not believe) that one ought to do *injustice* to avenge an injustice—they believe, rather, that an act that would otherwise constitute an injustice, may be just or at least justified, when that act is punishment for a previous injustice. Only if there were no distinction between revenge and legal punishment would Socrates be right that an initial unjust act and the response to it in kind are morally indistinguishable as injustices.

Understandably, Socrates avoids saying any such thing. Such an interpretation Socrates’ proposition about never doing injustice would be subversive rather than supportive of legal justice, to the extent that *legal* justice requires the possibility of just punishment, just violence.<sup>2</sup>

Instead, Socrates restates the matter in terms of never doing *harm* to another. Crito assents at once to that, and then Socrates returns to the matter of *justice* with a follow-on question: “having suffered harm (kakos paschonta) is it just or unjust to inflict

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<sup>2</sup> See Walter Benjamin, “Kritik der Gewalt”.

harm in return (*antikakourgein*)?" Again, Crito assents without qualification to the view that it is unjust, but Socrates is skeptical of whether Crito understands what he has assented to. According to Socrates, there are few believe this, and those who do lack common ground of discussion with those who do not. Socrates gives Crito the option of reflecting carefully on what he has assented to. Socrates' subsequent offer to Crito to explain himself should he disagree upon careful reflection is comic if not disingenuous. After all, since Socrates has just told Crito that there is no common ground of communication between those who agree and those who disagree with this particular proposition, it would be futile for Crito to express his considered disagreement. The possibility of communication with Socrates would end then and there. The community between Crito and Socrates is not like Habermas's ideal speech community—Socrates stipulates to Crito what Crito must agree to in order to have a common inquiry into justice with Socrates. For the purposes of the common inquiry, Crito must go along with Socrates, even without fully understanding the implications.

The stipulation with which Crito must go along, however, is somewhat different from what he had already assented to. The interdiction on doing harm now apparently extends to the situation of self-defense—Socrates had previously limited himself, apparently, to prohibiting retribution or requital for a harm suffered. However, the exact words that Socrates uses leave open one possible window for legitimate or just self-defense: Socrates may only be excluding the use of *retribution* or *punishment* as a *means* of self-protection—this would still allow harms inflicted in the heat of repelling an imminent or present attack. But of course, the conversation takes place in a prison: we cannot forget in such a setting that the *city* uses punishment for self-protection



(deterrence). Either what the city calls punishment makes the offender better, and therefore is not a harm (*Gorgias*, and see particularly the discussion of capital punishment in the *Laws*), or the principle of not doing harm, as now stipulated by Socrates, does not apply to cities but only to individual human beings.

### **The morality of contract and its limits**

Socrates goes on to ask Crito a further question about justice: “ought someone do as agreed if it is just or may he go against what is agreed?” Crito responds that “he ought to do it.” Socrates’ condition “if it is just” reminds us that it is not always the case that an agreement should be performed. In the *Republic*, for instance, Socrates had established that it would not be just to give a weapon back to a madman, even if there was an agreement to return it. Crito’s simplistic endorsement of keeping one’s promises in response to Socrates’ question suggests that Crito is oblivious to the importance of the qualification Socrates put on promise keeping—“if it is just”. This is further evidence that, as Socrates suspects, Crito does not understand the implications of accepting the notion that it is always unjust to do harm--one of these implications is a basic limit on the morality of contract.

At this point Socrates cuts to the chase, as it were, asking Crito a question that suggests he thinks Crito might now be ready to conclude their common inquiry into the justice of a conspiracy for Socrates’ escape. “Then consider whether, if we go away from here without the consent of the city, we are doing harm to the very ones to whom we least ought to do harm, or not, and whether we are abiding by what we agreed was right, or

not?” Naturally, Crito cannot answer this question, for Socrates has not stated who would be harmed if “we” go away without consent of the state nor has Socrates indicated what agreement would be broken. Asking a question that does not admit of an answer based on the previous steps in the inquiry, suggests Socrates wants to break off that inquiry. He can go no further by way of an investigation in common with Crito of the justice of a conspiracy to escape.

What replaces this common inquiry is a hypothetical conversation between Socrates and the laws together with the koinon element of the city. Socrates’ being persuaded by the laws and the koinon element of the city, allows Crito to appear to be persuaded. Despite what Socrates had said earlier about Crito’s exaggerated concern with the opinion of the many (polloi), Socrates appears to listen carefully when the koinon of the city speaks together with, or as, its laws. Law (the city speaking through a general rule, a principle) unites the most pressing concern of the philosopher (the principles of things) with the most pressing concern of the many (the body, its desires and the limits, the controls on those desires). Socrates can have a conversation with the laws that he cannot have with Crito directly.

### **The effect on the laws of Socrates’ proposed escape**

The laws and the *koinon* begin by concerning themselves with Socrates’ intention in escaping. They assert that Socrates’ intention must be that of destroying the laws and the city. For how could any city survive where the decisions of the courts are made invalid by private persons?

What does this opening statement of the laws tell us about their understanding of Socrates and his situation? First, the laws implicitly reject the possibility that Socrates' motivation in fleeing could be self-preservation or fear of death; such a motivation would not necessarily imply a desire or intention to destroy the laws (see Hobbes, *Leviathan*). But the laws are right in this respect: had Socrates wished to preserve his life without avoiding or resisting a legal verdict, he could have behaved himself accordingly at his trial. Secondly, while the laws first accuse Socrates of intending to destroy *them* as well as the city, when they go on to identify the general principle that justifies such an inference, the reference to the laws themselves is dropped, and only the threat to the existence of the city is mentioned. This subtle shift subtly indicates an important common ground between the laws and Socrates: Socrates has not challenged the justice of the laws under which he was convicted. Third, true to their character as laws, the laws universalize the issue of Socrates' choice. They do not ask what would be the effect on the city of *Socrates'* avoidance of the legal verdict in this case—rather they assert, in Kantian fashion, the implication of such a choice imagined as a general rule of action. Yet would the effect on the city of Socrates' escape from a legal verdict be the same as, for instance, the escape of a common criminal?

The response to the laws that Socrates now proposes to Crito attempts to turn the issue back to the situation of Socrates in particular. Socrates suggests the following reply: “The state wronged me and did not judge the case rightly”.

What is the meaning of this reply? It will be recalled that Socrates and Crito had agreed that it is never justified to do harm in retribution for a harm done. If this principle applies to cities, and not only to natural beings taken in their individuality, *and* if the laws

are right that Socrates' avoidance of the verdict would harm the city, Socrates' behavior would then be wrongful regardless of the verdict itself being wrongful.

Thus, either the principle does not apply to cities, or Socrates' reply has a different underlying moral structure than that of retribution for a wrong. Perhaps the reply depends on the notion that the city is not harmed in unusual cases where an individual avoids an unjust verdict, in the way it would were it a general practice for those condemned to act as it were as their own appeals judge. We should look at Socrates' case in its particulars—many general rules that are required for the existence of the city, nevertheless may entail exceptions in certain circumstances. Socrates has already prepared the ground for a consideration of the particulars in his qualification on the general rule of keeping ones' promises—"provided it is just".

### **The contractual argument for legal obedience**

In responding to the claim of an unjust verdict, it is the laws themselves who remind us of Socrates' qualification on promise-keeping, for the laws now seek to ground Socrates' obligation not to resist the verdict in his alleged agreement to abide by the city's decrees. Socrates suggests that he might be "surprised" by such a response, and therefore that the laws would continue with other arguments. Of course, he would be surprised, since as we know, Socrates endorsed promise keeping only when it is just, therefore suggesting that the laws' invocation of the morality of promise keeping is inadequate as a response to the issue Socrates raises about the justice of the verdict.

The laws next are made by Socrates to say a number of things that appear almost comic, or desperate. They claim that the laws and the city brought Socrates into being, in the sense that it was through the city that his parents married and conceived him. Does Socrates find any fault with the laws of marriage? Of course, Socrates replies that he doesn't, but the entire line of questions that the laws ask Socrates—a self-conscious imitation of Socrates' own method of question and answer—seem to further beg the fundamental question of whether, in the circumstances, Socrates' avoidance of the verdict would be unjust, because the city and/or the laws would be harmed or destroyed.

So far do the laws stray from their initial appeal to the idea of keeping promises, that they claim obedience from Socrates as their child or slave. Again, the laws can conceive of the problem in no other way than as one of the justice of Socrates' retaliation against an unjust verdict; in so doing they essentially admit the injustice of the verdict. But the reason why Socrates is bound not to strike back is not Socrates' own morality of not returning a harm with a harm, but instead that there is no equality between Socrates and the city: in relationship to the city, Socrates is a child or slave. There is something of the comic about the laws' invocation of the duty of obedience to a father, who one does not strike back, for one of the accusations against Socrates—at least in Aristophanes' plays—was that he was a teacher of father-beating.

### **Persuasion, obedience and consent**

It is perhaps with this in mind that the laws are led to qualify or alter in a fundamental manner the character of their argument. The laws apparently agree with

Socrates about the limits of paternal reverence or obedience, for they assert that the city is holier and in higher esteem among the gods and thinking human beings than the mother and father and the ancestors. Having begun by appearing to ground their own authority on paternal authority, the laws now create a common ground with Socrates by accepting a radical depreciation of parental authority. (Filmer vs. Locke) The city ought to be shown more reverence or obedience or humility when angry than an angry father. At a minimum, this suggests that the laws do not believe that an angry father ought to be shown complete or absolute obedience. But nor does it mean that the city is owed total and absolute obedience when angry, either. The alternative to obedience is to show the city by persuasion that it is wrong.

This is a fundamental qualification on the absolute requirement to obey the city and its legal verdicts.<sup>3</sup> The qualification is fundamental, because it relates the city's claim on obedience of the individual to the opportunity that it provides to the individual to persuade the city of what is really right. Even though an angry city ought more to be obeyed than an angry father, is there really an opportunity for persuasion while the city is angry? Doesn't the possibility of persuasion assume a moment for reflection or sober second thought? (See Thucydides the debate over Mytiline).

Moreover, is there any city but Athens that could make a plausible claim to offer afford such an opportunity of persuasion? The possibility of persuasion assumes some degree of freedom of speech, democratic institutions, or at least what Rawls calls a "reasonable consultation hierarchy" (*Law of Peoples*) With respect to the laws of Athens themselves, in the *Minos*—the other short Platonic dialogue with an explicitly legal

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<sup>3</sup> One should be clear that what is meant here is that the city has to provide is only an *opportunity* to persuade. If a citizen either does not take up this opportunity, or does take it up but fails in the effort at persuasion, it is his duty to obey.

theme—it is observed that the laws of the city are frequently changing, which suggests the possibility of persuasion, but the dialogue ends with an identification of good law with law that remains unchanged over time.

Was Socrates afforded the opportunity to persuade the Athenians at his trial? The least that can be said is that the defense strategy adopted by Socrates was not well calculated to reduce or calm the anger of the city. Socrates did not even attempt to put the city in a frame of mind that would be amenable to persuasion.

While not admitting this explicitly, Socrates asks Crito whether the laws speak the truth when they claim that one must either persuade or obey, and when Crito replies affirmatively, Socrates does not indicate any dissent from that reply.

But the laws go on not to draw the conclusion that Socrates would be doing wrong in escaping because he had, or forewent his chance to persuade, but rather to make a new kind of normative claim, this time based on gratitude, or the benefits that the city has conferred on Socrates.

Almost as soon as making the claim from gratitude, the laws point to its tension with the claim from consent or contract. At the age of adulthood, everyone has a choice to stay in Athens or to leave with their goods—in other words, the city does not even seize the goods of the emigrant, on the theory that it is owed for the benefits conferred on him while a minor. For, one might ask, why should the city be owed anything on account of benefits it confers on a minor who would not be capable of contracting for them?

This naturally leads to a reiteration of the *contractual* argument: anyone who does stay as an adult, and in awareness of how justice is administered in the city and how otherwise it is governed, is deemed to have consented to obey the law. This is supposed

to render disobedience a three-fold wrong: wrong because the laws are his parents, wrong because they laws nurtured him, and wrong because “after agreeing to obey us he neither obeys us nor convinces us that we are wrong”. However, the first two wrongs really collapse into the third, since they too depend on the (at least implied) consent of an adult to obey the law. Parental authority alone or the conferral of benefits alone, cannot do the normative work of justifying obedience, without the additional premise of informed and voluntary consent: that the city is owed nothing from the individual for benefits conferred prior to the age of voluntary consent, is shown by the failure of the laws to require restitution or repayment from someone who leaves once he reaches that age . And while the premises of parental authority and indebtedness for benefits are neither necessary nor sufficient, the premise of informed and voluntary consent is necessary and is *almost* sufficient in itself. Only almost, because as the laws now admit, even voluntary and informed consent is not sufficient to ground obedience fully—voluntary and informed consent does not dispense with the need to offer the citizen the opportunity to attempt persuasion as an alternative to obedience.

The laws now address the situation of Socrates in particular—finally, they admit, at least implicitly that the general point about implicit agreement with the city about obedience does not dispense with the need to examine individual cases. The laws suggest that Socrates made the agreement with them more emphatically than most other Athenians. Socrates actually admits that in replying in this way, the laws would be speaking justly.

What is the evidence that Socrates agreed more emphatically than most Athenians to obey the laws (unless he can persuade them they are wrong)? This is presented as



evidence that the city pleased Socrates. Previously, the laws had referred to right of an adult to leave Athens if the laws or the city did not please him. Now the laws are careful to refer only to the evidence that the city pleased Socrates; they are silent about whether the laws, in particular, pleased him. Apart from military service, Socrates did not venture out of Athens, for instance to go to festivals, or other journeys “as other people do”. This leads to the apparent non sequitur that Socrates had no wish to know any other city or other laws, but “you were contented with us and our city”.(And here the laws return to the stronger claim that not only the city pleased Socrates but the laws themselves).

The fact that Socrates did not travel does not necessarily imply that he did not wish to know any other city or other laws; it may only mean that he was able to grasp such knowledge of other cities and laws as he needed without having to leave Athens. Athens was sufficiently open to foreigners and foreign things generally that Socrates apparently was able to gain a considerable knowledge of the laws of other cities, while remaining in Athens.<sup>4</sup> As the laws themselves will shortly admit, Socrates not only knew about Sparta and Crete and their laws, but spoke of these cities as “well governed”.

Nevertheless this is consistent with the overall conclusion that Socrates was pleased with Athens. Athens permitted or facilitated a comparative inquiry into law; it is far from clear whether such an inquiry would be possible in other cities, even (and perhaps especially) those that, according to Socrates, had better laws. This may have been a reason to stay in Athens, but one that does not necessarily, as we see, lead to the conclusion that Socrates was pleased with the laws of Athens as they exist. Is a city that is better governed more or less pleasing than a city that, while less well governed, gives

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<sup>4</sup> See Socrates’ praise of democracy in the *Republic*: it is a convenient place to look for a constitution, since it contains all kinds of constitutions.557d.

the opportunity to the citizen to persuade the city that the law as it stands is in error? The Socratic answer to the question is not obvious at this point in the *Crito*, but is suggested by the complexity of the Socratic formula in the *Minos* that ‘law wishes to be the discovery of what is’.

But, at this point, the laws switch gears and raise a quite different kind of argument concerning the circumstances of Socrates. The laws point out that, had he wanted to, Socrates could have proposed exile as the penalty at his trial. The laws seem certain that this penalty would have been accepted. Thus, Socrates could have avoided death “with the state’s consent.” Instead, at his trial, Socrates had stated that he preferred death to exile. To act otherwise now, would be to behave like “the meanest slave”. By raising this argument, the laws lead us to wonder what would be the status of Socrates’ agreement to obey the laws of Athens, were he *not* to have had the chance to save his life without defying those laws. The question that the laws now put to Socrates as to whether by his behavior he agreed to live in accordance with the laws, and the affirmative answer that Socrates and Crito (with Socrates’ prompting) give to it, fail to address that situation. To say the least, neither the laws nor Socrates ever assent to the proposition that a wrongfully convicted man is bound to accept a sentence of death where he has been afforded no other options.

### **The conditions of consent**

Socrates and Crito having assented that Socrates agreed to live in accordance with the laws, the laws are now at pains to eliminate any possible objections to the binding

force of such an agreement—perhaps better than Crito, and in common with Socrates, the laws accept that the morality of promise-keeping is not absolute or unqualified.

The laws stress: 1) the absence of fraud or duress; 2) the long time period in which Socrates had the chance to leave Athens and go elsewhere; even in the absence of force or fraud, an agreement may be of limited or not validity, if the promissor is required to make up their mind hastily or without due reflection. 3) Socrates left the city “less than the lame and the blind and the other cripples”: the laws thus hint at another precondition for the validity of an agreement to obey that is inferred from the failure to leave Athens—namely, the capacity to leave. 4) the agreement is not one-sided, there must be a benefit to Socrates; what is inferred from Socrates’s failure over the years to leave Athens is not simply his willed acceptance or tolerance of the Athenian legal order, but that the laws of Athens pleased him “for who would be pleased with a city apart from its laws?”

This last rhetorical question reminds us of the tendency of the laws, from early on in their conversation with Socrates, to give themselves credit even where it is not obviously due. Thus, the laws had attributed the begetting and nurture of Socrates to themselves, as if the existence of laws concerning marriage and education of children were a sufficient condition of social reproduction, nature having nothing to do with it.

At the same time, one cannot ignore the radically anti-patriotic or (as we would say today) anti-nationalistic implication of the idea that one would not be pleased with a city apart from being pleased with its laws: “my country right or wrong” is replaced by “my country, if right”. The status of Athens as a homeland—the claim of tradition and ancestry—is insufficient to ground a “fair” implicit agreement by Socrates to obey the law. The laws themselves have to please Socrates, ostensibly at least.

While the laws suggest that one should not be pleased by Athens if one is not pleased by its laws, it is to be noted that they leave open the converse possibility that Socrates might be pleased by Athens' laws but not otherwise by the city. In the *Republic*, Socrates calls democracy the most beautiful constitution (*politeia*), but is highly critical of the democratic personality—of “democratic man”.<sup>5</sup> Socrates' critical posture towards the city of Athens, or its inhabitants, can be consistent with a respect for its laws. Yet as Socrates accepts in the *Minos*, law is in some measure the decree of the popular assembly--the will of the people. How can laws be better than the people who create them by consent? This question is raised, but not answered by the distinction between the laws and the city as it is used in the *Crito*.

What the *Crito* does tell us, however, is that the people (the many) are capable of putting “us” to death: this, it will be recalled, is common ground between Crito and Socrates, and a reason for being concerned not only about the laws of Athens but about one's reputation among the people of Athens. And in fact the laws in their dialogue with Socrates have subtly shifted the issue back to one of reputation. Having begun by characterizing the implication of the proposed act of disobedience as destruction of the laws—i.e. grievous harm to the laws—the laws then speak of the impiety of such an act, and, finally, move from impiety to reputational consequences. Given that Socrates was pleased by the laws of Athens, they suggest, he would make himself ridiculous by going away from the city.

The laws now seem to be ready to focus on the kinds of considerations that Crito wanted to focus on in the first place. This is not entirely surprising, for the best

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<sup>5</sup> Thus, Orwin is wrong to suggest that that Socrates never praised Athens for having good laws. Orwin, “Liberalizing the *Crito*: Richard Kraut on Socrates and the State”, in *Platonic Writings/Platonic Readings*, ed. Griswold, p. 175.

arguments of the laws are all dependent on the morality of promise-keeping. But, it will be recalled, Socrates never accepted that one should always observe a contract, even if the contract is voluntary, informed, and fairly balanced. Should an overriding harm be likely to occur from performance, then performance is not justified; similarly one would have to say that if there is any overriding benefit or good, from non-performance, this could justify such a course of action.

### **The limits of consent and the question of the good**

Thus, in their final arguments, the laws point out the harms that will come from Socrates' non-performance of his agreement with the laws, and try and refute the possible benefits. With respect to Socrates' friends, the laws suggest that they will be taking serious risks by helping him to escape, including banishment and/or confiscation of property. As for Socrates himself if he were to go to one of the nearest cities that is well-governed, Thebes or Megara, he would go as an enemy to their government, having the reputation of a destroyer of laws, and moreover, the government "and all who care for their own cities" will believe that the verdict against Socrates was just. After all, "he who is destroyer of the laws might certainly be regarded as a destroyer of young and thoughtless men".

The laws here imply a difference between themselves and the government of the well-governed cities—the latter will not look beyond the kind of considerations with which the laws of Athens merely *began*, namely that anyone who avoids a legal verdict is a destroyer of laws. Rather than judging Socrates decision to escape the verdict in light

of the injustice of the verdict, the government of the well-governed cities will judge the verdict in light of Socrates' attempt to escape it. If we are to believe the laws, the government of the well-governed cities will not even consider the possibility that someone who avoids an unjust verdict is anything but a common criminal.

The laws go even further—they suggest it would be shameful for Socrates to carry on in those cities the kind of conversation that he carried on in Athens, where he praised laws and lawfulness, presumably because Socrates will now himself have proven to be a law-breaker. But are there not ways in which Socrates could explain his behavior in a manner consistent with a general respect for laws and lawfulness? Of course, the avoidance of shame would depend on Socrates' interlocutors understanding any such subtle explanation.

What if Socrates were to escape to a city that was not well governed, for example to Crito's friends in Thessaly? In that case, the laws suggest, people might be amused by the tale of Socrates' escape, for example the kind of disguises employed. In such places, people will think Socrates' escape was the act of a coward—that he was motivated by fear of death. He will survive perhaps, but only as long as he does not offend anyone. We are thus reminded that in Athens Socrates survived a very long time, while offending a great many people. Finally, the laws ask: “What will become of our conversations about justice and virtue?” Here, the laws speak as if Socrates was in habitual conversation with *them*, and not the individual inhabitants of Athens.

By now, the laws have abandoned the method of question and answer—they pose questions but do not expect Socrates (along with Crito) to answer them. The laws have abandoned dialectic in favor of a speech—in favor of rhetoric. Perhaps they are now

speaking directly to Crito, without the intermediation of Socrates, and therefore see another manner of expression as more appropriate. This becomes evident as the laws move from the issue of conversations about justice and virtue, to the issue of the upbringing of Socrates' children. The laws now suggest that, should he escape, either Socrates would have to take his children within him into exile or let his friends care for them. In the latter case, would they be better cared for on account of Socrates being in exile, rather than dead. But Socrates himself had dismissed the issue about his children as irrelevant to the considerations of justice that, alone, ought to govern the decision as to whether to escape. Are the laws pointing out to Crito that even if they help Socrates escape, Socrates' friends may well still have to pay the cost of taking care of his children? Perhaps the laws are confirming here the truth of Crito's apparent reputation for cheapness.

### **Reputation, Anger and the Laws in Hades**

The final exhortation of the laws to Socrates is to put his immortal reputation ahead of all other considerations. Thus Socrates should care for the right most of all so that when he goes to the home of the dead he may be able to defend himself—i.e. save his reputation. If Socrates accepts his punishment, he will go away wronged only by men, not by laws. But if he escapes “after so disgracefully requiting wrong with wrong and evil with evil, breaking your compacts and agreements with us, and injuring those you least ought to injure—yourself, your friends, your city and us—we shall be angry with out while you live, and therefore our brothers, the laws in Hades' realm, will not

receive you graciously; ”. In restating here all their previous arguments, the laws assume that those arguments have been proven, above all that Socrates’ escape would make him a destroyer of the laws.

Or, rather, the laws (consistent with the abandonment of dialectic, of question and answer) are now reverting to an apodictic voice. We hear the laws as commanding, as potentially angry—and violent. Socrates states that the final words of the laws are heard by him as the “frenzied dervishes of Cybele seem to hear the flutes, and this sound of these words re-echoes within me and prevent my hearing any other words. And be assured that, so far as I now believe, if you argue against these words you will speak in vain.” In its commanding and threatening voice, the law drowns out discussion, and makes the effort to persuade futile. But in the *Crito*, we also hear the other, softer voice of the law, which offers the possibility of persuasion, which speaks of choice and free obligation, not slavish or unthinking obedience

### **Conclusion: the different voices of the laws**

In reflecting on these different voices of the laws, as they come and go in the *Crito*, we can begin to understand Plato’s teaching in this dialogue. As a matter of abstract right, or justice, the laws cannot, in their rational mode, make out an open and shut case that Socrates should accept to go to his death in the face of a wrongful conviction. But it is not the law’s rationality that is threatened or attacked by Socrates’ escape; it is the law’s ability to command, to be frightening, to be authoritative. The law, which is able to be rational, nevertheless requires a majesty that transcends reason.



We see with our own eyes that a dialogue with the likes of Crito about legal obligation is not possible on the plane of reason alone. The ability of men such as Crito to subvert the law through bribery and deceit undermines the majesty of the law. In the *Crito*, the laws are right to emphasize the long period of time that Socrates lived in Athens as an adult, and also his characteristic adult activity, the conversations that he engaged in with Athenians. These conversations, this free inquiry, did not cease to anger and offend. Without the protection of laws, it is very doubtful that these offending activities would not have brought ill to Socrates long before he was actually brought to trial. The anger of men is sometimes stronger than the anger of the law—the laws could not prevent Socrates being wronged by men. But such protection of the likes of Socrates as is available in any political community may largely depend on the capacity of men in general to be awed by the laws, including their brothers in Hades. By commanding Socrates not to escape, the laws are in fact punishing the city for its wrongful verdict against Socrates. By accepting the verdict, at the cost of his own life, Socrates shows that he is not the kind of person he is alleged to be by his accusers. Socrates' acceptance of execution is a shaming punishment of the city for the wrongful verdict. In the *Crito* this shaming punishment is, in effect, attributed to the laws, not to Socrates, for in the end the laws “command” Socrates not be persuaded by Crito. While Socrates' creed is never to harm another, it will be recalled that, early in the *Crito*, he did explicitly leave open the possibility that punishment for self-protection, i.e. deterrence, might be acceptable. Such punishment is especially acceptable, if it can be attributed to the laws, since no legal regime can preserve itself otherwise (and indeed Socrates had never made clear that the principle against punishment or retribution applied other than to individuals).

Whether the shame that Athens felt at the execution of Socrates, served as a deterrent against similar actions against other free spirits and philosophers is, of course, a matter for the historians.