

# Legislation, Legal Development and Anomie in Plato's Philosophy of Law

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Abstract

*In his Socratic dialogues, Plato seeks to vindicate the memory of Socrates by showing that Socrates' behaviour provides the model that the virtuous citizen ought to follow in his relationship with his state and its laws. Socrates offers a clear example of the consistency of the function of the common citizen with that of the wise man. In this respect, the possibility of a science of legal dynamics appears to be a subsidiary issue. If, however, one considers the fact that, according to Plato, the legal order is largely dependent on its acceptance by the ordinary citizen, one can argue that the Socratic dialogues contain hints of a theory of legal development. The purpose of the present paper is to explore and comment on Plato's views on legal development as a key element of social development, with particular attention being paid to his works *Apology of Socrates* and *Crito*. Although the focus of the discussion will be on the positive aspect of legal development, Plato's notion of lawlessness or anomie and its effects on the legal order will also be examined.*

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## Law, Legal Order and the Role of Legislation

Man, as a social being, is a central theme in Plato’s philosophy of law. <sup>(1)</sup> Plato argued that the concept of a political community of men or city-state (*polis*) is inconceivable unless the concept of law (*nomos*), understood as the application of reason to human affairs, is simultaneously considered. <sup>(2)</sup> The state is defined by reference to a particular kind of legal order and set of legal norms. This is implied by the close connection between the laws and the ‘community of citizens’ (*universitas civium*), the latter being endowed with a common will expressed through the legal order. The law makes the state an object of knowledge. It can be described as the mold that bestows regularity on the life of a given society. According to Plato, the development of law cannot be separated from the development of society. This suggests that legal development is fundamentally a social one.

The importance attached to the idea of persuasion and Plato’s awareness of the danger of rebellion show that he was fundamentally alien to a definition of law equating it to a mere command backed by force. <sup>(3)</sup> Plato anticipated Montesquieu’s view that the legal order depends on the acceptance by the common citizen of a system of moral values and the awareness of the social bonds the citizen displays in his daily behaviour. <sup>(4)</sup> This is evident from the ‘social contract’ theory delineated in

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(1) See England (1976: 1).

(2) See, e.g., *Crito* 53a; *Laws* I 644d. Plato defines ‘law’ (*nomos*) as ‘the regulation of Reason’ (*Laws* IV 714a2) and states that the study of law, if it is rightly framed, is the surest way to make the learner a better man. And see *Laws* XII 957c.

(3) The nineteenth century British jurist John Austin, for example, defined law in terms of a command supported by a sanction and as presupposing the habitual obedience of the bulk of a community to the commands of a sovereign himself not habitually obedient to anyone else. See Austin (1998).

the *Crito*, one of Plato's most famous dialogues. It should be noted, however, that the meaning of 'social contract' here is quite different from that usually attributed to John Locke or Jacques Jean Rousseau.<sup>(5)</sup> There is no reference to the origin of legislation in *Crito*, and Plato did not at this stage of his career admit the possibility of human life without law (as he will be able to do in his *Laws*). The law is viewed as temporally and logically antecedent to the citizen, who may accept or reject its rules, and it persists even if the citizen breaks the ties that bind him to the community. But what makes the social contract theory of *Crito* fundamentally different from later social contract theories is Plato's reference to the affinity of the divine 'laws of Hades' to those of the state.<sup>(6)</sup>

As in Plato the 'divine' is an anticipation and figurative expression of the 'rational', the description of the laws of Hades as divine may be understood as hinting at their objectivity and universality. This approach to the matter precludes the possibility of bestowing on Plato's account an ideological character in line with Hans

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(4) According to Montesquieu, "law in general is human reason", and "the political and civil laws" (that is, public and private law) are instances of the application of this human reason. Montesquieu (1977: 104).

(5) Social contract theory typically posits that individuals have consented, either explicitly or tacitly, to surrender some of their freedoms and submit to the authority of a ruler or magistrate (or to the decision of a majority), in exchange for protection of their remaining rights. The term 'social contract, refers to an actual or hypothetical agreement between the ruled and the ruler, defining the rights and duties of each. According to this theory, in primeval times individuals were born into an anarchic state of nature, which, depending on the particular version of the theory, was happy or unhappy. They then, by exercising natural reason, established a society and political community by means of a social contract. See Locke (1988); Rousseau (1998). And see Boucher and Kelly (1994).

(6) In *Crito* 54c, the laws stress to Socrates that the laws governing Hades are their 'brothers' and will not receive him kindly when they hear that he tried to destroy the laws of the state by disobeying them. However, Plato does not clearly explain the link between the laws of the state and the laws of Hades.

Kelsen’s interpretation of platonic justice. If Kelsen is right, the statement about the laws of Hades may be understood as a ‘grandiose lie’ aimed at persuading citizens to accept the supremacy of the positive laws of the state.<sup>(7)</sup> However, the evidence provided in *Crito* and the *Apology of Socrates* does not supply a firm enough ground to take a position on the question of the priority of either divine law or the law of the state. As the statement on the laws of Hades expresses an authentic religious experience felt by Socrates in the last moments of his life, it seems unlikely that it was intended as a tool to confer acceptability on the laws of the state. One might perhaps say that this statement points at least to what the just citizen is expected to believe. It possesses the status of a ‘virtuous belief’.<sup>(8)</sup>

Much of Plato’s legal theory deals with legislative science. According to him, the development of legislation depends on the social development of the citizen. The first stage of this development is the transition of an individual from the merely biological to a social level. Man, as such, is a merely biological being. The laws concerning the relations of the individual with the family bestow on him a social status. In this respect, one could say that the citizen is a product of the law. This also applies to the subsequent acts of the citizen, which, as such, are merely physical, but are raised by the law to a social level.<sup>(9)</sup>

The second stage of the citizen’s social development concerns the upbringing of the future citizen as an infant and as a child. The relevant laws prescribe the various duties of his parents towards him, including caring for his physical well-being

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(7) According to Kelsen, the platonic view of divine or natural law was a way of satisfying the lawgiver’s and Plato’s own thirst for power. Consider on this issue Kelsen (1960). However, the fact that Plato occasionally refers to positive law and its institutions as ‘divine’ (Laws XII 957c, XII 965c, XII 969b) should no mislead us. According to him, positive law may be ‘divine’ only insofar as it reflects and embodies reason (*nous*).

(8) *Crito* 47a. To the unwritten divine law may also refer the ‘greatest laws’ of *Crito* 53e.

and cultivating an elementary social and moral sense. Associated with the latter is the fear of derision, the aversion to inappropriate behaviour, and the feeling of shame.<sup>(10)</sup>

The third stage of the citizen's social development has to do with the educational function of the laws.<sup>(11)</sup> In *Crito*, reference is made to a set of written laws providing that the physical and 'musical' education of the future citizen is a mandatory obligation of his closest relatives.<sup>(12)</sup> The fact that music is included in the educational pattern mandated by these laws may suggest that the citizen is thereby endowed with what Protagoras describes as 'gentleness of the soul'.<sup>(13)</sup>

The fourth and final stage of the citizen's social development concerns his ability to perform his political duties. The laws related to the duties of citizenship include constitutional law, understood as the law that recognizes, among other things, the legal right to participate in the offices of the state, including the judiciary;<sup>(14)</sup> the laws concerning the administration of the state; and the laws providing for the various duties of the citizen (e.g., military service). All these are probably enacted, written laws.

(9) Reference may be made in this connection to John Searle's theory of 'institutional facts.' According to Searle there are some entities in the world that seem to exist wholly independently of human institutions, and he designates these 'brute facts.' He distinguishes these from what he calls 'institutional facts', whose existence, unlike the existence of brute facts, presupposes the existence of certain human institutions. As he observes: "It is only given the (legal) institution of marriage that certain forms of behaviour constitute Mr Smith's marrying Miss Jones." Searle (1969: 51). And see Anscombe (1958).

(10) *Crito* 53d-e.

(11) The relevant utterances in *Crito* do not refer to the educational function of legislation as a whole. This will be the case with the *Republic*.

(12) And see Plato's *Protagoras* 325e ff.

(13) *Protagoras* 326b. It is likely that the term *kosmos* may apply to the so 'adorned' personality, unless it involves also the performance of political duties, meaning then ordered rather than adorned soul.

Thus, to summarize so far, the four phases of a person’s social development concern: (a) their rise to a human social status; (b) their upbringing, aiming at cultivating healthy moral attitudes; (c) their education, the main purpose of which is to instil in them a spiritual and moral consciousness; and (d) their ability to participate in the affairs of the state, which involves the ability to fulfill the duties of citizenship. These phases correspond to legal functions and, in this respect, allow a dual classification of existing laws. We can distinguish between the unwritten customary laws, which largely correspond to the rules prevailing in phases a and b, and the written legislative acts which dominate phases c and d. It can also be suggested that the aforementioned functions can form the basis of a fourfold classification of laws, whether written or not. Thus, we have the laws on marriage, nurture, education and citizenship, the last including constitutional law.<sup>(15)</sup> Whichever of the above classifications is adopted, one could conclude that the development of the social consciousness of the citizen provides the basis for a functional classification of laws.

Plato’s comments on the moral development of the citizen suggest the assumption that the development of law implies a change in the moral standards accepted by the community. Many gloomy observations about Greek city-states, such as those concerning the separation of political power from wisdom,<sup>(16)</sup> suggest that Plato sensed a fundamental inconsistency underlying their condition. While they generally paid lip service to the egalitarian cooperative values grounded on isonomy, they actually implicitly adopted competitive values in both their domestic and foreign

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(14) And see Aristotle’s *Politics* 1274a.

(15) It is noteworthy that the penal law has no distinct status in *Crito* but is perhaps included in the laws on the judicial function. This may be so because the emphasis in *Crito* is on the power of persuasion rather than on compulsion and punishment.

(16) See Plato’s *Republic* V 473 d-e.

policies. According to Plato, this was especially the case in relation to the Athenian politics and public life, where competitive standards dominated.<sup>(17)</sup>

Plato's political theory, despite its aversion to the competitive values, recognizes them in relation to: a) the historical analysis of primitive communities; and b) the description of the foreign policy of any state. One might ask whether the prevalence of these values is not, for Plato as for the British political philosopher Thomas Hobbes,<sup>(18)</sup> a characteristic of the primitive stage of political and legal development. This seems unlikely to be so as we are told elsewhere that peaceful relations prevailed at that stage.<sup>(19)</sup> If, however, the 'Cyclopean cities' mentioned in Plato's *Laws*<sup>(20)</sup> are taken to represent the earliest stage of social and political development, one might conclude that they innocently adopted the competitive or selfish standards, as manifested by their inattention to one another.<sup>(21)</sup> It should be noted, further, that even the healthy state referred to in the *Republic* may be forced to wage war and thereby embrace the competitive values that such a policy dictates.<sup>(22)</sup>

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(17) The prevalence of these standards is associated with the belief that goodness and justice primarily pertain to protecting oneself by all means, helping one's friends and harming one's enemies. See, e.g., *Crito* 45c, 46a. Glauco, in the *Republic* (II 358c, 359b-c), alludes to this system when he says that people hold justice and equality as second-best values and that they would nourish different beliefs if they could do so with impunity. Kallikles' views on justice in *Gorgias* (491d), identifying it with 'having more' (*pleon ehein*), refer to these values, and this induced Plato to question the traditional competitive ideal of 'excelling' or 'distinguishing oneself' (*aristevein*), especially in so far as politics is concerned.

(18) See Hobbes (2017).

(19) *Politicus* 271e ff. Plato, like Hesiod, probably thought that the primitive stage of the history of mankind was the nearest to the ideal, as the myth of Cronus in the *Politicus* and the *Laws* seems to suggest.

(20) *Laws* III 681b.

(21) This situation is said to have persisted as long as they led a separate existence, i.e., prior to their 'convergence' noted in *Laws* III 681c.

(22) *Republic* V 466e ff.; 470e. And see *Republic* VII 540a ff.

Although Plato’s notion of law in *Crito* is based on the application of cooperative values and principles, the question can be raised as to how the transition from a competitive to a cooperative value system is ensured. As the whole movement of thought in *Crito* suggests, this transition can be effected through the common identification of the *just* (right as a noun or *dikaion*) with the *lawful* (*nomimon*). The established law is the rule that allows one to distinguish right from wrong, because it is the expression of justice as such. Plato’s treatment of law in *Crito* rests on the assumption that injustice is harmful to the soul, while justice represents its healthy state. This approach is perfectly consistent with the concept of justice adopted in *Gorgias*, where injustice is described as a ‘sickness of the soul’.<sup>(23)</sup> Indeed, the legal doctrine outlined in *Crito* implies the same ontology of the soul as in *Gorgias* and the *Laws*.<sup>(24)</sup> It is therefore evident that Plato, when he composed the *Crito*, had already perceived the ontological principle of sound legislation, that is, the true nature of the soul,<sup>(25)</sup> but did not give it a transcendental character, as he will do in the *Republic*.<sup>(26)</sup>

As has been noted, the positive development of legislation implies a change in the domain of moral values that provide its moral foundations. There is no strong evidence in the *Apology of Socrates* and *Crito* as to who the agent is that brings about this change. However, it can be inferred that Plato’s statements about the ‘competent man’<sup>(27)</sup> imply that this change amounts to a philosophical and moral conversion of

(23) *Gorgias* 512a.

(24) Consider on this issue *Laws* V 726-727a.

(25) Since order is the defining characteristic of the god (nous), who governs the cosmos, Plato’s philosophical legislator imitates the god and sets down laws that embody ‘order’ (taxis). The restraint of desire by law introduces a similar order in the human soul. To make the soul orderly thus assimilates it to the divine.

(26) See *Republic* V 476a. It is noteworthy that Plato in *Republic* VI 506 b-c appears to be fully aware of the ambiguity of the term *dikaion*, or ‘right’ (as a noun), which may be construed in light of quite different systems of moral values.

(27) *Apology* 25b; *Crito* 48a.



the citizen, represented here by Socrates, whose representative is not yet the philosopher but the morally competent man, i.e., the man who has the right insight into the true nature of the soul. It may be added that this moral change is irregular, since its lower stage, dominated by competitive values, coexists with the higher stage characterized by the dominance of ‘wisdom values’. John Walter Jones’s statement on the Platonic view of legal order, that it is “a living influence to be felt, experienced and manifested in conduct”,<sup>(28)</sup> applies to what is said in the *Apology* and *Crito* on this topic.

It is noteworthy that the law may be defended by an appointed advocate,<sup>(29)</sup> a hint obviously referring to the Athenian practice of appointing public advocates to defend a law being considered for repeal. Indeed, the law seems to be endowed with the faculty of conversing. The whole speech of the laws in *Crito* implies the ability of the law to state its own case, to convince the citizen of the rightness of its demands, to be convinced by him, thus suggesting that the law can be reformed or improved through the public action of the citizen.<sup>(30)</sup> According to Plato, the law can be ‘persuaded’, that is, modified, reformed, and improved by the action of the citizen.<sup>(31)</sup> This view of the law implies an appeal to both the emotion and reasoning capacity of the citizen. In this light, the Platonic statements about the ‘goodness of the law’ and the ‘love’ that the enlightened citizen is expected to feel towards it can be understood.<sup>(32)</sup> One might note in this regard that legal persuasion is somewhat similar to persuasion carried out through dialectic, that is, the rational examination and discussion of the implications and consequences of belief and action.<sup>(33)</sup> The

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(28) Jones (1956: 11-12).

(29) *Crito* 50b.

(30) *Crito* 51b, 52a.

(31) *Crito* 51c, 51e, 52a. This is a constant platonic claim, vividly expressed in the *Laws* IV 722b.

(32) *Symposium* 210b-c; *Hippias Major* 295d.

emphasis on persuasion in *Crito* points to a functional development of the law, with its persuasive function outweighing its compulsory one, which may have dominated the initial stage of socio-legal development. The compulsory function of law is deemed to prevail when persuasion fails. Violence or coercion may be used as a last resort when it is necessary to cure through purification an unhealthy state of affairs. Even then punishment should not be used hastily but should be regarded as a last resort. <sup>(34)</sup>

### ***Legal development and the judicial process***

The law, perceived as a living and evolving force, cannot be severed from its judicial application. <sup>(35)</sup> Judicial decisions are exemplifications of the law, relating to it as the particular to the universal. The examination of the judicial function of law suggests some kind of taxonomic development of legislation, where its type is linked to the solutions that universal law provides to particular problems. This way of looking at the issue is consistent with the view that contempt of court decisions constitutes a contempt against the legal order itself. <sup>(36)</sup> However, the notion that a close relationship exists between the legal and the judicial orders gives rise to certain difficulties. The most obvious difficulty stems from the fact that a judge may betray the ethical demands of his position. <sup>(37)</sup> Plato seems to stand by the rule concerning the validity of judicial decisions, <sup>(38)</sup> although it can be argued that one could be justified

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(33) See *Republic* V 476d-e.

(34) *Apology* 26a-b. Indeed, it is proposed that the offender should be convinced of the fairness of the sentence imposed on him. Consider *Apology* 37a; *Protagoras* 323 d ff.

(35) Consider, e.g., *Crito* 50b, 50c, 51c, 51e.

(36) Consider *Crito* 50b.

(37) *Crito* 54c; *Apology* 35c, 40a.

(38) See *Republic* VIII 557e-558a.

in disobeying ‘perverse applications’ of the law on the grounds that they imply the annihilation of the legal order by deed.<sup>(39)</sup> One may wonder if there is a confusion here between law (*nomos*) as a claim of reason and law as an established rule. In any case, it is clear that the speech of the laws belongs to an idealized sphere, the figure of Socrates as the ideal citizen being relevant to it. The claim about the absolute validity of judicial decisions may be understood as an ethical principle related to the behaviour of the ideal citizen, which allows him to be a model, in a somewhat Kantian sense, for all the ‘empirical’ citizens. Whatever it is, the ideal or right judgment (*dike*) can be seen as a logical consequence of the rational law (*nomos*). Moreover, it may be argued that Plato’s refusal, or at least reluctance, to recognize the practice and value of equity (*epieikeia*),<sup>(40)</sup> on the grounds that it is derogatory to the claims of strict justice,<sup>(41)</sup> is not unrelated to his views about the authority of judicial decisions. This refusal implies that there must be a close logical connection between *nomos* and *dike*, the judge not being allowed the right to freely interpret the law.

Now, one may wonder whether this way of looking at the matter is consistent with recurrent Platonic utterances about the triviality and pettiness of judicial matters, hence Plato’s reluctance to legislate on them.<sup>(42)</sup> It may be argued that the judicial function, whose chief aim is to cure a morbid state of an individual, is unnecessary

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(39) *Apology* 32b-c.

(40) Aristotle described equity (*epieikeia*) as not different from justice, but as a better form of justice and as a correction of the law where [the law] is defective due to its universality. An equitable decision is considered just because it is what the lawgiver would have decided under the particular circumstances of the case, if he or she had been present. See Aristotle, *Nicomachean Ethics* V, chapter 10. The Greek concept of equity was based on an idea of fairness and humanity in some way analogous to the idea underlying the Roman *ius nature* and English equity. And see Evans (1994).

(41) *Laws* VI 757e.

(42) See, e.g., *Republic* V 464d; III 405a ff.

when the legislator has to deal with a healthy social state. In such a situation, the legislator will be inclined to limit the scope of legislation to certain general principles, relying on the magistrates for adequate provisions on the details.<sup>(43)</sup> The magistrates, acting as judges, will provide appropriate solutions to problems as unforeseen circumstances may require. It should be concluded then that there is no inconsistency between the serious treatment of *dike* in *Crito* and the contempt displayed towards it in the *Republic*. The state of *Crito*, its laws and verdicts, is not yet the ideal or even the healthy state of the *Republic*, but an idealization of historical Athens. Treating *dike* according to the state’s degree of perfection resembles a parallel treatment of the law. If the state’s degree of perfection and rationality is high, the law should be limited to an outline or broad statement of general principles. The closer we get to the historical, empirical state, the more *nomos* and *dike* grow in importance. The philosopher is better equipped to recognize this fact since he will be more critically aware of the imperfection of this state. Correspondingly, his emphasis on the importance of written laws will increase. Plato would probably accept that the judicial verdict is to the law what the law itself is to the ‘paradigm’ of justice apprehended by the dialectical insight of the legislator.<sup>(44)</sup> This seems to be the implication of the speech of the laws in *Crito*.

## Lawlessness and Failed States

The ‘just’ in the *Apology* and *Crito* is that which is in accordance with the law. It may then be inferred that the ‘lawless’ is equivalent to the ‘unjust’. It is noteworthy that the terms ‘disorder’ (*ataxia*) and ‘dissoluteness’ (*akolasia*) are understood as

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(43) *Republic* V 458c.

(44) *Republic* VI 484 c-d.

synonymous with anomie or lawlessness (*paranomia*), or at least as closely related to it.<sup>(45)</sup> As, according to Plato, vice refers to an individual disorder of the mind and conduct, it can be inferred that, in relation to the state, ‘lawlessness’ is a term describing the disordered state of mind and conduct of its citizens. In the *Apology* lawlessness is described in terms of acting against the laws.<sup>(46)</sup> Such behaviour results from the tendency to make unjust decisions out of irrational impulses. As far as the state is concerned, the agent of such decisions and actions is a popular assembly.

The term ‘lawless’ (*paranomon*) primarily describes disorderly individual behaviour without necessarily referring to the laws of the state that are violated through it.<sup>(47)</sup> However, since the sovereign of a state is assumed to demonstrate a unity of purpose,<sup>(48)</sup> the notion of lawlessness can be extended to political decisions resulting in a growing weakness of the legal order.<sup>(49)</sup> In this regard, the notions of ‘disorder’ (*ataxia*) and ‘dissoluteness’ (*akolasia*) will be examined in so far as they relate to: a) the psychological roots of lawlessness, and b) its tangible effects. Injustice (*adikia*) will not be considered here in its primary sense, that is, as a disregard of an internal principle which obliges one to be just,<sup>(50)</sup> but in so far as it is

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(45) This reflects Plato’s view of order as resulting from the supremacy of law (*nomos*) either on a cosmic or a political level.

(46) *Apology* 32b-c.

(47) On Plato’s account of the connection between lawlessness and desire see *Republic* IX 571b. The rejection of tyranny may be due to its close link with desire, whose essence is lawlessness since it lacks any consciously accepted limit.

(48) Consider *Republic* V 462d, VI 493a.

(49) According to Plato, the function of *logos* within the soul is the source of normal legislative authority. *Logos* refers to the type of cognition distinctive to humans - it is the medium through which knowledge is obtained and, as such, it has a part in reason and argument. The sovereignty of *logos* is grounded on and legitimated by its knowledge of what is profitable or useful to the whole of the soul. The science of the *deon*, of what ought to be done, derives from this knowledge and is not granted a distinct epistemological status.

related to or contributes to lawlessness (*paranomia*).

According to Plato, the legal order involves the adoption by the legislator and the citizen of a ‘true’ hierarchy of values, otherwise referred to as scale of goods, or scale of ends, or scale of virtues. The laws are primarily the product of assessments of the various individual and social pursuits carried out by the legislator, who should therefore have an insight of this true or natural scale.<sup>(51)</sup> The legal order is annihilated when this insight is lacking and therefore the resulting appraisal of the existing pursuits is false. Lawlessness, then, has its roots in the lawgiver’s ignorance of moral knowledge. For Plato, the root of lawlessness is a morbid or unhealthy state of the soul, associated with injustice, due to which the soul is unable to know itself as man’s highest and truest self.<sup>(52)</sup> This ignorance on the part of the legislator and the citizen is the ultimate source of lawlessness.<sup>(53)</sup> In the *Apology* and the *Crito*, this kind of moral ignorance is largely explained in intellectual terms,<sup>(54)</sup> while in his later dialogues Plato draws attention to *akrasia* or lack of self-control, a state of moral weakness due to desire, as the ultimate source of moral ignorance. Thus, in the theory of punishment set forth in the *Laws*, he still adheres to the principle that any wrongdoing is involuntary<sup>(55)</sup> because it is due, at least in part, to desire.<sup>(56)</sup>

The ignorance arising from the diseased state of the soul entails a false

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(50) See *Crito* 47d where injustice relates to the contempt of right reason.

(51) *Laws* I, 631b ff.

(52) Consider *Crito* 47e; *Gorgias* 512a; *Republic* IV 445a.

(53) In the *Apology* and *Crito*, the emphasis is on the citizen, in the *Laws* it is on the legislator. This can be explained by reference to the difference of topics and circumstances addressed in those dialogues. In fact, there cannot be any distinction as far as the rise of lawlessness is concerned. See *Republic* IV 424d; *Laws* III 691a.

(54) *Apology* 22d-e; *Crito* 47d.

(55) *Laws* IX 861d.

(56) This view appears to be different from that expressed in *Protagoras* 355b ff.

judgment about the true hierarchy of goods.<sup>(57)</sup> This judgment consists in ranking first what is actually last.<sup>(58)</sup> This approach to lawlessness will be constantly maintained by Plato.<sup>(59)</sup> The only notable difference between the view of lawlessness expressed in Plato's earlier dialogues, including the *Apology* and *Crito*, and his later treatment of the subject in the *Laws* III and the *Republic* VIII lies in the fact that in the latter works the rise of lawlessness appears to be more gradual.<sup>(60)</sup> In the *Republic* it is assumed that there are corresponding degrees in the falsity of the moral judgment which lies at the root of lawlessness. So, the choice of honour and fame is evidently less conducive to lawlessness than the greediness of tyranny.<sup>(61)</sup> On the other hand, in the *Apology*<sup>(62)</sup> it is suggested that whether a citizen chooses honour, reputation or material wealth over wisdom, truth and the health of the soul, the state is equally corrupted.<sup>(63)</sup> This wrong moral choice implies a wrong direction of one's activity (*praxis*), or, in the words of Socrates, a 'wrong care'.<sup>(64)</sup> A state will descend to lawlessness when the legislator and the citizen care more for their material belongings than for their true selves, or consider the 'appendages of the state' more important than the state itself.<sup>(65)</sup> This practical lawlessness arises when the individual

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(57) *Apology* 30a-b.

(58) The same views on wrong appraisal are also expressed in *Republic* VIII, 548c, 550e, 561c.

(59) Consider, e.g., *Laws* I 628 c-d; III 697b.

(60) See, e.g., *Republic* IV 424d.

(61) *Republic* VIII 549a; *Republic* VIII 568d ff.

(62) *Apology* 29e.

(63) This difference may be explained by reference to the fact that while in the *Republic* and the *Laws* we are offered a theoretical description of a state's slide from lawfulness to lawlessness, in the *Apology* the state of lawlessness is considered from the standpoint of the righteous citizen as obtaining in fact.

(64) Plato and Aristotle did not consider practice (*praxis*) as such but in relation to its end (*telos*). They assumed that its finality conferred intelligibility on it and thus allowed its scientific study.

(65) *Apology* 36 c-d. compare with *Gorgias* 519a.

or the state make honour or wealth the chief objects of their pursuits. A morally wrong choice involves the conscious or tacit acceptance of false rules of action. One such rule is reflected in the notion of requiting injustice with injustice (*adikoumenon antadikein*). Although harming one’s enemy may be entrenched by tradition <sup>(66)</sup> and appear potentially rational, it can lead to practical lawlessness, as it implies that self-interest is the ultimate motivation of the citizen. Such false rules of conduct lead to the growth of selfishness in the soul of the citizen and to the weakening of the ties that bind him to the community and the state. <sup>(67)</sup>

We may now consider how the excessive rigidity of the law may lead or contribute to lawlessness. According to Plato, if the law is not understood by the magistrates charged with its implementation and the citizens, it becomes a dead letter. Such a situation can lead to lawlessness, as the law will fail to fulfill its educational function. <sup>(68)</sup> The educational weakness of law becomes particularly evident when its compulsory function prevails over its persuasive one. A legal system which too often resorts to violence at the expense of persuasion is self-destructive, and a legislator who resorts to hasty compulsion loses his moral authority. <sup>(69)</sup> Even when Plato describes law as involving commands, this implies a statement of its purposes, not coercion as such. <sup>(70)</sup> Undoubtedly, Plato would have rejected the view of Thomas Hobbes or John Austin that law is a mere command, supported by the threat of punishment. That a step towards lawlessness takes place when the law is merely a

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(66) See *Republic* I 332b ff.

(67) The connection between lawlessness and selfishness is frequently drawn attention to in the *Republic* VIII.

(68) This view is constantly held by Plato. Consider, e.g., *Laws* I 625a; VI 751 c-d.

(69) See *Crito* 52a, 52d-e.

(70) In relation to this matter consider *Politicus* 260b, where commandeering (*epitaktike*) is viewed as a theoretical science pertaining to the ends to be pursued and by no means as an actual compulsion.



mandatory command is further implied when too hasty action of the law is rejected, especially in relation to the death penalty.<sup>(71)</sup> This approach to the matter does not imply any laxity in the application of judicial decisions.<sup>(72)</sup> However, hasty and emotional verdicts can lead to lawlessness, even if they agree with the letter of the law, as such verdicts may display an over-reliance on punishment at the expense of instruction.<sup>(73)</sup> Plato's *Republic* goes further than this and tends to treat as potentially lawless any system based solely on the fear and threat of punishment.<sup>(74)</sup> According to Plato, recourse to coercion is evidence of a state of ignorance in the soul of the legislator.<sup>(75)</sup> If it were otherwise, the legislator would be aware of the false practical values, since knowledge of falsehood and error implies knowledge of truth and right.<sup>(76)</sup> It may be inferred that the law becomes too rigid and is hence degraded when there is no proper balance between its mandatory and persuasive functions. As this balance is based on the knowledge of what the inner order of the soul requires, the excessive rigidity of the law must arise from ignorance on the part of the legislator.<sup>(77)</sup>

When the proper proportion between the compulsory and persuasive functions of law is absent, the law becomes ineffective;<sup>(78)</sup> it ceases to be a living principle and becomes a dead letter. This also happens when the decisions of the courts issued on behalf of the law are treated as mere words.<sup>(79)</sup> Although court decisions are not laws,

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(71) *Apology* 37a-c; *Crito* 48c.

(72) See *Republic* VIII 557e.

(73) *Apology* 26a.

(74) *Republic* IV 426b-e.

(75) *Republic* III 413a.

(76) *Republic* III 408b-c.

(77) This agrees with the account of the corruption of the Athenian and Persian constitutions in Plato's *Laws* III.

(78) This is described as overthrow or corruption of the law. See *Crito* 50b, 53c, 54c.

there is a law that requires these decisions to be respected. This law becomes void when court verdicts are ignored. Furthermore, the law loses its force when it is misused to obtain an unjust judgment from it. In this case, there is a lack of proportion between the law and its judicial application. According to Plato, this is a clear symptom of lawlessness. We face a similar case of lawlessness when there is a complete discrepancy between the law and the judicial sanctions imposed on its behalf. The law can also be distorted by the decisions of magistrates holding executive power, whose relationship to the legislature parallels that of the judges.<sup>(80)</sup> In this case, the responsibility for maintaining law and order rests with the citizen, whose apparent disobedience is actually obedience to the law.

The phenomenon of political and legal corruption is associated with the power of the rulers,<sup>(81)</sup> but it affects also the behaviour of citizens. For instance, the Thirty Tyrants of Athens were lawless because they acted in contempt of the law they were supposed to respect.<sup>(82)</sup> They tended, presumably through ignorance, to seek a greater share of rights and powers than was assigned to them by the law.<sup>(83)</sup> Such behaviour induces the citizen to believe that his own interest is different from or even contrary to that of the community.<sup>(84)</sup> The citizen is in a potential state of ‘individualism’ (*idioses*), which is a key factor leading to legal weakness and is therefore consistently rejected by Plato.<sup>(85)</sup> This mentality is tantamount to hybris or a refusal of any kind of

(79) *Crito* 50b.

(80) See e.g., *Apology* 32c.

(81) *Laws* III 683e, 691a; *Republic* VIII 545d.

(82) See Aristotle, *Athenian Constitution*, ch. 34.

(83) *Nomos* (from *nemein*) expresses originally the idea of a fair repartition.

(84) *Crito* 51 a-b.

(85) *Idioses* embraces all the ways in which individuals can conceive of themselves as independent actors, with needs and interests of their own. It arises whenever something might be described as ‘personal’, ‘private’ or ‘individual’. A person who only tended his private affairs contributing nothing to the life of the community was described as an *idiotes*.

restraint, legal or moral. According to Plato, lawlessness is often the result of hybris, understood as a disregard of external constraints. When this happens, the citizen claims rights to which he is not entitled. He considers himself equal to the legal order and tends to use violence against it if he deems it convenient.<sup>(86)</sup> He is shameless towards the laws while insulting them.<sup>(87)</sup> When he acts in such a manner, the citizen, governed by ignorance, rejects the principle of obedience to law.<sup>(88)</sup> This spiritual lawlessness is expressed outwardly in disorderly conduct.<sup>(89)</sup> Such behaviour manifests a deep inconsistency, as it implies acceptance and then denial of the legal order by the citizen, and ultimately denial of his very existence as a political being, which he owes to the law.<sup>(90)</sup> The citizen is thus reduced to the level of a mere physical being, disconnected from the political community.<sup>(91)</sup> When the citizen is so degraded, the law is even more seriously affected than in the case of ineffectiveness of judicial decisions issued on its behalf. The law becomes meaningless as it can no longer function as an educational principle. It may be observed here that the effectiveness of the legal order depends, in both *Crito* and the *Apology*, on the citizen, while in the *Republic* and the *Laws*, the dependence of the law on the sovereign, the judge and the magistrate is more strongly emphasized.<sup>(92)</sup>

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(86) *Crito* 51b-c, 52e.

(87) *Crito* 52c.

(88) *Crito* 50e. The necessity of submission to the law is a constant Platonic principle. It should be pointed out here, however, that the Platonic ‘good slavery’ to the law involves submission to the superior principle of the soul or the state.

(89) *Crito* 50d-e; *Apology* 26e-27a.

(90) *Crito* 50e, 53a, d-e.

(91) *Crito* 50d – 51a.

(92) This shifting of emphasis may be due to the difference of dramatic circumstances of each dialogue.

### *The Lawless State*

When the laws become ineffective, either through weakness or excessive rigidity, the state descends into a state of lawlessness. The lawless state is contrasted with the well-organized state governed by good laws. In Plato the term *eunomia* refers both to a state with sound legislation and to a state where laws are observed. In the *Crito*, taken as a whole, the emphasis is on respecting the laws (with the qualification that a law may be ‘persuaded to change’ and thus be improved).<sup>(93)</sup> It can be concluded that a lawless state is one whose laws are both flawed and not widely observed. This means that the state as such is corrupt and prone to disintegration. The breakdown of the state is a manifestation of the corruption of its laws, since the laws are described as social bonds that hold the various parts of the state together, thus imparting unity to the system as a whole.<sup>(94)</sup>

Probably the worst symptom of lawlessness is the existence of a functionless citizen. This symptom is a source of concern for the political philosopher because it is inconsistent with the idea of justice. Since Plato assumes that justice is an application to human affairs of the principle of non-contradiction, which states that contradictory propositions cannot both be true,<sup>(95)</sup> it follows that the lawless state lacks intelligibility and is the object only of negative knowledge (that is, knowledge of what is to be avoided or rejected), drawn by inference, and comparable to the knowledge which the virtuous person attains of the human vices and sins.<sup>(96)</sup> In the lawless state, the philosopher, who is the real statesman, is compelled to behave like a private

(93) And see *Protagoras* 326d.

(94) See *Republic* V 462b; *Laws* VII 793b.

(95) This principle is defined functionally in *Republic* IV 436e–437a.

(96) *Republic* III 409b ff.

individual (*idiotes*).<sup>(97)</sup> His good reasoning or right *logos*<sup>(98)</sup> is regarded by his fellow-citizens as a false opinion, that is, as an opinion on imaginary matters. On the other hand, the resentful man appears to act like a judge;<sup>(99)</sup> the lawless mob appears to be exercising the functions of a lawful assembly;<sup>(100)</sup> and the lawless citizen appears to be lawful.<sup>(101)</sup> In the lawless state the philosophical scrutiny (*elenchus*) itself appears lawless,<sup>(102)</sup> while in fact it is a kind of cleansing method, aiming to restore the healthy condition of the state.<sup>(103)</sup>

In Plato's *Apology* and *Crito*, the terms used to describe the corruption of the legal order<sup>(104)</sup> convey the idea of the destruction or annihilation of the legal order and exclude the notion of changing a legal and constitutional system from one form to another. They also imply that the decay of the legal order occurs suddenly rather than gradually and incrementally. This peculiar treatment of lawlessness may be due to the dramatic circumstances of the *Apology* and the *Crito*, which require Socrates to confront a lawless state. It may also be due to the Socratic sentiment that the lawful state is normal and healthy, as is the just soul, while the lawless one is in a morbid state, as is the soul harmed by injustice. Thus, it can be concluded that the state and

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(97) *Apology* 31e; *Republic* VI 487d.

(98) In the *Apology* 17c, 18a, 20d, right *logos* appears to be equivalent to true *logos*.

(99) *Apology* 40a.

(100) *Apology* 32b.

(101) *Apology* 26e.

(102) *Apology* 23c.

(103) It is misleading to compare the connection between *elenchus* and lawfulness in the *Apology* 29e with Plato's reluctance to accept it in *Republic* VIII 537e ff. It should be noted here that: a) the Athenian state is supposed to be unhealthy in the *Apology*, while in the *Republic* Plato is dealing with the healthy, if not the ideal state; b) the suspiciousness displayed by Plato towards dialectic in the *Republic* expresses mainly his fear that it may verge on antilogy or mere contradiction if handled by unskilled teachers and pupils (*Republic* VII 539b).

(104) *Apolea* (*Crito* 50b); *anatrope* (*Crito* 50b); *diaithora* (*Crito* 52c-53b-c).

its legal order is logically prior to the citizen.<sup>(105)</sup> This logical priority of the law to the citizen supports the claim of its sacred character because, according to Plato, the sacred is the rational expressed in an emotional and pictorial manner.<sup>(106)</sup> This point of view is also expressed in the statement that the citizen is the child of the law (*ekgonos nomou*), that is, he owes his logical essence and existence to the law, in the same way that the ‘good’ is the condition of the existence and intelligibility of all moral values.

## Concluding Remarks

In the *Apology* and *Crito*, the main features of Plato’s theory of law and the state can be deciphered. The most important function of law is educational,<sup>(107)</sup> and hence the emphasis is on the persuasive methods at the expense of the compulsory ones. There is certainly less emphasis on coercion in these dialogues than in Plato’s later works.<sup>(108)</sup> This shift in emphasis may be due to a growing pessimism and suspicion in Plato’s mind regarding his belief in the spontaneous rationality of the citizen. It may also have been suggested to him by a passing diffidence in the value of the laws of the state, which, unlike the divine law of Hades, are likely to be corrupted

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(105) See *Crito* 50e-51a.

(106) We are told in *Republic* V 458e that the sacred is the advantageous. Since the advantageous is grounded on the ‘good’, i.e., the rational (*Republic* VI 505a), it follows that the sacred is an expression of the rational. For the logical priority of the legal and political order to the citizen we may compare Plato’s position in *Crito* to Aristotle’s statement that the city is prior to the individual by nature (*physei*). See Aristotle, *Politics* I, ch. I, 1253a ff.

(107) For Plato, the main object of education is the establishment of order in the soul, which is expressed as the rightly disciplined state of pleasures and pains; order in the state pertains exclusively to the rightly disciplined state. See *Laws* II 653b. A society that embraces both ‘good’ and ‘bad’ elements may be transformed into a well-ordered state if the mutual relations between its members are carefully organized. Consider *Laws* II 653c – 654a.

(108) Consider, e.g., *Politicus* 296b.

(as we are implicitly told in *Crito*). However, if *Crito* is read as a whole, the conclusion can be reached that the legal order is grounded in an ontology of the healthy and morbid state of the soul, that is, justice and injustice. The authority of the competent man is based on the knowledge of the justice and injustice of the soul (and not merely on the understanding of right and wrong). The authority of the philosopher in the *Republic* and that of the legislator in the *Laws* is founded in the same way. It may be pointed out, finally, that *Crito* expresses the Platonic principle that the law represents the state as a whole, being therefore logically and morally prior to the desires of the individual, which are particular and irrational, as long as they are not formed according to the requirements of the legal order.

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