

S Peté

Socrates and student protest in post-apartheid South Africa – Part One

Abstract

During recent years, various South African universities have fallen victim to student protest. The degree of violence involved in, as well as the frequency and duration of such protest action have varied from university to university. This article focuses on student protest action at the University of KwaZulu-Natal between 2012 and 2014. It examines such protest action through the lens of Plato's text *Crito*, which describes the events leading up to the death of Socrates. The question at the core of this article is whether or not the opinions of the ancient Greeks – Socrates, in particular – on the issue of obedience to law are in any way useful to South African law students when considering this issue in the context of the society in which they live. The article is divided into two parts. Part One examines the attitudes of the ancient Greeks to the issue of obedience to law and highlights points of possible relevance to the politics of protest in post-apartheid South Africa. Part Two of the article examines student protests between 2012 and 2014 at the University of KwaZulu-Natal. It also analyses two competing narratives about the nature of law in post-apartheid South Africa, which may assist in explaining the intimidatory tone of much of the protest action examined.

Socrates en protesaksie deur universiteitstudente na die einde van apartheid

Gedurende die afgelope paar jaar is verskeie Suid-Afrikaanse universiteite deur studente-protesaksie geteister. Die graad van geweld hierby betrokke, asook die aantal en duur van sulke insidente, verskil van een universiteit na die ander. Hierdie artikel fokus op studente-protesaksie aan die Universiteit van KwaZulu-Natal tussen 2012 en 2014. Hierdie protesaksie word beskou deur die lens van Plato se beroemde teks *Crito*, wat die gebeure voor die dood van Socrates beskryf. Hierdie artikel se kernvraag is, of die benadering van die Griekse filosowe, veral Socrates, teenoor die vraag of die reg gehoorsaam behoort te word of nie, enigsins relevant is vir Suid-Afrikaanse regsstudente in die konteks van hul huidige samelewing. Die artikel is tweeledig. Deel Een bestudeer die denke van die Griekse filisowe teenoor die vraag of die reg gehoorsaam behoort te word of nie, en lig sekere punte uit wat relevant mag wees in die konteks van die Suid-Afrikaanse politiek na afloop van apartheid. Deel Twee bestudeer verskeie studente-protesaksies aan die Universiteit van KwaZulu-Natal tussen 2012 en 2014. Die outeur analiseer twee verskillende denkwyses oor die rol van die reg in Suid-Afrika na afloop van apartheid, wat mag help om die intimiderende toon van studente-protesaksie gedurende die afgelope paar jaar te verklaar.

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1. Introduction

It is an early morning jurisprudence lecture at the University of KwaZulu-Natal. Being approximately twenty years after the fall of apartheid, the days of teaching a small class of mainly 'pale male' LLB students are long gone. This class is made up of a kaleidoscope of students from different ethnic, religious and economic backgrounds, and is predominantly female. Of course, the class is also much bigger in terms of numbers, and the lecture hall is bursting at the seams. The topic for discussion this morning is "obedience to law" – part of a wider examination of natural law thinking. In particular, class discussion centres on Plato's text *Crito*, written in 360 BCE, in which the death of Socrates – Plato's famous teacher and mentor – is described. Why, asks the lecturer, did Socrates choose to drink the hemlock in obedience to the laws of Athens, rather than take the opportunity offered to him to flee the city, and thereby escape death?

At some point during the discussion, sounds are heard from outside the building, which are familiar to nearly everyone in the lecture hall. They are the disturbing and perversely exciting sounds of a crowd chanting in unison, punctuated by angry shouts and shrill screams. It is the time of the year during which student protests have become 'traditional'. It is a period that is invariably marked by disruption and intimidation. As the chanting and shouts get louder, a current of apprehension and confusion begins to run through the class. The students look to the lecturer, waiting for an answer to the unspoken question on everyone's lips – is it better to sit tight and hope that the protestors pass by, or to get out while the going is good? Frequent past experiences of similar protests means that everyone in the lecture hall knows that there is a significant chance that this protest will turn violent. The young female students seem particularly apprehensive, as the chanting outside the lecture theatre reaches a crescendo. Several students rise from their seats as the demonstrators start banging loudly on the doors and windows. If this is designed to intimidate the non-protesting students, it is clearly working. Fortunately, the door to the lecture theatre remains shut and the demonstrators move on – their chants reverberating down the corridor. Everyone in the lecture hall is trying to act cool, which is made difficult by the rush of adrenaline in the blood. This time we were lucky. We did not get chased out and threatened with violence. Better still, nobody actually got hurt.

Time and again, during recent years, scenarios similar to those described above have played themselves out at the University of KwaZulu-Natal. For students, either enduring a student protest or taking part in one seems to have become something of a rite of passage – part of one's "education". For staff, the disruption and worry are part of the 'new normal' – something you simply live with. For a few of the older staff members, there is a strange feeling of *déjà vu* – an ironic harking back to the pre-1994 world, when the protests on campus were directed against the racist system of apartheid.

Although the events set out above did happen in the approximate detail described, this article does not focus on the particular details of a particular event. Of central concern is the broad question of obedience to law in post-apartheid South Africa and, in particular, obedience to law by students in one of the nation's 'transformed' or, at the very least, 'significantly transformed' institutions of higher learning. At the heart of the questions, which are central to this article, lies the irony of teaching law students about obedience to South Africa's constitutional democracy, while certain of their fellow students are engaged in acts of disobedience and intimidation. Does Socrates really have anything of value to teach contemporary South African law students, or is the story of his principled death simply Eurocentric claptrap that is of little relevance at present? What is at stake when South African students disobey the law by engaging in violence and intimidation during protest action? How vulnerable is South Africa's constitutional legal order at this time in its history? This article seeks to address such questions.

Part One of this article examines, in some detail, the attitude of the ancient Greeks – Socrates, in particular – to the issue of obedience to law. It highlights points of possible relevance to the politics of protest in South Africa during the post-apartheid period. Part Two of the article examines student protests between 2012 and 2014 at the University of KwaZulu-Natal. It also analyses two competing narratives about the nature of law in post-apartheid South Africa, which may help explain the particularly intimidatory tone of student protest in general. The article concludes by attempting to situate the ancient Greek 'lessons' from Part One within the context of South Africa's current 'protest politics' outlined in Part Two. The overall question addressed is whether or not South Africans currently have anything of relevance to learn from the ancient Greeks on the issue of obedience to law.

2. Setting the scene – the debate between Antigone and Creon

No discussion of ancient Greek thinking on the issue of obedience to law would be complete without at least some reference to *Antigone*, the famous tragic play written by the Athenian playwright Sophocles.¹ This classic Greek text illustrates the competing moral claims to obedience advanced by the laws of the state, on the one hand, and the laws of the gods, on the other. The play concerns a battle between two brothers, Eteocles and Polynices, for control of the Greek city of Thebes. Both brothers are killed in the battle and their uncle Creon takes control of the city. Creon orders that all those who have fought against the city are not to be buried – but rather left to rot. Whereas Eteocles is granted a proper burial, Polynices is denied proper burial rights by Creon. The Greeks regarded the failure to bury members of one's family who had died as a serious violation of a sacred religious duty. Polynices' sister Antigone, who is the heroine of

1 Sophocles was born in approximately 496 BCE and died in 406 BCE.

Sophocles' play, defies Creon's order and buries her brother – thereby carrying out what she regards as being her sacred duty. Creon then orders Antigone to be buried alive, which causes her to commit suicide before the sentence can be carried out. This, in turn, results in Antigone's fiancé Haemon, who is Creon's son, committing suicide over her body. Antigone foreshadows the tragic consequences that flow from Creon's attempt to override the laws of the gods, when she explains to Creon why she disobeyed his order:

... that order did not come from God. Justice that dwells with the gods below, knows no such law. I did not think your edicts strong enough to overrule the unwritten unalterable laws of God and heaven, you being only a man. They are not of yesterday or today, but everlasting, though where they came from, none of us can tell. Guilty of their transgression before God I cannot be, for any man on earth. I know that I should have to die, of course, with or without your order. If it be soon, so much the better. Living in daily torment as I do, who would not be glad to die?²

Antigone is making the point that we all have to die. In view of the certainty of death, it makes sense to live according to the laws of whatever God or gods you happen to believe in, since divine punishment presumably awaits you if you do not do so. This line of thinking may be extended to people who do not believe in the supernatural. Even if you do not believe in a God or gods, provided that you acknowledge that you have an innate sense of good and evil – wherever that may come from – it still makes sense for you to act in accordance with this inner moral law. If you do not do so – i.e. you ignore your conscience – you will lose your sense of inner peace. This is what we mean when we say that someone is suffering from a 'guilty conscience' or that 'his/her conscience is bothering him/her'.³ According to the above view, all that really matters in life is that one is true to one's God or gods, or true to one's own 'true self'.⁴

2 Quoted in Morrison 1997:21.

3 Speaking in October 1962, Nelson Mandela (1994:317) cites his conscience as the reason he is obliged to oppose unjust apartheid laws: "I would say that the whole life of any thinking African in this country drives him continuously to a conflict between his conscience on the one hand and the law on the other ... the law as it is applied, the law as it has been developed over a long period of history, and especially the law as it is written and designed by the Nationalist government is a law which, in our views, is immoral, unjust and intolerable. Our consciences dictate that we must protest against it, that we must oppose it and that we must attempt to alter it."

4 What constitutes our 'true self' is captured, perhaps, by the phrase 'the better angels of our nature' – a phrase famously used by Abraham Lincoln on 4 March 1861, in his Inaugural Address as President of the United States of America. Being true to oneself enables one to live a life of value. Ronald Dworkin (2011:13) wonderfully describes the process of shaping a life of true value: "I argue that we each have a sovereign ethical responsibility to make something of value of our own lives, as a painter makes something valuable of his canvas ... We must recognise, as cardinal among our private interests, an ambition to make our lives good lives: authentic and worthy rather than mean or degrading. In particular we must cherish our dignity ... Each of us bursts

In response to the simple and powerful argument put forward by Antigone, Creon puts forward the following counter-argument:

He who the state appoints must be obeyed to the smallest matter, be it right – or wrong. And he that rules his household, without a doubt, will make the wisest king, or, for that matter, the staunchest subject. He will be the man you can depend on in the storm of war ... There is no deadlier peril than disobedience: states are devoured by it, homes laid in ruins, armies defeated, victory turned to rout. While simple obedience saves the lives of hundreds of honest folks. Therefore, I hold to the law, and will never betray it.⁵

One could, perhaps, characterise this as a more down-to-earth approach to the issue. Without cooperation among the citizens of a state and, in particular, among those tasked with defending that state, there is no safety and security and no protected set of shared values. Without obedience to a common set of laws, cooperation between citizens for mutual security and protection of shared values is impossible. Obedience to law keeps a society safe and enables all citizens to live a 'civilised' life based on shared values. If it is left to each citizen to decide on a personal whim which particular laws s/he wishes to obey, the society in question is bound to collapse. Society exacts a moral price from those who wish to live within its protective embrace. That moral price is obedience to law. The implications of Creon's argument seem to be that, if one is happily ensconced in a particular society, then one's 'default drive' ought to be strict adherence to law, since there is no escaping the serious moral and practical consequences, for oneself and one's fellow citizens, of deliberately disobeying the law. Civil disobedience is a serious step that is not to be taken lightly – particularly in a society that provides each of its citizens with extensive rights and freedoms.

I shall now examine how the views of Socrates fit into the classic debate, illustrated above, between obedience to the laws of the gods, on the one hand, and obedience to the laws of the state, on the other.⁶

3. Socrates and obedience to the laws of the gods

Much of the discussion in this article about Socrates and his views will revolve around his arguments concerning obedience to the laws of Athens. Before embarking on this particular discussion, however, it is essential to make a prior point concerning his views on obedience to the laws of the

with love of life and fear of death: we are alone among animals conscious of that apparently absurd situation. The only value we can find in living in the foothills of death, as we do, is adverbial value. We must find the value of living – the meaning of life – in living well, just as we find value in loving or painting or writing or singing or diving well. There is no other enduring value or meaning in our lives, but that is value and meaning enough. In fact it's wonderful."

5 Quoted in Morrison 1997:21.

6 Note that Socrates himself did not write any philosophical texts. His philosophy is contained in the writings of his pupils, such as Plato and his contemporaries.

gods. The reason for this is that Socrates regards his obligation to obey the laws of the gods as an overarching moral duty, which comes before his obligation to obey the laws of Athens. As will become apparent, he regards his obligation to obey the laws of Athens as placing an extremely heavy moral burden upon his shoulders. Nevertheless, it is important to note at the outset that, for Socrates, this moral burden comes second to his ultimate moral obligation to obey the laws of the gods. In this respect, he is *ad idem* with Antigone.⁷

The above point may be illustrated by a brief examination of a few extracts from a number of Plato's texts. At several points in Plato's texts, Socrates makes it clear that his duty to obey the laws of the gods comes before his duty to obey the man-made laws of Athens. In Plato's text *Apology*, for example, he addresses the Athenian jury as follows:

Gentlemen of the jury, I am grateful and I am your friend, but I will obey the god [Apollo] rather than you, and as long as I draw breath and am able, I shall not cease to practice philosophy, to exhort you and in my usual way to point out to any one of you whom I happen to meet: Good Sir, you are an Athenian, a citizen of the greatest city with the greatest reputation for both wisdom and power; are you not ashamed of your eagerness to possess as much wealth, reputation and honours as possible, while you do not care for nor give thought to wisdom or truth, or the best possible state of your soul?⁸

These are not the words of a person who places strict obedience to the law of the state above all other moral obligations. Quite the opposite. For Socrates, 'wisdom', 'truth' and the 'state of your soul' are paramount. In Plato's text *Crito*, Socrates describes what he clearly regards as the supreme moral imperative as follows: "[T]he most important thing is not life, but the good life ... [T]he good life, the beautiful life, and the just life are the same ...".⁹

Throughout the *Crito*, Socrates is concerned with the question of what constitutes just action. It is submitted that he would have no compunction advising that laws requiring one to engage in unjust/evil action be disobeyed. This view is supported by Socrates' views on wrongdoing. For Socrates, just action entails that "one must never in any way do wrong willingly ...".¹⁰ He goes even further, stating that, even if one is wronged, one should never inflict a wrong in return, since one's retaliation would amount to a wrongful act. He reasons that injuring people is the same as wrongdoing. Therefore, even if one is injured, one should not inflict an injury in return.¹¹ Socrates is thus deeply concerned with avoiding any kind of wrongful action or injury, even in retaliation for unjust action against

7 He is also *ad idem* with Nelson Mandela as quoted in footnote 4.

8 Cahn 1999:35.

9 Cahn 1999:44.

10 Cahn 1999:45.

11 Cahn 1999:45.

oneself. It is impossible to conceive of him demanding obedience to evil laws – the equivalent in our time of Nazi or Stalinist or apartheid-type laws.¹²

4. Socrates and obedience to the laws of Athens

I shall now examine Socrates' views on obedience to the laws of Athens, by discussing some of the points raised in Plato's famous text *Crito*. This text, together with Plato's *Apology* dealing with the trial of Socrates, has given rise to a virtual academic industry dedicated to explaining the reasons behind the trial and death of Socrates.¹³ To cut a long story short, Socrates had been charged with failing to recognise the official gods of Athens, with introducing new divinities, and with corrupting the youth of Athens. He was tried before a panel of 501 judges/jurors, selected at random from a pool of people consisting of Athenian citizens who were over thirty years

12 It is submitted that this point is not invalidated by the fact that Socrates does not voice strong opposition to slavery, which, at the time, was a fact of life in Athens and throughout most of his 'known world'. Socrates' views, as well as the modern implications of these views, must be assessed in accordance with the social and political realities of the time and place in which he lived. Socrates was certainly not beyond pointing out anomalies in the approach of members of the Athenian ruling class to their slaves – as is indicated in the following anecdote from Xenophon's *The memorabilia*: "A man had administered a severe whipping to the slave in attendance on him, and when Socrates asked: 'Why he was so wroth with his own serving-man?' excused himself on the ground that 'the fellow was a lazy, gourmandising, good-for-nothing dolt – fonder of money than of work'. To which Socrates replied: 'Did it ever strike you to consider which of the two in that case the more deserves a whipping – the master or the man?' ... When some one else remarked 'he was utterly prostrated after a long journey', Socrates asked him: 'Had he had any baggage to carry?' ... 'Not I,' replied the complainer; 'only my cloak'. ... Soc. Were you travelling alone, or was your man-servant with you? ... He. Yes, I had my man ... Soc. Empty-handed, or had he something to carry? ... He. Of course; carrying my rugs and other baggage ... Soc. And how did he come off on the journey? ... He. Better than I did myself, I take it ... Soc. Well, but now suppose you had had to carry his baggage, what would your condition have been like? ... He. Sorry enough, I can tell you; or rather, I could not have carried it at all ... Soc. What a confession! Fancy being capable of so much less toil than a poor slave boy! Does that sound like the perfection of athletic training?" (Xenophon 1897a: Book III Part XII.) Furthermore, it is interesting to note that, for his time, Socrates appears to have adopted at least some relatively enlightened views on women: "The girl's performance is one proof among a host of others, sirs, that woman's nature is nowise inferior to man's. All she wants is strength and judgment; and that should be an encouragement to those of you who have wives, to teach them whatever you would have them know as your associates." (Xenophon 1897b:Part II.)

13 Socrates, who may be characterised, perhaps, as the Western world's favourite philosopher, was born around 470/469 BCE and died in 399 BCE. For accounts of the trial and death of Socrates, see Vlastos 1983:27-58; Strauss 1964; Stone 1988; Reeve 1989; Brickhouse & Smith 1989; Colaiaco 2001; Schofield 2002; Nails 2006; Wilson 2007.

of age. The trial lasted for only one day and he was condemned to death.¹⁴ Set in Socrates' prison in the hours prior to his death by suicide, the *Crito* consists of a dialogue between the famous philosopher and his friend Crito, who is intent on springing Socrates from prison and ensuring that he makes a clean getaway from Athens before the clearly unfair order of the Athenian court can be carried out. Of course, Socrates famously manages to convince Crito that he simply cannot take the tempting escape route being offered, and calmly drinks from the hemlock cup when the time comes for his sentence of death to be carried out.

A good place to begin this discussion is to note that Socrates was no fan of democracy. He did not like the idea of following like a sheep and blindly accepting the views of the majority. For Socrates, the fact that a majority in society holds an opinion is no guarantee that such an opinion is fair, or just, or even humane. Socrates knows just how dangerous popular opinion can be when focused on an unpopular individual. He knows that the liberty, property and even the life of such an individual can easily be sacrificed on the altar of popular opinion. Yet he refuses to compromise his principles when faced with this very real threat, which he describes as “the power of the majority ... to frighten us with more bogeys, as if we were children, with threats of incarcerations and executions and confiscation of property”.¹⁵ The problem with popular opinion is that it can be shallow and unthinking. At one point in his argument, Socrates characterises “the majority of men” as “those people who easily put men to death and would bring them to life again if they could, without thinking ...”.¹⁶ Socrates' contempt for popular opinion does not extend, however, to contempt for the people of Athens themselves. He is very much concerned with the continued survival of the city and the welfare of its people. This becomes clear when he begins to analyse the possible consequences of disobedience to “the laws and the state”.¹⁷ Socrates imagines a personification of the laws of Athens speaking in their own defence and warning him against disobedience. By personifying the laws of Athens and making them speak for themselves, Socrates puts forward the most intimate view of law possible – not an abstract and decontextualised set of rules and regulations in some dusty scroll, but rather a living entity which protects and nurtures Athens and

14 See Ober 2011:139. Ober (2011:146) describes the impact of Socrates trial and its outcome on Western philosophy as follows: “The stark confrontation between the moral philosopher and the democratic city in the dramatically satisfying narrative of the legal trial became a foundation story for Western civilization – and especially for moral philosophy. It is difficult to overestimate its impact”. Ober (2011:147) explains further that the story of Socrates' trial and death remain important today: “The story of Socrates and Athens remains salient in modernity – in an era in which ‘democracy conjoined with law’, as originally defined by the ancient Athenians, and ‘critical ethical inquiry’, as originally defined by Socrates, are both regarded by many people as primary goods and basic to human flourishing”.

15 Cahn 1999:43.

16 Cahn 1999:45.

17 Cahn 1999:45.

its people. Socrates seems to view the laws of Athens as something rare, fragile and vital to the continued existence of a small island of freedom and civilisation in a brutal and unforgiving world. The laws challenge Socrates – i.e., the laws speaking through Socrates, challenging Socrates himself – with the following probing questions:

Tell me, Socrates, what are you intending to do? Do you not by this action you are attempting intend to destroy us, the laws, and indeed the whole city, as far as you are concerned? Or do you think it is possible for a city not to be destroyed if the verdicts of its courts have no force but are nullified and set at naught by private individuals?¹⁸

This passage makes quite clear what, for Socrates, is at stake when an individual considers engaging in acts of civil disobedience. Acts of civil disobedience, which become sufficiently widespread, ultimately lead to the collapse of law. Once the law collapses, the city itself collapses. It goes without saying that when the city collapses, there is no protection for its citizens. This inevitably results in the large-scale deaths of innocents. In modern terminology, one might say that the collapse of the rule of law often leads to a failed state, characterised by human suffering and a widespread abuse of human rights.¹⁹

At one point in his argument, Socrates makes a direct comparison between a soldier's duty to obey orders in a time of war, and the general duty of all the inhabitants of a country to obey the law:

[I]f it [i.e., your country] leads you into war to be wounded or killed, you must obey. To do so is right, and one must not give way or retreat or leave one's post, but both in war and in courts and everywhere else, one must obey the commands of one's city and country, or persuade it as to the nature of justice.²⁰

As inhabitants of a city state, which had been burnt to the ground during the great battles against the Persian empire in the early part of the fifth century BCE, as well as being one of the two main protagonists of the Peloponnesian wars that took place during the last three decades of that century, Socrates' Athenian audience would have been very aware of the dire consequences of disobedience by a soldier in time of war. A failure to follow orders by one member of a military unit would immediately place the lives of all the other members of that unit in danger.²¹ The protection

18 Cahn 1999:45, 46.

19 The distinguished classical scholar Ober (2011:149) explains the moral calculation made by Socrates as follows: "Socrates weighs the assumed injustice of the conviction against the potential harm to the polis's laws and comes to an unambiguous conclusion: The consideration that escape would entail (morally relevant) harm to the laws decided the matter and so he refused to cooperate in the escape plan".

20 Cahn 1999:46.

21 The idea of each citizen standing in line within a hoplite phalanx, obedient to the laws of his gods, his city and his officers is, perhaps, best illustrated by the words commemorating the famous "three hundred" Spartans who fell

of Athens depended upon a coherent military structure, held together by strict obedience to orders. Similarly, according to Socrates' line of argument, the Athenian 'polis' – the city, its people, and its values – was held together by a strict adherence to the laws of Athens.²² It is submitted that this sense of the laws of Athens, being vital to the survival of the city state and its people within a hostile and unforgiving environment, is an important component of Socrates' argument.

At another point in his argument, Socrates explains what it means to be raised in a democratic state under the protection of the law, by imagining the laws of Athens addressing him as follows: "We have given you birth, nurtured you, educated you, we have given you and all other citizens a share of all the good things we could."²³

The idea expressed in the above quotation could, perhaps, be expressed in informal terms by saying that it was thanks to the laws of Athens that Socrates could be Socrates – his personality, character, beliefs and values had all been nurtured, shaped and protected by those laws. He was who he was – in part at least – because of the Athenian 'polis' and its laws. The Dutch philosopher Herman Dooyeweerd expresses the profound nature of the link between the 'polis' and its laws, on the one hand, and the personality and character of the citizen, on the other, as follows:

at the battle of Thermopylae: "Go, tell the Spartans, stranger passing by ... That here, obedient to their laws, we lie." [popularly attributed to the Greek lyric poet Simonides of Ceos – c. 556-469 BCE]. Sparta, of all the Greek city states, did not have physical walls to protect its people and its values. It was famously protected by "walls of men" – i.e., the Spartan hoplites who formed an unbreakable line of shields whenever an enemy threatened the city. Therefore, for the Spartans, standing in the battle line with one's shield covering the man next to one was literally an act of placing a wall around one's city and the values it represented. Obedience was essential, since the dropping of one's shield meant death to one's fellow hoplites and the destruction of one's city. This explains the traditional send-off given by Spartan women to their husbands and sons departing for battle – the handing over of the warrior's shield with the words "With it or upon it", meaning that the warrior should return to Sparta after the battle either alive and with his shield, having held his place in the line, or as a corpse carried by his comrades upon his shield, having been killed by the enemy rather than having dropped his shield and run from them. This is from Plutarch's *Apophthegmata Laconica* (Sayings of the Ancient Spartans). Plutarch 1931:465.

22 Anyone who has visited Athens and toured the ancient sites will have a sense of just how small this "island of democracy" appears to modern eyes. As a locus of democratic values, however imperfect, the Athenian 'polis' embodied an idea, which – it may be argued – was unique in the world at the time. Arendt (1958:198), for example, speaks of the 'polis' as follows: "The polis, properly speaking, is not the city-state in its physical location; it is the organization of the people as it arises out of acting and speaking together, and its true space lies between people living together for this purpose, no matter where they happen to be."

23 Cahn 1999:46.

In the classical age of Greek civilization the state was limited to the small area of the city-state (polis). The city-state was the bearer of the Greek culture religion and hence the Greek cultural ideal. A Greek was truly human only as a free citizen of the polis. The polis gave form to human existence; outside of this formative influence human life remained mired in the savagery of the matter principle. All non-Greeks were barbarians. They were not fully human since they lacked the imprint of Greek cultural formation.²⁴

To elaborate on the point made by Dooyeweerd in the above quotation, it is useful to turn to the distinguished classical scholar Josiah Ober, who explains what Socrates believed he had gained from the laws and customs of Athens as follows:

In sum, Socrates ... believed that he had received a great deal from the laws and customs of his native city: the circumstances of his early life and his early formation were profoundly affected by the distinctive Athenian legal and customary regime under which he was born, raised and educated; under other circumstances, his life-circumstances might not have allowed him to pursue philosophy. Given that Socrates was satisfied with who he was and who he had become, and given that his being and becoming was provided (in some part) by the polis, he did indeed owe Athens a substantial debt.²⁵

Ober explains the “debt” owed by Athenian citizens to the laws of the polis – a debt which could never be repaid – *inter alia*, as follows:

Were Socrates, a citizen of Athens, to harm the laws of his polis, he would be returning evils for the goods he had previously received from the laws ... Socrates had received from the laws his birth (genesis), his upbringing (trophe), and his education (paideia) ... In the *Crito*, the provision of birth, upbringing, and education defines the formation of the individual Athenian citizen by, through, and in relationship to his polis: the citizen is quite literally a product of the laws.²⁶

24 Dooyeweerd 2012:21.

25 Ober (2011:162) states further on this point that “the Athenian regime provided Socrates with conditions of birth, upbringing, and education that were compatible with the demands of a philosophical life, whereas the Spartan regime, for example, would not have ... Athenian-style democracy was, to the very end, the best real-world regime for Socrates”.

26 Ober (2011:150-157) expands on this point, *inter alia*, as follows: “The goods that Socrates of the *Crito* acknowledges having received from the laws of the polis were his birth, upbringing, and education – rather than national glory, power, and wealth, or individual freedom, equality, and security. The argument of the Athenian laws in the *Crito* suggests that collectively the three ‘parental’ goods constituted the core civic formation of the individual citizen. While most Athenian citizens had a more capacious conception of the goods offered by the polis, there is no reason to suppose that they would disagree with the positive argument made by the laws in the *Crito*: the parental goods underwritten by the laws provided each citizen with his primary identity; his birth, upbringing, and civic education taught him how to conduct his life”.

In return for the “debt owed”, the laws demanded obedience. After all, without obedience to law, there would be no Athenian ‘polis’ and no Athenian citizens to enjoy the rights and freedoms that life in the Athenian ‘polis’ offered.²⁷ As pointed out earlier, obedience to law could exact a high price. As Ober puts it:

First and foremost, the polis requires obedience to the written laws and unwritten customs of the polis (the term *nomoi* includes both) and to the orders of legitimately appointed public magistrates. This form of legal obedience included obeying the call to military service: when summoned, the good citizen served the polis with his body – most often as a cavalryman, heavy-infantry man (*hoplite*), or rower in the fleet. And when in the field he obeyed the orders of his commanders, who were themselves elected or appointed magistrates of the state. Obedience to laws and magistrates, especially in the context of military service, might entail grave physical danger, and might ultimately require the individual to sacrifice his life ...²⁸

Ober goes on to point out that, apart from obedience to its laws and customs, the Athenian ‘polis’ also expected its citizens to participate in the running of the democracy. Active participation in the democratic institutions of the ‘polis’ was part of the price of citizenship. Without an “active” and “engaged” citizenry, the ‘polis’ would have been unable to function properly as a democracy.²⁹ It is also worth pointing out that other Greek thinkers besides Socrates shared the idea that Athens expected from its citizens both obedience to its laws, as well as active engagement in its institutions:

Like the Athenian laws that Socrates of the *Crito* imagines as chastising a lawbreaker, Thucydides’ Pericles emphasizes the catastrophic harm that will come to the polis if individual citizens or social sub-groups place private interests above the common good. Likewise, in their legal orations, delivered before mass audiences of judges and spectators, Demosthenes, Lycurgus, Aeschines, and other Athenian political orators equate the flourishing of the polis with the active willingness of the citizenry to obey the law, to defend the laws by their voluntary public service, and to offer whatever personal excellence they might possess whenever it is called upon. Like Thucydides’ Pericles, these fourth-century Athenian speakers equated the failure to obey, to participate, and to offer personal excellence to the community with the catastrophic incapacity of the polis to ensure its own continuous existence.³⁰

27 Ober (2011:158) makes the important point that: “[b]y looking briefly at how Athenian law and custom regulated birth, upbringing, and education, we can see how freedom, equality, and dignity were integrated in the formation of citizens”.

28 Ober 2011:151.

29 See Ober 2011:151.

30 Ober (2011:155-156) sums up this point as follows: “There was, in sum, a general agreement between Socrates (as portrayed in Plato’s *Crito*) and the democratic political culture of Athens that the citizen had a substantial duty to his polis: obedience to the laws, customs, and magistrates of the polis;

Translating certain of the above points into a modern context, it may be argued that, if one resides in a constitutional democracy, striking back at law in response to what one perceives as being unfair treatment, through a campaign of deliberate disobedience, must always be a last resort – since such actions will constitute an attack on the democracy itself. Once a constitutional democracy crumbles, every member of the society in question loses the protection they once enjoyed. Perceived injustices, thought to have been suffered by an individual or group of individuals within a constitutional democracy, may have to be endured for the sake of the democracy as a whole. Of course, the aggrieved individual or group is perfectly entitled to protest vigorously against the perceived injustice, but only within the bounds of the law. It is only when injustice threatens to undermine the foundations of the constitutional democracy itself, or when obedience to a particular law becomes unconscionable that ‘illegal’ protest action becomes morally permissible.

It is submitted that Socrates’ argument should not be interpreted as demanding that one must put up with injustice – no matter what. He does insist, however, that simply because one is of the opinion that one has been wronged, does not give one the moral right to strike back at one’s country and its laws. One’s country has a powerful moral claim over one to obey its laws:

Do you think you have this right to retaliation against your country and its laws? That if we undertake to destroy you and think it right to do so, you can undertake to destroy us, as far as you can, in return? And will you say that you are right to do so, you who truly care for virtue? Is your wisdom such as not to realise that your country is to be honoured more than your mother, your father and all your ancestors, that it is more to be revered and more sacred, and that it counts for more among the gods and sensible men, that you must worship it, yield to it and placate its anger more than your father’s?³¹

In making the above comment, Socrates is clearly thinking of the Athenian state, the ‘polis’ that had nurtured him all his life and kept its citizens safe in a savage world. He is not thinking of a predatory state at war with groups of its own citizens such as the ancient Greek equivalent of a Nazi- or Stalinist or apartheid-style state.³² Nevertheless, his reverence for the state strikes modern democratic ears as being uncomfortably authoritarian. Translated into modern terms, one might make the point more modestly as follows: A constitutional democracy, which respects

public participation in support of the institutions of governance; and voluntary contributions on the basis of whatever special excellence he might possess. These duties were justly demanded by the polis on the basis of a conception of reciprocal exchange that could be analogized as a just (although unequal) contract: the citizen’s duties were an (inadequate) repayment for fundamental goods received by each citizen from the polis and its laws”.

31 Cahn 1999:46.

32 Obviously, groups such as women and slaves might have felt differently to Socrates as to the merits of the Athenian state, but that is another debate.

the rule of law and generally secures for its citizens basic human rights and freedoms, need not be perfect before it is morally entitled to demand obedience to its laws. The fact that a group of citizens have certain legitimate grievances does not entitle them to exceed the bounds of lawful protest, for the simple reason that the state has an overarching moral claim to obedience. As protector of the rights and freedoms of all citizens, the constitutional state demands that citizens not undermine its foundations when expressing their grievances – lest the state is brought to its knees, so putting everyone at risk. To put it more bluntly and succinctly, if one is fortunate enough to live in a largely functional constitutional democracy, one may have good reason to feel frustrated and aggrieved about certain issues, but this is not reason enough to break the law in protest.

Socrates makes a further important point as to why the inhabitants of a free society owe a debt of obedience to that society. This concerns the free choice of a free person to remain within a free society:

[B]y giving every Athenian the opportunity, after he has reached manhood and observed the affairs of the city and us the laws, we proclaim that if we do not please him, he can take his possessions and go wherever he pleases. Not one of our laws raises any obstacle or forbids him, if he is not satisfied with us or the city, if one of you wants to go and live in a colony or wants to go anywhere else, and keep his property. We say, however, that whoever of you remains, when he sees how we conduct our trials and manage the city in other ways, has in fact come to an agreement with us to obey our instructions.³³

The above passage makes the important point that living in a constitutional democracy under the rule of law – with all its benefits, rights and freedoms – entails concomitant responsibilities. Living in a free constitutional democratic state involves an implicit agreement among all the members of that state to abide by the ground rules of that democracy. These ground rules – basic obedience to the laws of the constitutional democracy – are what make the democracy possible. Obedience to law is the price that must be paid by each citizen who wishes to be part of the democracy. Of course, no constitutional democracy is perfect, and living in a constitutional democracy does not mean that one will always get one's way or never be treated unfairly in any way. The price of becoming part of a particular constitutional democracy will always involve a trade off between the overall benefits of that democracy, and the imperfections of a political system operating in the real world. One cannot simultaneously 'opt in' to a democracy in order to obtain the particular benefits on offer, and 'opt out' of the demands of that democracy – in particular, the demand that one obeys the law. By remaining within a democracy and accepting its benefits, one is implicitly indicating that one wishes to be part of that democracy and is prepared to accept the responsibilities placed upon one. The thrust of Socrates' argument is that, if one accepts the benefits of a system, one

33 Cahn 1999:46.

cannot reject one's responsibilities. One must take the bad with the good. Being part of a true constitutional democracy means that one is part of a 'team'. Obedience to the rules of the team is the price that one pays for being a member of the team – with all the benefits that this entails.

In trying to convince Socrates to honour his agreement to abide by the laws of Athens, 'the laws' warn of the consequences of disobedience to himself, his friends and society in general:

[C]onsider what good you will do yourself or your friends by breaking our agreements and committing such a wrong? It is pretty obvious that your friends will themselves be in danger of exile, disfranchisement and loss of property. As for yourself, if you go to one of the nearby cities – Thebes or Megara, both are well governed – you will arrive as an enemy to their government; all who care for their city will look on you with suspicion, as a destroyer of laws. You will also strengthen the conviction of the jury that they passed the right sentence on you, for anyone who destroys the laws could easily be thought to corrupt the young and the ignorant.³⁴

The above passage makes clear that there is a price to be paid for civil disobedience. The warning to Socrates that his contemplated disobedience will result in him becoming a "destroyer of laws" drives home the point that disobedience to particular laws in a constitutional democratic state threatens the integrity of the democratic legal system as a whole. By threatening the rule of law within a constitutional democratic state, one is threatening the systemic integrity of the democracy itself – the state, its people and its values. Furthermore, the above passage makes the important point that the consequences of an act of civil disobedience are seldom restricted to the individual committing that act of disobedience. Such acts nearly always have wider systemic implications. The laws make it clear that Socrates' friends will suffer as a result of his act. They also make the crucial point that such acts have the potential "to corrupt the young and the ignorant".³⁵ Certainly, history is replete with examples of unscrupulous politicians who, as a mechanism to attain power, have made use of populist democratic rhetoric to encourage widespread disobedience to law within democratic states. Once the rule of law is undermined and power is attained, such politicians may retain a veneer of the democratic form of government, but it is usually clear to all that the society in question has been drained of its true democratic content.

One of the most important advantages of living in a democratic state, which respects the rule of law, is that one is not subject to the arbitrary whims of whoever happens to be in power at a particular time. The laws make this point by warning Socrates of what will happen to him if he deserts Athens and goes to live in a city state characterised by 'license and disorder', as opposed to one which is 'well governed' and in which the laws are respected. They warn Socrates that: "You will spend your

34 Cahn 1999:47.

35 Cahn 1999:47.

time ingratiating yourself with all men, and be at their beck and call”.³⁶ The implication for contemporary South Africans is that, while respect for the rule of law within a constitutional democratic state imposes obligations of obedience on its citizens, absolving oneself of these obligations does not bring freedom. One simply exchanges the obligation to respect the rule of law with the obligation to obey whoever happens to be in power.

Towards the end of his argument with Crito, Socrates makes it clear that he considers obedience to the laws of Athens as being more than simply a good idea backed by sound practical argument; it is also a moral injunction with metaphysical implications:

Be persuaded by us [‘The Laws’] who have brought you, Socrates. Do not value either your children or your life or anything else more than goodness, in order that when you arrive in Hades you may have all this as your defense before the rulers there ... [i]f you depart after shamefully returning wrong for wrong and injury for injury, after breaking your agreements and commitments with us, after injuring those you should injure least – yourself, your friends, your country and us – we shall be angry with you while you are still alive, and our brothers, the laws of the underworld, will not receive you kindly, knowing that you tried to destroy us as far as you could.³⁷

The characterisation of the laws of Athens as the “brothers” of the “laws of the underworld”³⁸ is very telling. In modern terms, one might say that Socrates regards the duty to obey the laws of a democratic state such as Athens as being one that arises within the realm of natural law. He also regards this duty as one of the most important and fundamental of a person’s moral duties. For Socrates, a breach of this fundamental duty has profound moral implications. These implications could be compared, for example, to the guilty conscience of a person who has deliberately breached one of his/her deeply held moral beliefs, or to the feelings of remorse of a profoundly religious person who has deliberately violated what s/he regards as a law of God or the gods.

5. Conclusion

Part One of this article examined certain attitudes of the ancient Greeks – Socrates, in particular – to the question of obedience to law. It has emerged that Socrates firmly believed his primary moral commitment to be that he should obey the laws of the gods, but that his belief in a strong moral duty to obey the laws of Athens ran a close second to this primary commitment. So strong was his belief in his duty to obey the laws of his ‘polis’ that he was prepared to sacrifice his life rather than openly disobey these laws. Socrates understood the relative fragility of the laws of Athens at the time,

36 Cahn 1999:47.

37 Cahn 1999:48.

38 Currently, one might say brothers of the “laws of God” or the “laws of good conscience”.

and also appreciated the disastrous consequences for all in the 'polis' should those laws crumble. He makes a strong case for obedience to, and respect for the laws of the state – in particular, a state which protects its people and guarantees important individual rights and freedoms.

Part Two of this article will discuss the potential relevance of these 'lessons' to post-apartheid South Africa – where a culture of violent protest and general contempt for law appears to have taken hold. It will examine, in particular, student protests between 2012 and 2014 at the University of KwaZulu-Natal, as well as two competing meta-narratives as to the nature of law in post-apartheid South Africa. It will also assess the relevance of ancient Greek thinking to present-day South Africa on the issue of obedience to law.

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