

## Lesson 2 October 28th

Last week, we started with some very tough but fundamental questions about how the legal system works. We began by addressing the main question you see here: **Should we obey the law?**

We started thinking about the obligation to obey the law and whether this obligation is something we can justify in legal terms, or whether there are situations where we can justify disobeying the law. To make it clear, we will answer two main questions in the second part of the course:

1. **Is there an obligation to obey the law?**
2. **Is this obligation absolute or conditional? (more sophisticated)**

The terms **absolute** and **under condition** are taken directly from legal theory, which states that a contract can impose an absolute obligation. When we say *absolute*, we mean **without exception**. If something is absolute, there are no legal exceptions to not following that obligation.

Alternatively, if the obligation is **under condition**, it means that you can theorize and practically claim for a condition—an exception—to that obligation. This is just to ensure we are all aligned with legal dictionary.

So, these are the two questions we are addressing right now, and they can be further split into more detailed question. Whenever we think about the obligation to obey the law, we need to ask ourselves: **What is the source of this obligation?** Identifying the source of an obligation is a crucial task that you will need to perform in any legal profession. You must always ask: **What is the source of the obligation?** It can be a contract, a law, a constitution, but pinpointing and verifying the source is essential.

And this is what we are going to do today. Later, starting from tomorrow or maybe next week, regarding the second question—once we establish that the obligation is effective—we need to ask: **Is this an absolute obligation or an obligation under condition?**

- **If the obligation is absolute**, it means there are no limits to imposing any command on citizens by state power. So, when you say it's absolute, you are opening the door to any arbitrary behavior by the state power. That's the consequence of saying that the obligation is absolute.
- **On the contrary**, if you start thinking that state power acts under some conditions, you should ask yourself: **When can we claim these conditions?** Basically, what are the conditions?

Once you identify and assert these conditions, you need to consider **what instruments you can use in order to react to the breach of these conditions**. These instruments can

be used by us, the citizens, as members of the community, but they can also be used by the state power itself. So, it's a sort of dispute between the citizen and the state power, and we need to reflect on what instruments each side can use.

Is that clear? This serves as a sort of table of contents for what we will be doing in the next few weeks together. I believe that once you have this table of contents clearly in mind, you will better understand all the materials we will upload online and discuss in class. This is also a good way to organize your thinking—a good way to start thinking in legal terms.

That's why I wrote down this slide, because I want to make sure you understand that in legal terms, you need to think step by step and go through a table of contents that you must have in mind, whatever the point or issue you are discussing is. So, that's our table of contents for this second part of the course.

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**So, in general terms, we will start discussing this topic today:**

### **What is the source of the obligation to obey the law?**

Last week, we agreed that there is an obligation to obey the law; otherwise, the law would be useless. But then we started discussing **what is the source of the obligation to obey the law**, and we basically pointed out three different kinds of what we call **validity** of a law:

1. **Moral Validity**
2. **Social Validity**
3. **Legal Validity**

These three aspects must be distinguished from one another. Whenever we refer to the **moral validity** of the law, we are talking about what we call the **legitimacy** of the law. So, a law is morally valid if it is just, fair, and morally acceptable to all of us.

When we refer to the **social validity**, we mean something broader—something that is socially accepted and implemented, even without any formal legal validity. Do you remember the example we discussed? A law can be socially valid if the community follows it, but being socially valid doesn't necessarily mean it's also morally and ethically valid, or legally valid.

The third aspect, which is the most important in our studies, is the **legal validity**. Legal validity is closely linked with what we call **legality**.

**Legality** and **legitimacy** are two different things. At this point in your studies, I hope this distinction is clear enough.

- On one side, we have **legality—the formal validity** of the law, referring to its compliance with legal procedures and norms.
- On the other side, we have **legitimacy—the substantial validity**, referring to the **moral** and **social** aspects of the law.

They are different, and you need to start thinking that because they are different, they can be distinguished when you talk about any legal procedure.

Once you start distinguishing these two sides of the law—legality and legitimacy—you are assuming that in some cases (and we need to understand when and why), the formal validity of the law doesn't correspond to a moral claim.

**So, the law can be immoral.** Easy to say, much harder to understand, because how can a law be immoral when the law is supposed to be the basic rule of the community?

You are assuming that the law is something other than what the community wants; it is decided by someone else—a power, a state—that can implement very horrible, very immoral things. So, you must start recognizing that the law is part of a legal system which is **artificial** and **not natural**.

We need to start thinking, as contemporary jurists, that any law is an artificial product; it is not natural because, as we discussed in the first part of the course, we have moved beyond the concept of natural law and have distinguished between **legitimacy** and **legality**.

So, whatever law we are discussing, we need to start from the assumption that that law is an artificial product. It doesn't have to do with any natural order; it's not in our DNA. It's something artificial. If you are justifying that law by saying, "Okay, that's natural," you are saying something not true. Whenever the state or power says, "We have implemented this law because it's natural," they are misleading because we have understood that those two plans are totally different. By chance, they can become the same thing, but just by chance. Sometimes they align; sometimes they do not.

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### **Why have we introduced the so-called 'Crito' dialogue—the dialogue between Crito and Socrates?**

Because in that dialogue, we can clearly see the justifications and sources that, historically speaking, we have pointed out to answer the question about the source of **the obligation to obey the law**.

Crito is helping us—and Socrates, more than Crito—is helping us to answer this question. My goal for today's lesson is to **legally analyze**—starting to use the legal way of thinking—what are those sources and what is the situation?

Of course, *Crito*, like every dialogue by Plato and by any philosopher, can be analyzed and interpreted in many different ways. Today, we are focusing solely on the legal point of view in the drama to see how it can best help us answer the question about the source of the obligation to obey the law.

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**First of all, let's analyze the facts.** Whenever you start thinking legally about something, you begin by analyzing the facts. **What is historically going on? What is happening in the dialogue?** So, let's start with the facts.

**What is the dialogue about?**

**The situation is:** We have **Socrates in prison**, waiting for **execution**—the death penalty.

- So, we have a person in prison (Socrates), condemned by a court to death. It's a pretty tough, dramatic moment.
- **It's the eve of the execution**—the night before. The next morning, a boat will come to take Socrates, and then, as you remember, the next dialogue is about the so-called *Apology* of Socrates. So, *Crito* is just the night before the *Apology*.

**Who is Crito?**

- He is a **close friend and follower** of Socrates.
- He is fascinated by Socrates—by what Socrates said and taught during that period.

**What is Crito doing? Why is he there?**

- He is there because he wants **Socrates to escape from prison**.
- **In legal terms**, he is trying to convince Socrates to **disobey the law** and **escape from a legal sentence**—a court's decision.
- That's an important point: He is asking Socrates to do something **unlawful**.

**How does Crito plan to facilitate this escape?**

- Crito mentions that he has **connections**—people who can help Socrates escape by paying a sum of money.
- Crito is a **wealthy and influential person**. He has the means to **bribe the guards** and ensure that the way out is open.

**Why is this important?**

- Because we are addressing a situation where the **escape of Socrates is certain**—it's 100% possible, not just a hypothetical.
- If escape were only a possibility, the decision might be different. But here, the escape is assured.

**Second important assumption** that both Crito and Socrates are making is that the **accusation is unlawful**.

- They believe the court's decision is **unjust and unlawful**.
- In contemporary terms, we might consider this a **political trial** against Socrates.
- There wasn't any real criminal offense; he was accused of being a sort of ideological threat—corrupting the youth and not believing in the gods of the state. (being an ideological terrorist)
- The criminal charges were built around political opposition.

**Why is this relevant today?**

- This process is very contemporary because it resembles political trials in our modern age against political opponents.
- It can be considered a decision against a political opponent, not against a genuine criminal.

**Understanding these facts helps us see that the question about the obligation to obey the law becomes more complicated.**

- We are saying that **perhaps the obligation to obey the law is not absolute**, but we have some **conditions**.
- So, recalling the question "**Is there an absolute obligation to obey the law?**", we start answering "**No.**" The obligation exists, but it is **not absolute**.

As jurists, we need to **justify** our answers—always. You can't say something without any justification; that's not a legal way of thinking. You need to justify and motivate your reasoning.

So, once we decide that yes, we have some conditions for not obeying the law, we need to ask ourselves: **What are these conditions?** And actually, **Crito and Socrates** explore this throughout the dialogue.

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**Legally speaking**, we find in that dialogue the **three main answers** used in our legal history and legal philosophy to answer the question: **What is the source of the obligation to obey the law?**

These are:

1. **The Conceptual Argument**
2. **The Consequentialist Argument**
3. **The Contractual Argument**

In these three concepts, you can summarize basically all the legal and philosophical thinking about the obligation to obey the law. They are the main theories that have supported, throughout history, the idea of why we follow the law and why it is just and correct to do so.

That's why I chose *Crito* as an example because, in this dialogue, these three arguments are summarized. They are legal arguments that help answer the question "**Why do we obey the law?**" As we will see, they are much more practical and linked to our daily lives than we might expect; it's not just theory.

### **Why are these arguments important?**

Because they help us navigate between the two extreme positions on the spectrum:

- **On one side:** The **absolute obligation**—the **unconditional** duty to obey the law.
- **On the other side:** The **no obligation** to obey the law—the **anarchist** approach where one might say, "There is no obligation; I will follow my own will regardless of the law."

Most of us find ourselves **somewhere in between these two extremes**. Being in between means discussing:

- The **level of authority of the state power** to use force and impose laws on citizens.
- The **level of personal liberty** we have—the extent of our **self-determination** and **free will** within a legal system.

Depending on the level of recognition of self-determination and free will, we have different political systems:

- **Liberal democracies** assume a high level of self-determination.
- **Non-democratic authorities** might claim that you have little to no self-determination, and the state can impose whatever it wants—from your sexual orientation to social rules.

Where you place yourself on this spectrum determines **how far the state can go in your life**—imposing rules or allowing you freedom.

That's the "**elephant in the room**" behind *Crito*. **How far can the state go?** Can the state impose even death on a political opponent? And consequently, **what should an individual do in response?**

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**Before the break, we introduce the first argument.**

The very first argument presented by Socrates in his discussion with Crito is the **Conceptual Argument**, which is related to **dogmatism**.

- **Dogmatism** is when laws are accepted without criticism; they must be obeyed simply because they are laws.
- This approach assumes that the law is akin to a **dogma**, which is more typical of religion than of legal systems.

If you consider laws and dogmas as synonymous, you are essentially saying there is **no room for disobedience**, no space for not following the law. And that's exactly what Socrates is expressing in his first argument.

He's basically saying, "**You must follow the law because the law is the law.**"

- This is a tautology—a statement that is true by necessity or by virtue of its logical form.
- It's a strong tautology: "**You must follow the law because it's the law.**"

How many times have your parents or authority figures said, "**That's the rule—no justification needed.**" Whenever someone says that, they are referring to dogmatism and the conceptual argument.

- "**The law is the law; that's the rule. If you like it, fine; if you don't like it, too bad.**"

In this argument, there is a **confusion between two concepts**:

1. **Dogma**
2. **Law**

**Religion** is based on dogma. All major religions are based on fundamental truths (dogmas) that are accepted without proof. For example, the existence of God is a dogma; you must accept it without empirical evidence.

Let's look at **paragraph 50 of the text** to appreciate this argument. Socrates uses the metaphor that the **state is like your family, your father**. Therefore, you must follow the law because you owe **gratitude** to your family.

- **Gratitude** is a key part of the conceptual argument.

- Your family gives you support; you are here because of your family; you were born because of your family.
- Therefore, you must obey the law out of gratitude.

This idea is also reflected in the **Christian tradition**, for example, in the **Ten Commandments: "Honor your father and your mother."** It's a way of thinking that you must obey because you owe gratitude.

But by saying this, you are **confusing two different concepts** that must be distinguished:

- **Law** (an artificial, human-made system)
- **Dogma** (a principle or set of principles laid down by an authority as incontrovertibly true)

It's not sufficient that the law is imposed by an authority we respect for it to be considered just **because of that reason alone**. A law must be just **on its own merits**.

This is an important point and is the basis of all **natural law theories**.

- Confusing dogma and law was the main issue with natural law theory.
- When you say that the law has a higher authority (like God) imposing it on human beings, you are essentially saying we must follow it because it comes from a higher power.
- But in our contemporary society, we distinguish between **natural law** (physis) and **human-made law**.

We now assume that **human laws are always artificial**, as we said earlier. Therefore, the **conceptual argument** was strong for many centuries in our history, but today, it's not sufficient. It's not as rational or as compelling an argument.

That's why Socrates introduces the second argument, which is the **Consequentialist Argument**.

But now, we'll take a break, and in 10 minutes, we will analyze what we mean by the Consequentialist Argument.

**After the break**

So, the first argument used by Socrates—which means by Plato—is the **conceptual argument**.

So the conceptual argument is based on a misunderstanding between dogma and law, and it's basically linked with the concept of **gratitude**, which is a strong. Actually, this is an argument that is coming back very strongly in our contemporary political system

because many policymakers are using the terms of gratitude to suggest that you should be grateful to your country—that's why you should follow the law.

and second argument is linked with another strong argument, which is much more influential in the contemporary era, as we are going to see, which is the **consequentialist argument**. The consequentialist argument is based on the concept of **utility**. Utility is the key concept of what we call the so-called **utilitarian theory** in the 18th to 20th centuries.

So, a synonym of **consequentialism could be utilitarianism** as well. Utilitarianism is based on the concept of utility, which means—and it is linked with our way of thinking because utility assumes that **obedience**, so to follow the laws, is a consequence of the calculation of the rational human being. So basically, the obedience is the most rational thing that we can do.

So, to obey the law is good because it's the most rational thing we can do. And once again, as rational beings, we have on one side obedience and on the other side disobedience. And we are assuming that if everyone were to disobey the law, it would lead to chaos, and chaos is not good for us.

So, the strong assumption in this argument is that, in the end, **to obey the law is the safest and most clever thing that we can do in a complex society**. Because disobedience would be very unsafe, so it would have terrible consequences on us and on society. That's the key point of the argument, and another strong point of this argument that changes the framework is that we are assuming that human beings are **rational beings** able to do this calculation. So I'm not following the law just because someone ordered me to do that—God or an authority. I'm following the law because, rationally speaking, I know that it's better to follow than not to follow the law, because in not following the law, I would have very bad consequences.

that's a very short description of the so-called **consequentialist argument**. And that's why we define the consequentialist argument as a **forward-looking argument** or a forward-looking theory, because it says that the law is the best we can do now for the future. If we start disobeying the law systematically, we will destroy society in the end, which is a very, very strong argument. And that's why this argument, I would say, is—between the three—probably the most persuasive argument that we can list.

**What's the point of contact—and I want you to pay attention to this—the point of contact between consequentialism and the conceptual argument is well explained here in paragraph 51 d.**

Look at the first sentence here. The first sentence says—so those are the laws talking to Socrates. So Socrates is imagining that the Athenian laws are talking to him.

And he's imagining what they would say to him, whatever he would choose to follow. So the law is saying that if he is not satisfied with us, he should take his property and go away

wherever he likes. That's the strong argument that still today is used against any opponent of the power.

**If you are not satisfied, you are free to go away from the country.** And this is a strong argument because this argument is based on the idea that if you accept the rules of the country, you are accepting everything coming from that country.

Think about how strong this argument is and how often it is used by populists, for example. So, I'm acting on behalf of my people. And my people say that what I'm doing is good, so if you don't like it, please go away.

But if you stay here, if you have decided to stay here, you accept also the bad consequences. The assumption behind this argument is that you are free and rational, so you have this choice of staying or going away, but once you decide to stay, that's the consequence. And it becomes even stronger in **52b** when Socrates says—we, "we" means the laws—**have substantial evidence that you are satisfied with us and with the state. You would not have been so exceptionally reluctant to cross the borders of your country if you had not been exceptionally attached to it.** Very strong argument. You are part of this country; you should respect this country; otherwise, you would have the choice to go away.

And indeed, what is the first instrument used by states against political opponents? **Exile.**

And that exile is exactly based on this argument. I remove you from the country. You are outside the community, and so you cannot damage the country. You are like a virus; I put you somewhere else, and so the country is safe. I don't even kill you. I simply ask you or force you, in many cases, to leave the country.

Sometimes you force people; sometimes, you know, you suggest people to go away. And this idea of leaving the country is one of the basic concepts of the **consequentialist argument.**

In the end, for you, it's better to stay, but if you decide to stay, that means that you are obliged to follow the law, whatever law. You have no other choice.

Look at this answer here, which is a very legal answer. This is a very strong legal argument made by the laws—Athenians ideally talking with Socrates. **"You have been content with us, with our city; you have definitely chosen us."** So, to stay in a country, to obey the law, is a **choice.**

You get the difference—and I will go later to your question—you get the difference between **dogma** and **choice.** They are different.

They are not saying you are here because of nature, because God chose you. They say **you choose to stay here.** So you recognize that you are rational, and because you are rational, you have chosen to stay.

Because in that calculation, it was better for you to stay and not to go. Which is different from saying, "The law is the law; you must respect it." You get the point.

But coming back to the question of your colleague, and you undertook to set us in no collaborative activities as a citizen, proof that you are satisfied with our city. Look at that: if, furthermore, even at the time of your trial, you could have proposed the penalty of **banishment**.

If you had chosen to do so—that is, you could have done with the sanction of the state what you are trying to do with it—that means you had the choice within the legal procedures to admit your fault, the offense that you were on trial for, and you could choose for the anishment. So that was not the case that you mentioned because Socrates had the chance to go away from the country.

Of course, if you wouldn't have had the chance, the framework would change, but the assumption of the consequentialist argument is that you, as rational human beings, **always have the chance to choose**. If you choose like that, it's because it's convenient for you. And that's a good point regarding the source of the obligation to follow the law.

And we will go back to this point when we see how **liberal theory** works. Because this concept of the rationality of citizens who can choose to follow or not follow the law is still there. It's a choice, and you have chosen this.

And that's why we call it a **forward-looking view**. It's something that is good for you in the future. For this reason, you can't escape now. You will be, in italian, we will say, a **codardo**—how do you say in English? Coward

If you choose to escape now, well, that's something not moral that you are doing. Because, legally speaking, we are perfectly agreed that you need to follow the law and you need to be executed because that's how the death penalty works. Once again, take this argument and put it in the political framework, in the political debate of our countries, and you see how many times this argument comes back and how many times it is recalled by whoever. Saying, "You are part of this country."

There is also—in your book—a distinction between **rule consequentialists** and **act consequentialists**. I really didn't get it. So I don't agree with the author, so just the suggestion is to forget it. But you'll see that if you want, you know, there is this difference between what the author calls rule consequentialism and act consequentialism, but I really don't care about it.

The **third argument**, which I care a lot about, and which links us to today and tomorrow, is the **contractual argument**, because the idea of obeying the law can be seen as something good for our future, but we can see it also as backward-looking. If you assume a backward-looking theory, a backward-looking position on the obligation to obey the law, we are assuming that our community, our legal system, is based on an agreement—

a legal agreement but also a social agreement—and the rule number one of this agreement is to obey the law. This agreement is commonly known as the **social contract**.

So **contractualism** is a very strong position within the history of legal philosophy that supports the idea that the social contract is the best way to overcome a situation that we call the **state of nature**, which is that situation before the agreement, before the law, where there was only one rule implemented, and that rule was the rule of force.

Without a legal system, without a social contract, without an agreement, our society would live in a state of constant danger because the only rule that we would follow would be naturally the rule of force, like lions, like beasts. And we are going to see that **Hobbes**, Thomas Hobbes, was the first supporter of this theory, saying that the “*law is the best instrument that we have in order to overcome the state of nature.*”

If I assume that we do have an agreement among us that links us as a community, we need to assume that the rule number one of this agreement is the **duty to obey the law**. Breaking this duty means basically breaking society and breaking this social contract. So, once again, what does this theory have to do with the previous one?

So, it shares with consequentialism the idea of a man who chooses to follow the rules, was not imposed by anyone—he or she consciously, he or she rationally chooses to agree with such a contract. And once the choice is made, you need to follow that contract. Not only because it's something that has good consequences for you in the future, but because of that agreement.

And that's the same way of thinking in any human relationship; for example, think about **contract law** or **constitutional law**. The constitution should be considered as underlying a sort of social contract—so shared rules to live peacefully together that we all must follow if we want to live peacefully and be safe.

And this argument of being safe is a very strong argument. **Why do you obey the law? Because if you obey the law, you are safe.** Nobody can accuse you; nobody can tell you anything.

You obey the law; you are a good citizen; you are safe. That's the contract between us and the authority. I give you a part of my liberty; I give you a part of my rights, but you, authority, you give me back security and safety.

And that's a very strong argument that comes back in **paragraph 54**; we can see here:

Here, if you leave—so in the idea that you are escaping—so if you choose to escape, you live in that **dishonorable way**. So it's a dishonorable way to leave the country, not a legal way, as we already said. **Returning wrong for wrong and evil for evil.**

So the risk is that if you leave the country, it's basically you go back to the **state of nature**. Because leaving a country would be a message of, "Okay, we don't have any duty or

obligation. We can do whatever we want." But that would be a return to and going back to that natural law that says "**an eye for an eye**" and "**force for force**".

This is a very strong argument. Breaking your agreements and covenants with us—as is always the law—and injuring those whom you least ought to injure: yourself, your friends, your country, and us—then you will have to face our anger in your lifetime and in that place beyond, with the laws and others, and so on. So the idea is that if you escape, if you don't obey the law, you are breaking the agreement, the fundamental agreement on which society is based. And this fundamental agreement, at the very end, is only based on the idea of the **duty to obey the law**.

We cannot impose anything else, so it's like saying the constitution has only one argument: **obey the law**. But then we'll see that this is actually not enough because if we only have one single principle saying, "Oh, you must obey the law," we go back to the problem: **Okay, but any law?** And that's actually the next question that we would ask Socrates.

You now explain to us why we should obey the law, and you gave us three strong arguments in order to answer this question. So:

1. **We must obey the law because the law is the law** (conceptual argument).
2. **We must obey the law because, in the forward-looking theory, it's rational; it's the best for you; you will have good consequences from obeying the law.**
3. **You must obey the law because we are all linked; we accept law as a whole, and we can't say, "Oh, I like this; I don't like this."**It wouldn't work like that. Society would collapse

So, those three arguments are actually strong in answering the question, **what are the sources of obeying the laws?**

So, where is this—our yellow box here, So we now have the answers to this fundamental question. We now know that there are at least three groups of answers, three different kinds of sources for these answers, but we still need to answer: **What are the conditions?**

Because it cannot be—it's not possible—that this obligation is absolute. We need to write down some conditions, some borders, some limits that the authority of the state could never overtake, in order to preserve society.

Okay. Any questions on this?

Any questions on **Crito**?

Are you persuaded by **Crito**?

What would you do if you were **Socrates**?

