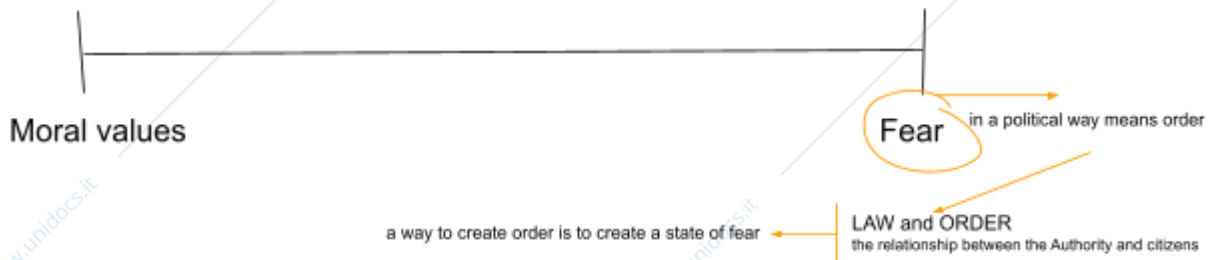


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Lesson 2

- Law draws limits of what I can do and can't do.



- I need to follow the law because I'm scared of the consequences (main reason to follow the law)

- There is another vision: Anarchist vision:

- there is not OBLIGATION to obey the law (just a social convention)
- main aspect that counts: INDIVIDUAL CONSCIENCE (I need to follow my conscience. If the law compel u against it, the law has no authority at all)
- people do not believe in a society organized by law, but in a society rules by individual

This is the anarchist approach ex. Henry David Thoreau

- The majority of philosophers are in favor of a general obligation to obey the law, however there are people who deny such obligation. Bc what the law demands offends your personal conscience.

- The conscience is all that matters. If the law compels u against it, the law has no authority at all. If the law tells u to do anything unconscionable, u should mpre entitled to resist it, refusing to do it.

- One of the most important reasons for accepting an obligation is to persuade people to compromise their own moral beliefs when they come into conflict with those of others.

- For Anarchists law lies at the very heart of state oppression, the idea of general obligation to obey is not even worth discussing.

Socrates' arguments in Plato's Crito

Plato was a Greek philosopher that used to face problems through stories.

This dramatic scene describes the eve of Socrates' execution by the Athenian state, bc he was convicted on a number of capital charges, including of betraying the city to its Spartan enemies. Therefore he was considered a danger to society. Convinced of the unjust death penalty Socrates' friends were imploring him to accept their assistance to escape. However Socrate denied the offer and put forward different arguments to explain the reasons beyond the decision. His reasoning can be broken down into 6 distinct arguments that drove the history of the philosophy of law and the human history:

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1. Unless there were general obedience to the law, there would be no state at all, hence complete anarchy
2. Each of us owes an immeasurable debt of gratitude to the state. The state is seen as a collective parent of all citizens, bc none of us would be alive outside of its protection
3. Anyone who does not like the laws, could at any time have emigrated
4. Since we are accepting countless benefits from the state, this place us in the place where we are in debt that we can never repay
5. there is an implicit agreement underpinning the obligation to obey the law
6. There are many bad laws, which would be subjected to criticism, but this does not give us the right to disobey them.

The state's demand for obedience can be justified by reference to future consequences.

Those six arguments could be summarized in three main arguments:

1. **Conceptual Argument:**

Disobedience is not allowed bc there is an unconditional duty to obey the law.

The law as law is always just.

Is based on the idea that the law is an ABSOLUTE OBLIGATION (so without exceptions)

Has a dogmatic approach (u need to follow the law just because it is law). It comes from the DOGMATISM that is based on dogmas (something u so not need to explain, just follow)(it's a law u can not escape from). The religion has the same approach.

It influenced our society from the ancient age.

It goes along with the Natural Law Theory

everyone must obey the law, if not, must be punished
bc the law is something bigger than humans
it does not come from them, but from something beyond (God, Nature)
if u break the law, u break the nature
the natural law is always **rational** and **universal** (without exceptions)
bc it goes beyond the social and human norms

In the ancient age: it was intended as nature (rain, storms, sun...)

In the modern age: with the secularization

N.L was called **PHYSIS**,

H.L was called **NOMOS**

law, constitutional law, social law
the one we use to live together

When the law is not just, it fails

ex. NAZIST neede to hunt jews citizens
APARTHEID black people where discriminated

NOT ENOUGH

But this theory, as CRito told Socrates, is not enough.

Why should people still follow something unjust?

That's where the Natural law theory goes in crisis.

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2. Consequentialist Argument

Comes from CONSEQUENTIALISM: is a philosophy which argues that obedience is the consequence of the calculation of the consequences.

The focus is on the future consequences of how I'm behaving now.

If I follow the rule I'll have an advantage, a beneficial effect

Is based on the concept of UTILITY: from the law u can get different possibilities.

Therefore it is based on the UTILITARIAN THEORY. (the justification for general obedience is future-oriented rather than rooted in a past agreement)

There are two different types of consequentialist argument:

RULE CONSEQUENTIALISM

- people decide to obey the law bc of the benefits it could give them
- bc they believe it could give them more advantages than disadvantages
- is more realistic, bc it stays within the moral rules
- DISOBEDIENCE is allowed, but dangerous
- Hence this theory is still influenced by the NATURAL law theory

ACT CONSEQUENTIALISM

- the state must choose the way to produce the "most good", even if in the agent's estimation, the law will create more harm than good
- this is a more moderate vision, as it takes in account a LIMIT → MORALITY (people will follow the law unless it goes against their moral values)
- is open to disobedience, bc it approves the individual act of law-breaking due to moral reasons

3. Contractual Argument

people need to follow the rules bc their part of the society
→ being part of the society means signing a **SOCIAL CONTRACT** in which are written down the rules of a peaceful life in the society

CONTRACTUAL THEORY

people obey the law bc there is something bigger than them: **SOCIAL CONTRACT**

SOCIAL CONTRACT

- **MODERN VISION OF LAW** → an agreement that men, as rational human beings, have the chance to sign if they want to be part of the society
- for the seek of keeping the peace and for other benefits
- the state has the right to expect obedience bc the consent was already been given

PURPOSE → was need to overtake the **STATE OF NATURE**

ANOMIC SOCIETY → (where humans life was solitary, poor, natish. State of nature means state of war the sole condition of the social contract is that the citizens life were safeguarded by the sovereign power (that is ABSOLUTE) before this agreement, humans lived in a state of nature: a society without laws, nomos, norms)

supported by...

- Thomas Hobbes
- John Locke
- Emmanuel Kant

- so far the law is the best way that humans found to live peacefully together
- without this agreement the society would go back to the state of nature
- is needed to organize the society and its values
- allows individuals to leave the state of nature and enter in the modern society, but the former remains a threat that will return as soon as the governmental power collapse

The society is rooted on a past agreement adopted to overtake the state of nature. the social contract impose a duty to obey the law.

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Lesson 3

CONTRACTUALISM vs NATURAL LAW

- There is something beyond humans, that makes the just society

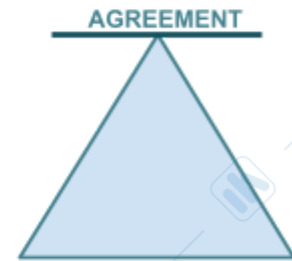
the subject that inspired the law is the **AGREEMENT** is considered part of **GIUSNATURALISMO** (dogma and social contract)

the entity that inspired the law is **GOD, NATURE, DIVINITY**

- With the social contract theory starts the idea of the hierarchy of law
- All the laws are not at the same level
- At the top of the pyramid is located the **AGREEMENT**
- The philosopher that made a clear difference is **UGO GROZIO**

15th - 17th century

- he was considered the father of the **international law**
- introduced the concept of **common law** between human beings
- he drew the line between the ancient age of natural law theory and the social contract theory



The contract theory influenced our world till contemporary times. It was developed to justify the removal of tyrants.

In the modern period the leading political thinkers were deeply affected by the constitutional conflicts that culminated in the revolution of 1688, which brought a permanent political stability to England. Afterwards in the same year a monarchy was established, however this caused civil wars, execution of a king and a period of military dictatorship.

Contrarian thinkers such as Thomas Hobbes and John Locke, were motivated by the political purpose. Hobbes was forced temporarily into exile in Paris and Locke also forced into exile bc of the repressive government of James II.

RAWLS

His main goal is to promote coherent utilitarian alternatives as general moral and duty theories. He claimed that his own contract theory leads to principles of justice that would not be endorsed by utilitarianism. This contract is hypothetical, bc he is referring to a scenario consisting of rational individuals that wants the best for themselves (the so called ORIGINAL POSITION). The contract would involve the endorsement of the principles. When choosing the principles that would govern a just society, each subject would be 'veiled' from all knowledge of the place he or she is to occupy in that society. So called VEIL OF IGNORANCE that is a device for the elimination of unconscious bias and prejudice which brings to fairness bc no one has an unfair advantage bc it is chosen in the dark.

This leads him to two basic principles of justice, whereby everyone would have the right to equal basic liberties and socioeconomic inequalities would be arranged for the benefit of the least advantaged

Lesson 6 Civil disobedience is illegal by definition, but is allowed when laws are wrong. Civil disobedience means 'deliberate principled lawbreaking'. The principle means that it is motivated by a selfless concern with opposing injustice. The purpose is to challenge these laws with illegal actions. Henry David Thoreau is thought to have been the first to use the term in an essay justifying his principled refusal to pay tax to finance the US war against Mexico and then by Gandhi against British rule in India and the civil rights movement in the 1950s–60s in the USA. Civil disobedience is a non-violent strategy of resistance. Is different from other forms of resistance to injustice, such as direct action, rebellion or revolution. This condition is not universally accepted, it must be used only, when all other legal methods to change the law have been explored and exhausted. Its purpose is to publicize the injustice. Disobedience to one unjust law should be accompanied by scrupulous obedience to the law as a whole.

Justification of civil disobedience

There are two polarized positions that cause disobedience . First, those who argue that disobedience to unjust laws is always a matter of personal moral decision are arguing that conscience always overrides any general obligation to obey the law. There is no obligation at all, because in the case of just laws, the obligation derived from conscience would be sufficient. This position was supported by Thoreau, who claimed that the law is owed any respect. He sustained that one always has the right to resist injustice. Civil disobedience is never justified. This position includes Socrates' which forbids principled disobedience but permits criticism and persuasion. It also includes Bentham's famous dictum 'obey punctually, censure freely'.

When the state breaks its side of the contract the obligation to obey is abrogated, therefore civil disobedience is justified.

A well ordered and just society the principles of equality and mutual respect are accepted, however it is inevitable that there will be some injustices that have to be accepted (about the distribution of wealth, undeserved privileges, miscarriages of justice). It is only when the injustice becomes grave that the civil disobedience is justified. Therefore the civil disobedience is seen by Rawls as a democratic process, as a public speech bc it is not violent. Indeed as a speech its purpose is communication.