I

"Why and in what circumstances should the individual obey the laws or the political authorities of the community to which he belongs?" This is the classic problem of political obligation which was first raised by the Greeks, for example by Sophocles in the *Antigone* and by Socrates. Indeed, Antigone and Socrates have become for us perhaps the most potent symbols of individual resistance to the moral authority of the law. In late fifth and fourth century Greece, belief in the traditional religious sanctions for obedience was being questioned and weakened and the problem of political obligation was a pressing one for philosophers interested in political theory. In this article I wish to concentrate on one particular aspect of this debate which may be of philosophical and not merely historical interest. It will be argued, firstly, that any satisfactory theory of political obligation must be of a certain type; secondly, that neither Plato (at least in his major works on politics) nor Aristotle provide a theory of this type; thirdly, that the reason for their failure lies partly in their conceptions of law and in their approach to political theory.

II

Answers to the question "Why should I obey the law?" may be divided into two categories. The first category covers any answer which bases the obligation to obey the law solely on the moral content of what the law prescribes; i.e. it is right to obey the law because what the law tells us to do is right. For example, one ought to obey the law against theft because theft is morally wrong. Answers in the second category, however, do not depend on the moral content of the law in question. They derive the obligation to obey from a more general obligation to obey the law as such. For example, one ought to obey the law against theft because one ought to obey the laws of a government which has the consent of the governed. The essential difference between the two types of argument is that obligations in the second category depend on the fact that the acts in question are prescribed by law whereas obligations in the first category do not. Thus, according to the second type of argument, if theft is not contrary to the law, there is no obligation not to thieve, whereas, according to the first type of...
argument, the obligation not to thieve remains in force whether theft is legal or illegal.

This distinction is similar to the distinction in jurisprudence between *malum in se* (a crime which is wrong in itself) and *malum prohibitum* (a crime which is wrong because it is prohibited). For convenience we may call the first type of argument ‘substantial’ because it depends solely on the substance of what the law actually prescribes and the second type ‘formal’ because it depends on the fact that the act concerned is cast in the form of a law. Thus baldly described, a ‘formal’ argument might seem to require moral abdication on the part of the citizen and unquestioning obedience to any law however wicked. But this need not be so, for two reasons.

First, though a ‘formal’ argument will depend on the fact that the acts concerned are prescribed by law it need not depend solely on this fact. Usually the obligation to obey a particular law will be derived from a more general obligation to obey all prescriptions of a certain regime or type of regime, which obligation itself is likely to be of the ‘substantial’ type. For example, the obligation to obey laws passed by a democratically elected legislature may depend on such ‘substantial’ considerations as that the laws are more likely than not to be in the public interest or that disobedience to them may lead to social chaos.

Secondly, though a ‘formal’ argument may require obedience to some laws of which the individual citizen disapproves, it need not be so all-embracing that it requires obedience to any laws whatsoever. There may still be room, that is, for a right of resistance *in extremis*. All that is required for a theory of obligation to be of the ‘formal’ type is that disapproval of, or disagreement with, the law does not automatically remove the duty of obedience. The duty can, however, be overridden on the grounds of conflict with some other duty or principle. For example, a conscientious objector may subscribe to a ‘formal’ theory which will require him to obey all laws except those which conflict with his conviction that the deliberate taking of life is always unjustifiable.

Once these qualifications are recognised, it may be argued that any adequate theory of political obligation must be of the ‘formal’ rather than the ‘substantial’ type. A ‘substantial’ argument justifies obedience only when one accepts that what the law tells one to do is actually the right thing to do. If one disagrees with the provisions of a particular law or set of laws, such an argument provides no reason for obedience. On the other hand, a ‘formal’ argument will have wider application. It will justify obedience in cases where the individual disagrees with the particular law in question. Given the variety of opinions and attitudes that must exist in a community of reasonable size and complexity, to allow any individual the right to disobey the law whenever he thinks it misguided or immoral is to condone intolerable social disorder. A tolerable and civilised
community can survive only if its individual members are prepared to obey the law and political authorities even when they think these authorities are acting in a misguided or immoral fashion. Some will not agree with these prejudices which sound increasingly old-fashioned year by year. But again it should be remembered that a ‘formal’ theory as such does not require obedience to any law whatsoever of any regime whatsoever. All it requires is obedience to some laws of some regime which are held to be wrong or misguided.

III

Formal theories of political obligations were not unknown to the Greeks. Plato himself gives one in the Crito. In this dialogue, Socrates argues that it would be wrong for him to escape from prison and avoid execution. If everyone disregarded the law when it went against him, society would be destroyed (49b). Furthermore there is an implicit contract between the laws and the individual citizen which requires that the citizen should always obey what the laws command provided that he has spent his childhood and part of his adult life in the community, that he has been free to leave the community if he wished and that he has had an opportunity of pleading his case (‘persuading the laws’) in a court of law. Now, if the individual should obey provided only that these conditions are met, it follows that the obligation to obey is not tied to the justice of the particular law in question. Indeed, Socrates expressly admits that the decision in his case was an unjust one (54b 8-9).

Is this argument Plato’s or Socrates’? The Crito is one of the early ‘Socratic’ dialogues which are usually taken to represent the ideas of Socrates rather than Plato himself. So too is the Apology which is not entirely consistent with the Crito because in it Socrates threatens to defy the court if it orders him to do something contrary to the commands of the god (29c-d), whereas, in the Crito there is no mention of such an exception.\(^2\) Whether the theory of the Crito belongs to Socrates or to Plato, it is at least clear that Plato was early aware of a theory which would justify obedience to unjust decisions. Yet in his later, major works on politics, the Republic, the Statesman and the Laws, he does not repeat or develop such a theory.

In the Republic, the legitimacy of the ideal state depends on its connection with the transcendent values of the forms. For anyone who is truly wise the obligation to comply with its regulations would be an inevitable consequence of his perception of the forms. The obligation to obey would therefore be a ‘substantial’ one because it would follow in each case from the independent moral value of the action in question. The duty of the unwise is similarly based.

\(^2\) I have discussed this inconsistency at greater length in ‘Socrates and Authority’, Greece and Rome, 19,2 (1972), 208-12.
They ought to do what the state demands because what the state demands is always right. However, they do not have the capacity to grasp the true reasons for their duty; hence the need to provide them with a reason that they can understand – the ‘noble lie’. According to the myth of the three metals, the men of gold are those who are ‘fit to rule’ (415a 4) and members of the lower classes will agree that the golden men deserve to rule. This agreement will constitute the temperance of the ideal state (430a-432a). This might appear to be a ‘formal’ view of political obligation: obey the rulers not so much because what they command is right as because their rule is in general the best regardless of whether what they command on each particular occasion is right. But Plato does not say this explicitly. It is more likely that acceptance of the guardians’ qualifications for rule also implies acceptance that what they command is always morally right. Indeed, it is perhaps unreasonable to expect anything more than a ‘substantial’ theory of political obligation for a state which is ideal. The need to justify obedience to unjust or misguided laws or decisions, which underlies ‘formal’ theories, is excluded a priori.

We should look therefore at Plato’s later works on politics in which he discusses non-ideal states. In both the Statesman and the Laws Plato argues that, if the wise cannot rule, the best solution is to have a rigorously enforced and inflexible legal code which will prevent a further descent into anarchy. Here, perhaps, is the basis of a ‘formal’ theory: if you want to prevent social anarchy, you must accept the need for a rigid and rigorous system of laws which you ought to obey even when you disagree with its prescriptions. The view that any type of government under law is superior to any type of government which acts above the law, with the sole exception of the rule of the ideal statesman, implies that it will be right to obey laws which are far from perfect. But Plato does not develop an argument in this form. His main argument for the relative superiority of the rule of law is that all laws represent the ‘fruit of experience’. ‘Each of them has been put forward by some advocate who has been fortunate enough to hit on the right method of commending it and who has thus persuaded the public assembly to enact it’ (300b).³ By this rather unconvincing argument, Plato tries to base the value of law primarily on its content. He supports this by supposing that any attempted amendment to the law will be conducted from motives of ambition or favouritism (300a). He does not consider the possibility that ordinary men might be able to improve an existing law. He thus does not directly face the situation covered by a ‘formal’ theory of obligation, the case where a law may be considered wrong or capable of improvement but nonetheless ought to be obeyed. The reasons for following the law are purely

substantial: the content of the law is always superior to that of any other possible course of action. Furthermore, Plato shows little interest in providing the citizen with reasons for obeying the law. He is concerned mainly with determining the relative value of different types of constitution and says explicitly that the question of consent is irrelevant (295d). If consent is irrelevant, if it does not matter whether the citizens agree that they ought to obey their government, there is little need to provide a theory of political obligation to convince them that they ought to obey.

In the *Laws* this position is modified. Rigid enforcement alone is not sufficient for a stable and law-abiding state. The importance of consent of the governed, which Plato had stressed in the *Republic* but rejected in the *Statesman*, is reinstated. If the citizens are to obey willingly they will need to be convinced of the value of what the law prescribes. Plato makes this point by one of his favourite political analogies, the comparison between the ruler and the doctor.

*Athenian Stranger*: Now have you further observed that, as there are slaves as well as freemen among the patients of our communities, the slaves, to speak generally, are treated by slaves, who pay them a hurried visit, or receive them in dispensaries? A physician of this kind never gives a servant any account of his complaint, nor asks him for any; he gives him some empiric injunction with an air of finished knowledge, in the brusque fashion of a dictator, and then is off in hot haste to the next ailing servant; that is how he lightens his master's labours for him. The free practitioner, who, for the most part, attends free men, treats their diseases by going into things thoroughly from the beginning in a scientific way, and takes the patient and his family into his confidence. Thus he learns something from the sufferers, and at the same time instructs the invalid to the best of his powers. He does not give his prescriptions until he has won the patient's support, and when he has done so, he steadily aims at producing complete restoration to health by persuading the sufferer into compliance. Now which of the two methods is that of the better physician or director of bodily regimen? That which effects the same result by a two-fold process or that which employs a single process, the worse of the two, and exasperates its subject?

*Cleinias*: Nay sir, the double process is vastly superior. (720b-e)\(^4\)

The superiority of this double process leads Plato to recommend that each legal prescription be prefaced by an elaborate preamble which will convince the

citizen of the value of the particular law. It is clear, however, that, from the point of view of the citizen, the reasons for obedience will be ‘substantial’ rather than ‘formal’. He will accept an obligation to obey only if he accepts the value of the law’s prescriptions. The education system will foster in the citizens the belief that the law and the government are right. It will not be concerned to teach them the more sophisticated lesson of the *Crito* that they should obey even when they think the government is wrong. In this respect, as in many others, the *Laws* does not show a change from the principles of the *Republic*. A stable and obedient state is still possible only if everyone in it agrees that what the authorities command is right.

Aristotle, as is well known, shows a greater respect than Plato does for brute facts of all sorts, including brute political facts. He agrees with Plato about the urgent need for political stability but is less confident of radically changing the structure of society or the beliefs of its members. Though he still accepts that the ideal society will be one where rule is in the hands of good men ruling wisely, he recognises that this is impracticable and that there is a need to find means of achieving a stable and reasonably just society without perfect rulers. We might expect him, therefore, to support a theory of political obligation which would encourage people to obey a government with which they disagreed. That people will disagree he does not doubt. Different types of constitution enshrine different conceptions of justice (*Politics* III 9) and revolutions are often caused by conflicting views of what is just (V 1). But Aristotle nowhere explicitly suggests that individuals ought to accept an obligation to obey the constitution even when it may appear to them to be unjust. Rather, he assumes that in the non-ideal world everyone will wish to pursue his own values and interests as he sees them. The democrat will want freedom and equal distribution of power; the oligarch will want wealth and unequal distribution of power. It is the task of the political scientist to devise and recommend methods of keeping the opposing forces in balance and thus reducing the risk of revolution. Only if the interests of powerful groups and individuals are unduly frustrated will they resort to revolution. This provides the rationale for the polity, the best constitution for most circumstances, which is a mixture of democracy and oligarchy, based on a large middle class, the class least prone to faction and revolution (IV 9-11). Aristotle’s approach is thus to take the interests and attitudes of citizens as given, just as the doctor takes the behaviour of physical organs as given. He makes no moral appeal to the individual citizen. He does not say, ‘if you want to live in a stable community you ought to accept certain laws and institutions of which you do not fully approve.’ He simply describes how he thinks people will believe and in what circumstances they are likely to obey.
To provide a satisfactory explanation of why Plato and Aristotle did not offer a 'formal' theory of political obligation is beyond the scope of this paper. Both writers are creatures of their times and one would need to give a detailed analysis and explanation of the extremism and intolerance which characterised Greek politics then as now. Two points, however, may be made which may throw some light on this question. The first concerns the nature of the Greek concepts of law and justice. The Greek word for law (nomos) could cover any social rule or convention and was not limited to what we would call law, i.e. rules created or upheld by a distinctly legislative institution. In other words, there was no clear distinction, such as we take for granted, between law and social morality. In Athens, it is true, there was a distinction between written and unwritten laws, depending on whether or not the laws were written up as part of the legal code. But this was not equivalent to a distinction between law and morality, because unwritten laws were regularly enforced in courts of law. In fact, the distinction between written and unwritten laws comes much closer to the English distinction between statute and common law than to that between law and morality. It is also true, at least in Athens from where most of our evidence comes, that not all the nomoi or accepted customs were legally enforced. It is unlikely that every time an Athenian citizen broke an accepted custom he would expect to be liable to prosecution. Nevertheless, on the conceptual level, at any rate, the boundaries between law and morality were not clearly defined.

This can be seen from the meaning of the Greek concept of justice (dikaiosyne). 'Justice' in Greek had a variety of different, inter-related meanings which were first clearly distinguished by Aristotle. It is his account of universal, as distinct from particular, justice which is especially significant. He equates it with the lawful and defines it as complete virtue in relation to others (EN 1129b 25-6). Thus justice in this sense embraces all social morality, all the principles which govern the behaviour of individuals to one another within society. It is also coterminous with the 'lawful' and therefore the 'law' includes all social morality.

It is difficult to frame a convincing 'formal' theory of political obligation without a fairly clear distinction between law and morality, because such a theory will usually need to allow for the possibility of an unjust or bad law or legal decision. If the lawful is equated with the just or good such a possibility becomes a contradiction in terms. I do not wish to suggest that the notion of an unjust law was necessarily contradictory in Greek, only that it was at least paradoxical. Thus the claim of Socrates in the Crito that he ought to have

5. See Nicomachean Ethics, Book 5.
obeyed the unjust decision of the court would seem stranger to Plato and Aristotle than it does to us. How could an unjust decision be a lawful decision and therefore legally obligatory? If one believes, as I think Plato and Aristotle did, that there is something paradoxical or logically odd about an unjust legal decision or law, then a theory of political obligation will need to be a substantial one: it will need to assume that the laws are just.

There was an alternative line of argument open to them, but it was one which they would not have wished to take. Though it was difficult to distinguish between law and morality and thus to conceive of a moral obligation to obey an unjust law, it was conceptually quite straightforward to distinguish between law and morality on the one hand and personal self-interest on the other. This distinction provided the basis for the sophistic contract theory of political obligation, as described by Plato in the Republic (358e-359b) and later adopted by Epicurus (Kurial Doxai 31-4). The need for law and justice was justified in terms of self-interest; it was in each person’s interest to give up the right to harm others and to adopt a code of social justice in return for a guarantee of protection from harm to himself. It would be possible in these terms to justify obedience to wrong or misguided laws: this law is wrong (i.e. contrary to self-interest) but it is right (i.e. in accordance with self-interest) to obey it. But, of course, for both Plato and Aristotle this approach would be unacceptable because it makes self-interest the supreme moral principle and inconsistent with the dictates of social morality and law.

A further reason why Plato and Aristotle did not develop a ‘formal’ theory of political obligation is that they both write from the point of the ruler rather than the ruled; they write for those who are likely to have the opportunity to control the machinery of the state. In this they reflect the main tradition of Greek political theory of the classical period which was dominated throughout by the question ‘What is the best form of constitution?’, considered from the point of view of those who were interested in reforming old constitutions or establishing new ones. Political science was the science of the legislator not of the citizen; it was statesmanship not civics. From the ruler’s point of view, the problem of political obedience is one of securing political obedience from his subjects and the solution therefore lies in appropriate manipulation of such things as the system of education and the formal machinery of government. The problem of political obligation as we understand it, however, is a citizen’s rather than a ruler’s problem. It exercises people like Antigone and Socrates who find themselves at odds with the political authorities and are driven to reflect on the limits of the state’s authority over them as individuals. But when Plato and Aristotle are faced with this conflict their instinct is to attack it from the other end and to ask how the government and society can be altered in order to remove or at least mitigate the conflict.