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OBEY THE LAWS: FREE OF CONSTRAINT

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“If a law is unjust, a man is not only right to disobey it, he is obligated to do so.”

-Thomas Jefferson

Abstract:

Devoid of obedience any law is merely a dead letter. But are we obliged to obey the law? If yes, then what causes this obligation? And if not, then what makes us believe that we are? From ancient philosophers like Aristotle and St. Augustine to more recent philosophers and political thinkers like John Locke, Ronald Dworkin and John Rawls etc., all have tried and failed to provide these mind boggling questions with an ideal answer which may explain the cause of existence of such obligation and hold its ground in all imaginable scenarios. At best they have pointed out some possible reasons, like morality, social contract, associative obligation etc., which might compel us to obey the law but not without leaving a wide room for ambiguity. Nevertheless in the latter half of the 20th Century, Joseph Raz, an Israeli philosopher, ventured to explore the other side of the isle by trying to answer the big question in negative. He disapproved altogether the quest for the ‘perfect reason’ by claiming that there exists no obligation to obey the law. This essay will attempt to give an insight on this age-old question through in depth analysis of the various philosophical reasons previously contended by different schools of thought and reviewing the nature of ‘civil disobedience’ while upholding the Razian stand of ‘no obligation’.

Keywords: No Obligation, Reasons To Obey, Civil Disobedience, Joseph Raz

Laws have been rather crucial in shaping the society into what it is today. People have obeyed laws since the times immemorial and it is undeniable that this obedience has become an inseparable part of their lives. In *Crito*, Socrates remarks on the importance of law as ‘*is a city without laws satisfactory to anyone?*’¹ But the cardinal question is whether the expediency of law

¹ Plato, *Crito*, at 9, 53a (translated by Cathal Woods and Ryan Pack, 1st Ed. 2007).

for the peace, progress, stability and even existence of the society, creates in itself an obligation for people to obey it. Most of the earlier philosophers went on to give the reasons for obligation without a conclusive ascertainment of its existence. Joseph Raz, in his essay '*The Authority of Law*', answers this question by refuting upon the independent existence of any obligation to obey the law. I would attempt to defend his views by giving my own interpretation of them. First the meaning of obligation would be discussed. Subsequently the two of the acclaimed reasons which obligate us to obey the law i.e. morality and higher laws and the 'social contract' would be critically examined. And the last part would discuss the nature of 'civil disobedience' in the light of present contentions.

What is an Obligation?

According to Raz, the general obligation to obey the law which entails the reason to do the act which law requires². Its existence must strictly pertain to the fact that law demands it. But the problem is that in real life such an obligation has no weight of its own. It is the accumulation of variety of other obligations and fears viz. moral obligation, social obligation, associative obligation and fear of persecution etc. existing in different proportions for each person which justify the obedience of law for him. Raz claimed that the main role of law is to mark the standard to which these independent motivations of people attach themselves³. For instance; people are generally known to possess some moral reasons to guide them against the commission of murder or rape. A law penalizing murder or rape would be just in the eyes of people because they already existing have other reason which certifies it to be so.

Taking this discussion further, say a survey is done in a democratic country where citizens are asked to give reasons for their obedience of some random laws prevailing in that country. It is possible that countless combinations of reasons could be put forward by a person to justify his views. It could be any reason be it morality, fear of social ostracism, fear of punishment or mandate to follow the word of God etc. The response might be different for every single law which is questioned or similar for all of them or a standard answer for some and different reasoning for others, depending upon the person so being asked.

Now consider a law which bans homosexual activities is put in the questionnaire among others. It

² Joseph Raz, *The Authority of Law* at 233, (Oxford University Press Inc. New York, 1979).

³ Ibid at 241

is a high probability that for an average heterosexual middle aged Muslim man taking part in the survey, the likely grounds to justify the existence of such law and authenticate the obedience which it commands, would be morality and the mandate to follow the word of God (assuming he adheres the commandments of Qur'an which explicitly condemns the practice⁴). It might be same in the case of an Orthodox Jew gentleman of similar qualifications as his scriptures and his culture too disapprove of homosexuality⁵. But a young atheist, who happens to be a lesbian, may resort to fear of punishment or social ostracism⁶ while giving reasons for her obedience of this law. She might even detest it for its unjustness and speak in the favor of its abolishment.

Nonetheless, this position might reverse if the next law which is questioned bans domestic violence like beating one's spouse etc. Here the former (Muslim man) may use the reasons of the latter (lesbian atheist) and latter may give the reason of morality used by former in the previous question. The reason for the Muslim man to do so could be that Islam permits a husband to use beating as a last resort if his wife refuses to have sexual intercourse with him⁷. It is not necessary that no Muslim would use morality as a reason because not all Muslims follow the word of Qur'an per se. But Muslims make up almost a quarter of the world's population (about 1.7 Billion) and most of the Muslim population resides in the Middle East where strict adherence to Qur'an and Hadiz is generally seen. Thus it would be safe to say that no less than 60-70% of Muslim males or 300-400 thousand people of the world would not have much moral reason to obey such law. That's a big number. It is not only in the case with Islam but with almost every major religion and even some cultures which permit or restrict some things which might be considered immoral or even diabolic in others. We may also consider restriction of abortion in Christianity, permissibility of child marriage in Hinduism (also in many other cultures as it is still legal in 93 countries) and polygamy in Islam and Hinduism etc.

This hypothetical survey, despite its low level of precision, explains a lot about the cause of obedience of law for different people. It could be inferred that even in a real life survey there would be hardly any consistency amongst reasons for obedience of any law given by the different persons. A person does not have consistency even amongst his own answers let alone with others.

⁴ Qur'an, Surah (26:165-166, 7:80-81 & 26:165) trans. Sahih International.

⁵ The Torah (Leviticus 18:22)

⁶Gregory M. Herek, *Homosexuality* at 5, (A.E. Kazdin Ed., Encyclopedia of Psychology, Washington D.C., American Psychological Association & Oxford Press, 2000).

⁷ Qur'an, Surah (4:34 & 38:44), trans. Sahih International.

The inherent cause of obedience is not same for anyone in all the cases. Therefore even if we suppose that there exists an obligation to obey the law, no one could point out a common cause for its existence.

To verify this stand of 'no obligation' it becomes indispensable to look at the other philosophical reasons which tend to fix a singular cause for the obligation to obey the law for all persons. I would examine three most popular reasons which have been considered the possible answer to the question by different schools of thought for centuries- morality and 'higher law'; social contract and coercion.

Morality and the 'Higher Law'

The 'natural law' theorists have since long taken the support of morality and 'higher laws' to show that there is an undeniable general obligation to obey the law. Aristotle, the father of 'natural law' paradigm, explored the nature of law, its abidingness and its applicability in Politics, Rhetoric and Nicomachean Ethics. According to him there exists two types of laws i.e. 'particular laws' (manmade laws) and 'universal laws'⁸, where latter is superior to the former. He believed that an ideal government (which was voluntary monarchy according to him⁹) would make just laws and ensure their obedience by the citizens¹⁰. Aristotle promoted the ideas of egalitarianism and rule of law in the society, long before they were even properly formulated by anyone, while suggesting that the supremacy of 'universal law' was the only way to achieve it.

Cicero, a famous Roman philosopher, was highly influenced by the work of Aristotle. He also believed that there existed a universally accepted, unchanging and everlasting law authored by God binding upon the whole world alike which could not be restricted or abrogated by any human legislation.¹¹ It is evident that both of these early 'natural thinkers' affirmed the existence of the 'universal law' which contained in itself an inherent obligation to be obeyed.

The further important contributions to this ideology were made by the Christian philosophers, St. Augustine and St. Thomas Aquinas. St. Augustine professed through his concepts of two cities ('City of God' & 'Earthly Cities') and 'original sin' that men have a strong tendency to sin and

⁸ Aristotle, *Rhetoric* at 57(Book 1-13), (W. Rhys Roberts trans., 1954).

⁹ Aristotle, *Politics* at (Book 3 P. 14), (Benjamin Jowett trans., 1999).

¹⁰ Ibid at Book at 4 P.8 and Book 2 P. 9.

¹¹ Marcus Tullius Cicero, *De Republica* at 3.33

they required a political authority to control them coercively so they might learn humility¹². In his early works, he expressed the view that human law must be legislated in conformity to eternal law (*Lex Aeterna*) which was thoroughly just.¹³ His great admiration to Cicero's philosophy could be seen in his works where he harmonized it with the principles of Christianity. Almost millennia later, St. Thomas Aquinas presented a more elaborate form of St. Augustine's philosophy. He divided this universal law into three parts: 'Eternal Law' or 'Lex Aeterna', through which everything in the universe is controlled¹⁴; 'Natural Law' or 'Lex Naturalis', which is the part of 'Lex Aeterna' imprinted on every rational being's (man) soul¹⁵; and the Divine Law, which are dictates of holy scriptures which revealed the elements of 'Lex Aeterna' to men¹⁶. The Human law on other hand was described as a means to enable disabled persons to follow the dictates of the natural law¹⁷ which was free of error¹⁸. St. Thomas Aquinas strengthened the religious involvement in natural law theory turning the view of obligation of law towards strict adherence to one's religious scriptures as command of God.

Modern natural thinkers, like Hugo Grotius, gave further modifications to the theory. Grotius used the 'just war theory' and 'right to necessity' as a basis to demark the existence and abidingness of natural law. He had a rather distinct general view of 'natural law'. He believed that it could not be amended even by God and even He was subject to it¹⁹.

From this brief review of historical evolution of 'natural law' ideology it becomes clear that all of these theories have two key assumptions- (1) there is some 'higher law' which commands obedience (2) its two indicated sources are morality and religious scripture. It cannot be denied that morality is one of the main reasons for our obedience of laws. But as for the sole contender to form a basis for 'general' obligation of the law, it hardly stands a chance. Raz took the 'bad influence' approach²⁰ to prove this point. He argued that though we may influence others through our behavior but the influence of every person and every act so done by him is different. For example, a traffic signal jumped by the Archbishop of Canterbury in his car would be news for

¹² St. Augustine, *De Civitate Dei* at 124.8, (426 C.E.)

¹³ St. Augustine, *De vera religione* at 31.58, (386 C.E.).

¹⁴ St. Thomas Aquinas, *Summa Theologica* at 93, (1485 C.E.).

¹⁵ *Ibid* at 91.

¹⁶ Raymond Wacks, *Understanding Jurisprudence: An Introduction to Legal Theory* at 22, (Oxford University Press, 2005).

¹⁷ *Ibid* at 95, art. 1.

¹⁸ *Ibid* at 91 art. 4.

¹⁹ *Supra* note 27 at P.127.

²⁰ Joseph Raz, *The Authority of Law* (237-242), (Oxford University Press Inc. New York, 1979).

thousands of people whereas same act done by a college student on his bike would go unnoticed. Thus believing the argument of 'preventing bad influence on others' given by the 'natural thinkers', former would carry a moral obligation to obey the traffic rules while the latter would not because he can exert no 'bad influence' by disobeying it.

Another basal defect to be focused is the inconsistency and vagueness of 'Higher Law'. According to majority of natural law theories, 'Higher Law', described as universal law, eternal law, natural law etc., is the supreme law to which all manmade laws are subordinate. But as for the explanation of what this 'Higher Law' comprises, merely sources like morality, reason and religious scriptures are pointed out. The main problem is not only the ascertainment of which one these is to be followed but also who shall be the authority to certify it as a source. Let's consider its given sources.

Morality is the set of moral reasons²¹ which an individual or a society considers as measurement yard of goodness for all the actions he commits or judges. Some of these reasons are innate in all men since birth like reverence of parents and abstinence from harming others etc. but most of them are learned through social interactions. Culture, religion, and country etc. of a person play a decisive role in formation of his moral reasons. But the problem arises with the generality of morals in every person on earth. Given the different backgrounds of people, a thing which is moral for one might be immoral for another. For example, let's say a law is made in India banning the sale and consumption of beef. The 80% of the Hindus residing there would have a strong moral reason to abide to such law as their society, culture, religion etc. all condemn the practice. But for Muslims and Christians residing in India there would be no such moral obligation to obey the law. Their obedience would only be a result of fear of punishment rather than moral motivation. The dictates of the 'Higher law' and morality of Hindus would differ greatly from those of Muslims, Christians and Jews on this point. There are many other examples which would concur to this stand.

Thus we may concluded that morality and even 'higher laws' (different for different people), though form a strong reason for obedience of most laws, cannot justify as a reason for general obligation to obey law.

²¹ Joseph Raz, *Incorporation by Law* at 3, (Storrs Lectures at Yale, 2003)

Social Contract

The 'natural law' theories remained uncontested till the mid 16th Century when Thomas Hobbes published *Leviathan* which singlehandedly brought back to life the concept of social contract of Socrates. In the dialogues *Apology* and *Crito* written by Plato, Socrates introduced the idea of 'Tacitus agreement' to the world. He claimed that if one continuously enjoys the facilities which the state provides (protection, employment, education etc.); observes its manner of deliverance of justice and handling of civic matters; and still decides to stay in it, then through his actions he enters into an implied agreement with the state to obey all of its commands²². Despite his previous stand in *Apology*, where he declared that injustice was being done to him²³, he condoned that injustice must not repaid by injustice²⁴ and breaking away from the prison and disobeying the court's decision would do be unjust.

The later philosophers like Thomas Hobbes, John Locke and Jean Jacques Rousseau, used this basic idea of 'Tacitus agreement' but gave their own separate reasons for its existence. Hobbes, in his illustrious work, *Leviathan*, used the concept of 'state of nature' i.e. existence of mankind without a civil society with laws or government, to explain the reason for the need of the state and laws. He believed that without a common authority to keep him in awe, humanity would exist in the state of nature (state of war)²⁵ wherein life would be 'solitary, poor, nasty, brutish, and short'²⁶. To save himself and be at peace, man ought to surrender his right of absolute liberty to the state in return for protection of his being and some basic rights.

Locke and Rousseau also gave their own versions of 'state of nature' in their works. John Locke, who was coeval to Hobbes, believed that even in the state of nature, man is not free from constrains of law which governs everyone i.e. the law of nature which, according to him, is created by law or, to non believers, discoverable by reason²⁷. Being a strong contender of inalienable rights of men, he proposed that people in the 'state of nature' surrender their absolute rights, to be governed by laws promulgated for the common good and interpreted by upright and unbiased judges²⁸. His

²² Supra note 3 at 51e.

²³ Thomas G. West, *Plato's Apology of Socrates: An Interpretation, with a New Translation* at 23 (39b), (1st ed., 1979).

²⁴ Ibid at 49d.

²⁵ Thomas Hobbes, *Leviathan* at 77, (1st ed., 1651).

²⁶ Ibid at 78.

²⁷ John Locke, *Second Treatise of Government* at 4, (edited by Jonathan Bennet, 2008)

²⁸ Supra note 42 at 41.

theory suggests that people had an obligation to obey the laws which an ideal government (one which governs by the principles of 'rule of law') makes for the protection of their inalienable rights. Hitherto, both the previous theories have emphasized only one main characteristic of the state i.e. protection, which according to them obligates everyone to obey the law.

Almost after a century, Jean Jacques Rousseau published his '*Discourse on the Origin and Basis of Inequality among Men*' in which he presented his version of 'state of nature' which was opposite of was completely opposite of Hobbes's original version. He believed that in the 'state of nature' there was happiness²⁹, equality³⁰ and peace (giving the instance of Caribbean tribes³¹) as man was uncomplicated and only felt for his actual necessities³². But during the inevitable transition to 'state of society', people became more self-centered due to development of and jealousy³³, inequality³⁴, crime³⁵ etc. ensued in the society. He proposed that only solution to this situation was 'social contract' whereby people give up their individual will for the general will³⁶. Everyone gives their rights to everyone and thus nobody loses any right. Though Rousseau views were quite different from Hobbes's and Locke's but his theory also only weights the protection provided by the state as the main reason for the general obligation.

Nevertheless, more recently John Rawl gave further implications of this 'social contract'. Through his famous 'veil of ignorance' hypothesis³⁷, Rawls presented a new vantage point to look upon what social contract has so far included that led to the unfairness in society as it exists today and what ought to be included in it to bring society to such a desirable state whereby no one is afraid to take up the 'veil of ignorance' challenge. He contended that everyone who is treated by such a government with reasonable justice has a natural duty to obey all laws that are not grossly unjust, on the ground that everyone has a natural duty to uphold and to comply with just institutions^{38,39}. Though Rawls theory appeals as comparatively more reasonable and realistic than any of the above but it has its own defects as discussed below.

²⁹ Jean Jacques Rousseau, *On inequality among mankind* at 34, (Translated by G.D.H. Cole., 2002).

³⁰ Ibid at 38.

³¹ Ibid at 19.

³² Ibid at 19.

³³ Ibid at 19.

³⁴ Ibid at 20.

³⁵ Ibid at 19.

³⁶ Jean Jacques Rousseau, *The Social Contract* at 11, (translated by G.D.H. Cole, 1913).

³⁷ John Rawl, *A Theory of Justice* at 136, (rev. ed., 1999)

³⁸ Ibid at 334-37, 350-62.

³⁹ M. B. E. Smith, *Is There a Prima Facie Obligation to Obey the Law?*, *The Yale Law Journal* at 959, (Vol. 82: 950, 1973)

'Social contract' paradigm fails on many accounts to give a stringent cause of general obligation to obey the law. There are two points which confirm this assertion. First, the 'social contract' is not much of a contract because the 'implied consent' of every citizen is not free. Socrates opines that relation between the state and a citizen is similar to a parent child relationship. But parent and child relationship is not a contractual relationship rather it is an associative one as 'Integrity Theory' of Ronald Dworkin suggests. Even by ignoring this contention, there is the problem of lack of choice. A person has virtually no choice other than submitting to a sovereign rule. For instance, a person may wish to flee from the totalitarianism prevailing in his own country to the neighboring country which is democratic. But due to unreasonable restrictions on issue of passport by the state, he is unable to obtain one. Hence, he is personally condemns state's manner of governance but due to the lack of choice he may be forced to live under its rule. Such person can't be said to have given an implied consent as per the concept of 'Tacitus Agreement'.

Secondly, even the justness of laws and the legal system, as suggested by Rawls, does not give rise to an independent generic obligation to obey the laws. It is admitted that people have a stronger incentive to obey the laws when legal system is just and which promulgates just laws. But even these laws are categorized as just only because people have abundant individual moral reasons to conform to them. As contended in the earlier part of this essay the laws mainly tend to provide a framework for individual motivations to stick to and thus by making good laws all a legal system is doing is giving establishing more acceptable and likely to be adhered frameworks for people's moral reasons. No special obligation to obey the law is created by just laws. Hence, the 'social contract' theory does not hold strong grounds either to give a singular reason which creates general obligation to obey the law for people. Nonetheless John Rawls's argument for validity and even necessity of civil disobedience in certain cases is quite plausible. It may further solidify the present contentions and ironically, weaken his argument about the obligation to obey law.

Civil Disobedience

Moving on to the other end of the spectrum we may see that the 'no obligation' ideology, which has been defended all along in this essay, becomes clearer when it comes to explaining the conditions of disobedience through it.

Civil disobedience is a social phenomena whereby a large number of citizens collectively denouncement or agitation against unjust laws or unjust political institutions or its activities. It has

been seen in action a number of times in the past century alone. Some popular examples include the 'Salt March' led by Mahatma Gandhi and Martin Luther King Jr. led Montgomery Bus Boycott which sparked 1960's 'Civil rights movement' in U.S. It has been established so far that people obey laws either because of their own personal motivations or, in some cases, out of the fear of punishment. Generally it is important for any law which survives for prolonged time or isn't often disrespected that the former cause of obedience i.e. out of one's personal motivation (morality, social stigma, conformity to religious commandment etc.) be more dominant than the latter i.e. fear of sanction. But sometimes a law, either from the inception of its legislation or due to some later change in trend, loses its ability to work as a robust framework for the dominant portion of its adherers to cling their personal motivations on it. In such cases more and more people first resort to the latter cause of obedience (fear of punishment) and when they outnumber heavily the motivated abiders then activities of defiance begin to take place which sometimes turn into a violent revolt. But this is not the case for every law. Whether such law would be opposed explicitly at all; how long will it take for any defiant activities to become common; or whether the matter could turn into a civil war; all depend upon the magnitude of unfairness of the law in question and its effect on the lives of people.

The recent ruling of U.S. Supreme Court in *Obergefell v Hodges*⁴⁰ case declaring all laws banning same-sex marriage as unconstitutional signify the power of civil disobedience. LGBT groups began their protests and movements in early 1970s and after almost half a decade of consequent legal battles achieved their goal. It is not a conventional example of civil disobedience which involves actual disobedience on the part of people involved in it rather this is an example of strong public agitation with only minor transgressions which if remains unchecked for long, turns into such fully fledged civil disobedience.

Nevertheless, civil disobedience is not justified in all cases. As John Rawls observes, it must be used only as a last resort against substantial injustice and the ill effects arising out of it must be balanced before such disobedience causes more harm to the nation than its actual stimulus⁴¹.

⁴⁰ *Obergefell Et Al. V. Hodges, Director, Ohio Department Of Health, Et Al.*, 576 US _ (2015).

⁴¹ John Rawl, *A Theory of Justice* at (363-267), (rev. ed., 1999)

Conclusion

From the discussion so far, it could be established that it is not possible to prove the existence of independent obligation to obey law through any single set of reasoning which may apply to every individual. The conclusions of the analysis of different reasons which had been used to demarcate the existence of this obligation prove to be in accord with this inference. Furthermore, phenomena like 'civil disobedience' are clear evidence to the fact that a general obligation to obey law is not only be impossible to prove but would have been a threat to humanity was it to exist. We find it very hard to give up our misconception that we are bound by law to follow it. But if we succeed in doing so, we may have a better understanding of the various other stronger constraints which actually make us obey the law for both our individual and universal good.

