

J. Raz, **The Authority of Law**, Chapter 12
THE OBLIGATION TO OBEY
THE LAW

I shall argue that there is no obligation to obey the law. It is generally agreed that there is no absolute or conclusive obligation to obey the law. I shall suggest that there is not even a prima facie obligation to obey it.¹ Such a view may be the outcome of a very pessimistic outlook on the value of law and the possibilities of its reform. My argument will not be based on such pessimistic assumptions. I shall argue that there is no obligation to obey the law even in a good society whose legal system is just. In other words, whatever one's view of the nature of the good society or the desirable shape of the law it does not follow from those or indeed from any other reasonable moral principle that there is an obligation to obey the law.

No general argument will be offered to show that there is no such obligation. Instead it is hoped that a more indirect approach may suggest that the duty does not exist. In the first section the nature of the claim that one has an obligation to obey the law will be discussed. The following two sections will examine the case for the existence of such an obligation arising first from moral and secondly from prudential considerations. Finally the last section clarifies the role of the law in society in a way which explains why one should not expect a good law to give rise to an obligation to obey it.

1. THE CHARACTER OF THE OBLIGATION

An obligation to obey the law entails a reason to do that which the law requires. But the converse does not hold. Many reasons to do that which the law requires have nothing to do with an Obligation to obey the law. One has reasons not to kill, assault, rape, or imprison other people which have no connection with the law and depend entirely on the fact that such acts are against the will or interests or (moral) rights of others. Yet such reasons are reasons to do that which the law requires, for the law requires to refrain from murder, assault, rape, and imprisonment. The obligation to obey the law implies that the reason to do that which is required by law is the very fact that it is so required. At the very least this should be part of the reason to obey.

It is easy to find many examples where the fact that the law requires an act is a reason to perform it. A person may be expelled from school or lose his job if rumours that he broke the law become known to his headmaster or employer. His criminal act(s) may greatly aggrieve his much-loved parents or spouse, etc. Such considerations do not even tend to show that there is an obligation to obey the law. For although in these cases the law (i.e. the fact that the law requires an action) is a reason for conforming behaviour it is an incidental reason existing for a particular person, applying under certain special circumstances. The obligation to obey the law is a general obligation applying to all the law's subjects and to all the laws on all the occasions to which they apply. To look for an obligation to obey the law of a certain country is to look for grounds which make it desirable, other things being equal, that one should always do as the law requires. These grounds need not be the same for everyone or for every occasion, but they should be of sufficient generality so that a few general sets of considerations will apply to all on all occasions. The search for an obligation to obey the law of a certain country is an inquiry into whether there is a set of true premisses which entail that everyone (or every citizen? every resident?) ought always to do as those laws require and which include the fact that those actions are required by law as a non-redundant premiss.

Liberal political theory usually assumes that an obligation to obey the law implies nothing more than a prima facie reason to obey. The concept of an obligation, however, imports a practical necessity more stringent than that of a prima facie reason. I have argued elsewhere² that an action is obligatory only if it is required by a protected reason³ which does not derive merely from the fact that adherence to it facilitates realization of the agent's goals. No doubt one may be content with inquiring whether or not there is a prima facie reason to obey the law which applies to all the law's subjects on all occasions to which the law applies. It will be suggested below that even in this 'modest' sense there is no obligation to obey the law. But it is of interest to note that for most people an obligation to obey the law (and most people believe themselves to be under such an obligation) means something far more demanding than

¹ A very powerful and persuasive case showing that there is no obligation to obey the law is presented by M. B. E. Smith, 'Is there a Prima Facie Obligation to Obey the Law?' *Yale Law Journal* 82 (1973) p. 950. Cf. also R. Wasserstrom, 'The Obligation to Obey the Law' in R. S. Summers (ed), *Essays in Legal Philosophy* (Oxford, 1968).

² On the analysis of 'obligation' see my 'Promises and Obligations' in *Law, Society and Morality*, Essays in honour of H. L. A. Hart, edited by P. M. S. Hacker and J. Raz (Oxford, 1977).

³ Cf. Essay I above for the explanation of 'protected reasons'.

a prima facie reason. It means a peremptory reason best explained in keeping with my general analysis of obligation, as a categorical protected reason. The prevalence of this 'strong' notion of an obligation to obey, far from resting on naïve and unreflective political attitudes, reflects a coherent and sober understanding of essential features of the political situation which has long been conveniently overlooked by most political theorists.

The question of the proper attitude to the law is a central preoccupation of political philosophy. One aspect of it is the inquiry whether there is an obligation to comply with the claims of the law for obedience, whether one has a duty to obey the law as it, i.e. the law, demands to be obeyed. It is this obligation which is generally thought of by the general public as the obligation to obey the law. Quite apart from this terminological point there can be little doubt of the importance of an inquiry into whether it is justified to comply with the claims of the law for obedience.

The law's claims for obedience are very different from the current philosophical conception of the obligation to obey the law as a prima facie reason to obey. Most of the current philosophical writings assume that the obligation to obey the law is not violated when an offence is committed in circumstances where there are strong moral reasons for committing it even though its commission is liable to lead to a conviction in a court of law. One can imagine, for example, unlawfully obtaining or stealing a medicine necessary to cure a patient and which for various reasons cannot be lawfully obtained (suppose that the man is a tourist with very little money in a country whose language he does not speak, etc.). Obviously such an act is a violation of an obligation to obey the law if that is understood as an obligation to obey the law as it requires to be obeyed. On that interpretation any act which is a breach of law is also a violation of the obligation to obey the law.

Two points are involved here. The first is that through its rules and its adjudicative machinery the law assumes the right to determine in what conditions legal requirements are defeated by other considerations. The courts apply various doctrines such as conscientious objection, self-defence, necessity, etc., to absolve people from blame for breach of law. To a certain extent prosecutorial discretion is designed, in certain countries, to serve the same purpose. So that while it is true that legal requirements are not, in law, absolute, the law itself claims to determine their proper import, to fix the conditions in which they are overridden. Therefore, an obligation to obey the law interpreted as a 'strong' obligation, i.e. to obey it as it requires to be obeyed, includes acknowledging more than a prima facie reason to obey the law. It includes admission that the reasons to obey have the weight and implications which the law determines for them. In other words it entails a reason to obey in all circumstances defeated only by considerations which are legally recognized as excusing from prosecution or conviction.

This may sound like claiming that the obligation to obey the law is absolute. But, and here is the second point, this is a mistake. The essay on 'The Claims of Law' provided arguments for holding that the law claims not absolute but exclusionary status. Courts need not deny the weight of moral reasons which sometimes argue for breaking the law but which are not provided for by the law and are not allowed to count as excuses or justifications. But the courts do maintain that neither they nor the individual are entitled to break the law on such occasions. They claim that one should disregard those countervailing considerations, however weighty.⁴ The legislator or the executive may have to take some action. But so long as they have not done so the individual should disregard those countervailing considerations. In other words the law claims that its rules and rulings are authoritative. To establish an obligation (in the strong sense) to obey the law, as commonly understood, is to establish that its claim is justified, that the law indeed has the legitimate authority it claims to have.

2. MORAL REASONS TO OBEY

There is no denying that some people have moral reasons to obey the law. Some people (e.g. the Archbishop of Canterbury) have such a position of pre-eminence in the community that their actions have profound influence on the attitudes and behaviour of many people. As a result any breach of the law on their part may have grave consequences and thus they have a general moral reason to obey the law. A reformed criminal may promise his girlfriend never to break the law again if she marries him. If she does he will be under an obligation to obey resting on moral reasons. Similar in some respects is quasi-estoppel. Occasionally a person presents himself as law-abiding in order to induce other people to obey the law. If he succeeds in moving other people to obey the law in an expectation of some benefits (peace, prosperity, etc.) which will accrue to them if both they and he abide by the law, he may well have a moral reason to obey the law so as not to deprive them of those benefits, especially if by inducing them to obey the law he made them forgo some other benefits or undertake certain extra burdens.

Several philosophers have attempted to found a general obligation to obey the law on extensions of these

⁴ That the offender was motivated by them may, quite properly, count as either mitigating or aggravating consideration when it comes to sentencing. But sentencing is governed by its own principles, which do not affect the present issue.

considerations. They tried to show that *every* person present or living in a country is bound, by considerations of one or the other of these kinds, to obey its law. Disobedience, even to a bad law, it is sometimes argued, sets an example and inclines other people to disobey. And those affected may not be discriminating or may lack sound judgment and may be inclined to break good laws as well as bad ones. Hence one has an obligation to obey. This is an important argument and I do not wish to appear to belittle its weight. It is all too easy to dismiss it on the ground that the action of one private individual has too little impact to be worth considering. A public atmosphere of respect for law rests on the cumulative effect of individual behaviour. Though most of us cannot influence public attitudes in the way the Archbishop of Canterbury can, we do affect other people's attitudes even if in smaller measure. While this is undoubtedly an important argument it can hardly be sufficient to establish a general obligation to obey the law. First, at best it provides an ordinary prima facie reason to obey, not a pre-eminent reason amounting to an obligation, to a recognition of the authority of the law. Secondly, though the argument applies in many cases it fails to apply to many others. There are offences which when committed by certain people or in certain circumstances do actually revolt people and strengthen the law-abiding inclinations in the population. In other cases the example set is a good one because on the whole it encourages disobedience only when it is justified. But of all such cases it may be said that to the extent that the offence tends also to act as a bad example for some the argument applies even if overridden by other considerations. There are, however, countless offences the commission of which is never known. Countless traffic offences and many small tax offences, for example, are never detected at all. Moreover, in many cases it is practically certain in advance that the offence, if committed, will remain undetected. Such offences naturally do not set any example whatsoever. Hence the argument from setting a bad example fails to apply to many instances of possible offences. Though an important consideration, it does not even establish a 'weak' general obligation to obey.

It is no objection to these considerations that most of the offences which do not serve as a bad example are either minor offences or victimless crimes or ones which (like tax offences) do not have a direct or identifiable victim. The obligation to obey the law is supposed to be general. Moreover its practical implications are more likely to be decisive in such cases. In major offences or those causing direct harm to identifiable individuals there are usually plenty of direct forceful reasons for (or against) conformity to the law which do not depend on the fact that the act is legally required.

The repeated attempts to base an obligation to obey the law on promises or other undertakings are even less persuasive. True enough, some people are made to take an oath of allegiance, sometimes including an undertaking to keep to the law. Often such undertakings are given in conditions amounting to coercion or duress which deprive them of any moral validity (e.g. when conscripts are made, on pain of severe penalties, to take an oath of allegiance in a country not recognizing an adequate right of conscientious objection). But in other circumstances such an oath may impose a moral obligation to obey (e.g. when voluntarily undertaken prior to assuming an office of state which one is under no compulsion or great pressure to assume). Most people, however, do not commit themselves in this way. Can one interpret the ordinary submission to the law of the normal citizen as amounting to such an undertaking? Certainly not. Promises and other voluntary commitments are created by an expressed intention to be bound.⁵ It is clear that the ordinary life of normal citizens includes nothing amounting to a promise or a voluntary undertaking.

Nor is the third type of consideration mentioned above more likely to provide a basis for a general obligation to obey the law. Estoppel and various forms of quasi-estoppel are indeed independent grounds for action. If by his behaviour a person knowingly induces another to rely on him then he should not, other things being equal, frustrate the expectations of that other person if doing so affects him adversely. Thus if, for example, I knowingly induce another to obey the law by words or actions which lead him to believe that I will obey the law myself, then I should, other things being equal, not let him down by breaking the law. But this argument applies only if by breaking the law I adversely affect the man who relied on me. This can be by harming him or his interests or even by causing him distress and disappointment. The degree of harm is one key factor in assessing the weight of this consideration as a reason for a particular action. Herein lies one difficulty in basing a general obligation to obey on such a consideration: one's violation of the law does not always affect anybody, however minimally and however indirectly. But the main objection to this argument for an obligation to obey is that by and large we do not induce that kind of reliance in others and we certainly do not do it knowingly. This last point is a point of fact which I can but state: Even if it is true that one's behaviour induces others to obey the law, it is certainly not something that people are normally aware of. Most people do not believe that others obey the law because they expect them to do

⁵ On the nature of promises see my 'Promises and Obligation', *ibid.*

so.⁶

The reason people do not believe that they induce others to obey is that they do not, at least not in any morally relevant sense. It is true that up to a point, and especially in certain areas of the law, people are encouraged to obey by the expectation that others will generally do likewise. But this is no more a reason for me to obey than the fact that many Londoners are encouraged to remain in London by the expectation that many people will continue to live there is a reason against any person leaving the city.

The arguments from promising and quasi-estoppel of the kinds considered above are not only intellectually misguided; they are also morally pernicious. They suggest that every individual is inevitably obliged to obey the law of his society regardless of how good or bad that law may be. The arguments from setting a bad example, on the other hand, presuppose—but do not in themselves establish—that the law has rules whose violation will be morally bad. Several kinds of arguments attempt to establish an obligation to obey all law because all legal systems are morally good (natural law arguments) or to obey the laws of a legal system if it is essentially just or morally good.

It was argued above⁷ that many kinds of natural law theories are misconceived. But the arguments there presented left unaffected the thesis that every legal system has some moral merit. Even if the law is necessarily good in some respects and to some degree no obligation to obey it follows. If the facets of law which make it morally valuable are pervasive, systemic features, e.g. that it—the law—is a way of securing public order through subjecting social activity to a framework of openly ascertainable rules, then it affects an individual's reasons only to the extent that his action will tend to undermine the law. Such reasons are mostly derived from the argument from setting a bad example and it has already been argued that such reasons are not capable of generating an obligation to obey.

Alternatively, the necessarily present and universally worthwhile aspects of the law may be manifested in some of its laws or institutions, e.g. if all legal systems contain laws protecting worthwhile life. If so then one has reason to obey those laws (which does not depend on their being legally valid, but derives from their moral content) but no reason to obey other laws, except in so far as not doing so is setting a bad example leading to offences against the good laws. And we are back with the inadequate argument from setting a bad example.

For similar reasons the duty to support and uphold good institutions, the existence of which need not be denied, is insufficient to establish an obligation to obey. It extends directly to those laws setting up and maintaining the just institutions (e.g. those guaranteeing the functioning of a democratic government in the society). It provides reasons to obey other laws only to the extent that by doing so one sets a good example or that by failing so to act one sets a bad example: that is, only to the extent that obedience to these other laws strengthens or prevents weakening the laws on which the democratic character of the government is founded.

Peter Singer's *Democracy and Disobedience* (Oxford, 1973) is among the most interesting discussions of the difference the democratic character of the government makes to the existence of reasons to obey the law. He sees two grounds for a prima facie obligation to obey the law of a perfect democracy. One arises out of participation (pp. 45 ff.). Singer's argument is one of estoppel: 'The legal doctrine of estoppel, then, serves as a useful illustration of what I am saying about voting. In voting, one's voluntary behaviour leads others to the reasonable belief that one consents to the majority decision-procedure. After the event one cannot say that one never consented.' (p. 52.) Here its factual assumption is simply false. People generally know that non-democrats do participate in democratic elections.

Singer's second argument (pp. 30ff.) regards democratic procedure as a fair way of achieving a compromise between competing and legitimate claims. One therefore has reason to support it and accept its results as fair. There are, however, two reasons for which democratic procedures can be thought to be fair. One is valid but insufficient to create an obligation to obey; the other is misguided. The valid reason is that in some countries democratic decisions are more likely to produce fair results and to be acceptable to the public than any alternative. Such considerations establish that democratic government is a just government in those countries and should be supported. But as was pointed out above the duty to support just institutions is insufficient to establish an obligation to obey the law. (On p. 38 Singer indicates that he relies on the duty to support just institutions.)

The other interpretation of Singer's argument takes it to imply that the very fact that a solution was reached by a democratic procedure makes it a just solution (even while conceding that other features of it may make it unjust). This seems to me to be plainly false. The rejection of this view does not depend on a purely instrumental view of democracy. One may approve of it as expressing trust in the mature judgment of the population, or as necessary for

⁶ It is true that one has reason to save others from harm even where that harm is not caused by one knowingly inducing them to behave in a certain way. But here one no longer relies on the semi-estoppel argument but on a general obligation to save others from harm. Such argument will often lead one to conform to the law but only occasionally to obey the law because it is the law.

⁷ Cf. Essay 3 above and also *Practical Reason and Norms*, ch. 5, section 3.

self-expression and for the development of a free person, etc., and yet not acknowledge that each one of its decisions ought to be obeyed just because it was democratically reached (compare: the fact that a decision was taken by an official who followed all the rules of natural justice does not render it just, even though natural justice is valuable both instrumentally and in itself).

Such sketchy refutations of popular arguments as here provided are far from sufficient to show that there is no way of persuasively arguing for a moral obligation to obey. But probably no master argument can prove the non-existence of such a moral obligation. All that can be done is to illustrate the kind of difficulties such an argument has to overcome and to examine some popular arguments. Having done that the discussion in the rest of the book will be based on an assumption that there is no general obligation to obey.⁸

⁸ Some further moral reasons to obey the law are discussed in the next essay on 'Respect for Law'. As will be there seen, they do not undermine the negative conclusion of the present section.