Obedience

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Law is to some extent unique sphere since in some distinction from other fields in human life, such as art, religion, science, and other professional disciplines its structure is fundamentally based upon obligations and not upon commitments. Thus, there is a difference between a non-obligatory (ethical) commitment of a dentist to provide his/her patient with the best medical treatment, possibly imagined, and the dentist (legal) obligation towards the patient and the state to be licensed. Typically the ethical breach of a commitment may result in social sanctions against the wrongdoer, while unlawful infringement of obligations may often render civil sanctions and criminal punishments against the offender. A religious believer may reason that s/he is indebted not singularly to religious commitments but furthermore to religious obligations too. Yet, a failure to practice based on a religious commitment (which is not legalized) shall not result in civil penalties and criminal punishments. The political power of law rests on enforceable obligations that presume obedience by subject human beings. Therefore law as a process of identity practices is subjected to countless political conflicts over hegemony.

The quandary why should people obey a law has been drilled for many years. One hermeneutics conceives law as religious or natural and therefore as inescapably and undeniably generating justice. It was reflected in writings of philosophers as St. Augustine, and persisted well onto the 16th century. The concept of natural law in its more secular version was vivid well until the mid 20th century. A second hermeneutics refers to the ruler as deserving systemic obedience in order to facilitate efficacious government. It was essentially 17th century Thomas Hobbes concept in the Leviathan so that supremacy of human law was second only to conflicting religious dicta (Leviathan 1660, chapters XII, XXI). A third hermeneutics rests on the

presumed communal nature of a society that empowers a certain agent, be it the legislative or the executive body, to govern through a rule making. John Locke in his Second Treatise of Civil Government (1690, chapter XIII) is a prominent thinker in that tradition as was shaped during the 17th century. A fourth hermeneutics, mainly developed by Karl Marx (1843/1975, 1852/1976), conceives law as an epiphenomenon constructed by the bourgeoisie and for that reason subjected to legitimate disobedience. A fifth hermeneutics that was mainly articulated since the 18th century, presumes that the intrinsic logic of law is embedded in the desired necessity of a society to exist. There is no individual autonomous virtue of forming and obeying obligations. People obey in practice and should obey as a social *sine qua non* condition to generate a durable society (Hume, 1739). David Hume (1739), Immanuel Kant (1785), Max Weber (1914), John Rawls (1971, 1999) and Joseph Raz (1977, 2001) are models of that tradition, which presumed that laws should primarily be obeyed, as a *sine qua non* to existence of society, while disobedience is lawful only as an exception.

Nonetheless, disobedience is not necessarily unlawful and the dilemma under what conditions people should disobey law has been drilled for many years, as well. To presume that law in democracy should be obeyed under all circumstances, since it reflects a majority rule, significantly questions the ability of minorities to resist law. A law may severely infringes their human rights, notwithstanding ratified by the majority, which often controls all branches of government, including the legislative and the judiciary. Is it not valuable for a democratic existence to prefer disobedience over violence under conditions of systemic discrimination? Alternatively, if disobedience is in principle legally recognized, what are its boundaries in contemporary democracy?

One normative scenario contends that disobedience is permissible once there is not a necessity in enforcing a law. Such a statement may lead to chaotic disobedience to laws since most people will never concur on what is a 'necessity' unless submitting themselves to authority. Hence, while most political thinkers admit that some disobedience in democracies is legitimate they disagree as to which conditions make it legal. Disobedience should be bounded in its normative and practical scope, and the query is what should be its boundaries? The problems with possible contemporary

interpretations are crucial. Is disobedience to a secular state law is justified once a religious law is not enforced? Since invariably in all democracies secular state law surpasses religious law, in some matters, at least, the option of religious disobedience may be an acute issue. Thus, should polygamy be legalized? A minimal age for marriage annulled? Is disobedience of law that prohibits using religious symbols in public sphere is legal? (Barzilai 2003, 2004).

It is undesirable to formulate one single deontologist and consequential rule according to which obedience is always lawful and disobedience is always illegal. There is no desired deontologist and consequential opposite rule, as well. Ontologically, a democratic criterion for disobedience is that law may be justly and legally disobeyed in context in which it severely infringes irrecoverable damage to basic needs and human rights, and once the aforesaid (potential) damage is not absolutely necessary for the protection of other community members' basic needs and human rights. Thus, higher taxes imposed on deprived people; a preventive war for aggressive purposes; an abolishment of a religious faith; are only a few examples to instances in which disobedience should be legally permissible in a democracy, if no other democratic avenue of political participation for changing a bad law is effectively accessible to the public.

Not all cases of conflicts between particularistic needs and obligations justify disobedience. Disobedience is a democratic and legitimate principle, its legalization in specific instances, however, should be politically and constitutionally calculated within a broader perspective of various options for well being and political behavior in a democracy. The lawfulness of disobedience is dependent on the gravity of the damage that it supposes to evade and hamper, and if no the other political means as parliamentary struggles and adjudication may be practically and effectively available. Furthermore, disobedience is even desirable once the damage to basic human needs and rights is unrecoverable through any foreseeable mode of political participation. The power of law in democracies is embedded in its willingness and ability not only to enforce obligations but to be responsive in matters in which obligations are suspended and when disobedience should be decriminalized and lawful.

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