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Obedience

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Law is different from other fields in human life, such as art, science, and other professional disciplines; its structure is fundamentally based on obligations and not on commitments. For instance, there is a distinction between a dentist's nonobligatory (ethical) commitment to provide her patient with the best possible medical treatment, possibly imagined, and the dentist's (legal) obligation toward the patient and the state to hold a license to practice.

Typically, the ethical breach of a commitment may result in social sanctions against the wrongdoer, although unlawful infringement of obligations may often render civil sanctions and criminal punishments against the offender. There is dissimilarity between law and religion in this context. A religious believer may reason that he is indebted not only to religious commitment, but also to religious obligations. Nevertheless, a failure to observe a religious commitment, which the state has not transformed into a legal norm, will not result in civil penalties or criminal punishments. The political power of law rests on enforceable obligations that presume obedience by subject human beings.

Reasons to Obey Law

If cultural diversity exists in a society, law as a process of identity practices subjects itself to countless political conflicts over hegemony. Why should people obey a law? One hermeneutic answer conceives law as essentially religious or natural and therefore as inescapably and undeniably generating justice. Philosophers such as Saint Augustine (354–430) argued this, and the idea persisted well into the sixteenth century. Concepts of natural law in more secular versions remained important until the mid-twentieth century.

A second interpretation refers to the ruler as deserving systemic obedience to facilitate efficacious government and ultimately to maintain order. This was Thomas Hobbes's (1588–1679) concept in the *Leviathan*, where he argued that the supremacy of human law nevertheless acquiesced to conflicting religious dicta. A third hermeneutic rests on the presumed communal nature of a society that empowers a certain agent, be it the legislative or the executive, to govern through rule making. John Locke (1632–1704) in his *Second Treatise of Civil Government* prominently developed this theme.

Karl Marx (1818–1883) conceived law as an epiphenomenon constructed by the bourgeoisie to dominate the working class. For that reason, the popular majority could legitimately disobey state law. Finally, many philosophers since the eighteenth century have presumed 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. Under most of these formulations, disobedience is lawful only as an unusual exception.

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Disobedience of Law

Nonetheless, disobedience of law may be more thoroughly developed as a social practice. The dilemma under which people should disobey law has many dimensions. 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. Thus, a law may severely infringe a cultural minority's human rights, notwithstanding ratification by the majority, which often controls all branches of government, including the legislature and the judiciary. Should not a democracy prefer disobedience to 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 to enforce a law. Such a statement may lead to chaotic disobedience to laws, however, since most people will never concur on what is a necessity, unless they submit themselves to authority. Hence, although 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 question is what should be its boundaries?

The problems with possible contemporary interpretations are crucial. Is disobedience to secular state law justified once a religious law permits the conduct? Since invariably in all democracies positive state law prevails over religious law, in some matters, at

least, the option of religious disobedience may be an acute issue. For instance, should polygamy be legalized? What should be the minimum age at which a “marriage” is annulled? Is disobedience of a law that prohibits using religious symbols in the public sphere legal?

It is undesirable to formulate one single principle according to which obedience is always lawful and disobedience is always illegal. There is no desired deontologist and consequential opposite rule, either. Ontologically, a possible democratic criterion for disobedience is that one justly and legally may disobey law in the context in which it severely infringes basic needs and human rights. Thus, higher taxes imposed on deprived people, a preventive war for aggressive purposes, or abolishment of a religious faith are a few examples 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.

Conflicts between particularistic needs and legal obligations that would justify disobedience should be closely considered. Disobedience is a legitimate democratic principle; however, it should be politically and constitutionally calculated within a broader perspective of various options for well being and appropriate political behavior in a democracy. The lawfulness of disobedience is dependent on the gravity of the damage that it attempts to evade, while no other political means, such as parliamentary struggles and adjudication are effectively available. Furthermore, disobedience may be 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 also to be responsive to matters in which obligations are suspended and disobedience decriminalized and made lawful.

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See also

- [Cultural Identities](#)
- [Custom and Law](#)

- [Hobbes, Thomas](#)
- [Legitimacy](#)
- [Locke, John](#)
- [Marx, Karl](#)
- [Morality and Law](#)
- [Positive Law](#)
- [Rawls, John](#)
- [Religion, Law and Religious Minorities](#)

Further Readings

Barzilai, Gad. (2003). *Communities and Law: Politics and Cultures of Legal Identities* . Ann Arbor: University of Michigan Press.

Barzilai, Gad. "The Redemptive Principle of Particularistic Obligations: A Legal Political Inquiry." *The Responsive Community* . 14 (2004). 133–37.

Gans, Haim. (1992). *Philosophical Anarchism and Political Disobedience* . Cambridge: Cambridge University Press.

Rawls, John. (1999). *The Law of Peoples* . Cambridge, MA: Harvard University Press.

Raz, Joseph. (1977). "Promises and Obligations." In *Law, Morality, and Society* , edited by Joseph Raz, ed. , and P. M. S. Hacker, ed. . Oxford: Clarendon Press, 210–28.

Walzer, Michael. (1970). *Obedience: Essays on Disobedience , War and Citizenship* . Cambridge, MA: Harvard University Press.