

## Must we always obey the law?

The precept of the law lies as the bedrock of every modern society, serving as a guideline, sanctioned with punitive measures, to arguably regulate the actions of its citizens, maximise social welfare, and ensure justice prevails. The main proposition arguments that stipulate that we must always obey the law are as follows: I) John Locke's argument of tacit consent, which argues that within the government's territorial control, its citizens owe the state compliance with the law and II) Aristotle's warning of the nullification of the power of the law if any of it is disobeyed. However, legal functionalists contend that the law cannot always be obeyed due to its inextricable link with upholding 'social morality', the standards for which are subjective and change over time. In consideration of the aforementioned arguments, this essay will weigh this mutability regarding the issues with an inconstant legal standard to argue that we cannot always be expected to obey the law.

First, Locke asserts that assuming citizenship of a country obligates one to give 'tacit consent' to agree to the social contract, which prioritises social order over individual freedom, and thus obey the law (Locke, 1993). By benefiting from such laws, which give individuals the right to protection in the form of national defence, social security and fundamental rights, it is argued that one owes a debt to the government, fulfilled by obeying the law. If the law can be bypassed by some and not others, people may become vulnerable to exploitation by virtue of dispensing unequal rights. This may seem an over-exaggeration, as, for example, giving an exemption for a speed limit law may not necessarily create systemic social inequality due to its comparatively trivial effect on society. Nonetheless, even minor laws, such as this, are implemented as a one-size-fits-all standard for driving on the road to protect individual safety and equal rights. Following Locke, by using these public roads, built by and for the use of society, we are obliged to obey all traffic-related laws or risk chaos. If one individual, or a group of individuals, found that they could bypass the law without consequences, society would gradually become despotic, with those persons being allowed to reap the benefits of being a part of society, but not having to contribute to affording such privileges, or held accountable for endangering others' safety. The taxation system illustrates this further, as it takes pre-existing financial inequalities into account to scale tax contributions according to respective incomes. If unfair tax exemptions were provided to certain individuals or social groups, this would grant them power that others in society do not have, thus creating systemic social inequality in which the burden to contribute to society is

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placed on those without such power, but the benefits are reaped more by those not contributing. Thus, Locke contends that the use of ‘tacit consent’ protects society from social chaos and inequality. Moreover, whilst critics may reasonably contend that this argument gives way to blind conformity to unjust and dictatorial laws, the operation of tacit consent lies upon the legitimacy of the government and its laws, which is commonly defined by its pursuit of the ‘common good’ - a requirement that the self-serving nature of tyranny fails to fulfil (Zaller, 1993). As tyranny therein cannot be legitimised through consent, the argument concedes that no political obligation is incurred by the theory of tacit consent to obey a tyrannical government (Ashcraft, 1980). Thus, Locke’s rationale defends citizens under tacit consent to obey the law from exploitation on two fronts: the threat of free-riders and despotism.

Despite these merits, its manifold flaws undermine this argument’s persuasiveness on why one must always obey the law. Although certain laws are structured to take into account inequalities such as financial wealth, the laws overall fail to consider the structural and systemic inequalities of society, where citizens are not all born under equal circumstances. Thus, the case of tacit consent severely overlooks the extent to which the law is inherently skewed towards the advantaged. Consequently, John Rawls develops Locke’s theory to argue that tacit consent is valid but only to laws that are just and equitable, created behind a ‘veil of ignorance’ (*Veil of Ignorance - Ethics Unwrapped*, n.d.). Here, factors pertaining to the individuals making those laws, such as social status, identity and class, would be unknown to them, taking selfish biases to maximise one’s status out of the equation. Hence, the law would be created in a way that would not unfairly advantage those born with or possessing more power, or unjustly discriminate against anyone based on their identity, thus promoting justness and equity. Rawls contends that we must only tacitly consent to these laws, as only they are fully just (Greenwood, 1995). However, even Rawls conceded that to create laws behind a veil of ignorance would be impossible in reality. Moreover, political views are not always isolated from the law, as exemplified by the statistics from a study that found conservative Justice Antonin Scalia of the US to have voted to acquit defendants in 82% of white-collar court cases, yet only 7% of those with non-white-collar defendants (Cohen, 2020). Despite the implementation of preventative measures against inequity, such as the Equality Act (2010), the truth remains that the law and its administration is inherently prejudiced and paradoxically does not always promote equity, as it is written and administered by humans with individual biases. Thus, the principles of fairness and equity

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that the argument of tacit consent relies upon proves antithetical, as the law itself does not obey these ideals.

Second, the rule of law fixates on the sovereignty of the law, and the equality of all those that abide by it. To maintain the autonomous and neutral nature of the law as a superior power that supersedes the control of political rulers, Aristotle postulates the law must always be followed (Tyler, n.d.). Without an absolute obligation to obey the law, lay individuals will be given the power to choose whether to abide by the law, on the basis of their individual standards of morality. External factors, including culture and religion, leave us prone to holding differing moral standpoints, and hence demonstrate the subjective, rather than objective, standards of 'morality'. As the law cannot satisfy every citizen's individual moral beliefs, it stands to lose its sovereign power if citizens adopt a 'pick and choose' mechanism for what suits them best, especially due to humanity's naturally selfish tendencies. This leaves the law vulnerable to corruption and defeats its impartial purpose. Thus, this logic supports the argument for upholding an absolutist approach to obeying the law, as the assumption is that the law provides an objective standard on how best to run society - a quality necessary in the modern social climate where individualism, pluralism and diversity are at its greatest.

Nonetheless, this rationale is challengeable. The autonomy and neutrality that the theory of law arguably relies on does not hold true in reality, when in most democratic countries, most codified laws are written by men, voted on by men, and implemented by men. Insofar as the views of the arguably more privileged gender, race and social class are heavily reflected in the law, legal objectivity cannot be value-neutral, provided that personal, social, and cultural biases inevitably factor into the legislative process, as argued by Rawls. Designed to enshrine fundamental rights, UK legislation and the US constitutional laws are open to statutory interpretation and dynamic invalidation, enabling the values of the current social climate to validate highly disparate laws, particularly on politically polarised topics of contention. Most notably, in the US, the landmark overturning of *Roe v. Wade* in the US Supreme Court featured a 5:4 split, with all 5 justices who voted to overturn being politically conservative (Mendoza, 2022). Here, the influence of the political climate on which laws are overturned clearly demonstrates that the law cannot be neutral or objective when the ratification of the law is so deeply set in prejudice. Aristotle further propounds that the superiority of the law as a neutral pillar of justice provides objective protection to all citizens,

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regardless of their different moral standards. Yet, with abortion laws now left up to the individual authorities of different states and their political views in the US, it is axiomatic that the law in fact changes with the standard of times and fluid political influence. As seen in past protests against segregation laws, and its contrast with the laws promoting equality in contemporary US, the law cannot always be obeyed, due to its inconsistency in view of dictating even supposedly 'objective' moral standards.

Some laws, however, such as the criminalisation of homicide, irrefutably do more good than harm; other, more trivial laws, most notably that of jaywalking, are inherently less severe and its benefits are not as nuanced, which is reflected in the leniency of the penal system, culminating in only a small fine. Due to the existence of this hierarchical structure of legislation, the freedom to break the law increases proportionately with the decreasing severity of punishment. Hence, as the law acknowledges that life is not black and white, neither is the law, as clear in the exceptions and precedents that condone even the most absolute of crimes. By acknowledging that even the most uncontroversial laws should be taken up on a case-by-case basis, we must also concede that the law is not perfect and not all-encompassing on dictating human behaviour in society. Although, for the purpose of co-existence, there are certain rules that we must follow to fit into a communal space, individual beliefs and expressions must also be given space to grow and challenge the status quo, giving society the opportunity to evolve. Therefore, it is crucial to not always obey the law, but rather, to always challenge what is 'set in stone' and socially accepted, to better the governance of society. Ultimately, as what is legal does not necessarily equate to what is moral, the law cannot always be obeyed.

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