

## Must we always obey the law?

Law stands as our guardian; it holds the gates closed to the onslaught of chaos that exists beyond perception. Law claims to protect and save us; it allows us to live freely amongst one another in a productive society, sheltered from Hobbes' 'solitary, poor, nasty, brutish and short'<sup>1</sup> state of nature. Though all these may be true, and although law is the felicitous instrument of justice, 'it can also be employed as an instrument of exploitation'<sup>2</sup>. Law embeds the malign principles of our predecessors and enhances with power the government's authority, resulting in endless possibility of inexorable oppression and despotism. Thus, it is our duty to determine the level of obedience one must attribute to the towering voice of force that is the law.

Holding the law as a sacrosanct maxim of absolute authority seems to have been practically rendered incoherent due to the considered abandonment of long held principles of law in favour of the true ontologically dominant concept, that of the good. 'The Nuremberg Trials, for example, might be viewed by some as a triumph of legality over lawless violence'<sup>2</sup>, as they set the precedent that 'the sheer wickedness of an act can render it legally punishable'<sup>2</sup> retrospectively, even without original legal principles being in place to support such a conviction. Article 7 of the Human Rights act precludes such prosecutions, upholding integrity by advocating for no punishment without law<sup>3</sup>. It is for this reason that often the Nuremberg trials are not seen as bastions of justice 'but by others as the reverse'<sup>2</sup>, 'victors' justice'<sup>4</sup>, inventing crimes on which to punish the defendants for their acts in the war. Nevertheless, their actions do seem reasonable. In this instance, the law internally accepted that sometimes obedience is not the answer, the pragmatic consequences of social placation and justified punishment can outweigh the benefits of obedience<sup>5</sup>.

Diametrically opposed to the aforementioned position takes the place of support obedience, a principle that must also be abandoned on the grounds of the consequences of its acceptance. It is said that law is 'an essential precondition for the attainment of certain good states of affairs'<sup>2</sup>, and this seems highly plausible. Hobbes illustrates a lawless community, where the self interested natures of each individual are in perpetual conflict causing unending uncertainty and violence<sup>1</sup>. It follows from this point that 'obedience is a necessary evil'<sup>6</sup>, it allows a path for a compromise between ideals allowing a variety of people to function effectively within a society. When an obstinate individual is 'reluctant to compromise, it may be necessary for some third party to compel'<sup>6</sup> them. 'Obedience is not the suppression of a will in favour of someone else's, it is learning to live in community'<sup>6</sup>. Therefore, a support based structure of obedience has the unavoidable consequence

of social disorder; a situation in which the functions of society we have grown accustomed to and dependent on are rendered inoperable.

Therefore, it is imperative to find a *via media* between these two extremes, one that recognises obedience as a fundamental axiom for any society; we would be 'worse than dead'<sup>7</sup> without the state and the laws it provides. The approach that seems to have the greatest efficacy is the principle of the general will, adapted from the political philosophy of Rousseau; the law must be obeyed unless there is collective recognition by the personified community that such a law contravenes their base principles of morality. This principle aligns fundamentally with the values of democracy and the powers of protesting, both recognised as essential presuppositions for any effective system of governance.

This approach appears to be successful and academically corroborated as there is ubiquitous agreement on the need for a formation of a 'Pactum unionis' before a 'pactum subjectionis'<sup>8</sup>; law cannot function effectively if it is not given its due deference, there is a limit to what governmental force can achieve. Any regime can be overthrown if enough support is accumulated; therefore, the government does need to act consistently in a way representative of the population's opinions, avoiding prolonged resentment burgeoning and to increase public confidence. 'Obedience lasts only as long as the government provides protection and security'<sup>9</sup>. Strategic civil disobedience or protests are therefore effective in the majority of advanced democracies, allowing the government to stay grounded in the opinions of those governors, to withhold their position as governing within the imprimatur of the population, without the absurd consequences of purely selective obedience.

Although not necessarily disobedience, the need for such public grounding is revealed by protests. For example, the Police, Crime, Sentencing and Courts Act 2022, which was proposed to reduce the effect and power of protests by codifying and enhancing the penalties and police controls<sup>10</sup>, was immediately regarded as *contra* public morality and rights. The bill would have created a very broad offence of 'intentionally or recklessly causing public nuisance punishable by a prison sentence of up to 10 years'<sup>11</sup>. The aforementioned bill caused mass outrage among the population as protestors rallied to the street to show their disapproval and voice their fear over the results of such an act- the collapse of democracy<sup>12</sup>. Their voices were heard, causing the government to reevaluate their calculus as to the need for social order compared to the right to protest, and, although the act was passed, many of the most pernicious articles were altered<sup>13</sup>. It

is impossible for parliament to always be right, so the checks and balances of public involvement are an essential part of the functioning of democracy and maintaining a political system with the public's will at heart.

The principle of governance decisions altered by the common will was embodied in 1930s Spain, an event entitled the Extremadura campaign. Living in the context of the Spanish civil war, a vast body of peasants were enduring mass unemployment and lack of social wellbeing. There was a simple solution to this issue, reassigning abandoned estates in the Badajoz region to the peasants, allowing them to create both a livelihood and homes. However, the right wing government in power at the time obdurately upheld legislation that prohibited such equitable actions. The peasants were apoplectic at this and took over the lands against the will of the governors, a show of collective disobedience against a misguided power. Unable to oppose the overwhelming acceptance the occupation had drawn, the legislation was altered permitting their occupation<sup>14</sup>. In instances of overwhelming general will contravening government policy, disobedience may be the only pragmatic option available.

However, it would be to commit great fragility to social order if this theory encouraged any instance of vacillating, hysterical public outrage to alter the integrity of the law. The general will has only dominion over the political realm, not the judicial; disobedience can only be permitted to change laws based on principled arguments, rather than change the application of laws in a certain situation. Democracy's etymology stems from the Greek 'demos kratia', 'rule by the mob'<sup>15</sup>, and it is paramount that we avoid submitting to the flaws which the ancients saw in democracy. A widely promulgated example of such a case was that of Alder Hey Hospital vs Evans<sup>16</sup>. Misguided by biased, emotional parents grieving the tragic suffering, and looming death, of their only son, a tidal wave of public outrage ensued. Yet, when considered retrospectively through a principled lens, such outrage was completely unjustified; the law on which no one can object, that it is important to do 'what is in the best interest of the child', was applied sufficiently to the situation<sup>17</sup>. The apotheosis of the public rage occurred as a mob precipitously stormed the hospital, endangering all inside, galvanised by the misguided opinion of a lack of justice<sup>18</sup>. Therefore, any instances of disobedience should not occur against legislative declarations, there are sufficient procedures through which legislative conduct can be assessed; rather, disobedience should only be a factor influencing a 'representative' who refuses to align their policy with the general will.

Additional corroboration of the principle of general will as the sole reasonable motivator of disobedience is provided by the abhorrent phenomenon which is vigilante justice. One person, or a localised group of people, disobeying the law for what

they believe to be right. Such events occur when individuals feel so egregiously wronged by the actions of others that they believe they have to take it into their own hands to provide the just outcome. It is undeniable that vigilante justice is a misnomer, however, as any acts of a vigilante are inherently unjust as it maintains a complete disregard for the safeguards of due process. Vigilante justice results in ‘increasing caste violence against vulnerable communities’<sup>19</sup>. In these cases, ‘it is mere suspicion of crime, not the proof of crime which seemed to justify the public killings’. The justice system is designed to follow Blackstone’s ratio for good reason; when emotions are overwhelming, there is endless possibility for flawed judgement leading to a violent attack on an innocent. As an illustration *R v James and Norley*<sup>20</sup>, where a pair of individuals viciously attacked and burnt the body of an innocent man facing unsubstantiated accusations of paedophilia. The police, on inspection of the evidence, concluded that all such claims were unfounded. Nevertheless, the unfortunate Ebrahimi -notably part of a minority- endured brutish violence, an act believed to be deserved, but conclusively an instance of almost immeasurable injustice. Therefore, we cannot leave the option of disobedience to an individual, the option must be endowed upon the community as holding a general will, one only excisable against principles rather than judicial applications.

Thus, individual obedience is in fact a ‘necessary evil’; one that maintains the order necessary for a community to function effectively and compromise to be reached. However, where the legislators misuse their power as representatives of the community that empowers them, the community almost has no choice but to challenge their authority - for the benefit of the continuing integrity of society and the acceptance of compromise.

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