

Must one always Obey the Laws? by Timothy McDermott, O.P.

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The question I have been asked¹ is: Must one always obey the laws? The first thing to say is that clearly this is not a legal question. By that I mean that you cannot answer the question by saying: but the law says you must. For then your questioner comes back with: and why must I obey *that* law? The situation is rather like that of the pilot of a plane or the captain of a ship. The crew and passengers do not obey the pilot or the captain merely because he tells them to. Nor do they do it simply because he is a powerful man and would make them sorry if they didn't. Rather they obey him because they think he has a *right* to tell them what to do. He has the right because he holds a position of authority. Obeying a government is so like the situation of obeying a pilot, that in fact the word government derives from the Latin word for steering a ship. One obeys a government not simply because of its power, but because of its authority; and it does not get this authority simply by saying that it has it. You do not obey laws simply because the laws say that you must. Why then do you?

We might ask what gives the captain of a ship his position of authority. There are two answers to this, because there are two questions hidden in it. If we mean, how did it come about that this particular man is filling this position of authority, then the answer would be that he was chosen by the legally approved methods. But if we mean, how did it come about that such a position of authority was there to be filled, then the answer must be that the situation demanded the existence of such a position, the necessity for it was part of the whole state of affairs, for it is impossible successfully to sail a ship or fly a plane in which the decisions are left to a huge committee of passengers and crew. (The Indians, apparently, have a shrewd word to say about committees: the camel, they say, is a horse designed by a committee.) So men recognize that the whole enterprise of sailing a ship or flying a plane or making a horse demands unified authority of some sort. The position of authority must be there if the enterprise is to be successful.

If we now go on to ask what gives a government authority to promulgate laws, we will find ourselves giving answers parallel to the two answers about the ship's captain. If the question means, how did those particular men come to have government authority, then the answer, we

¹This is based on a talk given on the campus of the University of Cape Town.

hope, will be that they were chosen by some accepted legal method. But if the question means, how does it come about that there is such a thing as a governing authority in the community, then the answer must be that it is demanded by the very enterprise of social life together, required in order that the community may preserve and develop itself successfully.

To the question then whether we as individuals are committed to obeying that authority, the answer becomes very clear. We are ; just to the extent that we are committed to the enterprise of social life together, committed to the enterprise of preserving and developing our community. That is to say, the authority rests upon a premiss : the government must be obeyed if the enterprise of social life is to be successful. Or, to put it in another way, the authority of laws derives from a previous fact about laws : namely, that they are instruments of social order. The law must be obeyed *in order that* the community may prosper.

But if law is an instrument of social order, and we are bound to the law only because we are bound to the social order, then we have a new way of phrasing our whole question. If laws are obeyed because of the order they are, by hypothesis, striving to maintain and develop, could this hypothesis sometimes be false ? And what would then happen to our obligation to obey ?

Now whatever sort of question this is, it is certainly a question about the basis of law, about what lies behind the law. It is therefore not a legal question, although it is a question with profound bearing on the nature of law. Similarly, the question is not a political question, though again it is a question with a profound bearing on the nature of politics. For the social order that lies behind the law, and which the law exists to serve, lies behind the practice of politics too ; and politics and politicians exist to serve it. It is the job of politicians to make decisions of policy, to decide what laws will best serve the social order ; but it is not the job of politicians to decide what laws will best suit themselves, or some other purpose than the general social order ; still less is it their job to damage or destroy that social order. If politicians were to make laws damaging to the social order, then clearly they would have ceased to act as true politicians. The question I am asking, however, is precisely the question of what happens when there does occur a divorce between laws and the social order they are claiming to preserve. Are such so-called 'laws' in fact laws at all ? This is not a political question, any more than it was a legal question. The political question would ask whether such and such a law is as good as it might be, or whether some other law ought to have been laid down. But our question asks whether such and such a law is a law at all, or whether such and such a law *can* be laid down.

One would call the question a philosophical question if this did not

imply for most of us that it was an abstract question. But it is not an abstract question. It is a very vital and concrete question for vast numbers of people over the globe, our own country not excepted. It is a *fundamental* question; but a fundamental question about life, and about our attitude in life to the demands of our own social order. As such this question requires a responsible reply.

By a responsible reply I mean a reply which fully meets or 'responds to' the question posed. To give such a reply here I shall have to pick my way between two irresponsible replies, two replies which do not really meet the question squarely. On the one hand, there are people who quickly dismiss the question as silly: of course one need not always obey the law. On the other hand, there are people who immediately shout down the question as blasphemous: of course one must always obey the law. Both reactions are impatient and irresponsible, not really attempting to meet the question squarely, but trying to sweep it out of the way with an 'of course'.

The impatience of the people who say 'of course one need not always obey' betrays a certain contempt for the whole notion of law and obedience to law. For these people the concept of obedience is questionable from the beginning, so that cautiously suggesting that obedience can *sometimes* be put in question is mere waste of time. Behind this attitude I detect a certain failure to realize the fundamentally social character of men, and the way they are bound to the social order; a legacy perhaps from exaggerated nineteenth century accounts of the inviolable rights of individuals. One might call it an 'over-liberal' attitude. I want to avoid this attitude, and make it clear that *in general* there can be no question at all of an individual's obligation to obey the laws of his community. He is in general bound by those laws, precisely because he is bound to pursue the social order. He does not *decide* to pursue such a social order of his own free choice; he is committed to it from birth. Man is not primarily a private creature, with the inviolable right to develop and express himself in isolation from others, though reluctantly constrained by law to a certain code of public behaviour for the benefit of those others. Man is a social being, developing and realizing himself in social community with others. He needs the social life, and the social life needs the law. Consequently, man himself needs the law as a positive instrument for his own welfare and development. By his very nature, then, and not by any optional contract, he must obey the law.

To go back to our example of the captain and his ship. If we had been born members of that ship we would be bound to the authority of that captain. The authority of his orders would not be drawn from the fact that we consent to them, but from his position of authority in the whole enterprise, and from the fact that his orders were serving the good of the ship. Similarly, no government – not even a democratic government –

draws its authority from the fact that its citizens consent to its laws, but from the position it holds in the enterprise of social life, and from the fact that its laws serve the good order of the community it governs. It is true of course that under a democratic system the community elects its government, and if a government has come to fill its position by illegal methods, or by methods that unjustly discriminate among the community as to which will be allowed to elect, then there can certainly be question as to whether that government has the right to speak with the authority it claims. Nevertheless, given the authority, what it lays down does not need the consent of the governed before it becomes of force. Democracy, no more than any other government, is not strictly speaking government according to the will of the people, but government according to the required good order of the community. And as *such* it claims our obedience.

However, I am only saying that these facts are *in general* unquestionable. And this in answer to the impatience of the people who say 'of course one need not obey the laws'. It would equally want to avoid the impatience of the people who say 'of course one must always obey the laws'. Their impatience is often a form of emotional dependence upon the *status quo* and upon the comfort that 'law and order' provides. For these people obedience to the law must of its very nature be unquestioning, and even to raise such a question as I am raising, however, one answered it, would seem to them faintly treasonable. Strangely enough, I think that behind this attitude lies the same mistake as behind the first: an unawareness of our obligations to pursue the social order. Individuals, in this case, the legislators, are again being regarded as able to do what they like to some extent, and not as limited by the requirements of the community they live in. I want to avoid this attitude, and make it clear that neither the legislators nor the community which elects them create the social life which they are trying to regulate. Legislators cannot, for example, define the community to fit their laws. They find themselves legislating for a certain community already established, with its confines already drawn by the very fact of social life; it is for the good of that community that they must care.

So legislators, too, must act responsibly; that is to say, they must promulgate laws 'responding to' the objective demands of the social order. If they do not do this they run the risk of their laws not being laws at all. 'Law and order' would then become an empty phrase, for the so-called 'law' has no relation at all to the needed social order. Again we may appeal to our analogy of the captain and his ship. Crew and passengers must obey him – whether they agree with him or not – as long as his orders do not jeopardise the whole existence of the enterprise, at the service of which he and his authority are. But if he is clearly destroying the ship, running the enterprise aground – whether it be from

ignorance, from madness, or from malice – then he ought not to be obeyed. Indeed, someone in secondary authority ought to wrest the wheel from him.

In general, then, I think the answer to the question, must one obey the laws, is 'Yes'. And the answer would remain 'Yes' even if one thought them not the best laws in the circumstances, and would, given the chance and the authority, repeal them. Just as I must obey the captain even if I think his course and orders not the best ones, and would set a different course myself. But there occurs a line beyond which laws cease to be laws at all: namely, when they throw the whole social order into jeopardy. And if one asks then whether such pronouncements ought to be obeyed the answer must certainly be 'No'. The exact whereabouts of this line will clearly depend on circumstances. One hundred miles from land a certain course might not be as disastrous as it would close to a lee shore when strong winds are blowing. Clearly one would have to possess a patient and reasonable conviction of an informed sort about these circumstances and about the laws themselves; one would have to be acting to save the whole enterprise from collapse, and so one would have to have some sort of guarantee that one's own actions would not bring down the enterprise in ruins anyway. There would be many restrictions and conditions in practice. But in the last analysis, it is possible for certain laws not to have binding force, in which case they ought not to be obeyed, and in certain circumstances ought to be resisted.

'If the commands of somebody's will are to have the authority of law,' says St Thomas, 'they must be regulated by reason. It is only in this sense that we can accept the dictum: the will of the ruler has the force of law. For in any other sense the will of the ruler is rather lawlessness than law.'

'Human law therefore has the quality of law only in so far as it is in accordance with right reason. . . . In so far as it deviates from reason it is called an unjust law, and has the quality not of law but of violence.'

'Laws are unjust when they are detrimental to human welfare. And this may be so with respect to their aim, as when a ruler enacts laws which are burdensome to his subjects and do not make for common prosperity, but are designed rather to serve his own interests. . . . Or they may be detrimental as regards their form, as when the burdens, though concerned with the common welfare, are distributed in an inequitable manner throughout the community. Laws of this sort have more in common with violence than with legality, for as St Augustine says: A law which is unjust cannot be called a law. Such laws do not in consequence oblige in conscience; except occasionally in order to avoid scandal or disorder, for in those circumstances a man must sometimes forego his rights.'

(St Thomas Aquinas: *Summa Theologiae*, 1a 2ae; 90, 1, ad iii; 93, 3, ad ii; 96, 4.)