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NATURAL LAW AS THE BASIS FOR ONE'S OBEDIENCE TO LAWS

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ABSTRACT

There has always arisen the question whether man should obey or disobey all the law made by the state, or whether it is only necessary to obey only those laws that made for the good of society and are just. This question has a far reaching effect on the organization of any society. It also goes to the basis of governments because if everyone disobeys the law, then disorder, anarchy, lawlessness and chaos will ensue. The only plausible answer to this question normally gravitates towards the form, extent and quality of power vested in the legislature to make laws that respond and answer to the problems of the human society. This objective of this paper lies in its profound attempt to lay bare the philosophical basis of man's obedience to positive law, and to attempt to decipher the impact of obeying the good laws of the state is embedded in natural law and to examine whether the said obligation to obey laws also include the obligation to obey bad and unjust laws.

INTRODUCTION

> ***But no one is morally infallible, neither the majority nor the minority, the lone individual may be the crank or an inspired reformer… We have thus to weigh the issues carefully and with much searching of heart before trying the strong medicine of resistance or disobedience…***
> ***…the person may be outwardly wrong to disobey the law, but inwardly or morally justified…the more the law conforms to ethical standards, the better, but there are many moral matters which it would be foolish to try to enforce by law.[1]***

The question as to whether there is any reason for obeying the laws of the state is as old as the state itself. In the days of Socrates, it was this natural law obligation to obey the law that so influenced him that he chose to rather drink hemlock, the poison administered to him by the State of Athens and die instead of escaping the wrath of the law. This problem indeed has not been put to rest, but has continued to trail man in human civilizations and diverse cultures, but which is now ever present, more rigorous, more factual and with much urgency than what it was centuries ago, constantly seeking for valid rationalization within natural law principles. The underpinnings to this depend on how best the following questions among others are satisfactorily answered or if there is a rejoinder that touches on the basic issues in contention which includes questions like - Is it good to obey the law? Why must we obey the law at all? What natural law and ethical reasons will successfully ground an individual's obligations to obey the laws of a state? What if these state laws are oppressive and unjust as Socrates said the state the instruments were then, what will prompt the individual's obedience in such a case? Why would someone still be obligated to obey these rules at all is what we have set out to tackle in our attempt to answer these questions possibly in the affirmative, and give due credence to any exceptions therein.

Also, it further serves to sound a note that obedience is not all about what makes for the good of the society. That is, in certain circumstances, natural law principles and expediency lead to a disobedience to bad and noxious laws promotes some good and compels the state to revisit, review and repeal or amend these bad laws.

Finally, this analysis provides a repackaged recipe for obedience to laws to which we have given our consent either implicit or explicitly. We will sound it that it is bad and wrong to benefit from a law because it favours you, and when it does not favour you, to refuse to obey it. It will be shown to be ethically wrong and which ought to be discouraged for those laws that are just and equitable, not necessarily because it compels the minority to fit into the mould made for them by the majority, but because it states the obvious. The quality of being impartial is what makes for a just and equitable society and the summation would be that good laws bring order to society.

The above passage, drawn from the book ***A Modern Introduction To Philosophy, Readings From Classical and Contemporary Sources*** is merely a tip of the iceberg of what lies ahead of us, and it's why we need to explore and dig deep in other to locate the ethical bases of man's obligation to obey the law. The need to delve into an exhaustive and crucial isolation of the ethical basis of our obligation to the law draws from the fact that there is a distinction between what is law and what is morality. It's true and realistic that no one is morally infallible, and it's incumbent on every individual to obey his own conscience at times, especially when in doubt, rather than an unjust law. It may be that someone could be legally guilty but morally innocent. But it remains proven that the power of punishment in form of either retributive, reformative or as a deterrent cannot do much in terms of compelling conformity, compared to the use of persuasion as an instrument of reformation.[2] This is so because as ***M.B.E. Smith*** observed, quoting ***H.A. Pritchard,*** *"The* mere receipt of an order' *backed by force seems, if anything to give rise to the duty of resisting, rather than obeying"*[13] Despite this irrepressible and undeniable fact, it has been argued to prove or establish its existence.[4] Though it can be assumed, but it does not derogate from the truth that *"those subject to a government often have a prima facie obligation to obey particular laws (e.g when disobedience has seriously untoward consequences or involves an act that is mala inse)"*[5]

The above view formed the crux of the position adopted by Socrates in Platos dialogue, ***"THE CRITO",*** where Socrates, awaiting execution in jail refused to escape when the opportunity was offered him. To Socrates, he was tried according to validly enacted state laws and found guilty, so it was only morally just for him to accept the punishment and face the death penalty. The interesting thing decipherable from Socrates loyalty to the law of Athens here is that it helped to raise so many questions viz: what exactly are the obligations of citizens to the state and its laws? What are the ethical basis that ground these obligations? What are the limits of a citizens obligation? Why should a citizen in a democratic state obey the law? In answering the above, we quickly defer to the words of ***Steven R. Salbu***, who argued that;

> ***Individual acts of conformity to rules and regulations which result from effective socialization represent an agreement between institution and conformer that the latter will suspend individual judgment and replace its exercise with the application of the rules contained in the code of cannon.***[7]

Therefore, can we safely say that the obligation to obey the law derives from the individual's self piety, or that it is induced by the threat of force and punishment, or the individual's reasoning?

Plato indeed takes it that service to the gods and service to the laws are the expression of the divine in us. In referring to ***Plato, Julia Annas*** quoting from ***Plato,*** agreed and held that obedience to laws very highly esteemed when she says offices in Magnesia are assigned to those notable for their obedience to law. She says "*We say that the highest service of the gods is to be given to the person who is first in being most readily obedient to the established laws, and wins this victory in the city.*[8]

In the above case with Plato, the case been made out is that the obligation to obey the law is not without reward. In that is so, the obligation to obey the law is a virtue ingrained in the minds of the people, a standard with which to measure the virtue of a people and a service to invest in and a discipline to cherish. When it is done willingly, the gods, Plato says reward handsomely.

LITERATURE REVIEW

A phenomenal and rich source of literature abound and indeed greet this topic which seeks to inquire and question the rightness or otherwise of any duty or obligation on the individual to obey laws at all. To set sail, we consider ***Julia Annas'*** description of virtue and law in Plato" where it was argued that Plato's obligatoriness of law is rooted in Plato's explanation or concept that being virtuous implies "growing up and living in a society regulated by laws"[9]. ***Julia Annas*** further asserts that virtue is "not merely a matter of reliably doing the right thing, but requires that the person do it in the right way, with the right understanding and with the right feelings"[10]

Annas continues by maintaining that ***Plato*** places much emphasis on the fact that laws are meant to be preceded by preambles called "*prooimia*" This is because for the people to be obliged to obey the law, lawgivers ought to mix persuasion with necessity in addition to the force and sometimes behind laws. Thus, the citizen is not just told what to do, but given, an explanation which he can rationally sometimes for justification as why this is a good regulation, for the citizens benefit.[11]

This is the explanation ***Annas*** aptly gives Plato's **THE LAWS** and ***THE REPUBLIC***, that the government owes the people a rational explanation of the law in question because its only after the citizens understands the reasons for a law, he is enabled to see that law or regulation as something he could give rational assent rather than see these laws as an alien imposition, something without any justification, but coerced or forced on the people to obey anyway.

The above, like the dialogues of **PHILO OF ALEX4NDRIA,** as quoted by ***Annas***, Law structures a way of life which can be positively and persuasively recommended.'2 and all such obedience to the law as habit.[13]

In her contributions in the work ***OBLIGATION AND CONSENT II, Pitkin*** in describing what she called "hypothetical consent" theory stated that obedience to laws is owed to the government to which one ought to consent, because political obligation is justified and those under that government owe the prima facie obligation to obey the laws issued by that government.[14]

In his contribution to the debate **J. Plamenatz** argues that serious past attempts to, in the words of ***M.B.E. Smith's*** *"refurbish the implicit consent argument"* have been unsuccessful.[15] In ***Plamenatz*'s** analysis, there is either *"garden-variety consent"* or direct consent, and indirect consent. It was restated that direct consent which obliges obedience to laws is rarely seen or shown by citizens to governments, while the indirect consent is what is common place, and widespread. He adds that it is indirect consent that *"establishes a prima facie obligation to obey the law ...occurs wherever a person freely votes or abstains from voting".*[16] In his words:

> ***Even if you dislike the system and wish to change it, you put yourself by your vote under a (prima fade) obligation to obey whatever government comes legally to power....you voluntarily take part in a process which gives authority to these people.***[17]

For ***Plamenatz***, he assumes that by voluntarily participating in an electoral process, men have indirectly conferred the legal and legitimate authority on that government. However this argument is ineffective in its defence of prima facie obligation, if it covers those who voted, how does this account for those who refused to vote and those who are ineligible of vote.

In the same line of argument, ***Gewirth*** contends that men consent to government *"when certain institutional arrangements exist in the community as a whole (including) the maintenance of a method which leaves open to every sane non-criminal adult the opportunity to discuss criticize and vote for or against the government"*[18] .

In ***Alan Gewirth's*** opinion, government is legitimized or justified because it is a necessary end to avoid certain evils that man would ordinarily be exposed to, which was what was in the state of nature. **M.B.E. Smith** in his view described ***Gewirth's*** ideas as tilting towards "utilitarian consideration", hence the people owe the

government that protects its subjects from these evils and in addition to the more extensive benefits of government to the people. No government can survive a situation in which everyone in that state breaks the law, for the consequence of such general disobedience will be disastrous. No government exists in a state of anarchy. In the words of ***Brandi***, there is an absolute obligation on man to perform an act if it:

> ***Conforms with that learnable set of rules the recognition of which as morally binding- roughly at the time of the act - by everyone in the society of the agent, except for the retention by individuals of already formed and decided moral convictions, would maximize intrinsic value.***[20]

Brandi thus propounded three rules-of which the first stated the first prima facie ob1igations and the latter two dealt with cases in which lower-level rules conflict - those rules whose recognition would have the best consequences, that is, better than the alternative rule accepted well as better than were no such rule accepted.

R. Neurath, in his work accessed on the internet and accessed as **WHY OBEY LAWS. PDF** in January 2012, listed three answers to the question why obey Laws? The conditions stated by him consist of:

- The social contract
- Unitarianism and
- The principle of fairness

He surmised that there does not seem to be a clear answer to the question because there does not seem to limits to the peoples obligation and also that there is no express description of what the obligations are or are expected to be or what is it intended to replicate.

In his own contribution, Willie Costello wrote a commentary on **Nicholas Sars' "FROM POLlS TO SELF: A REINTERPRETATION OF PLATO'S CRITO**. ***Costello*** opened his commentary with the projection of **Nicholas Sars** seeking to put up a sort of *"incipient contractarian account of our obligation to obey the law."*[21] He disagrees with ***Nicholas Sars*** in that his appeal to piety which linked him with justice, which though agrees with the objective sought by Socrates and early Platonic philosophy, but it is not in tune with Sars' linking it with contractarian interpretation. Indeed, he rests the man's obligation on the fact that "both readings see Plato as engaged in a meta-ethical dispute of what grounds our obligation to be law abiding"[22]**,** averring rather that the idea of obligation in ***CRITO*** was based on the *"subjects own process of reasoning"*. Arguing further, ***Costello*** stated that:

> **What Nick's refutation of the standard reading actually helps us see is that the contractarian not merely reaches the wrong conclusion, but is in fact asking the wrong questions.**[23]

Patrick Durning in the ***CANADL4N JOURNAL OF PHILOSOPHY*** published the article *"POLITICAL LEGITIM4CY AND THE DUTY TO OBEY THE LAW"* in which he made contributions as to why one should obey the law. In his introduction he averred that it has been hotly contended whether the states legitimacy depended upon the subjects' submission or whether they owned the state the duty to obey the law. He pointed out that it is evenly divided between legal philosophers each taking one or the other side of the divide, while some argue for, others argue against the fact that the individual has or owes the obligation to obey the laws of the state.

For ***Patrick Durning,*** the state is only legitimate if it is *"permissible for that state to issue commands and enforce them"*[25]. Still others rest the state legitimacy on possession of claim rights and not to have its power usurped or undermined. All legitimate states power, which in the formulation of ***Hohfeld***, invests such a legitimate state to possess the *"ability to alter the rights and duties of other. The right to make binding laws, laws that the people residing in their territory have a duly to obey"*[26]**.**

Arguing further, ***Durning***, pointed out that the inseparability theory as an argument for the states legitimacy which grounds the peoples obligation is useful both for philosophical anarchists and non anarchists because it, more than anything else, appeals to the principle that *"one may o force people to do things that they have a duly to do"*[27]. **During** thus leads how he disagrees with the inseparability theory because it included the fact that states, whose subjects lack the duty to obey the law won't be stopped from enforcing the law on these citizens, so in the final analysis.. the inseparability theory justifies the issuance of commands backed by force and not duty to obey. having failed to take cognizance of the fact that commands should-

> **Depend upon the subjective conditions of the respective agents, such as the information (or misinformation) that each has[28].**

Durning, in proving his points stated above asserts that the inseparability theory of obligation to obey be law fails in the face of certain obvious facts and situations. He gives as a case the fact that at times, some individuals can gain or lose rights to things which occur beyond their control.
For instance, when a natural disaster such as flooding occurs, **Durning** says, for the fact: that the farmer and resident has been made propertyless and homeless, that individual would suddenly "have a right to take others' surplus property without their permission (and there people will have a duly to give him)"[29]. He concludes that individuals would have the right to use certain things that he lacked just before the disaster, even though neither he nor the propertied individuals brought that disaster about. He draws the curtain on this argument when he construed that despite fantastic arguments from people like ***Simmons***, that a state with good qualities has a right enforce its laws and to be obeyed by those subject to its control. To him to establish the inseparability theory involves much more, and in particular, it must be shown that *"a stares having such (good) qualities could not give it a special right to issue laws and enforce them"*[30].

He concluded his argument about the prima facie duty to obey the laws by asserting plausibly in the following woods:

> **There may be no general, even prima fade duty to obey the laws of a state, not even a just state, but there is a general prima fade duty not to interfere with the administration of the laws of a just state[31].**

The consequent of the above cannot be different from the fact that it is incumbent upon the state to ensure order, and to organize the state for ultimate good of all, and this definitely depends on the states ability to make laws and the citizens duty not to interfere with that duty to make these laws, which aggregates to helping the state to achieve that purpose. He relied on the argument of ***Kent Greenawalt*** that even though the idea that the governed should not interfere with the exercise of force by government officials is not at the centre or core of the concept of legitimacy, but agrees that *"imagining a concession of legitimacy which did not include (the idea that the governed should not interfere with the exercise of force by those in authority) is difficult"* [32]
Thus, he inevitably reaches the conclusion that-

> **A right to non interference entails a right to be obeyed, because not interfering with the state involves complying with the law...the states primary activity is the 'legal organization of society' and individual's failure to comply with the law interferes with the task.[33]**

It follows that not obeying laws made to help organize the society implies that no society is itself being organized. Obedience, ascending to **Durning**, the *prima facie* duty to obey the laws do not depend on any set of characteristics as all persons subject to the state must all have the duty to obey the laws and support the state. He therefore cautions that:

> **If the duty to obey the law depends on the democratic credentials of a government, then the moral importance of something is being against the law could vary with how democratic a state is...so I think we should beware of assuming a simplicity that needs to be proven.[34]**

Robert N. Johnson in his article published on the web page **www.obligation.dhi.pdf** titled OBLIGATION and posted at **johnsonrn@mission.edu** (misson.edu began by asking what is the true nature of and justification for moral and legal obligation such that its grip on us as citizens is either that we are willing to obey the laws or are willing to die not fulfilling them. He lists out three classes of persons with whom obligation is related — the person or entity having an obligation or the agent; what that agent is obligated to do or the performance and the person or entity owed the performance (the object).[35]

Robert N. Johnson submits that obligation is normative, concerned with how things should be, and which he calls "democratically normative", which case it touches on duty, and hence what is permissible, forbidden. He continues by saying that there is either perfect obligations or imperfect obligations to obey the law, holding that an obligation may or may not generate reciprocal rights for their objects for example the obligation to help others. Also, he presents the concept of obligation to obey the law as an agent relative in which case the performance of the obligation contain within its scope *"an essential reference back to the agent and the agent carrying out that performance"*[36]

Robert N. Johnson points out that deontic obligation to obey the law answers to *"modal notions"*, as to what is normatively necessary, possible or impossible to do. According to him,

> **These modalities are often characterized much like causation and other kinds of necessity, as relations grounded in the governance of laws...An action is obligatory when a normative law or rule makes it normatively necessary…**[37]

In upholding the place of the existence of a prima facie law to obey the law, **Robert N Johnson** says like **Ariston,**

> **A mechanism to establish the legitimacy of a normative law or rule can be called a "pedigree". Systems of normative rules or laws require a pedigree that establishes the legitimacy of these laws or rules in creating a genuine obligation...What is required for deontic necessity are laws that are non-optimal rules of behaviour, and that at a minimum, have a pedigree that makes them legitimate rules of the system.** [38]

Robert N. Johnson further explains that with the exit of such deontic realms which hinged on divine pedigree like those of St. Augustine, and which placed deontic duties on same plane h demands which conform to laws laid down for man by God, he stated that it changed to the view that the legitimacy of law mainly arose from acts of will or "voluntarism" of man. This Lockean theory of contract placed human acts of choice, consent, agreement, promise, and the need to seek personal good at odds with those of others and the consequence is chaos which is only resolved surrendering all our authority over ourselves to the sovereign or the community. This transferred authority grounds the power of the state to enact and enforce laws. The obligation to obey laws that issues from this is we are fulfilling **"a promise we have made"**.

This still leaves some unanswered question such as: who made the promise? Did we, or was it made in our behalf? How was the promise made? Is it therefore binding on us and therefore to obligate us to obey laws made centuries thereafter?

NATURAL LAW AS THE BASIS FOR OBEDIENCE TO LAWS

Sandra A. Mc. Calla, in her article *"IS THERE A PRIMA FACIE OBLIGATION/DUTY TO OBEY THE LAW? AN EXPLORATION OF JOHN RAWLS' AND W.D. ROSS'S VIEWS"* states unequivocally that prima facie obligation is one that must be fulfilled unless it conflicts on a particular occasion with an equal or stronger obligation. She argues that although individuals subject to a government usually have an obligation to obey particular (actual) laws, they don't have a prima facie obligation to obey all laws even though legal laws are not always based on moral grounds.

She lists three theories as grounds for our obligation to obey particular laws, which are:
1. Consent Theory
2. Gratitude Theory
3. Farness Theory

Mc Calla points out that an analysis of the theory of political obligation demonstrates the reliance on or the inherence of these three in the discourses of ***Rawls Ross and Hart.*** According to her, political obligation is stuck in the principles of natural law and it commences the moment we begin to address our minds to the fact that in moral and legal theory, that human law is denied or gotten from moral norms that are universally valid and discoverable by reasoning about human nature or true human goods. She further explains that laws are for the common good, the natural good and that it encapsulates the good of the individual members of the common community. It is this common good that bind all people without regard to their voluntary actions, and *"all individuals are bound to the requirement in question, which is also owned to all people.*[40] She further contends that natural and moral duties are inseparable, are dictated by the precepts of natural law and any attempt to *"qualify natural duties the value will be lost"*[41] and might result to a contradiction which will ultimately lead to our adopting some form of moral analysis or an attempt to separate moral from natural duties. This she say was responsible for the Rawls they missing the mark because he contemplated making a separation between political obligations and all other kinds of obligations.[42]

Mc Calla, further agrees with ***John M. Finnis*** argument that when we classify human actions, we find out being a 'law abiding citizen' is invariably an aspect of action undertaken for the sake of the common good. This Mc Calla says is because being a law-abiding citizen requires obeying the law even when one does not see an independent reason to do what the law requires.[43] However, this leaves so many questions yet unanswered and that includes our knowing to what extent one is obligated to obey an unjust law, how do one identify those laws that are unjust, whether one would be justified to choose some laws to obey and some other laws to disobey or avoid, to what extent does the practical relevance of the laws that work come into play in deciding the laws that are to be obeyed? Also, what is best for each law, do those laws sought after practically positioned to fulfill the intent of the laws to be obeyed, would the criteria outlined in compelling obedience to some laws intended to guide and focus our obligation on those laws which are evident in one's own culture? More so, should we rely on our rational capacities to decide how to act and hope that each individual will do the same? If we rely on our rational capacities, can we therefore claim to be obliged to obey the law free from the overwhelming influence of natural law? Then we have to examine also who determines what makes a particular law just and fair, how is it determined, is it the state and how do the state arrive at this? To this array of promptings, Mc Cala replies with an echo of an omnibus-like retort, that should an individual have the prima facie obligation to obey laws, then that obligation would only be binding if and only it that obligation is circumscribed in obedience to those laws that are just and fair and in keeping with a justified moral code.[44] The point being made here is that Mc Cala is redeucing moral codes into those written and enmeshed in the universal principles of natural law.

GROUNDS OF MORAL OBLIGATORINESS

1. **Consent Theory: Mc Clara** roots this in the Lockean Contract Theory. She agrees with John Locke that man had at some time in his pre-historic past live in a state of nature. According to her, as soon as man leaves the state of nature, he surrenders to the Lockean ideal by agreeing to submit himself and rights to the determination and conclusion of the majority.[45] It is this surrendering of all his rights that makes man incur the

obligation to comply with all the measures legitimately undertaken by the community. It is in this direction that we see ***Mc Clara's*** reference to **H. L.A. Hart** as being quite interesting. H. L. Hart had in 1955 wrote that;

> ***When a number of persons conduct any joint enterprise according to rules, and thus restrict their liberty, those who have submitted to these restrictions where required; have a right to a similar submission from those who have benefited by their submission. The rules may provide that officials should have authority to enforce obedience and make further rules. This will create a structure of legal rights and duties, but the moral obligation to obey the rules is due to the cooperating members of the society, and they have the correlating moral right to obedience.***[46]

In the instant, she tries to establish the seminal idea that the success of the enterprise depends on near - universal obedience to the rules, but not universal cooperation. Obedience here involves sacrifice, restriction of one's liberty and submission to an authority hitherto established by common consent. If a person benefits from participating in such an enterprise, and if he intends to continue receiving benefits, then he is bound to continue to obey and would be acting unfairly whenever he refuses to obey its rules.

In her reference to ***Rawls'*** conception of the consent theory, she admits absolutely that the obligation which gives rise to fair play is made up of some complicated parts and some accompanying complex practices, therefore anyone who benefit from such legal systems have a prima facie duty to obey their laws."[47]

It is pertinent to point out that individuals owe a duty or prima facie obligation to obey state laws, but there exists also a level of obligation that is expected of democratic societies which are always not forth coming. If a democratic society is not fair in its dealing with citizens, it would be unfair to ask that citizens remain obligated or submitted to these unfair rules. The idea of being fair, again is a direct reference to that which is inherently built around and onto natural law precepts. A typical example is when a state imposes say a dusk to dawn curfew on the citizenry. It has been established that during curfews, over 95% of the communities are needlessly restricted for the sake of the good of the community. It is obvious thus that once a person takes positive steps to procure benefits generated by ongoing cooperative labour of others, he incurs an obligation to share in the labour.[48] The corollary is true that if we wait for everyone to perform their fair share, we will accomplish nothing. It is this that motivated Socrates to accept to drink hemlock poison and to die even when he knew he was merely roped into committing the offence(s) by his associates as a way shoving him aside and mitigating his popularity, and of course, silencing him.

This was why Socrates said that the obligation to support just institutions definitely includes the duty to obey the laws that are unjust so long as they "do not exceed certain limits of injustice."[49] What Socrates tries to advance here is the fact that as long as human institutions are organized and set up by man, there are bound to be unjust laws such as the one that indicted him. The end game would be our being able to decipher when such laws have exceeded the scale of unjustness set for it by natural law principles. In the case of Socrates, it is still generally contended that the death sentence passed on him for giving proper orientation and education to young Athenians far exceeded the limits of all scales of injustice available to man. It was injustice personified. Moreover, the corollary is true that when the citizens begin to accept certain levels of injustices, the citizenry are indirectly vesting too much power in the government. It would increasingly become thin and difficult, when and where to draw the line between the citizens' obligation to obey or disobey the law. The injustice of a law may in the long run provide plausible reasons, strong enough to disobey the laws of the state, but it has to be determined that these reasons ought to practically outweigh the duty to obey, not eliminate it altogether.[50] Socrates ought to have accepted taking asylum in another state or country, and avoided dying by taking the poison. This is a serious weak point in the obligation to obey the law.

Moral obligation and not responsibility are owed the individual and the community, and when one is under an obligation, recourse is made to the *"over-ruleability of a prima facie duty"*. Other pressing duties need take precedence over the obligation. Prima facie obligations come in degrees, either due to their moral stringent prima facie colouration, or because it has the greatest balance of prima facie rightness. In drawing her argument on this

subject to a close, ***Mc Calla*** recalls that the duty of obeying the laws of one's country is hinged on three grounds. She said it:

> **Arises partly from the duty of gratitude for the benefits one has received from it; partly from the implicit promise to obey which seems to be involved in permanent residents . . . and partly from the fact that its laws are potent instruments of the general good.[51]**

The fact still remains that to consider truly how far this has grounded the obligation to obey the laws of a state, and what to do with the laws of an unjust state, natural law sooner than now takes the front burner and it only makes it work.

David Bear in his work "ESTABLISHING A MORAL DUTY TO OBEY THE LAW THROUGH A JURISPRUDENCE OF LAW AND ECONOMICS (2007)" attempts to articulate in a more proactive manner the views of ***Randy Barnett*** to establish a moral duty to obey the law, as though they are measured through the procedural assurances of substantial justice. He begins by admonishing us generally that it has become ingrained in our political psyche that it is indeed preferable and desirable to escape the chaos and uncertainty that human nature introduces and lays bare in the state of nature.[52]

Bear begins by showing that it is indeed desirable to live outside the state of nature and to stop building defence walls, to start sowing farms, to provide community security and to maximize utility thereupon. **Bear** progresses to an elucidation of the import of escaping or living outside the state of nature and says that the only sure way to this is formation of a government which would develop some instruments of coercion and enforcement of its laws, force compliance and possessed of some degree of centralization.[53] According to him, such escape from the state of nature was a moral justification to introduce the individual into governmental order. It is only if such moral justification exists or is brought about, that each individual could be said to have the moral justification to obey the law. But, he cautions that the law is by definition basically coercive. This informs why Bear goes on to hold that in order to justify this inherently coercive powers of the law, there must be a moral justification for that law. If there is a legitimate and compelling justification for the law, then there is a moral duty to obey the law.[54] The flaw that can be exploited by people on the two sides of the divide is his non reference to any such universal standard or reference to natural law principles.
Bear in conceding that there actually exists such justification, sets out certain grounds for the individual's obedience to state laws. These include:

1. **Prudential**: Under this head, obeying the law is in ones own interest, and one has the intrinsic philosophical reason to do. The prudential reasons do not prescribe a moral duty upon an individual and hence needs no moral justifications. Example of such is not to drive over 80 km per hour, or payment of a fine. This is not sufficient discourse for the obligation to obey the law.
2. **Moral:** This reason assigns an intrinsically binding duty upon the individual, given by a sovereign state. The state in this sense is sovereign, not obeying anyone, but it is habitually obeyed by all. He described the theory as **"facially absurd",** because in its move to set the state over and above the people, even ruthless dictators would command a moral duty of obedience.[55]
3. **Consent**: Bear states submits that consent is a viable ground for obligation to obey the law because the ideal method of establishing a moral duty to obey the law is through an individual's own consent to be governed by that law as enacted.[56] **Bear** contends further that "consent" as a ground for the obligation to obey the law is powerful and strong enough even to the point where if it were possible, it could turn a legal bad into a legal good, and hence surmises that it is certainly sufficient to establish a moral duty to obey the law.[57]

In arguing further, **Bear** asserts that due to the vast power wielded by consent, if there is consent to be governed, then one can also consent to give up, or alienate one's rights. This is further strengthened by the words of ***Sir William Blackstone*** that;

> **"No subject of England can be constrained to pay any aids or taxes, even for the defence of the realm or the support of government, but such as are imposed by his own consent or that of his representatives in parliament".[58]**

This was re-echoed in the case of **CHRISTOLM V. GEORGIA, Z. U.S. (DAL) 419 at 458** where the United States Court held per **WILSON J.**, concurring that:

> **The basis of sound and genuine jurisprudence laws derived from the pure source of equality and justice must be founded on the consent of these, obedience they require.[59]**

There however still exist differences between actual consent, even if actual consent is not *Realistically possible in any large geographically - based government[60]*. For instance, it will not be realistic for all who attain 18 years of age to walk up to Senate or any Upper Legislative House and endorse the Constitution or sign objecting to some provision of the Constitution. This deficiency in consent is said to be implied if the previous generation consented to be so governed and established for themselves the moral duty to obey the law, thus it binds future generations to same obedience even though this too has critics lined up against it for sake of its agency format. The other is that called implied consent gleaned from actions of an individual. The most common form of implied consent is that gotten from participating in an election, residing in and paying taxes in a particular jurisdiction or area. The voter whose candidate wins an election is bound by the decisions of that flow from his candidate, if one's candidate loses, then he has to accept the result of the process he voluntarily participated in, and if one was neutral, then having voluntarily chosen inaction he is bound to accept the outcome and abide by it also.[61]

4. Legitimacy Without Consent: This theory proposes to establish a moral duty to obey the law and holds that arises from gratuity or fair play. Here, emphasis is placed upon the moral duty that arises when-

> **Individual laws are substantively just, and (that) a moral duty arises to the entire system to the extent that there are procedural safeguards assuring the justness of the laws the system prod iices[62].**

Under this ground also are lumped such theories which hold that legitimacy arises from the intrinsic value of democratic choice, and that legitimacy is not necessarily incurred when democratic choices are made according to reasons that are compatible with every reasonable persons moral code.

5. Gratuity and Pair Play: This theory according to **Bear** explains holds that *"there is a moral duty to obey the law when an individual receives benefits from another[63]"*, and in this case, the state. By receiving the benefit, Bear goes on, the individual incurs a debt of gratitude toward his benefactor for living in a prosperous society, being protected, secured and given the basis that accrue from an ordered state, and being given the basic necessities that flow from such a state. It is the similar to that submitted by and as discussed from **Mc Calla.**

6. Substantive Justice A La Carte: Under this ground, it is said that the individual owes the state a prima facie obligation if and only if when a law that is substantially just has been put in place. This is premised on **St. Thomas Aquiana's** declaration that "unjust laws are acts of violence rather than laws"[64]. The legitimacy of this ground rests on the law and not the consent that is given by the people. Hence, without or in the absence of any consent, this ground subsists. The primary question that calls for attention here is, who determines what is a just law or substantially just law?

7. System- Wide Procedural Assurances of Substantive Justice

According to ***David Bear,*** this method is based upon systematic procedural assurances of substantive justice. In explaining if further, **Bear** argues that this system-

> ***….Establishes the justices of a legal system by determining whether the system* maintains procedural methods which provide assurances that the resulting laws will protect justice.**

> **The Logic of the methodology is that a given level of protection provides for a corresponding level of certainty that any given law is just[65],**

The above methodology resembles Legitimacy Without Consent except that this is dependent upon or an out growth from the Chicago Legal System And Economics and the Austrian School Of Law And Economics. These are the climax of the efforts to derive economic laws from the observation of individuals making their own subjectively based choices.[66] The Chicago School seeks to reflect a system by which it is said to trivialize the very real, inherently subjective nature of individual decision making process, thereby ending it in a *"distortion of reality"*[67]. It has been stated that the Chicago School in demanding for determinacy crowds out significant question that touch on subjective assessment, institutional context, social embededness, knowledge judgment, entrepreneurship, creativity process and history.[68]

The Austrian School on the other hand dwells and reflects on individual actions and also extends the traditional neo-classical principles of economics, to account for the subjective nature of individual decision making. **Bear** asserts that through the two schools, it is possible to establish a moral duty to obey the law but only to the degree that the law embodies procedural assurances for the protection of justice. In conclusion therefore, he claims that:

> **The policies of the schools are procedural assurances of an outcome. To the extent that each school's procedures provide for the protection of justice, a legal system based upon them is owed a moral duty of obedience.[69]**

In tackling this question "***WHY SHOULD I OBEY THE LAW",*** **Nkiruka Ahiauzu** in her article *"MULTIPLE PRINCIPLES AND THE OBLIGATION TO OBEY THE LAW"* argues that law gives rise to normative and factual problems of motivation and comprehensiveness. She goes on to list what she calls the unifying principles which are:

1. Fairy play
2. Natural Duty, and
3. Common good

Explaining these principles, ***Ahiauzu*** said these three principles are *"combined in a single theory with the aim of satisfying the requirements of a 'general obligation' to obey the law"*[70] **Ahiauzu** therefore took after the same pattern as **Klosko** as she addresses the fair play principle as one that implies a mutuality of restrictions on participants in the enterprise and which includes the notion of reciprocity. She proceeded to state that the fair play principle satisfies the generality requirement because it also covers what ***Kiosko*** calls *"presumptively beneficial goods"*[71]

Ahiauzu goes on to explain how this form of obligation applies generally to all or most person. In addition, this principle similarly covers non-excludable goods. The link, **Ahiauzu** points out is that non excludable goods at some point depend on the non-excludable goods to function. For example, personal security depends on good roads network to function, making both indispensable, albeit indirectly to the citizen.[72]

The second principle she listed is the theory of natural duty, so called because they apply to persons who have no volitional undertaking. A list of obligation under this principle cover or extend to the duty of mutual aid which binds on persons regardless of whether it is voluntarily accepted or not. For example, it is good and binding on all persons to, assist less fortunate ones in the society, to contribute to the success of just institutions, etc. **Ahiauzu** concedes to **Kiosko** in holding that the natural principle theory solves the problem of particularity which plagues the problem of the obligation to obey the law. This she adds, is based on the idea of reciprocity and natural duties are owed one's own, not other political bodies, and it also covers a wider range of state services.[73]

The third principle dealt with by ***Ahiauzu*** to explain man's obligation to obey the law is the common good principle. This principle bridges the gap as it covers those services that the state provides which work to promote the common good of society, but failed to account for services that are indispensable or aimed to help the less fortunate. This principle covers all other state functions to the extent that they promote the common good, so that

these functions are *"seen to be fairly distributed and procedurally common*[74] and which must be for the public interest and the benefits outweigh the costs.
Ahiauzu, therefore concludes by saying that-

> **The multiple principle theory as composed by the three hypothetical responses does not adequately address the first-personal considerations of the question, "why should I obey the law?"**[75]

It is therefore plausible to reach a conclusion that ***Ahiauzu*** though brilliantly tried but still could not locate the reason nor give a good philosophical reason for the citizen's obligation to obey the law. Her conclusion draws on ***Raz's*** position that there is no general obligation to obey the law.

George C. Christie's deliberately assumes the position that will contradict the notion peddled by skeptics that there are none and exists no general and prima facie obligations to obey the law.[76] Though both the general obligation and prima facie obligation to obey the law exists and are often confused, it does not obfuscate its existence. It is a fact, ***George C. Christie*** states that even if one agree that there exists a prima facie obligation to obey the law, it does not mean that one must necessarily obey the law no matter what. He agrees with John Simmons that other more important counter-vailing moral obligations may arise which would put the duty to obey the law in second place. In that case, though the obligation to obey the law is ever present, it may be outweighed by other relevant moral considerations[77], he agrees.

In his explanations, ***Chritie*** reviewed ***M.B.E. Smith's*** opinion and pointed out that the points raised by ***M.B.E. Smith*** against the obligation to obey the law are not sustainable. In his review, he stressed that Smith's submission that should we decide to base moral obligations to obey the law on considerations of fair play, gratitude, or utility, there are many situations in which one's failure to obey the law will neither cause inconveniences, because the failure might have gone unnoticed, unobserved, and would not even pose as a bad example either.

George C. Christie adopts two positions in which the moral obligation to obey the law are derived, first that of ***J. L. Mackie,*** whom he agrees with can be derived from our "obligation to show respect for the good faith efforts of our political leaders to perform their duties ".
Secondly, he also agrees with A. D. M. Walker that a moral obligation to obey the law can be derived from obligations of gratitude, "obligations ultimately owed to our fellow citizens respectively "[78].

Arguing further, ***Christie*** maintained that morality and law cannot be clearly distinguished, and that in so far as morality and law interact, it is always morality that informs the law and not the opposite. In this regard, he declared that "whether such coordination is provided by law or custom or public exhortation is a matter of indifference[79]. The law, he adds merely provides an additional non-moral reason to behave in a specified fashion. Then he asks:

> **What kind of a world it would be if the general understanding was each person is permitted to break the law if there is a reasonable certainty that no one will be harmed or be affected by this bad example.**[80]

Christie thus reaches the conclusion when in answering questions that confront him on this matter, he avers that despite the fact that these particular obligations vary in strength, it does not in any way entail that there is no general obligation of constant strength to behave morally.

In his own work, ***Stephen Perry*** lists out two conditions or grounds on which to base the individual's obligation to obey the law. These he says are;
1. Consent, and
2. Fair play.

In other to articulate his views on the obligation to obey the law, Stephen Perry declares that-

> **A general obligation to obey the law arises when a legal system possesses the speal political virtue of integrity (which) requires government to speak with one voice, to act in a principled and cohered manner towards all its citizens, and to extent of the law, considered as a whole, has integrity, while the question of what is the content of the law depends, in part, on whether or not law understood as having this content rather than that would have integrity (and hence would give rise to obligation obey).[84]**

Finally, may we briefly examine **Anthony D. Amato's** work, *OBLIGATION TO OBEY THE LAW. A STUDY OF THE DEATH OF SOCRATES*, published in the ***49 Southern California Law Review.*** This work x-rays the narrative of the trial and death of Socrates as lifted from the dialogues of Plato, and in particular the ***APOLOGY, CRITO*** and ***EUTHYPHRO***.

Early in the work, ***D'Amato*** threw up a poser when he questioned:

> **Do we have an obligation to obey any law, no matter how unjust or evil, provided only that of is in fact a valid rule of the legal system in which are happen to be physically located?[85]**

In addressing this topic ***D'Amato*** listed three possible bases for an ethical obligation to obey the law.

1. Having assented to the law, both express and implied consent.
2. Estoppel by one's own action used ethically.
3. Recipients of benefits conferred on the citizens by the state.

These, **D'Amato** stated are the grounds that can be assembled from **Plato's** dialogues. In his further analysis, D'Amato examined the legal and ethical context of ***Socrates'*** trail. He stated that Socrates was tried teaching philosophical debates which they claimed corrupted the minds of youths.[86] He established that Socrates' life was devoted to teaching young and old;

> **Not to care first and foremost for their bodies or for wealth, but rather for the improvement of their minds and souls.[87]**

He held that Socrates did this by;

> **Asking questions of anyone who would listen, probing their answers for weakness, examining their logic and attempting to arrive of the truth. By so doing he helped his listeners to think for themselves.[88]**

Though, it was argued that there was no tangible evidence of harm that the young men were not at all corrupted, their parents or guardians or any other person claiming harm were not at the trial to give evidence against him, but ***D'Amato*** in the passage reproduced below proved that Socrates teachings posed a real threat to the Athenian society as conceived by them then. He said:

> **What was at stake in the exchange was not a definition of 'gods" but the establishment of a more troublesome fact. If (Socrates) taught the youth of the City of Athens to think for themselves, to examine premises carefully, to be careful in their logic, (instruct themselves in ethics, and to lean by their own instruction, then in a sense the young people were worshipping 'false gods" inimical to the city's interests. Young citizens who think for themselves and examine premises cannot be counted upon to obey the state's commands or to make good soldiers who obey orders without hesitation.[89]**

This teaching of ***Socrates*** therefore ran afoul of the Athenian establishment, the recognized gods, duties, and lifestyle, which together cemented the Athenian society together, making it invincible in battle. The pursuit by ***Socrates*** of an unexamined life that is not worth living and disinterested search for truth, chirped away at the

Athenian society's base and foundation and put it at risk. Although it looks like petty vindictiveness on the part of these poets, orators and politicians who accused him, but the basis of Socrates' trial *"was nothing less than this perceived threat contained in Socrates own teaching"*[90]. Allowing Socrates to have a domineering control of the minds of Athenians could up-stage the system, give rise to an insurrection and lead to a failure of the Athenian state.

However, the views of Socrates about the just system under which he was tried and the
procedure are useful ingredients that point to the relevance of an unchanging principles of natural law. He did not query the propriety or procedure of his trial. In fact, at the outset he said "I must obey the law and make my defence ". His defence was not to deny his acts, but a call to interpretation f his acts to suit him, arguing that *"my teaching is the gods bidding and I consider that the city has enjoyed no greater boon than my service to the gods"*[91]

The procedure were just as ***Socrates*** conceded. A public accusation, public trial before over 500 Jurors, and a verdict which was put to vote.

After the sentence was handed down, ***Crito*** and his other friends appealed to ***Socrates*** to escape as one of the options given hem specified or spelt out, but ***Socrates*** objected, saying the grounds of his objection are;

1. Prior agreement to obey the law ***Socrates*** argued that escape from prison would be wrong because it will be a breach of a just agreement he had with Athens[92]. It has been severally contested that there was no explicit agreement, oral or written. But it has been further countered that the agreement referred to by Socrates was inferred and implied between the citizen and the Athenian State, in which case he had to obey all valid legislative decrees and judicial verdicts of the state.
2. Obligation through estoppels which can only be relied upon because ***Socrates*** failed to leave Athens after the age of majority. This also implied that by Socrates electing to stay in Athens after maturity, he also agreed to consent to all the laws of Athens that were in force as at the time he resolved to remain; or those that were foreseeable and their reasonable modifications.[93] The scope of this estoppels extends to the law under which Socrates was tried, more so, after he was told that his actions were those declared to be illegal, he did not apologies or offer to change, but said he would continue, to so teach philosophy. Even the concession of going on exile was rebuffed and rejected. Estoppels therefore included the offence for which Socrates was tried. The state in asking Socrates to leave Athens, *"the state is necessarily asserting that the person's moral choice is either to emigrate or to submit to the states laws*". However, the refusal of Socrates to emigrate or go on exile cannot be construed as participation or acquiescence in the states legal system. It is argued that if he had escaped, it would have brought home to the public "the immortality of the law that sentences a person to death for teaching what he believers.[95]

3. PASSIVE RECEIVER OF CONFERRED BENEFITS

This was one of the reasons that **Socrates** advanced for his refusal to escape. It is possible that **Socrates** had conferred on himself through the actions of others certain benefits so that he was under an obligation not to escape, even when it is obvious that he 'vas only a passive recipient?[96]

Though this has been made more significant in the works of ***Rawls*** and ***H. L. A. Hart***, will it be the case that a passive receiver of conferred benefits would be obliged even when he was not included in the decision making process initially to submit to the death penalty? Why should one be ethically bound by the commitment that the others make to their mutually advantageous activity? Is there any a thing as an objective benefit? I think it is not true that by choosing to live in a place, one has also chosen to impliedly comply with all the agreements entered into before one's coming. What will the person do when the interests clash especially with other preferences of his? What if the benefactor had a different incompatible position to return the favour for other things that benefited him by doing different things. In the case of ***Socrates***, if his preoccupation was to clean up the political machinery by exposing graft, corruption and voting frauds and espousing to the people that *"the unexamined life is not worth living"*. Group he still be indebted?"[97]

I think the passive receiver of a conferred benefit comes un1er matters of strict ethical obligation, which ultimately resides in the conscience of the individual. The acceptability of the depends on the nature of the action taken by the society. Socrates objected to escaping based on the above grounds. In his defence he claimed that escaping will endanger his friends, out of Athens he could be regarded as enemy, a detractor, who can be prosecuted or chased about at will confirms the accusation by the state, and that it would be a bad example to his students and posterity, says ***D'Amato.*** It will foreclose his teachings that laws were good, righteous and man's must precious possessions. If he escaped, it will look like repaying evil with evil, injustice with injustice and breaking of agreements and covenants. Thus on the final analysis, it will pay and be preferable to be executed and depart this life as a victim of injustice wrought by men. That is what Socrates became. It was indeed the source and the basic reason for our inquiry into the bases for man's obligations he obey laws.

CONCLUSION/SUMMARY

We have been privileged to review and leaf through albeit painstakingly, only a fraction of the literature and works on this all important ethical problem - what are the ethical bases for ones obedience to the law. The facts deduced devolve into three major bases or grounds for man's obedience to laws and which fall back on the vital place occupied by natural law as the basis for our obedience to laws. Among some of these we find:

1. Consent theory
2. Gratitude theory
3. Fairness theory (fair play).

However, some other grounds can be inferred and these include:

4. Estoppels
5. Passive receiver of conferred benefits
6. Prudential grounds
7. Moral grounds
8. Substantive justice a la carte
9. System wide procedural assurances of substantive justices.
10. Common good

The above grounds, having been drawn from a wide diversity and variety of works and philosophers, point also to natural law as the underlying cause for the array of background and shades of understanding that inform them. They overlap, and in the main can be collapsed or each other with appropriate modifications and our reaching effect with ease and without loss of meaning or import.

It is our position therefore that these grounds listed above though a fantastic explanation of how man's indebtedness to a society can gravitate to obedience to the laws of a state, they do not satisfactorily ground man's obedience to the laws of a state. The grounds can be faulted and there can be no link between the grounds so listed or expounded and the actual persons that ought to obey the law today. That aside, the consent theory is too broad, distant and extends into the realms of time too distant and extant that the acts of the citizenry today cannot linked with mock happenings that did happened in the past. Further, laws seems to be an aberration from whichever way it is looked at as it places unnecessary restrictions, holds and bars on the people and coerces and threatens to take from man one of the costliest and humanist of his possessions, his freedom and liberty. More so, obedience to the laws of a state is a two way traffic. The state as well as the individual plays complimentary roles. The state need enact good laws to be obeyed. Has this been satisfied yet? What role do we give natural law in its bid to compliment our roles as we strive to obey the laws made by the state.

It is therefore our conclusion that obligation to obey the law is an ethical commitment which resides in the conscience of the individual. It is the reason why conscientious objectors cannot be eliminated, when the government or state acts in such a way as to usurp the rights of the citizenry. There are the new age Socrates' today in our societies, and they can be found even in totalitarian regimes like China, Iran, and North Korea. Their main thrust, the reason why they can stand against these brutal regimes is that they have to compare the

laws operating within their domains to the incorruptible standards imposed upon humanity by natural law principles.

Laws make a society, good laws makes a good society. The society needs the institution of laws that bind in conscience to be obeyed. In concluding, we state that obligations are relative to a particular society and are determined by the set of rules whose acceptance in that society would have a better consequence than the acceptance of a different set of rules. It would be advantageous to accept a rule than not accepting any other law or rule. In the words of ***M. G. Singer,*** though breaking the law has some bad consequences, but sometimes, the good done by breaking the law balances the bad or even outweighs it. In fact the utilitarian generalization, which I do not find good enough to subscribe to can only establish that the prima facie obligation to obey the law is binding or relevant *when obedience is optimific*. This therefore thrusts the basis for one's obedience to positive laws on the recognition and acceptance of what Cicero terms "true law" or natural law, and by which he means reason in agreement with nature; possessed of universal application, made up of such principles which are unchanging and everlasting; and that which summons to duty by its commands, and averts from wrong doing by its prohibitions.

In our final conclusion therefore, since our obedience depends on the eternal, unchanging and universal principles of natural law, we can only accede to the position which holds that-

> **If everyone breaks the law when obedience was not optimific, the good done by separate acts of law-breaking might more than compensate for any public disorder which might result.[98]**

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