



Auckland Unitarian Church
Love beyond belief

When is breaking the law a moral imperative?

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If you grew up in 1950s America as I did, you probably assumed certain things about the world. In particular, the system was fair. It never occurred to me that the system was rigged to reward my privilege of being born white, male, and middle class. My privilege blinded me to the fact that this wasn't true for everyone.

Until I went to university I only knew one black person my own age. We were in fourth grade together. Chester, who was the only black child in my school, was often sent to the naughty corner. I never asked why he was sent there more than his white classmates by our teacher, who, of course, was white like all the teachers and administrators in my school. No one questioned that he deserved it since the teacher sent him there. That is just what happens if you don't follow the rules. So, follow the rules. You might not like all of them but if you comply you won't find yourself in trouble with authority.

All that changed for me in 1965. I was horrified to watch what was done to the marchers in Selma led by Dr Martin Luther King Jr. That the pictures were in black and white did not minimise the brutality of the fire hoses, dogs and police batons that rained down on them by those I had been taught were supposed "to protect and serve". If TV had not revealed that the system didn't work the same for everyone, I might have remained oblivious. But privilege continued to blind me to oppression right in front of my nose.

I lived in a white neighbourhood far away from the South, where I assumed the problem was. How white? My high school had 2700 students and not one of them was black. Why? At the time didn't know. Later I learned that laws at the time allowed people not to sell their homes to black people. And if that didn't stop someone from selling to a black person, banks could legally refuse mortgages on the basis of race. Apparently, the South was closer to "liberal" California than I imagined.

This was just the opening salvo of many in my education that there were just and unjust laws. If you were a person of colour or poor, you were more likely to suffer from the latter. If you were white and privileged and outraged by this reality, it put an onus on you to decide what to do about it. Intellectually and from a distance it was easy to condemn these laws, but in the moment when it required a personal price, what was to be my response? I remember many who shared my discomfort arguing that the black community should not push so hard and they certainly shouldn't be rioting in the cities. It only hurt their cause. "Reform takes time," was the argument. Blacks were told by white people who didn't need to be, to be patient.

Over a hundred years earlier, in his essay on civil disobedience, Henry David Thoreau had outlined our possible responses, "Unjust laws exist: shall we be content to obey them, or shall we endeavour to amend them, and obey them until we have succeeded, or shall we transgress them at once?" But how do we decide?

I would argue that should we break them there must first be a moral imperative. The Book of Exodus gives us an example that sounds like it could be a story in tomorrow's paper:

There was a new king in Egypt, one who differed greatly from those who came before. This Pharaoh was especially worried about the country's resident aliens—the Israelites. And so, Pharaoh did what national leaders have done from time immemorial—he gave a speech: He said to his people, “Look, [these] people, the Children of Israel, are more numerous and stronger than we are. Come on, let's use our wits against them, and keep them from growing, and then, if a war occurs, they could join our enemies and make war upon us” (Exodus 1:9-10).

After rallying the nation, and as an attempt to prevent this outcome, Pharaoh implemented measures designed to weaken and oppress the Israelites. He taxed them nearly to death, forced them to build public works projects, and ultimately enslaved them. But Pharaoh wasn't satisfied with the results of these measures. So, he called the midwives.

Pharaoh said to the midwives of the Hebrews—the name of the first one was Shifrah and the name of the second one was Puah— he said, “When you help the Hebrew women to give birth, if it's a son, put him to death.” (Exodus 1:16) But the midwives refused to obey him, thereby providing us with what is arguably the first recorded instance of nonviolent civil disobedience in world literature.

Shifrah and Puah were, the text reports— in awe of the Divine. They responded to a moral and spiritual imperative that transcended ethnic, religious, and national bonds. They chose love instead of hate, compassion instead of indifference and courage instead of fear—simply because it was the right thing to do.

To undermine moral authority that enables disobedience, those in power make much of the importance of “the rule of law”. Since they have already defined the law for their benefit, that makes sense. We have heard a lot about that in the last week after Metiria Turei, the co-leader of the Green Party, volunteered that years ago she had violated the rule of law. While a single parent on the domestic purposes benefit, she had not acknowledged to the state that she lived with flatmates, as to do so would have reduced her already meagre benefit. This admission, which was made to expose cruel policies that punish the poor, has cost her any opportunity to be a cabinet minister should she be part of a new government after September's election. This has not satisfied those in power who continue to demand that she resign from Parliament. This is in contrast to Prime Minister Bill English's knowingly receiving a \$32,000 housing allowance to which he wasn't entitled for living in his family's 1.2-million-dollar home. After it was made public, he eventually and reluctantly reimbursed the state, but there is no police investigation as in Turei's case or demands he resign from those who laud the rule of law.

Augustine, Bishop of Hippo, had something to say about this in the 4th century.

Augustine did not subscribe to any sort of “divine right” of rulers. Nor did he believe that legislation or decrees should pass unquestioned. “An unjust law is no law at all,” he maintained. To Augustine, government was at best a necessary evil that could only grow more evil the bigger it became. In his work *City of God*, he questioned the legitimacy of government itself.

He saw kingdoms no better than robbers, for they stole justice for their own benefit. They created laws that gave them power to act with impunity in their lust for greed. Augustine recounts a conversation between Alexander the Great and a pirate who had been seized to make his point. When Alexander asked the man about his hostile possession of the sea, the pirate retorted with bold pride, “What thou meanest by seizing the whole earth; but because I do it with a petty ship, I am called a robber, whilst thou who doest it with a great fleet art styled an emperor.”

Despite Augustine’s distrust of government, the importance of the rule became foundational in western law and politics thanks to 13th century theologian Thomas Aquinas. However, what has been glossed over is that Aquinas argued there were four kinds of law: There is eternal law, which resides only in the mind of God and is unknowable to mere mortals. It is the highest form of law. Under that is Divine Law which is made known in scripture, but only to those who accept its authority. Under that is Natural Law which is available to all. It refers to our rational capacity to discern general principles in the order of nature to enable us to flourish as a species in communities, given that by nature we are social animals. At the lowest level is human law. It is an interpretation of natural law in a specific context. In a just society there is no conflict between human and natural law. If there is a conflict, natural law holds precedence for an informed conscience. No individual should obey a law that he or she believes to be unjust, because laws that violate reason are not laws. Moreover, laws must have sufficient flexibility to be waived when necessary in the interests of the common good.

According to Aquinas it can be argued that Metiria Turei followed the rule of natural law which invalidated an unjust human law. The policies of the state left her impoverished and unable to adequately care for her child unless she refused to obey them. Her decision to risk censure by acknowledging her past non-cooperation with human law was an attempt to change them so they were not in conflict with natural law. It was an act on the behalf of the increasing number of poor reliant on a political system that does next to nothing to help change their circumstances and, in fact, seems determined to impede their efforts. For instance, the present government has offered a modest increase in benefits, but then has made them more difficult to receive, striking many in need from the roles, while giving tax breaks to its wealthier supporters.

While conservative opinion writers have only scathing words for Metiria, decrying her breach of the rule of law, Martin Luther King would applaud her efforts.

On April 12, 1963, King sat in a jail cell in Birmingham, Alabama for coordinating nonviolent actions against segregation. In an attempt to stop the civil rights movement in Alabama, Circuit Judge W.A. Jenkins issued a blanket injunction against “parading, demonstrating, boycotting, trespassing, and picketing.” Dr King marched anyway, and was arrested. Four days later, after reading a newspaper article from local clergymen condemning him for hypocrisy in breaking the law, Dr King wrote the now famous “*Letter from a Birmingham Jail*,” in which he broke down the difference between a just and unjust law, stating we, as human beings, have “not only a legal, but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws.” He based his arguments on Augustine, Aquinas and Thoreau. King had this to say about Thoreau’s essay on civil disobedience in his autobiography, “I was so deeply moved that I reread the work several times. I became convinced that non-cooperation with evil is as much a moral obligation as is cooperation with good.”

The difficulty for us is distinguishing between just and unjust laws. Sometimes it is obvious. King offers this guideline, “An unjust law is a code that a numerical or power majority group compels a minority group to obey but does not make binding on itself. This is difference made legal. By the same token, a just law is a code that a majority compels a minority to follow and that it is willing to follow itself. This is sameness made legal.” But even he knew the issue was more difficult, pointing out that, “We should never forget that everything Adolf Hitler did in Germany was ‘legal’ and everything the Hungarian freedom fighters did in Hungary was ‘illegal.’ It was ‘illegal’ to aid and comfort a Jew in Hitler’s Germany. Even so, I am sure that, had I lived in Germany at the time, I would have aided and comforted my Jewish brothers.”

Relying on natural law does not have law libraries filled with man-made statutes and precedents to guide us. Ultimately, we have only our conscience to guide us. Our Seven Principles are of some help, but our Six Sources of Inspiration and Spiritual Growth are more so. The First Source is “Direct Experience” (what you know to be true because you have experienced it first-hand for yourself), the Second Source of our liberal religious tradition is “Words and deeds of prophetic women and men which challenge us to confront powers and structures of evil with justice, compassion, and the transforming power of love.” But the challenge is not only to study and admire those prophetic men and women (Thoreau, King, Gandhi, and so many others), but to discern when and if your conscience might call you to follow in their footsteps of civil disobedience to protest an unjust law or call attention to an injustice.

Addressing how difficult it can be for those of us who live relatively comfortable lives to choose civil disobedience, Sharon Welch, in her important book *A Feminist Ethic of Risk*, writes that, “It is easier to give up on long-term social change when one is comfortable in the present — when it is possible to have challenging work, excellent health care and housing, and access to the fine arts. When the good life is present or within reach, it is tempting to despair of its ever being in reach for others and resort merely to enjoying it for oneself and one’s family.... Becoming so easily discouraged is the privilege of those accustomed to too much power, accustomed to having needs met without negotiation and work, accustomed to having a political and economic system that responds to their needs.”

Ultimately neither I nor any other person can answer the question for you of if or when your conscience may call you to engage in an act of civil disobedience or obedience to moral authority. But I can tell you that Unitarian Universalism is a religious tradition that encourages you to listen to your conscience and to pay attention when your conscience tells you that the right, good, beautiful, and true way is different from what everyone else — even the government — tells you is right. As Thoreau taught us, if we the people do not like the way things are, then we the people can demand change at even the highest levels of society.