

STUDY GUIDE: LDS PERSPECTIVES ON THE LAW
LESSON: LIMITS ON THE DUTY OF OBEDIENCE TO SECULAR LAW
By Jay W. Butler

Scripture References:

-Exodus 1:15-22-2:1-4
-Joshua 2:1-6
-Daniel 3:1-21; 6:4-17
-Matt. 22:15-22
-Acts 5:25-29
-Romans 13:1-8
-1 Peter 2:13-17
-1 Nephi 4:6-13, 18
-D&C 63:26
-D&C 98:4-8
-D&C 101:75-80
-D&C 124:49-50
-D&C 134
-D&C Official Declaration 1
-Twelfth Article of Faith

Selected Reading Material:

N. Eldon Tanner, "The Laws of God", Ensign, Nov. 1975, 82

Reynolds v. United States, 98 U.S. 145 (1879)

Encyclopedia of Mormonism, Vol. 1, CHURCH AND STATE; Vol. 1, CIVIL RIGHTS; Vol. 1, CONSCIENTIOUS OBJECTION

Declaration of Independence

Henry David Thoreau, "On the Duty of Civil Disobedience" (1849)

Robert S. Wood, "Rendering unto Caesar: Moral Responsibility and Civic Duty in a World of States," Brigham Young University Symposium, Moral Perspectives on American Security Policy: Views from the Community of LDS Scholars, 30 September-1 October 1993

Kathleen A. Brady. "Religious Organizations and Free Exercise: The Surprising Lessons of Smith," *Brigham Young University Law Review*, Vol. 2004, No.5

War, Conscription, Conscience and Mormonism, Mormon Heritage (1971)

Notes and Commentary:

Section A: Sources of the Duty to Obey Secular and Divine Law

This section is intended to illuminate the differences between secular and divine law, the ways in which the individual experiences and connects with the two systems, and the sources of conflict between them.

1. **The Order of Precedence Between Secular and Divine Law**

- *What is the "law" that we believe in "obeying, honoring and sustaining"?*
- *How do the systems of divine and secular law differ in the way they affect behavior?*

- *When conflicts arise between these systems of law, what is the order of relative precedence? Why?*

Reading Excerpts:

N. Eldon Tanner, "The Laws of God," *Ensign*, Nov. 1975, 82

. . . I should like today to deal with the majesty of law as it affects mankind. For the sake of this discussion let us divide it into three subheadings: First, the laws of nature; second, the laws of man, or the laws of the land; third, the laws of God as they pertain to our salvation and exaltation.

. . .

Now, regarding the laws of the land, or the laws of man, it is necessary that we be governed by laws, which are made not alone to curb the evildoer, but to protect the rights of all. . . .

It is most important that all citizens be informed in matters of government; that they know and understand the laws of the land; and that they take an active part wherever possible in choosing and electing honest and wise men to administer the affairs of government.

There are many who question the constitutionality of certain acts passed by their respective governments, even though such laws have been established by the highest courts in the land as being constitutional, and they feel to defy and disobey the law.

Abraham Lincoln once observed: "Bad laws, if they exist, should be repealed as soon as possible; still, while they continue in force, they should be religiously observed."

This is the attitude of the Church in regard to law observance. We agree with the author of the following statement:

"In reality the man who defies or flouts the law is like the proverbial fool who saws away the plank on which he sits, and a disrespect or disregard for law is always the first sign of a disintegrating society. Respect for law is the most fundamental of all social virtues, for the alternative to the rule of law is that of violence and anarchy." (Case and Comment. March/April issue, 1965, p. 20.)

There is no reason or justification for men to disregard or break the law or try to take it into their own hands.

2. **Sources of Individual Allegiance to or Disaffection with Civil Law**

- *What is the source of individual motivation to comply with law?*
- *How does compliance with law benefit society, the individual?*
- *What are the social costs of permitting or encouraging civil disobedience?*
- *Under what circumstances might one conclude that the social benefits of civil disobedience outweigh the costs?*

Reading Excerpts:

Kenneth L. Cannon, "Mountain Common Law: The Extra-legal Punishment of Seducers in Early Utah," *Utah Historical Quarterly* 51 (Fall 1983): 308-27

(Recounts the case of Howard Egan, who killed his wife's seducer, the father of her illegitimate child. George A. Smith as defense counsel argued for a duty on Egan's part to punish the offender. Such cases were frequent and B.H. Roberts saw in them a "high sense of honor, the virility, the strength, and the courage of the community's manhood." The foregoing is taken from the brief review by Martha Bradley, "Mormons and the Law," *Sunstone*, March 1985: 44.]

Mahatma Gandhi, "Statement in the Great Trial of 1922," *Mahatma*, Vol. II, (1951) pp. 129-33, available at <http://www.mkgandhi.org/speeches/speechMain.htm>

[Gandhi was tried March 18, 1922 on charges of committing offences punishable under Section 124 A of the Indian Penal Code, the offences being contained in three articles published in Young India of September 29 and December 15 of 1921 and February 23 of 1922. The judge explained that “the charge in each case was that of bringing or attempting to excite into hatred or contempt or exciting or attempting to excite disaffection towards His Majesty's Government.” The following is taken from Gandhi's speech in response to the charges.]

. . . Section 124 A, under which I am happily charged, is perhaps the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen. Affection cannot be manufactured or regulated by law. If one has no affection for a person or system, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote, or incite to violence. But the section under which mere promotion of disaffection is a crime. I have studied some of the cases tried under it; I know that some of the most loved of India's patriots have been convicted under it. I consider it a privilege, therefore, to be charged under that section. I have endeavored to give in their briefest outline the reasons for my disaffection. I have no personal ill-will against any single administrator; much less can I have any disaffection towards the King's person. But I hold it to be a virtue to be disaffected towards a Government which in its totality has done more harm to India than any previous system. India is less manly under the British rule than she ever was before. Holding such a belief, I consider it to be a sin to have affection for the system. And it has been a precious privilege for me to be able to write what I have in the various articles tendered in evidence against me.

In fact, I believe that I have rendered a service to India and England by showing in non-co-operation the way out of the unnatural state in which both are living. In my opinion, non-co-operation with evil is as much a duty as is co-operation with good. . . .

Martin Luther King, Jr., *Autobiography*, Chapter 2

No other person has been more eloquent and passionate in getting this idea across than Henry David Thoreau. As a result of his writings and personal witness, we are the heirs of a legacy of creative protest.

Howard W. Hunter, in *The Teachings of Howard W. Hunter*, edited by Clyde J. Williams [Salt Lake City: Bookcraft, 1997], pp. 163-73.

We are charged to uphold the laws of the land. We are charged with the duty of sustaining and upholding the laws of the land. It is dishonest to intentionally violate the law. It doesn't make any difference how one may feel personally about the fairness or justness of the rules which have been established by society, one's duty is to respect and sustain the law. The commission of major crimes is condemned by nearly all persons, yet some will intentionally violate lesser laws, such as traffic ordinances, without any sense of guilt.
. . . .

In a republic, the government has the sovereign right as well as the duty to protect the rights of the individual and to settle civil disputes or disorders by peaceful means. Citizens do not have the right to take the law into their own hands or exercise physical force. The sovereign laws of the state must be sustained, and persons living under those laws must obey them for the good of the whole. In this regard The Church of Jesus Christ of Latter-day Saints takes a strong position. One of the fundamental tenets of its faith is clearly stated in these words: “We believe in being subject to kings, presidents, rulers, and magistrates, in obeying, honoring, and sustaining the law.” (Articles of Faith 12).

Section B: Sources of Conflict Between Secular and Divine Law

The materials in this section provide a basis for characterizing and classifying the sources of conflict between secular and divine law.

1. Individual Disaffection with Specific Legal Rules

- *Can conflicts between divine and secular law be usefully categorized by type of conflict?*
- *Do some categories of conflict raise issues of principle different from those raised by other categories?*

Reading Excerpts:

Daniel 3:1-21

16 ¶ Shadrach, Meshach, and Abed-nego, answered and said to the king, O Nebuchadnezzar, we are not careful to answer thee in this matter.

17 If it be so, our God whom we serve is able to deliver us from the burning fiery furnace, and he will deliver us out of thine hand, O king.

18 But if not, be it known unto thee, O king, that we will not serve thy gods, nor worship the golden image which thou hast set up.

Matthew 22:15-22

15 ¶ Then went the Pharisees, and took counsel how they might entangle him in his talk.

16 And they sent out unto him their disciples with the Herodians, saying, Master, we know that thou art true, and teachest the way of God in truth, neither carest thou for any man: for thou regardest not the person of men.

17 Tell us therefore, What thinkest thou? Is it lawful to give tribute unto Caesar, or not

18 But Jesus perceived their wickedness, and said, Why tempt ye me, ye hypocrites?

19 Show me the tribute money. And they brought unto him a penny.

20 And he saith unto them, Whose is this image and superscription?

21 They say unto him, Caesar's. Then saith he unto them, Render therefore unto Caesar the things which are Caesar's; and unto God the things that are God's.

22 When they had heard these words, they marveled, and left him, and went their way.

2. **Institutional Conflict with Specific Legal Rules**

- *Do other issues arise when the Church as an institution is opposed to secular law?*
- *Is the individual free at any point to separate his position from that of the Church as an Institution?*

Reading Excerpts:

Statement of Elder Rudger Clawson prior to sentencing under the Edmunds Act:

Your Honor, I very much regret that the laws of my country should come in conflict with the laws of God; but whenever they do, I shall invariably choose the latter. If I did not so express myself, I should feel unworthy of the cause I represent . . . [This law is] unconstitutional, and of course cannot command the respect that a constitutional law would. That is all I have to say, your Honor.

Reynolds v. United States. 98 U.S. 145, 165-167 (1878)

An exceptional colony of polygamists under an exceptional leadership may sometimes exist for a time without appearing to disturb the social condition of the people who surround it; but there cannot be a doubt that, unless restricted by some form of constitution, it is within the legitimate scope of the power of every civil government to determine whether polygamy or monogamy shall be the law of social life under its dominion.

In our opinion, the statute immediately under consideration is within the legislative power of Congress. It is constitutional and valid as prescribing a rule of action for all those residing in the Territories, and in places over which the United States have exclusive control. This being so, the only question which remains is, whether those who make polygamy a part of their religion are excepted from the operation of the statute. If they are, then those who do not make polygamy a part of their religious belief may be found guilty and punished, while those who do, must be acquitted and go free. This would be introducing a new element into criminal law. Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or if a wife religiously believed it was her duty to burn herself

upon the funeral pile of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice?

So here, as a law of the organization of society under the exclusive dominion of the United States, it is provided that plural marriages shall not be allowed. Can a man excuse his practices to the contrary because of his religious belief?

To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.

Doctrine & Covenants. Official Declaration--1

To Whom It May Concern:

. . . .

Inasmuch as laws have been enacted by Congress forbidding plural marriages, which laws have been pronounced constitutional by the court of last resort, I hereby declare my intention to submit to those laws, and to use my influence with the members of the Church over which I preside to have them do likewise.

There is nothing in my teachings to the Church or in those of my associates, during the time specified, which can be reasonably construed to inculcate or encourage polygamy; and when any Elder of the Church has used language which appeared to convey any such teaching, he has been promptly reproved. And I now publicly declare that my advice to the Latter-day Saints is to refrain from contracting any marriage forbidden by the law of the land.

WILFORD WOODRUFF

President of the Church of Jesus Christ of Latter-day Saints.

Section C: General Principles for Resolving Conflicts Between Secular and Divine Law

- *Is it possible to infer from the scriptural and historical record general rules defining cases in which disobedience to secular law is justified?*
- *What are those rules?*
- *As a specific example, is it permissible for a member in good standing to be a conscientious objector? What if conscientious objection were not a legal option (i.e. if military service were compulsory with no exceptions)?*
- *Should one who opposes compliance with a law on moral grounds be willing to suffer the legal consequences, as were Gandhi and Shadrach and his companions, or is it morally acceptable to resist application of the law in those circumstances, and if so, by what means (e.g. by armed resistance, flight, legal defense, etc.)?*

Reading Excerpts:

Robert S. Wood. "Rendering unto Caesar: Moral Responsibility and Civic Duty in a World of States"

Whatever the origins and legitimizing principles of political power, obedience to secular law is not a voluntary matter. Failure to respond to the injunctions of Caesar risks confiscation of property, incarceration, and execution. Even in a free and constitutional regime, where the commands of the law and the wielders of political power may be changed, one must follow the prescribed process through which change is sought while adhering to the demands of the current injunctions . . . unless the demands of the law are so antithetical to the clear direction of Heaven as to dictate civil disobedience. Here, of course, is the rub, for even if the divine principle is clear, the application of that principle to concrete circumstance requires judgment as to how to act and how to gauge the broad consequences for oneself and others of one's act; in a phrase, prophetic judgment is needed.

Joseph Anderson [Secretary to the First Presidency], Standard Form Letter Response to Questions Regarding Conscientious Objection (example dated March 20, 1970)

Dear Brother

Reference is made to your letter without date addressed to President Joseph Fielding Smith in which you inquire as to the attitude of the church regarding war and conscientious objectors.

I am directed to tell you that membership in the Church of Jesus Christ of Latter-day Saints does not make one a conscientious objector. As you are aware, there are thousands of young men of the church assigned to the various services in the military.

As the brethren understand, the existing law provides that men who have conscientious objection may be excused from combat service. There would seem to be no objection, therefore, to a man availing himself on a personal basis of the exemptions provided by law.

....

I am further directed to tell you that the President, with Congress, must determine the position the country should take with regard to any national or international question. If it were left to the individual to determine whether or not we should be involved there would be nothing but chaos. Then too, it is not possible for an individual citizen to have the information that is available to the President and the congress, and without all of the facts he is not in a position to judge.

Each individual citizen should use his influence to change any act which he thinks is not in the best interest of the country, but while the act is in force it is his responsibility to support it.

Sincerely yours,

Joseph W. Anderson
Secretary to the First Presidency

See also, 10 U.S.C. § 312(b); 32 C.F.R. Part 1636, stating current statutory and regulatory law concerning qualification for conscientious objector status.

James E. Faust, "The Integrity of Obeying the Law," Freedom Festival Fireside, Provo, Utah, July 2, 1995.

Civil disobedience has become fashionable for a few with strongly held political agendas. Even when causes are meritorious, if civil disobedience were to be practiced by everyone with a cause our democracy would unravel and be destroyed. Civil disobedience is an abuse of political process in a democracy. . . .

Recently I heard a new convert to our Church urge that the Church resort to civil disobedience and violence because of the moral wrongness of abortion. The position of The Church of Jesus Christ of Latter-day Saints opposing abortion is longstanding and well-known. I told him that it was our belief that even though we disagreed with the law, and even though we counseled our people strongly against abortion, and even though we bring into question the membership of those involved in abortion, we are still obliged to recognize the law of the land until it is changed. His response was, "Even if it is wrong?" I tried to explain that when we disagree with a law, rather than resort to civil disobedience or violence, we are obliged to exercise our right to seek its repeal or change by peaceful and lawful means.

James E. Talmage, *Articles of Faith*, pp. 422-23 (1899)

A question has many times been asked of the Church and of its individual members, to this effect: In the case of a conflict between the requirements made by the revealed word of God, and those imposed by the secular law, which of these authorities would the members of the Church be bound to obey? In answer, the words of Christ may be applied—it is the duty of the people to render unto Caesar the things that are Caesar's, and unto God the things that are God's. []

....

Pending the overruling by Providence in favor of religious liberty, it is the duty of the saints to submit themselves to the laws of their country. Nevertheless, they should use every proper method, as citizens or subjects of their several governments, to secure for themselves and for all men the boon of freedom in

religious service. It is not required of them to suffer without protest imposition by lawless persecutors, or through the operation of unjust laws; but their protests should be offered in legal and proper order. The saints have practically demonstrated their acceptance of the doctrine that it is better to suffer evil than to do wrong by purely human opposition to unjust authority. And if by thus submitting themselves to the laws of the land, in the event of such laws being unjust and subversive of human freedom, the people be prevented from doing the work appointed them of God, they are not to be held accountable for the failure to act under the higher law.

Hugh B. Brown, General Conf., Oct. 1965

We should understand that each of us has a duty to honor, support, and sustain our civil leaders and the law. The fact that everyone is entitled to his or her own opinion insofar as various matters of law and government are concerned does not relieve any of us of the personal responsibility to obey honor, and sustain the elected governmental officers and the law which it is their duty to administer.

Unfortunately, there are those among us today who advocate breaking the law as one means of calling to the attention of the nation that some have not been given the full benefit of the law. They argue that the laws they break are minor and that the breach is useful and justified because it assists in the enforcement of a greater law. This reasoning is fallacious and inconsistent with Christian principles. To follow such thinking is to decide that every man is entitled to choose which law he will abide and which he will violate. No orderly society can be established on such theory. There are lawful ways and means of securing all human rights, and one does not foster Christian virtue through irresponsible breaking of the law. Seeds of anarchy are sowed in the minds of those who follow a lawless course. Anarchy was never the way of God but rather the way of Satan.

Section D: Other Relevant Events and Texts

- *What were the consequences at civil law of Nephi's having slain Laban to obtain the brass plates?*
- *How do you account for the direction given by Brigham Young to Daniel H. Wells to organize resistance to Johnston's army as it approached the Salt Lake Valley?*
- *Do statements in the Doctrine & Covenants which validate civil laws that protect fundamental rights imply a right to disobey laws that violate such rights?*

Reading Excerpts:

Acts 5:25-29

25 Then came one and told them, saying, Behold, the men whom ye put in prison are standing in the temple, and teaching the people.
26 Then went the captain with the officer, and brought them without violence: for they feared the people, lest they should have been stoned.
27 And when they had brought them, they set them before the council: and the high priest asked them,
28 Saying, Did not we straightly command you that ye should not teach in this name? And, behold, ye have filled Jerusalem with your doctrine, and intend to bring this man's blood upon us.
29 Then Peter and the other apostles answered and said, We ought to obey God rather than men.

Doctrine & Covenants 98:4-7

4 And now, verily I say unto you concerning the laws of the land, it is my will that my people should observe to do all things whatsoever I command them.
5 And that law of the land which is constitutional, supporting that principle of freedom in maintaining rights and privileges, belongs to all mankind, and is justifiable before me.
6 Therefore, I, the Lord, justify you, and your brethren of my church, in befriending that law which is the constitutional law of the land;
7 And as pertaining to law of man, whatsoever is more or less than this cometh of evil.

Doctrine & Covenants 134:2, 5

2 We believe that no government can exist in peace, except such laws are framed and held inviolate as will secure to each individual the free exercise of conscience, the right and control of property and the protection of life.

. . . .

5 We believe that all men are bound to sustain and uphold the respective governments in which they reside, while protected in their inherent and inalienable rights by the laws of such governments; and that sedition and rebellion are unbecoming every citizen thus protected, and should be punished accordingly; and that all governments have a right to enact such laws as in their own judgments are best calculated to secure the public interest; at the same time, however, holding sacred the freedom of conscience.

James Moss, in *Studies in Scripture*, vol. 1, Kent Jackson and Robert Millet, eds., p. 528.

The rule of law among men, rather than personal rule, is also supported by section 134. Joseph Smith taught that law is good and from God, and that we should use it in society: “If, then, we admit that God is the source of all wisdom and understanding, we must admit that by His direct inspiration He has taught man that law is necessary in order to govern and regulate His own immediate interest and welfare; for this reason, that law is beneficial to promote peace and happiness among men. . . . [Journal of Discourses 9:309]

Section 134 teaches, however, that there is a limit to the allegiance owed secular governments. God holds governments accountable for making and administering laws “for the good and safety of society.” Governments are to frame laws that “secure to each individual the free exercise of conscience, the right and control of property, and the protection of life.” Governmental officers are to enforce and administer laws “in equity and justice.” Governments are to protect individuals “in their inherent and inalienable rights” and are to hold “sacred the freedom of conscience.” Governments are therefore to use their power and authority not to coerce individuals but to support them in their divine, inherent individual rights.

President Joseph F. Smith taught that as long as governments serve their citizens in righteousness, those citizens should support their government:

The law of the land, which all have no need to break, is that law which is the constitutional law of the land, and that is as God himself has defined it. . . . Now it seems to me that this makes this matter so clear that it is not possible for any man who professes to be a member of the Church of Jesus Christ of Latter-day Saints to make any mistake, or to be in doubt as to the course he should pursue under the command of God in relation to the observance of the laws of the land. . . .

The Lord Almighty requires this people to observe the laws of the land, to be subject to “the powers that be,” so far as they abide by the fundamental principles of good government, but He will hold them responsible if they will pass unconstitutional measures and frame unjust and proscriptive laws. . . . If lawmakers have a mind to violate their oath, break their covenants and their faith with the people, and depart from the provisions of the Constitution, where is the law, human or divine, which binds me, as an individual, to outwardly and openly proclaim my acceptance of their acts? [Journal of Discourses 23:70-71]

Edward L. Kimball, Civil Disobedience, in *The Carpenter: Reflections of Mormon Life*, Vol. 1, No. 2, Spring 1969, pp. 7-14:

In summary, Latter-day Saints have recognized as the norm a religions obligation to obey the civil law. At the same time they acknowledge that there may on occasion be a moral obligation to disobey the law. Even unjust laws are to be obeyed, unless the citizen has a clearly stated divine command to do otherwise or unless he has (after conscientious and prayerful consideration) concluded that the very strong presumption in favor of obedience is overcome. We are faced with the possibility of error on both sides—relying placidly on our ignorance as a basis for doing nothing or acting upon well-intentioned impulse without having considered well enough the fundamental social value and the religious obligation to live within the law. No other person can make our decision for us, but neither can we properly make the decision in reliance solely on our human wisdom.