

PHILOSOPHICAL ANARCHISM AND POLITICAL
DISOBEDIENCE by Chaim Gans, Cambridge, Cambridge
University Press, 1992, 174pp, \$90(HC), ISBN 0 521 41450 4.

This is a valuable book, at least as much for its detailed consideration of the positions which it attacks and for the academic references which it offers as for the position which it reaches. Professor Gans' central project here is the development of an argument to show that there is a duty to obey the law, a duty which overrides some types of concerns and interests (ones which he calls "amoral" — probably better termed "nonmoral") but which does not necessarily override moral considerations to the contrary in any particular instance. Gans is concerned to show that a duty to the law, and obedience to the law because it is the law, need not compromise an agent's moral autonomy.

This is an important issue, and one which is prominent throughout the book, namely, the extent to which one relinquishes one's moral autonomy (one's capacity and responsibility for deciding moral matters for oneself) in assuming a duty or an obligation to obey the law. Simply, if there is a universally overriding or absolute duty to obey the law, then there is no space left for an individual to consider the (other) moral merits present in particular cases: the matter is decided without either the requirement of or the opportunity for moral decision-making on the part of the agent. This issue is primarily directed toward whether or not it would be undesirable for there to be a duty to obey the law; it does not figure at all prominently in assessing arguments which are advanced in support of there being such a duty or arguments directed against the existence of a duty. In reaching the conclusion that there is no compromise to one's moral autonomy in recognising a duty to obey the law, then, Gans is basically recognising a happy truth about the matter. Independently of this, he argues that there is a *prima facie* duty to obey the law; and with his discussions about the presence of moral autonomy, he explains that the presence of this duty does not have the downside of compromising the autonomy of moral agents. The *prima facie* duty which Gans advocates leaves plenty of space for individual, autonomous, moral evaluation and moral decision-making even in the presence of clear legal prescriptions one way or the other.

Gans goes to some length to articulate the issue of whether there is a *moral* duty to obey the law — to explain exactly what this issue is and what 'duty to obey the law' means and amounts to. The claim that there is a duty to obey the law is a claim that there is a moral duty to obey the law and that this moral duty is occasioned by the very existence of the law. According to this view, any law (even an immoral law) has some moral pull on an agent simply because it is the law. There is a moral status to law *per se*. This is one issue. It is, of course, separate from the issue of the *strength* of the moral duty created by the presence of a law.

In Chapter 1, Gans explains the issue of whether there is a duty to obey the law and articulates the concern of "autonomy-based anarchism", that the presence of a duty to obey the law decreases, or completely eliminates, the possibility of autonomous moral agency. Gans notifies us here that he will argue for the existence of a "generic *prima facie* duty" to obey the law, a duty which is absolute wherever there are no contrary moral reasons to obeying the law, a

duty which takes absolute precedence over non-moral reasons. The argument for this occurs in the next chapter.

In Chapter 2, Gans canvases six purported bases for the presence of a duty to obey the law: gratitude, consent, the negative consequences of disobedience, fairness, a duty to support just institutions, and the presence of communal obligations (that is, obligations to one's community). Gans' discussion here is at its best, I believe, as he presents, summarises, and evaluates these more or less traditional purported foundations for the duty to obey the law. He regards criticisms of the first two — that based on gratitude and that based on consent — as fatal to those positions. However, he argues that the remaining four, taken as a group, do establish a duty:

[A] single complex combining all four arguments supplies the firmest and most successful basis for political obligation. The argument from consequences, the argument from fairness and the argument based on the duty to support just institutions, clarify just why obeying the law is the central component of this obligation's substance. The argument from fairness and, to a larger extent, the argument from communal obligations, clarify just why this duty is mainly a unique and intimate duty owed by citizens to the specific communities of which they are members. The argument from consequences and the argument from the duty to support just institutions demonstrate why it is not only such a duty. (p89)

A duty is established, according to Gans, in virtue of its protection of "an important value: the existence of a mechanism for the institution and enforcement of desirable conducts, a mechanism whose existence enhances the stability and security of our lives, substantially" (p92). A duty is established by reference to the promotion of values by the law, the institution of law. Only in so far as the values promoted and protected by the law are desirable is there a duty to the law itself.

Discussion of this point — in particular, discussion of the democratic foundation of values (in Chapter 3), and the limits of the duty to obey the law (in Chapter 4) — occupies the remainder of the book. Gans offers what he calls a formal theory of the limits of the duty to obey. Exactly how far the duty to obey extends "depends on the answer to yet another question: which value system should one adopt" (p120). And this latter question is one which is declared to be beyond the scope of the book.

The syntax of the book is sometimes awkward, and it is sometimes ungrammatical. The frequent references forward and backward through the book (references to what has already been shown or to what will be shown) are occasionally offputting.

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