Dissent

OBLIGATION AND THE RIGHT OF DISSENT

Giving consent is one way in which we acquire obligations. For example, if I freely promise to do something, I then have an obligation to do it. It is important, however, that my promise is free. If I am forced to promise, e.g. by threats, then we would not usually think that I have to keep the promise. So we can argue that for obligations acquired by consent, the consent must be given freely. For me to consent freely, there must be an alternative – I must be able to refuse to consent, i.e. I must be able to dissent.

(If we understand obligation just to mean ‘duty’, then not all obligations are acquired by consent. We have many moral obligations or duties without having a say over them, e.g. the obligation not to murder. The question of political obligation is how free and equal individuals could have an obligation to obey an authority, and we have seen that some philosophers have argued that this is not a moral duty unless the individuals have given their consent.)

The reason, we said, consent is needed for obligations not given by morality, is that individuals are free and equal. But coercion does not respect the freedom and equality of the individual. So consent is meaningless if it is coerced. Consent without the right to dissent is not consent at all. So we can see that unless I have the right to dissent to something asked of me, I cannot become obliged to do it.

THE IMPLICATIONS OF DISSENT FOR POLITICAL OBLIGATION

If political obligation rests on consent, then we could argue that people who dissent have no political obligation. Let us consider this in relation to voting. If political obligation rests on consent, and consent is expressed through voting, does a person’s dissent or failure to vote mean that they do not have an obligation to obey the law?

If we say ‘yes’, we argue that they have not agreed to obey the law, so they have no duty to obey the law. On this understanding, dissent abolishes (or prevents) political obligation. This causes a problem: only those people who vote, or perhaps only those people who vote for a political party that accepts the current political system, have an obligation to obey the law. That means that the government is not justified in enforcing the law against those who dissent or don’t vote.

If we say ‘no’ – people who express dissent still have a political obligation – does this rob their dissent of meaning? Their dissent has had no affect on their relation to the state.

We can respond that this is too simplistic. A weaker implication is that we cannot have political obligation unless we have the right to dissent, but dissent does not free one from political obligation. We could argue that political obligation depends upon having the right to political participation, and this right includes the right to dissent, within certain limits. The law must protect our right to dissent and express our dissent. There are many forms of legitimate democratic activity that can express dissent, apart from voting, such
as joining pressure groups. Dissent remains meaningful when these ways of influencing the government are available.

However, there are two objections to this. First, the point of basing political obligation on consent was to protect freedom and equality. Appealing to pressure groups and other forms of influence only protects equality if individuals have equal influence; and it is clear that they do not. So this answer may secure political obligation, but sacrifices equality.

Second, appealing to influence means that consent is no longer the basis for political obligation. It may be that political obligation is based on the opportunity to engage in legitimate democratic activity. But this opportunity isn’t equivalent to consent.

LEVELS OF DISSENT

We should note that we can talk of dissent from a particular law or laws; and also dissent from the government or state as a whole.

In liberal democracies, there are legal ways in which we can express our dissent. We can vote against the government that made the law, we can take part in protests, we can join pressure groups that try to change the law. To dissent in a stronger sense is to say ‘I refuse to obey the law’, i.e. it involves illegal action. This can take the form of conscientious objection or civil disobedience. Whether our right to dissent covers civil disobedience is contentious, and discussed in the handout on Civil disobedience.

The most famous case of conscientious objection is refusing to fight for one’s country because one is a pacifist, but it describes any personal refusal to obey a law that one thinks it is morally wrong to obey. Conscientious objectors do not usually not try to change the law, but simply dissent from it personally. For example, they may believe that while they themselves may not fight, it is not necessarily wrong that others do. When it is a legal requirement to join the armed forces, this is breaking the law. If they break the law, they can be imprisoned — and many will not resist this as they do not disrespect or dissent from the authority of the law generally. (In many countries, conscientious objection is legal, but the objector may be required to perform some other, non-violent task for the state as a substitute for fighting. When conscientious objection is legal, then the objector is not dissenting from the law, only from fighting for their country.)

The most fundamental dissent is to the state as a whole, expressed in revolution. In a revolution, not only are the rulers replaced, but the structure or institutions of the state is also changed. If we acquire political obligation, as Hobbes and Locke argued, by consenting to be ruled, then we must also retain the right to dissent from being ruled — or at least, from being ruled by the state as it is. We look at their arguments in the next section.

JUST GROUNDS FOR DISSENT

Where dissent is expressed within the law, then there is no need to justify it. On whatever matter someone disagrees with the law, he or she has the right to express that disagreement legally. This right is guaranteed by the right to political participation, and no further grounds for dissent are needed.
Where dissent involves disobeying the law, then it needs to be justified. Conscientious objection can be justified in two ways: first, case-by-case, objectors justify their actions by appealing to the moral value they believe the law conflicts with. The social consequences of an individual act of conscientious objection tend to be minimal, and so there is little need to look for additional justification of the individual's actions at a social or political level. But, second, we can offer a defence of the value of conscientious objection in general to society. To force an individual to obey a law they hold to be morally wrong would be a violation of their moral integrity, which could harm the individual. Furthermore, at present they do not disrespect the law or dissent from its authority generally, nor do they encourage others to break the law. Forcing them to act against their conscience could lead to both these adverse consequences. It is far better, therefore, to treat their dissent leniently. Given that it involves breaking the law, some punishment or other requirement needs to be enforced (or conscientious objection will, in practice, become legal). So it is best to apply either by light sentence or, for example, require productive work in lieu of armed service.

Dissent from the state

In *Leviathan* (Ch. 21), Hobbes argues that the main purpose of the state, and the reason we consent to it, is to protect us against violence and the threat of violence. Our obligation to the state, therefore, last 'as long and no longer' than the ability of the state to protect us. If it fails to deliver protection, we have the right to cease to obey its laws. Second, Hobbes argues that in the state of nature, we have a ‘natural right’ to do what we need to do to stay alive. We retain this right in a weakened form in the state. Any law or command that threatens our self-preservation, we have a right to dissent from and disobey. Again, since the purpose of the state is to protect us, any such law goes against the purpose of the state and our reasons for consenting to it; so we have the right to dissent. However, these are the only grounds on which we can justly disobey the law or revolt against the state.

In the *Second Treatise* (Ch. 19), Locke similarly argued that what makes a state legitimate is also what gives citizens the right to rebellion. A state is made legitimate by the consent of the citizens, and for the purpose of enforcing the Law of Nature. The government can lose its legitimacy by failing in its purpose or in general, by losing the support of the citizens. At this point, the citizens no longer have an obligation to obey the government, as it is not a legitimate authority. If those in power try to retain power, then in a sense, it is they who are ‘rebelling’ against the people. The people therefore have the right to respond to this assertion of power by people who are no longer a legitimate authority, and overthrow them.

Both Hobbes and Locke agree, then, that we are justified in dissenting from the state when it ceases to perform the main function that it serves. They have different accounts of what this is – protecting us against violence or enforcing the Law of Nature. The state fails to be legitimate when it fails to deliver the benefits it is supposed to. If we think consent is also an important part of legitimacy, we can add that we are justified in dissenting from the state when it fails to command the consent of its citizens.

Assessing Locke

As Locke’s theory is very close to contemporary theories, it is worth discussing further.

Locke argues that when creating the state, people hand over the right to punish offences of the Law of Nature (which states that no person may subordinate another, harm his
life, health, liberty or possessions, except in self-defence). Enforcing the Law of Nature is the purpose of the state. So if a government either fails to do this, or acts in a way that violates the Law of Nature, then rebellion is justified. Second, a government is only legitimate if it has the consent of the citizens. For Locke, this is not explicit consent, but tacit consent, which he also refers to as an attitude of trust. The loss of this trust is also a ground for rebellion.

How do these two conditions relate? Suppose that a government breaks the first condition, and in some way, it doesn’t do what it ought to do. However, it does not lose the trust of its citizens, or at least the majority of its citizens. Perhaps it hides the truth about what it has done, or the citizens are not upset enough to object. Is dissent justified? What if we reverse the situation: the government has not failed in any way, but it does lose the trust of its citizens? Is dissent justified then?

Locke appears to think that the grounds go together. In other words, he citizens as informed and rational – they withdraw consent when and only when the government acts wrongly. But what if they are not?

We can argue that, for Locke at least, consent is fundamental. A government without consent cannot be legitimate. By contrast, justifying dissent against a government that retains consent leads back to each person using their own judgment about what is right. It was so that we could have a common, established position that the state was set up.

This leads to a second question: Does the individual have a right to rebellion (or at least, the attempt to resist the state), or does the right to rebellion something which only the majority of people, together, can have? To give the right of rebellion to the individual would again return us to the inconveniences of the state of nature, each person deciding individually when to dissent from obedience to the law. We give up this right to the community as a whole when setting up the state. It is only when the majority withdraws its consent that the government becomes illegitimate, and rebellion is justified.

But this answer faces an objection: what shall we say when the state violates the rights to life, health, liberty or possessions of some of its citizens, but the majority are not moved to withdraw their consent? If only the majority have the right to dissent, then the victims will not be justified to dissent. But this seems unacceptable. Surely a minority can be justified in disobeying the law, or even in rebellion, if the state violates their rights.