Political obligation and consent

IS CONSENT THE BASIS OF OBLIGATION?
Political obligation is the obligation to obey the law because it is the law, rather than because there is some independent moral justification for doing what this or that law requires. For example, we could argue that we shouldn’t drive recklessly, because it endangers the lives of other people. This cites a specific moral reason to obey this specific law. It is different from arguing that we shouldn’t drive recklessly because it is against the law. And it only gives us an obligation to obey this law, not other laws.

If this is the only kind of answer that can be given to ‘why obey the law?’ – specific moral reasons for specific laws – then there is no political obligation. The question of political obligation is whether we have a general obligation to obey the law, or just an obligation to obey this law or that law? And second, if we do, why do we have this obligation?

We could argue that it is rational – in the sense of in one’s self-interest – to submit to some form of authority (see the handout on Authority and Legitimacy). Hume argued that laws and the state are the most efficient means of securing peace and stability. He went on to argue that we should explain why we feel we ought to obey the law in these terms; and argue that our feeling is right – the benefits we receive give us an obligation to obey.

But philosophers have objected that the fact that it is rational for us to obey the law is not enough for us to have an obligation to do so. An obligation is a duty, it is to be bound (from the Latin, ligare) to do something. The question of obligation goes beyond the question of what it is rational to do, because we can ask whether we have an obligation to act rationally. People can be held to their obligations. But should I be forced to do what is in my self-interest?

Why is there an issue here? Because we take individuals to be free and equal. The law, however, coerces people to act in specific ways. If you break the law, you are punished. If you have an obligation to obey the law, this is just. But how can it be right to coerce people who are free and equal? One tradition in political philosophy suggests that the answer must be, can only be, that somehow the individual has agreed to obey the laws of the state.

Giving consent is certainly the way we acquire many other obligations. For example, if I make a promise, I am agreeing to acting in a way that keeps my promise. So perhaps political obligation also comes from consent.

EXPLICIT CONSENT
The strongest form of this answer claims that individuals must explicitly consent to the rule of the state for them to have an obligation to obey it. This argument appears in Locke’s story of how the state comes to exist:
Men being... by nature all free, equal and independent, no one can be put out of this estate and subjected to the political power of another without his own consent, which is done by agreeing with other men, to join and unite into a community for their comfortable, safe and peaceable living... they have thereby made that community one body, with a power to act as one body, which is only the will and determination of the majority... And thus every man, by consenting with others to make one body politic under one government, puts himself under an obligation to everyone of that society to submit to the determination of the majority. (Second Treatise §§95f.)

As Locke himself realized, however, if this ever actually happened, which seems very unlikely, it only happened for the first generation of that society. For everyone born into an established society, there is no such procedure. People alive today have never explicitly consented to be ruled – we were never offered the choice. If explicit consent were the basis of obligation, then we (at least most of us) would have no obligation to obey the law of the society in which we live.

**VOTING**

Perhaps this is too quick. If it is an act of consent we are seeking, then voting appears to be the place to look. This is certainly the closest we come to saying that we agree to be governed.

But is this what voting expresses? For voting to be the basis of political obligation, it must be an act of consent – to what? To obey whatever laws the elected government passes? The view that voting is consent must claim that people who vote for the opposition are just as much giving their consent to obey the rules of the successful party. Does it make sense to say that I express my consent to live by laws I am trying – by voting – to prevent?

With explicit consent, if I say that I do not consent to the state, then you cannot say that in fact I do. By definition, I do not explicitly consent to something until I say I do. So if I do not intend my vote to be consent to obey the laws passed by whatever government is elected, then the mere fact that I voted cannot be taken as an expression of consent.

**TACIT CONSENT**

Knowing that explicit consent was hard to secure, Locke developed a theory of ‘tacit’ consent, consent that is not actually spoken, but may be understood to have been given:

> every man that hath any possession or enjoyment of any part of the dominions of any government doth hereby give his tacit consent...whether this his possession be of land to him and his heirs for ever...or whether it be barely travelling freely on the highway’ (Second Treatise, Ch. 8, §119)

We can object that this leaves no room at all for dissent – except to leave the country. Consent is only meaningful if dissent is possible; you can only meaningfully consent if you have a choice in the matter. Hume pointed out the flaw:

> such an implied consent can only have place where a man imagines that the matter depends on his choice... Can we seriously say that a poor peasant or artisan has a free choice to leave his country, when he knows no foreign language or manners,
and lives, from day to day, by the small wages which he acquires?’ (‘Of the Original Contract’ in Essays Moral, Political and Literary)

A second objection is that it is difficult to see how just walking on a road could express consent to obey all the various laws a government has passed (rather than, say, just traffic regulations). Consent is meaningless unless it is understood as consent by the person consenting.

**Voting and tacit consent**

We may argue that to vote is to voluntarily take part in a system of governance, so it expresses tacit consent to that system. You are taking part in a social institution that has certain rules; just in taking part, you are agreeing to abide by the rules – rather like playing a game. One of those rules is that you accept the result of the vote.

This may true for many people. But what if I cast my vote for a party that promised revolution? I am explicitly advocating the abolition of the state; is this consistent with saying that I consent to its continuation? To ignore or discount the voter’s intention as expressed by their vote – by saying that to vote at all expresses consent to the existing system of government – makes their vote meaningless as a form of consent.

Second, if voting is consent, then I cannot express dissent from the current political system through voting for a revolutionary party. We could reply that you can express dissent by *not* voting or by deliberating ruining my ballot paper.

But then, third, what about people who simply don’t *bother* to vote? If we say that they give tacit consent, as they have the opportunity to vote, this makes it impossible to dissent once more, since everyone has this opportunity.

**HYPOTHETICAL CONSENT**

Perhaps actual consent, whether explicit or tacit, is not needed for political obligation. Is it enough that consent would be rational or is deserved? For example, if we were in a state of nature, we would find it rational to create the state and obey its laws. If this is right, then we can say that we *would* consent if rational; this is ‘hypothetical’ consent.

But there are three problems with basing political obligation on hypothetical consent. First, the fact that it would be rational for me to consent does not mean that I do consent; and part of what it is to respect the free equality of individuals is to respect their choices even when we believe they are irrational. Second, that I would consent in a state of nature does not mean it is rational for me to consent now any more than the fact that it would be rational of me to request a glass of water if I were thirsty implies that I should request one now. We need to show that consent is rational under current circumstances. And this depends on what type of state I live under and what the real alternatives to this state are. Third, if by ‘rational’ we mean to appeal to the individual’s self-interest, we will not establish a secure and stable society. For people will withdraw their consent as soon as it becomes in their interests to do so. We need people to believe that they have a *duty* to obey the state, not just that it is a good idea.