

## **Why Obey Laws?**

### **Introduction**

Plato's dialogue "The Crito" tells how Socrates, awaiting execution in jail after his trial, refuses to escape when presented with the opportunity. He refuses because to escape would be a violation of his duty to the state and its laws. Socrates argues that he has been tried according to the law, found guilty and therefore must accept his punishment. He drinks hemlock and dies.

Socrates' view is that all citizens belonging to a state have an unbreakable obligation to the state and its laws. So Socrates died rather than break this obligation. What exactly are the obligations of citizens to the state and its laws? What are the limits of our obligations? The following question is the one we will consider: Why should a citizen (in a democracy) obey the law?

There are three sorts of answer to this question which will be examined.

1. The social contract
2. Utilitarianism
3. The principle of fairness

### **The social contract**

The great English philosopher Thomas Hobbes (1588–1679) introduced the idea of the social contract in order to solve the problem posed by what he called the "state of nature". The state of nature for Hobbes was the condition in which humans would live without the protection of a state and its laws. In the state of nature life would be "solitary, poor, nasty, brutish and short". In other words, it would be a state of war of all against all – no co-operation, peace or security and constant fear. How can humans avoid the state of nature? According to Hobbes the only way was for all people to obey laws.

The social contract consists in the understanding that people will obey the law on the assumption that everyone else will also obey the law. And for Hobbes the only way of enforcing the social contract was by creating a state with absolute power – the "sovereign" or the "commonwealth". The existence of such a state will then enable citizens to pursue their lives in peace and security. For Hobbes the social contract is a form of trade off. The citizen gives up his rights to the state and in return receives peace and security.

One problem for Hobbes' view was presented by another great English philosopher John Locke (1632–1704) in the following way: "This is to think that men are so foolish that they take care to avoid what mischiefs may be done them by polecats or foxes but are content, nay think it safety, to be devoured by lions." In other words, according to Locke the absolute power of the state ("lions") poses a far greater threat to people than individual people ("foxes and polecats") pose to each other in the state of nature. Locke was not as pessimistic as Hobbes about human beings in the state of nature, but more pessimistic than Hobbes about the power of the sovereign.

What do you think of this? Who do you think is right, Locke or Hobbes?

Locke believed that all people are naturally free, equal and independent. So no-one is naturally in authority over anyone else. For Locke the basis of all authority is consent. No-one has authority over you unless you voluntarily put yourself in that position by giving your consent. If authority is based on consent then the question is how a citizen's obligation to the state and its laws can be explained in these terms. This is where Locke's idea of the social contract

comes in. According to this view of political obligation, citizens are obliged to obey the law because of a contract between them and the state – the “social contract”. However, for Locke the social contract was based on consent rather than on the absolute power of the state. There are three main versions of the social contract. However, each one has problems – I mention one of them in each case.

1. **Consent:** The social contract is based on citizens giving their consent to the state and its laws and hence having a duty to obey them. In other words, the social contract is based on actual consent. Problem: No-one actually does give their consent. No-one signs a document or makes a verbal agreement giving their consent. Have you?
2. **Tacit consent:** By remaining within the boundaries of the state, a citizen tacitly agrees to live by the laws of the state. “Tacit consent” means that the consent is understood or implied without actually being stated. Anyone who didn't at least give tacit consent to the state and its laws would leave and go and live somewhere else. Problem: Simply too difficult to leave – it's not an option for most people. Therefore it can't be assumed that a citizen has given any form of consent, tacit or otherwise, just because he or she remains within the state's borders.
3. **Hypothetical consent:** It is as if there were a contract between state and citizen. There may be no actual or tacit agreement but the relationship between state and citizen is like a contract. The state offers certain advantages such as security and since citizens derive benefits from what the state offers, there is an obligation to comply with the laws. Problem: A hypothetical contract is not a contract, so how can it serve as the basis of political obligation?

## Utilitarianism

Utilitarianism is a general ethical theory which states that the rightness or wrongness of an action is determined by the amount of happiness or well being it produces. This theory can then be used as a basis for the state in the following way. According to utilitarianism we have an obligation to the state and its laws because they contribute more to human well being than any alternative. Without a state life would be much as Hobbes said. Thus, the utilitarian argues, people's being will be greater within the state and its laws than without them.

Problem: Utilitarianism is a theory which is based on maximizing overall happiness or well being. However an overall increase in well being may be at the expense of individuals. For example suppose that, after a terrorist bombing, punishing scapegoats (assuming the terrorists had escaped) could satisfy a community's demand for justice. If this could be done efficiently and in secret, then it may well increase the overall level of happiness and thus be justified in utilitarian terms. In other words, utilitarianism seems to justify punishing innocent people if this leads to an overall increase in the level of happiness or well being.

## The principle of fairness

According to this principle, political obligation is based on the idea that since citizens derive benefits (security, orderly government, public services, for example) from living in a state then they owe allegiance to the state and its laws. This is simply a matter of fairness. You owe it to your fellow citizens (and they owe it to you) to play your part in an arrangement from which you derive a benefit. It is a matter of fairness rather than consent, tacit or otherwise. In other words, you get something out of living in a state and being protected and serviced by its laws, so you have an obligation to obey those laws. The obligation is like a payment for a service.

Problem: Even though you may benefit from a state and its laws you haven't actually given your consent. The benefits of the state have been imposed on you without you asking for them. So why are you under an obligation?

The American philosopher Robert Nozick gives the following example: The people in your neighbourhood decide (without your consent) to set up a public address system every Sunday, playing music, telling jokes, etc, entertaining everyone in the neighbourhood, and where each person takes his or her turn to operate the system. Do you then have an obligation to operate the system when your turn comes around? After all, you've derived the benefits by being entertained every Sunday so shouldn't you play your part? In this situation, do you have an obligation to do your bit? Does the principle of fairness lead us to being overburdened with obligations that we didn't ask for?

## **Anarchism and Libertarianism**

There does not seem to be a clear answer to the question we started with. What is the basis for the obligation to comply with the state and its laws? Perhaps there is no answer. Maybe there is no sound moral basis for obeying laws - it's just something we do to avoid punishment but there is no clear moral reason for doing so. More radically, perhaps the existence of a state with coercive powers (police, army, and judiciary) is not desirable at all. Is anarchism the best system?

Anarchists are opposed to the existence of a central government. According to anarchism political authority resides not in a central government but rather in voluntary co-operation among citizens. The state is regarded as repressive. Thus, since the existence of a state is not justified there is no question regarding a citizen's obligation to the state. It's simple – there is no such obligation. Problem: How will security be provided? Is anarchist society like the state of nature? How is the voluntary co-operation among citizens to be co-ordinated? Won't a central government (or something like it) ultimately prove necessary?

There is a more modern version of anarchism, called "libertarianism". Robert Nozick is its main defender. He introduced the notion of the "minimal state" whose only function is to prevent violation of rights. The minimal state will not even tax its citizens. Thus, according to the libertarian view, the (minimal) state will do little more than provide internal security and defence against external enemies. Is this enough? What should a state provide? Roads? Hospitals? Schools? Police protection? Social welfare? In particular, is the state entitled to tax its citizens? Does taxation violate people's personal liberty, specifically their liberty as to how they can spend their money? The state, by way of taxation, redistributes wealth. Is this a legitimate function of the state?

## **References**

1. Robert Nozick, *Anarchy, State and Utopia*
2. Jonathan Wolff, *An Introduction to Political Philosophy*

R. Neurath