Pitkin: Hypothetical Consent and ‘Nature of Government’ Justifications

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On the one hand (following the liberal tradition generally) a kind of **methodological individualist** about political theory—political problems, political responsibility must ultimately be explained in terms of the actions of **individuals** (not ‘blobs’). But, following Wittgenstein, ‘the meaning of a sentence is its use’; individuals and their utterances are always already embedded in a (social) system of diverse **language games** (‘holism’).
Political Obligation: Questions

Four “mutually related but partially independent” (50) questions:

1. **The limits of obligation** (“When are you obligated to obey, and when not?”)
2. **The locus of sovereignty** (“Whom are you obligated to obey?”)
3. **The difference between legitimate authority and mere coercion** (“Is there really any difference; are you ever really obligated?”)
4. **The justification of obligation** (“Why are you ever obligated to obey even a legitimate authority?”)

Political Obligation: CT Answers

As we’ve seen, a popular supposed “solution” to the problem of political obligation involves the idea of express or tacit consent:

- **When am I obligated to obey?** – Just in case I have either actually or tacitly consented to authority
- **Whom should I obey?** – Whomever I (or a majority of others) have consented to let rule
- **Legitimate authority?** – Yes there is, just insofar as I (or a majority of others) have consented; otherwise it’s mere coercion
- **Justified?** – Just because, and just insofar as, I (or a majority of others) have consented
An Alternative to the Consent Theory

- As we’ve also seen, however, when construed in this way consent theory, a) faces some serious counterarguments (e.g., immoral, tyrannical rulers) and b) doesn’t seem actually to explain very much.

- Pitkin describes a different sort of theory:

  “your obligation depends not on whether you have consented but on whether the government is such that you ought to consent to it, whether its actions are in accord with the authority a hypothetical group of rational men in a hypothetical state of nature would have (had) to give any government they were founding.” (50)

  (Pitkin claims to locate this idea in Locke, though that is debatable)

The H/NOG View

- At least at first blush, this “hypothetical/nature of government” view (H/NOG) seems to do well with question 3:

  *What makes authority legitimate?* The fact you *ought to obey it*, that it *deserves* obedience.

- Wittgensteinian Point: In part, this simply involves clarifying what we mean by the concepts of “authority,” “consent,” etc.

  We clarify what legitimate authority *is*, in part, by clarifying what “legitimate authority” *means*...
Obedience: The Real Question(s)

- But simply knowing the meaning of concepts is not much help in the face of practical questions concerning involving choice.

> “our real need is for a practical way of deciding whether to obey or resist this government right now, or which of two rival authorities to follow” (51)

H/NOG proposes: Look to the nature of the government; its characteristics, structure and functioning.

- The H/NOG view may seem to be not much more practical than the consent theory, but it at least has the virtue of “pointing...a man in the right direction.”

Diverse Cases: Consent / NOG

a) Socrates, as presented in the Crito and the Apology

b) An ordinary criminal

c) An American student engaging in civil disobedience

d) A Mississippi Negro (sic) who decides to join a revolutionary group

e) A South African Negro who decides to join a revolutionary group

f) A minor official in Nazi Germany, who continues to carry out his functions
a) – f) contemplate different sorts of actions, some violent, some not; some individual, some organized, some specific, some programmatic

The student and the two potential revolutionaries will likely give little or no weight to past or implicit consent; they will focus instead on the wickedness of the current government.

The criminal probably will not care about obligation at all, says Pitkin, precisely because he doesn’t respect the authority of the law in the first place.

Socrates and the Nazi, by contrast, will look at least in part to past promises that they have made...

**The ‘Minor Nazi’**: My obedience is based on my past consent (e.g., oaths and specific commitments).

But, we might say, that is not enough, since you have a duty to disobey, to resist in the present

**Socrates**: My obedience is based on my past consent (his tacit consent in not having left)

In Socrates case, we might say that his obedience is implicitly a judgment that “there is nothing basically wrong” with Athenian law.
Two Disadvantages of Personal Consent

It is useful to contrast these cases, since they point to some of the basic problems of an (actual) personal consent view:

1. How do you know what you’ve consented to?

Your government as it was when you consented? The particular people in power? The laws? What about changes since then? Are they *ultra vires*?

2. Can past consent never be outweighed by an obligation to resist?

Sidebar: The Onus Question

Pitkin:

“…*normally the law is to be obeyed and resistance requires justification. You are not morally free to resist as a matter of whim.*” (52)

So, e.g., the “ordinary” criminal has no good reason for her disobedience, she simply does not feel or accept the force of the law

Why shouldn’t the onus run the other way?
Majority Consent

- On a traditional view of consent, the obligation to obey is created by majority consent – a (backward-looking) procedural view. (The relevant procedure creates the obligation to obey.)

- Under H/NOG this idea is reinterpreted:

  **Procedural Criteria** (i.e., How it works)

  "a government is likely to seem to us deserving if it is open to the governed, reprehensible if it rules against their will”

  (55, emphasis added)

This contrasts with:

**Substantive Criteria** (i.e., What it does)

Does the government pursue “good, benevolent, justifiable policies”? If the people really do like what they get, this too counts as evidence that they (ought to) consent.

- Clearly, there are potential problems with respect to how these sets of criteria are to be weighted. (55-56)

  How, e.g., does a functioning, but substantively ineffective, democracy compare to benevolent dictatorship?
'Nature of Government’: A Quick Review...

**Hume**: Contract/consent adds nothing to a theory of political obligation. Both the institution of promise-keeping and political obligation are ultimately founded on judgments about what is to our benefit. (i.e., utilitarian considerations)

So, political obligation can only be justified with reference judgments about what benefits us (e.g., order, stability, decent respect for liberty)...

**Pitkin**: ‘Personal’ consent may be inadequate, but consent theory can still be workable if it is understood as *hypothetical* consent.

We can assess whether some (idealized) person ought to consent to a government by assessing the nature of that government (in particular, by weighing procedural and substantive criteria).

But it’s not quite that simple. There’s still the Wittgensteinian aspect to consider…
Is H/NOG Equivalent to Utilitarianism?

Pitkin: “No.”

**Utilitarian claim:** You are obligated to obey when obedience is best (in terms of utilitarian benefit) for the whole of society/the whole of humankind.

But, says Pitkin, this misunderstands the nature of promise keeping and obligation.

**Consider:** Desert island promises

The Nature of Obligation

- According to Pitkin (and Mill), utilitarianism allows everyone to *judge for herself* what makes for a good government and obey accordingly *

- But obligation, Pitkin asserts, is not a matter of acting on one’s private judgment—the meaning of the concept of obedience is normally to *do what the law/government says is best.*

(* Incidentally, IMO, a possible mischaracterization of utilitarianism. Mill says, e.g., the each person is generally the best judge of what's good for them. But the point is to have an *objective* assessment—your judgment may be best because you *know best*, not just *because it is yours*. Cf. paternalist, welfarist utilitarianism.)
But, In Any Case...

- Traditional consent theory (and much liberal political theory generally) assumes that people are (or start out as) separate, self-contained units and that, therefore, promises and political obligations are (and maybe can only be) self-assumed.

- But, says Pitkin, the institutions of promise keeping and political obligation can’t be created in this way.

“The making of particular promises or contracts presupposes the social institution of promising or contracts, and the obligation to keep promises cannot itself be founded on a promise.” (58, emphasis added)

- Promising, i.e., is a social practice – something that we do and something that we need to learn how to do as we grow up.

- Moreover, contrary to what utilitarianism seems to hold, we don’t really have any freedom of choice concerning the institutions of obedience and promise keeping (Cavell, 60)

“[Promise keeping] is not socially useful; it is indispensable to the very concept of human life.” (60)
Two Aspects of Obligation

Inner “deontological” aspect (“Right”):

Within the social practice of promise keeping/obligation, obligation requires (or at least involves) consent, but consent is not sufficient. (Else we would be able to excuse ourselves from obligations simply by withholding consent; receive praise for actions that just happen to look acceptable.)

Outer “teleological” aspect (“Good”):

Obligation also depends on the judgment of others; the objective consequences of obedience or disobedience

In Hard Cases (Like Revolution)...

“Who is to say?” when a government is to be disobeyed, when revolution is justified (or what sort of disobedience is justified)?

Answer: Everyone. Yet no one individual’s view is definitive, since she might be mistaken and so can rightly be judged by others.

Pitkin: There can be no definitive answers in this realm.