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# Obligations Essays on Disobedience War and Citizenship

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## BOOK REVIEWS

**Obligations: Essays on Disobedience, War, and Citizenship.** MICHAEL WALZER. Cambridge, Massachusetts: Harvard University Press. 1970. Pp. xvi, 244. \$7.95.

Rules of conduct pervade human activity. Some are obvious because they are formally expressed: the judge who writes an opinion consults the rules in his statute book; the chef preparing a chocolate mousse follows the rules of his recipe. Other rules of conduct are impalpable: in polite society, persons eat with prescribed manners; in ordinary conversation, we observe rules of demeanor, often without knowing what they are.

To maintain stable patterns of human conduct, rules are frequently upheld and enforced with vigor; infractions that injure the interests or supposed interests of others may be treated severely. Since the rules of conduct called laws are basic to the social structure, persons grant them special seriousness. Precisely because of the high status that legal rules enjoy, their kinship with other rules of conduct is often overlooked. This error particularly infects most discussions of an ancient topic—the obligation to obey the laws.

Fortunately, Michael Walzer's book avoids this mistake. Professor Walzer implicitly recognizes that legal rules, while differing from other rules, resemble them in many respects. In particular, he argues that the obligation to obey the laws is only one of many obligations that persons may incur. From this perspective, he approaches contemporary problems of disobedience, war, and citizenship. Eleven essays—plus an introduction and two appendices—comprise the book. They offer some provocative ideas. Nevertheless, as Professor Walzer himself acknowledges, the book does not present a coherent theory of obligations, but only a series of attempts to apply a theory left largely unstated. The author neglects to argue for, or even state clearly, many of his basic assumptions. As a result, the book frequently frustrates the reader.

Throughout the book, Professor Walzer applies what he calls "consent theory." As I understand it, consent theory assumes that:

1. A person should choose among alternative courses of conduct by considering what obligations he has.
2. A person has obligations only because he has consented to have them.
3. Therefore, a person can determine what obligations he has by

examining what he has consented to. His moral obligations arise from his moral biography.

I have phrased consent theory as a theory of making moral decisions, that is, as a procedure for determining what a person should do. It may also be phrased as a theory of moral judgment (a theory of whether a person deserves praise or blame for what he has done) or as a theory of moral justification (a theory of how an action or proposed action can be morally justified).

The theory, however phrased, is presented most strikingly in the first essay, "The Obligation To Disobey."<sup>1</sup> Professor Walzer transforms the doctrine that governments derive "their just powers from the consent of the governed." As originally used by Jefferson, the doctrine was revolutionary—a rationale for overthrowing a tyrant who rules without the people's consent. Later, among democratic apologists, it became an ideology for compliance with the existing order. If we are living in a democracy, we were told, we have consented to its laws and must therefore obey them. In Professor Walzer's variant, we may have consented to disobey a law and may therefore be obliged to disobey it.<sup>2</sup>

This situation may arise, he argues, in any pluralistic society that permits groups other than the state to form and flourish.<sup>3</sup> In such a society, persons will join a number of formal or informal groups. The more formal ones will have rules and even systems for making rules. Some of these groups acknowledge that their rules always yield to those of the legal system—for example, a law-abiding corporation. But other groups claim that their rules, at least sometimes, are superior in obligation to certain legal rules, even though they acknowledge that most rules of the legal system remain supreme. These groups are often quite analogous in structure to the state. They may have constitutions, by-laws, and elaborate structures for rule-making. They may have procedures for admitting members far more formal than the citizen's tacit consent. Indeed, they may formally differ from the state only because they claim authority over a portion of the member's conduct. The state, by contrast, claims authority over the entire conduct of its citizens, subject only to limits set by the state itself.

Since these groups may formally resemble the state, Professor Walzer reasons, a person may incur an obligation to obey the rules

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<sup>1</sup> Pp. 3-23.

<sup>2</sup> Pp. 3-4.

<sup>3</sup> Pp. 10-16.

of a group in very much the way he incurs an obligation to obey the legal rules of the group called the state.<sup>4</sup> While the supremacy clause of the Constitution<sup>5</sup> makes the federal government legally superior to all other governments, there is no obvious moral supremacy clause that makes a government superior to a non-governmental group.

Once this argument is accepted for formal groups, applying it to informal groups becomes only a matter of degree. In Professor Walzer's view, therefore, a person may decide that he should disobey a law because he has a superior obligation to a group to do so.<sup>6</sup> Similarly, we may praise a person for disobedience because he follows such a superior obligation. Finally, a person may justify disobedience to a legal rule by citing a superior obligation to obey the rules of a group.

Several things trouble me about Professor Walzer's argument and his consent theory in general. First, he asserts that persons who disobey laws typically do so as members or representatives of groups:

Men rarely break the law by themselves, or if they do they rarely talk about it. Disobedience, when it is not criminally but morally, religiously, or politically motivated, is almost always a collective act, and it is justified by the values of the collectivity and the mutual engagements of its members.<sup>7</sup>

My own current experience does not fit Professor Walzer's model. I regularly counsel young men who wish to avoid military service. After they explore the available legal means, they confront the prospect of the officer's order to step forward for induction. Many say they will refuse, preferring prison or emigration to military service. Often, they explain and justify their plans by moral reasons, but never, in my experience, by membership in a group that opposes war or even by loose affiliation with a class of like-minded men. What they say about their obligations, of course, may not be correct. But it would be surprising to find that their moral justification springs from a group they never even considered. I think a young man who refuses military service may have ample moral justification in his lone conscience, even if he has never heard of a war resister's league.

Second, Professor Walzer leaves the concept of consent so diffuse that one cannot tell what a person has consented to and whether his consent morally binds him any longer than he chooses. Consents, says

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<sup>4</sup> Pp. 14-16.

<sup>5</sup> U.S. CONST. art. VI, cl. 2.

<sup>6</sup> Pp. 16-23.

<sup>7</sup> P. 4.

Professor Walzer, "are commitments to other people, or they are commitments to principles or parties or political institutions that arouse expectations in other people."<sup>8</sup> At the outset, Professor Walzer claims that he has never assumed the existence of consent "without looking for evidence that it has actually been given."<sup>9</sup> But his rules of evidence are so imprecise that only he could apply them. Moreover, even assuming a person has consented to something, is his consent revocable at will, revocable under certain conditions, or irrevocable altogether? A consent theory, since it imitates the law of contracts, should provide some way of answering this question. Professor Walzer, however, merely avoids the issue.

Finally, and most fundamentally, Professor Walzer's consent theory—and, indeed, all theories of obligation through consent—trouble me because they rest on the value that a person, above all else, should keep his promises. Professor Walzer says:

Consent theory suggests a procedural rather than a substantive ethics. It is not, in the usual sense of the phrase, a theory of value (though it does provide certain evaluative criteria that may properly be applied to the procedures of moral life). It is a way of describing how particular men come to have obligations, not what obligations they presently have. It invites us to search out what this or that individual has agreed to do; it provides no information as to what he "should" do or should have agreed to do—except for the single injunction that he honor his commitments.<sup>10</sup>

In this passage, Professor Walzer dignifies promise-keeping by calling it honoring one's commitments. But it is still promise-keeping, and any moral theory that takes that as its ultimate value seems shallow, if not absurd. Over one hundred-twenty years ago, Thoreau wrote, in his *Civil Disobedience*:

Must the citizen ever for a moment, or in the slightest degree, resign his conscience to the legislator? Why has every man a conscience, then? I think that we should be men first, and subjects afterward. It is not desirable to cultivate a respect for the law, so much as for the right. The only obligation which I have a right to assume is to do at any time what I think right.<sup>11</sup>

I have never seen a persuasive answer to Thoreau's argument,

<sup>8</sup> P. xii.

<sup>9</sup> P. x.

<sup>10</sup> *Id.*

<sup>11</sup> H. THOREAU, *CIVIL DISOBEDIENCE* 14 (Revell ed. 1964).

either in Professor Walzer's book (where he disposes of it in a footnote)<sup>12</sup> or anywhere else.

*Robert Horowitz\**

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<sup>12</sup> A footnote merits a footnote. Professor Walzer says:

[O]bligations are always shared among men, who must judge one another. "The only obligation which I have a right to assume," wrote Thoreau, "is to do at any time what I think right." But when, in jail, he greeted the visiting Emerson with the famous question, "What are you doing out there?" he clearly implied the existence of a common obligation. Common to whom? Common at least to New England philosophers, one of whom was failing to meet it.

P. 6 n.5. Emerson had asked Thoreau what he was doing "in there." Thoreau's view was that Emerson should be in jail with him because it was right for each of them to refuse to pay taxes. Professor Walzer confuses mutual obligation with similar obligation. According to Thoreau, neither was obligated to the other; instead, they were each obligated to do what was right.

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