

# Obligations, social emotions, and social contracts

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This paper has two aims. First, it raises the issue whether and how contractarian political theory can justify political obligations toward some particular political authority. Second, it attempts to draw some brief conclusion from this regarding the prospect of Europe as a political community. The paper argues that there is a common assumption to almost all contemporary versions of contractarian political theory which must be dropped in order to make room for the contractarian justification of such obligations. The assumption of mutual unconcern seems to make it impossible for such theories to rationally justify particular obligations towards a particular political authority. I suggest that this limitation can be theoretically overcome. But I also suggest that the feeling of mutual concern of citizens towards each other is a necessary condition of their rationally justifiable obligations towards the decisions of a political authority. The development of this social emotion is a precondition of Europe as a political community.

**Key words:** political obligations, community, contractarianism, collective goods, Europe

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## INTRODUCTION

Can we expect people in Europe to regard the European Union as a form of political community or should they just see it as a new form of bureaucratic organization? Belonging to communities creates special obligations. Thus, belonging to a political community implies that it is rational for people to feel that they have political obligations with regard to the particular political unit in question. It seems to be constitutive to any political community deserving the name that its citizens feel politically obliged and that such a feeling is rationally justified. In my paper, I shall consider the problem of political obligations at a rather abstract level. But at the end I also aim to draw some conclusion about the empirical conditions of Europe as a (future) political community.

## THE PROBLEM OF POLITICAL OBLIGATIONS

To start with, I shall introduce a somewhat technical distinction between the notions of *duty* on the one hand and *obligation* on the other. I draw the distinction with reference to the scope of validity of certain norms. Duties are universal in the sense that their scope of application is not constrained by any contingent conditions. In this sense, we have certain *prima facie* duties which are valid independently of who we are and whom we owe them. The scope of validity of obligations, on the other hand, is contingent upon the specific circumstances in which they arise. Political obligations are obligations that we have only if certain decisions are legitimately arrived at by a supreme authority of a particular state of which we are citizens. These are obligations of a very peculiar kind for a variety of reasons. Let me bring out some of these peculiarities.

Outside the political context we usually claim that one may have an obligation to another person(s) on two different kinds of grounds. First we say that there are certain kinds of personal relations that impose obligations on us. Someone is naturally obliged to help her children, to take care of her parents and at least not to be indifferent towards those who are her relatives. There could, of course, be overriding reasons which invalidate these obligations, but few would deny that we all have at least *prima facie* obligations of such kind. Another important example of a personal relationship that imposes obligations on us is friendship. It is difficult to imagine one's having a friend without admitting that she must be more responsive to her friends' needs than the needs of some distant stranger. These obligations are not necessarily of equal force. Their force depends, for instance, upon the closeness of some relation. The needs of our children or our beloved impose more urgent obligations on us than the needs of a colleague whom we hardly see and may not even like. But this problem of degree should not concern us at the moment. An important common characteristic of all these obligations is that *they are supervenient on certain non-chosen (natural or social) relations among persons*<sup>1</sup>.

The other kind of obligations is not dependent on personal relations. The most obvious examples of such kind of obligations are obligations that are imposed on us by making a promise. Never to break a promise is a duty in the sense I have characterized it. But, by having made a promise, I created a particular obligation the scope of which depends on the content of the promise. This kind of obligation does not supervene on my personal relation to the person to whom I promised something. It is created purely by the fact that I have voluntarily engaged in a sort of situation that imposes an obligation on me. So, these obligations *supervene on a situation in which one has voluntarily engaged*. Although acts of promises are the most obvious examples of such situations, there are many others that may be mentioned. When I use public transportation, for instance, in many towns I am obliged to show my ticket to the request of the conductor. The basis of this obligation is the fact that, simply by using public transportation, I have voluntarily engaged in a situation that obligates me to do certain things – e. g. to show my ticket, if I am asked to.

Some philosophers would claim that all these situations could in fact be understood as cases of tacit consent. The idea is that any non-personal obligation that is not established by an explicit promise must be established by some tacit consent. But I find this suggestion counterintuitive. I do not consent whenever I get on the bus, use an elevator or enter a restaurant, although by such actions I do impose various sorts of obligations on myself. Moreover, it is questionable whether, apart from some very special circumstances, the talk about tacit consent makes a clear sense<sup>2</sup>. Nothing, however, depends on this intended reduction of all non-personal obligations on a single one as long as we admit that in certain cases voluntary engagement in a particular kind of situation can ground our obligations. These obligations, just as the obligations arising from our personal relations, are only *prima facie* binding, and they all admit of degrees. There could be overriding reasons which exempt one from any of these obligations. And, patently, the rules that I must comply with by entering a restaurant do not have the same force as the ones I impose on myself by entering a hospital.

<sup>1</sup> Some say that friendship is a matter of choice. I would say that we do not choose friends, rather we recognize them. Anyway, in what follows nothing depends on whether friendship is a matter of choice or a matter of recognition.

<sup>2</sup> About this, see the illuminating considerations of A. J. Simmons (1979), Chapters III and IV.

Do political obligations supervene on personal relations or on situations in which one has voluntarily engaged? During the Middle Age – the Golden Age of political obligations, if I may qualify it so – both answers might have been satisfactory. The vassals imposed obligations on themselves by making a contract with the king. And those who did not have the fortune to sign such a contract for themselves might have felt some personal (emotional) relation toward him or her, and this assumed their relation-grounded obligations – at least this is what our (hi)story teaches. But in our days when representative democracy is the prevalent (and unquestionably the preferable) form of political power, no such theory can find a good sale. Who would say, after all, that a person has no political obligations unless she has some sort of personal emotional attachment to the Prime Minister or the President of the state in which she is a citizen? And no one would claim, either, that those who have not voluntarily engaged in becoming citizens of a particular state are therefore exempted, for instance, from the obligation to pay tax there. Obviously, that would be a good reason for virtually all of us to escape our obligations. To be a subject of a particular state that has a particular political authority is not a question of voluntary engagement in some obligation-grounding situation. Most of us were just born under the authority of a particular state, and it is this fact, if any, that should explain why we have political obligations to a particular authority.

## CONTRACTUALISM

Contractualism, in its original form, in early modern political philosophy attempted to justify political obligations on the one hand, and to determine their limits on the other. With the revival of contractarian methodology in the previous century its application has been, however, refocused. In this section, I will first explore some of the key features of classical contractarian theories by contrasting them with their modern descendants. Then I shall show why contemporary contractarian theories face special difficulties as regards the justification of political obligations.

In my exposition, I shall rely on some fundamental ideas of the two paradigmatic figures of early modern contractarian philosophy: Thomas Hobbes and John Locke. There are a number of ways one can contrast their theories, but for the present purpose I wish to bring out only two fundamental (and rather obvious) differences. The first is the difference in the kind of political obligations they wanted to justify. The second is the role of non-political moral norms in their arguments. As we shall see, and as it must be intuitively clear, these problems are interrelated. The Hobbesian theory aims to justify unconditional obligations to the sovereign, whereas Locke wants to show under what conditions the sovereign's claim for obedience is justified. As to the role of the non-political moral norms, Hobbes claims that compliance with any norms is, and can only be, guaranteed if there already exists a sovereign to whom we owe unconditional obligations. Locke, on the other hand, meant to show that the existence of pre-political norms ('natural rights') can limit the legitimate extension of our obligations to a political authority.

In order to see the contrast between the 17th century theories and their modern descendants, let me first highlight some of the general characteristics of contemporary contractual justification of moral and / or political norms. Contractarian justifications are based on counterfactual reasoning. They ask what political norms and / or institutions rational agents would prefer in conditions which are similar to the actual ones to varying degrees, but in which no such norms and institutions yet exist. It is assumed that the existence of these norms and institutions will not affect the nature of our desires and preferences. If we assume, as for example

Rousseau did, that social institutions change significantly the nature of our desires and preferences, then the counterfactual claim that certain norms and institutions would be preferred in such 'pre-social' situation cannot in any way justify their *actual* acceptance.

But what does it mean that the nature of our desires and preferences is unaltered between the hypothetical and the actual situation? The establishment of certain norms does seem, after all, to imply a change in our preferences. According to the contractarian theories, however, the established norms do not change preferences, but rather *constrain* them. More precisely, they add some sort of 'metapreferences' to the existing ones. These 'metapreferences' constrain the acceptable range of those actions by which we aim to satisfy our first-order preferences. Contractarians aim to rationalize *impartial* and *unanimous* rules from the perspective of a situation in which no such rules yet exist. Exactly because the rules to be justified are impartial and universally acceptable, most modern contractarian theories specify the pre-contractarian conditions as the conditions of *mutual unconcern*.

The assumption of mutual unconcern is introduced in order to preclude the possibility that biased (partial) reasons can play a role in the choice of appropriate moral or political principles. Impartiality as a moral requirement and contractarian justification are therefore closely related<sup>3</sup>. Contractual justifications attempt to prove that we have reasons to accept such moral or political rules that are valid independently of our personal attachments or resentments. There is, therefore, something inherently Kantian in the contractarian method of justification. No personal 'inclination' is permitted to be relevant in the choice of moral principles.

The assumption of mutual unconcern is not, however, without its problem. In Rawls's theory, principles of justice are so chosen that, if the 'parties' involved are all rational, the situation itself disallows any unfair outcome. Mutual unconcern (or 'disinterestedness', to use Rawls' own term) in the 'original position' is not an empirical assumption, but rather a methodological device. Since people in their actual choices do concern with each other, in the circumstances in which only the just principles are rational to choose no information about distinctive concerns with others can be permitted to be taken into account. For those theories, like Gauthier's, where the hypothetical choice differs from the actual ones only in that we are directly morally motivated in the actual situations, whereas in the hypothetical one our choice of action is determined by purely optimizing considerations, it is difficult to see how concern for others can be excluded from the relevant set of preferences<sup>4</sup>. But the reason why such preferences *should* be excluded is clear. Their exclusion simplifies the problem of finding rationally acceptable reasons for impartial moral principles.

In sum, I would characterize the most general features of Rawls's and Gauthier's contractual justification as follows. First, according to contractual justification, moral or political norms are based on some kind of idealized choice. Second, this idealized choice grounds norms that are interpreted as metapreferences constraining the admissible range of actual actions. Third, an essential characteristic of the norms chosen is that they must be impartial. And finally, their impartiality is guaranteed by the assumption of persons' (or the parties') mutual unconcern in the hypothetical choice situation.

It is crucial to notice, however, that the fourth of these characteristics is present only in some modern contractarian theories. Although the Hobbesian individuals' concerns with

<sup>3</sup> As has been made clear by Brian Barry (1995).

<sup>4</sup> See Vallentyne 1991.

each other are rather unfriendly, it is not yet exactly the kind of mutual unconcern that we can find in contemporary contractarian theories. When Hobbes characterizes the state of nature (the state without political authority), he emphasizes that the satisfaction of every person's desires involves an interest in what other persons have or want. Hence, competition is an in-built characteristic of human condition. It is not only scarcity that gives rise to conflicts, but also men's natural tendency to enslave and use the others. The norms related to such situations are, of course, impartial norms. The universal endeavour to establish peace, which grounds all other norms, could only be satisfied by everyone's unconditional obedience to the decisions of a particular political authority. Therefore, in Hobbesian political philosophy the contractarian argument is designed to support the rationality of obedience to any authority as long as it is strong enough to enforce its decisions<sup>5</sup>.

In the Lockean theory, the issue of mutual unconcern is somewhat more complicated, since Locke characterizes the state of nature in such a way that certain duties are already universally effective in it. Locke thinks that it is rational for individuals in state of nature to respect the famous Lockean rights<sup>6</sup>. Given this, Locke must explain why it would be rational to establish any political authority at all. There are well known difficulties with answering this question, but one obvious answer which can be found in Locke's *Second Treatise* makes appeal to the *partiality* of our decisions in case of conflict. Locke claims (rather reasonably) that in cases of conflict we tend to be biased for ourselves and for those whom we love. Therefore, the fundamental rationale for establishing a 'political society' is that only it can guarantee the impartiality of judicial judgments. In the Lockean theory, although its explanatory role is not as fundamental as in the Hobbesian case, persons do have personal concerns with each other in the state of nature. Its role is, of course, not the same as in the Hobbesian theory, since for Locke certain moral norms are already effective in the state of nature and remain so even when the central political authority has been established. Consequently, these norms are assumed to constrain the legitimate extent of political power just as well as they constrain the actions of particular persons.

In the Lockean theory, particular political obligations are based on consent. This consent is actual, if people agree on establishing a new political authority; and it is tacit, if they indicate by their actions that they would consent explicitly, if they had an opportunity to do so. There are, as I have already noted, widely known difficulties with the idea of a tacit consent. Locke's idea that by using our own property, for instance, we express consent appears to be odd. Notice, however, that in a certain sense the question of political obligations to a just government cannot even arise in a Lockean theory. Given that the only legitimate goal of such political authorities is to guarantee the prevalence of moral norms that are already effective in the state of nature, and given that the political authority is not supposed to impose norms with a new content, there is a reason to accept the decisions of any government so long as it does not overstep its natural (moral) limits. No such political authority has ever existed in practice, since the functioning of political institutions implies that they must sometimes make controversial decisions (minimally about who should bear the costs of the functioning of this authority<sup>7</sup>). But ideally, when the morally acceptable political obligations are already de-

<sup>5</sup> Provided, of course, that the sovereign is sufficiently strong and able to enforce obedience.

<sup>6</sup> Locke, unfortunately, owes us a reason why it is so, but in the context of the present argument it suffices simply to state that he does use this assumption.

<sup>7</sup> On this problem and one proposal how to solve it, see Robert Nozick (1974), Chapters 4 and 5.

terminated in the pre-contractarian stage, no special problem concerning political obligations seems to arise. There are not any *special* obligations that are imposed on the citizens simply by being a subject of a particular political authority.

Consequently, in the classical Hobbesian and Lockean cases, the established political norms are impartial, even if they allow for mutual concern in the pre-contractual stage. In the Hobbesian case, impartiality is guaranteed because subjects (rather than citizens) are obliged *unconditionally* to any political authority. In the Lockean case, the *universal* moral norms constraining the allowable range of actions of a central authority are already (though imperfectly) effective in the pre-contractual state. Hence, the contract justifies only the existence of some central authority as a technical device that can guarantee a more perfect compliance with the norms. Contemporary contractarian theories, however, *aim to justify not only the establishment of some political authority, but rather certain moral (or political) norms* that should regulate the behaviour of the institutions and the citizens. Therefore, no such norms can be postulated in the pre-contractual stage. On the other hand, none of these theories would accept a political philosophy that, like the Hobbesian one, justifies unconditional obligations. As we have seen, the reason why Hobbes advocates the idea of an unconditional obligation towards any government is that he thinks that only such an obligation can guarantee compliance with all other norms. The aim of contemporary contractarians is, however, to justify certain general moral and political norms, and not to specify the conditions in which we have obligations towards a particular political authority.

Hence, contemporary contractarianism faces a difficulty concerning the justification of political obligations with regard to some *particular* political authority. Classical contractarians could explain why citizens ought to comply with decisions of a political authority. But their reasons, although related to moral norms, are not *moral* reasons. Both the Hobbesian and the Lockean theories justified political obligations by showing that, in order to guarantee the effectiveness of certain morally important values, it is rational to accept the existence of particular political institutions. Contemporary contractarian theories, however, aim to provide reasons for accepting certain moral or political norms. The scope of these norms must be *universal* by nature. The question of political obligations concerns, however, *particular* moral considerations in at least two different senses. The first, and more obvious, sense is that we are not politically obliged *per se*, rather we are obliged towards the rules and laws of a particular state of which we are citizens. I may find, for example, that the system of taxation in a neighboring country is juster than it is in mine. This fact does not, however, give me a good reason to pay my tax according to the laws of that country, even if I admit that following just rules is a universal moral duty. I am still obliged to pay according to the laws and rules of the state of which I am a citizen.

This example leads to a second and more interesting reason why obligations to a given political authority depend on moral considerations related to particular situations. It is reasonable to hold that we are obliged to comply with the laws of our government only if we think these laws are just and compliance with them promotes the prevalence of justice. It is hardly imaginable, however, that each and every citizen in a state finds every law that has been legitimately introduced by a particular political authority just. The idea of political obligations, however, is not dependent upon whether every citizen finds every law just. The most generally held view is that if 'the basic structure of a society' (to use the Rawlsian expression) is just, then every citizen is obliged to comply with the decisions of their political authority. Therefore, the existence of certain laws that certain citizens consider as unjust does not morally exempt them from obedience.



Another interesting, and less discussed, characteristic of political obligations is that not every abuse of power gives a morally sufficient reason for non-obedience. The fact, for example, that many governments have been found corrupt is not, in itself, a good moral reason for not to pay tax. I think this is a very important feature of political obligations. Most of our obligations can be overridden. Political obligations can be overridden as well. But they cannot be overridden simply by claiming that a government is corrupt. This reveals, I think, something fundamental. It shows that although we do have political obligations with regard to the decisions of our political authority, the source of these obligations is not some sort of particular *respect* towards our own political authority as such. Why? Because in many cases we are expected to respect the decisions of our government, even if we are not expected to respect the government itself.

Can any contemporary contractarian argument show why we ought to respect particular decisions of our government, even if we do not respect the government itself and even if we find its decisions unjust? In the next two sections I turn to this question.

### POLITICAL OBLIGATIONS AND COLLECTIVE GOODS

Two major groups of modern contractarian arguments have been thus far distinguished. Rawlsian contractarians want to ground moral norms on hypothetical choices made in fair circumstances. This means that they already incorporate moral claims in the characterization of the pre-contractual situation. Other contractarians (like Gauthier) characterize such choices as purely optimizing ones and aim to show that the outcomes of self-interested optimizing and moral choices are co-extensive. From this latter approach it follows that, in the context of political obligations, it would be rational to comply with the decisions made by a political authority only if obedience increased anyone's expected benefit in comparison to the situation in which mutual non-compliance prevails. In fact, we may claim that this is *the* classical contractarian argument for the rationality of obedience to the decision made by a central political authority. The existence of such an authority can supply such *selective incentives* that are necessary for maximizing individual benefit in certain choice situations.

The typical situations in which this argument holds are called in game theoretical phraseology 'Prisoner Dilemma type situations'. There are two general characteristics of this type of situations that are worth mentioning in this context. One is that in a Prisoner Dilemma type situation players have a mixed interest: they have reasons both to make a mutually advantageous agreement and to exploit the other player(s) by not complying with it. So understood, the Prisoner Dilemma type situations can be contrasted with situations where the interests of the players are either purely conflicting or, alternatively, purely harmonious. Games of pure conflict are situations in which one player can win only what the other loses. In such situations, the players' interests are diametrically opposed. On the other hand, there are situations in which there are mutually advantageous solutions to a problem from which the players have no incentive to deviate. Typical examples of these latter situations are problems of coordination. If, for example, we have a convention that after an unexpected break of the telephone line it is always a person called who will call back the other, neither person is rationally motivated to deviate from such a convention. In cases of a pure conflict, it is impossible to establish a convention that would mutually benefit both players. Typical situations of this sort are, for instance, competitions.

When we say that the Prisoner Dilemma is a situation in which players have mixed interests, what we mean is that they are rationally motivated both to establish a mutually beneficial agreement and to deviate from it. Otherwise put, although mutual compliance is preferred by

both players to mutual non-compliance, unilateral non-compliance (deviance) is preferred to mutual compliance. If we characterize the Prisoner Dilemma type situation in this way, it can be easily seen how a contractarian argument could be construed to rationalize compliance with decisions of some central political authority. The argument claims that a political authority, by constraining the admissible range of actions, can guarantee compliance and hence the realization of the collectively optimal outcome. Therefore, the morally right choice (compliance with political obligations) and the choice determined by purely self-interested and optimizing considerations will determine a co-extensive range of actions.

But why would the Prisoner Dilemma type situation be relevant to the question of political obligations? It is relevant only, if we grant that it is the problem of collective goods and of externalities that can legitimize the existence of political authority. On this view, the need for political institutions arises only when we face the problem of externalities and the procurement of collective goods<sup>8</sup>. In such cases, individuals have an interest in both mutual cooperation and unilateral deviation. Therefore, a central authority is needed to guarantee the success of cooperation.

But this way of justifying political authority is only of little use when it comes to the problem of political obligations. First, in contemporary market economies, not many of the collective goods are actually procured by the state. The problem of collective goods can show us why we need to have centralized organizations in certain situations, but it cannot justify obedience to the decisions of a central authority. The second and related problem is that the tasks and therefore the justified range of decisions of these organizations are limited. Therefore, for the realization of a desired collective good, it is rational to accept certain constraints on the admissible range of behaviour, only if one can see that these constraints contribute to the realization of *that* desired good. Central political authorities, however, do not only promote the realization of some public good, but rather – and more characteristically – they make decisions about *which* public good should be realized. Moreover, they make decisions about the *ways* in which public goods should be realized. But why should rational citizens comply with the obligations imposed on them by these decisions?

The sort of contractarian argument that is based on the idea of a purely self-interested optimizing choice of individuals ought to prove that the moral motivation for compliance and the optimizing considerations lead to the same choice of behaviour. Unfortunately, the argument one paragraph back shows quite conclusively that this cannot be proved when the choice is about the obedience to the decisions of our political authority. If we all desire the same thing (e. g. clean air) and we all see that it can only be realized by setting constraints on the choice of certain actions (e. g. the use of our vehicles), there is at least one good reason to self-impose certain constraints, even if our optimizing considerations are purely self-interested. But more often than not there is no universal agreement as to *what* public good should be realized. Moreover, even when such disagreement can be overcome, another remains concerning the allocation of expected costs and / or benefits.

As far as I can see, the vast majority of the decisions of a political authority concern exactly such issues. The authority decides how much money should be allocated to health care and how much to national defense, and it decides whether health care should be advanced by building state-run hospitals or subsidizing private ones. The real problem of political obligations arises exactly in this context: why am I obliged to comply with the decisions of a central authority when I disagree with the decisions made? More concretely: why am I obliged to pay my full tax,

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<sup>8</sup> See, for instance, Buchanan (1975).



if I disagree with the way the government uses my money? I doubt that a contractarian model based on the idealized optimizing choice can fare very far in answering this question.

How could it be rational to contribute to the realization of certain 'goods' that I do not want to be realized? One possible answer is that it is rational to preserve those institutions that can help in the realization of *some* goods that one prefers, even if there are a number of goods for which one is simply forced to pay. But how can we determine the range of these 'important' goods? I am afraid that this solution would inevitably lead to some form of Hobbesianism. Any government is a good government if it guarantees at least public security – probably the only common denominator of the collective goods that (almost) everyone thinks should be provided by the state. But then all other obligations that derive from the other necessary decisions can simply be justified by claiming that it is rational to preserve these institutions. And this seems to amount to exactly something like the Hobbesian justification of unconditional obligation. This justification of political obligations would, therefore, lead to a counterintuitive result.

Does the contractarian justification of political obligations fare better, if the pre-contractual state is characterized so that only impartial decisions can be made, and therefore moral considerations are built into the structure of justification? Choices in these circumstances establish universally applicable principles of justice. The circumstances of justice do not vary from one situation to another. With this procedure, we can perhaps justify some universally valid principle of justice such as the constitutional safeguard of human rights. It is less clear whether or not this procedure is also applicable to justify obligations with regard to particular decisions of a political authority. Let me mention just one obvious example that shows why the justification of universally valid principles of justice and the justification of particular obligations can come apart.

Let us suppose that the Rawlsian arguments for the difference principle are correct and can be conclusively justified by his version of contractualism. The difference principle is then a universally valid principle of just distribution of the socially available goods, since rational and self-interested individuals behind the veil of ignorance (where only impartial decisions can be made) agree that in the post-contractual situation they'll prefer institutions that maximize the benefit of the worst-off group. Now imagine that in the actual situation a just government must choose from two alternative distributive schemes. Both schemes would increase the benefits received by the worst-off, but the identification of a particular group of persons as the worse-off group would be partly determined exactly by the choice of the distributive scheme. One distributive scheme would benefit more one group of people and would render another group the worse-off, and vice versa. I would propose to consider the reasoning of a third party, since this precludes partiality generated by self-interest. If someone prefers to support one of the groups for whatever reason she might have, why is she morally obliged to comply with an authority's decision which aims to support the other group from its tax? Notice the dilemma: the decision of the authority is not unjust in the sense that it does accord the scheme of just distribution. Yet people can disagree about the justness of particular political decisions, even if those decisions are not disallowed by some universally accepted principle of just institutions.

Rawls himself claims that everyone has a duty to support just institutions, and therefore we are obliged to obey any rules in so far as a justly institutionalized government has established them. But this argument obviously misses the point, since the question of political obligations is exactly the question why we are obliged to comply with the rules of an otherwise justly institutionalized authority, if we believe that a particular rule is unjust. It is difficult to see why someone behind the veil of ignorance would rationally accept a principle that stipulates

that he is obliged to comply with decisions that he, in the light of all relevant and known facts, would judge unfair. The Rawlsian approach to contractualism might allow for a justification of universal moral principles on which just institutions can be grounded, but it can hardly aid to justify our obligations to comply with all the decisions that have been made by a justly elected and institutionalized political authority. Whether and why we should comply with the rules that we consider unjust is always a matter of particular choice which is based on reasons present only in a particular situation.

It appears, therefore, that these approaches to contractarian political philosophy cannot justify political obligations with regard to a particular authority. If the pre-contractual state is a state in which persons are mutually unconcerned and their behaviour is determined by purely optimizing considerations, then they could have a reason to accept only unconditional obligations. Unfortunately, the same is true, if the characterization of contractual choice already includes moral considerations. Such theories may establish universally valid principles which just institutions should accord, but they cannot guide our choices in particular cases in which we think that certain decisions of an otherwise just authority are unjust. The only answer offered, namely that we have unconditional obligations towards the rules established by such an authority, is far from being convincing. Shall we then dismiss contractualism as a method of justifying political obligations?

Not necessarily. Perhaps the failure of contractualist justification does reveal something very important about the nature of such obligations. It shows that whenever we feel we must comply with some of the rules established by a legitimate political authority, we do not have a political obligation *with regard to a particular government*. Rather we have certain *obligations to our fellow citizens*. Earlier I have claimed that obligations are supervenient on personal relations or on certain situations in which we have voluntarily engaged. Contractarian theories aim to show that although we do not usually voluntarily engage in the situation of becoming a citizen of a particular state, if the institutional setup of the state satisfies certain conditions, we have self-interested and optimizing (or alternatively, impartial and moral) reasons to accept the existence of such a state. Such reasons cannot, however, justify obligations to comply with the particular decisions of a particular political authority, especially whenever we regard the particular rules in question unjust. There remains, however, the other possibility of grounding political obligations – perhaps they are obligations that are imposed on us by personal relations. True, this will not ground any direct obligation towards our government. But it may justify obligations with regard to our fellow-citizens.

## COMMUNITIES AND CONCERNS

Is it not absurd to invoke personal relations to people whom we do not even know? I think this is the point where a contractarian argument can be proposed in favour of the existence of a special kind of obligations that we call 'political'. What we have to give up is the idea of mutual unconcern and return to the assumptions of early modern contractarianism. Then some contractarian theory can justify obedience in those cases in which citizens already regard themselves as members of the same political community, exactly because such persons have a very natural concern with each other. This concern is not personal in the sense that it is not determined by some natural or face-to-face relation to some other person(s). Neither is it universal in scope, since it considers only those who contingently belong to a particular political unit.

The contractarian argument I would propose to use in such a situation was first proposed by T. Scanlon and has been further elaborated in a political context by Brian Barry. A bit sim-

plified, Scanlon suggests that an action is wrong, if it does not conform to rules which “no one could reasonably reject as a basis for informed, unforced general agreement”<sup>9</sup>. Notice that this characterization, depending on the nature of the rules to be determined, allows a restriction of scope. It can be claimed that people who know that they belong to the same political community must decide under which circumstances and to which extent they should comply with the decisions of a political authority.

When determining these principles, it would be reasonable for them to reject certain rules. For instance, it would be reasonable for them to reject a rule that would allow non-compliance in every case whenever certain citizens disagree with a particular decision of their state. It is easy to construe arguments to show why it would be reasonable to reject such a rule. To mention but one example, the acceptance of this rule would imply a constant favoritism for the preferences of the minority. Given that, in the ideal case at least, in a democratic state the preferences of the majority ought to determine the decisions of political authority; the acceptance of such a rule would imply that those belonging to the minority would be exempted from any law they disagree with. This would be in certain cases impossible, and unfair in others. On the other hand, the contractarian argument so interpreted does not preclude legitimate claims for compensation, if the compliance imposes an unfairly heavy burden on those who belong to the minority.

What about the limits of our political obligations? With the Scanlonian approach, we can support, it seems to me, some Rawlsian criteria concerning the limits of our obligations. *Prima facie* we are obliged to comply with the decisions of the government because we have an obligation to support just institutions. This rule would be difficult to reject on reasonable grounds, unless one is ready to admit that the protection of unjust institutions can be the basis of an informed, unforced general agreement. It is important to note, however, that what this contractualist argument implies is only that *our political obligations are directly obligations towards our fellow citizens and only derivatively towards the political authority as such*. Moreover, political obligations, just as other obligations, allow degrees; there could be overriding reasons for not complying with the decisions of an authority. What we must consider in cases of disobedience is how much burden we would impose on our fellow citizens by our non-compliance.

## CONCLUSION

It seems to me that the Scanlonian contractualism can offer an attractive solution to the problem of moral justification of political obligations. But there is an important empirical presupposition without which this solution cannot work. People who have such obligations must regard themselves as fellow citizens. I started with the question whether Europe may be regarded as something more than a purely bureaucratic organization. As I have said, one condition that must be satisfied is that citizens of the different states have reasons to feel obliged to decisions taken by the EC authorities. But our previous considerations have shown that such feelings are rationally justified only if citizens of Europe have a certain concern with each other. Hence, Europe's chances to become a political community depend on whether or not its citizens will develop this culturally grounded concern with each other.

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<sup>9</sup> The original idea occurs in Scanlon 1982. For a more elaborated version of the original idea, see Scanlon 1998.

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## Įsipareigojimai, visuomeninės emocijos ir visuomeninės sutartys

### *Santrauka*

Straipsnio autorius turi du tikslus. Pirma, keliamas klausimas, ar ir kaip politinė sutarties teorija gali pateisinti politinius įsipareigojimus tam tikrai politinei valdžiai. Antra, siekiama iš to padaryti išvadą atsižvelgiant į Europos kaip politinės bendrijos vaizdą. Straipsnyje teigiama, kad minėtas klausimas persmelkia beveik visas politinės sutarties teorijas. Autoriaus manymu, turėtų būti patvirtinti šie įsipareigojimai iš sutarties perspektyvos. „Abipusio abejingumo“ prielaida tokį patvirtinimą daro neįmanomu. Autorius siūlo teoriškai įveikti šį apribojimą. Be to, siūloma piliečių abipusio abejingumo vienas kitam jausmą laikyti būtina sąlyga racionaliai patvirtinti įsipareigojimus politinės valdžios sprendimams. Šios socialinės emocijos plėtotė yra Europos kaip politinės bendrijos pirminė sąlyga.

**Raktažodžiai:** politiniai įsipareigojimai, bendrija, sutarties teorija, kolektyvinis gėris, Europa