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# **Political Obligation**



# **POLITICAL OBLIGATION**

## **ACADEMISCH PROEFSCHRIFT**

ter verkrijging van de graad van doctor  
aan de Universiteit van Amsterdam  
op gezag van de Rector Magnificus  
prof. dr. J.W. Zwemmer  
ten overstaan van een door het college voor promoties  
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*Cover photographs:*  
Łukasz Mokrosiński

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# Introduction

That obedience to the government is everything but self-evident, had been clear to me long before I took my first classes in political philosophy. When I formulated my first thoughts on the issue I was 13 years old and did not know that the problem I tackled, under the name of the “problem of political obligation”, had been a subject of a debate going as far back as Plato. It was on December 13, 1981, the day on which General Jaruzelski, commander-in-chief of the Polish armed forces and the leader of the Polish Communist Party, issued the order declaring martial law in Poland. That event convinced me that disobedience and resistance were the only proper attitudes toward the state.

The order banned the Solidarity trade union, the first trade union in the Soviet block independent of the communist government, and put an end to a mass social movement aiming at liberating the society from the grip of the authoritarian state which the formation of Solidarity initiated. The restrictions that followed were severe and the historians studying this period have not hesitated to call them draconian.<sup>1</sup> Solidarity’s offices, documents, and money were confiscated and many of its activists were arrested. All other social and professional organizations were suspended, as was the right to strike. Public meetings and demonstrations were banned, borders and civilian airports closed, telephone communications cut, gas stations shut down, censorship of the mail was introduced and a curfew imposed. People were not allowed to travel beyond their place of residence without a permit from the authorities. Anyone who was thought to threaten the interests of the communist state could be immediately interned for an indefinite period. Many enterprises were placed under military control and their workers came directly under military discipline. Absenteeism or disobedience would be punishable by court martial sentences “from two years’ imprisonment to death”.<sup>2</sup> Public service employees and workers in many enterprises were threatened with dismissal if they did not sign a “loyalty pledge” declaring their resignation from Solidarity and their

<sup>1</sup> cf. Paczkowski 2003, p. 450-1

<sup>2</sup> cf. Ash 1983, p. 263-4



loyalty to the communist state. Along with many other journalists, my mother was fired. I remember columns of army trucks and police vans driving around and troops armed with rifles patrolling the streets.

At the moment martial law was declared I was too young to join the series of strikes against the government, as my parents did, or to join the demonstrators throwing stones at the police forces, as my only slightly older friends did. But the years that followed confirmed my initial presumption in favor of disobedience and resistance. I was growing up in a sphere dominated by the idea that the project of a just society built on the respect for human rights and freedoms—that Solidarity stood for—required resistance to the government. Our house became a meeting point of opposition activists and a storage place for various underground materials. There were lots of underground books and leaflets. My father, who was a treasurer of a local Solidarity unit, kept trade-union money in a broken TV-set in the sleeping room.

I was 16 when an acquaintance of my parents asked me to distribute a bunch of anti-government leaflets. A friend of mine lived in a flat conveniently situated, and I decided to drop them from her balcony. I did not know then that the local Solidarity unit had planned a radio transmission in the same block at the same time. The place was full of the secret police. I dropped the leaflets and had hardly left the flat when the police arrived at the door. A boy-friend of her older sister, accidentally passing by, was arrested. He spent three months in prison. But even the harm to the innocent person I caused did not shake my conviction that the right attitude to the government was resistance. The value inherent in the formula of common life that Solidarity stood for, and which I experienced in daily interactions with people dedicated to it, gave me a sense of commitment and purpose that I have never experienced since. Already after the collapse of the system, I learned that the acquaintance of my parents who had given me the leaflets worked for the secret police. I asked myself then whether acts of resistance falling prey to provocation became for that reason less right. My answer was no.

Years later and in a different country, I took my first classes in political philosophy. Accidentally or not, one of the first courses I followed was one with the provocative title: “Why not anarchy?”. It dealt with theories of political obligation. The very topic of the inquiry—a search for reasons to *obey* the government—felt more than abstract to me. Until then, the presumption in favor of disobedience and distrust of the idea of political authority had become an almost pre-reflective idea that organized my perception of the world. The topic did not square with my political experience at all. I had habitually thought

about my relation to the government in terms of disobedience, not obedience. Obedience smacked of opportunism and the betrayal of ideals. I could not think of any purpose for which a government could be helpful, let alone necessary. As I saw it, the government was an obstacle to whatever was worth pursuing. I barely passed the course. Yet the way its topic clashed with my views was sufficient to make me realize that my political experience might have biased my perspective on the issue. As a result, I began to think that there might be contexts in which questions about obedience were not totally insane. My ingrained hostility to the idea of political authority and the presumption in favor of disobedience and resistance was challenged if only because it was placed outside of the context in which I was used to thinking about these matters i.e., outside of the context of a wicked state. I concluded that the answer to the problem of our relation to the government that struck me as obvious in December 1981 was, perhaps, correct in the circumstances of the 1980s in Poland, but it was certainly not complete.

Seventeen years after I had first discovered a duty to disobey the government, I began a research project that investigated the possibility of an obligation to obey it. This dissertation presents the results of my inquiry. Its major conclusion is somewhat unexpected. After having analyzed the most influential contemporary theories of political obligation, my argument brought me back to the initial intuitions on the subject I had formulated as a reaction to the events in 1981. At that time, I believed that resistance to the government was justified and even required by virtue of the value inherent in the model of social organization underpinning the postulates of Solidarity. What made the model inherently valuable in my perception was its vision of social relations founded on respect for the human rights and freedoms of every individual person. The theory of political obligation I develop in chapter 6 employs this intuition in a surprising way. I introduce there the idea of values internal to relations. These are values supervening upon certain ways persons relate to each other. In particular, I argue that a state of affairs in which persons treat each other rightly in the way specified by their natural duties and rights, is valuable in itself. I argue that the value inherent in a just society so formed, i.e. the value of civil justice, can be a source of reasons to obey the government. If the model of social life that Solidarity stood for can be seen as a particular embodiment of civil justice – as I think it can – my conclusion is that the same value that justified disobedience to the authoritarian communist government in Poland in the 1980s can, under different circumstances, ground an obligation to obey the government.

In this chapter, I introduce the concept of political obligation and explain the nature of the problem it poses. I also formulate the basic conditions that a successful theory of political obligation should meet. These conditions will organize my discussion of the theories of political obligation in the chapters that follow.

## 1. The Problem of Political Obligation

The concept of political obligation describes our relation to the government. The relation that is the object of political obligation has been typically described in terms of obedience to the government's directives. So understood, political obligation has traditionally been seen as tied to the concept of political authority. In particular, it has been thought that the right to command in terms of which political authority of the government is defined arises as part of the same act in which one acquires an obligation to obey it.<sup>3</sup> Simmons says:

“political obligation and the right of the government to command (...) have traditionally been supposed to be logical correlates. Thus, the right to command has been thought to be granted the government in undertaking an obligation of obedience to it. Because of this, the problem of governmental legitimacy has (...) been tied to the problem of political obligation”.<sup>4</sup>

While endorsing the thesis about correlativity between political obligation and political authority, we should be careful about what exactly it involves. Political philosophers sporadically recognise that political obligation can also dictate disobedience to the government.<sup>5</sup> When political obligation requires disobedience to the government, no political authority is established or rather, the authority that was granted to the government is withdrawn. This means

<sup>3</sup> The idea that political obligation and political authority are conceptually tied is not an exclusive property of modern and contemporary political thought. It was present in the earlier political thought, too. The difference is that the earlier writers (e.g., St. Paul) reversed the order in which the concepts are linked: while for the modern and contemporary writers political authority follows from the existence of obligations, for the earlier writers political authority was normatively prior to obligations to obey (say, where the political authority of kings was believed to be justified by God, political obligations were seen as normative consequences of authority independently justified in this way). As Green puts it, new theories explain the authority by the existence of political obligations. Old theories explain political obligations by the existence of political authority, Green 1988, p. 236. See also Simmons 1979, p. 58

<sup>4</sup> Simmons 1979, p. 195. Besides by Simmons, the correlativity thesis is endorsed by Wolff 1976, Copp 1999, Green 1988, Raz 1986 and 1999, Klosko 1992 and 2005.

<sup>5</sup> cf. Horton 1992, p. 166, MacIntyre 1984, p. 14

that political obligation can bind individuals even if no political authority is momentarily operative. The correlation between the concepts of political obligation and political authority is, then, not entirely symmetrical: while we cannot speak of political authority in the absence of political obligation, we might speak of political obligation in the absence of political authority.<sup>6</sup>

The problem that political philosophers have with the concept of political obligation relates to the constitutive role that political obligation has in establishing a relation of political authority. In order to see what makes political obligation problematic in this context, we need to take a closer look at the features that define political authority. There are two basic dimensions in terms of which a political authority relation can be defined. First, we can ask by virtue of what features a relation of political authority is a relation of *authority*. Second, we can ask what makes it into a *political* relation.

Traditionally, political *authority* has been spelled out in terms of the right to command. The right to command is the right to unilaterally create new and cancel existing obligations of others just by issuing directives for action. In other words, the action-guiding force of the commands issued by the authority is not conditional on the results of deliberation on the merits of the commanded action.<sup>7</sup> Rather, the commands are both intended to be taken and are taken as reasons for action. Green notes:

<sup>6</sup> Some authors deny the correlativity thesis. They argue that one can account for political authority in detachment from an obligation to obey it. I will address this position at the end of this chapter.

<sup>7</sup> Next to the condition of content-independence, much of contemporary political philosophy conceives of political obligation as an obligation to take the state's instructions as exclusionary reasons for action. The concept of exclusionary reasons has been introduced by Raz 1975 and developed in his subsequent writings. It has been employed in the context of political authority and political obligation by Finnis 1980, Hart 1982, Regan 1987, Green 1988, Morris 1998 and others. As presented by Raz, exclusionary reasons do not enter the balance of reasons on the merits of the case but overrule its result "by kind and not by weight" (Raz 1979, p. 22). To take exclusionary reasons as a guide for action is then to surrender our judgment about what we think should be done on the merits of the case. I follow Den Hartogh 2002, ch. 7 who argues that content-independent directives of the authority are not higher order reasons that exclude other considerations from being the ground of action. Rather, they enter the balance of reasons on the merits of the case and do not require a surrender of judgment. If they seem to have a special status as compared with the reasons with which they compete on the merits of the case, it is because of the status of these other reasons. Den Hartogh considers two basic situations in which practical authority is exercised: epistemic authority and coordinating authority. In a situation in which the intervention of epistemic authority is called for, one does not trust one's assessment of reasons or knows it to be defective. And thus, directives of epistemic authority do not exclude any judgment because no valid judgment has been made: they "take the empty stage" representing the unknown force of substantial reasons (Den Hartogh 2002, p. 137). The force of directives of coordinating authority can be explained in a similar way. Directives of coordinating authority are relevant in a situation of coordination problems. In such situations we have two relevant classes of pre-existing reasons: reasons that justify the coordination and

“Someone claims authority when he makes requirements of another which he intends to be taken as binding, content-independent reasons for action; his authority is recognised when another so treats the requirements”.<sup>8</sup>

Of course, agents may also have independent reasons to do what the authority requires them to do. A law prohibiting murder is a good example: subjects of the authority have a duty to refrain from murder because the government commands them to do so, but they also have a natural duty to refrain from it. Yet to take reasons other than the commands themselves would not be to recognise the authoritativeness of the commands, but rather, of those other reasons. Wolff says:

“When I am commanded to do something, I may choose to comply (...) because I am brought to believe that it is something which I ought to do. If that is the case, then I am not, strictly speaking, obeying a command but rather acknowledging the force of an argument (...). But the person himself has no authority—or, to be more precise, my complying with his command does not constitute an acknowledgement on my part of any such authority. Thus, authority resides in persons (...) by virtue of who they are and not by virtue of what they command”.<sup>9</sup>

In traditional political thought, the right to command ascribed to political *authority* has been thought to entail a claim-right against its subjects to have its commands obeyed. This way of conceiving of political authority goes back to Locke, who argued that to have authority is not only to have the right to command but to have the right “to command *and* be obeyed”.<sup>10</sup> Commonly, the

reasons to act in the way that solves the coordination problem. Directives of coordinating authority do not exclude any of them. Reasons in terms of which the point of coordination is expressed are and remain the reasons to do what the authority prescribes. The second class of pre-existing reasons (reasons to act in the way that solves the coordination problem) is underdetermined. This is because of what makes the situation of coordination a problem: the point of coordination is insufficient to identify the action to be taken. Directives of authority create a new option (or give an existing option a new description). On balance, given the point of the coordination, the option created by the authority is preferable as a guide for action. Yet its preferable status derives from the underdetermined character of the considerations with which it competes. Den Hartogh concludes that no necessary connection exists between exercising authority and providing exclusionary reasons.

<sup>8</sup> Green 1988, p. 60. As Green notes, this way of thinking about authority has a long tradition in the modern political philosophy going back to Hobbes’ *Leviathan*, pt.II, ch. 25. In contemporary political philosophy it has received a powerful re-statement in the writings of Hart 1982, ch. 10 and Raz 1979, ch. 12, Raz 1986, p. 35 (“A person has (practical) authority (...) only if his authoritative utterances are themselves reasons for action”).

<sup>9</sup> Wolff 1976, p. 6. For a similar argument see Raz 1979, p. 234-235, Green 1988, p. 87

<sup>10</sup> Locke, *Two Treatises of Government*, (1698), I, 120. In contemporary political thought, this idea is endorsed by Wolff 1976, ch. 1, Simmons 1979, ch. 8.2. and 1999, p. 746, Green 1988, ch. 8.4.

claim-rights have been thought to reside in the government. I will argue that the traditional conception of political *authority* requires modification on this point. While I endorse the view according to which the government exercises authority if content-independent obedience to its commands is a matter of obligation the performance of which can be claimed as a matter of claim-rights, I will argue that claim-rights do not necessarily reside in the government. Rather, claim-rights reside in the party to whom the performance of the obligation is owed. As we will see, the performance of the obligation to obey the government can, but does not necessarily have to, be owed to the government: rather than to the government, one can owe one's obedience to the government's directives to one's fellow-citizens. In the same way, one may have a duty to obey one's father's directives, but, having promised to do so to one's mother, owe compliance with his directives to her rather than to him. One might worry that if we accept this argument and claim that the government does not necessarily have the claim-rights to its subjects' obedience, then the government's right to command will appear merely as a physical power to influence the choices of its subjects rather than as a normative power of creating for them new obligations and cancelling existing ones. This worry is groundless. The possession of a claim-right to obedience is not a necessary condition of creating new obligations for others or cancelling others' existing obligations. In order for one's commands to create new obligations for others or cancel their existing obligations it is sufficient that one's commands be a focus of others' obligations to obey. The government's commands are not less the focus of the citizens' obligations to obey when the citizens owe obedience to them to their fellows than when they owe it to the government itself.

Following the dominant trend in modern and contemporary political philosophy, I have presented a relation of political *authority* as one in which content-independent obedience to the commands of the government is a matter of obligation, the performance of which can be claimed as a matter of claim-rights. The second dimension in terms of which the political authority relation can be defined is its *political* character. Note that relations of *authority* can be established in the state of nature: nothing in the state of nature prevents one from submitting oneself to the domination of another and from taking his directives as reasons for action in a content-independent way. If *political* authority is to mark a difference between the state of nature and political

and 1996, p. 8, Klosko 2005, p. 21. Compare Raphael: "The authority to issue commands is (...) a right against those to whom the commands are addressed that they should do what they are commanded to do. It is a right to receive obedience, and it corresponds to an obligation on the part of the others to give obedience", Raphael 1976, p. 69.

society, then the relation of domination and submission it involves will have to reflect it. Many have pointed out that in order to turn the state of nature into the *political* condition the agency exercising authority has to hold a monopoly of command over all individuals inhabiting the same territory.<sup>11</sup> I will add another condition. I will argue that in order to describe a relation of authority as a *political* relation, we must be able to describe a collection of individuals subject to the authority of a given agency as a political society, as opposed to the state of nature. I will argue that this implies that reasons that require obedience to the directives of the authority should engage individuals in ways that bind them to each other, as opposed to engaging them independently of each other. This aspect of the relation of *political* authority has not received attention in the literature on political obligation. I will show, however, that if enough attention is paid to it, it will suffice to disqualify quite a number of theories of political obligation.

There is one more feature that reasons to obey the government have to meet if they are to place us in a relation of political authority to the government. As Simmons and others have observed, we intuitively conceive of our political allegiances as special i.e., binding us to one particular government rather than to more governments. Accordingly, reasons that govern political obligations to obey the government should be particularised:

“in referring to political obligation, I do not mean to narrow our field of possible answers only to those moral requirements best described as obligations; (...). But I do want to suggest that we are only interested in those moral requirements which bind an individual to one particular political community, set of political institutions, etc. (...). Many people feel that they are tied in a special way to their government (...). [T]hey feel that they are (...) bound to support their country’s political institutions and obey its laws, in ways that they are not bound to the corresponding institutions of *other* countries. (...). It seems to me that the problem of political obligation is precisely the problem of explaining the nature (...) of such special moral bonds”.<sup>12</sup>

Following the dominant trend in modern and contemporary political philosophy, I have introduced political obligation as an aspect of the relation of

<sup>11</sup> The claim that monopoly over the use of force is among the most important features distinguishing the state from the stateless society goes back to Hobbes and Locke. In contemporary political philosophy, this claim has been defended by Weber 1946, p. 78, Nozick 1974, p. 23-24, Green 1988, p. 79-80, Buchanan 2002, p. 689-690, Morris 2005, p. 320, 328, Klosko 2005, p. 21

<sup>12</sup> Simmons 1979, p. 30-31, 3. Emphasis in the original. The Particularity Requirement has been endorsed, among others, by Kavka 1986, p. 407-415, Green 1988, p. 227-230, Klosko 1992, p. 23-26, Klosko 2005, p. 12, 107-110, Wellman 2005, p. 34-53

political authority. Presented in this way, the problem of political obligation is not just the question of whether we have any obligations to obey the government. The problem of political obligation is also the question of whether the reasons that govern such obligations can ever have the special features required to sustain the traditional concept of political authority as presented above. Part of what makes political obligation a problem, then, is to explain whether we can ever have obligations to obey the government's commands in a content-independent way.<sup>13</sup> If such obligations are to be properly *political*, they must further be shown to bind individuals to one particular government rather than to more governments, be a source of claim-rights and, on pain of blurring the distinction between the political state and the state of nature, engage individuals in such a way that when acting on them they could be described as a political society. In the subsequent chapters, I will discuss the most influential contemporary theories of political obligation. I will measure the degree of their success by the degree to which the reasons in which they ground political obligation satisfy these conditions.

Before closing my introduction, I would like to signal that the place occupied by the concept of political obligation in the relation of political authority makes political authority special amongst the other forms of (practical) authorities. Typically, directives of (practical) authorities provide us with content-independent reasons, but not necessarily with obligations. For example, it would be odd to say that a doctor's prescription presents us with an obligation to follow it. In this context, it seems fair to ask whether we could not conceive of the action-guiding force of the directives of political authority in a similar way, i.e., as providing us with reasons rather than with mandatory reasons for action. Given that my inquiry focuses on the conditions under which the relation of political authority in its traditional formula is possible, I do not have enough space here to explore this possibility. I will confine myself to signalling the problems confronted by recent attempts to conceive of political authority in detachment from obligations.

The argument that the authority of the government does not entail an obligation to obey its content-independent directives on the part of the government's subjects has been pursued in two variants. According to the first

<sup>13</sup> The content-independent character of obedience corresponding to the exercise of authority is often thought to imply that there are no antecedent limits to the scope of authority and, indeed, the claim to authority the government makes is unlimited, cf. Raz 1975, p. 150-152, Raz 1986, p. 76-77, Green 1988, p. 82-83, Morris, ch. 7. A theory of political obligation will have to decide whether such claims can be sustained.



variant, political authority does not correlate with its subjects' obligations to obey its commands. The government's right to issue commands backed by force is understood here as a mere liberty right or permission anchored in an independent justification that an agent might have to coercively affect others' behaviour.<sup>14</sup> According to the second variant, the liberty right to issue commands backed by force correlates with obligations other than political obligations. Rather than with obligations to obey the government's commands, it is said to correlate with obligations not to interfere with the government's enactment and enforcement of its commands.<sup>15</sup> Both variants are problematic because they collapse one of the most fundamental distinctions in modern and contemporary political philosophy, namely, the distinction between the state of nature and civil society. As presented in the classic writings of Hobbes and Locke, the relations among persons in the state of nature are symmetrical: each person has the right to use force to compel compliance with what he judges to be his morally justified commands. With the transformation of the state of nature into civil society, the relations become asymmetrical: the rights attributed to political authority, commonly vested in the government, set it apart from all other groups in the society and ordinary citizens. Now if a mere liberty right to issue commands backed by force were sufficient to attribute political authority to the government, it would not be sufficient to distinguish the government from its subjects. A resort to force cannot be justified unless it is a means to enforce performance of (perfect) pre-existing duties. This means that the government cannot issue commands backed by force in any other way than by pointing to pre-existing duties. However, if the government issues commands backed by force by pointing to pre-existing duties, its commands lack content-independent character. Similarly, if we have natural duties not to interfere with the coercive enforcement of (perfect) natural duties, then our response amounts to the recognition of the pre-existing duties and is deprived of content-independent character. If the action-guiding force of the commands of the government lacks content-independent character, then the government cannot properly exercise political authority. Another way of putting this point is to say that without content-independent character, the directives of the government are not different from the directives that any of its subjects might issue. For every private individual has a moral right to issue commands backed by force to enforce others' pre-existing duties on some occasion or another, for example, in cases of self-defence or the defence of others. So if political

<sup>14</sup> Smith 1973, Ladenson 1980

<sup>15</sup> Sartorius 1981, Greenawalt 1987, ch. 4, Wellman 1996, Edmundson 1998

authority consisted in the exercise of justified coercion then we would have to impute political authority to every private individual. Consequently, the government would not have any rights that ordinary individuals lack and its presence would make no difference to the state of nature. I conclude that this attempt to define political authority in detachment from obligation fails.

## 2. Plan of the Thesis

In the next chapters, I will discuss the most influential theories of political obligation. My discussion will be organised along the lines I have already signalled above. I will ask how successful theories of political obligation are in accounting for what makes a relation of political authority a relation of *authority* and for what makes it a *political* relation. Alternatively, I will ask how successful they are in explaining what makes content-independent obedience to the directives of the government an *obligation* and what makes this obligation *political*. I will begin with theories that derive political obligation from transactions that take place between particular individuals and the government, for example acts of consent or the receipt of benefits. Chapter 2 will be devoted to the argument that derives political obligation from the rules of the linguistic convention governing the use of this concept. The conceptual argument, as it has come to be known, has often been swiftly dismissed as utterly implausible. Critics usually spend but a few pages revealing its implausibility. Although my discussion will be similarly short, I will argue that the conceptual argument contains an important insight concerning the nature of political obligation. In chapter 3, I will deal with theories that derive political obligation from a moral duty to promote universal moral values, for example well-being or justice. In that context, obedience to the government is said to be a matter of obligation because it is instrumental to the discharge of our natural duties. In chapter 4, I will discuss theories according to which political obligation is generated by bonds of affiliation existing between individuals who are members of the same state. I will close my critical overview of the contemporary theories of political obligation by returning to the transactional approach in chapter 5. I will discuss there the horizontal variant of the transaction theories focusing, in particular, on fairness theories. Unlike in the vertical transaction theories, considerations of reciprocity for the benefits received bind individuals to one another rather than to the government even if they require obedience to it. Throughout my critical discussion of the existing theories of political obligation, I will refine and elaborate the conditions that reasons of political obligations should satisfy. In chapter 6 I will propose and

develop a novel account of political obligation that satisfies all these requirements. In chapter 7 I will return to the empirical events that inspired my interest in the topic and I will reflect on them from the perspective of the theory of political obligation I have developed.

## Vertical Transactions: Consent and Reciprocity

According to the theories I will discuss in this chapter, political obligation is grounded in certain transactions that take place between particular individuals and the government.<sup>1</sup> Individuals can become parties to such obligation-generating transactions either in voluntary or in non-voluntary ways. The theory of consent is an example of the first approach: it derives political obligation from acts of personal, deliberate consent to the government. Reciprocation theories provide an example of the second approach: they derive political obligation from, for example, personal enjoyment of benefits conferred by it. Acts of consent and considerations of reciprocity establish special normative relations between the parties involved. The relations are such that the individuals incur an obligation to obey the directives of the government and the government is conferred a right to command and a right to demand obedience to its commands. It is claimed that with the generation of the pair of correlated obligation and right a political society is created: the government acquires political authority and individuals become citizens.

Relations of consent or reciprocation can also bind individuals to one another rather than to the government. In such cases, obedience to the government is a matter of obligation individuals owe to one another rather than to the government.<sup>2</sup> In order to distinguish the two variants of the transaction

<sup>1</sup> I use the term “transaction” to convey either the situation of mutual or unilateral participation i.e., where either both or only one party is active. Simmons uses it in the former sense, Simmons 1999, p. 764, Beran in the latter sense, Beran 1987, p. 154

<sup>2</sup> Hobbes’ social contract theory is an example of the horizontal variant of consent theory in modern political philosophy. A contemporary example of the horizontal consent theory is the

theories, I will call them vertical and horizontal respectively. In this chapter, I will focus on vertical transaction theories and I will return to the horizontal variant in chapter 5.

I will argue below that the vertical transaction approach to political obligation is flawed. After I have introduced the consent and reciprocity approaches in some detail, I will present some of the most common arguments that have been raised against them. Subsequently, I will argue that there is a more fundamental defect involved in deriving political obligations from vertical transactions between particular individuals and the government.

## 1. Consent

An act of personal consent to the government's authority is a paradigm case of voluntarily and intentionally assuming political obligation. An appeal to consent as a ground of political obligation appears in the earliest recorded account of political obligation: in Plato's *Crito*, Socrates argues for political obligation by pointing to his free, if only implicit, agreement to abide by the verdicts of the Athenian courts.<sup>3</sup> Locke's *Second Treatise* is the classic statement of consent theory in modern political philosophy.<sup>4</sup> In contemporary political philosophy, the consent approach to political obligation has been defended by Raphael, Plamenatz, Downie, Walzer, Pateman, Tussman, and Johnson.<sup>5</sup> The most extensive treatment of personal consent as the basis of political obligation can be found in Beran.<sup>6</sup> Part of the appeal of the consent theory as a theory of political obligation derives from the fact that it accounts for both elements which are constitutive of the relation of *authority* between citizens and the government. As we saw in the previous chapter, it is a mark of

“actual consent theory” developed by Gilbert 1999. Horizontal variants of the reciprocity approach to political obligation have been presented by Becker 1986 and Walker 1988, 1989. Fairness theory is another version of a horizontal reciprocity theory of political obligation. I discuss it in chapter 5.

<sup>3</sup> Plato, *Crito* 51d

<sup>4</sup> Locke 1690, ch. 7 and 8. The claim that Locke's social contract theory is a case of a vertical approach to political obligation can be debated. The original contract is made among the citizens who subsequently install the government by an act of trust in the sense of delegation. The consent of newcomers, however, is given to the government directly, e.g. in the form of an oath.

<sup>5</sup> Raphael 1970, ch. 4, Plamenatz 1967, p. 220-241, Downie 1964, p. 70-71, Walzer 1970 (consent identified with voting in the elections), Pateman 1979 (consent identified with participation in the law-making of direct democracy), Tussman 1960, Johnson 1974 (consent identified with acceptance of the membership in the state)

<sup>6</sup> Beran 1987

the authority relation that content-independent obedience to the government's instructions is a matter of obligation the performance of which can be claimed as a matter of correlated claim-rights. Consent ensures that the government's instructions will be taken in a content-independent way: consenting to X creates an obligation to do X irrespectively of the further characteristics of X.<sup>7</sup> Furthermore, consent ensures that obedience to the government's directives is a matter of claim-rights. By consenting, we voluntarily incur obligations and confer rights on the party to whom we consent. We alter our moral relationship in that it becomes legitimate for the party to whom we consent to interfere with our conduct and demand that we act as we have consented to act. Hart put this point well:

"If I consent to your taking precautions for my health or happiness or authorise you to look after my interests, then you have a right which others have not, and I cannot complain of your interference if it is within the sphere of your authority".<sup>8</sup>

Consent theory offers a promising account of political obligation for yet another reason: it satisfies the Particularity Requirement. The Particularity Requirement demands that political obligation should bind individuals to one particular government rather than to more or all governments. Obligations of consent satisfy this condition: by consenting to a particular government, one's relation to it becomes special in a way that is not true of one's relation to all other governments.<sup>9</sup>

Successful as it is in accounting for the *authority* relation and its particularised character, consent theory is not devoid of difficulties. The most common argument raised against it is that it is not applicable to real political life. According to the objection, in actual political practice nothing in the behaviour of individual citizens can be taken to count as the giving of binding consent to government.<sup>10</sup> This objection is less dangerous to consent theory than it is usually taken to be. As Simmons argues, to say that no particular transactions have taken place between the government and the citizens is not to say that it is impossible or undesirable for the citizens to become bound to their governments in such ways. If not, then the objection is not one to the principle of consent as a ground of political obligation, but only to people's failure to take

<sup>7</sup> cf. Den Hartogh 2002, p. 105, Beran 1987, p. 83, Green 1988, p. 41, 177

<sup>8</sup> Hart 1955, p. 184. See also Lyons 1969, p. 174.

<sup>9</sup> cf. Simmons 2002, p. 28-29

<sup>10</sup> cf. Hume, *Essays Moral, Political and Literary* II 12, Raz 1979, p. 238-9, Horton 1992, p. 45, Klosko 1992, p. 142-3, Wellman 2001, p. 736

such considerations in their relations with the government seriously.<sup>11</sup> Endorsing this line of reasoning, many proponents of consent theory have taken a revisionist stance in matters of political obligation. They admit that political obligation does not exist because nobody has ever consented to the government, and they argue that it would exist if individuals did consent to the government. Correspondingly, various ingenious ideas have been developed concerning the reform of the state so as to realise consent-based obligations to a greater extent than they exist at present.<sup>12</sup>

Here is a more serious objection to consent theory. Whether an act of consent is valid depends on how the situation of choice is structured. In particular, consent is valid only if the situation of choice is not coercive. How is our situation of choice structured vis-à-vis the government? The presence of a government in a given territory confronts us with a choice either to accept the set of regulations it imposes or, if one is not willing to consent, to leave the territory or undergo other unpleasant consequences the government attaches to refusal. In the range of choices the government presents us with there is no option to stay and disobey its regulations or to stay and obey them according to our own will or understanding of them. The way the government structures our situation of choice raises the following question: does it have the right to restrict our choices in this way or not? If the government does have the right to restrict our choices (for example, because it has somehow achieved a position of moral sovereignty over its territory even before it obtains the consent of its citizens) or if it provides us with other good reasons to accept it, then the basis

<sup>11</sup> Simmons, 2005, p. 344

<sup>12</sup> Beran 1987, ch. 7. Revisionist version of the consent theory is held also by, for example, Simmons 1979, p. 79, 191-201 and Simmons 1984, p. 795. Revisionist stance in matters of political obligation raises two problems. First, many revisionists claim that the absence of political obligation in contemporary states does not foreordain us to anarchy because people would obey the government for other reasons, cf. Simmons 1979, ch. 8, Simmons 1987, p. 275-279, Green 1988, ch. 9. Insofar as they admit this, they recognise that political obligation makes no difference to people's actual conduct. This raises the following question: if it makes no difference, why should we be concerned at all about the absence of political obligation and, following their advice, try to reform the state so as to realise consent-based obligations to a greater extent than exists at present? The second problem is related to the criteria of success for a theory of political obligation. It is often accepted that the criterion of success for a theory of political obligation is how well it explains our deep-seated and generally shared convictions. Various empirical studies, e.g., Tyler 1990 and Klosko 2005, report that people believe to be under political obligations. If the results of these studies are correct, the revisionist has two tasks. As he argues that, at least at present, we do not have political obligations, he has to explain that such convictions are wrong and why (e.g. because of indoctrination). He also has to explain how his own revisionist theory can be the correct one, in spite of not meeting the criterion of matching existing convictions. Some of these problems are discussed in Green 1988, ch. 9, Green 1996

of this right or the independent reasons it provides could be argued to establish political obligation and political authority prior to and independently of the act of consent. In this case, consent becomes redundant as the ground of political obligation. If the government does not have the right to restrict our choices, then the choice is coerced and therefore invalid. Consequently, no authority relation and no political obligation are established.<sup>13</sup> Consent theory can avoid this troubling alternative if it allows for individual influence on the terms of political submission. This would entail allowing that the terms of political obligation be a matter of individual negotiations with the government. In section 3, I will argue that consent theory and vertical theories more generally entail this possibility. I will argue, however, that to allow for individual negotiations about the terms of political obligation is to turn the political state into a state of nature. In the end, then, consent theory is faced with a dilemma: if the situation of choice is structured by the government, consent is either invalid or redundant. If it is not structured by the state, we end up in the state of nature.

## 2. Reciprocity

I will now consider a situation in which the political bonds are established in non-voluntary ways. Individuals may become bound in this way by, for example, receiving benefits from the government and legal institutions. Receipt of benefits places them in a relation of reciprocation: they are required to repay for the benefits in an appropriately grateful fashion. Repayment, it is argued here, consists in obeying and supporting the government.

Reciprocation as a ground of political obligation has as long a history as consent theory. In Plato's *Crito*, Socrates argues for political obligation as reciprocation of benefits provided.<sup>14</sup> In contemporary political philosophy the idea of gratitude as a basis of political obligation has been briefly defended by Ewing, Ross and Plamenatz.<sup>15</sup> A version of this position is developed by Soper. According to him, provided that one recognises the need for authority and understands that those in authority try, in good faith, to exercise it in one's interest, one owes them respect. The crucial way of showing this respect is by

<sup>13</sup> cf. Horton 1992, p. 36, Wellman 2001, p. 736, Den Hartogh 2002, p. 69

<sup>14</sup> Plato, *Crito* 50d-51d.

<sup>15</sup> Ewing 1947, p. 218, Ross 1930, p. 27, Plamenatz 1968, p. 24.



obeying their instructions: “respect for those in charge is a reason for doing what these persons believe I should do: comply with the law”.<sup>16</sup>

I will focus on three problems pertaining to this approach. First, reciprocity theories, just as consent theory, are susceptible to the objection from actual political practice. Just as people do not see themselves as consenting to the government, gratitude or respect is not what most citizens actually feel toward the government.<sup>17</sup> The force of this objection, however, is weak. Just as in the case of consent theory, it can be answered by endorsing a revisionist stance in matters of political obligation. Two other objections are more serious. First, neither considerations of gratitude nor respect make clear in what sense content-independent obedience to the orders of the government should be an object of political obligation. To begin with, obligations of reciprocity leave the specification of the suitable repayment for the benefits received to the discretion of the beneficiary.<sup>18</sup> It is thus up to the citizens to decide on the most suitable repayment for the benefits provided by the government: they could decide to obey it in a content-independent way by way of repayment, but they are not obliged to do so. Furthermore, one can reasonably doubt whether following the benefactor’s orders is the only or the most suitable way to show one’s gratitude or to express one’s respect. Some other activity could be sufficient repayment.<sup>19</sup> Klosko put this point well:

“Although the provision of benefits may generate an obligation for Grey to make *some* appropriate response, it follows from the expressive nature of gratitude that it is up to him to determine exactly what this response should be. This is problematic because the state does not require just any suitable response for the protection it provides. It demands specific responses that, for example, Jones serve in the military, under conditions that it, rather than he dictates. By contrast, obligations of gratitude are like

<sup>16</sup> Soper 1987, p. 148

<sup>17</sup> Klosko 1991, p. 44-46

<sup>18</sup> Klosko 2005, p. 148

<sup>19</sup> Of course, as Becker argues, a response should be fitting and proportional to what one has received. Thus, for example, if one receives protection, one has an obligation to contribute to protection himself, Becker 1986, p. 105-24, 413-17. Still, it does not follow that one should do it in a way demanded by the government i.e., by serving in the military. Serving in the military is not necessarily the only option to contribute to protection--in the same way, returning for the benefits one receives from the police protection does not require one to join the police forces. The argument that obedience is not the only or the most suitable way to show one’s gratitude or to express one’s respect can be found in by Locke 1970 (1698), II, sec. 70, p. 332. Against the gratitude approach to political obligation this objection has been raised by Smith 1973, sec. I, Simmons 1979, p. 168-169, 185-186, Simmons 2001, p. 56-57, Green 1989a, p. 816, Klosko 1991, p. 34-37, Klosko 2005, p. 148. Against Soper, this objection has been raised by Greenawalt 1987, p. 162-163, Den Hartog 2002, p. 77.

gifts. If Smith gives Jones a gift, it is up to her (the giver) rather than him (the recipient) to decide what the gift will be”.<sup>20</sup>

Second, obligations of gratitude or respect are not a matter of correlated claim-rights. This is because it is essential that a grateful and respectful response be spontaneous. It would undermine their spontaneous nature if their performance was a requirement, capable of enforcement by the benefactor. This is how Berger articulated this point in the case of gratitude:

“While we have no hesitation in saying there is an obligation to show gratitude for help or gift, we do not feel at ease in saying that it is something owed to the grantor in the sense that he has a right to demand it. Such a demand shows the help or gift to be something less than a show of benevolence; it appears to be something done in order to gain favour, and to the extent that we feel this to be the case, the duty to show gratitude is diminished”.<sup>21</sup>

If obligations of reciprocity do not endow the benefactor with rights to claim the beneficiaries’ grateful or respectful responses, then he has no right to enforce them in case they turn ungrateful or disrespectful. The consequences for an account of political obligation are clear: if political obligation were grounded in considerations of gratitude or respect, the government would be deprived of the right to interfere with the freedom of those citizens who failed to act on their political obligations. For example, if I failed to show my gratitude to the government by spontaneously paying my taxes, the government would have no right to enforce my payment. Without a claim-right to my grateful response, the performance of my political obligation would be none of its business. Neither would it be the business of any of my fellow-citizens: the vertical scenario is silent about any normative relations between fellow-citizens that would endow them with claim-rights to one another’s actions.

The essence of the two objections outlined above is that considerations of gratitude and respect fail to account for the relation of *authority* between the government and its citizens because they fail to account for two aspects of the authority relationship: they fail to ensure the content-independent character of obedience to the government’s directives and they fail to present content-independent obedience as a matter of claim-rights. For these reasons, theories

<sup>20</sup> Klosko 2005, p. 148, see also Simmons 2001, p. 56-57, Simmons 2002, p. 34

<sup>21</sup> Berger 1975, p. 300, see also Card 1988, p. 115, 121-124

that derive political obligation from considerations of gratitude and respect fail as theories of political obligation.<sup>22</sup>

I have presented the most common problems vertical transaction theories raise as theories of political obligation. I want to argue now that even if they could be successfully rebutted, vertical transaction theories would still fail to provide a plausible approach to political obligation. My contention is that even if vertical transaction theories succeeded in establishing a relation of political *authority* to the government, the relation they would establish would not be a *political* one. In other words, if vertical transaction theories succeeded in establishing an obligation to obey the government in a content-independent way, the obligation they would establish would not be a *political* obligation. Thus, even if citizens in a suitably reformed state had consented to the government or felt gratitude or respect toward it, and their consent, gratitude or respect constituted a valid and relevant source of their obligation to obey its orders in a content-independent way, the resulting commitments, although a form of obligation, would not be *political* obligations.

### 3. The Private Fallacy

In pursuing this argument, I will presuppose that in order to account for what is *political* about political obligation one should be able to describe individuals acting on their political obligations as constituting a political society and as obeying political authority. Unless individuals acting on their political obligations constitute a political society and obey political authority, it is

<sup>22</sup> There are a number of other objections against the reciprocity approach to political obligation. As many pointed out, mere receipt of benefits regardless of the conditions under which it is accomplished is not sufficient to generate obligations of reciprocation. In particular, the benefactor should confer the benefit for appropriate reasons and at least some effort and sacrifice should be involved in his doing this, Berger 1975, p. 301, Simmons 1979, p. 170-172, Klosko 1991, p. 38-41. Yet, as Simmons observes, “any sacrifice which the government makes for me is a very small one. The expense involved in extending the benefits of government to one additional person must be negligible at best. But even if it were not, the fact remains that government services are almost always paid for by citizens through taxes (...). And certainly, very little sacrifice is involved in converting these funds into public services”, Simmons 1979, p. 189. Furthermore, the benefit must not be granted for disqualifying reasons e.g., to advance the interests of the benefactor. Again, however, “we certainly have sufficient experience, even in the best of states, of benefits being conferred as a part of a drive to solicit votes, or to advance the status of the government in international circles”, Simmons 1979, p. 189-190. Lyons raised a similar objection against Soper’s argument from respect we owe to the ruling class: “I see little if any reason to assume that those who rule (...) do so with sincere moral scruples. Experience gives good reason to suppose that the contrary is often true. Soper’s ideas about the typical intentions of those in power makes me wonder what planet he has been living on”, Lyons 1988, p. 163.

unclear what is *political* about their political obligations. Another way to formulate this requirement is to say that the concept of political obligation should be in conceptual agreement with the concepts of political society and political authority. Does the identification of political obligations with vertical commitments make it possible for vertical transaction theories to account for the concepts of political society and political authority?

The picture of political society that results from deriving political obligations from special transactions taking place between particular individuals and the government presents us with a series of special two-party relationships. Depending on the specific nature of the transaction, we are dealing here with a series of relations of gratitude or a series of acts of consent linking particular individuals to the government. Beran's version of the consent theory makes this particularly explicit. He writes: "the political authority relation between the state and its citizens (...) [is] the product of an agglomeration of unilateral acts of consent".<sup>23</sup> Note now that even if all such individual transactions commit each and every individual to the same course of action, the resulting convergence can hardly ever be taken to ground and describe any social order. In order to speak of a social order, our actions should refer to each other. Weber defined social action as that which "takes account of the behaviour of others and is thereby oriented in its course".<sup>24</sup> In contemporary social philosophy, Tuomela expressed this thought in terms of the interdependency of reasons for action: "in all kinds of social action, the participants are interdependent as to their action and thoughts".<sup>25</sup> The interdependency of reasons and actions has been emphasised by theorists so diverse as Parsons, Mead, Wittgenstein, and Winch.<sup>26</sup> In the conceptual framework of vertical transaction theories, individuals acting on their political obligations do not form a social order so understood. Instead, the most we can see is a picture of a collection of individuals all of whom are possibly acting in the same way, but doing so independently and irrespectively of one another. My act of consent or my debt of gratitude commits me to a certain course of action and your act of consent or your debt of gratitude commits you to a certain course of action. Yet even if we act in the same way, my act of consent stands in

<sup>23</sup> Beran 1987, p. 154, 155

<sup>24</sup> Weber 1947, p. 88. In another place he defined social action as "action in which the meaning intended by the agent or agents involves a relation to another person's behaviour", Weber 1978, p. 7. Social relationship exists then "when several people reciprocally adjust their behaviour to each other with respect to the meaning they give to it", Weber 1978, p. 30

<sup>25</sup> Tuomela, *Social Action*, Routledge Encyclopedia of Philosophy 1998

<sup>26</sup> Parsons 1937, Mead 1934, Wittgenstein 1953, Winch 1958

no relation to your act of consent and my debt of gratitude stands in no relation to your debt of gratitude. Each of us would still act in the same way even if the other were not there. Our reasons for action remain private and random; there is no order or common framework that describes our respective acts and there is no sense in which they refer to one another. Instead of *social* action, we have here only a coincidence of individual *private* courses of action. This brings us to a paradoxical conclusion: the picture of individuals acting on their political obligations in the vertical scenario is not a picture of any social entity and, thus, it is not a picture of a political society. But if we do not form a political society when acting on our political obligations, the concept of political obligation makes no sense. Vertical theories of political obligation are flawed. I will call the flaw of which they are guilty the Private Fallacy.

The Private Fallacy has yet another formula. I said above that, in the vertical scenario, individuals acting on their political obligations do not form political society because they do not form any social entity at all. I want to claim now that the entity they form does not differ in a significant way from the state of nature. To begin with, note that nothing in the vertical scenario prevents different individuals in the same territory from consenting to or receiving benefits from – and thus placing themselves in a relation of reciprocation to – different transaction agencies. Nor are the same individuals prevented from entering into such obligation-generating transactions with different agencies and under different conditions at the same time. The situation I am envisaging is analogical to the one analysed in Robert Nozick's *Anarchy, State and Utopia*. In *Anarchy, State and Utopia*, Nozick imagined that some of the inhabitants of a territory might join one protective agency and some might join another. As such agencies would be in the same position vis-à-vis one another as individuals would be before they joined them, the situation in which a number of protective agencies operated in the same territory would not differ in a significant way from the state of nature. Just as in the case of individuals or the alliances they can form in the state of nature, there would be no common judge to decide the conflict between them and to enforce the solution. And, thus, Nozick argued, the reasons that led people to join these organisations would also lead to fighting between these organisations.<sup>27</sup> Such violence, as many have subsequently remarked, would be worse than the Hobbesian war of all against all because the battles would be better organised.<sup>28</sup> So if a problem of the state of nature is that individuals are not able to solve their conflicting interests in

<sup>27</sup> Nozick 1974, p. 12-17

<sup>28</sup> cf. Waldron 1993, p. 22-23, Wellman 2005, p. 15-16

any way but by fighting them out individually or in alliances then the emergence of multiple transaction agencies only replicates that problem. Insofar as vertical theories allow for the possibility that individuals acting on their political obligations remain in the state of nature, they fail to describe political society and, thus, fail as theories of political obligation.

One might argue that the problem posed by the possibility of multiple transaction agencies operating in the same territory can be circumvented if we argue, *à la* Nozick, that market forces would eventually result in a single, dominant political agency taking the monopoly position, in a similar way to his account of the emergence of the ‘ultramiminal state’.<sup>29</sup> But a closer look at this response only shows that the Private Fallacy cuts deeper than we assumed so far. If the authority of the monopolistic agency we have just envisaged is founded on a series of privately set up contracts, their terms are normatively inaccessible to all but the two parties directly involved in them. An analogous situation would be your promise to pay your debts to X—if I am a third party, your promise is none of my business: I have no right to know the content of the deal between you and X, let alone to determine it, nor do I have the right to demand that you keep your promise. If the terms of our political submission are similarly private, they become problematic in the following sense. Given that our fellow-citizens cannot legitimately interfere with the terms of our political submission, the only constraints upon the terms of our political submission are set by our power and bargaining skills with respect to the political agent. This means that the terms of our political submission might come to reflect the power differences that determined our relations in the state of nature. For example, if, for whatever reason, X nourishes animosity or resentment against (some) others, he could try to use his bargaining advantage to make the terms of his political contract disadvantageous for them. X could, for example, try to persuade the political agent to let him keep his gun. X could then use it to threaten others with violence whenever they get in his way. Of course, others cannot be sure whether X will act in such a manner. But if they are not sure, the lack of assurance will give them a reason to make their terms of political submission disadvantageous for X. For example, Y could use her bargaining power to negotiate for herself a privilege of exclusive management over the stream that crosses the territory she shares with X. Y could then threaten X with diverting its course and depriving X of the water needed for his corn plantations in order to extort free corn provisions from him. If X engages in acts of violence against Y and Y engages in acts of extortion against X, they

<sup>29</sup> Nozick 1974, pt. I

are in the state of war. And if they are not sure whether the terms of political subjection the other has negotiated for himself are disadvantageous for him, they are trapped in a collective action problem called the assurance problem. Both situations are standard descriptions of the state of nature. I conclude that replacing multiple transaction agencies with one agency holding monopoly in a given territory does not carry us out of the state of nature. Rather, it encloses us within its institutionalised replica. I call it an institutionalised replica of the state of nature because the submission to the political agent on the model of vertical commitments does not change the balance of power that existed between us in the state of nature, but only reproduces and reinforces it. It reproduces it in the sense that the differences in power between us that allowed some to treat others as a means are now written into the terms of our private political contracts. It reinforces it in the sense that they are now guaranteed by our contracts and, thus, protected by the political agent. If the introduction of the monopoly condition into the vertical scenario does not carry us out of the state of nature, it fails to correct for the flaw in the vertical concept of the *political*.

I have argued that the Private Fallacy undermines the vertical concept of political obligation in that it makes it impossible to describe individuals acting on their political obligations as constituting political society. Bound by vertical commitments, individuals do not form any social entity or the entity they form does not differ in a significant way from the state of nature. The Private Fallacy also makes it difficult for vertical theories to account for the concept of political authority. We have seen, for example, that vertical theories allow for the possibility of multiple transaction agencies operating in the same territory. This means that even if they can present us with multiple relations of *authority*, an important aspect of what makes a relation of authority a *political* relation escapes them: they cannot account for political authority's monopoly to enforce obedience of all individuals inhabiting the same territory.<sup>30</sup> We saw that even the accommodation of the condition of monopoly does not prevent vertical theories from collapsing the concept of the *political*. Furthermore, not all vertical theories, as I argued earlier, can account for the concept of political *authority*. Those that can do so, cannot ensure its stability. Where the authority of the political agent is founded in a series of privately negotiated deals, its

<sup>30</sup> The claim that monopoly over the use of force is among the most important features distinguishing the state from the stateless society goes back to Hobbes and Locke. In contemporary political philosophy, this claim has been defended by Weber 1946, p. 78, Nozick 1974, p. 23-24, Green 1988, p. 79-80, Buchanan 2002, p. 689-690, Morris 2005, p. 320, 328, Klosko 2005, p. 21

subjects, as we saw above, can never be sure that the terms of the contracts negotiated with it by other individuals are not disadvantageous for them. This permanent deficit of assurance casts a constant shadow of insecurity over the validity of individual contracts, thus undermining the stability of the monopolistic position of the agency.

Is it possible to rescue the idea of vertical transactions as the ground of political obligation? As identified by the Private Fallacy, the inability of vertical transaction theories to account for what is *political* about political obligation has its source in the private character of reasons for obeying the government's directives. The question, then, is whether obligations generated in vertical transactions can be made less private?

Until now, I have assumed that the private character of the transactions in virtue of which individuals acquire political obligations means that individuals do not necessarily know the outcome of one another's negotiations with the political agent or the bargaining assets they employ to secure them. One might think that making the terms of our political obligations less private would require making them a matter of common knowledge. As I will argue below, however, transparency about the terms of political submission is not sufficient to rectify the flaws in the vertical concept of the *political*.

First of all, transparency about the terms of political submission and about the reasons for action corresponding to them does not dispose of the first problem identified by the Private Fallacy. Mere knowledge about reasons for action does not make them interdependent: we may know each other's reasons for action and still act independently and irrespectively of each other. The commonality of knowledge does not suffice then to conceive of individuals acting on their political obligations as constituting a social entity, let alone a political society. Neither does the introduction of common knowledge about the terms of political submission dispose of the second problem identified by the Private Fallacy. Namely, if our power and bargaining positions differ, common knowledge does not eliminate the impact that that inequality could have on the terms of our political contracts. It does not prevent, then, the re-establishment of the state of nature between us in a new institutionalised form. It is true that by introducing common knowledge into the vertical scenario we eliminate the opaqueness that, being the source of the assurance problem, kept us in the (institutionalised) state of nature. We saw that the fear that others might possess greater power or a bargaining advantage and use it against us when negotiating the terms of their political contracts inclined us to set up the terms of our political submission in a way that would disadvantage them. With the introduction of common knowledge, the differences in power and bargaining



positions between us become public and the assurance problem disappears. However, this does not suffice to carry us out of the (institutionalised) state of nature because while the introduction of common knowledge makes the differences in power and bargaining positions between us public, it does not eliminate them. Neither does it constrain the use some of us could make of them to set up the terms of their political submission in a way that would disadvantage others. My knowledge about your greater power and bargaining skills does not prevent you from trying to secure for yourself privileges that give you the possibility of exploiting me. In a similar way, my knowledge that the contract you have negotiated for yourself places me in a disadvantageous position does not provide me with extra bargaining assets I can deploy to renegotiate my contract with the political agent. If my bargaining power is weak there is nothing I can do to counter the disadvantages that follow for me from the contract you have negotiated for yourself. I might refuse to join the association run by the political agent but if the services it offers, limited as they are, are better than no services at all, then the refusal might disadvantage me even more. Thus, even if common knowledge eliminates the assurance problem, it is only to reveal that the fears that grounded the assurance problem were not without foundation. While under the conditions of opacity we could only fear that others might use their advantages in power and bargaining skills to set up the terms of their political submission in a way that could be exploitative of us, once the veil of mutual opacity is raised, we see that there is indeed nothing that could prevent them from doing so: we see that there are no constraints upon what particular individuals can negotiate for themselves other than those set by their normative dispositions, power or bargaining skills. The conclusion that follows is that making private formulas of political obligation a matter of common knowledge does not rectify the flaws in the vertical concept of the *political*. We cannot leave the institutionalised state of nature by simply announcing what bargaining assets we deploy in our negotiations with the political agent and how we intend to use the privileges we have gained to exploit others.<sup>31</sup>

There is another strategy one might try in order to avoid the state-of-nature properties the Private Fallacy imports into the vertical concept of the

<sup>31</sup> Both problems might be solved by introducing multilateral contracts among individuals concerning the terms of their political submission. This solution would be sufficient to ensure that our reasons for action are interdependent rather than independent. Moreover, insofar as individuals would start negotiating from a position corrected for threat advantages (for prudential or moral reasons), the danger of mutual exploitation could be eliminated. Accepting this proposal would transform the vertical character of the theories discussed here into a horizontal one.

*political*. One might argue that the position of a monopolistic transaction agency will be strong enough to offer to all its subjects, on the model of the Hobbesian sovereign, the same standard contract. By making the terms of political submission the same for everybody, the danger of privately negotiated contracts and mutual exploitation is eliminated. Further, the assurance problem that the possibility of privately negotiated contracts caused, and which undermined the stability of the authority of the monopolist, is eliminated. This qualification, however, while solving some problems with the vertical theories, creates new ones.

First, the situation in which we are presented with the choice to accept or decline the same standard contracts, is a clear-cut example of a situation in which our choices are structured by the will of a third party. In this case, the objection to consent theory raised in section 1 applies: either the sovereign presents us with antecedent reasons to restrict our choices in this way or he does not. If he does not, our choices are coerced and the contracts invalid. Or the sovereign does present us with antecedent reasons to restrict our choices—and if so, it is not the contracts that ground our political obligations, but the antecedent reasons.

Second, although each of us is offered the same contract, its observance, according to the logic of the vertical argument, is a matter between the sovereign and every individual separately. This implies that even if we are all required to comply with the same regulations, each of us is accountable to the sovereign only. None of us has any claim of right concerning another individual's compliance with the sovereign's orders. Our compliance with the sovereign's orders is due to the sovereign only. For example, if the sovereign determines the conditions of financial transactions we can enter into, we owe our compliance with those conditions to the sovereign but not to one another. Accordingly, I do not owe the repayment of my debt to my creditor but rather to the sovereign alone. My creditor does not have the right to demand that I act as I promised or contracted. Neither can he require that the sovereign execute my performance of what I promised or contracted.<sup>32</sup> This is because, as I argued above, performing what I promised or contracted is a matter of the contract I made with the sovereign and my creditor has no right to interfere with how I go

<sup>32</sup> Whether he has rights against the sovereign that he protect him against financial abuses or other harms depends on how broad protection services he has been able to negotiate for himself. It is possible that he has a right to a protection against invasions on his property but not to a protection against deceitful debtors.

about my contract with the sovereign.<sup>33</sup> If our fellow-citizens do not have rights to demand that we act as we committed ourselves to, they cannot be wronged if we fail to do so. In this scenario, then, when we break our promises or otherwise harm or mistreat others, the only party that is wronged is the sovereign. It is doubtful whether this scenario is superior to the (institutionalised) state of nature which it was supposed to remedy. For even though it disposes of the danger of mutual exploitation involved in the possibility of privately negotiated contracts,<sup>34</sup> the lack of mutual rights written into it still allows us to treat each other as a means.<sup>35</sup> One could argue that this objection is not entirely right because it only tracks the lack of civil rights and fails to notice that we could still hold natural rights against each other. The problem with this rejoinder is that we can speak of natural rights only insofar as we are clear about what natural duties prescribe in the various interactions we enter into. However, this is often unclear: what compensation, for example, does natural morality prescribe if I do not pay my debts? If we disagree about the pronouncements of our natural duties and pursue our private interpretations of their requirements, we are back in the state of nature—even though we are subjected to the same sovereign and under the same conditions.

I will now summarise the results of this section. I have argued that vertical transaction theories, by conceiving of political obligation in terms of private reasons to obey the government, are guilty of what I called the Private Fallacy. Namely, they cannot conceive of individuals acting on their political obligations as forming a political society. The problem manifests itself in two ways. Individuals acting on their political obligations do not constitute a political society because they do not form any social entity at all or the entity they form does not differ from the state of nature. I have considered two attempts to evade the Private Fallacy: first, by introducing common knowledge about the terms of individual political contracts; and second, by making the terms of individual political contracts identical. I argued that neither of these corrects for the flaws in the vertical concept of the *political*. Below, I will

<sup>33</sup> The possibility of third parties' claim-rights is a matter of debate. See Lyons 1969, Hart 1982, ch. 7, McCormick 1982, ch. 8

<sup>34</sup> Even if the danger of mutual exploitation is eliminated, the danger of exploitation may come from another direction. The strong position of the monopolist and his power to prevent rival agencies from organising and offering alternative contract proposals eliminates any external constraint on the content of the standard deals he offers. This could allow him to offer standard contracts that are exploitative to all, cf. Klosko 2005, p. 32-33.

<sup>35</sup> The situation described here is one of the variants of Feinberg's Nowheresville—an imaginary world the inhabitants of which possess no rights against one another. What is wrong with Nowheresville, Feinberg argues, is that the lack of mutual rights makes it impossible for us to respect the dignity each of us possesses as a human being, Feinberg 1980, p. 151, 155

consider one more proposal for dealing with the flaws in the vertical concept of the *political*. It is a proposal that underlies Leslie Green's revision of the classic consent theory.

#### **4. Social-Role-Bound Consent: a Vertical Transaction Theory Reconsidered**

The concession that consent theory's picture of political life is defective lies at the foundation of Green's attempt to revise consent theory. Green recognises that a proper description of political life has to refer to forms of association other than the arrangements particular individuals enter into with the government. He writes:

"the consent theorist often does tend to overestimate the role of the will at the expense of communal traditions in establishing those moral relations that are constitutive of political life".<sup>36</sup>

According to Green, by conceiving of political obligation exclusively in terms of individual arrangements, classic consent theory overlooks a social dimension inherent to it: "it is wrong to think of our most important duties as being consequences only of our own wills; this is to drain them of the social dimension which explains their form and content".<sup>37</sup>

Green's aim is to re-construct consent theory in such a way that it could incorporate the "social" dimension of our political obligations while upholding individual consent as their ground. His revision of consent theory proceeds in two steps. First, he introduces what he considers to be a missing social dimension in classic consent theory: a social role or the practice of citizenship. He claims that one cannot act as a citizen other than in accordance with the specifications of this social practice. In the same way, he says, one cannot conceive of oneself as a spouse other than in terms of the rights and duties constitutive of the social institution of marriage.<sup>38</sup> In the second step, Green ensures that the act of consent acquires its place in this picture. He argues that although the form and content of political obligation is determined by the social practice of citizenship, it remains a matter of individual choice whether to become obligated in this way or not. Similarly, although the content of the

<sup>36</sup> Green 1988, p. 201

<sup>37</sup> Green 1988, p. 205

<sup>38</sup> Green 1988, p. 204-205

rights and duties constitutive of the social institution of marriage is external to one's will, one can marry only by one's own consent.<sup>39</sup> These arguments lead Green to a theory of "role bound consent" which he describes as a "socialised extension of consent theory".<sup>40</sup> He writes:

"on this view, the obligations of the members will be defined socially, through the practice of membership in their society, while the obligation to be a member will remain an individual one".<sup>41</sup>

Green's socialised version of consent theory seems to rectify the Private Fallacy in classic consent theory and in other attempts to derive political obligation from vertical transactions with the government. The first problem identified by the Private Fallacy was that vertical theories cannot conceive of individuals acting on their political obligations as constituting a political society because they cannot conceive of individuals so acting as constituting any social entity. By conceiving of political obligation as an obligation attached to a social role, Green appears to rectify this defect. The concept of a social role, as sociologists put it, "operates in that strategic area where individual behaviour becomes social conduct", it "provides a 'bridge' between individual and society".<sup>42</sup> As social role theory emphasises, in taking a particular role every individual positions himself not only in relation to a particular addressee of the role-specified action, but also to all participants in the relevant social practice.<sup>43</sup> Thus, insofar as political obligation is attached to a social role of citizenship, an individual acting upon it finds himself placed in a wider network of relations, besides the relation to the political agent. More importantly, along with the

<sup>39</sup> Green 1988, p. 204. This argument forestalls the idea that role-obligations form the involuntary baggage human agency retains from the process of its social constitution *viz.* that individuals have political obligations just in virtue of being born into social practices in which these obligations are embedded. We have encountered claims of this sort in the conceptual argument in Chapter 1 and we will find them back in the communitarian accounts of political obligation in Chapter 4. Green denies that such claims can plausibly be held about the practice of citizenship. Even if we grant that conditions of the constitution of human agency are social, he argues, it would be implausible to claim that they are also political; no sound concept of human identity can include submission to political authority as its constitutive feature. Thus, even if some forms of association are necessary for the constitution of human agency, citizenship and the obligations attached to it are not among them. One can always distance oneself from it and make it an object of evaluation and choice, see Green 1989, p. 113, Green 1988, p. 195.

<sup>40</sup> Green 1988, p. 219 and Green 1988, p. 205

<sup>41</sup> Green 1989, p. 111, see also Green 1988, p. 205-206, 244.

<sup>42</sup> Nadel 1957, p. 20 and Loudfoot 1972, p. 134 respectively. See also Heading/Hollis 1972, p. 43; Biddle 1979, p. 84-85.

<sup>43</sup> cf. Downie 1971, ch. 6.

long-standing sociological tradition, Green describes the relation between the occupant of the social role and the relevant reference group in terms of a pattern of expectations: “I use the term ‘role’ in the sociological sense to mean a fairly stable cluster of deontic expectations which receive social recognition”.<sup>44</sup> To say in this conceptual framework that a social role provides a guide for action is not to say that individuals take it as such independently of how others approach it. Rather, it is to say that it could have become a guide for action for a given individual only because it has been recognised as such by others in the first place.<sup>45</sup> This means that, when acting on his political obligation, every individual orientates his actions by reference to the expectations of others who, in their turn, do the same. Insofar as this is the case, their acts of obedience and the reasons that motivate them are, at least partly, interdependent; they do not form a contingent regularity, but are interlocked in a common pattern. This suggests that the employment of the concept of the social role of citizenship could allow Green to conceive of a political society within the consent theory framework.

Green’s socialised version of consent theory seems also to dispose of the second problem identified by the Private Fallacy. When explaining the nature of this problem, I argued that the private character of political contracts corrupted the *political* with a set of state-of-nature properties. In particular, the private character of political contracts left individuals without assurance that the terms of political obligation others would negotiate for themselves would not institutionalise their power advantage over others, thereby re-introducing the state of nature relations between them. The concept of the social role of citizenship ensures that the terms of political submission are not an issue to be decided in private negotiations between particular individuals and the political agent: “roles are social and not individual creations”.<sup>46</sup> As they are determined beforehand and in the same way for all, the assurance problem and the danger of mutual exploitation are both avoided.

If Green’s revision of the consent theory really does avoid the flaws of the vertical concept of the *political*, my dismissal of vertical theories might have been too hasty. There might be a way to establish a political society out of a series of individual acts of commitment to the government after all. I will now refute this conclusion. I will argue that Green’s account of the social role of citizenship undermines the very social nature of this role. If correct, this

<sup>44</sup> Green 1989, p. 818. Compare Biddle 1979, ch.5.

<sup>45</sup> cf. Biddle, 1979, p. 209-210

<sup>46</sup> Green 1989, p. 819

argument puts in doubt whether Green's account avoids the Private Fallacy that undermined the vertical theories discussed in the previous sections.

It is first necessary to recall Green's definition of the social role of citizenship. He defines it as a pre-existing, socially constituted set of rights and obligations that cohere into a social convention. He claims that political obligation is a constitutive element of this set.<sup>47</sup> Political obligation, as Green emphasises, differs from mere compliance with the commands of the political agent. One may comply out of habit, self-interest, fear, or the conviction that what the government requires is, on independent grounds, morally best. One acts on one's political obligation only if one obeys for the reason that one's obedience is required. Only this way of obeying commands ensures that they be taken as content-independent reasons for action and secures their authoritative character.<sup>48</sup> The problem I have with Green's concept of the social role of citizenship can be put in the form of the following question: what happens to the social character of the role of citizenship if the commands issued clash with the entrenched cluster of rights and obligations that constitute the social role of citizenship?

Given that the political obligation inherent in the social role of citizenship requires citizens to obey the commands issued in a content-independent way, then, once the commands of the political agent override the cluster of rights and obligations that are constitutive of the social role of citizenship, the occupants of it will replace its established content with the content of the commands. Unless we can identify an element in the social role of citizenship that is resistant to arbitrary changes, it is now the will of the political agent that determines the terms of citizenship. If the commands of the political agent have the power to override the action-guiding force of the social practice, it would be wrong to say that in obeying them individuals still act on the social role of citizenship. Instead, they act on the momentary will of the political agent. This re-activates the first problem identified by the Private Fallacy. If individuals do not act on the social role, but respond directly to the top-down orders of the political agent, the relations between them and the political agent are no less vertical than in classic vertical theories.<sup>49</sup> Moreover, by issuing a command to this effect, the political agent could make individuals

<sup>47</sup> Green 1988, p. 204-205; 206, 220

<sup>48</sup> Green 1988, p. 86-87, ch. 2, 3 and 8

<sup>49</sup> Note that the argument is not about the moral quality of the commands of the political agent but about the way acting on them changes our reasons for action and our normative relations. The commands could be just, but Green's revision of consent theory would still fall prey to the Private Fallacy.

obey his orders independently and irrespectively of whether others do so. Without reference to each other when obeying the political agent's orders, individuals acting on their political obligation cannot be considered as co-participants in a social practice. Again, when acting on their political obligations, individuals do not form any social entity, let alone a political society.

Note also that once the requirements of the social role of citizenship are identical with the expressions of the political agent's will, not only can the content of the role be changed from one moment to another (depending upon what sets of orders are currently being issued), but it can vary from one individual to another, as there is nothing that can prevent the political agent from formulating different sets of orders for different individuals. This amounts to the re-introduction of private terms of political submission. Depending on how the political agent determines the terms of political submission of each of his subjects (e.g., whether and how much power he gives you over me), his commands might institutionalise a situation in which individuals exploit each other. This collapses the *political* into a state of nature and re-introduces the second problem identified by the Private Fallacy.

Both problems could be avoided if it were possible to find an element in Green's concept of the social role of citizenship that remains insensitive to the overriding force of the commands of the political agent. The most obvious candidate would be the purpose that obedience is to serve. Green claims that an act of consent to the social role of citizenship creates an inherently valuable relationship between consenting individuals: "consenting to obey (...) instantiates a form of association which may be regarded as a shared good".<sup>50</sup> He calls this good civic friendship. The proposal is thus to see civic friendship as a limiting condition on the validity of commands: their interference with civic friendship among citizens renders them invalid. However, quite apart from the fact that Green does not employ the concept of civic friendship as a constraint on the validity of commands, there are other problems with this proposal. As he defines it, civic friendship resides in the equality that the status of citizenship establishes among individuals that may be unequal in all other respects.<sup>51</sup> But, given that Green defines the status of citizenship in terms of political obligation and, thus, in terms of content-independent obedience,<sup>52</sup> the equality that the valuable relation of civic friendship consists in is the equality

<sup>50</sup> Green 1988, p. 208, 1989a, p. 110

<sup>51</sup> Green 1989, p. 819, 1989a, p. 110

<sup>52</sup> "the status of citizenship is in part constituted by our political obligations and to assume it is to assume them (...) as an element of an inherently valuable relationship", Green 1988, p. 210



of content-independent obedience. One may wonder here why the valuable relation of equality should be defined in terms of equality of content-independent submission to another's commands. However, the more important point is this: if civic friendship itself is defined in terms of content-independent obedience to the political agent then it cannot function as a constraint on the validity of his commands. For no command of the political agent can ever endanger civic friendship so understood: even if we obey the commands that order us to act in different, possibly mutually exploitative ways, then insofar as we obey them in equally content-independent and exclusionary ways, civic friendship between us is still preserved. Given that civic friendship cannot serve as a constraint that would protect the social role of citizenship against the possible de-socialising effects of political commands and that Green provides no other clues about what such a constraint could consist in, his concept of the social role of citizenship is subject to the criticism I have raised above. Consequently, his modified version of consent theory does not escape the Private Fallacy because it makes the *political* realm as vertically fragmented as in classic vertical theories. Before closing my discussion, I wish to point out that even if we found a constraint against the possible de-socialising effects of the commands of the political agent – for example, a richer description of the moral relation between citizens – Green's account of political obligation would still fall prey to the objection I raised against classic consent theories in section 1. When considering whether or not to consent to the social role of citizenship, our situation of choice is restricted and structured in advance. Either there are reasons to restrict our choices in this way or there are not. If there are not, our choices are coerced and the acts of consent invalid. If there are reasons to have our choices restricted in this way, it is not our acts of consent that carry our political obligations, but those antecedent reasons.

I will now summarise the argument I have made in this chapter. I have argued that vertical transaction theories of political obligation are guilty of the Private Fallacy. By conceiving of reasons to obey as private ones, they are unable to account for the concept of political society and political authority. If individuals acting on their political obligations do not constitute political society and do not obey political authority, it becomes unclear what is *political* about political obligation. I have considered three attempts to correct for the flaws in the vertical concept of the *political*. None of them succeeded in resisting the problems identified by the Private Fallacy.

## Linguistic practice

Instead of pointing to individual commitments when explicating the normative force of the obligation to obey the government, the argument I will discuss in this chapter points to ordinary linguistic practice and to how it determines the meaning of this obligation for individuals—language users.

The proponents of this argument endorse Wittgenstein's argument that language is a human institution embedded in a distinctive form of life. In learning the language, one is initiated into a certain human practice and learns the rules for the use of the concepts that govern it. In this spirit, Pitkin says that the meaning of a promise can be elucidated only by attending to its use: "promising is a social practice, something we *do*, something children have to learn *how to do*".<sup>1</sup> The same counts for the concept of political obligation: when learning what the concept of political obligation means, one learns what one does when using it. The proponents of the linguistic approach to political obligation argue that the particular practice into which one is initiated when learning the rules for the use of the concept of political obligation is the practice of political society. McPherson says:

"the point is that we do live in society, however we may suppose this to have come about. Belonging in society involves acceptance of rules and it involves rights and obligations. (...). We have not understood what it means to be a member of political society if we suppose that political obligation is something we might not have had".<sup>2</sup>

According to the proponents of the linguistic approach, terms like 'political obligation', 'authority', 'law' and 'government', as they are used in the

<sup>1</sup> Pitkin 1973 (1966), p. 212. Emphasis in the original.

<sup>2</sup> McPherson 1967, p. 64

linguistic practice governing the practice of political society, are not used in order to make true or false statements but in order to undertake an action or to change relationships between people. The same holds for the concept of a 'promise' in the social practice of promising. The peculiar character of these words derives from the fact that the rules governing their use belong to the class of constitutive rules.<sup>3</sup> The major characteristic of such rules is, in Searle's words, the fact that "[they] do not merely regulate but create or define new forms of behaviour".<sup>4</sup> In the case of promises, Rawls explained it in the following way:

"promising is an action defined by a public system of rules. These rules are (...) a set of constitutive conventions. Just as the rules of game do, they specify certain activities and define certain actions. In the case of promising, the basic rule is that governing the use of the words 'I promise to do X'. It reads roughly as follows: if one says the words 'I promise to do X' (...), one is to do X".<sup>5</sup>

According to the proponents of the linguistic approach, what we learn about the concept of political obligation when we are initiated into the practice of political society is that by using it, we place ourselves in a relation of (content-independent) obedience to authority, law and government. Correspondingly, we learn that calling X the authority or law or government counts as putting oneself under the obligation to obey it (in a content-independent way). This leads them to argue that political obligation is conceptually implied in the concepts of 'political authority', 'law' and 'government', as they are used in ordinary language. Or, as Pitkin put it, admitting a Wittgensteinian inspiration for this argument, it is related to them as a "point of grammar".<sup>6</sup> Here is a representative statement of the linguistic argument:

"[to the question] 'why does a legitimate government, a valid law, a genuine authority ever obligate me to obey?' (...) we may say that this is what 'legitimate government', 'valid law', 'genuine authority' *mean*. It is part of the concept, the meaning of 'authority' that those subject to it are required to obey, that it has a right to command. It is part of the concept, the meaning of 'law' that those to whom it is applicable are obligated to obey it. As with promises, so with authority, government and law: there is a *prima facie*

<sup>3</sup> In her discussion of constitutive rules, Pitkin refers to Austin 1961 and Rawls 1955.

<sup>4</sup> Searle 1970, p. 33

<sup>5</sup> Rawls 1971, p. 344. This point was also argued by Searle 1970, ch. 2.5, ch. 3.1.

<sup>6</sup> The reference to Wittgenstein's *Philosophical Investigations* is mentioned by Pitkin 1973 (1966), p. 202

obligation involved in each (...). ‘Authority’, ‘law’ and ‘government’ are grammatically, conceptually related to obligation, as is ‘promise’”.<sup>7</sup>

Given the conceptual link it posits between the concept of political obligation and the concepts of political authority, law and government, the linguistic argument has come to be known as the conceptual argument in the literature on political obligation. I will remain faithful to the established terminology in the remainder of this chapter.

The conceptual argument is not held in high esteem in the literature on political obligation. Critics usually spend but a few pages revealing its implausibility.<sup>8</sup> Although my discussion of the conceptual argument will be similarly short and I will agree with most of the points typically raised against it, I will argue that the conceptual argument contains an important insight as to how we might avoid the flaws we found in vertical transaction theories discussed in the previous chapter. As a matter of fact, the conceptual argument has often been presented as an alternative to vertical theories of political obligation. According to the proponents of the conceptual argument, vertical or, as they call them, “individualistic” theories provide a flawed picture of political society.<sup>9</sup> By looking for reasons for obedience in political histories of particular citizens, “individualistic” theories cannot exclude that in some cases no such reasons and consequently no political obligations could be found.<sup>10</sup> With political obligation as a contingent factor, “individualistic” theories “encourage the view that social arrangements (...) can be altered and even ended at individuals’ will and pleasure”.<sup>11</sup> As its proponents claim, the conceptual argument rectifies this defect. By locating the source of reasons for obedience in the semantics of the terms, i.e., in the logic of the concepts expressed by these terms, it assures that every individual language user is under a political obligation. By saying that the particular form of life or human practice is the limit to how the linguistic concepts constituting it can be understood, it ensures that the terms of political obligation cannot be altered at the individual’s will: just as there is no logical space for individual negotiations about the

<sup>7</sup> Pitkin 1973 (1966), p. 214, 215. Other formulation of this argument can be found in McPherson 1967, p. 59-60, 64 and Macdonald 1952.

<sup>8</sup> Simmons 1979, p. 38-43, Pateman 1979, p. 27-30, 104, Flathman 1972, p. 100-106, 111-112, Green 1988, p. 193-195, Horton 1992, p. 137-145

<sup>9</sup> Their critique focuses on the accounts that made contract, consent or receipt of benefits the ground of political obligation. Cf. Macdonald 1952, p. 172-173; McPherson 1967, ch. 5; Pitkin 1973 (1966), p. 211.

<sup>10</sup> cf. McPherson 1967, p. 64

<sup>11</sup> Macdonald 1952, p. 172-173

constitutive rules of the game of chess, there is no logical space for individual negotiations about the constitutive rule of the practice of political society i.e., political obligation.

In my view, what really makes the conceptual argument superior to vertical theories is a suggestion it contains as to how political obligation could be understood without committing the Private Fallacy that disqualified vertical transaction theories. Recall that vertical theories derive political obligation from special transactions taking place between particular individuals and the government. I said that this model of the political domain was defective because the private character of political obligations so acquired made it impossible to conceive of individuals acting on their political obligations as constituting a political society or, for that matter, any social entity. The proponents of the conceptual argument raise a similar point against “individualistic” theories. They claim that where political obligation is a contingent factor related to political histories of particular individuals only, it is unclear how particular members of the same political society are related to one another: “ties to other individuals seem mysterious or illusory”.<sup>12</sup> The conceptual argument overcomes this flaw. By conceiving of political obligation as grounded in the linguistic practice that is embedded in and constitutive of the practice of political society, it implies that the linguistic rules are the rules of a social practice. Accordingly, it implies that individuals acting on their political obligations are participants in the same social practice. However, saying that the rules of political obligation are the rules of a social practice does not in itself prove the superiority of the conceptual argument over “individualistic” theories because the acts of consent in which “individualistic” theories ground political obligation also presuppose a social practice, namely, a practice of promising or consenting. If the conceptual argument is to be superior to “individualistic” theories as its proponents claim it to be, it must be because the particular social practice in which it anchors political obligation i.e., the practice of political society establishes ties between individuals where the rules of the practice of promising or consenting made them “mysterious and illusory”. Given that the rules of the practice of promising or consenting establish only bilateral claim-relations between individuals who are direct parties to a given promise or a contract, the less “mysterious and illusory” ties between individuals that the practice of political society establishes must be multilateral claim-relations between individuals acting on their political obligations. By saying that both the content and the observance of political

<sup>12</sup> Pitkin 1973 (1966), p. 211

obligation is a matter of social rules so understood, the conceptual argument makes political obligation less private than vertical transaction theories. It offers a way out of the ‘private obligation’ fallacy that undercut the vertical concept of the *political*. This is, in my view, the greatest contribution of the conceptual argument to the debate on the nature of the political obligation.<sup>13</sup>

I have agreed with the proponents of the conceptual argument that by deriving political obligation from the linguistic practice embedded in and constitutive of the practice of political society, they are able to avoid the defects of vertical transaction theories. I said, in particular, that their argument is an interesting proposal as to how political obligation could be understood without committing the Private Fallacy that disqualified vertical transaction theories. Interesting as it is, however, the insight that political obligation is a matter of a social practice has not received its proper elaboration in the linguistic-conceptual framework. The way the conceptual argument analyses the normative force of linguistic or social practice makes it unattractive as an argument for political obligation. According to the conceptual argument, any inquiry into the normative force of linguistic concepts is exhaustively answered by pointing to the meaning that the social practice attaches to them. To rephrase Pitkin’s argument about the normative force of promises for the case of political obligation: “there is no (...) answer to the question ‘why does a political obligation ever oblige?’ beyond calling attention to the meaning of the words”.<sup>14</sup> To search beyond the meaning or beyond the practice of use of this concept would be to ask “why ought we to do what we ought to do?”.<sup>15</sup> If we accept this position, however, we accept that the mere existence of the linguistic or social practice *viz.* the practice of political society is a reason to comply with its rules. As Warnock argued, this account of the normative force of rules is inadequate:

“the mere *existence* of a rule does not by itself provide a reason why it should be complied with; it must be possible to point to *some* objection to non-compliance, other

<sup>13</sup> This means that the Wittgensteinian inspiration for the conceptual argument is limited. By saying that individuals acting on the linguistic rules governing the concept of political obligation act on social rules as presented above, the proponents of the conceptual argument imply that linguistic rules are social rules that establish multilateral claim-relations between individuals acting on them. If they remained faithful to the Wittgensteinian inspiration, this equivalence between linguistic rules and social rules could not hold. As follows from Wittgenstein’s private language argument, language and concept formation require merely public rather than social rules or, in other words, they require rules that are identifiable or intelligible to all rather than shareable, see e.g. Van Willigenburg 2002, p. 174 against Korsgaard 1996, p. 136-139.

<sup>14</sup> Pitkin 1973 (1966), p. 212

<sup>15</sup> McPherson 1967, p. 59-60, 64

than simply that it is non-compliance, if we are not to regard rules themselves with a kind of idolatry. (...). Behind any rules must be reason for their existence”.<sup>16</sup>

Moreover, this account of the normative force of linguistic or social rules equips the conceptual idea of political obligation with some disquieting features. In making the mere existence of a linguistic or social practice the reason to comply with its rules, the conceptual argument makes our obedience to just any rule a matter of course—it does not offer space to inquire either as to whether these specific rules or, for that matter, whether any rules at all, are desirable in this particular situation. Even in the case of constitutive rules, where the application of the rules itself constitutes the reason for acting (as it is only by acting in the manner that the rules specify that one can (properly) engage in the activity they create and define), we would still like to know whether the practice they specify is desirable after all.<sup>17</sup> Just as when playing chess we are still able to ask ‘why play this game, after all?’, in the political context we should be able to ask ‘why have a linguistic practice such that ‘if an X is referred to as ‘political authority’ then the X should be obeyed’, after all?’.<sup>18</sup> Not being able to point to the reasons explaining why it is desirable that these words be used in this rather than another way, we are not able to evaluate their use in particular situations as correct or abusive. This worry inspires the criticism to the effect that the conceptual argument allows morally objectionable actions to be carried out under the name of political obligation. Flathman says:

“the fact that words have a certain established use is in itself hardly a reason for acting in a manner that affects other people. If instead of saying ‘That was what I was ordered to do’ Eichmann had said ‘That is what the words ‘authoritative command’ mean’ he would hardly have added to the strength of his case. (...). To show that an action is consistent with semantic rules is not to show that the action is justified”.<sup>19</sup>

The insensitivity of the conceptual argument to the ‘corrupted speech’ problem has other embarrassing results. In the *Introduction*, I described the

<sup>16</sup> Warnock 1971, p. 41; 51. This point was employed in Flathman’s criticism of the conceptual argument: “if the fact that ‘This is a law’ means ‘There is an obligation to obey it’ is to count as a reason for obeying the law it must be shown that it is desirable that society have arrangements that include laws and the rule that people have an obligation to obey them”, Flathman 1972, p. 106

<sup>17</sup> cf. Warnock 1971, p. 41; Den Hartogh 1985, p. 46-47

<sup>18</sup> cf. Green: “suppose there were some term whose use was universally recognised as implying that one was obliged to obey; could we not then just refuse to play that language game, everything else remaining the same?”, Green 1988, p. 195

<sup>19</sup> Flathman 1972, p. 105; 113

attitude of resistance to the communist authorities in Poland in the 1980s. Now, if the grammar of language does not allow us to conceive of ‘political authority’ without claiming at the same time that it should be obeyed, then this attitude must be perplexing. We cannot explain it as a reaction of the linguistic community to an abuse of the term ‘political authority’ because we have no tools to discriminate between correct and abusive uses of the language. In this situation, the only way in which the conceptual argument can explain the resistant attitude is to classify it as a case of linguistic incompetence. However, to say that disobedience of oppressed subjects to an oppressive government is a sign of their inability to understand the concept of ‘government’ is not to explicate the problem but rather to explain it away. Simmons makes a similar point when he says:

“were the conceptual argument sound, we would not be able even to understand the claims of rebels and anarchists who deny their obligations. It would be as if they were claiming that a triangle need not be supposed to have three sides. But that the claims of rebels and anarchists are at least meaningful (i.e., not self-contradictory) seems plain. At the very least, we can understand them to be saying that they deny their membership in the political society that claims them as citizens”.<sup>20</sup>

There is one more problem to which the defective account of the normative force of the linguistic or social rules gives rise. By making the mere existence of a social practice the reason to comply with the rules of the practice, the conceptual argument renders the normative force of rules indistinguishable from that which natural facts exercise upon us. In this spirit, Pateman remarked that the conceptual argument approaches political obligation as if it was a “fact about the world”.<sup>21</sup> In this light, our compliance with political obligation appears as yielding to a natural necessity rather than as participating in a social practice. This raises doubts as to whether the Private Fallacy pertaining to vertical transaction theories has been overcome after all.

Both problems with the conceptual account of political obligation could be prevented if the explanation of the normative force of the relevant linguistic or social practice *viz.* the practice of political society did not refer to the mere fact of its existence but rather to some reasons justifying its acceptance. Insofar as the conceptual argument conceives of linguistic rules as social rules, its logic allows for this possibility. Social rules typically relate to the point of the

<sup>20</sup> Simmons 1996, p. 254

<sup>21</sup> Pateman 1973, p. 215



interaction they sustain.<sup>22</sup> The reference to reasons justifying the use of particular concepts and, thus, the meanings of particular linguistic expressions would enable us to evaluate whether particular objects can count as their correct designates. In this way the reference to reasons justifying the rules governing the use of the concept of political authority would disclose the criteria that would allow us to evaluate whether a particular X can count as the correct reference of the concept of political authority. We would then be able to distinguish between correct and incorrect uses of this concept. Moreover, in explaining the normative force of linguistic or social rules in terms of the point of the interaction they sustain, we would anchor it in the reasons that the interacting individuals act upon. Thus, in explaining political obligation in terms of the point of the social practice of authority, we would anchor it in the reasons that the individuals participating in this practice act upon. Political obligation would appear not as an externally imposed necessity but as a phenomenon upheld by the dynamics of social interaction. In this way, the social formula of political obligation that made the conceptual argument superior to “individualistic” theories would be saved. This way of rectifying the conceptual argument, however, would undermine it in another way. By pointing to the considerations that justify the existence of the social or linguistic practice concerning the use of the term ‘political authority’, we explain why we want to have agencies to which we are bound in the way this concept implies. Thereby, we point to a ground of political obligation that is prior to and independent from the reasons provided by the grammar of the language. The reference to linguistic rules as a source of political obligation becomes redundant.

I conclude that the conceptual argument fails. Its failure, however, should not make us blind to the fact that it contains an interesting proposal as to how political obligation could be understood without committing the Private Fallacy that disqualified vertical transaction theories. Where vertical transaction theories used a model of a direct relationship between each and every individual and the government to ground political obligation, the conceptual argument introduced an additional element into the picture of the relation between the individuals and the government. It made individuals conform to a common rule when complying with the government’s instructions. It remains to be seen whether this intuition can be given a more plausible form.

<sup>22</sup> Den Hartogh 2002, p. 1

# 3

## Natural Duties

The theories I will discuss in this chapter ground political obligation in our general duties to promote certain universal moral values. Utilitarian accounts of political obligation, defended by Hare and Sartorius, derive political obligation from the duty to promote the value of welfare or happiness.<sup>1</sup> In deriving political obligation from the duty to protect the vulnerable, Goodin appeals to the value of well-being.<sup>2</sup> The value of well-being is also the ultimate justification of political obligation in Honoré's and Wellman's accounts who derive political obligation from, respectively, the duty to meet urgent human needs<sup>3</sup> and the principle of samaritanism.<sup>4</sup> Finally, justice is central to Waldron's argument from the natural duty of justice, which has its inspiration in Kant and Rawls.<sup>5</sup> Values like welfare, happiness, well-being or justice engage us in our condition simply as persons and prior to and independently of any (institutional) relationship we could possibly enter with each other. For this reason, the duties they create for us are seen as our natural duties. Accordingly, the accounts that derive political obligations from the duties to promote these values are referred to as natural duty theories.<sup>6</sup>

According to natural duty theories, obedience to the government is a matter of obligation because it is instrumental to the discharge of our natural

<sup>1</sup> Hare 1976, Sartorius 1975, ch. 6

<sup>2</sup> Goodin 1988

<sup>3</sup> Honoré 1981

<sup>4</sup> Wellman 2001, 2005

<sup>5</sup> Waldron 1993

<sup>6</sup> Presumably, utilitarians and Goodin would prefer to speak in terms of general moral requirements rather than natural duties. For the purposes of my discussion, the difference is merely nominal. Also Simmons 2002, 2003, p. 61, 2005 and Wellman 2005, p. 98-99 include these accounts into the class of natural duties.

duties. The argument takes one of two forms, depending on how it conceives of the instrumentality of the government. According to its first variant, the government provides a framework within which we can pursue our natural duties most efficiently. According to its second variant, the government provides the only possible and, thus, necessary framework within which we can pursue them. I will refer to these arguments as the Optimisation Argument and the Necessity Argument respectively.

My discussion of the natural duty accounts of political obligation proceeds in three steps. First, I will present the Optimisation and the Necessity Arguments in some detail. Second, I will ask whether these arguments succeed in establishing obedience to the government as an *obligation* to take its commands in a content-independent way. Third, I will ask whether the obligation to obey they claim to have established is a *political* one. In doing so, I will ask how successful natural duty theories are in accounting for what makes a relation of political authority a relation of *authority* and for what makes it a *political* relation.

## 1. The Optimisation Argument

According to the Optimisation Argument, the right way to fulfil our natural duties is to maximise the value those duties are meant to realise. This assumption supports Goodin's account of political obligation. He writes:

“Our general duties toward people are sometimes *more effectively* discharged by assigning special responsibility for that matter to some particular agents. When that is the case, then that clearly is what *should* be done”.<sup>7</sup>

From this perspective, to help our next door neighbour in dire need is not enough to meet the requirements of our natural duty to help the needy; rather, we should strive to help as many needy persons as possible. Similarly, the right way to discharge our natural duties to protect the vulnerable, feed the hungry, provide a shelter to the homeless, care for the ill or promote the happiness of the unhappy is to maximise the number of the vulnerable that are protected, to maximise the number of the hungry that are fed, etc.

The optimising approach to value promotion is also inherent in the utilitarian accounts of political obligation. The principle of utility is a maximising principle enjoining its adherents to maximise in the world

<sup>7</sup> Goodin 1988, p. 683. Emphasis added.

whatever their standard of goodness has identified as intrinsically good.<sup>8</sup> Accordingly, the principle of utility requires obedience to the government whenever obedience results in better consequences than any alternative course of action: “whatever is understood by political obligation, if it is to be utilitarianly justified, must be shown to be *maximally* beneficial”.<sup>9</sup>

According to the Optimisation Argument, the state provides an institutional framework in which we acquire more or better opportunities to perform our natural duties or in which our duty performances are maximised or rendered sufficiently large. Thus, Goodin claims that in the case of our duty to protect the vulnerable, the institutional framework of the state guarantees that the needy are either optimally aided or that the number of the needy we reach when acting upon the duty is maximised. Obedience to the government is, then, the way to go about discharging our natural duties. Goodin argues as follows:

“States are assigned special responsibility for protecting and promoting the interests of those who are their citizens. (...). [These] special responsibilities are (...) assigned merely as an administrative device for discharging our general duties *more efficiently*. (...). It is perfectly proper that in discharging that responsibility the state should compel its citizens to comply with various schemes that require occasional sacrifices so that all may prosper”.<sup>10</sup>

## 2. The Necessity Argument

According to the Necessity Argument, the state provides the only possible framework in which we can pursue certain values and so discharge our natural duties. If we did not have the state (or, perhaps, if we did not invent it, had it not been there), we would be unable to do what our natural duties require of us. The necessity variant of the natural duty argument is employed by Waldron. Waldron constructs his version of the natural duty account of political obligation along the lines of Kantian political philosophy. Its organising moral principle requires that we recognize each other as moral subjects and deal with each other on that basis. Following Kant, Waldron argues that if we live side-by-side without an institutional enforcement of justice, we disagree about what justice requires. This disagreement makes us resort to force to pursue our competing opinions. In threatening each other with violence, we wrong each

<sup>8</sup> Frey 1987, p. 532

<sup>9</sup> Horton 1992, p. 62. Emphasis added.

<sup>10</sup> Goodin 1988, p. 685. Emphasis added.

other and violate each other's rights. Justice requires that we do not treat each other in this way. Rather, it requires that we create and obey the legal and political institutions charged with doing justice in our societies. It is the only way for us to confront each other as right-bearers and not as predators:

“The pursuit of justice in an institutional vacuum leads to conflict among persons who have different views about what justice requires. (...). The setting up of political institutions (...) is the way to avoid and mitigate the disagreements and conflicts that will otherwise inevitably arise even among people attempting in good faith to follow the dictates of justice”.<sup>11</sup>

The Necessity Argument is also employed by Wellman. Wellman derives political obligation from our natural samaritan duty to rescue others from perilous circumstances. The perils we are duty-bound to prevent concern the lawlessness of the state of nature. Violations of rights and lack of security, which prevent us from pursuing rewarding lives, are the most prominent evils of this predicament. As compared to Waldron, Wellman conceives of the object of our natural duties in teleological rather than deontological terms. The samaritan duties to rescue others from the evils of lawlessness in the state of nature do not arise, for Wellman, on the plane of one's personal relations with any specific others. Their object is not so much directed against *me* violating others' rights or depriving them of security, as against this happening. As Simmons put it, Wellman's samaritan duties address an “impersonal, nonoccasional, ongoing moral problem”.<sup>12</sup> Again, obedience to the government is the only instrument that allows us to solve it:

“Political states offer the *only* hope of escaping the state of nature. It does not require a full Hobbesian account of human nature to recognise that an environment with no political state would be an insecure place in which peace would be unavailable and moral rights would be disrespected. Put plainly, there will always be people unwilling to honour the moral rights of others if there were no legal repercussions of violating them. Moral rights will be respected and peace will be ensured only if police effectively protect individuals and recognised judges impartially adjudicate conflicts according to established rules. (...). States provide crucial benefits which could not be supplied in their absence. (...). Political states are *necessary* to avoid the extreme perils of the state of nature”.<sup>13</sup>

<sup>11</sup> Waldron 1993, p. 28, 22

<sup>12</sup> Simmons 2005, p. 184

<sup>13</sup> Wellman 1996, p. 216-217. See also Wellman 2001, p. 743, 759 and 2005, p. 3-12

As presented above, both the Optimisation and the Necessity Arguments ascribe a unique position to the government. They conceive of the government either as uniquely efficient or as the only possible means to perform our natural duties. Obedience to its instructions is, then, an externally instrumental means to an independently valuable end. I will assess these claims below. I will begin by analysing the assumption upon which they rest. When arguing that we have a duty to obey the government as an instrument to maximise or realise happiness, welfare, well-being or justice, the natural duty theories presuppose that we have a duty to maximise or realise such values. Is this assumption concerning the relation between values and prescriptions for action justified? If the maximisation or realisation is a proper response to value, is it always a matter of duty? The relevance of raising this issue should be clear: if there is no duty to maximise or to realise value, then there can be no duty to obey the state as a way of maximising or realising it.

### 3. Values and Duties

Before we ask whether maximisation or realisation of values as a way of responding to them is a matter of duty, we should ask whether values require any response at all. Some philosophers say that morally valuable properties do not constitute a source of reasons for action and that, therefore, any attempt to derive obligations from the concept of morally valuable properties is a mistake. Werner made an argument to this effect:

“it is fallacious to assume—as might be tempting—that a belief in the objectivity of good commits one to a belief in moral obligations (...). Even if one views good as objective (...), it does not follow that (...) there is anything one ought to do”.<sup>14</sup>

If Werner is correct, the natural duty argument for political obligation fails: if values do not require any response, we cannot be required to obey the government as a way of responding to them. This extreme position, however, is difficult to sustain. To account for our moral experience it would have to provide an account of the normativity of reasons for action that is independent of their relation to value. As Raz has persuasively argued, no such account can be given. In his discussion of the normativity of reasons for action, Raz argued

<sup>14</sup> Werner 1967, p. 135

that insofar as we have any reasons for action, their sources can only be values.<sup>15</sup>

Insofar as values are the source of whatever reasons for action we have, they call for our response. Let us accept the position that the proper response to values is to maximise or realise them. The next question is whether maximisation or realisation is always a matter of duty? I will begin the discussion with the requirement to realise values.

One problem that we immediately encounter when reflecting on a moral theory that would make the realisation of value always a matter of duty is that, given the great number of values we can think of, it would give us no conceptual tools to decide how to invest the limited time and resources we have in pursuing them. For example, insofar as there is a value in the preservation of the endangered plant species *oxypolis canbyi* and there is a value in supporting the hospice for terminal cancer patients in my neighbourhood, pursuing each of them would make equal claims on my time and resources. The way in which the equality drawn between such concerns conflicts with our moral intuitions suggests that the capacity of value to create obligations for agents must draw on the moral weight of values.<sup>16</sup> Not all values can be the source of equally strong reasons for action. Unless a given value is important, its realisation cannot be required, though it may be considered a supererogatory act i.e., an act that it would be morally preferable for the agent to do, but not an act he would be under a duty to perform.

In view of this conclusion, the status of both the optimising and the necessity variant of the natural duty theory of political obligation is uncertain. Unless more is said about the weight of values for the realisation of which obedience to the government is required, it leaves us doubting whether we should consider obedience as a moral obligation or only as a morally preferable course of action. This issue underlies the following remark made by Greenawalt:

“not every moral reason (...) underlies a duty or obligation to act. (...) I do not have [an] obligation (...) to give money to every poor person I pass although there may always be at least one good moral reason for performing [such acts]. (...). Promoting desirable consequences is often praiseworthy, but the failure to do so is not a subject of blame.

<sup>15</sup> Raz 1999, ch. 2 and 3.

<sup>16</sup> A complete account of when a reason for action amounts to a duty is beyond the scope of my discussion. In establishing whether acting upon a given reason is a matter of duty, such an account might appeal to other considerations besides the weight of value that call for our response. For example, it might argue that a reason presents us with a duty when it would be a defect of moral virtue not to follow it or when not acting on it would not be universalisable.

What answer, if any, may be given to the person faced with a choice whether to obey who says: ‘No doubt, my obeying will have good consequences, promoting the common good, helping the government work, strengthening just institutions (...). But if I need not devote most of my resources to charity, why ought I to obey?’ (...). Having a moral reason to obey the law (...) is not a plausible rendering of the idea of (...) obligation”.<sup>17</sup>

I believe that both variants of the natural duty theory meet this challenge satisfactorily. The values in which they ground political obligation possess a measure of stringency required to make pursuing them a matter of duty. In both their variants, natural duty theories conceive of morally valuable properties in terms of goods the lack of which would make the exercise of human agency impossible. Goodin makes political obligation a function of our duty to provide “a minimum level of basic necessities for [our] compatriots”.<sup>18</sup> According to Wellman, what validates the authority of the government are the “life-saving benefits” the government provides for its citizens.<sup>19</sup> The same way of accounting for the mandatory character of reasons to obey the government is also present in Honoré’s account of political obligation. He describes the goods secured by obedience to the government as a matter of survival.<sup>20</sup> According to Waldron, obedience to the government saves us from the horrors of the lawless and insecure environment of the state of nature.<sup>21</sup>

I have said that natural duty theories succeed in establishing obedience to the government as a matter of obligation insofar as obedience is instrumental to promote urgent moral tasks. Before I move on, let me signal an implication of this position. Insofar as the natural duty accounts derive political obligation from the government’s capacity to cope with urgent tasks, they fail to cover all those cases of governmental action when the tasks that the government performs are not urgent, for example, parking regulations.<sup>22</sup> Incapable of accounting for the entire range of the government’s activities, the proponents of the natural duty approach are forced to admit either that their

<sup>17</sup> Greenawalt 1987, p. 102, 175, 103. See also Wellman 2001, p. 226

<sup>18</sup> Goodin 1988, p. 670

<sup>19</sup> Wellman 1996, p. 218, note 10

<sup>20</sup> Honoré 1981, p. 51-55

<sup>21</sup> Waldron 1993, p. 14-15.

<sup>22</sup> Den Hartogh put this point clearly: “It may be true that without government human life would be impossible, or at least nasty, brutish and short. But governments do not restrict themselves to goals which are recognised by all to be pressing needs requiring care or management (...). They do all kinds of things which are seen as second-best, indifferent, or even positively harmful or evil, by large groups of their subjects. (...). But even when government activity aims at objects universally recognised as worthwhile ones, they often are not as urgent as the principle of necessity requires”, Den Hartogh 2002, p. 74



accounts are incomplete or that all present governments, in regulating such domains, are illegitimate. The latter implication has been adopted, not without some dissatisfaction, by Wellman:

“I should acknowledge that some might be dissatisfied with how little the samaritan theory justifies. (...). [B]ecause one’s assistance is an instance of samaritanism only when the person assisted is sufficiently imperiled, the samaritan account appears incapable of explaining why the state should perform various administrative functions (such as regulating the commodities markets or establishing forms of marriage), which clearly do not rescue people from perilous circumstances. (...). I must confess that I do not know whether samaritanism can justify more than a minimal, ‘night-watcher’ state (...). Let us grant (...) that samaritanism cannot justify a contemporary welfare state”.<sup>23</sup>

I have specified the conditions under which the realisation of values can be a matter of duty and I have established that the requirement to realise values, in which natural duty theories ground political obligation, satisfies them. I would like to focus now on the requirement to maximise values. This stronger requirement is employed by the optimising variant of the natural duty argument. According to it, we are not only required to realise values or keep them in mind when acting so that we regularly advance them but we are also required to do so in the highest degree possible. Is this stronger assumption plausible? It is a familiar argument against consequentialist theories that the requirement to maximise value is too demanding because it leads to an overload of duties. This is so whether we are required to maximise the overall value or various separate values like well-being, welfare or happiness. In both cases, the critics point out, we are required to aggregate values across an ever-larger number of cases than we have already done. The impact of the value maximisation principle is, then, like that of a black hole: it swallows every piece of our time, effort and resources, claiming also those portions of our time, effort and resources that we would normally devote to pursuing personal projects and relationships. By requiring that we sacrifice our projects and relationships for the sake of aggregating ever more values, a maximising moral theory makes the fulfilment of a duty possible only at the price of self-renouncement. In the eyes of critics, this is too much for morality to ask: morality becomes dominant to such a degree that it becomes hard to see ourselves as having a life at all.<sup>24</sup> Moreover, they add, whatever space it could grant us to pursue our projects and

<sup>23</sup> Wellman 2001, p. 757-758

<sup>24</sup> see, e.g., Scheffler 1982; Nagel 1986, ch.8 and 9; Williams 1973; Attfield 1987, ch.7; Heyd 1982, ch. 4

relationships, it would make their proper pursuance impossible, for we would be permitted to pursue our projects and relationships only insofar as they are justified in terms of the maximising principle. This would alienate us from our projects and relationships because in attaching only as much weight to them as the overarching optimising principle tells us to do, we would not be able to see them as intrinsically valuable. Our motivations to pursue them would be incompatible with the motivations necessary to pursue them. Using Williams' famous phrase, a maximising moral theory would saddle us with "one thought too many" in respect of our personal projects and relationships whereby our commitment to them may be seen as insufficient or distorted.<sup>25</sup>

The thrust of the arguments above is that a moral theory that would make the maximization of value a matter of duty would be implausible. Slote shows that, as a matter of fact, our common moral concepts rebut it.<sup>26</sup> He points out that the optimific does not possess one important feature we typically associate with moral requirements. Namely, it is a defining mark of moral requirements that a failure to perform them counts as a moral wrong for which a degree of blame is appropriate. As Slote points out, a failure to produce optimific results does not necessarily have to be an object of moral blame. Insofar as that which is chosen is good enough, opting for less than the best cannot be morally wrong. Now if less than the best is morally acceptable and not morally wrong, then the best cannot be a matter of moral duty.<sup>27</sup>

What are the implications of these arguments for the optimising variant of the natural duty account of political obligation? Insofar as the optimific cannot be a matter of duty, the natural duty theories that build their account of political obligation on the Optimisation Argument are flawed. For as we have no duty to optimise our moral performances, we have no duty to obey the government as a way of optimising our moral performances. Given that we

<sup>25</sup> Williams 1981, p. 18-19. See also Stocker 1976

<sup>26</sup> Slote 1984.

<sup>27</sup> Slote invokes a number of examples to support this point: "Consider a manager of a resort hotel who discovers, late one evening, that a car has broken down right outside its premises. In the car are a poor family who haven't the money to rent a cabin or buy a meal at the hotel, but the manager offers them a cabin gratis, assuming that it would be wrong not to do so. (...). She goes through the list of cabins till she finds a cabin in good repair that is large enough to suit the family. (...). In such circumstances, optimising act-consequentialism or act-utilitarianism would presumably hold that the manager should look further for a better room. (...). But I think ordinary morality would regard her actions as benevolent and her choice of a particular room for the family in question as morally acceptable, not wrong. She may not display the optimising benevolence that standard act-consequentialism would require (...) but in ordinary moral terms she has done well enough (...) and had no obligation to do any better", Slote 1984, p. 149

have no duty to optimise our moral performances, the fact that the government might offer us the most efficient framework to pursue them is irrelevant.

In this section, I have challenged the assumptions behind the natural duty argument for political obligation. According to this argument, obedience to the government is a matter of obligation because it is instrumental to the pursuit of values that we are under a natural duty to pursue. I argued that we can speak of such duties only if they require us to realise values or to keep them in mind when acting so that we regularly advance them, but not if they require us to maximise them. This argument was sufficient to conclude that the optimisation variant of the natural duty theories fails to establish obedience to the government as a matter of obligation. In the next section, I will challenge the idea that obedience to the government is a matter of obligation in another way. I will argue that unless natural duty theories can argue that the natural duties in which they ground political obligation are perfect duties, obedience to the government cannot be a matter of obligation but merely an optional way of action.

#### **4. Imperfect Duties and Political Obligation**

It will be useful to begin by recalling the concept of perfect and imperfect duties. Perfect and imperfect duties differ in two respects. First, while perfect duties are specific about how and toward whom they require us to act, imperfect duties leave it to our discretion to choose a particular way of discharging them. The act is obligatory but the “how”, “when”, and “toward whom” of its performance is left up to us. Second, while perfect duties correlate with claim-rights in others, imperfect duties do not endow other persons with correlative claim-rights to our performances of those duties. Compare a classical account of the distinction between perfect and imperfect duties formulated by Mill:

“[E]thical writers divide moral duties into two classes, (...) duties of perfect and imperfect obligation; the latter being those in which, though the act is obligatory, the particular occasions of performing it are left to our choice; as in the case of charity or beneficence, which we are indeed bound to practise but not toward any definite person, nor at any prescribed time. In the more precise language of philosophic jurists, duties of perfect obligation are those in virtue of which a correlative right resides in some person

or persons; duties of imperfect obligation are those moral obligations which do not give birth to any right"<sup>28</sup>.

It is often thought that the perfect and imperfect character of duties tracks the negative or positive character of actions they require.<sup>29</sup> This is correct insofar as negative and positive duties often differ as between the features that make duties perfect and imperfect: negative duties, requiring us to refrain from certain actions (e.g., duty to refrain from lying), have determinate content and correlate with rights in others, while positive duties, requiring us to undertake positive actions (e.g., duty to help), do neither. However, the intuition that derives the perfect or imperfect character of duties from their negative or positive character cannot be entirely correct. This is because we can think of duties that require positive actions and, at the same time, have all the properties of perfect duties i.e., that are determinate and correlate with rights in others. One example is duties of justice which Kant classified as duties of perfect obligation.<sup>30</sup> There are also other examples of positive duties that are perfect. Compare Jeske:

“positive duties, at least typically, are imperfect duties: our duties to provide others with certain goods or services are not correlated with claims of any specific individuals that we provide them with those goods or services. I say typically, because there are exceptions: (...) if I am on the bank of the river and I see you drowning, I have a positive duty to throw you the life preserver at my feet, and it is plausible to suppose that you

<sup>28</sup> Mill, *Utilitarianism* 1987 (1861), p. 322. The distinction between perfect and imperfect duties can be traced back to Kant's *Groundwork of The metaphysics of morals* (1785), 4:421, *The metaphysics of morals* (1797), 6:390. Buchanan's is an example of a contemporary formulation of these concepts: “Perfect duties are determinate, both with regard to the content of what is required (...) and with regard to the identity of the object of the duty (...). Imperfect duties, in contrast, are indeterminate in both respects: the agent is free to exercise his or her own judgement and discretion in determining the content of the duty as well as the choice of occasions on which to perform the action. (...). If I have a duty (...) to aid the needy, then I may choose the kind and amount of aid I render, choose to render aid to some persons rather than others, and also may choose to perform my charitable act later rather than now. (...). The recognition that some of our duties are imperfect allows us to pick our moral battles. (...). What is important is that we do something, sometime, to help the homeless, to provide health care for the needy, to advance the opportunities of women and minorities, etc. We need not do this particular thing, for this particular individual, today. (...). Put somewhat crudely, perfect duties articulate definite moral requirements; imperfect duties only indicate broad moral goals”, Buchanan 1996, p. 28-29 and 30-31.

<sup>29</sup> Compare Simmons: “Some of the natural duties are negative duties (requiring only forbearances) and as such can be strict or ‘perfect’ duties (...). The duties not to assault, murder, lie, defraud, steal, and so on are of this sort. (...). The positive natural duties (those requiring positive action and not mere forbearance), on the other hand, are less strict (‘imperfect’), Simmons 2001, p. 48

<sup>30</sup> Kant *The metaphysics of morals* 6:213, 219

have a claim against me that I do so. There is no room for me to say here: ‘I’ll help the next drowning person that I encounter’”.<sup>31</sup>

Instead of deriving the perfect or imperfect character of our duties from the type of actions they prescribe, it seems more plausible to see it as a function of the position in which we stand vis-à-vis the object of our duty or the recipient of our duty performances. I suggest that a duty is a perfect one if we are in a unique position to perform the action it requires. In other words, a duty is perfect if it would go irremediably unfulfilled if we had neglected it: the harm that would follow from our failure to act could not be compensated on another occasion, by other means, or by actions of another person. If we are confronted with the only possible way to discharge a given duty, then its content is determined and the duty recipient has a claim-right to our relevant performance. Hence, the duty is perfect independently of whether it requires negative or positive actions. Note that this account, while pointing to the limits of the intuition that links perfect and imperfect character of duties to their negative or positive character, also explains why this intuition enjoys such currency. This is because we are always in a unique position to perform our negative duties. The harm that follows from our failure to perform our negative duties cannot be compensated by others performing their negative duties. The harm that follows, say, from my failure to refrain from violating your right to privacy by opening your post, cannot be compensated by others refraining from violating it and leaving your post untouched. As far as positive actions are concerned, we do not usually stand in a unique position to perform them: for example, the harm that follows from my failure to care for you when you are ill can be compensated by others caring for you. The possibility of alternative fulfilment of positive duties explains why we often think of them as imperfect duties.

I will now show the implications of the concern with perfect and imperfect duties for natural duty arguments for political obligation. I will begin with the Optimisation Argument. Note that duties to maximise well-being, happiness and welfare of others or to protect the vulnerable, in terms of which Hare, Sartorius and Goodin explain political obligation, all dictate actions that we are seldom in a unique position to perform. Unless special conditions apply, the harm that follows from, for example, my failure to promote the happiness of the unhappy, provide a shelter to the homeless, care for the ill or feed the hungry can be compensated by your providing them with a shelter, caring for

<sup>31</sup> Jeske 1996, p. 302

them and feeding them. The possibility of alternative fulfilment means that they are imperfect duties. O'Neill, among others, argued that "obligations owed to those in agency-threatening need (...) are only imperfect obligations".<sup>32</sup> The implication of this argument for our discussion should be clear. If natural duties are imperfect duties, we cannot be required to optimise our performances of natural duties. To require that we optimise them would be to require that we act on every occasion that arises, for example, that we provide help whenever and to whomever possible. But this is exactly where imperfect duties grant us discretion. So the Optimisation Argument does not establish obedience to the government as a matter of obligation: if we cannot be required to optimise our performances of imperfect duties, we cannot be required to obey the government as a way of optimising our performances of imperfect duties.

The argument from imperfect duties can be formulated in more general terms. If we admit that natural duties are of an imperfect character, then we have to admit that no actions whatsoever can be required of us as *the* way of discharging them. But if no particular action can be required of us as *the* way of discharging them, then obedience to the government as a way of discharging them cannot be required. Moreover, no one—neither the government nor fellow-citizens—has a right to demand that we obey the government as a way of discharging them. If natural duties are imperfect, obeying the government is not an obligation but an optional way of action.

When formulated in this way, the argument from imperfect duties seems to be equally damaging for the necessity variant of the natural duty argument for political obligation. For, with the exception of duties of justice that support Waldron's account, both Honoré's duty to meet urgent human needs and Wellman's samaritan duties are typically only imperfect duties: unless special circumstances occur, we are not in a unique position to perform them. This is also how O'Neill classifies them.<sup>33</sup> If they are imperfect, no actions whatsoever can be required as *the* way of discharging them and so obedience to the government cannot be required either. Note, however, that the entire point of the Necessity Argument is that, as far as the performance of our natural duties is concerned, special circumstances do occur. Unlike the Optimisation Argument, the Necessity Argument does not claim that without obeying the government we would not be able to perform our natural duties optimally, but that without obeying the government we would not be able to perform them at

<sup>32</sup> O'Neill 1989, p. 230-231

<sup>33</sup> O'Neill 1989, p. 231

all. To say that there is only one way to perform our duties is to say that they would go irremediably unfulfilled if we did not perform them in that way. The harm to the needy, hungry, ill or homeless that would result from our failure to obey the government could not be compensated on any other occasion, by any other means or by the actions of other persons. If so, the presence of the government places us in a unique position to perform these duties. Hence, these duties are perfect.

Of course, this response to the objection from imperfect duties holds only insofar as we can defend the strong assumption that the necessity variant of the natural duty argument makes about the instrumental role of the government. The idea that our natural duties would go irremediably unfulfilled if we did not obey the government has been a target of many anarchist attacks. If they are successful in rebutting it, the necessity variant of the natural duty argument is subject to my initial objection: the natural duties in which it grounds political obligation are imperfect and obedience to the government as a way of discharging them cannot be a matter of obligation but only an optional way of action. It is then important to see how convincing the anarchist arguments are.

The simplest counter argument that the Necessity Argument has to face is a denial that we need any institutional framework to do what our natural duties require of us. There are various non-institutional ways, one can claim, in which we can promote justice, respect the rights of others, help the needy or care for the weak. And if we do not need any institutional framework to do any of this, then neither do we need a state framework. Simmons has made an argument to this effect:

“It is hard to see why membership in a state (...) is necessary for advancing goods like justice. One can, for instance, support just arrangements in other ways than by specially binding ourselves to one of them. We can speak out against injustice, or we can put our money where our mouths are (...). If we can act morally without accepting membership in a political community, [one] cannot successfully argue that the state is for each of us ‘morally necessary’ or that unwillingness to cooperate to produce shared political solutions is ‘unreasonable’ or morally objectionable. (...). Since these are duties that I can discharge independent of institutional arrangements, I am permitted to do so while refraining from supporting or joining myself to even morally exemplary institutional arrangements”.<sup>34</sup>

The power of this argument is limited. It can be countered by arguing that sometimes we do not have enough resources to do what natural duties

<sup>34</sup> Simmons 1999, p. 767 and 754. For a similar point see Den Uyl and Rasmussen 2001, p. 58-9

require of us and that in such situations it is only if we combine our efforts with others that we can meet the requirements of those duties. Many of the goods and services that our natural duties require us to provide, for example, secure environment or law enforcement, cannot be provided without coordinated action.<sup>35</sup> Among the natural duty theorists, this position is taken by Waldron. According to him, “the pursuit of justice often requires coordination, among those who are attempting to do justice (...). Institutions are necessary for that coordination”.<sup>36</sup> Wellman resorts to the same argument:

“the problems of the state of nature can be solved only via social coordination. To emphasise: political instability does not just create a *big* problem, it creates a *dire coordination* problem. (...). Obedience to the law is different from most samaritan responsibilities insofar as it is a component of a larger communal project”.<sup>37</sup>

However, the argument from the necessity of coordination is not sufficient to silence the anarchist attacks. An anarchist can admit that performance of natural duties requires coordination and still refuse to accept that the government is uniquely necessary to establish and maintain that coordination.<sup>38</sup> The anarchist could remind us that we conceive of our relation to the government—unlike our relations to other agencies—as a relation of authority. When coordinating our actions, the government, unlike other agencies, claims it creates obligations for us to follow its directives in a content-independent way. The anarchist could ask whether this type of agency is indeed necessary to help us establish and maintain coordination. Are we unable to coordinate unless each of us assumes an obligation to take the directives of the coordinating agency in a content-independent way? The answer is that it is not necessary to accept such far-reaching means in order to succeed in cooperating. Coordination can be established and maintained by means other than reference to authority and obligation. As Green persuasively argued, custom, coercion, advice, persuasion, exhortation, reward or a bribe could do the job sufficiently well.<sup>39</sup> If it is possible to achieve the same results without invoking an

<sup>35</sup> cf. Klosko 2005, ch. 2

<sup>36</sup> Waldron 1993, p. 28-29

<sup>37</sup> Wellman 2005a, p. 110, 107

<sup>38</sup> Simmons, for example argues that one cannot exclude that alternative coordination schemes could be established and function as efficiently as the one provided by the government, Simmons 1993, p. 258, Simmons 1999, p. 766-767, Simmons 2005, p. 183, 187-188.

<sup>39</sup> Green 1989a, p. 101-102, Green 1988, p. 87., 114. Strictly speaking, not all of these solutions are solutions in the game-theoretical sense; some of them “solve” the game by changing it. But nothing in Green’s argument turns on it.



obligation to obey, then, the anarchist could argue, to insist on such an obligation is to urge us to become more tightly bound to a given agency than is warranted by the point of the commitment; in Green's useful terminology, it is to commit an error in practical reason, an error of overcommitment.<sup>40</sup>

Convincing as it is, this argument does not force us to abandon the Necessity Argument. Consider this. Coordination is a matter of mutual adjustment of actions of a number of individuals. Individuals will coordinate their actions in view of a desired outcome if they succeed in focusing their expectations concerning each other's actions on a single course of action that will be followed by all. If we conceived of the government's claim to authority as a factor that makes certain courses of action salient, i.e., makes them the ones that each individual expects everyone else to follow, then we could circumvent the anarchist objection. Salience and authority are quite different ways of guiding action. Taking the government's claim to authority as salient, i.e., as the factor that focuses the expectations of individuals in a way that helps them to coordinate their actions, does not automatically imply acceptance of the obligation that the government claims to create. The obligation to obey the government's directives arises independently of its claims to create obligations: it depends on whether the coordination scheme they establish allows us to do what we have independent moral duties to do. Correspondingly, taking the government's directives as salient guides for action does not automatically imply acceptance of the authority they claim to possess. Thus, the bond with the government we establish by taking its directives as salient is much weaker than the one we establish by assuming an obligation to obey them in acknowledging their authority. Thereby, the error of overcommitment against which the anarchist warns us, is avoided.<sup>41</sup> Of course, this response to the

<sup>40</sup> Green 1989a, p. 101-102. Green's own argument to the effect that accepting authority is not necessary for coordination is different. Coordination requires a salient point by reference to which individuals could adjust their actions in respect of one another. After Raz 1975, Green argues that accepting authority requires taking its instructions as exclusionary reasons for action. Now salience as a way of guiding action is not an exclusionary reason for action, hence coordinating instructions of the government cannot have authority, Green 1988, ch. 4.7. The force of this argument depends on the plausibility of the assumption that the instructions of authority have exclusionary character. This is a matter of debate, see Den Hartogh 2002, ch. 7.

<sup>41</sup> Here is another argument to the effect that the government's capacity to solve coordination problems does not automatically endow it with political authority. Recall that we defined political authority as a relation in which content-independent obedience to the government is a matter of *obligation* which can be claimed as a matter of correlated claim-rights. I do not think that the government has political authority just in virtue of its power to solve coordination problems because I do not think that just any coordination problem presents us with an *obligation* to solve it. Not every coordination pattern makes it possible for us to perform what we have an independent moral duty to perform. We might have a reason to solve a coordination

anarchist's challenge can be accepted only if the government's claim to authority really *can* serve as a salient guide for action. There is no reason to think that this should be impossible. A claim to authority is just as good a source of salience as custom, coercion, advice, persuasion, exhortation, reward, a bribe or anything else. Recall that in his discussion of the concept of salience, Lewis emphasised that it does not matter how salience comes about. What is important is that a salient point is "unique in some way the subjects will notice, expect each other to notice, and so on".<sup>42</sup> The idea that the government's claim to authority makes its directives for action salient has been widely accepted.<sup>43</sup> Among natural duty theorists, Waldron argues that the necessity of the government derives from the necessity of a salient point that secures cooperation:

"The reasons for having a single scheme of justice (...) give us our best grip on the criteria for political legitimacy. To the extent that the underlying reason has to do with strategic choice in something like a coordination game, anything that establishes the salience of one system over others will be a reason for preferring it. (...). In most cases, the fact that there *is* a state and that it is, for all practical purposes, dominant and unchallenged in a territory will be sufficient".<sup>44</sup>

If the argument above is accepted, it implies the following defence of the Necessity Argument: the government's directives provide a salient point by reference to which individuals can mutually adjust their actions in a coordination scheme. Insofar as such a point is necessary, the government's directives are necessary too. Note that while this defence of the Necessity Argument focuses on the government's capacity to establish coordination schemes, it also holds for its capacity to establish cooperation schemes. For unless it is clear and undisputed which goods, including a mechanism of enforcement of our contributions, should be produced in a cooperative way and

problem and thus to obey the government but it is not always a *mandatory* reason. If a given coordination pattern does not do so, I do not see why we would have an *obligation* to comply with the coordinating instructions rather than a mere prudential reason. If there is no *obligation* to comply with coordinating instructions, they have no political authority as we defined it.

<sup>42</sup> Lewis 1969, p. 35.

<sup>43</sup> The argument that their claim to authority makes the instructions of the government salient has been defended by many authors. It seems that Bentham assigned such a role to authority when he described it as "a common signal (...) notorious and visible to all", Bentham, *Fragment on Government*, in: Green 1983, p. 321. In contemporary political and legal philosophy, this argument has been defended by, for example, Gans 1981, 342, Edmundson 1998, p. 58, Den Hartogh 2002, ch. 6 and 7, Boardman 1987.

<sup>44</sup> Waldron 1993, p. 25

how we should distribute the burdens and the benefits of this enterprise, a decision on such issues and, thus, the actual format of cooperation, will require coordination and arbitration. Insofar as the government's orders address these problems by providing salient points by reference to which individuals can adjust their actions, the necessity of there being such points confers necessity on the government's orders.

Now one could object that this way of defending the necessity of the government is too weak: given that we can think of salient points other than the directives of the government, the necessity of the government is a matter of empirical contingency only. This objection can be answered in the following way: even though the state is not the only possible way of providing salient points by which individuals can coordinate their actions, nevertheless, insofar and as long as the government plays this role as a matter of fact, we might be under obligation to follow its orders. The fact that we can think of other instruments to serve this goal does not relieve us from the duty to use instruments which are currently available—especially if other mechanisms are equally good and their presence is equally contingent. In the same way, the fact that I can think of feeding this particular hungry person with a cheeseburger instead of a hamburger does not relieve me from the duty to feed him with a hamburger if this is what I have at the moment. Moreover, the availability of other instruments does not mean that I would be justified in employing them on my own. Unless others join me, my unilateral recourse to any alternative non-governmental arrangement will not have the desired effect and thus it would not enjoy the moral justification it could otherwise enjoy. While it is true that this argument does not defend the necessity of the government in a collective sense (collectively, we could establish coordination or cooperation schemes in other ways), it nevertheless does so in an individual sense (none of us could coordinate or cooperate with the others in any other way, given the fact that this coordination or cooperation scheme is already established).

If the argument from salience is accepted as a rejoinder to the anarchist's challenge, it suffices to reject one more anarchist objection that can be raised against the Necessity Argument. The anarchist could argue that the government suppresses or undermines the conditions under which any alternative arrangements could be operative. The government does so by claiming a comprehensive authority over the behaviour of all those who find themselves under its jurisdiction and by protecting its authority against any external

interference.<sup>45</sup> In suppressing or undermining the conditions under which any alternative coordinative arrangements could be operative, the government fabricates the conditions that are supposed to make it necessary. The idea of the government's necessity, then, is a social artefact.<sup>46</sup> In light of what I said above, this objection poses no problem: insofar as the directives of the government provide salient points enabling individuals to coordinate their actions, the only condition they have to meet is that they stand out in the perception of the coordinating individuals. How their salient character comes about is irrelevant: whether the salient character of the government's directives is fabricated or not, as long as the government's directives do their job in focusing individuals' expectations on a particular course of action and allow individuals to coordinate their actions, following the government's directives is part of the moral end that individuals realise through coordination.

In this section, I have dwelled on the character of the natural duties invoked as a ground of political obligation. In particular, I asked whether they were of perfect or imperfect character. What was at stake in this exercise was the normative status of actions *viz.* obedience to the government they dictate. If natural duties were imperfect, obedience to the government as a way of discharging them would only be an optional way of acting. Therefore, the imperfect character of natural duties would make them unsuitable as a ground of political obligation. If natural duties are to be the source of political obligation they must be of perfect character. We saw that the optimising variant of the natural duty argument referred to imperfect duties and, thus, failed to establish obedience to the government as a matter of obligation. In order to assess the necessity variant of the natural duty theories, I considered a number of arguments against the Necessity Argument. Had these arguments successfully undermined the unique role of the government in pursuing our

<sup>45</sup> The comprehensiveness of the authority modern governments claim discussed by Raz 1975, p. 150-152, Morris 1998, p. 205-206

<sup>46</sup> Taylor's is an example of such an argument. Taylor argues that modern states impose central management and administration upon what used to be regulated in other local and communal ways, for example, by village councils and other deliberative assemblies. What follows is that voluntary forms of cooperation (aimed at caring for the old, sick and unemployed, keeping the streets clean, maintaining order, providing and maintaining schools, libraries, parks, etc) decline. "The arguments for the necessity of the state (...) are founded on the supposed inability of individuals to cooperate voluntarily to provide themselves with public goods, and especially (...) with security of persons and property. The intervention of the state is necessary, [it is claimed here] at least in order to ensure that *some* provision is made of the most important public goods. (...) I argue that the more the state intervenes in such situations, the more 'necessary' (on this view) it becomes, because (...) voluntary cooperative behaviour atrophy in the presence of the state and grow in its absence. Thus, again, the state exacerbates the conditions which are supposed to make it necessary", Taylor, M. 1976, p. 134.

natural duties, we would have had to admit that these duties were of an imperfect character. The Necessity Argument would then be unsuitable as an argument for political obligation because it would fail to establish obedience to the government as a matter of obligation. My conclusion, however, is that the Necessity Argument holds and, thus, that the argument from imperfect duties does not endanger the necessity variant of the natural duty argument for political obligation. In the next section, I will subject the necessity variant of the natural duty argument to yet another critique. We will see that its case for political obligation is less strong than it has appeared so far.

## 5. Individual or Collective Obedience?

I have granted, above, that the government is necessary insofar as it establishes and maintains a cooperation scheme without which we could not discharge our natural duties. According to the proponents of the necessity variant of the natural duty argument, this admission commits us to the conclusion that each of us is obligated to join and comply with the requirements of the cooperation scheme that the government establishes and maintains. This conclusion is problematic. Many have pointed out that the realisation of a collective task, be it the provision of a certain good or the prevention of a certain evil, does not require that everybody act in the prescribed way. Den Hartogh put it this way:

“in a state it is hardly ever true that the collective task will only be executed if literally everybody contributes. If I decline to make any contribution, the consequences (...) will be almost imperceptible. If I fail to pay my taxes, no other Dutch citizen will feel the difference”.<sup>47</sup>

Simmons raised the same point against Waldron’s attempt to derive political obligation from our natural duty to promote justice: “in typical contexts of general obedience, [the actual effects of our actions] are normally negligible. One more act of legal disobedience or obedience simply makes no difference to the cause of justice”.<sup>48</sup> In arguing that no particular individual contribution is necessary to the establishment and operation of a government-run scheme, Den Hartogh and Simmons imply that no particular individual is in a unique position to contribute to the government-run scheme. If nothing more is said, this argument can undermine the necessity variant of natural duty theories. For

<sup>47</sup> Den Hartogh 2002, p. 74-75.

<sup>48</sup> Simmons 2005, p. 169. See also Raz 1979, p. 238; Gans 1992, p. 71

if no particular individual is in a unique position to contribute to the establishment and operation of a government-run scheme, then, independently of how necessary such a scheme is, no individual can have a perfect duty either to enter this scheme or to obey its requirements.<sup>49</sup> Note that participation in a government-run scheme is not a matter of an imperfect duty either: it could be a matter of an imperfect duty if it were one of various ways one could choose to perform one's natural duties. The assumption of the Necessity Argument is, however, that besides participation in a government-run scheme, no other ways to perform our natural duties are actually available. Now if participation in a government-run scheme is neither a perfect nor an imperfect duty, we should conclude that it is no duty at all. At most we can think of it as permissible action, i.e., an action we are at liberty to perform. In this section, I want to investigate whether the necessity variant of the natural duty argument for political obligation has the resources to answer this problem.

As I signalled earlier, depending on whether the object of our natural duties is to perform certain acts or to promote certain ends, the necessity variant of the natural duty argument for political obligation has a deontological and a teleological version. The object of Waldron's duties of justice is best described in deontological terms. The emphasis lies here on respecting others' rights rather than on pursuing a state of affairs in which those rights are respected. Theories that define the object of our natural duties in a deontological way do not confront the problem of establishing individual obedience as a matter of duty. If the object of my natural duty is my respecting others' rights, rather than bringing about a state of affairs in which their rights are respected, then this natural duty cannot be realized unless I act as the duty prescribes. If my duties are of deontological character, then I am always in a unique position to do what they require of me: I am always in a unique position to perform right actions *viz.* to respect the rights of those with whom I interact. Thus, if there is no other way for me to perform such duties than by obeying the government, my obedience is a matter of perfect duty. Waldron:

“Our duty of justice is not satisfied by ensuring that whatever institutions we happen to have are just; it is satisfied only by our doing our part to establish just institutions”.<sup>50</sup>

<sup>49</sup> Another way to put this point is this. For me to have a perfect duty to comply with the scheme requirements, it must be true that by refusing to do it I would violate the rights of those whom the scheme provides with goods and services. But they cannot have the rights against me that I join the scheme if my personal compliance is not necessary for the scheme to provide the relevant goods or services. If I do not wrong them when refusing to comply with the scheme requirements, I have no reason to do anything about my conduct.

<sup>50</sup> Waldron 1993, p. 29

Wellman, on the other hand, conceives of the object of our natural duties in teleological terms. Here, the object of my natural duties is not directed against me violating others' rights or depriving them of security, but rather, against this happening. The emphasis lies on pursuing a state of affairs in which others' rights are respected and their security is guaranteed. Pursuing such impersonal ends is not necessarily linked with personal performance of the relevant acts viz. with my respecting others' rights or taking care of their security. First, it is at least possible that respect for others' rights might sometimes be best promoted by violating the rights of those who are likely to innocently impede progress toward the desired state of affairs. More importantly, realisation of such moral ends requires general rather than universal action, which implies that no one is in a unique position to contribute to it and, thus, that no one can be required to do so with the force of a perfect duty. As pursuing such impersonal ends is not necessarily linked with any personal performance of duty to pursue them, natural duty theories of a teleological bent are deprived of the rejoinder open to their deontological counterparts. Not surprisingly then, Wellman admits that, as it stands, his samaritan account has no resources to make individual obedience a matter of duty. He claims, however, that it can remedy this weakness by importing considerations of fairness:

“rather than reject samaritanism as the key to explaining our duty to obey the law, I recommend that we merely import the nonconsequential considerations of fairness. Thus, while it is true that states rather than individual persons are necessary and sufficient to eliminate the perils of the state of nature, (...) a state is nothing more than the (coerced) coordination of numerous individual persons. (...). I suggest that we understand our political obligations as our fair share of the communal samaritan chore of rescuing others from the perils of the state of nature”.<sup>51</sup>

This rejoinder is unsatisfactory. Given that considerations of fairness bind us only insofar as we are actually morally bound to some collectivity and its enterprises,<sup>52</sup> Wellman's proposal to conceive of individual obedience as a fair share in the samaritan project of rescuing others makes sense only if we see ourselves as participants in such a project. But in what terms are we supposed to see ourselves as participants in the samaritan project? It cannot be in terms of considerations of fairness because they apply to us only after we have recognised ourselves as the participants in the samaritan project. So it must be

<sup>51</sup> Wellman 2005, p. 33. See also Wellman 2001, p. 749ff, Wellman 2005a, p. 107

<sup>52</sup> cf. Simmons 2005, p. 185

in terms of samaritan reasons. But we have already seen that we have no mandatory samaritan reasons to engage with a collective samaritan project: given that the realization of this project does not require that literally every individual engage with it, no one is in a unique position to engage with the project or to secure the success of the task in terms of which it is defined. Consequently, no one has a perfect duty, in terms of samaritan reasons, to contribute to the project. Unless Wellman provides us with another reason to join a government-run samaritan scheme, considerations of fairness have no grip on us.<sup>53</sup>

One might think that Wellman might support his case and argue that joining the government-run cooperation scheme is matter of a perfect duty if he resorted to the argument proposed by Buchanan and Den Hartogh. They suggested that it is only because of the absence of a cooperation scheme that our natural duties lack perfect character and present themselves to us, instead, as imperfect duties or as merely permissible courses of action.<sup>54</sup> When we let a cooperation scheme divide the load of the duty into a set of unique tasks assigned to separate individuals, we create a one-to-one relation between the needed action and the individual ability to provide it and so we perfect what otherwise appears as an imperfect duty or a permissible action. Given that our natural duties, as presented by the cooperation scheme, confront us as perfect duties, we have a perfect duty to join the scheme that makes their discharge possible. If this argument were correct, it would allow Wellman to argue that we have a perfect duty to join the government-run cooperation scheme because this is what our natural duties, in the perfect form they acquire in the scheme, require of us. But this argument is not correct: the employment of a cooperation scheme as a way of specifying the content of our imperfect duties is of no normative significance unless we have a duty to specify their content in this way. But we have no duty to specify their content in this way: our reasons for entering a cooperation scheme as a way of specifying the ‘how’, ‘when’, and ‘toward whom’ of our imperfect duties are no less optional than our reasons for entrusting this decision to flipping a coin or letting a friend decide for us. Indeed, adopting *any* decision on this issue is optional, for there is no perfect duty to perfect imperfect duties. Insofar as it makes sense to speak of an imperfect duty to perfect our imperfect duties, the argument lapses into a

<sup>53</sup> I have not discussed Honore’s account of political obligation from the duty to meet basic human needs because it is unclear whether he conceives of this duty in teleological or deontological terms. Depending on whether the duty is of teleological or deontological character, my respective argument will apply.

<sup>54</sup> Buchanan 1987, p. 570, Buchanan 1996, Den Hartogh 2004 unpublished



*regressus ad infinitum*: if an imperfect duty to perfect our imperfect duties is to have any practical force, it should first be perfected; but we saw that we have only imperfect duties to perfect our imperfect duties so the problem re-appears at this (and every subsequent) level as well. The same flaw defeats this proposal, insofar as it should provide us with a mechanism to turn merely permissible actions into perfect duties: just as we have no perfect duty to perfect our imperfect duties, we have no perfect duty to turn our permissible actions into perfect duties. Buchanan's and Den Hartogh's proposal does not, then, provide us with reasons to join Wellman's samaritan cooperative. And thus, Wellman's proposal to resort to the considerations of fairness to answer the problem with individual obedience fails: for unless we have reasons to join any government-run samaritan scheme, considerations of fairness do not apply to us.<sup>55</sup>

So far I have been concerned with the question whether natural duty theories of political obligation succeed in establishing obedience to the government as a matter of *obligation*. We have seen that, among the natural duty accounts, only Waldron's succeeds in that. Both the optimisation variant of the natural duty argument and the necessity variant pursued by Wellman fail to establish obedience to the government as a matter of obligation.

I would like, now, to turn to the second part of my argument and ask whether the obligation that natural duty accounts claim to establish is a *political* obligation. As I did in the case of the vertical transaction theories, I will ask whether individuals acting on their political obligations form a political society and whether relations of domination and submission that natural duties establish are relations of political authority. Unless this is the case, it is unclear whether the obligation that natural duty theories claim to establish is a *political* obligation.

<sup>55</sup> One might argue that the problem I identified in Wellman's account is irrelevant because it does not arise in the actual political practice. In the actual political practice we hardly ever face a possibility to join government-run cooperative schemes. Rather, we find ourselves participating in them simply because of being born into them. Insofar as we participate in them, fairness governs our contributions. I disagree that this fact deprives the objection I raised against Wellman of any practical force. The fact that we have not reflected on whether we have any samaritan reasons to join the scheme does not make the issue nonexistent. Once we awake to consider it and go through the argument I made above, we will realize that we have no perfect samaritan duty to participate in it. And given that in Wellman's account, considerations of fairness bind us under the condition that we have a samaritan duty to join a scheme ("while the communal nature of political order requires that we invoke fairness, the principal normative premise remains samaritanism, the requirement that we perform easy rescues when others are sufficiently imperilled", Wellman 2005a, p. 107), the discovery that we have no such duties will release us from the duty to contribute to the scheme we might have vis-à-vis its other participants in virtue of the considerations of fairness.

## 6. Can Natural Duties Ground *Political* Obligation?

Instead of asking whether individuals obeying the government in response to the call of their natural duties form a political society, let me begin with a more basic question: do individuals obeying the government in response to the call of their natural duties form any social entity? Or, in other words, can we describe their actions as an instance of social action? Recall that in order to describe the actions of individuals obeying the government as social action, we should be able to say that part of their reason to obey is that others do so: interdependence of reasons and actions, as I argued in chapter 1, is one of the distinctive features of social action. Consider now the concept of natural duty. Natural duties hold between us simply by virtue of our humanity. We possess humanity independently of how, if at all, we act or relate toward each other. This means that natural duties engage us independently of how, if at all, we act or relate toward each other.<sup>56</sup> For example, natural duties bind us even to those who do not act on their natural duties toward us. In this way, I have a duty to refrain from lying to you even if you lie to me. Moreover, natural duties bind us independently of whether any others act on them. In this way, I have a duty to refrain from lying to you even if others lie to you. If natural duties provide us with reasons for action independently of whether any others act on them, the reasons they provide us with are independent. If reasons governing our actions are independent, our actions cannot be described as social actions.<sup>57</sup> Correspondingly, when obeying the government in response to the call of our natural duties we do not form a society. And if we do not form a society, we do not form a political society. It is true that when our natural duties dictate obedience to the same government, we will converge on following this same government's directives. The resulting pattern of conduct might then appear to an external observer similar, if not indistinguishable, from one that forms a

<sup>56</sup> Natural duties hold between us simply as moral equals rather than as transaction partners, affiliates, co-operators, etc. Rawls, to whose concept of natural duty of justice Waldron refers, put it this way: "natural duties (...) hold between persons irrespective of their institutional relationships; they obtain between all as equal moral persons. In this sense the natural duties are owed not only to definite individuals, say to those cooperating together in a particular social arrangement, but to persons generally. This feature in particular suggests the propriety of the adjective "natural"', Rawls 1971, p. 115.

<sup>57</sup> The claim that reasons that natural duties provide us with are independent squares with Rawls's claim that natural duties are not a matter of social practices: "natural duties (...) have no necessary connection with institutions or social practices; their content is not, in general, defined by the rules of these arrangements", Rawls 1971, p. 114. To say that natural duties are not a matter of social practices means that I have a reason to act on them independently of how others go about them.

political society. But this resemblance is illusory. Similarly, we would not say that a group of persons were giving a concert together if each of them played the exact notes assigned to him in the score, at exactly the designated moments, and in the same room, but with no intention to tune in to the tones made by the others. Although they played according to the same score, each of them played his own theme. Even if the collection of themes would happen to coincide, they could not be said to perform as an orchestra.<sup>58</sup> The case is even more conspicuous when the natural duties invoked as a ground of political obligation are imperfect duties. In this case, it is not only that our reasons to respond to the call of the relevant natural duties are independent, but also that it is for each of us independently to decide how to respond to them. Some might choose to obey the government as a way of discharging their imperfect natural duties and others might not. In this case, not even an illusory resemblance to any social pattern could be observed. The problem I am signalling here is a replica of the problem we encountered when discussing vertical transaction theories. Just like the vertical transaction theories, the natural duty theories are subject to the Private Fallacy: given that reasons to obey the government engage individuals independently of each other, the picture of individuals acting on their political obligations is not a picture of political society.

Here is another sense in which the entity formed by individuals obeying the government in response to the call of their natural duties is not a political society: obedience to the government rendered in response to the call of natural duties collapses the *political* domain into a series of isolated and normatively separate relations of domination and submission. Again, the problem is similar to the one we observed in the vertical transaction theories and although, here, the fragmentation of the *political* has a horizontal rather than a vertical curve, it is recognisable as a form of the Private Fallacy. In the vertical transaction theories, we had a series of bilateral relations linking particular individuals to the government. Natural duties bind us to (all) other individuals rather than to the government—obedience to the government is merely their object. While this changes the character of the fragmentation of the *political* domain, it does not eliminate it. For despite binding us to (all) other individuals, natural duties bind us to each of them separately. For example, if I am under a natural duty to help X, my obedience to the government as a way of helping X is a matter between X and me only. If I am under a similar duty toward Y, my obedience to the government as a way of helping Y is a matter between Y and me only. Moreover, if my argument in the previous paragraph is correct and natural

<sup>58</sup> cf. Dworkin 2000, p. 227

duties engage us independently of each other, then even if we find ourselves in a claim-relation to the same party, the claim-relations so established are normatively separate. For example, if you and I are under a duty to help X, none of us has a claim-right to the performance of the other (even if my failure to help X makes your duty to help X more burdensome). Only X has a right to demand that each of us does his duty. For only X would be wronged if any of us failed to do what the natural duty requires. You might be, perhaps, justified in expressing your disapproval about my failure to perform my duty to X but, unlike X, you would lack the right to demand and enforce my relevant performance. If obeying the government is a way of performing our natural duties, then obedience is a matter of isolated and normatively separate bilateral claim-relations. When discussing it in the context of the vertical transaction theories, I argued that this consequence of the Private Fallacy obscures the difference between political and non-political forms of life.

I have said that natural duty theories, just as vertical transaction theories, are subject to the Private Fallacy and, thus, cannot account for the concept of political society. Can they account for the concept of political authority? In other words, can the relations of obedience to the government established by natural duties be seen as relations of political authority? Insofar as natural duty theories collapse the *political*, the relations of obedience to the government established by natural duties cannot be seen as an instance of *political* authority. Yet one may also wonder whether they are always relations of *authority*. A relation of authority, as I established in chapter 1, is one in which content-independent obedience is a matter of obligation, the performance of which can be claimed as a matter of correlated claim-rights. Relations of obligation established by natural duties seem to depart from this model in two respects. First, insofar as natural duties invoked as a ground of political obligation are imperfect duties, they establish no claim-relations at all: as Mill emphasised in his characterisation of imperfect duties, imperfect duties do not endow anyone with a right to claim our performances of our imperfect natural duties. The optimisation variants of the natural duty argument that invoke imperfect duties as a ground of political obligation are, then, unable to account for a political *authority* relation. Second, one might doubt whether obedience to the government rendered by virtue of natural duties has a content-independent character. One obeys the directives of the government in a content-independent way if one takes the fact that they are given as a reason for action. But natural duties dictate obedience to the directives of the government only insofar as obeying them realises welfare, happiness, well-being, etc. Utilitarianism provides a case at point. According to Bentham, the founding

father of utilitarianism, individuals should obey the government when obedience is for the best and disobey it when disobedience is for the best.<sup>59</sup> The principle of utility is used here to test each individual act of obedience according to its expected consequences. Insofar as we make obedience to the government's directives dependent on the degree to which they realise utility or other values, it is not the government's directives that we take as our reasons for action, but the reasons provided by utility or other relevant values. Insofar as our obedience to the government's directives is governed by reasons other than the fact that the directives have been given, our obedience lacks the content-independent character. By directly consulting independent reasons at any time the government demands our obedience, we fail to recognise the authoritativeness of the government's directives; if anything, we recognise the authoritativeness of the reasons that independently apply to us.<sup>60</sup> Contemporary utilitarians might avoid the problem insofar as they adopt the strategy of rule- or indirect utilitarianism. Indirect utilitarians, like Hare, could appeal to utility in order to justify the practice of content-independent obedience and then justify each particular act of obedience by reference to that practice.<sup>61</sup> It is unclear whether other natural duty accounts of political obligation could adopt this strategy, but some such modification would be required if the relations of political obligation they establish are to be seen as relations of political *authority*.

I have pointed out the problems that natural duty theories may encounter in accounting for the concepts of political society and political authority. Are we to conclude that they entail the same deficient view of the political domain as we found in vertical transaction theories? This conclusion would be too quick. Some natural duty theories *viz.* Waldron's and Wellman's, refer to the concept of coordination. Unlike other natural duty accounts, they do not just claim that obedience to the government is a way of discharging our natural duties. They claim that obedience to the government is a way of discharging our natural duties *insofar* as the government establishes a coordination scheme aimed at discharging our natural duties. Introduction of the concept of coordination into

<sup>59</sup> As Bentham put it, the subjects "should obey, in short, so long as the probable mischiefs of obedience are less than the probable mischiefs of resistance: (...) it is their duty to obey just as long as it is their interest, and no longer", Bentham *A Fragment on Government*, ch. 1, sec 43, quoted after Simmons 1979, p. 47

<sup>60</sup> For a similar line criticism see Gans 1981, p. 340-341

<sup>61</sup> Plausibility of rule- or indirect utilitarianism is a matter of debate, see Lyons 1965, Smart 1973, Simmons 1979, p. 51-52, Horton 1992, p. 62

the natural duty framework might steer clear of the problems that trouble other natural duty accounts.

First, introduction of the concept of coordination into the natural duty framework immediately disposes of the problem that prevented other natural duty accounts from accounting for the concept of political authority. The problem other accounts faced was accounting for the content-independent character of obedience. This problem disappears if obedience to the government's directives is required insofar as they establish coordination schemes. For they establish coordination schemes by providing salient points by reference to which individuals can adjust their actions. Salient points derive their action-guiding force not from *what* they prescribe, but from the fact *that* they prescribe it. To take the government's directives as salient guides for action is to follow them irrespectively of their content. It is to obey them in a content-independent way.

Second, Waldron's and Wellman's reliance on the concept of coordination might also allow them to dispose of the Private Fallacy that prevented other natural duty theories from accounting for the concept of political society. Consider the logic of the Necessity Argument as pursued by Waldron and Wellman. Unless we cooperate, they claim, natural duties cannot be performed. This is to say that unless we cooperate, those duties cannot be our duties at all (we cannot have duties that we are unable to perform: ought implies can). If our natural duties bind us only insofar as there is a cooperation pattern that makes their realisation possible, they bind us only insofar as others act on them in the cooperative framework. If our natural duties bind us only insofar as others act on them, the reasons they provide us with are interdependent. Interdependency between our reasons for action allows us to see our actions as an instance of social action. Furthermore, by making cooperation part of the content of natural duties, Waldron and Wellman might dispose of the fragmentation of the *political* domain into a series of isolated relations of domination and submission. Insofar as performing our natural duties requires cooperation, we come to stand in a claim-relation to our fellow-participants in the cooperation scheme i.e., all cooperation participants seem to acquire correlative rights to our co-operative behaviour. These are multilateral rather than bilateral mutual claim-relations. This reasoning cannot be accepted, though, without answering the following objection. One could argue that cooperation is merely a particular form that the content of natural duties takes in a situation in which the duties cannot be performed otherwise. By adjusting the content of natural duties, we do not change the claimant of the performances of the duty i.e., the person to whom the performance of the duty

is owed. For example, if the only way in which I can help the needy is by cooperating with X and Y, it is still the needy who are the claimants of my cooperative actions—given that the realisation of the duty is owed to them, they are the claimants of *whatever* actions I can undertake to discharge the duty (subject to the proviso, applying to all natural duties, that the relevant actions are not unduly costly). In other words, the recipients of the performances of our natural duty have a claim-right against us that we undertake whatever actions (within limits) can bring about the realisation of that duty. If this action is participation in a cooperation scheme, they remain the claimants of our cooperative performances. Thus, even if natural duties require us to cooperate as a way of performing them, the *political* domain dissolves into a series of separate and normatively separate bilateral claim-relations.

A way to avoid this problem is to argue that our performances of natural duty form a closed system of mutual dependencies. While I am not sure whether this argument could be employed by Wellman,<sup>62</sup> let me illustrate what it would amount to in the case of Waldron. Waldron employs the Kantian idea that persons in the state of nature are a constant threat to each other. In threatening each other with unjust conduct, they wrong each other and violate each other's rights. Now, it is not unreasonable to predict that an experience of a threat of unjust conduct might lead persons to embark on unjust conduct toward others. This is to say that those under threat themselves become a source of threat to others. Imagine four persons, A, B, C and D. A's very presence poses a threat to B's property. The danger that A creates for B turns B into a threat for C. For C might fear that the experience of a threat and a fear of losses would lead B to seek compensation by invading and robbing C. But now the danger that B creates for C turns C into a threat for D. For D might fear that the experience of a threat and a fear of losses would lead C to seek compensation by invading and robbing D. Finally, the danger that C creates for D turns D into a threat for A. For A might fear that the experience of a threat and a fear of losses would lead D to seek compensation by invading and robbing A. At this point, the pattern of threat-fear-threat interactions is reinforced because insecurity and a fear of losses A experiences from D turns A into a threat for B, etc. (A similar chain of threat-fear-threat interactions is released

<sup>62</sup> Waldron refers to natural duties to respect one another's rights. While I will argue below that we can imagine that the performance of our natural duties to respect one another's rights can be interdependent, it is less obvious that we can stipulate it in the case natural duties of help to which Wellman refers. To say that our performances of our duties to help are interdependent would be to say that everybody is dependent on the help of all others. But this seems implausible if the duty to help is conceived of as a matter of charity in the way Wellman does.

insofar as A's very presence poses a threat of unjust conduct for C or D or insofar as C's very presence poses a threat of unjust conduct for D or A, etc.) Being a threat to others, A, B, C and D violate the rights of their victims. Insofar as submission to the government is *the* way to put an end to violations of rights and to promote justice, each of them has a natural duty to do so. Accordingly, those whose rights they violate have a claim-right against them that they submit to the government. Note that in the situation sketched here, the renouncement of threatening conduct by submission to the government is not only a matter of bilateral claim-relations between every intimidator and his particular victim. For example, A's renouncement of threatening conduct toward B, whom A wrongs by his threatening presence, is not only a matter between A and B. Rather, A's renouncement of threatening conduct toward B can be claimed as a matter of right also by C and D. This is because each individual act of threatening conduct is also an indirect cause of a threat that their victims pose toward others. For example, in threatening B, A creates an actual danger that B will invade C and C will invade D. In other words, A's threat to B is an indirect cause of B's threat for C and of C's threat for D. Thus, in threatening B, A violates not only the rights of B but also the rights of C and D. Therefore A has a natural duty to renounce threatening conduct in respect of B not only to B but also to C and D. Correspondingly, it is not only B that has a claim-right against A that A renounce threatening conduct in respect of B by submitting to the government; it is also C and D that have claim-rights against A that he renounces his threatening conduct in respect of B by submitting to the government. (A similar chain of multilateral claim-rights concerning renouncement of unjust conduct and submission to the government can be stipulated for any other configuration of persons involved in threat-fear-threat interactions.) The network of multilateral mutual claim-relations concerning submission to the government so established prevents the dissolution of the *political* domain into a series of isolated and normatively separate bilateral relations of domination and submission. If accepted, this adjustment would ensure conceptual agreement between Waldron's account of political obligation and the concept of political society. Note, however, that the concept of the *political* this account presupposes is very thin. Unless we stand to others in a relation of natural duty, our concern with their rights and well-being derives exclusively from our concern with our own rights and well-being. That is, we are not concerned about the violation of others' rights because we are concerned with their rights as such: C is not concerned with A's violation of B's rights because he is concerned with B's rights or well-being as such. Rather, C is concerned with A's violation of B's rights because it has consequences for his



own well-being and rights. This is not necessarily how we experience our engagement with others in society. We often seem to be concerned with others' rights for reasons other than our self-interest. The repugnance with which we respond to, for example, cases of senseless violence cannot be entirely explained by the fact that they make us fear for our own rights and well-being. Rather, we seem to be concerned with others' rights and well-being as such. In chapter 6 I will propose an account of political obligation that, employing the concept of natural duties, does justice to this aspect of our political experience.

I have considered whether natural duties can serve as a ground of *political* obligation. There is still one aspect of this problem I have not discussed but which is frequently raised in this context. It is claimed that a properly political obligation is particularised i.e., it binds individuals to one particular government rather than to more governments, or to governments in general. Ever since Simmons introduced it, the Particularity Requirement has served as a powerful instrument of critique against natural duty theories. Given that the general duties to pursue justice, happiness, utility or well-being bind us to persons generally, it is not clear how they should be cashed out in terms of the more particularised obligation to obey one's own government. If I live under a just government, I may have a duty to obey its directives. But while it follows that I have a duty to obey my government, I am equally obligated by the same principle to obey every other just government. Thus, because they are not particularised, obligations to obey derived from general moral values are not *political* obligations in the right sense. This objection lies at the core of Simmons' critique of natural duty theories:

“A general moral duty to promote justice—or any other impartial value—cannot bind one specially to support or comply with one particular state or society. (...). Natural duties bind those who have them (...) because of the moral character of the required acts. Happiness (utility) must be promoted because happiness is good. Murder must be refrained from because of the moral significance of murder. This means that natural moral duties will bind me as strongly with respect to persons or institutions that are not close to me (or my own) as they will with respect to those that are. Murdering Russians is as wrong as murdering Americans. Just Swedish political institutions merit support as much as, and for the same reason as do, just political institutions in the United Kingdom. But because this is true, it is difficult to see how a natural duty account could ever bind citizens specially to their own particular laws or domestic institutions. (...). This makes the derivation of the duty to obey domestic law from any natural duty desperately problematic from the start”.<sup>63</sup>

<sup>63</sup> Simmons 2005, p. 166

While I think that this objection disqualifies most of the natural duty accounts, I believe that Waldron's account can escape it. Waldron derives political obligation from our general duty to promote justice. He escapes the objection from the Particularity Requirement because of his claim that we cannot promote justice unless we coordinate our actions. Justice presents us with valid obligations only if its requirements are translated into the requirements of a coordination scheme. When the requirements of justice are translated into the requirements of the coordination scheme, they bind us to the particular institution that runs the scheme *viz.* the particular government rather than to the governments in general. Given the territorial nature of cooperation schemes, they address our interactions with people within a particular territory and not our interactions with people in general. In arguing that justice requires that each person obey the particular government that runs the—usually territorially defined—cooperation scheme, Waldron's account meets the Particularity Requirement.<sup>64</sup>

It is time to draw conclusions from my discussion. Throughout this chapter, I have discussed natural duty theories of political obligation. In the first part of my discussion, I asked how successful they were in establishing content-independent obedience to the government as a matter of political *obligation*. I showed that the optimising variant of the natural duty argument failed in that respect. Its idea that we have a duty to obey the government because it provides a framework in which we can pursue our natural duties most efficiently turned on an implausible assumption that we have a duty to optimise our moral performances. Additionally, the natural duties it invoked as a ground of political obligation turned out to be imperfect duties. This ruined the case for establishing content-independent obedience to the government as a matter of obligation, because imperfect duties leave the manner of their discharge up to the discretion of individual agents: they thus leave it up to them whether to obey the government as a way of discharging them or not. The necessity variant of the natural duty argument faced another problem. In the version pursued by Wellman, it established obedience to the government as a matter of collective rather than individual obligation. The consequence of the natural duty theories' failure to establish obedience to the government as a matter of *obligation* is that they fail to establish the relation to the government as a relation of political *authority*. Their inability to establish the relation to the government as a

<sup>64</sup> This permits that if there are more, mutually coordinated, schemes, for example, the Dutch state and the European Union, they could bind us.

relation of political *authority* can also be illustrated in another way. If our relation to the government is to be a relation of political *authority*, it should be a relation of content-independent obedience. While the necessity variant of the natural duty argument as pursued by Waldron and Wellman secured the content-independent character of obedience to the government, the optimising variants failed in that respect, too.

In the second part of my discussion, I asked how successful the natural duty theories were in establishing obedience to the government as a matter of *political* obligation. Again, in falling prey to the Private Fallacy, the optimisation variant of the natural duty argument failed in that respect. The necessity variants proved more successful in accounting for the *political* character of political obligation. The reliance on the concept of coordination ensured the interdependent character of reasons governing one's relation to the government, thereby eliminating one of the sources of the Private Fallacy. As it did not automatically ensure mutual and multilateral claim-rights between individuals involved in a coordinated action, I suggested an adjustment to the common reading of natural duties to address this problem: (non)performance of one's natural duties toward their direct recipient placed one automatically in a natural duty relation to all others. While it is unclear whether Wellman's samaritan duties could be read along these lines, Waldron's account can accommodate it with ease. Waldron's account seems, then, to be the only one that successfully explains both what makes political obligation an *obligation* and what makes it *political*. It is also Waldron's account that, in the overall assessment of the natural duty theories I conducted in this chapter, emerges as a promising argument for political obligation. As I claimed, however, the thin concept of the *political* it presupposes does not do justice to the way we experience our political life. Before I present an account of political obligation that supplements this thin model of the *political*, we might search for some clues as to how to address this problem in the associative theories of political obligation. I will discuss these in the next chapter.

# 4

## Affiliation

According to the theories I will discuss in this chapter, political obligation is generated by bonds of affiliation existing between individuals who are members of the same state and subject to the same government. So conceived, political obligation is, thus, a species of special duties. Typically, special duties are discussed in the context of intimate relations, such as those between family members and friends, but political philosophers have argued that they arise in other forms of affiliation as well: among colleagues, neighbours, fellow union members, co-nationals, members of the same religion or ethnic group and even among team or gang members.<sup>1</sup> The special duties that obtain in such contexts have come to be known as associative duties. The thesis that political obligation is an instance of associative duties is pursued by Horton, Tamir, Hardimon, and Miller.<sup>2</sup> The claim that affiliation of co-citizenship can be the source of an obligation to obey the government can also be found in communitarian writings, for example, in the work of Sandel and MacIntyre.<sup>3</sup> Following the established terminology, I will refer to such arguments as the associative accounts of political obligation.

The initial case that the associativists make for political obligation is promising. For example, in claiming that our political obligations arise between members of the same state rather than between persons in general, it

<sup>1</sup> In extending the class of special duties in this way, the associativists have come to claim that it is not the intimacy and emotional closeness that generates special duties, cf. Tamir 1996, p.96-98 (for critique: Wellman 1997, p. 194-200). Further in this chapter we will see where the associativists locate the normative force of affiliation and assess the plausibility of their proposals.

<sup>2</sup> Horton 1992, Tamir 1996, Hardimon 1994, Miller 1995

<sup>3</sup> Sandel 1982, p. 175-179, 1984a, 1984b, MacIntyre 1981, ch. 15, 1984

straightforwardly satisfies the Particularity Requirement.<sup>4</sup> The associative theories also seem to have some immediate advantages over the accounts of political obligation I discussed earlier. In locating the source of political obligation in a network of special relations existing between individuals that participate in certain social practices, they have the capacity to explain the *political* character of their interactions in terms of interdependent reasons between affiliated individuals – the latter being a feature missing in vertical transaction theories. The reference to social practices might also enable them to provide a thicker account of the *political* domain than the one entailed in natural duty theories.

My analysis of the associative argument for political obligation will proceed in three stages. I will start by reconstructing the concept of associative duties as employed by Horton, Tamir, Hardimon, Miller and their communitarian predecessors. I will position the concept of political obligation in this conceptual framework. Next, I will concentrate on two points that I find decisive for the success of the associative enterprise to ground political obligation. I will ask how affiliation can ever be a source of *obligations* and exactly what affiliation should be the source of political obligation. Second, I will ask whether reasons in terms of which the associativists want to account for the normative force of affiliation can ground *political* obligation.

## 1. The Associative Character of Political Obligation

Given that associative duties are a species of special duties, an analysis of the associative concept of political obligation requires recalling the notion of special duties. The best way to approach special duties is by contrasting them with general duties.<sup>5</sup> The first dimension of difference between these two classes of duties is their range. Unlike general duties, special duties do not bind in a general way, but fall upon a limited class of agents only. Scheffler put this point in the following way:

“general duties are duties that we have to people as such, whereas special duties are duties that we have only to those particular people with whom we have had certain

<sup>4</sup> cf. Simmons 2002, p. 28-29

<sup>5</sup> I have benefited from the following general discussions on special duties: Oldenquist 1982, Cottingham 1986, Pettit 1985/6, Pettit/Goodin 1986, Scheffler 1995 and 1997, Jeske 1996, 1998, 2001 and 2002, Wellman 2000 and 2001.

significant sorts of interactions or to whom we stand in certain significant sorts of relationships".<sup>6</sup>

The limited normative range of special duties is also to be found in their associative subclass. Horton says:

"A member of a [community] is uniquely related to that [community] and it is this relationship which (...) is one of obligation. (...). It extends so far as, but not further than, the limits of the (...) community of which one is a member".<sup>7</sup>

Hardimon makes the same point:

"Role obligations are special obligations, obligations to definite individuals rather than to persons generally. (...). [A] role obligation (...) applies to an individual in her capacity as an occupant of that role: as a sister, as a citizen".<sup>8</sup>

The difference between the normative range of special or associative duties and general duties finds its clearest manifestation in those cases where special duties prescribe, not without some air of paradox, the non-general performance of general moral duties. Tamir's analysis of associative duties contains a number of examples to this effect. For the sake of illustration, let me invoke a passage in which she argues that special duties require partial, because priority-based, performance of the general duty of charity:

"When I claim that charity begins at home I do not intend to imply that the poor of my town are better [than the poor in other places] but (...) that I have a greater obligation toward them than to strangers because they are members of my community".<sup>9</sup>

The second point which distinguishes special duties from general duties is their formula of justification. Unlike in the case of general duties, one accounts for special duties by citing a special relationship or affiliation. To invoke a special relationship or affiliation in the justification of the duty is to admit that it has a reason-giving force. Philosophers discussing special duties

<sup>6</sup> Scheffler 1995, p. 2. Hart was among the first to distinguish special duties as a separate class of duties, Hart 1955, p. 183.

<sup>7</sup> Horton 1992, p. 151, 152

<sup>8</sup> Hardimon 1994, p. 344, 334. The exact borders of our affiliation group(s) can be a matter of controversy. Does familial affiliation extend as far as kinship? Kinship as far as clanism? For a discussion see Cottigham 1986, p. 359-360

<sup>9</sup> Tamir 1996, p. 100-1

disagree about the source of the reason-giving force of special relations or affiliation. Two competing accounts of the normative force of special relation or affiliation dominate the discussion: reductionist and non-reductionist.

Reductionists account for the normative force of special duties by subsuming them under more general obligation-generating factors. According to them, affiliation has a reason-giving force only insofar as it borrows it from such general considerations. An example of a reductionist argument about special duties is the claim that we can best fulfil what our general duties require of us if we pursue them in relation to particular persons rather than in relation to all persons. The optimising variant of the natural duty argument for political obligation discussed in the previous chapter is an instance of this strategy. In particular, the concept of political obligation developed by utilitarians or pursued by Goodin's consequentialist account of political obligation could be interpreted as a special duty in this reductionist sense. Another reductionist way to account for special duties is to invoke discrete interactions that can occur in the context of such relations, for example, tacit consent, promises, provision of benefits,<sup>10</sup> or legitimate expectations.<sup>11</sup> Still another reductionist way to understand special duties is to argue that it is valuable from a universal point of view for people to have the moral power to bind themselves into special relationships<sup>12</sup> or to argue that such relations give a particular shape to universal values or are valuable from a universal perspective.<sup>13</sup> What is common to all reductionist accounts is that they refuse to invoke affiliation as a basic moral fact and search for more fundamental sources of special duties. Affiliation only identifies special duties and fixes their content, but it does not justify them.

Unlike the reductionists about special duties, the non-reductionists claim that affiliation, in and of itself, provides reasons for action. For non-reductionists, affiliation not only fixes the content of special duties but, most importantly, it generates and validates them. Affiliation does not derive its normative force from universal considerations external to itself; its reason-giving force is of an intrinsic, rather than an extrinsic, nature. The special character of special duties, then, is explained both in terms of their content and in terms of their justification. The difference between reductionist and non-reductionist accounts of special duties is well captured by Wellman:

<sup>10</sup> Hart 1955

<sup>11</sup> Sommers 1986

<sup>12</sup> Gewirth 1982 ch.10.

<sup>13</sup> Raz 1999, ch. 9; Mason 1997, Jeske 1998, p. 542, 2001, p. 28.

“Whereas a [non-reductionist] might cite the relationship of sisterhood as the ultimate source of duty, a reductionist must identify a more basic feature of moral significance before she can posit a special duty among the sisters. (...). On her view, the mere fact of sisterhood is morally irrelevant. (...). Thus, while a [non-reductionist] and reductionist might agree about the content and stringency of any given obligation (...), the [non-reductionist] will understand the relationship to have fundamental moral importance, whereas the reductionist will object that its significance is at most derivative”.<sup>14</sup>

The associativists are committed to non-reductionism about special duties. According to them, particular affiliation functions as an independent source of normativity. Tamir says: “the essence of the associative thesis (...) is that we are affiliated and therefore morally obligated rather than morally obligated and only then affiliated”.<sup>15</sup> Hardimon denies that obligations attached to socially defined roles have a source of normativity beyond themselves: “role obligation is a moral requirement (...) whose normative force flows from the role”.<sup>16</sup> The non-reductionist approach to associative duties is also endorsed by Horton:

“[O]bligations which are constitutive of the relationship do not stand in need of moral justification in terms of a set of basic moral principles or some comprehensive moral theory (...). It is often sufficient to point out that a man is this boy’s father to attribute certain obligations on the part of the man towards the boy. It is both unnecessary and misleading to seek some further moral justification for the obligations (...). Even if more is said about (...) the nature of family life, it would be unlikely to have anything to do with contract, consent, fair-play or the maximising of utility, and even gratitude need not figure in such an account”.<sup>17</sup>

The choice of the non-reductionist over the reductionist approach to special duties requires defence. The associativists might employ three

<sup>14</sup> Wellman 2000, 540, 554. See also: Miller 1995, p. 50.

<sup>15</sup> Tamir 1993, p. 136. Tamir explicitly stresses that the normative force of special duties is not reducible to other moral considerations: “when communal relations are reduced to reciprocity, fairness, or gratitude, there is nothing special or interesting about them; they fail to add any new dimension to our moral thinking and merely become a special case of contractual relationships”, Tamir 1993, p. 103.

<sup>16</sup> Hardimon 1994, p. 334. One might try to question the consistency of the non-reductionist position about special duties endorsed by the associativists. One might do it by pointing out that they admit (e.g., Tamir 1993, p. 102, 136-137) that in case of a conflict between associative and universal requirements, the latter may override the former. This objection, however, does not challenge the associative claim that associative duties have an independent normative status from universal principles: to admit a possibility of one reason being overridden by another is not to explain the normative force of the former in terms of the normative force of the latter.

<sup>17</sup> Horton 1992, p. 150, 156, 148



arguments to support it. According to the first argument, to search for a more basic or fundamental justification of special duties beyond the mere fact of a given relationship is to suffer from a defective moral sensitivity, which, as described by Williams, provides the agent with “one thought too many”. Wellman says:

“The associativists’ foremost worry about [reductionist] explanation of special responsibilities (...) is that it is of a wrong type. (...). [I]t is wrongheaded to search beyond the mere fact of shared [relationship]. The product of such search must inevitably fail to match our moral phenomenology insofar as it involves “one thought too many””.<sup>18</sup>

The second argument that the associativists could employ against reductionism about special duties is not *that* reductionists have too many thoughts about special duties but that the *type* of thoughts they have violates our common moral intuitions about special duties. In particular, reductionism makes the normative force of special duties provisional. Reductionism grants that an affiliation has normative weight only to the extent that it embodies certain general valuable properties. The logic of this position requires that we switch our loyalties to whatever realises the valuable properties to a higher degree. Thus, for instance, reductionists would require that we change the object of our political loyalties if we came across a more just government. Similarly, in case of our familial attachments, they would require that we turn all our care to the neighbours’ children if they turned out to be more gifted than our own.<sup>19</sup> Other reductionist strategies yield no less counterintuitive results: few of us would find it convincing to say that our familial duties are exhaustively explained in terms of a fair distribution of familial burdens and benefits, or that the duties of spouses are exhausted by the consent the partners express when making marital vows.<sup>20</sup>

Finally, associativists could argue that reductionists do not treat special duties seriously enough: if their account of special duties were to be adopted, special duties could not always be a fundamental category in ethics. In some reductionist accounts, special duties hold only insofar as they are instrumental to overcome the limitations that time, distance and resource scarcities place upon our acting on general moral principles; such is, for example, the general line of the consequentialist defence of special duties that relies on the idea that

<sup>18</sup> cf. Wellman 2000, p. 551.

<sup>19</sup> cf. Pettit 1985/6, p. 183-4, 186, Jeske 1998, p. 533-4.

<sup>20</sup> cf. Scheffler 1997, p. 190. See also Horton 1992, p. 147.

we can better fulfil what our general duties require of us if we pursue them in relation to particular persons rather than in relation to all persons. But special duties would lose this instrumental role and, with it, their separate status in ethics, in a world in which such limitations did not obtain. Thus, as reductionists cannot sustain the place of special duties in an ideal world, they cannot preserve them as a fundamental category in ethics.

I have presented associative duties as a species of special duties. I said that, just as in the case of all special duties, the normative range of associative duties is limited to the members of a given affiliation group and that the justification of associative duties invokes affiliation as a source of reasons for action. I demonstrated that from the two rival approaches to the justification of special duties, reductionist and non-reductionist, the associativists endorse the latter. I would like now to argue that the combination of these features commits the associativists to say that the reasons that govern associative duties are agent-relative reasons.

Before I demonstrate the agent-relative character of reasons that associative duties provide us with, I need first to recall the concept of agent-relative reasons. The distinction between agent-relative and agent-neutral values together with the corresponding distinction between reasons was introduced by Nagel.<sup>21</sup> Agent-relative value is a source of reasons for a particular agent but not for others. Accordingly, an agent-relative reason is a reason only for a particular individual to do something. If X has relative value, then each person has reason to have it realised for himself but not to have it realised for others. For example, if well-being has relative value, then I have reason to promote my well-being and you have reason to promote your well-being but I do not have reason to promote your well-being and you do not have reason to promote mine.<sup>22</sup> Agent-neutral value is a source of reasons for any agent. Accordingly, an agent-neutral reason is a reason for anyone to do something. If X has agent-neutral value, then each person has reason to have it realised whether for himself or for others. Thus, if well-being is an agent-neutral value, then I have a reason to promote not only my own well-being but also yours and everybody else's. The difference between agent-relative and agent-neutral reasons is reflected in the form they take. The form that agent-relative reasons take includes an essential reference to the person for whom they are reasons. The form of agent-neutral reasons does not include such a reference.

<sup>21</sup> Nagel 1986, ch. 8, sec. 4

<sup>22</sup> cf. Korsgaard 1996, p. 276

Can we find the features characteristic of agent-relative reasons in the reasons that associative duties provide us with? To begin with, note that reasons that govern associative duties are emphatically stressed to be reasons only for the individuals participating in a given affiliation group or special relationship. They are not reasons for those beyond the boundaries of the association. This feature corresponds to the first feature of agent-relative reasons in Nagel's definition. Second, just as in the case of agent-relative reasons, the form of reasons that attach to associative duties includes a reference to the persons for whom they are reasons. This reference is typically located in the statement of their ground. For example, duties of brotherhood make an essential reference to persons for whom they are duties. If they apply to *you*, *you* figure in the justification of the duty as in the phrase "you should do X because he is *your* brother". The same counts for associative duties between compatriots: if they apply to *you*, *you* are mentioned in the justification of the duty as in the phrase "you should do X because they are *your* compatriots". I have taken these two examples from Miller,<sup>23</sup> but we can find similar ones in other authors. Compare Horton: "It is precisely that it is *their* political community which gives *them* a distinctive reason for action".<sup>24</sup> Tamir:

"The associative approach to political obligations thus suggests that individuals assume such obligations because they see the state as *their* state, its laws as *their* laws, and its government as *their* government. (...). [I]ndividuals assume obligations to a state (...) because it serves as an object for *their* identification. They comply with its rules, support its institutions, and are willing to defend it (...), because they see it as *their own*".<sup>25</sup>

The two features of associative duties I have highlighted—the fact that they engage only specific individuals and that the reference to specific individuals occurs in the expression of reasons they provide—do not conclusively decide the issue of their agent-relative character. We can think of reasons that engage only specific agents but are generally valid. Reductionist accounts of special duties provide examples of this point. We saw that reasons that govern special duties in reductionist accounts can be given a form that involves a reference to particular agents even though those reasons derive their validity from general moral considerations i.e., their validity is decided in agent-neutral terms. What makes the agent-relative character of reasons that govern associative duties undeniable is the third definitional feature of

<sup>23</sup> Miller 1995, p. 50, 58.

<sup>24</sup> Horton 1992, p. 162. Emphasis in the original.

<sup>25</sup> Tamir 1993, p. 135, 139. Emphasis in the original. See also p. 101.

associative duties i.e., their normative independence from general moral principles. By postulating the normative independence of associative duties, we cut off the possibility of their reduction to general duties. This precludes classifying them as valid for anybody i.e., as agent-neutral. The agent-relative character of reasons that associative duties provide us with is acknowledged by, for example Nagel and Brink.<sup>26</sup> Jeske put it this way:

“Special obligations are obligations owed (...) to those to whom we stand in some sort of special relationship, e.g., our friends, our family members, our colleagues, our fellow citizens (...). [G]enuinely special obligations are agent-relative reasons”.<sup>27</sup>

In this section I have focused on the class of special duties and distinguished the category of associative duties as a species of that class. I showed that associative duties are characterised by three features. First, their normative range is limited to the members of a given affiliation group. Second, their justification invokes affiliation as a source of reasons for action that is independent from general moral principles. Third, reasons that govern associative duties are of agent-relative character. Now, if political obligation is a species of associative duties, it will possess these features, too. Within the associative framework, then, we have to think of political obligation as governed by agent-relative, mandatory reasons that are generated by some form of affiliation and the normative force of which extends as far as, but not further than, the boundaries of the affiliation. It is the aim of the remaining sections to assess the plausibility of conceiving political obligation in such terms. I will begin my analysis by identifying the affiliation that, according to associativists, is the source of political obligation.

## 2. Which Affiliation?

The associativists claim that the affiliation group that generates the political subclass of associative duties is political association. They often identify it with a polity or a state:

“the only way of justifying (...) political obligations (...) is to adopt the description of the (...) *state* as a community that generates a particular type of associative obligations, namely, political obligations”.<sup>28</sup>

<sup>26</sup> Nagel 1986, p. 165, Brink 2001, p. 163

<sup>27</sup> Jeske 2001, p. 1

In what sense do the associativists want us to conceive of the state as an independent source of obligations? We often think of the state in terms of the relation of authority between citizens and the government. Can the state conceived exclusively in these terms be normatively primitive? Two reasons speak against it. First, the relation of command and obedience involved in the relation of political authority, rather than being a source of justificatory force, itself requires justification. It cannot be normatively primitive in the way other relations can; for example, friendship. While we have no problem in thinking that friendship is worth pursuing for its own sake, positing a relation of command and obedience for its own sake is problematic. Perhaps, if a relation of command and obedience were a uniquely natural or appropriate expression of practical attitudes involved in other social relations, we might see it as part of the moral end those relations realise. But, as Locke argued, obedience to the commands of others does not figure in the content of actions that are appropriate to express other social affiliations;<sup>29</sup> it is at most instrumental for pursuing them.<sup>30</sup>

Another reason why we cannot say that the political association understood exclusively in terms of a practice of political authority is a source of political obligations is that it would make the associative argument circular. As I established in the *Introduction*, a relation of political authority necessarily presupposes political obligation (though we can think of political obligation without authority). This means that insofar as we define political association in terms of an authority relation, we accept that a practice of political obligation is part and parcel of it. Thus, if the associativists argue that the special relation that generates political obligation is a political relation and they understand it as a relation of command and obedience then their argument is circular: it derives political obligation from an arrangement that presupposes it.

The associative claim that political association or a state is normatively primitive must, then, refer to features other than the authority relation. The associativists often refer to the idea of membership in a polity or a state. They spell it out in terms of a “shared identity”, “embeddedness”, “sense of belonging”, “relatedness” or “connectedness” that arises among those who

<sup>28</sup> Tamir 1993, p. 130. Emphasis added.

<sup>29</sup> Locke 1970 (1698), II, sec. 70, p. 332. The Lockean argument about the inappropriateness of obedience as a way of expressing other relations has been employed by Green against associative and communitarian theorists, Green 1989a, p. 100-102, 1988, p. 199-200

<sup>30</sup> This is also how Locke accounted for the appropriateness of obedience in parent-child relationship. The appropriateness of the child’s obedience is justified in terms of the function of the relation, i.e., preservation, nourishment and education of children until they reach the age of reason, Locke 1970 (1698), II, ch. VI, sec. 56, 58

share the same cultural heritage, history, language, nationhood and the existence of which they consider valuable.<sup>31</sup> At other times, the associativists conceive of membership in terms of a network of relations into which the terms of citizenship or social roles implicate individuals.<sup>32</sup> Let us accept that it is membership in a state defined in such terms that makes political association normatively primitive. Our next question is in what sense can such considerations ground obligations? For example, in what sense can sharing a given cultural heritage be an obligation-generating consideration? The reason cannot be that certain cultural heritage is of intrinsic value. In other words, we cannot say that, for example, the associative obligations shared by the Dutch follow from the fact that the Netherlands is partly constituted by its Golden Age painting legacy. This would make it difficult to explain why, given that the Golden Age painting legacy is intrinsically valuable, the obligations this consideration can generate should be limited in range to the Dutch only. In explaining the normative force of membership understood as, for example, sharing the same cultural heritage, the associativists repeatedly refer to two considerations: its constitutive role for the agent's identity and the normative force of "relational facts" it creates.<sup>33</sup> Tamir says:

"deep and important obligations flow from *identity* and *relatedness*". And: "political obligations (...) belong to the wider category of associative obligations (...). [A]ssociative obligations grow from *relatedness* and *identity*".<sup>34</sup>

We find a similar idea in Horton:

"explanation of political obligation in terms of *membership* and a shared *identity* (...) enables us to account for the particular claims on people of their own polity".<sup>35</sup>

Below I will examine these claims. From the two sources of normativity listed above, identity and relational facts, let me take identity first.<sup>36</sup>

<sup>31</sup> Horton 1992, ch. 6, Tamir 1996, ch. 6

<sup>32</sup> Horton 1992, ch. 6, Hardimon 1994

<sup>33</sup> I borrow the term "relational facts" from Miller 1995, p. 50.

<sup>34</sup> Tamir 1993, p. 99 and Tamir 1993, p. 130, 101. Emphasis added.

<sup>35</sup> Horton 1992, p. 162. Emphasis added.

<sup>36</sup> Before I start, I would like to guard against a possible confusion of the concept of identity with the concept of identification. The associativists use both terms interchangeably at times, see Horton 1992, p. 169, Tamir 1993, p. 135, Miller, 1995, p. 65. In my view, this usage is unwarranted. Identification refers to a cluster of cognitive and practical attitudes, emotions, sentiments, and feelings. If the argument from identity referred to identification, it would make

### 3. The Argument from Identity

Among the associative theories of political obligation discussed in this chapter, the argument from identity is employed by Horton, Tamir, and Hardimon. The argument states that our social affiliations—for example, sharing the same cultural heritage, history, language, etc.—are constitutive of our identities. This fact endows the terms of the affiliation—the requirements attached to the social practices in which we participate with those with whom we share the same cultural heritage, etc., and the roles we occupy in such practices—with mandatory moral force and grounds our special duties toward those who are co-affiliated. Horton, for example, says:

“some institutions play a role so fundamental in our lives that they are partly constitutive of our sense of who we are (...). Some institutional obligations, through their deep-rooted connections with our sense of who we are (...) have a particularly fundamental role in our moral being. That these kinds of institutional involvement generate moral obligations (...) is only to be expected”.<sup>37</sup>

For this argument the associativists are indebted to communitarians. Both the idea that identity is socially anchored and that the terms of affiliation have normative force for those constituted by them are at the foundation of communitarian thought. MacIntyre formulated it in the following way:

“we all approach our circumstances as bearers of a particular social identity. I am someone’s son or daughter, someone else’s cousin or uncle; I am a citizen of this or that city, a member of this or that guild or profession; I belong to this tribe, that clan, this

the existence of the appropriate attitudes, feelings, and sentiments a condition for the creation of moral requirements. This would imply that the lack of the relevant attitudes, sentiments and feelings would put us off the ethical domain. However, it does not seem inconsistent to say that we are obligated even if we do not experience the relevant feelings; our lack of them may result from our being weak-willed, confused, or immoral yet neither weak will, nor confusion, nor immorality releases us from our obligations, cf. Simmons 2001, p. 83. Or think of a situation in which we do have the required attitudes, sentiments and feelings but only because they have been induced in us or into which we have been manipulated. Surely, the existence of such beliefs and feelings would not be sufficient to claim that we have obligations toward people, social groups and states with which they lead us to identify, cf. Simmons 2001, p. 83. My conclusion is then that being obligated is a different matter from having certain attitudes or experiencing certain emotions and, thus, it is a different matter from identification. Another reason why the concepts of identity and identification should not be used interchangeably is that identification covers only a subjective aspect of identity. The following problem illustrates it well: the fact that I identify with Poland, the Polish nation and traditions is not sufficient to say that I am Polish. Other elements than my subjective feelings are needed here, for example, the recognition of my Polish identity by other members of that reference group.

<sup>37</sup> Horton 1992, p. 157

nation. Hence what is good for me has to be the good for one who inhabits these roles. As such I inherit from the past of my family, my city, my tribe, my nation, a variety of debts, inheritances, rightful expectations and obligations. These constitute the given of my life, my moral starting point. This is in part what gives my life its own moral particularity. (...). I can only answer the question “What am I to do?” if I can answer the prior question “Of which story or stories do I find myself a part?”<sup>38</sup>

As claims about what practices, roles and relations make us into who we are or as claims about how we come to know what obligations we have, the communitarian and associative claims about identity may appear to be merely descriptive or epistemological claims. Critics of communitarianism indeed read them in this way and argue that so interpreted they do not warrant the normative conclusions that the communitarians draw from them. Hardin, to mention one example, takes just this strategy to attack communitarianism and his critique bears also on the associative argument from identity. Hardin argues that the communitarians make a move from the claims about what makes us into who we are to the claims of what we should do. However, as he points out, to describe oneself in terms of a cluster of duties is not to make a case for their normative force. If one proceeds from the claim that certain practices and obligations are constitutive of one’s identity to the claim that it is right to act on them, one commits the “is-ought” fallacy:

“One of the peculiarities of identity talk is the tendency to suppose that the mere fact of an identity makes certain actions right. This popular move is an instance of the derivation of a moral from a descriptive fact, of an ‘ought’ from an ‘is’.”<sup>39</sup>

In a similar way, Hardin argues that if one proceeds from the claims about received beliefs about one’s obligations to the conclusion that it is right to act on them, the move one makes is unjustified. For to explain how we have come to know the duties we believe we have is not to make a case for their normative force. The most one could argue for here is that it is rational to act on them because it is rational to act on the knowledge one has. But to argue that it is rational to act on one’s knowledge is not to argue that one’s actions are morally justified.<sup>40</sup>

I agree with Hardin that if we read the communitarian and associative claims about identity as descriptive or epistemological claims, the normative

<sup>38</sup> MacIntyre 1981, p. 204-205, 201, see also Sandel 1984b, p. 17.

<sup>39</sup> Hardin 1995, p. 8. See also Wellman 1997, p. 197

<sup>40</sup> Hardin 1995, p. 185, 186, 213, 199.



conclusions that the communitarians and associativists draw from them do not follow. Can we read the associative argument from identity in a way that avoids this problem?

Simmons' analysis of the argument from identity contains a suggestion. In his reconstruction of this argument, Simmons draws our attention to the claim, present both in communitarian writings (the embedded self thesis)<sup>41</sup> and in associative theories (the idea of contextual agency),<sup>42</sup> that without constitutive social practices, we could neither be ourselves nor know ourselves. Rejecting constitutive social practices would de-constitute the agent whose identity they engage. Simmons' suggestion is to read the argument from identity as stating that obligation is a reaction against a threat of a loss of identity. He rephrases the argument from identity accordingly:

“Some (or all) of our obligations are justified in virtue of the fact that denying these obligations would amount to denying our identities (...). What makes me who I am, what gives me my values and ends, is (...) my occupation of certain local social roles, but occupying these roles conceptually involves having the local, associative obligations attached to them. (...). I cannot meaningfully ask why (or whether) the I-who-am-in-part-constituted-by-certain-obligations has those obligations. (...). [D]efenders of the identity thesis take the personal incoherence or unintelligibility allegedly involved in denying certain obligations to constitute a justification for ascribing those obligations as moral requirements”.<sup>43</sup>

On Simmons' reading of the associative argument from identity, social practices possess a special normative force for agents who describe themselves in their terms because the loss of identity that would be involved in rejecting these practices gives agents moral reasons to comply with the requirements attached to them. To the extent that agents cannot deny relevant social

<sup>41</sup> Sandel 1982, MacIntyre 1981, p. 220

<sup>42</sup> Tamir 1993, ch. 1

<sup>43</sup> Simmons 2001, p. 80, 81. One might, perhaps, object here that the proposed interpretation of the associative argument from identity proceeds entirely in the first person singular turning a blind eye to the concept of common or shared identity. My answer to this objection is that, unless we postulate a collective entity, a “we”, that is distinct and irreducible to the individuals that form it, the argument from common identity reduces to the argument from identity in the first person singular. It does so in the following way: common identity is the identity that the agent shares with some other(s). It is, thus, always a part of individual identity of those who share it: who the agent is, is partly defined by his belonging to a certain “we”. It is then the agent's individual identity that accounts for the normative force of the common identity: if the agent is partly defined by the common identity, then he cannot reject it because then he would cease to be who he is. His identity in the first person singular puts a ban on rejecting the common identity and produces the corresponding obligation.

practices without losing the sense of who they are, these practices obligate them. Could the associativists adopt this reading of the argument from identity? Simmons' interpretation relies on the idea that the voice with which identity prescribes and forbids actions is a normative one. This means that the associativists can endorse it only if they conceive of identity in normative terms. Do they? The associativists' texts provide enough positive evidence for this idea. For example, Hardimon claims that the loss of identity is a normative loss.<sup>44</sup> Horton ascribes to identity a moral dimension: "the sense of who we are (...) characteristically has a fundamentally moral dimension".<sup>45</sup> According to Tamir, our self-understandings have a justificatory force: "justifications for assuming political obligations must (...) be grounded (...) on the way in which individuals understand their social position".<sup>46</sup> Similar claims are present also in the classic communitarian arguments. Compare the following passage from Sandel:

"[M]oral force [of constitutive social practices] consists (...) in the fact that living by them is inseparable from understanding ourselves as the particular persons we are—as members of this family or community or nation or people, as bearers of this history, as sons and daughters of that revolution, as citizens of this republic".<sup>47</sup>

These claims provide sufficient support for Simmons' interpretation of the associative argument from identity (the question whether the associativists *can* successfully defend such claims is another matter and Simmons answers it in the negative.<sup>48</sup> I will consider this issue in the next section). Given that Simmons' interpretation is also, unlike the other readings of the argument from identity, the only one that makes sense of the normative conclusions that the argument is supposed to provide, I will adopt it for my subsequent discussion.

So far, my reconstruction of the associative argument from identity has proceeded in separation from the context in which the associativists employ it. Let me now place it back in that context and explain how it should ground political obligation. Applied to the problem of political obligation, the

<sup>44</sup> Hardimon 1994, p. 345, 346, 347 and 1994a, p. 157.

<sup>45</sup> Horton 1992, p. 157

<sup>46</sup> Tamir 1993, p. 134

<sup>47</sup> Sandel 1984b, p. 17 and Sandel 1982, p. 179. There are other authors, too, who take up the issue of political obligation from a position sympathetic to communitarian or associative theories, and who also conceive of identity in normative terms. For example, Charvet says that "identity of a collection of persons as members of a single community is the basis of moral value", Charvet 1990, p. 81. See also Fletcher 1993, p. 16, Miller 1995, p. 65.

<sup>48</sup> Simmons 2001, p. 80, 81.

associative argument from identity renders the following account. Some of the social practices, roles and relations in which we participate are constitutive of our identities. The social practices, roles and relations that constitutively engage our identities come with obligations attached to them. Political obligation is among them. We cannot deny such obligations, political obligation among them, without denying our identities. Political obligation is justified because our identity would forbid denying it.

Is this argument plausible? It depends on the plausibility of its two assumptions. First, political obligation describes our relation to the government. It may, and often does, involve content-independent obedience to its commands. How plausible is it to say that we cannot disobey the government without de-constituting ourselves as agents? Can obedience be constitutive of who we are? Second, how plausible is it to conceive of identity in normative terms?

Take the first issue. Insofar as political obligation involves obedience to the government, the associative argument appears problematic because it is problematic to claim that obedience—whether to the government or to any other agency—is constitutive of who we are. In his discussion of the associative argument for political obligation, Green pointed out that the idea that we cannot deny the obligation to obey the commander without ceasing to be who we are entails a “foolish and dangerous”<sup>49</sup> picture of ourselves:

“Political obligation involves the acceptance of authority relations, that is, acceptance that the requirements of one’s state create moral duties. Can this be identity-constituting? (...). [W]hat would it mean to say that outside authority relations one had no conception of oneself as a person? It would mean that at the core of one’s very self-understanding lie the commands of another”.<sup>50</sup>

Note that if this really was the implication of the associative argument, we could not properly act on our political obligations at all. For if at the core of our self-understanding lay the commands of another, it would be another—the commander, the government—that defined who we are. And if it were another that defined who we were, it would also be another who would define how we acted. A thought-experiment can help illustrate this problem. Think of being plugged for life into a modified model of Nozick’s experience machine: a command machine. Even if, before getting plugged in, we could choose the exact profile of the commands the machine will make us obey, it would be

<sup>49</sup> Green 1989a, p. 113

<sup>50</sup> Green 1988, p. 214

wrong to say that we obey them once we are connected. True, we perform what we are commanded to perform, but it would be wrong to say that we act; rather, we are acted upon, or it is another agent in us—the machine, the commander, the government—that acts. If political obligation were constitutive of our identity, we could not act on it. The question is whether these undesirable implications indeed follow from the associative argument from identity. I do not think they do and if it seems otherwise it is because we misrepresent the relation of command and obedience involved in the practice of political obligation. As I argued in the previous section, a relation of command and obedience, unlike, for example, a relation of friendship, cannot stand on its own. Whenever it exists, it can only be because it serves goals external to itself. If so, then the associativists could argue that identity requires obedience to the government not because obedience is *constitutive* of who we are but because it is *instrumental* to other considerations or social practices that constitutively engage our identities.

Take the second issue. Can we account for the normative force with which identity requires us to act on the dictates of constitutive social practices? The associativists' answer, as the quotes invoked above make clear, is positive. But, we can ask, in virtue of what is the voice with which identity speaks a normative one? The associativists, just like the communitarians, are distressingly imprecise in explaining what makes identity normative or in virtue of what, as they say it, identity has a moral dimension, justificatory force, or is the basis of moral value. Below I will try to place their claims within the range of possible positions on this issue.

#### **4. What Is Normative About Identity?**

Is the normative force of identity derivative or is it intrinsic to it? Is identity normative because it reflects value and reasons for action or because it generates them? Does identity require us to act on the dictates of constitutive social practices because there are reasons to act on them or is the requirement to act on the dictates of constitutive social practices a requirement because identity prescribes it? Are the constitutive social practices reason-giving for us because there are reasons to act on them or are these reasons reasons because of who we are? Put this way, the problem with the normative force of identity reveals a structure identical to that of the Euthyphro dilemma.<sup>51</sup> In the most

<sup>51</sup> "Is the pious loved by the gods because it is pious or is it pious because they love it?", Plato, Euthyphro 10a.

general terms, we could put it this way: do we have reasons to do certain things because they are of value or are they reason-giving for us because we value them?

#### 4.1. The First Proposal: Identity Reflects Value

We might think that the associativists should be placed on the “reflective” rather than on the “constructive” side of the Euthyphro dilemma. The idea that identity reflects value corresponds to the communitarian and associative concept of the self. The embedded self does not construct but discovers value. We find the normative—values, principles, reasons for action—when we become aware of the various affiliations in which we participate. Normativity is given prior to the identity it constitutes. Recall MacIntyre:

“the key question for men is not about their own authorship; I can only answer the question “What am I to do?” if I can answer the prior question “Of what story or stories do I find myself a part?”. (...) Here I find criteria proposed to me which I can make my own in the sense that I can frame my choices and my actions in accordance with them, but their authority is derived not from my choice but from the way in which in such a community they cannot fail to be regarded as normative”.<sup>52</sup>

Read in this way, the associative argument from identity is subject to two problems. First, when identity is a transmitter of pre-given normativity, it becomes unclear what role the reference to identity should play in the associative argument. I do not add anything to the pre-given normative force of values, principles, or reasons for action inherent in the constitutive social practices when I discover them as *mine* or, to follow Sandel’s terminology, as *me*.<sup>53</sup> My becoming aware of values, principles, and reasons for action adds nothing to the moral force they already independently have, just like my disregarding them does not detract from it. If I discover them as a part of myself, I still discover them as independently valid reasons for action. To be sure, it depends on me whether the values internal to the social practices will be realised, but the facts about what sorts of things are valuable are independent of their being mine/me; it is not the fact that they are mine/me that makes them reason-giving for me. It is, thus, not my identity that provides me with reasons to act on the obligations attached to constitutive social practices in

<sup>52</sup> MacIntyre 1981, p. 201 and 1967, p. 208

<sup>53</sup> Sandel 1982, p. 55-57

terms of which I describe myself, but whatever justifies these practices. But then it is not identity that puts a ban on rejecting constitutive social practices, but whatever values inhere in these practices. The reference to identity as a source of reasons for action becomes irrelevant and the associative argument from identity collapses into an argument from the independent normative force of social practices. Simmons put it this way:

“[I]f our identities are partly constituted by our roles in local practices that do independently generate moral obligations for those occupying roles within them, the additional appeal to personal intelligibility then seems perfectly superfluous and misleading. (...). The personal unintelligibility of denying the obligations is not the reason why persons in fact have the assigned obligations (i.e., it is not the ground of the obligation). That reason is provided by whatever is taken to justify the normative independence [of social practices and obligations attached to them]”.<sup>54</sup>

The second problem is this: if we conceive of identity as merely reflecting the independent normative force of social practices, then the duties that the argument from identity establishes are not of the type that the associativists seek to establish. That is, if their normative force is independent from their link to the agents for whom they are duties, they are agent-neutral.<sup>55</sup> However, as I argued earlier in this chapter, non-reductionism about special duties commits the associativists to argue for their agent-relative character. In other words, if social practices possess normative force independently of whether they figure in our self-understandings or not, it is unclear why the duties attached to them should be reason-giving only for those who participate in them rather than for all agents in general. It is unclear why they should be special duties. In light of both considerations, I conclude that when the normative force of identity is read as reflecting values and reasons for action, the argument from identity fails.

## **4.2. The Second Proposal: Identity Constitutes Value**

The associativists could adopt another interpretation of the argument from identity. They could argue that identity, rather than reflecting values, constitutes a value itself or that identity, rather than transmitting independently valid reasons, is itself a source of reasons for action. In other

<sup>54</sup> Simmons 1996, p. 82

<sup>55</sup> One may protest here that the social practices might acquire agent-relative value for the agent whose identity they engage. I consider this option in section 4.3. below.

words, the associativist might claim that there is a value involved in being the particular agent one is and that being the particular agent one is gives one reasons to act (or to refrain from acting) in ways that accord with one's particular constitution. We should be familiar with such claims because we often make them to account for our actions in everyday life. You say, for example, that you will not do X because you are not that type of person; if you did, you would not be true to yourself. And I say that I will do X because I am the type of person that does X. In both cases, we do not appeal to *reasons* there may be to do or to refrain from doing X but to the fact that we *are* the type of person who does or does not do X. If this is the reading of the argument from identity that the associativists adopt, then it places them on the opposite side of the Euthyphro problem. Let me spell out the contrast clearly. On the "reflective" side of the Euthyphro dilemma it was whatever justified social practices that was the source of the reasons to act on obligations attached to them; it was not the fact that the social practices happened to be mine/yours or me/you. Here, social practices determine the content of our duties, but it is their being *mine/me* that is the condition of their normative character. We have reasons to act on the social practices not because there are reasons to act on them but because they are *mine/yours* or *me/you*.

Does the "constructive" reading of the normative force of identity render the argument from identity more plausible? I do not think it does. Think of wicked social practices. Do those whose identities such practices engage have moral reasons to act as they dictate simply because they are *theirs/them*? Take my own life story: I used to describe myself in terms of the social practices of communist Poland. I did not know myself otherwise than embedded in them and I still think that a part of my identity has been lost with the collapse of that system of "organised injustice".<sup>56</sup> Would you say that because the social practices developed in that system formed my identity, I had a moral duty to support that system? For example that I had moral reasons to participate in various mass manifestations in support of the Party because an uncritical habit to do so was instilled in me and I could not reject it without revising my self-conception?

The "bad identities" problem is only an indication of a broader problem with the "constructive" reading of the argument from identity. The broader problem is that the argument from identity, so interpreted, seems to ground duties to act on *any* constituents of our identities, whatever their nature. Think of our genetic make-up: our genes provide an even more enduring aspect of

<sup>56</sup> Kurczewski 1993, p. 67

who we are than do the family, nation, culture, and other formative social practices. If we claim that we have a duty to act on the obligations attached to constitutive social practices because they are *ours/us*, such biological constituents of our identities should determine the content of our duties in a similar way. Why should we not determine our duties to others by their genetic distance to us? We might think this idea opens the door to sexism or racism and reject it for this reason. But this does not deter everybody. For example, Belliotti, who claims to be developing Sandel's ideas, argues that because our inherited genetic make-up contributes as much to who we are as do formative social practices, it must be equally normatively relevant:

“moral requirements result from the contributions, whether by genetic contribution or enduring attachment, (...) to personal identity. (...). [T]heir moral force results from the recognition that they are indispensable in forging the particular people we are and in constituting the particular value we embody”.<sup>57</sup>

If you remember the myth of King Midas who had the capacity to change everything into gold by a simple touch, you can think of the force that identity has in our “constructive” story in a similar way: identity has here the capacity to infuse everything it encounters in itself with normative force: from genes to wicked social practices. The material it encounters, biological or social, is essentially arbitrary, contingent: it results from the accidents of our biological constitution and social circumstances. By infusing whatever it finds in itself with reason-giving force it elevates the dictates of the arbitrary, contingent, or morally wicked material to the status of moral duty. As the mythical story about King Midas reveals, Midas quickly discovered that he would not like to have everything turned into gold. Perhaps, if we change the standard reading of the myth, he was not convinced that every object was worth preserving in precious golden form. In a similar way, we would like to avoid the undesired conclusion that the dictates of any social practice or biological determinants could be turned into moral duties: the idea that the dictates of whatever contingent material we encounter in ourselves should be given a moral character strikes us as implausible. But can we avoid this conclusion? In order to block it, we would have to differentiate between the constitutive social practices that can and the constitutive social practices that cannot determine the content of our special duties. In a similar way, we would have to differentiate between various biological determinants. But in order to qualify the argument from identity in

<sup>57</sup> Belliotti 1986, p. 156 and Belliotti 1989, p. 270



this way, we would have to invoke other considerations than their being *ours/us*. We would have to invoke the reasons why certain constitutive social practices or biological determinants should be given the form of obligation and others not. However, in doing so, we would be admitting that it is not identity that does the work in the argument but those other reasons and we would make the argument collapse in the same way as the first, “reflective”, proposal above. Simmons made this argument for the case of wicked social practices:

“[Take] someone who (...) is an agent in the gestapo, someone who can’t intelligibly deny the obligations attached by local practice to that position. Surely that personal unintelligibility cannot establish a moral obligation to torture suspects, to send innocents to the death camps (...). Perhaps, we might say, that is only because the local practice is in this case morally vile. But if only those local practices that satisfy the demands of external moral principles can realise the argumentative goal here (i.e., generate genuine moral obligations), this strongly suggests that the personal unintelligibility of denying local obligations is not (...) any basis for ascribing moral obligations”.<sup>58</sup>

There is still another problem with the “constructive” story about identity. As the “constructive” proposal has it, we act on the social and other forces we find in ourselves not because there are *reasons* to act on them but because they are *ours/us*. If the voice of that which is *ours/us* is not the voice of reasons, it must be, as I will argue below, the voice of desires. Desires, however, cannot turn their objects into morally obligatory ends. If identity is driven by desires it has no normative force at all. This claim is a version of a more general argument against the idea that values ultimately depend on our espousing them. We can find it in Regan’s argument against the (neo)Kantian idea that the ultimate source of value is the force with which practical reason sets ends for itself.<sup>59</sup> A similar argument is made by Taylor against the concept that a radical or authentic choice is a final justification for actions.<sup>60</sup> Taylor argues for this point after analysing the process by which the existentialist agent adjudicates between two incommensurable claims, and Regan does so after analysing the process by which the Kantian rational agent constructs moral law. Let me take a similar route and analyse the process by which, if you allow the expression, an “identity unit” establishes moral duties.

<sup>58</sup> Simmons 1996 (2001), p. 82

<sup>59</sup> Regan 2002

<sup>60</sup> Taylor, Ch. 1977, p. 118-125

How does an identity unit go about establishing, say, a duty to obey the government? The duty to obey must be established at the moment the identity unit directs itself to a practice of political authority that it discovers in itself. Only after the identity unit has called this constituent of itself into its focus, can it infuse it with the normative force it allegedly emits. It is at this moment that the reason to obey the political authority—as it is defined by the practice of political authority that the identity unit discovers in itself—should be created. But we can ask here: why does the identity unit direct itself at this practice? Or, to make the situation even more complicated: what if our identity unit encounters in itself mutually exclusive or incommensurable practices, for example, the practice of political authority and an anarchistic inclination? Remember that it has no standard that would guide it in its perception of the material it encounters in itself. This means that the two alternative courses of action cannot be contrastively characterised as yet: the first, for example, as the path of duty and the second as the voice of a delinquent conscience—such a characterisation will be created only at the moment the identity unit directs itself at one or chooses it. Taylor (rephrased for the purpose of my example) says:

“Well, I might ponder the two possibilities, and then I might just find myself doing one rather than another. But (...) do I really choose if I just start doing one of the alternatives? (...). In order for us to speak of choice, we cannot just find ourselves in one of the alternatives. We have in some sense to experience the pull of each and give our assent to one. But what kind of pull do the alternatives have here? What draws me to [disobedience] is perhaps unproblematic enough, but what draws me to [obey the authority] cannot be the sense that I owe it to [it], for that *ex hypothesi* has to issue from the choice. It can only be a *de facto* desire, like my desire [to disobey]. (...). Perhaps then it is that (...) I don't consult preferences at all. (...). [But a] choice made without regard to anything, without the agent feeling any solicitation to one alternative or to the other, or in complete disregard of such solicitation, is it still a choice? What could it be? Well, suddenly he just goes up and takes one of the alternatives”.<sup>61</sup>

Regan's discussion reaches a parallel point when he asks why the Kantian rational agent, having no objective standard of goodness outside himself, chooses the ends that he chooses. He sees only two possibilities: “one is that the agent chooses in accordance with her empirical desires; the other is that she chooses completely arbitrarily, that she simply launches herself at

<sup>61</sup> Taylor, Ch. 1977, p. 120, 121, 122.

some project or other for no reason at all”.<sup>62</sup> While it can be disputed whether this argument fairly describes the process of going through the test of the Categorical Imperative in the course of which the Kantian agent establishes moral law,<sup>63</sup> it seems appropriate as a description of the process in which the identity unit relates to the material it finds in itself: for acting on forces one finds in oneself only because one finds them at that moment is arbitrary and acting on them only because this is the way one is, is acting on an inclination or a desire. But how, Regan continues, can desires create reasons? And: can arbitrary self-launching create reasons? The answer to the first question is that the mere fact that we desire X does not make X good or its pursuit obligatory. The answer to the second question is that reasons imply standards and, therefore, cannot be created by arbitrary acts which are arbitrary exactly because they are not guided by any standards. Reasons are not created by arbitrary choices, just as standards are not created by standardless choices. The conclusion that follows is that the normative force of the identity unit cannot be normative and that, on the “constructive” reading of the normative force of identity, identity has no normative force at all. In light of Regan’s ultimate conclusion, the failure of the “constructive” reading of the concept of identity appears to be a consequence of the failure of a more general project:

“we cannot generate the moral law out of a conception of the person alone. The person needs standards external to herself if her choosing is to be valuable—indeed, if she is to do anything properly called ‘choosing’ at all”.<sup>64</sup>

Here is yet another way to demonstrate the implausibility of the “constructive” proposal. Think of the picture of the moral world that the “constructive” reading of the argument from identity implies. If every particular identity constitutes an intrinsically normative entity, then with every new particular identity a new intrinsically valuable entity enters the world. Given the reproduction and mutation capacities that such normative entities possess, the number and variety of sources of normativity becomes infinite. But, if you say

<sup>62</sup> Regan 2002, p. 275.

<sup>63</sup> To describe actions of the (neo)kantian agent as arbitrary self-launches is to describe them as a case of what Korsgaard calls the “particularistic willing”. But, as Korsgaard argued, ascribing “particularistic willing” to the (neo)kantian agent is not only implausible but the very concept is (within Kantian framework) logically impossible, Korsgaard 1999, p. 23-27.

<sup>64</sup> Regan 2002, p. 291. As Regan adds, this argument is supported by commonsense view. People do not think that it is their acts of choosing certain projects that makes them valuable but the other way around: they see their choices of these projects as a response to their value (which is then independent of the fact that they choose them), see: Regan 2002, p. 275.

that each and every identity unit bears value and is a source of reasons for action, then you say that both  $X$  as well as  $\sim X$  bears value and is a source of reasons for action. In doing so you admit that whatever exists bears value and is a source of reasons for action and you render the very concept of value and reasons for action meaningless. Or, you picture the moral world as a collection of normative singularities. But then the possibility of morality becomes as problematic as the possibility of private language.

In this section, I have shown that if we place the normative force of identity at the “constructive” edge of the Euthyphro dilemma, we run up against normative consequences that we are not prepared to accept. Unless we are prepared to see the dictates of any social practices or biological determinants elevated to the status of moral duties, we must judge the argument from identity as unsuccessful. I have also argued that identity cannot plausibly be placed at the “constructive” edge of the dilemma at all. This is because, as Regan’s discussion of the sources of normativity helps us to see, identity has no force to construct anything or, rather, what it constructs is of no normative relevance.

Before I proceed to analyse another possible interpretation of the associative argument from identity, let me recapitulate what I have established so far. What is at issue is how we acquire special duties to act on the dictates of social practices—political practices among them—in terms of which we describe ourselves. I have agreed that the duty springs from the ban identity puts on denying the constitutive social practices. What we are searching for is how identity can have this normative influence. The two proposals above have not been successful in providing a convincing account of the normative force of identity. From the perspective of the two horns of the Euthyphro dilemma, which establish the range of possible positions on the issue, identity appears either as a passive spectator of the play of independent normative forces acting within it or as a subject undifferentiated from the desires playing in it. The normative force we are dealing with here is either external to identity or it is absent.

Now the associativists can protest that we should not accept the negative result of our discussion too promptly because neither the “reflective” nor the “constructive” reading of their argument does justice to their argument. Namely, in relation to the social practices that it encounters in itself, identity is neither a normative automaton nor a normative wanton as the “reflective” and the “constructive” proposals present it. Instead, they can claim, identity can distance itself from the normative and other forces playing in it and take an

evaluative stance toward them. They can back up their protest with the idea, which they concede under the pressure of the critics, that the embedded self has a capacity for self-reflection and a (limited) choice regarding the social material in which it finds itself embedded.<sup>65</sup> This move, even if its validity is a matter of controversy,<sup>66</sup> restores the distance between the identity unit and the normative and other forces playing in it that the two proposals above eradicate. For now, even if it is the normatively independent forces inherent in the constitutive social practices that decide the course of action, it is the identity unit that decides which one will play this role. In a similar way, the distance between identity and desires is restored. For when the identity unit reflects on its desires, it makes them distinct from itself and gains evaluative command over them in the same way in which a subject of an inquiry is distinct from and has an evaluative command over its object. This is, I think, how we can read Sandel:

“the subject achieves self-command (...) by reflecting on itself and inquiring into its constitutive nature (...). [R]eflexivity is a distancing faculty (...). In reflexivity, the self turns its lights inward upon itself, making the self its own object of inquiry and reflection. When I am able to reflect on my obsession (...), I thereby establish a certain space between it and me and so diminish its hold”.<sup>67</sup>

Granted, then, that there is a distance between identity and the social and other forces playing in it, how do the communitarians and associativists think identity relates to the material it finds in itself? Here is a new proposal.

### **4.3. The Third Proposal: Identity Chooses Value**

The associativists might claim that identity confers agent-relative value on the social practices it discovers in itself. The claim that the value of the constitutive social practices is of agent-relative character does not exclude the possibility that the constitutive social practices can also have universal or agent-neutral value. The associativists could admit this and still argue that we have agent-relative reasons to act on the requirements of social practices. They could say that it is in response to the universal value of social practices that we develop an

<sup>65</sup> Hardimon 1994, p. 345, 348 (the idea of “reflective acceptability” of the role), Tamir 1996, p. 14, 33 (contextuality need not preclude choice), Sandel 1982, p. 57-59, MacIntyre 1981, p. 205, 206 and 1988, p. 8, 326, 394.

<sup>66</sup> cf. Kymlicka 1991, p. 57-58 and Crittenden 1992, ch. 1

<sup>67</sup> Sandel 1982, p. 58

interest in them. The agent-relative value that relevant social practices acquire when we come to relate to them is conferred upon them in addition to the universal or agent-neutral value they already have.

The “agent-relative” reading of the associative argument from identity is a midway position between the “reflective” and the “constructive” proposals. It improves on the “constructive” proposal in that, by delimiting the range of objects or social practices upon which identity can confer value to those that are universally valuable, it corrects for the undesired result that any object or social practice matching our desire profile acquires normative force. At the same time, the “agent-relative” proposal avoids the problems of the “reflective” proposal, for while normativity, as the “agent-relative” proposal conceives of it, is not entirely a matter of a particular identity’s self-expression, it does not exclusively rest with the social practices identity encounters in itself either. In order for a universally valuable practice to acquire an agent-relative value, some particular agent must relate to it in the right way: there must be a relation of fit between the practice and the agent’s particular interests, preferences, desires and concerns, such that the agent embraces the practice as valuable. Thus, unlike in the “reflective” proposal, in the “agent-relative” proposal identity has an active normative role. The “agent-relative” proposal improves on the “reflective” proposal in yet another way. Namely, it can account for the special character of duties to act on the dictates of constitutive social practices. The “reflective” proposal failed here because it conceived of the normative force of the values inherent in constitutive social practices as independent from the self-understandings of the agents i.e., as agent-neutral. It could not, therefore, explain why the duties attached to the constitutive social practices should bind only the agents who describe themselves in terms of these practices rather than all agents. In the “agent-relative” proposal, the agent-relative value inherent in social practices exercises its normative force only on those agents who relate to those practices in the right way. Thus, the duties that the agent-relative value inherent in social practices creates bind only the agents who describe themselves in terms of these practices. The agent-relative character of duties prevents their reduction to general duties and, thereby, makes this proposal compatible with the account of special duties that the associativists hold.

The plausibility of the “agent-relative” proposal depends on the plausibility of the concept of agent-relative value. It is outside the scope of this chapter to deal satisfactorily with the issue of the plausibility of agent-relative morality. What I can do, however, is to show that even if the concept of agent-relative value employed here can be defended, the “agent-relative” proposal will be vulnerable to another type of critique.

First, there are doubts about whether one can have an agent-relative reason to pursue an agent-neutral value. Dancy, for example, argues that the claim that one has an agent-relative reason to pursue an agent-neutral value unnecessarily proliferates reasons for action. To illustrate this he asks us to consider the case of someone whose project is: “that the cure for AIDS be found”:

“[It is a mistake to think that] where my project is not defined by reference to myself, the reasons that it generates will be. One might think this because one feels that my basic reason for spending time and energy on seeking a cure for AIDS is *that it is my project*, a reason that clearly contains essential reference to myself. So although I might spend money on attending a conference on AIDS in Reykjavik that could be “better” spent on famine relief, the reason that justifies this (...) will be an agent-relative in Nagel’s sense. I want to suggest, however, that this move introduces “one thought too many” (...). My reason for attending the conference is that it makes it more probable that I (...) will find the cure for AIDS. This (...) does not mean that my having that project is here playing the role of a reason—it merely allows something else to stand as a reason”.<sup>68</sup>

In her discussion of the possibility of agent-relative reasons, Korsgaard provides another argument against the idea that we could have agent-relative reasons to pursue agent-neutral values. She points out that to have agent-relative reasons to pursue agent-neutral or universal values is not just to hope that the relevant values are realised, but to aspire to *be the someone* who realises them. Taking such a project seriously, Korsgaard observes, might commit us to the implausible claim that we have reasons to prevent others from pursuing the agent-neutral values in question. For example, if Dancy’s project was that *he* should be the one to find a cure for AIDS, then he would have a reason to prevent others from seeking a cure for AIDS. As Korsgaard says, this would no longer be a concern with a universally valuable project of relieving AIDS suffering but a perversion of it. And so the proposal is implausible.<sup>69</sup>

Second, even if we found a way to defend the possibility of having agent-relative reasons to pursue agent-neutral values, the “agent-relative” proposal will not escape the Regan-like critique I raised against the “constructive” reading of the associative argument from identity. Recall that the argument against the “constructive” proposal was that identity could not be the source of normativity because, without standards of value external to itself, it is desires that drive it and desires do not carry any normative relevance. Agent-relative

<sup>68</sup> Dancy 1993, p. 236. Emphasis in the original.

<sup>69</sup> Korsgaard 1996a, p. 286-288.

value arises whenever the desire profile of a particular agent and the object(s) of his concern match. But, if interests, preferences or desires cannot generate normativity, as I argued in the previous section, can they confer additional value on the objects of the agent's concern? My contention is that, for the reasons advanced in the previous section, they cannot and so the "agent-relative" proposal is guilty of the same defect that rendered the "constructive" proposal unacceptable.

In order to correct for this problem with the "agent-relative" proposal, we would have to distance the agent's principle of action from the sway of desires so that we would not run into the problems of the "constructive" proposal. At the same time, however, the normative authority of the principle of action cannot derive from the forces external to and independent of the agent's identity, as this would return us to problems of the "reflective" proposal. Korsgaard's discussion of the constitutional model of agency entails a suggestion for how the "agent-relative" proposal can be modified.<sup>70</sup> The new proposal is this: identity is guided by the principle of self-constitution.

Korsgaard begins her discussion of the constitutional model of agency by recognising various forces working in or on the person. She argues that in order to characterise the agent's identity it is not sufficient to list these forces, but it is necessary to say how these forces are combined and related. By the principle of self-constitution, she understands a principle that organises the social and other forces the agent finds in himself into a certain unity. Korsgaard invokes the Aristotelian "form" and "matter" terminology to clarify it. According to Aristotle, a thing is composed of form and matter. The matter is the material from which a thing is made. For example, a house is made of pieces of concrete. The form of a thing is the organisation, shape, or pattern given to the material. For example, the form of a house is the four-pieces-in-a-square-and-one-on-top-of-them arrangement of pieces of concrete. Using this terminology, we can say that the social and other material the agent finds in himself is the matter of his identity. The form of his identity is the way this material is arranged. The principle of self-constitution refers to the form of identity so understood.<sup>71</sup> Korsgaard argues that the principle of the internal organisation of the material within identity carries normative force. In order to illustrate it, she asks us to consider the house-building example again. Not just any way of arranging the pieces of concrete will make a house. Unless one does not mind failing here, there is a way one *has to* go about arranging those pieces of concrete: the four-

<sup>70</sup> Korsgaard 1999 and 1996b, ch. 3

<sup>71</sup> Korsgaard 1996b, p. 107-108



pieces-in-a-square-and-one-on-top-of-them arrangement will have a normative force for one. If one deviates from this form and spreads the pieces of concrete all over the place, one will not build a house but make a mess. Korsgaard argues that identity is normative in the same way in which the form of a house is normative.<sup>72</sup> Some ways of arranging the material one finds in oneself lead to personal unintelligibility. They are ways to lose rather than to constitute identity. If unintelligibility is to be avoided, one will *have to* arrange the social and other forces one finds in oneself into a coherent whole. Unless one does not mind failing here, this internal organisation of the material one finds in oneself will have a normative force for one. Korsgaard calls the normativity at issue here, the normativity of “internal standards”, which a thing must meet in virtue of what it is.<sup>73</sup> The way I suggest to modify the “agent-relative” proposal is to employ this view of the normative force of identity: identity confers agent-relative value on the social and other material it finds in itself insofar as it organises it into a coherent and intelligible whole. Two issues remain to be explained. Why should the normative force of such a constitutional arrangement have a moral character? And, given the vast number of social and other material that can enter agents’ identities and the infinite number of ways in which such material can be combined to produce a unity, would every coherent unity be morally normative?

According to Korsgaard, answering these questions requires answering another question first: why should there be unity rather than disunity in the internal constitution of identity? The answer to that question given by those who have worked with the constitutional model of agency—Korsgaard retrieves it in Plato (the concept of just action) and in Kant (the idea of making laws for ourselves)<sup>74</sup>—is that the human capacity to act requires internal constitutional unity. You have to pursue a unity between the social and other forces you find in yourself because otherwise you cannot act. So, as Korsgaard says, it is because you are a human being and “being human, you have no choice than to act”<sup>75</sup> that the constitutional unity of identity is the “internal standard” for you. Having established the link between the necessity of internal constitutional unity and the human capacity to act, we can answer our second question: not

<sup>72</sup> Korsgaard 1999, p. 14-15

<sup>73</sup> Korsgaard 1999, p. 14. Within the communitarian and associative tradition, the general contours of the constitutional model of agency and, thus, of the modified version of the “agent-relative” proposal can be found in the concept of the narrative unity of life that MacIntyre posits in regard to the self embedded in social practices, see MacIntyre 1981, ch. 15.

<sup>74</sup> Korsgaard 1999

<sup>75</sup> Korsgaard 1997, p. 249

every unity you might pursue will do—unless it advances the capacity to act, it has no normative force.<sup>76</sup> According to Korsgaard, the link between the necessity of internal constitutional unity and the human capacity to act also entails an answer to the first question i.e., it explains the moral force of “internal standards”. Korsgaard argues that if the human capacity to act is to be a reason to pursue constitutional unity, the human agency that is defined by it must itself be of value.<sup>77</sup> The value of human agency explains the moral force of “internal standards”.

Notice that we have arrived here at the corrective effect we have been searching for. We have distanced the agent’s principle of action from the pull of desires without locating it outside the agent. In our modified proposal, social practices acquire agent-relative value for the agent not just whenever they match his desire profile, but only insofar as that match provides a fit with his internal constitution. Is this reading of the argument from identity still acceptable to the associativists?

If it is the “internal standards” that give you reason to pursue unity in the social and other forces you find in yourself, then it is the normativity of the “internal standards” that justifies the unity you establish. Insofar as social practices form a part of the unity you establish, it is with the normative force of the “internal standards” that the principle of self-constitution prescribes acting on them. But the “internal standards” are universal standards: they are standards that every human agent has to meet in virtue of what he is i.e., their universality is rooted in the human condition. Thus, even though the agent’s principle of action is located within the agent rather than outside him, the justification of the obligations involved in the particular unity he establishes proceeds in universal moral terms. You can still say that the reasons that the

<sup>76</sup> According to Korsgaard, the identity units that do not meet their “internal standards” and are driven by wrong constitution principles are “defective”. “Defective” constitution principles would be, for example, those that allow other forces to work on or in the agent. She illustrates this with an example of an agent that takes it as a principle to let himself be ruled by another, Korsgaard 1999, p. 14 and 16.

<sup>77</sup> “We endorse or reject our impulses by determining whether they are consistent with the way in which we identify ourselves. Yet most of the ways in which we identify ourselves are contingent. (...). What is not contingent is that you must be governed by *some* conception of your practical identity. For unless you are committed to some conception of your practical identity, you will lose your grip on yourself as having any reason to do one thing rather than another—and with it, your grip on yourself as having any reason to live and act at all. But *this* reason for conforming to your particular practical identities is not a reason that *springs from* one of those particular practical identities. It is a reason that springs from (...) your identity simply as a *human being*, a reflective animal who needs reasons to act and live. And so it is a reason you have only (...) if you value yourself as a human being. (...). [Y]ou must value your own humanity if you are to act at all”, Korsgaard 1996b, p. 120, 123, 121. Emphasis in the original.

principle of self-constitution gives you are *agent-relative* because the particular constitution that the principle of self-constitution refers to is *yours*. However, they are *reasons* only insofar they reflect universal “internal standards”. In other words, it is the particular unity that you have established that obligates you, but its obligating force derives from the universal moral foundation from which the “internal standards” derive their normativity. The justification of duties to act in the way specified by social practices that enter our identity—political practices among them—that this proposal establishes is, thus, of a reductionist character. As the associativists pursue a non-reductionist account of special duties, we have to conclude that this proposal is not available to them. Not surprisingly, Korsgaard uses it as an argument against communitarianism:

“It is because we are human that we must act in the light of practical conceptions of our identity, and this means that their importance is partly derived from the importance of being human. We must conform to them not merely for the reasons that caused us to adopt them in the first place, but because being human requires it. (...). Once the communitarian sees himself this way, his particular ties and commitments will remain normative for him only if this more fundamental conception of his identity is one which he can see as normative as well. (...). Someone who is moved to urge the value of *having* particular ties and commitments has discovered that part of their normativity comes from the fact that human beings need to have them. (...). And that means that he is no longer immersed in a normative world of particular ties and commitments”.<sup>78</sup>

I have come to the end of my discussion of the argument from identity. I proposed and analysed three interpretations of the associativists’ claim that identity has normative force. None of them has proved successful. The “reflective” proposal turned out to be irrelevant, the “constructive” proposal turned out to be implausible, and the “self-constitution” proposal turned out to be unavailable within the non-reductionist framework that the associativists employ to account for associative duties. I conclude that, as we cannot account for the normative force of identity, the argument from identity fails to establish any obligations to act on the demands of social practices that are constitutive of our identities. Thus, even if it were true that we could not deny our political obligations without denying our identities, this would not ground the mandatory moral character of our political obligations.

<sup>78</sup> Korsgaard 1996b, p. 125, 121, 118-119. Emphasis in the original. An argument that communitarianism is, contrary to what it claims, a universalist rather than a particularist theory can be also found in Hardin 1995, ch. 7, esp. p. 185

## 5. The Argument from Affiliation

The argument from affiliation states that affiliation (“relatedness”, “connectedness”, “membership” or “relational facts”)<sup>79</sup> is an independent source of normativity. The argument echoes those strains in contemporary moral philosophy that announce a move from a universalist approach in ethics to a contextual one and claim that morality is inextricably bound up with the social practices operating in particular communities. The argument from affiliation is pursued in two variants, depending on which aspect of social practices it takes to be normatively laden. According to its first variant, it is the relations that a given social practice establishes between individuals that are the source of reasons for action. According to its second variant, it is the social practices themselves that are the source of normativity. If Bradley’s thesis about the binding force of “my station and its duties” can be seen as an early forerunner of the argument from affiliation,<sup>80</sup> then it is the “my” and the “station” in his “my station and its duties” what the two variants emphasise respectively. I will discuss both variants in turn.

### 5.1. Variant I: Special Relations

The “relational” variant of the argument from affiliation is employed by Horton and Tamir. Among those who work within the associative paradigm, but address the problem of political obligation only indirectly, it is employed by Miller.<sup>81</sup> The “relational” variant begins from an unproblematic observation that social practices, including political association, establish a network of relations between individuals who occupy various positions in these practices. It claims subsequently that these relations, in and of themselves, are basic reasons for action. The normative force they have is understood to be analogical to the force that special relations in the more immediate and intimate communities (for example, families) have: if we ask where their normative force derives from, we need not argumentation but punishment, as Aristotle put it, or, as Williams has expressed it recently, we suffer from “too many

<sup>79</sup> Tamir 1993, p. 101, Horton 1992, p. 162, Miller 1995, p. 50

<sup>80</sup> Bradley 1876. Bradley’s thesis is invoked in the context of special or associative duties by, for example, Hardimon 1994, p. 337-241, Pettit 1985-6

<sup>81</sup> cf. Tamir 1993, p. 101, Horton 1992, p. 162, Miller 1995, p. 50

thoughts”.<sup>82</sup> The associativists extend the Aristotle-Williams’ argument from immediate and intimate communities to intermediate and less intimate communities like political societies and states. Thus Horton proceeds from the idea that “[i]t is often sufficient to point out that a man is this boy’s father to attribute certain obligations on the part of the man towards the boy” to the case of political society or the state: “polity is like the family (...); obligations which are constitutive of the relationship do not stand in need of moral justification in terms of a set of basic moral principles”.<sup>83</sup> In a similar vein, Miller argues that “because he is my compatriot” has the same moral import as “because he is my brother”.<sup>84</sup> Having extended the argument from special relations to political societies or states, the associativists claim to have accounted for the normative force of political obligation. Their claim is that because the relations established between the participants in political societies are special and special relations are the source of special duties, political obligation binds with the force of special duties. Does this argument work?

The most common way to argue that it does not is to say that the extension of the argument from special relations is invalid. In the first place, as Wellman argues, intermediate communities, like political communities or states, lack the essential features of immediate communities and are, thus, insufficiently like them to render the extension justified.<sup>85</sup> Secondly, the extension has absurd or atrocious consequences. An argument to this effect has been raised by Wellman and Cottingham.<sup>86</sup> They claim that if the presence of a self-referential element in the description of our relations decides their

<sup>82</sup> Aristotle argues that if I wonder whether I must love my parents, I need not argumentation but punishment, Aristotle, *Topica* I, 11, 105a. Williams 1981, p. 18

<sup>83</sup> Horton 1992, p. 156, 150

<sup>84</sup> Miller 1995, ch. 3. Similar arguments are also found in MacIntyre. According to him, relations between members of the same national community enjoy the same particularistic, irreducible normativity as that which is involved in relations between spouses, family members or friends, MacIntyre 1984, p. 4-5

<sup>85</sup> Wellman points to three differences between more immediate communities like friendship and less immediate communities like states that make them incompatible. First, more immediate communities involve an element of consent that is absent in political communities (“one selects one’s friends in amore direct and individual fashion than one chooses one’s compatriots”). Second, the emotional bond present in more immediate communities is lacking in less immediate communities (“no one would posit special responsibilities among friends if there were not emotional attachment and interdependence involved in friendship, and because these features are absent from citizenship, it seems unlikely that special political obligations are (...) cousins of the special obligations thought to exist among friends”). Third, only immediate forms of communities can be argued to be intrinsically valuable while the value of less immediate communities can only be of instrumental kind, Wellman 2001, p. 221, 222.

<sup>86</sup> Wellman 2000, Cottingham 1986

normative weight, then we can re-describe all our relations as relations of intrinsic normative significance. Wellman:

“In allowing ‘because he is my brother’ to count as a basic reason for action, associativists are alleging that there is magic in the pronoun ‘my’. (...). But if there is truly magic in the pronoun ‘my’, then we apparently must have special duties to all our relations, just as the magic in promising means that we have special moral duty to keep all of our promises”.<sup>87</sup>

Cottingham constructs a whole list of examples to illustrate the counterintuitive results that the associative argument from special relations yields. He argues that if we start from family relationships where “because he is my family member” is a reason for action, there is nothing that can prevent us from claiming that kinship and clanism are equally normatively relevant so that we should accept “because he is of my kin” and “because he is a member of my clan” as valid reasons for action. In a similar way, he claims, due to the fact that “because he is a member of my race” and “because he is a member of my gender” will count as valid reasons for action, we will have to accept racism and sexism as valid moral principles. Just as we can increase the degree of moral atrocity of the results this extension yields, so we can also increase the degree of their absurdity: we could maintain that we stand in a special relation to the creatures of our planet or of our galaxy so that “because he is a creature of my planet” and “because he is a member of my galaxy” will become valid reasons for action for us.<sup>88</sup> In the same way, we can think of ourselves as implicated in a network of relations established by practices that prescribe actions that are silly or trivial. The associative argument would then have us classify the relations established by such practices as special and elevate silly or trivial actions to the status of special moral duties. According to Wellman, in order to avoid such undesired consequences the associativists would have to differentiate between relations that are and that are not normatively significant. This move, however, requires invoking considerations external to a relation itself and would render the account of associative duties reductionist:

“an associativist need not assert that *all* relations are morally significant only because *some* are. (...). In taking this route, she seeks to affirm the moral significance of familial and political relations, while denying the importance of race and gender. (...). I expect that an adequate story can be told, and that we can vindicate the moral significance of

<sup>87</sup> Wellman 2000, p. 552

<sup>88</sup> Cottingham 1986, p. 359-360, see also Wellman 2000, p. 552

citizenship without opening the door to racism. It is important to notice, however, that even if such a story exists, it cannot save associativism. This is because the chief virtue of associativism is supposed to be its ability to explain the significance of our relations *without telling an unnecessary and cumbersome story*.<sup>89</sup>

Wellman concludes that the associativists cannot give a plausible account of duties that attach to special relations without embracing reductionism. Are there any responses open to the associativists? Consider the following suggestions.

The associative argument from special duties could be given a two-tier structure. The associativists could grant that it is only when a relationship or a practice can be positively tested against universal moral considerations that it generates special duties, but they could still maintain that to invoke such considerations at the moment of action is to suffer from “too many thoughts”. Thus, to illustrate the two-tier structure of this position, they could grant that we can account for what is valuable about the relation of friendship in terms of the universal value of friendship (e.g., friends make our lives richer), but still maintain that at the moment of action, the justification of the special duties we have toward our friends is exhausted by pointing to the relation itself, rather than by pointing to the universal value that a relation of friendship realises (e.g., that it enriches our lives). At the level of moral motivation, “because he is my friend” is the basic reason for action because it is only in this way, without searching for deeper reasons, that we can realise the universal value of friendship. In a similar way, the associativists could account for the normative force of the relation of co-citizenship. They could argue that the relation of co-citizenship has normative force because it realises the universal value of co-citizenship (e.g., “by virtue of being a citizen, a person is a member of a collective body in which he can enjoy equal status with its other members and is thereby provided with recognition”)<sup>90</sup>. Just as in the case of friendship, the associativists could say here that at the moment of action “because he is my compatriot” is the basic reason for action because it is only by detaching one’s action from the desire to realise the universal value of co-citizenship that one can realise it.

Putting aside doubts as to whether this proposal correctly reflects our intuitions about special relations and, in particular, about the relation of friendship, it is unclear to what extent the associativists—who claim that special

<sup>89</sup> Wellman 2000, p. 552, 553. Emphasis in the original.

<sup>90</sup> Mason 1997, p. 442

duties are governed by reasons that are independent *vis-à-vis* general moral principles—would be ready to grant that special duties derive their validity from general moral values. For the associativists to accept the two-tier reading of the argument from special relations, further modifications would be necessary. As above, we could say that the possibility of testing a special relation, *viz.* the relation of friendship or co-citizenship, against universal values of friendship or co-citizenship is a condition of “because he is my friend” or “because he is my compatriot” counting as a basic reason for action. Yet, the degree to which these universal values condition the normative force of the “because he is my friend” and “because he is my compatriot” considerations would have to be less extensive. In the previous proposal, “because he is my friend” could count as a basic reason for action only because by pointing to the fact of the relation, one could realize the universal value of the relation *viz.* the universal value of friendship. In a similar way, “because he is my co-citizen” could count as a basic reason for action only because by pointing to the fact of the relation, one could realize the universal value of the relation *viz.* the universal value of co-citizenship. This means that the normative force of “because he is my friend” or “because he is my co-citizen” was exhausted by the universal value that described the relation—if the relation were not valuable from the universal point of view, pointing to the fact of the relation could not count as a reason for action. Thus, if the relation of friendship did not realize the universal value of friendship, we could not cite it as a reason for action. In a similar way, if the relation of co-citizenship did not realize the universal value of co-citizenship, we could not cite it as a reason for action. In the new proposal, the relation of friendship or co-citizenship is itself a source of reasons for action—its normative force is not exhausted by pointing to the universal values of friendship or co-citizenship that describe the relation. The special relation’s being valuable from the universal point of view is only a condition under which the reasons that the special relation generates are valid. In other words, the universal values of friendship and co-citizenship are only the necessary conditions of “because he is my friend” and “because he is my compatriot” counting as reasons, but not sufficient ones. If this proposal is accepted, it would provide a way for the associative theories to answer Wellman’s critique: it would allow the associativists to let general moral considerations decide which relationships or practices can be a source of special duties without thereby endorsing reductionism.



## 5.2. Variant II: Normative Independence of Social Practices

According to the second variant of the argument from affiliation, it is the particular affiliation or social practice that, in and of itself, is the source of reasons for action. If we invoke Bradley's helpful phrase, it will be the "station" rather than the "my" that carries the normative force of "my station and its duties" here. In this form, the argument from affiliation is best represented by Hardimon's statement that "role obligation is a moral requirement (...) whose normative force flows from the role".<sup>91</sup> Simmons refers to this position as the "normative independence thesis" and rephrases it as "the view that local associative obligations, including political obligations, are internally justified or self-justifying, that local practice can independently generate moral obligations".<sup>92</sup>

The "normative independence thesis" combines two ideas. On the one hand, it urges us to focus on received culture, ethos, established norms and conventions already present in social life—it is in the particularity of such social phenomena where we are to search for the starting points of ethical reasoning. Hardimon expresses this idea when he says that it is *Sittlichkeit* that binds us.<sup>93</sup> I take the main idea here to be that ethics is socially anchored: that goods, values and other moral phenomena are created and sustained by social practices that are external to individuals and exercise normative force on them. As it stands, however, this claim is compatible with the idea of the universal character of moral phenomena<sup>94</sup> and, therefore, it does not ensure the non-reductionism about special duties that the associativists employ. The second idea, then, upon which the "normative independence thesis" must rely is that the normative force of the moral particulars incarnated in social practices is independent *vis-à-vis* general moral principles. Now, if we argue that morality is socially anchored and that we cannot reason from the particular to the general, we claim not only that social practices are the sources of normative phenomena, but also that social practices limit the application or validity of normative phenomena. This is, in my view, the real thrust of the "normative independence thesis": that there is no way for the normative phenomena to reach beyond the practice that breeds them. In my view, when MacIntyre says

<sup>91</sup> Hardimon 1994, p. 334.

<sup>92</sup> Simmons 2001 (1996), p. 70.

<sup>93</sup> Hardimon 1994, p. 333

<sup>94</sup> cf. Raz 1999 ch.9, ch. 10, Raz 2001.

that moral justification can be compelling only to those situated within a given social practice, he must have exactly this picture of morality in mind:

“the goods by reference to which and for the sake of which any set of rules must be justified are (...) goods that are socially specific and particular. (...). Goods are never encountered except as thus particularised. (...). It is only *qua* member of this or that particular community [that] I can appreciate the justification for what morality requires of me from within the social roles. (...). I find my justification for allegiance to these rules of morality in my particular community; deprived of the life of that community, I would have no reason to be moral”.<sup>95</sup>

Can we think of any goods or values the validity of which is limited by the social practices in which they originate? If there are any such goods and values, they must be deeply social in the sense that we cannot conceive of them in any other way than through certain social practices: either because they cannot come into existence or because they cannot be engaged with except through certain social practices. In his discussion on the social dependence of morality, Raz gives examples of such goods: being good at chess is an example of a good that can be accessed and enjoyed only through the practice of chess playing; Mason argues that the value of equal status depends on the practice of citizenship and cannot be realised in any other way.<sup>96</sup> Is the validity of such goods and values limited by the social practices in which they originate? It might seem that this is the case: the value of being good at chess has no hold on those who do not play chess, and the value involved in being a Dutch citizen has no hold on me if I am not Dutch. But this appearance is misleading. As Raz emphasises, we can recognise the goodness in practice-bound goods even if we do not participate in the relevant practices. For example, I can recognise the good involved in having Dutch citizenship even if I do not have it. In regard to the value involved in chess playing, Raz puts this point this way:

“Concrete socially created values must be subsumed under abstract universal values, or they will be unintelligible. (...). [W]e understand a concrete value, like the value of chess, when we understand how playing well engages one with other more abstract values, and does so in the way which is appropriate to chess”.<sup>97</sup>

<sup>95</sup> MacIntyre 1984, p. 9-10, 12, 10.

<sup>96</sup> Raz 1989, Mason 1997, p. 442

<sup>97</sup> Raz 1999, p. 155, 207

Thus, although we can admit that a social practice limits the conditions of existence and the accessibility of a given good or value, this does not imply that it limits their validity. Given that we are able to see such particular goods or values as a species of the general ones, their normativity is recognisable for us at a higher level of generality. Therefore, this proposal does not account for the normativity that the “normative independence thesis” assumes. The reason why the social practice-dependent goods or values invoked above do not qualify under the class of goods and values described by the “normative independence thesis” signals a more general problem confronting the thesis. As Simmons argues, we find it difficult to think of moral concepts that would exercise normative force on us, for example, impose obligations on us, but would be neutral with regard to general moral principles. This difficulty, according to Simmons, testifies against the “normative independence thesis”:

“The best commonsense test case for the normative independence thesis would be that of a practice that was perfectly neutral under assessment by external moral principles. (...). To the extent that a practice seems morally pointless (from the perspective of external moral principles)—to the extent that it is not beneficial or not freely chosen by its participants to advance their projects—to that extent it seems very hard to imagine anyone insisting that the associative obligations it assigns have any genuine moral weight. Even mildly beneficial, harmlessly silly practices seem unable to impose any genuine obligations on non-consenters. (...). The fact that it is so hard to imagine utterly neutral practices that do not seem at the same time just silly is itself (...) a strike against the normative independence thesis”.<sup>98</sup>

We might try to make sense of the concept of normativity presupposed by the “normative independence thesis” if we conceive of it in agent-relative terms or in group-relative terms.<sup>99</sup> We could then say that the validity of moral concepts is limited by the social practices in which they originate because it is relative to the agent or the group that participates in the practices. However, the “normative independence thesis” precludes this interpretation. As I argued earlier, if the way people relate to certain objects or phenomena is to confer agent-relative value on those objects and phenomena, people’s concern with them cannot be contingent and arbitrary; it must be informed by normative standards. Accordingly, to confer agent-relative value on the social practices in which people participate, their concern with these practices must be governed by normative standards. On pain of rendering the associative argument

<sup>98</sup> Simmons 2001, p. 88-89

<sup>99</sup> The concept of group-relativity has been developed by McNaughton and Rawling 1995

circular, the normative standards that govern people's concern with social practices must be external to those practices. This implies, however, that the normative force of social practices is dependent on those standards too and, thus, it is not independent in the way presupposed by the "normative independence thesis".<sup>100</sup> Given that we cannot account for the "normative independence thesis" in agent-relative terms and given that the agent-neutral reading is precluded by the non-reductionist stance inherent in the associative approach, I conclude that the "normative independence" variant of the argument from affiliation cannot account for the normative force of associative duties, political obligation being among them.

This completes the first part of my analysis of the associative theories of political obligation. I asked how affiliation can ever be a source of *obligations*. From the two arguments that the associativists put forward—the argument from identity and the argument from affiliation—only one version of the latter, i.e., the argument from special relations, and only if modified in the way I suggested, proved successful in accounting for the reason-giving force of affiliation. None of the other arguments could explain in what sense the affiliation is a source of obligations, including political obligation.

The problem I want to tackle in the second part of my analysis stands independently of the results we arrived at in the first part. Its thrust does not depend on whether the associativists actually succeed in accounting for the normative force of associative duties, including that of political obligation. It asks, instead, whether the *type* of reasons in terms of which the associativists want to succeed to account for them, is the right type of reasons to ground political obligation. My question now is the same question I asked about the vertical transaction and natural duty theories: are reasons in which the associativists ground political obligation of the right type to ground *political* obligation?

## 6. Affiliation of Private Reasons?

Political obligation describes our relation to the government. As I argued throughout the previous chapters, in order to account for what is *political* about political obligation, the reasons in terms of which we relate to the government

<sup>100</sup> This raises an additional problem of how to particularise a group of individuals subject to the normative force of the practice. Any way of accounting for it, would be sufficient to account for their political obligation rendering the normative force of the practice redundant. In a similar way, Simmons argue, the Particularity Problem arises for the natural duty theories.

should be interdependent between those subject to it and should endow them with mutual claim-rights to what they prescribe. Only in this way can we account for the concepts of political society and political authority without which the concept of political obligation makes no sense. Do reasons which, according to the associativists, govern our political obligations satisfy these conditions?

The first associative argument for political obligation I considered was the argument from identity. This argument derives the normative force of political obligation from the constitutive role that a political practice plays in an agent's identity. Are reasons of identity of the right type to ground *political* obligation i.e., are they interdependent and do they endow us with claim-rights to what they prescribe? Reasons of identity have their source in the value involved in one's being the particular agent one is. As no other person is what one is, the reasons of identity one has do not arise for others. Insofar as considerations constitutive of one's identity do not normatively engage others and *vice versa*, reasons of identity are an instance of reasons I called independent, i.e. reasons whose call on us to respond is valid irrespectively of how, if at all, they engage others. It is interesting to note that the independence of reasons of identity cuts deeper than the independence of reasons we encountered in natural duty theories. In the latter case, even if each of us was called separately to engage with the reasons provided by natural duties, we could at least say that the reasons to which each of us was so called to respond were the same reasons. The reasons with which identity provides us are not like this. As they have their source in the value involved in the particular agents being who they are, their identity as reasons is essentially determined by a reference to the agents for whom they are reasons. In other words: the uniqueness of particular agents enters their identity as reasons. This means that if we say that a reason is a reason for a particular agent we say that its identity as a reason is as unique as the identity of the agent for whom it is a reason. There being no identical agents prevents there existing a relation of sameness between reasons that their distinct identities provide them with. Even when universalised, such reasons do not become the same reasons. Pettit says:

“[If theorists of special obligation] are to embrace the requirement of universalisability, then they will have to adopt a surprisingly relativistic stance. (...). Suppose that A has the relativised duty to see that he develops his talents, in virtue of [the fact that] he is someone with talents, he has time available (...) and the like. If B is similarly qualified and we therefore universalise the obligation so as to include him, what is the result? B is

called upon (...) to see (...) that he, B, does so. The relativity of the content means that universalisation takes us to a *distinct* obligation".<sup>101</sup>

We could put the difference in depth of independence between the reasons that the natural duty and associative theories employ this way: if in the framework of natural duty theories each of us stands separately *vis-à-vis* the reasons we are called on to respond to, then, nevertheless, we all stand in the same normative world. If in the framework of the associative theories each of us stands separately *vis-à-vis* reasons, each of us stands in a separate normative world.

Reasons of identity also fail to satisfy the second condition required of reasons that govern political obligation. Namely, they do not provide us with mutual claim-rights to what they prescribe. For if considerations constitutive of my identity do not normatively engage others and *vice versa*, then there is no ground on which they could demand and enforce my acting on them if I fail to do so and *vice versa*. For example, if your self-conception as a supporter of Manchester United F.C. gives you a reason to attend the UEFA Champions League match that the club will play in your town next month, we do not think that you having this self-conception would ever give me any right to demand and enforce you to do so. We can understand that I might find it a pity if you didn't attend the match, but we would reject any attempt of mine to force you to buy a ticket as an instance of unjustified paternalism and meddling in what is none of my business.

If reasons of identity are private in the sense described above and if political obligation is governed by reasons of identity, the picture of the *political* domain is the following. If we are subject to the same government, each of us will most likely discover the same practice of political authority as a constitutive element of his identity. Accordingly, our political obligations will most likely have the same government as their object and will dictate the same actions. Nevertheless, insofar as our identities are distinct and my concern with my identity does not normatively concern you and *vice versa*, our political obligations will engage each of us independently of one another: *I* have *my* political obligation toward this particular government if *I* discover that the practice of political authority operating in the political association of which I am a member is a constitutive element of who *I* am; the normative force of the obligation I have derives from the constitutive role this practice plays for *my*

<sup>101</sup> Pettit 2000, p. 175, Pettit/Goodin 1986, p. 660. Emphasis added. Also: Korsgaard 2002, VI, p. 16

identity. Analogically, *you* have *your* political obligation toward this same particular government if *you* discover that the practice of political authority operating in the political association of which you are a member is a constitutive element of who *you* are; the normative force of the obligation you have derives from the constitutive role this practice plays in *your* identity. The reason I have to obey the government does not exist as a reason for you and *vice versa*. But if my reason to obey the government does not exist as a reason for you and *vice versa*, then you have no ground to complain if I fail to act on my reason and *vice versa*. And independently of whether you are the government or my fellow-citizen, if you try to enforce my acting on it, I will reject it as a case of meddling in what is none of your business and *vice versa*. Given that reasons of identity are neither interdependent nor endow us with mutual claim-rights, we do not form a political society when acting on them. If we do not form political society when acting on them, they cannot govern our *political* obligations.

A similar problem arises when we try to account for the concept of political obligation in terms of the associative argument from the “normative independence” of social practices. According to this argument, established social practices, roles, and conventions have the status of independent moral phenomena. Insofar as such social phenomena are conceived as external to individuals, they present themselves to them as moral entities incarnated in social facts. Such incarnated moral particulars call for our response in the same way as other facts about the world do: they do so by virtue of the fact that we happen to live in a particular place and at a particular time. Yet the specific space and time parameters apply to us independently of how, if at all, we relate to others situated in the same space and time. This means that the reasons such incarnated moral particulars present us with engage us independently of how, if at all, we act or relate toward one another. Insofar as such reasons dictate obedience to the government, we do not form a political society when obeying the government. If we do not form a political society when acting on our political obligations, the concept of political obligation makes no sense.

The implications of the two associative arguments considered so far are disappointing. Neither the argument from identity nor the “normative independence” variant of the argument from affiliation succeeds to account for what is *political* about political obligation. The reasons in terms of which they account for our political obligations are private: they engage us independently of one another and do not endow us with mutual and multilateral claim-rights. One might try to evade this problem by claiming that in some situations private reasons of others could normatively engage us. If private reasons of others

engaged us, one might say that individuals acting on their private reasons constitute a social entity. Insofar as such reasons regulated individuals' relations to the government, individuals acting on them could be seen as constituting a political society. Obligations in regard to the government such reasons established could be then *political* obligations. In her discussion of the normative force of practical identities, Korsgaard considers two proposals of how the private reasons of others could normatively engage us. One such proposal would be to say that our private reasons logically commit us to taking other people's private reasons into account. As far as the reasons of identity are concerned, the argument could go this way: we would begin by showing that one is rationally committed to valuing certain features of oneself. We would then move to the further conclusion that one must value, on pain of contradiction, the same features in others. If one values the things that others value, their reasons must also be one's own reasons.<sup>102</sup> In her discussion of this proposal, Korsgaard denies that the appeal to consistency could ever bridge the normative vacuum between individuals reasoning in terms of private reasons:

“Consistency can (...) force me to acknowledge that your desires have the status of reasons for you, in exactly the same way that mine do for me. But it does not force me to share in your reasons (...). It could still be true that I have my reasons and you have yours, and indeed that they leave us eternally at odds”.<sup>103</sup>

Another proposal would be to say that the private reasons of others acquire normative force for us if we have reasons to accord them normative force. We would have reasons to accord them normative force if this would serve our own private reasons.<sup>104</sup> This approach fails, too. Within its framework, the standing we grant to the private reasons of others is not normative at all. For if the private reasons of others have a normative force for us as long as we have private reasons to accord them normative force, then their normative force for us is our private property. But then it is not a normative force at all: it is like the normative force of my promise to see you tonight unless I change mind and want to see someone else—no binding force has been generated.<sup>105</sup>

<sup>102</sup> Korsgaard 1996b, p. 133. She refers to Nagel's "The Possibility of Altruism" and Gewirth's "Reason and Morality" as the representative of this approach.

<sup>103</sup> Korsgaard 1996b, p. 134. We saw this argument at work, in Pettit's formulation, when we argued that universalisation does not extend the normative force of private reasons beyond the boundaries of the person for whom they are reasons.

<sup>104</sup> Korsgaard 1996b, p. 133. She refers to Gauthier's "Morals by Agreement" as the representative of this approach.

<sup>105</sup> cf. Korsgaard 1996b, p. 134.



If any satisfactory account of the *political* is to come out of the associative camp, it must be in terms of the third associative argument for political obligation *viz.* the argument from special relations. According to it, political obligation is governed by reasons that arise from special relationships that a social practice of citizenship establishes between individuals participating in it. As duties of special relations bind us only insofar as others act on them, the reasons they provide us with are interdependent. For example, no reasons of sisterhood arise for me unless there is someone who relates to me as my brother or sister and acts in a corresponding way. In the same way, co-citizenship provides us with reasons for action only if there are some others who relate to us as co-citizens and act in a corresponding way. Consequently, if obedience to the government enters the content of reasons that the special relation of co-citizenship provides us with, interdependency between our reasons for obedience allows us to say that, when obeying the government, we form a political society. The associative argument from special relations not only allows us to account for the *political*, but it also describes it in a way that better accords with our moral intuitions than, for example, Waldron's version of the natural duty argument. I argued that natural duties form a very thin basis of our political concern with each other. When natural duties govern our political relations, claim-rights can come only in the form of natural rights. The objects of natural rights are the basic interests of their holders simply as persons. In my discussion of Waldron's version of the natural duty account, I argued that in a society in which the currency of our mutual concern is our own basic interests or rights, we are concerned with others' basic interests and rights only insofar as their recognition or violation (in)directly affects our own basic interests and rights: unless we stand in a natural duty relation to others, their well-being and rights matter to us only because it can affect our well-being and rights. Reasons that arise from special relations move us beyond self-regarding concerns in regulating our political relations and ensure a thicker basis of our concern with one another. Others matter to us not because our basic interests matter to us, but because of the relation between us: we are concerned with them as our brothers, neighbours, fellow-union members, or co-citizens.

By way of concluding this chapter, let me summarise my main arguments. My discussion of the associative theories of political obligation has been organised around two major questions. First, I asked whether affiliation, which, according to the associativists, is the source of our political obligations, has any normative force. Second, I asked whether the reasons in terms of which the associativists

want to account for its normative force are of the right type to ground political obligation. The argument from identity and the “normative independence” version of the argument from affiliation failed on both accounts. If we have any associative obligations that govern our relation to the government, they will be obligations that have their source in the special relations in which we stand to our fellow-citizens, as described by the associative argument from special relations.



## Horizontal Transactions: Fairness

I began my discussion of contemporary theories of political obligation with theories that derive political obligation from acts of individual consent to the government and considerations of reciprocity for the benefits conferred by it. I had signalled then that both types of obligation-generating transactions have horizontal variants: acts of consent and considerations of reciprocity for the benefits received can bind individuals to one another rather than to the government. In consequence, unlike in the vertical transaction theories, obedience to the government can be a matter of obligation that individuals owe to one another rather than to the government. I want to complete my discussion of contemporary theories of political obligation with an analysis of this class of theories. I will focus my analysis on the fairness theory of political obligation, which is the most prominent example of horizontal reciprocity theories.<sup>1</sup>

### 1. The Principle of Fairness

Fairness arises out of mutual relationships between individuals participating in a project that requires that a sufficient number of individuals contribute to it in order for it to yield advantageous results for all. Fairness makes a contribution to the scheme, which would otherwise be vulnerable to suboptimality

<sup>1</sup> Other examples of horizontal reciprocity theories are the reciprocity theory developed by Becker 1986 and the gratitude theory developed by Walker 1988, 1989. A horizontal variant of consent theory is developed by Gilbert 1999. I will not discuss it here because she maintains that the bonds between individuals that ground political obligation are not necessarily moral.

problems,<sup>2</sup> a matter of obligation that one owes to fellow scheme participants. When demanded by fairness, individual contribution is seen as a right return due to others for their contributions to the production of the benefits one is allotted in the scheme.

Fairness theories of political obligation conceive of the political state as a particular type of cooperative scheme. The benefits that a government-run scheme provides are typically measured in terms of goods such as environmental protection, protection from natural disasters, medical care, public safety from epidemic diseases, law and order and national defence, etc.<sup>3</sup> Obedience to the government is seen as a form that the obligation to contribute to such a scheme takes. When demanded by fairness, obedience is seen as a right return due to others who, by obeying the government, contributed to the production of the benefits one is allotted in the scheme.<sup>4</sup>

<sup>2</sup> Rational choice would defeat reasons to contribute to the cooperative venture if an individual is confident that enough others will contribute to guarantee that the mutually advantageous results will be produced.

<sup>3</sup> cf. Klosko 2005, ch. 2

<sup>4</sup> It is a matter of controversy whether the receipt of benefits that generates obligations of fairness to reciprocate should be of voluntary or of non-voluntary character. Both proposals are contested. On the one hand, as first suggested in Nozick's discussion of the principle, a voluntary receipt of benefits would collapse the principle of fairness into the principle of consent, Nozick 1974, p. 95. Moreover, it is not even clear whether one could voluntarily receive the goods provided by a state-run coordination scheme. Given that most of the benefits provided by the government are of non-exclusionary character i.e., once produced, nobody can be excluded from enjoying them, the idea of their voluntary receipt seems misplaced: as one cannot refuse them, one cannot be said to voluntarily accept them, either. On the other hand, the idea that non-voluntary receipt of benefits would obligate one in fairness to reciprocate is often thought to have unacceptable consequences, too. As Nozick pointed out, all sorts of unasked for services would create obligations, cf. Nozick 1974, p. 90-93. In an attempt to steer clear from the non-voluntary reading of the fairness principle, Simmons suggested a voluntary reading of the principle that does not collapse it into the principle of consent. According to Simmons, it is not necessary to have an option of refusing the benefits to be capable of voluntarily receiving them. Willing acceptance of benefits, including non-exclusionary ones, is sufficient to ensure a voluntary character of their receipt, Simmons 1979, p. 125-133. The problematic character of this proposal has been disclosed by Den Hartogh. Simmons' idea of willing acceptance presupposes a belief that we would take the benefits even if we had the option of refusing them. As Den Hartogh observes, this rules out the disposition of the free-rider. The reason to exclude free-riding can only be that it is unfair. In this case, however, willing acceptance of the benefits is not a matter of free choice but rather a matter of compliance with a moral principle *viz.* the principle of fairness. This turns Simmons' idea of willing acceptance of benefits into a case of hypothetical consent collapsing it into a case of their non-voluntary receipt, Den Hartogh 2002, p. 85-86. Given that there is no way to make sense of the idea of voluntary receipt of benefits as a ground of obligations of fairness, we should re-consider our reluctance to accept the non-voluntary version of the principle. If our reluctance to accept the idea that a non-voluntary receipt of benefits could create an obligation reflects our conviction that only obligations voluntarily undertaken are valid, it is implausible: the concept of natural duty testifies against it. Alternatively, we might be reluctant to accept an obligation to return for unasked for benefits because we find them unworthy of the required price. I grant that if this is the case, no obligations of fairness arise. This still leaves the possibility that in cases in which the

When analysing this approach to political obligation, I will concentrate on one particular aspect of the problem of political obligation. I argued that in order to make a case for political obligation it is not enough to establish that content-independent obedience to the government's instructions is a matter of obligation. In order to make it a matter of *political* obligation, reasons that require obedience to the government should be interdependent and they should endow us with mutual claim-rights as to what they prescribe. Among the theories discussed so far only Waldron's version of the natural duty account and the associative argument from special relations satisfied these conditions. In this chapter, I will ask whether reasons of fairness are of the right type to ground our political obligations so understood.

At first glance, the fairness account of political obligation seems promising. The reciprocity argument anchored in considerations of fairness makes a better case to ground political obligation as compared to its vertical counterparts. Reasons of fairness bind individuals to one another rather than each particular individual to the government. The horizontal relations of reciprocity between individuals introduce social and normative links between individuals that were missing in the vertical picture of the *political*. First, when dictated by reasons of fairness, our acts of obedience are a response to the similar acts of others. As Greenawalt put it, "the duty of fair play relates to a continuing enterprise in which one's present and future acts are based on assessment of how one's fellow participants have acted in the past and on expectations of how they will act in the future".<sup>5</sup> In particular, your contribution to a common project is part of my reason to contribute and *vice versa*. To say that our acts of obedience are a response to the similar acts of others is to say that our acts of obedience refer to one another. This introduces social links between individuals that were missing in the vertical scenario. Mutual reference or interdependence of reasons for obedience allows us to say that when dictated by reasons of fairness, our acts of obedience reflect a social pattern. Second, when dictated by reasons of fairness, obedience to the state is a matter of mutual and multilateral claim-rights. In one of the first formulations of the fairness principle, Hart said:

"the obligation [of fair play] to obey (...) arises between members of a particular political society out of their mutual relationship. (...). [W]hen a number of persons conduct any

benefits are worthy of their costs, the principle retains its plausibility. This is how I will understand the applicability of the fairness principle throughout my discussion.

<sup>5</sup> Greenawalt 1987, p. 127. Similar observations are made by Hart 1958, p. 101, Simmons 1979, p. 116 and Simmons 2001, p. 40-41 and Den Hartogh 2002, p. 81.

joint enterprise (...), those who have submitted to [its rules] when required have a right to a similar submission from those who have benefited by their submission. The rules may provide that officials should have authority to enforce obedience and make further rules (...) but the moral obligation to obey the rules in such circumstances is due to the cooperating members of the society and they have the correlative moral right to obedience".<sup>6</sup>

By endowing individuals with mutual and multilateral claim-rights, reasons of fairness introduce the normative links between individuals that were missing in the vertical picture of the *political* domain. In introducing social and normative links between individuals obeying the state, the fairness principle appears to correct for the defects in the picture of the *political* domain that turned out to be fatal to the vertical variant of the transaction theories of political obligation. Below I will reconstruct the principle of fairness in more detail and ask how far it can validate these initial appearances.

## 2. The Kantian Core of the Fairness Principle

According to the fairness principle it is wrong that some get the benefits of cooperation without bearing the costs, while others get the benefits only because they have taken on the costs. A default case of unfairness so conceived is free riding. When explaining the wrong involved in free riding both advocates and critics of the fairness principle say that it consists in using or manipulating others in order to better one's situation. When arguing for this point, they avail themselves of Kantian language. Lowe, for example, argues in the following way:

"we might (...) get at the wrongness of free riding by appeal to the Kantian injunction against using others solely as a means to one's ends. In free riding a person implies that others exist to fill one's own needs, that the value of their efforts is that they have provided a benefit for oneself, and that no reciprocation is necessary".<sup>7</sup>

In prohibiting free riding, the principle of fairness prohibits the instrumental treatment of others. In this formula, the principle of fairness seems to be an adaptation of the second formula of Kant's Categorical Imperative for the context of cooperative interactions.

<sup>6</sup> Hart 1955, p. 186, 185.

<sup>7</sup> Lowe 2000, p. 75

Alternatively, one might try to formulate the fairness principle as a principle that prohibits exploitation. This formulation seems to be invited by those who, like Simmons, explain the wrong involved in unfairness in terms of taking advantage of others or exploiting them:

“the kind of unfairness condemned by the principle is that involved in taking advantage of or exploiting the sacrifices of persons who have freely assumed the burdens associated with maintaining mutually beneficial schemes”.<sup>8</sup>

However, if free riding is understood to be the default case of unfairness, this formulation of the principle cannot be entirely correct. In the context of a wider discussion on the concept, for example Gauthier’s, exploitation describes a situation of “bettering one’s situation through interaction that worsens the situation of another” (as measured against the situation in which the parties would have been if they had not interacted).<sup>9</sup> Gauthier calls this default case of exploitation “parasitism.” Free riding differs from parasitism in that in engaging in free riding one does not necessarily worsen the situation of one’s cooperation partners.<sup>10</sup> Thus, defined as a prohibition on exploitation, the fairness principle would not necessarily prohibit free riding. Yet, the intuition that brings unfairness and exploitation together is not entirely incorrect either. For when being a parasite on others, i.e. when in one’s attempts to better one’s situation one worsens their situation, one not only harms others, but one also makes instrumental use of them and, thus, violates the Kantian injunction against using others solely as a means to one’s ends. From this perspective, it is correct to say that the fairness principle is a prohibition on exploitation. We should keep in mind, however, that the principle of fairness prohibits exploitation because, on this reading of it, it prohibits the instrumental treatment of others and exploitation is a particular case of it (i.e., exploitation is a case of the instrumental treatment of others, which results in the worsening of their situation).

In reconstructing the normative force of the fairness principle in terms of the second formula of the Categorical Imperative that prohibits treating others as a means to one’s ends, I have relied on the default reading of fairness i.e., a prohibition on free riding. Understood exclusively as a prohibition on free riding, however, the principle of fairness does not address all situations we

<sup>8</sup> Simmons 2001, p. 29-30. For a similar formulation of the fairness principle see Lyons 1965, p. 175, Lowe 1996, p. 54

<sup>9</sup> Gauthier 1986, p. 205

<sup>10</sup> Simmons 2001, p. 30-31



would call unfair. Suppose, for example, that when deciding on the terms of cooperation the more powerful among us left no option to us but that of entering into a cooperation scheme, the terms of which guarantee them the gross of the benefit and, at the same time, reduce their contribution to a minimum. Even though the cooperation benefits both parties, the resulting distribution of benefits and burdens allows the powerful to take advantage of the weak. While we are not dealing here with a case of free riding (the more powerful party does not *shirk* his contribution), we would nevertheless describe the situation as unfair. The Kantian injunction underlying the fairness principle correctly identifies the wrong inherent in the situation described: in using his power advantage to reduce his own contribution and to shift the gross of the cooperative burdens on the weaker party, the more powerful party treats the weaker party as a means to his ends when it comes to deciding how the cooperative burdens and benefits should be divided between them. The fact that the Kantian injunction does account for our intuitions about the unfair character of the situation described above suggests that the principle of fairness not only guards against violating the principles that govern the distribution of cooperative burdens and benefits but that it also addresses itself to the very character of those principles. Given that the Kantian injunction never to treat others as a means does not provide any specific account of the right division of cooperative benefits and burdens, the question is how to determine the exact prescription of fairness on that point. The proponents of the fairness account argue that, insofar as fairness addresses itself to the character of the principles governing the distribution of cooperative burdens and benefits, it requires maintaining a proper proportion between benefit and contribution across the relevant individuals. Thus, if there are no morally relevant differences between beneficiaries, those who benefit similarly should bear similar burdens. If their cases are morally similar, there are no factors that would justify their different actions. It is the opposite that seems right: they should be subject to similar treatment. The idea that the fairness principle involves the principle requiring that morally similar cases be treated similarly has been explicitly endorsed by Klosko:

“on a more basic level, the principle expresses a general idea of fairness: similar individuals should be treated similarly. It is wrong for certain people to be exempt from burdens others must bear in the absence of morally relevant differences between them”.<sup>11</sup>

<sup>11</sup> Klosko 1992, p. 34

Compare a recent formulation of the equal treatment reading of fairness in Lefkowitz:

“[fairness requires that] each individual’s contribution be equal to the contribution of the other participants from whom that individual differs in no morally relevant respects”.<sup>12</sup>

If, absent morally relevant differences between benefiting individuals, receipt of similar benefits makes their cases morally similar, then the receipt of different benefits will make their cases morally different. What would be a fair treatment of individuals that are morally dissimilar in this way? According to the proponents of the fairness principle, dissimilar individuals should be treated commensurate with their differences: those who are allocated bigger benefits in the scheme should be charged higher contributions and those who are allocated smaller benefits should be charged smaller contributions. The different treatment is the way to preserve proportionality between benefits and costs across all relevant individuals. Given that “proportion [is] equality of ratios”,<sup>13</sup> preserving proportionality between benefits and contributions ensures equal treatment across all benefiting individuals in a way that accommodates moral differences between them. This interpretation of the principle of fairness is implied in Simmons’s discussion of it.<sup>14</sup> Recently, Carr has argued that it is the import of the equal treatment reading given to it by Klosko:

“If equality of treatment expresses a (...) general idea of fairness, (...) [it] would seem to mandate that the proper ratio of benefit to burden be maintained for all beneficiaries. (...). By juxtaposing benefits with the assumption of burdens, (...) the fairness principle makes fairness into something like a payment in kind or a *quid pro quo*”.<sup>15</sup>

I have said that the principle of fairness, in addressing the distribution of cooperative burdens and benefits, requires that every individual’s contributions

<sup>12</sup> Lefkowitz 2004, p. 19

<sup>13</sup> Aristotle, Nic. Eth. V, 3: 1131a31

<sup>14</sup> cf. Simmons 1979, p. 113-112.

<sup>15</sup> Carr 2002, p. 16, 21. Elsewhere, he says: “Thus understood, the concept of fairness approximates the notion of formal justice and requires the equal treatment of equal cases and proportionately different treatment of proportionately different cases. So anyone who benefits from the efforts of others should assume a portion of the burden commensurate with the ratio of benefit to burden realised by others”, Carr 2000, p. 31. That fairness requires one to contribute to the scheme in proportion to the benefits one is allocated in the scheme is also argued by Lowe 2000, p. 81, 84

be in proportion to the benefits he is allocated in the scheme and that the proportion be constant across all relevant individuals. Applied to my example above, this means that the more powerful, claiming the gross of cooperative benefits, should also bear the gross of cooperative burdens. This formulation of the principle of fairness does not, however, eliminate all problematic aspects of the situation described in the example. We might still wonder why the weaker party is denied some of the benefits that are granted to the powerful party. For example, we would certainly object to a policy denying a certain ethnic minority access to the public health care system even if this denial were followed by lowering the taxes of the minority group accordingly. Given that we are not necessarily dealing here with a case of treating others as a means and that the proportion of benefits to burdens across all parties in the scheme is the same, the problematic character of the situation cannot be explained in terms of the violation of the principle of fairness as reconstructed above. We should, perhaps, think of it as a problem of justice rather than fairness. This seems to be implied by the way Simmons addresses this point:

“[the principle of fairness] seems to entail that the better off are bound to support unjust schemes which favour them, and the more discriminatory the scheme, the more strongly they must support it. And second, it seems to entail that those who are allocated tiny, unfair shares of the benefits are still bound to cooperate with the unjust scheme which mistreats them. (...). While we can, of course, agree with Rawls that intolerably unjust schemes ought not to be furthered (...), there is no logical difficulty (...) in holding that we may sometimes have obligations of fair play to cooperate within unjust schemes”.<sup>16</sup>

However, if we admit that the issue of benefit allocation in a cooperative scheme is a matter of justice rather than fairness, we admit that the principle of fairness, as a principle governing our political interactions, has an important weakness: in the political domain governed exclusively by the principles of fairness, possible injustices in the benefit allocation will have no properly political solution.

It is interesting to note that the second formula of the Categorical Imperative upon which the principle of fairness draws does recognise the problematic character of the situation described in the example above. The Kantian injunction has two formulations: the negative one that prohibits treating others as a means and the positive one that requires treating others as ends-in-themselves. The problem involved in the situation described above could be seen as a violation of the positive part of the Kantian injunction. From

<sup>16</sup> Simmons 1979, p. 112, 113, 114.

the perspective of the positive part of the Categorical Imperative, we could say that in denying others certain benefits, we do not treat them with the respect and concern they deserve as autonomous moral agents when it comes to distributing cooperative benefits. If the principle of fairness is insensitive to the problem it is because it relies only on the negative part of the Kantian injunction. As the two parts of the Categorical Imperative are not equivalent, the satisfaction of the negative part does not guarantee the satisfaction of the positive part: as my example above illustrates, we can refrain from treating others as a means and still fail to treat them as ends-in-themselves. The insensitivity of the principle of fairness to the (in)justices in the distribution of cooperative benefits could be rectified if, in accounting for its normative force, the proponents of the fairness principle relied not only on the negative part of the Kantian injunction but also on its positive part. It is unclear whether the proponents of the fairness principle would be prepared to adopt this broader understanding of the principle of fairness. Some such modification would be required, however, if the “unfairness” in the distribution of benefits the principle of fairness allows is to be countered.

I have traced the normative core of the fairness principle to the prohibition against treating others as a means. I said that this formulation reflects the negative part of the second formula of the Categorical Imperative. We saw that the principle of fairness not only guards against the violation of the principles that govern the distribution of cooperative burdens and benefits but that it also addresses itself to the very character of those principles. My next question is whether the principle of fairness, as I have reconstructed it in this section, provides us with the right type of reasons to govern political obligation?

### **3. Fairness as a Ground of Political Obligation**

Before I ask whether reasons of fairness are of the right type to ground properly *political* obligation, I would like to ask whether the content of the *obligation* that the principle of fairness establishes involves content-independent obedience to the directives of the government.

In answering this question, it is important to keep in mind that various details of the organisation of cooperative schemes can be a matter of controversy. The controversy may concern the exact division of tasks but also the exact character of the principles that are to govern the distribution of cooperative burdens and benefits. I said that the principle of fairness, in addressing the distribution of cooperative burdens and benefits, requires that

every individual's contributions be in proportion to the benefits he is allocated in the scheme and that the proportion be constant across all relevant individuals. This formulation of the fairness principle for the distribution of cooperative burdens and benefits leaves space for various interpretations. First, there may be disagreement about the way to measure the contributions and benefits of cooperating individuals. Sometimes a measure of benefit and burden can be natural, for example, money and labor. In other situations, more complicated measures could be applied and benefits and burdens can be measured in terms of utility gains and utility losses.<sup>17</sup> Second, the exact model of proportionality that should govern the right division of cooperative burdens and benefits might be contested. It seems that the fairness theorists discussed in this chapter conceive the proportionality on the model of Aristotle's proportionality principle which states that contributions should be allocated in proportion to each person's benefits: roughly speaking, that those who benefit twice (three times, etc) as much, should also contribute twice (three times, etc) as much. This conception of proportionality suggests the matter is simpler than really is the case. In the theory of rational bargaining, the concept of proportionality, addressed to the problem of the right division of cooperative burdens and benefits, has been employed in several other ways. One prominent position argues that net utility gains should be equal.<sup>18</sup> Another position requires equalizing the individuals' burdens relative to the maximum benefit they could expect.<sup>19</sup> Settling on one of the competing views concerning the details of the organization of the cooperation scheme, such as the exact character of the principles that are to govern the distribution of cooperative burdens and benefits, will require arbitration. Unless we resort to arbitration on those points, we will not be able to contribute our share (because we will not know what it is) and thereby we will fail to treat our fellow-participants in the cooperation scheme with the respect they deserve. As Den Hartogh observes, the possibility of competing views about the details of the organisation of cooperation scheme and the necessity to resort to arbitration explains why the

<sup>17</sup> Economists traditionally measure benefits and burdens in terms of welfare, for example, the idea that a tax system should reflect the principle of equal proportional sacrifice conceives of the relevant sacrifice as a sacrifice in welfare. In the theories of justice, welfare as a measure of burdens and benefits is contested. In the discussion about the "currency of justice", Rawls and Dworkin criticize the idea that welfare is the right measure of justice and choose, instead, for disposition over resources.

<sup>18</sup> Nash 1950

<sup>19</sup> Kalai and Smorodinsky 1975. A similar solution is Gauthier's "minimax relative concession" principle in Gauthier 1986. A discussion on various conceptions of proportionality can be found in Peyton Young 1994.

content of the fairness requirements takes the form of content-independent obedience to the directives of the government. Given that the acceptance of the arbitrating authority involves taking its directives in a content-independent way, fairness requires content-independent obedience to the directives of the arbiter. Insofar as the fairness theorists conceive the forms of cooperation provided by the government as a form of arbitration between competing ways of organizing the scheme, fairness requires content-independent obedience to the directives of the government.<sup>20</sup>

Is the obligation to obey the directives of the government in a content-independent way that the principle of fairness establishes a *political* obligation? The Kantian reading of fairness, with its emphasis on the negative part of the second formula of the Categorical Imperative, has the unconditional character of a deontic prescription that binds persons independently of how or whether at all they are related. In this form, fairness is like a duty we owe to each other simply by virtue of being humans. And indeed, Carr, for example, classifies fairness requirements under the category of natural duties:

“because human beings are creatures of incomparable worth, we stand under something we might call a natural duty to treat them accordingly. This duty arises by virtue of the valorisation of the individual (...) and follows rather (...) automatically from it. The notion of Kantian fairness (...) involves a natural duty of this sort”.<sup>21</sup>

Now, as we have seen in chapter 3, reasons of this kind lack the interdependent character required of reasons that are to govern our *political* interactions. It is true that insofar as treating others as ends-in-themselves in the context of a cooperation scheme requires doing our part as specified in it, the content of our duties (i.e., *what* treating others-as-ends requires) is defined interdependently. But interdependency affects here only *how* each of us pursues such duties, not their *reason-giving* force. This implies that reasons of fairness cannot be interdependent. Correspondingly, when responding to their reason-giving force, our actions do not form any social pattern. This means that when acting on our political obligations we do not form a political society and so the concept of political obligation governed by reasons of fairness understood in the Kantian way makes no sense.

Perhaps we can arrive at the interdependence of reasons of fairness along the following lines. When analysing the wrong a free rider commits in

<sup>20</sup> Den Hartogh 2006, p. 795

<sup>21</sup> Carr 2000, p. 82.

manipulating others, many authors including Klosko, Simmons and Cullity,<sup>22</sup> say that it consists in the preferential treatment that he accords himself but that he denies to others: in freely enjoying the benefits of the cooperative efforts of others, a free rider relies on the renunciation of this privilege by others. Simmons:

“the moral wrong done involves (...) unfair ‘self-selection’—in which individuals select themselves for the privilege of doing the limited amount of free-riding that the cooperative scheme can tolerate without harm. (...). [N]o participant is entitled to select himself for those opportunities, since each participant has at least as much claim on the benefits of non-harmful free-riding as any other, and since honouring all such claims would undermine the scheme. Self-selection takes advantage of the good-faith sacrifices of others, by forcing them to bear alone the full cost of a mutually beneficial scheme. (...). Accounts of political obligation (...) employing the principle of fair play are concerned with this sort of unfair self-selection”.<sup>23</sup>

The shift in emphasis, from explaining the wrong involved in unfair behaviour in terms of violating the Kantian injunction never to treat others as a means but always as ends, to explaining it in terms of according oneself objectionably preferential treatment, implies a corresponding shift in accounting for the normative force of the fairness principle. One seems to move here from the Humanity Formula of the Categorical Imperative to, according to Kant, its equivalent Universal Law Formula, which requires that our actions meet the requirements of universality. Now, if the wrongness of unfair behaviour consists in its non-universalisable character, then there must be a sense in which the imperative of universality lends normative force to the fairness principle. It is in this sense, one might claim, that fairness involves some measure of interdependence. The fairness principle can be seen here as interdependent in the sense in which its validity depends on the possibility of its being acted upon by others without it yielding a contradiction in conception. What are we to say about this proposal?

My reply is that, even if the shift is warranted,<sup>24</sup> this form of interdependence is too weak for our purposes. The universality test requires that we be able to think of a given principle of action as being endorsed and acted upon by others without it yielding a contradiction in conception. But this

<sup>22</sup> Klosko 1992, p. 35, Simmons 2001, ch. 2, Cullity 1995

<sup>23</sup> Simmons 2001, p. 30-31.

<sup>24</sup> The equivalent character of the Kantian formulas of the Categorical Imperative has been questioned in Korsgaard 1996b

allows for a situation in which a principle passes the universality test even if the relevant others do *not* actually endorse it or act on it. For even if they do not actually endorse or act on it, it may still be true that if they *did* endorse or act on it (even though they do not now), the principle would *not* yield a contradiction in conception. If this is the case, the results of the universality test are still positive and we are led to admit that the principle in question has action-guiding force for us. To admit this, however, is to admit that the given principle does not bind us by virtue of its binding others, but by virtue of a *possibility* that it could bind them. Hypothetical endorsement of reasons for action, however, is not enough to guarantee that our actual actions possess the measure of interdependence required to ensure their social character. Therefore, reasons that attach to the principle of fairness interpreted along the lines of the Universal Law Formula of the Categorical Imperative lack the interdependent character required of reasons that are to govern political obligation. Note also that the fact of passing the universality test does not guarantee that a given principle would endow us with mutual claim-rights to what it dictates: for, if all that is required for a principle to bind me is the possibility that you *could* endorse it without the principle yielding a contradiction in conception, then the force of my claims that you act on it remains just as speculative as the possibility of your endorsing it. This problem once again calls into question the suitability of the fairness principle as a principle governing our *political* interactions.

There are two ways of securing the interdependent character of reasons of fairness. One could argue that the condition of reciprocity is essential to the application of the Categorical Imperative in its Universal Law Formula. Insofar as the fairness principle relies on it, the condition of reciprocity inherent in it would endow reasons of fairness with interdependent character. An argument to the effect that the condition of reciprocity is essential to the application of the Universal Law Formula of the Categorical Imperative would require demonstrating that the right description of a universalisable maxim involves a reference to reciprocity. Such a demonstration seems possible insofar as, for example, the maxim “do not cooperate if you can expect that others would not cooperate” can be universalised. Alternatively, one might build the condition of reciprocity and, thus, the condition of interdependence, into the principle of fairness by arguing that no obligations of fairness to contribute bind one unless one is assured of the contribution of others. This condition, as Den Hartogh notes, seems fairly obvious (because it is not unfair to refuse to cooperate if one knows that no one else is going to contribute), but it is largely absent from the debates on fairness. Den Hartogh states this condition in terms of mutual



expectations between cooperating individuals. He argues that the principle of fairness applies only under the condition that the participants to a cooperative scheme mutually expect each other to make their respective contribution.<sup>25</sup> If obligations of fairness bind only if one can expect that others contribute and *vice versa* i.e., if one's contribution depends on others' contribution, then reasons to contribute are interdependent. If our reasons to contribute depend on whether others contribute, our reasons are interdependent.

Let me conclude. I have analysed the sense that the principle of fairness acquires when it is employed as a ground for political obligation. I argued that in the form pursued by its proponents the principle could not ground *political* obligation, and I suggested necessary corrections. I conclude that if modified along the lines suggested, the principle of fairness, next to Waldron's variant of the natural duty account and the associative argument from special relations, is a plausible principle of political obligation. This qualified acceptance of the fairness principle as a principle of political obligation commits me to address one more objection often raised against the fairness account of political obligation. An argument to the effect that the fairness principle can govern our relation to the government must rest on an assumption that contemporary states are sufficiently like cooperative enterprises for mutual advantage for the principle of fairness to apply to their citizens. This has been denied by many critics of the principle of fairness, for example, by Simmons and Horton. They argue that there is no consciousness of cooperation among citizens of contemporary states. According to them, citizens of contemporary states perceive the benefits provided by the law as purchased from the government by taxes rather than as created through the cooperation of their fellow-community members. Moreover, they would often consider them as unworthy of the price they are asked to pay for them.<sup>26</sup> My response is that these claims fly in the face of the results of empirical studies concerning reasons to obey the government and the law. Klosko, for example, refers to the results of research in social psychology that show that people generally interpret the taxes they pay as a fair contribution to a common enterprise.<sup>27</sup> In his most recent study, he presents the results of a focus-group research study about reasons to obey the government. Again, considerations of reciprocity directed at one's fellow-citizens had a prominent place among reasons mentioned by the research

<sup>25</sup> Den Hartogh 2002, p. 81, Den Hartogh 2006, p. 794

<sup>26</sup> Simmons 1979, p. 139-142, 2001, p. 37-42, Horton 1992, p. 92-93

<sup>27</sup> Klosko 1987, p. 357-362 but see a sceptical voice about the relevance of such empirical results in Green 1996

subjects.<sup>28</sup> Similar results are brought about by recent studies on tax compliance conducted by economists Alm and Torgler.<sup>29</sup> The results of empirical studies suggest, then, that people do understand the cooperative origins of the benefits they receive and regard them as worth the price they must pay for them. This allows us to portray political societies as exhibiting a more cooperative structure than Simmons and Horton presuppose.<sup>30</sup>

Before closing my discussion of the fairness account of political obligation, I would like to signal its weakness. The theory of fairness conceives of our political interactions on the model of a cooperative scheme for mutual advantage. If people are making a cooperative arrangement for mutual advantage, they will want to cooperate with those who can be expected to produce benefit. The very idea of such cooperation will exclude certain classes of people from participation. In particular, it will exclude those who, due to certain impairments or disabilities, can be expected to contribute far less than most to a cooperative endeavour. For example, since severely handicapped individuals or young children may have very little to offer in the way of producing benefits for themselves and others, they would be excluded from the cooperation.<sup>31</sup> Consequently, the principle of fairness would not govern our relations with them. In a political state governed by the principle of fairness, they will be denied citizenship and corresponding political obligations and rights.

The analysis of the fairness theory in this chapter completes my overview of the most influential contemporary theories of political obligation. In the next chapter, I will suggest a novel account of political obligation.

<sup>28</sup> Klosko 2005, ch. 9. See transcripts from the focus group interviews on p. 209, 210-211, 214-215, 216-217

<sup>29</sup> Alm and Torgler 2006

<sup>30</sup> This position has also been defended by Greenawalt 1987, p. 135-136, Gans 1992, p. 61-62 and Arneson 1982, p. 633

<sup>31</sup> This criticism has been raised in the context of theories of justice, very frequently in the discussion of Gauthier's work but also in the literature on Rawls. See, for example, Nussbaum 2006, ch. 2



# 6

## A New Proposal: Civil Justice

Throughout my discussion I have argued that a successful account of political obligation should not only explain what makes content-independent obedience to the directives of the government a matter of *obligation* but it should also explain what makes this obligation *political*. I argued that in order to explain the *political* character of political obligation, reasons that require content-independent obedience to the directives of the government should be interdependent and should endow us with mutual and multilateral claim-rights as to what they prescribe. We saw that a number of influential theories of political obligation failed on this account. I said that those theories were guilty of what I had called the Private Fallacy. Namely, by deriving political obligation from reasons that engage us independently of one another, they collapsed the *political* domain into a series of private and normatively separate relations of domination and submission. Such a model of the *political*, I argued, is merely an institutionalised replica of the state of nature. In this chapter I will introduce a novel account of political obligation that grounds political obligation in reasons that, in regulating our relation to the government, are interdependent and endow us with mutual and multilateral claim-rights as to what they prescribe. I will call such reasons public reasons to emphasise that the way they bind us to the government guards against the private formula of the relation of domination and submission that corrupts the *political*. Let me first shortly recapitulate and refine the conditions of publicity that reasons of political obligation should satisfy.

## 1. Public Reasons

In the first place, I postulated that the reasons that are to govern *political* obligation should be interdependent. Reasons that are interdependent do not bind us independently of one another: if they bind me it is because they bind you and *vice versa*. In other words, if I embark upon a course of action, it must be in response to what you have done or in response to what (I think) you will do. The same counts for you. Part of my reason to embark on this course of action should be formed by what you have reason to do and *vice versa*. The postulate of interdependence is meant to ensure that our acts of obedience to the state can be described as *social* actions rather than as a coincidence of individual *private* courses of action. For, if our actions do not reflect any *social* pattern, we do not form any social entity and, consequently, we do not form a political society. If we do not form a political society when acting on our political obligations, then the concept of political obligation makes no sense.

In the second place, I postulated that the reasons that are to govern *political* obligation should make both the content of this obligation and its observance a matter of mutual and multilateral claim-rights.<sup>1</sup> This condition is meant to ensure that the terms of political submission to the government do not become exclusively a matter of separate arrangements between particular individuals and the government. As I argued earlier, when the terms of political submission are left to private arrangements between particular individuals and the government, the only constraint upon what the individuals can negotiate for themselves is set by their power position and bargaining skills with respect to the political agent. The danger involved in this situation is that individuals could try to make the terms of their political contract disadvantageous for others. Or, even if they were not so inclined, they might nevertheless act in this way because they may lack the assurance that others would not do so. As a result, the terms of political submission established in the course of private arrangements between particular individuals and the government might carry over into the *political* a pattern of interactions characteristic of the state of nature. By postulating that the reasons regulating individual relations to the

<sup>1</sup> The classes of reasons that are interdependent and endow us with mutual and multilateral claim-rights to what they prescribe are not necessarily equivalent. For example, not all reasons that are interdependent endow us with claim-rights. Consider, for example, utility-maximising reasons that drive our acts as represented in a coordination equilibrium. Such reasons are interdependent. However, as individual utility is defined relative to the agent, what we deal with here is interdependence of agent-relative or private reasons. As it is a characteristic feature of agent-relative reasons that they matter to the agent without it being the case that they should or do matter to anybody else, no claim-rights are involved.

government should be a source of claim-rights between individuals, we ensure that the individuals can legitimately intervene with the terms of each other's political submission. Thereby we place a constraint upon what they can negotiate for themselves with the government and we counter the danger that their submission to the government will re-institutionalise the state of nature.

What kind of reasons must reasons of political obligation be if what they prescribe is to be a matter of mutual claim-rights? To answer this question, we first need to dwell on the concept of claim-rights. In addressing my claim to you, I intend to show you that you have a reason to do what I claim. I intend my claim to function as such a reason for you. This means that I make a claim to correctness, which I expect you to recognise as valid. For me to rationally expect this, two conditions must be met. The reasons in terms of which I formulate my claim must be reasons you cannot but endorse as reasons. If they are not, it would be rational for you to ignore my claim and irrational for me to pose it. At the same time, these reasons must be reasons I recognise as valid. If this condition were not satisfied, I could, as Gaus points out, manipulate you by pushing you into conclusions with which I disagree but which, for example, could benefit me.<sup>2</sup> This has the following implication for an account of reasons that are a source of mutual claim-rights: if what these reasons prescribe is to be a matter of mutual claim-rights, then they must be reasons that bind us in the sense that none of us, when presented with them, can reject them as reasons. I will say for short that reasons that are a source of claim-rights must be capable of mutual justification.<sup>3</sup>

The requirement of mutual justifiability needs to be developed further. For if mutual justifiability were all that was required for claim-rights to arise, then just *anyone* presenting me with just *any* reason that I cannot but endorse as a reason would acquire a claim-right to my acting on it. However, as we saw in the case of natural duties, only someone who has a direct stake in our acting on such reasons (i.e., someone who will be wronged if we fail to act on these reasons) can acquire claim-rights to our adequate performances. Moreover, not just *any* reason endows others with a claim-right to our acting on it, but only one that establishes our obligation i.e., one that presents us with an action the performance of which is sufficiently stringent. Finally, unless we are in a unique position to perform the required action, many stringent reasons establish only imperfect duties. This means that the actions they dictate are only optional and their performance cannot be a matter of anyone's claim-rights. Thus, if reasons

<sup>2</sup> Gaus 1996, p. 139-140

<sup>3</sup> In this paragraph I have drawn on the arguments put forward by Gaus 1996, p. 139-140, Postema 1995, p. 85 and Scanlon 1998

of political obligation are to endow each of us with claim-rights as to what they prescribe, they should have three additional characteristics. First, they should possess a measure of stringency required to make acting on them a matter of obligation. Second, the actions they dictate should be a matter of perfect duty i.e., we should be in a unique position to perform them. And third, each of us must have a direct stake in others acting on them.

I have identified the conditions of publicity that reasons to obey the government must satisfy if they are to govern *political* obligation. Note that if we can demonstrate that reasons that dictate obedience to the government are public in the sense described above, we can also explain the sense in which obedience to the government they require is a matter of political *obligation*. That this is the case follows from the presupposition that public reasons are a source of claim-rights and, thus, that they are stringent and that the performance of actions they dictate is a matter of perfect duty.

The claim I want to defend now is that reasons that satisfy the conditions I identified above attach to a class of values that have as their object certain relations between persons. Below I will give a general description of this class of values. I will then distinguish the value of civil justice in this class and explain what is distinctive of the relations to which it attaches. Finally, I will argue that reasons of civil justice can ground political obligation.

## 2. Values Internal to Relations

In order to focus our discussion on the type of phenomena to which values internal to relations belong, let me invoke some examples familiar from everyday life.

We all have or had friends. Friendship describes a relation of closeness and intimacy, mutual understanding and trust between persons who foster affectionate attitudes toward each other. We cannot think of friendship in terms other than as a relation between persons—I can foster the most affectionate and friendly attitudes toward you but I cannot consider myself your friend unless you treat me in a similar way. Given that friendship exists only as a relation between persons, the value we ascribe to friendship does not exist in any other way than through a relation between persons. The value of friendship, internal to certain ways persons relate to each other, has an interesting property. While a relation of friendship is described in terms of mutual affection and (a history of) acts of trust and understanding between persons, the value we ascribe to it is different and distinct from the value we ascribe to acts of trust or understanding considered separately. Neither is the

value of friendship exhausted by the value involved in the sum of such acts and attitudes. Rather, friendship that supervenes upon such ways of approaching each other is a form of human relationship that is of value itself. We have reasons to preserve and maintain it other than, and additional to, the reasons we have to pursue relations of trust or mutual understanding.

Those of us who have enjoyed university education will be familiar with the concept of academic culture. We use this term to describe the climate of work at universities. We measure it, for example, by the enthusiasm of the scientific staff and its dedication to didactic excellence. Another important criterion is the degree to which scholars approach each other's ideas with an open mind, engage in constructive rather than in nagging or aggressive criticism and refrain from plagiarism and other forms of academic dishonesty. While the set of principles the compliance with which makes for a positive academic culture can be multiplied, listing them will not exhaustively account for the concept of academic culture. The value we place on positive academic culture as a stimulating intellectual environment is distinct from the value we place on being treated in the way that the particular principles mentioned above specify. In other words, positive academic culture is valuable in itself. We have reasons to cultivate it other than, and additional to, the reasons we have, for example, to refrain from stealing others' intellectual property or to respect others' efforts by refraining from hostile criticism.

Those of us who had the luck to escape large and anonymous metropolises will be familiar with the concept of a good neighbourhood. This concept describes the living climate of an ensemble of individuals who occupy spaces in a physical proximity. Just as in the case of academic culture, we might list the principles that govern the ways in which people forming good neighbourhoods approach one another. For example, we will observe that they often help one another, exchange small favours or keep an eye on one another's property when they are away. Again, the value involved in the climate of mutual friendliness and trust that this way of co-existence engenders will not be exhausted by the value that such friendly gestures and favours have for those who exchange them. Rather, the climate of mutual friendliness and trust that supervenes upon this way of approaching each other seems to be a valuable form of human relations worth preserving for its own sake.<sup>4</sup>

On a more abstract analysis, we can see the two examples above as instances of the same, more general, moral phenomenon. They both illustrate a climate of mutual recognition that arises whenever individuals treat each other

<sup>4</sup> I wish to thank Frans Jacobs for helping me with the examples.



with the respect and dignity they deserve simply as human beings. Again, it would be wrong to say that the climate of mutual recognition and respect that comes into being whenever individuals treat each other in this way is exhausted by the value of humanity that it realises. Rather, the form of human relationship that the climate of mutual recognition and respect involves seems to be of value itself. We have reasons to preserve and maintain it other than, and additional to, the reasons of humanity that require us to treat other individuals with due respect.

The type of phenomena that the examples of friendship, academic culture, good neighbourhood and mutual recognition illustrate share one important feature. They do not simply realise certain values that bear on us prior to interaction. Even if they supervene upon a situation in which such antecedent values govern the way we approach one another, the phenomena of academic culture, good neighbourhood and mutual recognition embody distinct values that manifest themselves and come to bear on us only through interaction. The normative dimension they signal is not present in the world prior to interaction. When referring to such phenomena, I will speak of values internal to relations. I will now provide a closer analysis of this concept.

The concept of values internal to relations is a holistic one. As I understand it, the object of values internal to relations is a constellation of a certain type of acts. The type of acts I have in mind are not distinguished by any specific aims that the agents embarking on them might want to achieve. Rather, the major characteristic of such acts is that, whatever their further aims, they are informed by respect for others' interests, as these are defined by various antecedent considerations that describe the condition of persons simply as human beings—for example by the value of humanity. We might say that values internal to relations are a property of a state of affairs in which we respect others' interests as defined by antecedent values. Now my contention is that the value inherent to such a state of affairs cannot be explained in terms of the antecedent considerations that command the separate acts constituting it *viz.* separate acts of respecting others' interests. Nor is it a function of their aggregate. Although the value inherent in such a state of affairs relates to such antecedent considerations in the sense that it supervenes upon the pattern of acts they motivate, its normative force is independent from the normative force that such considerations, logically prior to it, might exercise on us. Put in general terms, the idea I want to convey by introducing the concept of values internal to relations is the following: there is an independent normative property supervening upon a world in which we treat one another rightly where that which is right may be defined by various antecedent standards of

rightness. The normative force that the value inherent to such a world exercises on us is not (an aggregate of) the forces that would independently determine particular right acts. Rather, it is an independent force.

As formulated above, the concept of values internal to relations might invite the following objection: if values internal to relations are the property of the state of affairs in which we respect each other's interests, as determined by antecedent considerations, then to act on them is to do what such antecedent considerations specify. If this is the case, the requirements with which values internal to relations present us are identical to the requirements with which the relevant antecedent considerations present us. This implies that values internal to relations cannot form a separate class of values. In replying to this objection, I will deal separately with the content of reasons that values internal to relations provide us with and with their normative character.

First, as far as their content is concerned, I partly grant the observation that stirs the objection. Indeed, the content of reasons that values internal to relations provide us with will often be the same as the content of reasons that the antecedent considerations provide us with. Yet, the observation is only partly right. For in situations in which the content of right action is indeterminate or subject to controversy between us, values internal to relations will provide us with reasons the content of which is novel. I will demonstrate this when discussing the case of civil justice below.

Second, even if the observation was entirely right, the conclusion one derives from it would not follow. For even if we were dealing exclusively with reasons of the same *content*, this would not warrant the idea that we were dealing with the same *reasons*. Reasons can have the same content and still remain different reasons. For example, the value of mutual recognition provides us with reasons to approach others with due recognition. The same acts of due recognition may be required on other grounds too, for example, on the ground of the value of humanity residing in each of us simply as a person and irrespective of particular relationships we might be in with one another. Now we cannot explain the normative force of reasons that the value of mutual recognition provides us with by pointing to the value of humanity and *vice versa*. For even though they have the same content, they bind us under different conditions. As the adjective *mutual* signals, the value of *mutual* recognition requires approaching others with due recognition on the ground of a certain interaction already existing between us so that your claim that I accord you due recognition makes sense if and only if you accord a similar recognition to me. If you claimed recognition simply in terms of your humanity, no such conduct on your side would be required. Thus, even if reasons

associated with values internal to relations have the same content as the antecedent reasons upon which they supervene, they are different reasons.

Third, unlike the reasons that associate with the antecedent values, reasons that values internal to relations provide us with are interdependent. The holistic nature of values internal to relations implies that they describe a pattern of at least two acts. This implies that for one's act to realize the relation pattern through which the value manifests itself it must be the case that others will act or have already acted in the relevant ways, and *vice versa*. Agents depend on one another for their respective acts to realize the relation pattern and the value that attaches to it. The relevant act of each agent is the condition of the valuable relation that the other is to realise. The acts that aim at realising the normative quality of the pattern as a whole and, thus, the reasons that drive them, are interdependent in the same sense in which the property of being taller and the property of being smaller are interdependent: without the other, each of them loses its meaning as an expression of the dimension of height. Another way to put this point is this: unlike the antecedent values, reasons that attach to values internal to relations cannot bear on us in our condition simply as persons. One cannot have them just on one's own. This is because they require a more-than-one-person setting to manifest themselves and such settings are conceptually unavailable to us when we consider ourselves simply as persons and prior to interaction. Besides, no one, when considered in detachment from whatever relations he has to others, can realise a state of affairs of which certain acts of others are constitutive elements. If one cannot realise it in one's condition simply as person, one cannot be required to: ought implies can.<sup>5</sup>

I have argued that values internal to relations and the antecedent values that motivate acts upon a pattern of which values internal to relations supervene constitute different sources of normativity. I would now like to illustrate how the normative dimension, which values internal to relations signal, makes sense of our common moral intuitions.

Our common moral intuitions tell us that the wrong involved in, for example, acting unfairly toward persons who have been fair toward us weighs heavier than the wrong involved in acting unfairly toward persons who have been unfair to us. Correspondingly, the moral criticism uttered in such situations confronts us as more grievous when voiced by those who have acted fairly toward us than by those who have not. The difference in the degree of

<sup>5</sup> It is possible to say, however, that in our condition simply as persons, we have a reason to enter into practices through which such values could manifest themselves. I will address this possibility in the next section.

moral disapproval we feel in these cases is inexplicable in terms of considerations that independently determine what treatment is due to others. For, to remain faithful to the Kantian reading of fairness in the previous chapter, the value of humanity prescribing fair treatment resides equally in persons who treat others fairly and in those who do not. This means that the offence against the value of humanity involved in my unfair conduct is not more or less weighty depending on whether the party I wrong in such ways acted fairly or not. The difference in the degree of moral disapproval we feel in such situations can be accounted for, however, in terms of the class of values internal to relations. From this perspective, my unfair conduct toward a person with whom I have enjoyed fair interactions can be judged wrong in two distinct ways: first, as an offence against the value of humanity that prescribes fair treatment as due to him simply as a person; second, it can be judged wrong in terms of the value that has come to bear on us through the quality of our interactions. This additional normative dimension is not available between me and the person who has acted unfairly toward me. For by being unfair he has made it impossible for the value to manifest itself between us. So the difference in the degree of moral disapproval we feel in these cases can be explained by the fact that in the first case I commit two wrongs (one in terms of the antecedent reasons and the other in terms of the value that has come to supervene on our relation) while in the second case, I commit only one wrong (in terms of the antecedent reasons). The respective presence or absence of the additional normative dimension relative to the history of our interactions accounts for the respectively higher and lower degree of moral disapproval and for the respectively stronger and weaker force of the claims that the wronged party can issue against us in both cases.

I have delineated the class of values internal to relations. I would like now to distinguish the value of civil justice in this class.

### **3. Civil Justice**

As I will employ the term, civil justice is a property of the state of affairs in which persons accord each other that which is due to each of them as specified by their natural duties. I refer here to any set of individuals related to one another by a network of patterns of interaction, for example, A to B, B to C, C to D and D to A.<sup>6</sup> Inasmuch as according others what is their due is a matter of

<sup>6</sup> Such interactions, at least in the world we live in, require spatial proximity. We can think here then of interactions involved in such daily activities as, for example, shopping, renting flats,

justice, civil justice describes a social order in which people treat one another justly in the way specified by natural duties.

Civil justice, as other values internal to relations, is a holistic concept. Civil justice is more than the (sum of) just acts constituting the pattern which it describes. The normative force of civil justice is distinct from the normative force of natural duties that motivate the acts upon the pattern of which it supervenes. Think, for example, of a situation in which we, following our natural duties, refrain from discriminating against others on the ground of race. My contention is that a state of affairs in which we approach each other in such a way has a distinct and independent value from the value of humanity possessed by persons of all races that it protects. This way of thinking about racial tolerance is not uncommon. One often speaks of the value of racial tolerance in terms that make it irreducible to the value of humanity possessed by every individual human person. Green, for example, says that the value of racial tolerance consists in its contribution to the public goods of security and the efficient use of human capital. More importantly, he says that a racially tolerant society constitutes an inherently valuable form of human relations.<sup>7</sup> A social order in which we refrain from exercising violence against one another is another example of a society governed by civil justice. The value involved in the form of human coexistence free from senseless violence is more than the (accumulated) value(s) of bodily integrity that each of us has a duty to respect in others simply by virtue of them being human persons. This seems to correspond to our common moral intuitions insofar as we experience an act of senseless violence not only as an attack on the bodily integrity of its direct victim, but also as an attack on the formula of common life that we value for its own sake.

I have said that while civil justice supervenes upon a pattern of acts governed by natural duties, it is a normative property distinct from natural duties. Accordingly, reasons that civil justice provides us with are not reasons that our natural duties provide us with. What civil justice registers is the normative force residing in a pattern of acts driven by natural duties as a whole. From this holistic perspective, a full description of a reason for action contains a reference to all similar acts that constitute the pattern as a whole. Thus, when I act on civil justice, my according you your due is not a response to what my natural duty tells me that I owe to you simply as a person. Rather, it is a response to the value that resides in the normative order all of us form when we

offering and accepting work, participating in traffic, etc., but not in e-mailing with a businessman from Andaman Nicobar Islands.

<sup>7</sup> Green 1988, p. 208

approach one another in the way natural duties dictate. For example, from the perspective of a racially tolerant society, my refraining from discriminating against you because of your skin colour is not a response to my natural duty to respect your humanity. Rather, it is a response to the value that resides in the normative order of a just society all of us form when refraining from discriminating against each other on the ground of skin colour. I owe it to you not by virtue of your status simply as a human person but by virtue of your status as a fellow-member in the just social order we form together.

To recognise that civil justice governs our relations with others is to recognize others' rights to live with us in a society described by civil justice. Given that civil justice supervenes upon a pattern of acts governed by natural duties, the content of the rights that civil justice establishes will often reflect the content of natural duties. Yet, although the content of civil rights may be determined by our natural duties, civil rights are not natural rights that correlate to our natural duties. Given that they presuppose the value of civil justice, we can claim them only insofar as we participate in a relation pattern upon which civil justice supervenes; unlike natural rights, we do not have them simply as persons. Thus, when I act on civil justice, my according you your due is not a response to what your natural right tells me that I owe to you simply as a person. Rather, it is a response to your civil right to just treatment, which you have as a participant in the normative order we form together when we act toward each other in the way our natural duties dictate. For example, from the perspective of a racially tolerant society, you have no right to my tolerance if you reject my job application because of my skin colour. Yet, your racial tolerance toward me is not a condition of my racial tolerance toward you if you claim it as a matter of your natural right.

An important feature of civil rights is their multilateral character. This means that if you and I stand in a claim-relation toward each other in virtue of civil justice, the object of the rights we hold against each other is not only our actions *vis-à-vis* each other but also our actions *vis-à-vis* all other participants in the valuable relation pattern in which we participate. To explain it, let me first recall that civil rights are rights to live in a just society with those with whom one interacts. Given that the interactions that constitute the just society are not only interactions between the two of us but also interactions each of us has with all other participants in the valuable order we form together, the object of my civil right will be your conduct insofar as it concerns me *and* insofar as it concerns others (and *vice versa*). In terms of my example of a racially tolerant society, this implies not only that I have a right against you that you do not count my skin colour among the factors relevant in considering my

job application, but also that I have a right against you that you do not count X's skin colour among the factors relevant in considering his job application. Accordingly, your intolerance toward X releases me from my civil duty to refrain from discriminating against you on the ground of your skin colour in the same way in which your intolerance toward me does this. Still, it remains the case that your racial tolerance toward any of us is not a condition of my racial tolerance toward you if you claim it as a matter of your natural right.

I said that civil justice describes a situation in which we accord each other whatever is due to each of us, as specified by our natural duties. Understood in this way, civil justice does not always find its actualisation in our interactions. Many natural duties do not specify exactly the dues that are their objects. What, for example, does the requirement of equal treatment of men and women prescribe in sports? Other natural duties are imperfect: in the face of a moral black hole into which their pursuance would otherwise push us, they leave it to our discretion to determine when and how the general ends they prescribe should be realised through particular actions. Such is the case, for example, with the broad duty to help the poor, which leaves us free to decide which poor persons we will help and in what way. Now, when our duties do not specify exactly our respective dues, disagreement as to their content might prevent us from acting on them. And when we are permitted to decide to whose basic interests we will respond and in what way, the basic interests of many may be left unanswered, as when I, acting on the imperfect duty to help the poor, decide to help another poor person rather than you. The imperfect character of our natural duties might even prevent us from acting on them at all. Given that one of the features that makes our imperfect duties imperfect is the fact that none of us can be said to be in a unique position to perform them, the logic of collective action might lead to non-performance.<sup>8</sup> Insofar as the unspecific or imperfect character of natural duties prevents us from according others what is their due and, thus, leads to a setback to their basic interests, civil justice does not come to supervene on our interactions. It does not, therefore, find its actualisation in our interactions. Does this place us beyond the normative reach of civil justice? Not necessarily. The fact that our respective dues are not fixed (unspecific duties) or that we are permitted to decide to whom and how we accord them (imperfect duties), does not mean that the idea that there are things we owe to each other is misplaced. If we can make sense of the idea that there are things we owe to each other, then we can also make sense of a

<sup>8</sup> cf. Buchanan 1996, p. 34, 36 pointing to assurance problems; Den Hartogh 2004 unpublished

situation in which such requirements are met. This means that we can make sense of the idea of civil justice. It is in this sense that civil justice appeals to us in the context of unspecific or imperfect natural duties: civil justice describes an ideal situation in which the unspecific or imperfect character of natural duties is overcome. The question that arises here is whether in such circumstances civil justice can create duties for us?

To begin with, note that we can recognise the value of civil justice even if it does not find its actualisation in our interactions. Similarly, staying in an ugly environment does not prevent us from recognising the value of beauty. Insofar as we recognise the value of civil justice, each of us has a reason to correct for the unspecific content or imperfect character of natural duties that stands in the way of realising the just society it describes. However, reasons of civil justice do not provide us with duties at this stage. It is because the just order that civil justice describes is a more-than-one-person setting and none of us, merely on his own, could realise a state of affairs of which certain acts of others are constitutive elements. If one could not, one could not be required to: ought implies can. Yet, once the conditions in which the realisation of civil justice is possible are present, reasons of civil justice come to bind us with the force of a duty. And the conditions of possibility arise at the moment any person starts acting on them. This might involve, for example, suggesting a procedure rectifying the unspecific or imperfect character of natural duties that stands in the way of realising the just society that civil justice describes. Once any one person undertakes steps to realise civil justice, the normative situation of all persons involved changes. First, once someone starts acting on reasons of civil justice, the factor that prevented civil justice from creating obligations is removed: every subsequent act combines with the first one to realise a more-than-one-person setting required for a just society. Second, recall that civil justice, supervening upon a pattern of acts governed by natural duties, makes their object a matter of civil rights. Given that civil justice refers to an ideal situation in which the unspecific or imperfect character of natural duties is overcome, this holds even for the unspecific or imperfect duties the object of which is not a matter of natural rights. As long as natural duties remain imperfect and unspecified i.e., as long as their content remains indeterminate, however, these rights cannot be actualised. A procedure aimed at rectifying the unspecific or imperfect character of natural duties, if successfully instituted, will determine the content of our, otherwise indeterminate, duties, and, thereby, it will actualise the rights we hold against each other by virtue of civil justice. Insofar as one recognises civil justice and the rights it creates, one must recognise that remaining in a situation in which the unspecific or imperfect



character of our natural duties prevents us from according others their dues constitutes a violation of their civil rights. When a procedure aimed at rectifying the unspecific or imperfect character of natural duties is put forward, our collaboration eliminates the wrong involved in the violation of civil rights and, as such, it is required as a matter of duty. Thus, once someone starts acting on civil justice, everyone acquires a duty by virtue of civil justice to join in.<sup>9</sup> To refrain from doing so would be to violate the civil rights of others.<sup>10</sup>

I have argued that when the content of natural duties is indeterminate, civil justice requires rectifying it. Note that from the perspective of natural morality, no mandatory reasons arise to correct for the unspecific or imperfect character of natural duties. Natural morality does recognise that the kind of order we form when acting on our unspecific or imperfect natural duties is normatively deficient. This is because the imperfect or indeterminate character of natural duties might prevent us from according others their dues and, thus, lead to a setback to their basic interests. Yet, unlike from the perspective of civil justice, from the perspective of natural morality, the interests that are the object of such duties are not a matter of rights. Thus, their setback is not a violation of rights. Natural morality does not register a violation of rights because there are no rights that correspond to imperfect duties: as imperfect duties leave the ‘how’, ‘when’, and ‘toward whom’ of their performance to our

<sup>9</sup> I argue that as soon as someone suggests a procedure for correcting for the unspecific or imperfect character of natural duties, everyone has a duty to join. One may point out that duties in virtue of civil justice to join the procedure cannot be perfect ones unless the procedure has been instituted successfully i.e., that there may still be collective action problems which should be overcome first: negotiation issues about the best procedure, and assurance problems. In case such difficulties occur, the duty to join arises only at the moment that a salient solution to such problems can be identified. I discuss this issue further in section 6.

<sup>10</sup> Note that within the class of persons whose interaction pattern civil justice describes, the obligations civil justice establishes are general i.e., they apply to all or most of the participants in the valuable relation pattern. Using Nozick’s terminology, we could say that there is no ground upon which one could claim the status of the Independent. As articulated by Nozick, the idea of Independents describes a group of persons living within a domain in which the interpretation and enforcement of justice is run by a (minimal) state and who refuse to join it, insisting on a right to interpret justice and enforce it themselves, Nozick 1974, p. 24, 54-56. In the context of my discussion, the Independents would be those who would recognise that the suggested procedure aimed at rectifying the unspecific or imperfect character of natural duties realises the value of civil justice but, insisting on pursuing their own interpretation of natural duties, they would deny that they have a duty to comply with its requirements. From the perspective of civil justice, the position of Independents is not defensible. For if the Independents recognise civil justice, they must recognise that a situation in which they act on their own interpretation of natural duties is normatively deficient. If they recognise it as a moral offence, they recognise a duty to rectify it if they can. Given that they can do it by complying with the requirements of the procedure, they must recognise the compliance with the procedure as a moral duty. Thus, the Independents cannot recognise civil justice without thereby recognising that it saddles them with obligations.

choice, no person is in a position to claim their performance as his due if only because it is not clear what such a claim should be a claim to. Similarly, no natural rights correspond to natural duties the content of which is unspecific. We can say that while from the perspective of civil justice the deficiency involved here constitutes a wrong, from the perspective of natural morality, it can be better described as a harm.<sup>11</sup> If, from the perspective of natural morality, the setback to basic interests that follows when agents hold on to unspecific or imperfect duties as guides for their actions does not involve a violation of anyone's rights, then agents cannot be said to be guilty of a moral failure. Of course, if they have the proper motivation to do their duties, they will prefer to see that the basic interests of others are answered better rather than worse. However, if no specific actions of theirs can be demanded as anyone's due, natural morality will leave correcting for the deficiencies involved in their natural duty performances to their moral sensitivity and discretion.

I have argued that civil justice supervenes upon a pattern of acts governed by natural duties and that the duties it creates for us are distinct from the subvenient natural duties. I argued also that civil justice can create duties for us even when the actual performance of natural duties is frustrated due to their indeterminate character. I want to pause here, as this situation allows me to complete my discussion of the relation between the reasons of civil justice, or values internal to relations more generally, and the subvenient reasons. When introducing the concept of values internal to relations, I argued that they have a distinct normative force from the considerations that govern the interaction pattern upon which they supervene. The situation in which duties of civil justice have their supervenience basis in indeterminate natural duties allows me to demonstrate that values internal to relations, *viz.* civil justice, can differ also in their content from the subvenient considerations.

When supervening upon an interaction pattern governed by unspecific or imperfect duties, civil justice requires rectifying their unspecific or imperfect character. If the pronouncements of natural duties are unspecific and therefore open to controversies, an arbitration mechanism can do the job. When the indeterminate character of natural duties reflects their imperfect character, a cooperation scheme can do the job. A cooperation scheme divides the load of the general moral aims that imperfect duties confront us with among a number of individuals. Thereby, it redefines what we owe to each other in such a way that we can translate it into individual action without the danger of falling into

<sup>11</sup> I adopt the distinction between "wrong" and "harm" from Feinberg 1984

a moral black hole that acting on imperfect duties would otherwise involve. Moreover, by dividing the load of the imperfect duty into a set of unique tasks assigned to separate individuals, the cooperation scheme specifies the 'how', 'when', and 'toward whom' of its performance and prevents collective action problems, which can otherwise frustrate the performance of the duty.<sup>12</sup> Insofar as an arbitration or cooperation scheme rectifies the indeterminate or controversial character of our natural duties, civil justice will dictate its employment and compliance with its resolutions. In requiring employment of and compliance with the arbitration or cooperation mechanism, the content of that which civil justice requires of us is distinct from the content of natural duties. The requirements of the arbitration or cooperation scheme provide a new formulation of what we owe to one another and create corresponding rights where no natural rights existed. What we owe to one another in virtue of civil justice, even if continuous with the general moral intent of the natural duties, will have no direct equivalent in the domain of natural duties and, given that the schemes enable us to pursue objectives that could not have been pursued in their absence, the requirements of civil justice will extend to cases in which the initial formula of natural duties did not apply. For example, where I previously used to invite a randomly chosen poor person for an expensive dinner once a year as a way of going about my imperfect duty to help the poor, I might now be required to pay a small percentage of my yearly income to sustain a social welfare system that covers the basic needs of all poor persons on a regular basis (within the class of persons related to one another by a network of patterns of interaction in which I participate). Moreover, compliance with the rules of the schemes enters the content of that which we owe to one another in virtue of civil justice. For example, if the social welfare scheme is run by the government, civil justice may require obedience to the tax policy pursued by the government even if there is no natural duty that requires obedience to the government.

In requiring compliance with the requirements of an arbitration or cooperation scheme, civil justice provides us with reasons the content of which is novel. Note, however, that not just any scheme requirement can derive its normative force from civil justice. I said that civil justice requires compliance with the scheme requirements only insofar as they specify the formula of those natural duties that would otherwise remain imperfect or controversial. Unless the scheme requirements are continuous with the general moral intent of the natural duties the content of which they are meant to specify, they cannot bind

<sup>12</sup> cf. Buchanan 1996 and Den Hartogh 2004 unpublished

by virtue of civil justice. For example, if we consider a cooperative division of the load of the imperfect duty to help the poor into a set of unique sub-tasks, no requirement that is irrelevant to fulfilling this duty, say, a prohibition on smoking when at work, can be obligatory. Similarly, where arbitration settles a controversy concerning the exact content of the equal treatment of men and women in sports, no action which is outside of the negotiation area can be obligatory. Furthermore, on pain of self-contradiction, the force of civil justice cannot be conferred on those schemes the requirements of which are at variance with perfect and uncontroversial natural duties i.e., those natural duties the specification and execution of which does not require any institutional intervention: for example, the negative duties that forbid harming others or lying. As we will see in the next section, these internal constraints on the content of civil justice will have important consequences for the concept of political obligation: I will argue that the obligation to obey the government can be content-independent only within some limits.

Before I move on to demonstrate that reasons of civil justice are of the right type to ground political obligation, I would like to address a possible misunderstanding concerning the action-guiding force of civil justice. One might argue that the normative force I ascribe to values internal to relations and, in particular, to the value of civil justice, presupposes and tacitly relies on yet another moral principle. An argument to this effect could be based on a claim that a valuable relation pattern upon which civil justice supervenes is a public good. It is a distinctive feature of public goods that, because their production and sustenance requires less than universal contribution, they are vulnerable to free riding and parasitism. As a result, their production faces suboptimality problems. It is often argued that overcoming such problems requires an intervention of a moral principle, for example, the principle of fairness, which would counter the temptation to free ride or to be a parasite.<sup>13</sup> If valuable relations have the structure of public goods, then, the argument would say, civil justice must presuppose some such principle. And this means that civil justice is not normatively self-sufficient.

To refute this argument, it is sufficient to repudiate its premise. Following this strategy, I will argue that to conceive of valuable relations on the model of public goods is to misconceive them. One way to demonstrate this is to show that one cannot free ride or be a parasite on valuable relations and this is how I will proceed.

<sup>13</sup> A moral solution to the suboptimality problems was first suggested by Sen 1974, 1977

The object of values internal to relations is a certain way in which we approach each other. To be able to free ride or to be a parasite on such values, one should be able to engage with them without approaching others in the relevant ways. Is that possible? It would be possible if the good involved in valuable relations were exhausted by the value of the treatment one receives from others. In such a case, I might enjoy the treatment others accord me even if, assuming they would not be sensitive enough to notice, I faked approaching them in the relevant ways myself. But when that which is of value is my standing in a relation of justification to others (given their similar stance), some aspect of it will be inaccessible to me if I do not relate to them in this way myself.<sup>14</sup> In the same way, the value of friendship is not exhausted by the services my friends might render me and unless I actually act as a friend an important aspect of the value of friendship will be inaccessible to me. Now, if one cannot fully engage with values internal to relations without acting in the way they prescribe, i.e., if one cannot enjoy the good involved in a relation without contributing, then free riding or parasitism is conceptually impossible. In that case, there is no need to invoke any additional moral principle because there is no problem for it to fix. If so, civil justice neither presupposes nor relies on any such principle. It is normatively self-sufficient.

Still, one might claim, this argument flies in the face of the facts. For, consider the example, briefly mentioned above, of a social welfare system that civil justice requires us to establish as a way of rectifying the imperfect character of the natural duty to help the poor. The social welfare system operates *via* a coordinated scheme of individual contributions that the government imposes on us. The requirements of the scheme divide the load of the otherwise imperfect duty to help the poor into a set of tasks that individual persons are able to perform without the danger of falling into the moral black hole that acting on this duty might otherwise involve. By reformulating the natural duty to help the poor in this way, the scheme enables us to accord others what is their due. When complying with the requirements of the scheme, then, we come to stand in a relation of civil justice to one another. Now, one might wonder, isn't it true that people can free ride on the system of social welfare? Take X, for instance, who receives social welfare, but fakes her

<sup>14</sup> This means also that one cannot fully engage with values internal to relations by seeing to it that the existing valuable relation patterns are maintained or that the new ones are developed i.e., by seeing to it that people respect one another's interests as defined by the pre-determined considerations. This is because seeing to it that others stand in valuable relations to one another is simply not equivalent to standing in such a relation to them oneself. This suggests that values internal to relations do not have a simple teleological structure.

inability to get a job and shirks her duty to report herself to the Unemployment Officer every month. Isn't this a case of free riding and doesn't it suggest that a valuable relation such a scheme forms has a public good structure after all?

My reply is the following. The belief that this is a case of free riding relies on the idea that the value of the social welfare benefit X receives is exhausted by the amount of the tax-euros of her fellow-citizens she enjoys spending. But to conceive of it exclusively in such terms is to forget that an important part of the value of the social welfare benefit consists in the relation to others in which its receipt places her. It is a relation of rights and duties that have no direct equivalent in the domain of natural morality. The tax-euros X receives are the currency of the right to be helped that X acquires by virtue of the valuable relation in which she stands toward others. X stands in the valuable relation to others, and thus enjoys the relevant right, only insofar as her actions are the element of the valuable relation pattern i.e., a pattern in which we accord one another our dues. In the case of the duty to help the poor, according others what is their due amounts to compliance with the requirements of the scheme that corrects for the otherwise imperfect character of the duty to help the poor. This entails either paying the required contribution or, if one is the one to be helped, trying to find a job and reporting to the Unemployment Officer. By failing to comply with these requirements, X places herself outside the valuable relation. For that reason, the value of the social welfare benefit she enjoys when shirking her duties is not the same as the one she would receive if she performed her duties. She retains the money but she does not engage through it with the value of civil justice. Another way to put this point would be to say that while she still enjoys the same amount of money, she does not enjoy the right that would entitle her to it. Yet, the value of a benefit rightfully obtained is not the same as that of a benefit obtained otherwise. If shirking her duties deprives X of a part of the good she could otherwise enjoy, she cannot be said to enjoy it for free because she cannot enjoy it in this form at all. I conclude that the example of taking advantage of the social welfare system does not endanger my argument that the valuable relation described by civil justice is invulnerable to free riding. If so, then my argument that civil justice is normatively self-sufficient holds too: for if the nature of the valuable relation described by civil justice makes free riding impossible, the normative force of civil justice does not depend on any additional moral principle that would discourage free riding.

In this section, I have introduced the value of civil justice as an instance of values internal to relations. I want to demonstrate now that reasons of civil justice can ground political obligation. I will begin by demonstrating that reasons of civil justice meet all the conditions of publicity I specified in section

1. This will suffice to show that reasons of civil justice establish an *obligation* and that the obligation they establish satisfies all the conditions required of a properly *political* obligation. Next, I will explain the sense in which reasons of civil justice can require content-independent obedience to the directives of the government and I will demonstrate that this requirement is properly particularised i.e., that it binds us to one particular government rather than to government in general. Finally, I will show that obligations to obey the government we acquire by virtue of civil justice place us in a relation of political authority to the government.

#### 4. Civil Justice and Public Reasons

In section 1, I argued that reasons of political obligation should meet a number of conditions of publicity. While all of these conditions are required to ensure the *political* character of political obligation, some of them also govern the sense in which political obligation is an *obligation*. The requirements that the actions that political obligations dictate should be stringent and that we should be in a unique position to perform them belong to this subclass. The latter requirement is meant to ensure that the performance of actions that reasons of political obligation dictate would not be optional i.e., that it would be a matter of a perfect rather than imperfect duty. Do reasons of civil justice satisfy these conditions? I said that civil justice describes a situation in which we accord each other whatever is due to each of us as specified by our natural duties. As according others what we owe to them has the measure of stringency required to make it a matter of obligation, so the first condition I formulated is satisfied. Are the obligations that civil justice presents us with perfect i.e., are we in a unique position to perform what reasons of civil justice require of us? The object of civil justice is a just society established with those with whom we interact. Are we in a unique position to establish a just society with those with whom we interact? In the previous section, I said that insofar as civil justice supervenes on our relations, it necessarily refers to the treatment I accord you and *vice versa*. In this respect, civil justice is like friendship: just as you cannot engage in a relation of friendship with me if I do not treat you as a friend, so you cannot engage in a relation of civil justice with me if I do not treat you rightly. If no person other than me can realise the relation of friendship or civil

justice between you and me, I am in a unique position to realise it and so my duty is perfect.<sup>15</sup>

With the exception of the two conditions of publicity indicated above, other conditions of publicity that reasons of political obligation should satisfy specifically address the *political* character of this obligation. I argued that if reasons to obey the government are to establish *political* obligation, they should be interdependent. We have seen already that reasons of civil justice, just as all reasons that attach to values internal to relations, satisfy this condition. Furthermore, I argued that the *political* character of political obligation requires that reasons of political obligation be a source of mutual and multilateral claim-rights. I translated this requirement into two further conditions. First, I said that reasons that dictate obedience to the government should be mutually justifiable between us. Recall that reasons are mutually justifiable between us if none of us, when presented with them by another, can reject them as reasons. Now, insofar as we accept that values internal to relations identify a normative dimension present in our lives, we should be able to justify them to each other in the same way in which we justify to each other other values, for example, friendship or beauty. This means that when presented with reasons to act in ways directed at realising civil justice, we cannot but endorse them as reasons—just like when presented with reasons to act in ways directed at realising friendship or beauty, we cannot but endorse them as reasons. The requirement of mutual justifiability, however, has to be supplemented: we saw in section 1 that unless we are prepared to accept the implausible conclusion that just *anyone* presenting us with a reason that we cannot but endorse as a reason would acquire a claim-right to our acting on it, the mutual justifiability of reasons will not suffice to make acting on them a matter of claim-rights. I argued that within the class of persons to whom reasons can be justified, it is only those who have a direct stake in our acting on them that can have claim-rights to our relevant performances. The second condition, then, that reasons of *political* obligation have to satisfy if they are to be a source of claim-rights is that others should have a stake in our acting on them. Do reasons of civil justice satisfy this condition? That this is the case follows from the argument that established the perfect character of duties of civil justice. If, as I argued above, we are in a unique position to realise a just society with those with whom we interact, they have a direct stake in our

<sup>15</sup> Of course, if I act unjustly toward my interaction partners, they can form a just society without me. I am not a necessary part of every just society possible. But the society others can establish in this case will not be the society described by civil justice that supervenes upon an interaction pattern of which *I* am a participant.



actions. Our failure to act on civil justice distorts the normative entity of which all our acts are the elements. It deprives them of the valuable relation in which they participate with us. It is important to keep in mind, however, that the scope of the claim-relation civil justice establishes is limited to the participants in the relation pattern upon which it supervenes. The outsiders i.e., those with whom we do not interact, do not have a stake in our acts in the same way in which our fellow participants in the pattern do. For if our actions or inactions deprive our fellows of the valuable relation that exists between us, our similar actions or inactions do not affect the outsiders in the same way. As there is no value in which we participate together, there is no sense of loss if any one of us does not act toward the other in the way it prescribes. If civil justice does not shape our interactions, we cannot be deprived of it. Having no stake in our acts, the outsiders have no ground to hold a claim-right against us to do what civil justice prescribes, and *vice versa*.

I have demonstrated that reasons of civil justice satisfy all the conditions of publicity that reasons of political obligation should satisfy. In the next sections I want to defend an account of political obligation founded on civil justice.

## 5. Political Obligation

Political obligation describes our relation to the government. Traditionally, this relation is described in terms of obedience to the government's directives. At least, this is the form in which the accounts discussed in the previous chapters have set off to establish political obligation even if they sporadically recognised that political obligation can also dictate disobedience to the government.<sup>16</sup> As a requirement to obey the government, political obligation has to meet several conditions. In the subsequent sections, I will argue that insofar as civil justice requires obedience to the government, it satisfies them. In the next chapter, when illustrating the civil justice account with empirical material, we will see that civil justice can also require disobedience to the government.

In order for a requirement to obey the government to be a requirement of political obligation, three conditions should be met. First, it should require us to obey the directives of the government in a content-independent way:

<sup>16</sup> cf. Horton 1992, p. 166, MacIntyre 1984, p. 14

“Obedience is not a matter of doing what someone tells you to do. It is a matter of doing what he tells you to do because he tells you to do it”.<sup>17</sup>

“Political obligation is the doctrine that everyone has a moral reason to obey (...) the laws of his or her own state and that this reason binds independently of the content of the law”.<sup>18</sup>

“To genuinely obey the law (rather than to simply do the same act that happens to be required by law) is to do what law requires because it requires it. A moral obligation to obey the law (a part of one’s political obligations), where the law’s requirements (...) are to do A and B, is not identical to a moral obligation specifically to do A and B (which obligation would continue even if the legal requirements to do A and B were changed)”.<sup>19</sup>

The requirement of content-independence is, as Green notes, what makes political obligation unacceptable for an anarchist: the anarchist would be prepared to obey the government for various prudential and moral reasons, but not because the government requires it.<sup>20</sup> If plausible, the civil justice account of political obligation will have to explain to the anarchist how the directives of the government can make a difference to our moral reasoning independently of the nature of the action prescribed.

Second, in requiring obedience to the directives of the government, political obligation should satisfy the Particularity Requirement. The Particularity Requirement has been introduced by Simmons as reflecting the intuitive way we conceive of our political allegiances. Recall:

“in referring to political obligation, I do not mean to narrow our field of possible answers only to those moral requirements best described as obligations; (...). But I do want to suggest that we are only interested in those moral requirements which bind an individual to one particular political community, set of political institutions, etc. (...). Many people feel that they are tied in a special way to their government (...). [T]hey feel that they are (...) bound to support their country’s political institutions and obey its laws, in ways that they are not bound to the corresponding institutions of *other* countries. (...). It seems to me that the problem of political obligation is precisely the problem of explaining the nature (...) of such special moral bonds”.<sup>21</sup>

<sup>17</sup> Wolff 1976, p. 9

<sup>18</sup> Green 1996, p. 8.

<sup>19</sup> Simmons 1993, p. 60, note 4

<sup>20</sup> Green 1988, p. 60

<sup>21</sup> Simmons 1979, p. 30-31, 3. Emphasis in the original.

If plausible, the civil justice account of political obligation will have to establish that our commitments to take government directives in the content-independent way do not bind us to states in general but only to a particular state *viz.* the state of which we are the citizens.

Finally, given the conceptual link that modern and contemporary political thought has made between the concepts of political obligation and political authority, I will have to demonstrate that the civil justice account of political obligation conceptually complements the concept of political authority. We have already seen that the civil justice account partly satisfies this requirement. In arguing that reasons of civil justice are public reasons, I have shown that it accounts for the *political* in the concept of a political authority relation. What remains to be asked is whether the requirement to obey the government grounded in civil justice can account for what makes the political authority relation a relation of *authority*.

## 6. Content-independence

Before embarking upon the details of the argument to the effect that civil justice requires us to take the directives of the government in a content-independent way, we should be clear about the place of the government in the argument from civil justice. So far I have argued only that civil justice requires employment and compliance with arbitration and cooperation schemes. How does obedience to the government follow from this requirement?

Here is the general idea. We have seen that civil justice presents us with the task of establishing cooperation schemes and formulating a common interpretation of natural duties. This task presents us with the necessity of choosing one cooperation scheme or settling on one interpretation of natural duties among the various possible ones. The choice between various possible options might confront us with collective action problems. Insofar as the government is instrumental in solving them, civil justice will require obedience to it. Let me elaborate.

It often happens in larger groups that communication channels between individuals are impaired. If this is the case, then, even if we are indifferent among the various interpretations of natural duties or cooperative schemes geared to their execution, we might be unable to choose one unless we can expect others to choose accordingly. In other words, we might confront what the rational choice theorists call a coordination problem: everybody waits for

everybody else to identify an interpretation or a scheme to be chosen.<sup>22</sup> If we can communicate but disagree as to which of the possible cooperation schemes or interpretations of natural duties should be chosen, the problem might take another form. Having divergent ideas about the issue at stake, we might get stuck in a negotiation process. Even though each person prefers agreement to non-agreement, each person hopes that by prolonging the bargaining process he will be able to secure a result that better corresponds to his preferences. The social impasse that arises here has the structure of what the rational choice theorists call a bargaining problem.<sup>23</sup> Now insofar as the government solves coordination and bargaining problems concerning the interpretation, distribution and execution of our natural duties, civil justice will require obedience to the directives of the government.

Aside from the social impasse related to the necessity of settling on a common interpretation of natural duties and choosing a cooperation scheme concerning their execution, we might also be confronted with problems of the stability of the interaction patterns formed around the chosen options. This might be particularly acute in the case of solutions to bargaining problems: if any party to a compromise finds himself disadvantaged by it, he might have an incentive to re-open negotiations and refrain from compliance. Now, one might argue, given that the interaction pattern formed around the chosen options will establish a valuable relation between the interacting parties, civil justice will provide them with a moral motive to comply. Yet, this argument will not do. Civil justice will not suffice to guarantee stability of the chosen option, for even morally motivated persons will not comply unless they are sure that others are similarly motivated (or unless they know that others know that they are so motivated). This is to say that the stability of the chosen option will be endangered by what the rational choice theorists call the assurance problem. Again, insofar as the government solves assurance problems by providing

<sup>22</sup> Waldron argues that coordination problems are a model for many social issues. His examples range from traffic codes (“a scheme that required motorists to drive on the left would be just. And so would be a scheme that required motorists to drive on the right”) to institutional structures for implementing economic justice (“Suppose we establish (...) Rawlsian difference principle as a fundamental criterion of economic justice. There may still be choice to be made about the best institutional structures for achieving this: a negative income tax (...) or some more familiar scheme of welfare support. Some of these choices are made on the basis of which structure is more likely to be just, given the contingent circumstances and history of each society. But some of them will be arbitrary: welfare scheme W together with fiscal scheme X may be every bit as just as welfare scheme Y together with fiscal scheme Z. It will matter that we settle on one combination but it may not particularly matter which”), Waldron 1993, p. 23-24

<sup>23</sup> Note that without communication, a bargaining problem becomes a coordination problem, Schelling 1960, p. 58-59, Den Hartogh 2002, p. 21

mutual information or additional incentives to comply, for example, in the form of sanctions, civil justice will require compliance with its directives.

The extensive literature on the topic spares me an argument to the effect that the government and its legal apparatus can and do provide solutions to assurance problems and serve as an arbitration or coordination mechanism.<sup>24</sup> Within the general consensus on this issue, however, there is one point of disagreement. It concerns the question as to whether the government, which is distinguished from other social institutions by its claim to authority and obedience, is uniquely suited to play these roles.<sup>25</sup> Depending on how we answer this question, the case for political obligation can be stronger or weaker. If the government were uniquely suited to provide arbitration, coordinate our actions, and solve assurance problems, obedience to the government would become a part of the moral end we are independently required to pursue. In chapter 3, I discussed this issue in the context of the government's role in securing conditions in which we perform our natural duties. I rejected the view that the government is uniquely instrumental for these purposes. Similar reasoning applies to the role the government can play in providing arbitration or securing cooperation. Provision of arbitration and assurance or solving coordination problems is not the exclusive domain of the government. In particular, to recall Green's argument to this effect, solving disagreements and coordination problems does not require accepting the government's claim to authority.<sup>26</sup> As far as disagreements are concerned, an appeal to custom or convention can settle the matter. As far as coordination problems are concerned, what is required to solve them is salience, and being salient is not

<sup>24</sup> The argument for political obligation from the need for arbitration and coordination is central to the whole social contract tradition from Hobbes to Kant. In contemporary discussions, it is endorsed by: Raz 1975, p. 64, 1986, p. 30-31, 49, 56, 75-76, 1989, p. 1187-1194; Finnis 1980, ch. 9, 1984, 1989, Gans 1981, Postema 1982, Boardman 1987, Waldron 1993, p. 22-23. Kavka 1995 argues that even morally perfect people would need the state for reasons of arbitration. More recent discussions include Sunstein/Ullmann-Margalit 2001 and an extensive argument in Den Hartogh 2002, ch. 5, 6, 7.

<sup>25</sup> Among those who support the idea of the unique suitability of the government or the legal system to solve coordination problems and their arbitration variants are Finnis 1980, ch. 9, 10, 1984, 1989, Aiyar 2000. Among those who admit the government's role in providing arbitration or coordination but deny that it is uniquely instrumental to play this role are Gans 1981, p. 342, Green 1983, Green 1988, ch. 4, 5. Den Hartogh 2002, p. 115 points to reasons that often make the employment of the government preferable to other means of securing arbitration or coordination: gain in time, effort, degree of determinacy.

<sup>26</sup> Green 1983, Green 1988, ch. 4 and 5. He argues that to accept the state's claim to obedience would be to make the error of overcommitment.

the exclusive attribute of the government: a promise to follow a certain course of action, custom, morals, advice, bribe or threat provide alternatives.<sup>27</sup>

I have said that civil justice requires obedience to the government insofar as it is instrumental to solving coordination and bargaining problems, but I denied that such instrumentality is a unique property of the government. Does the denial of the government's unique role in providing arbitration or securing cooperation defeat the account of political obligation based in civil justice? It does not. For even though the government is not the only way of providing arbitration or securing cooperation, nevertheless, insofar and as long as the government plays these roles as a matter of fact, we might be under an obligation to follow its directives. The fact that we can think of other instruments to serve these goals does not relieve us from the duty to use the instruments that are currently available—especially if other mechanisms are equally good and their presence is equally contingent. Similarly, the fact that I can think of feeding this particular hungry person with a cheeseburger instead of a hamburger does not relieve me from the duty to feed him with a hamburger if this is what I have at the moment. Moreover, the availability of other instruments does not mean that I would be justified in employing them just on my own. Unless others join me, my unilateral recourse to any alternative non-governmental arrangement will not have the desired effect and thus it will not enjoy the moral justification civil justice could otherwise provide. However, although the merely factual rather than the conceptual instrumentality of the government does not defeat our case for political obligation, it weakens it. For insofar as the idea of replacing the government with another instrument for solving coordination and bargaining problems remains conceivable, a world without political obligation remains a possibility. And this means that, as Den Hartogh puts it, “the existence of [political] obligations does not belong to the rock-bottom of moral fact”.<sup>28</sup>

I have established the sense in which obedience to the government is a requirement of civil justice. But I have not yet established that the obligation to obey the government that civil justice establishes is a political obligation in the sense explained above i.e., that it requires us to take the government's directives in a content-independent way. The argument to this effect turns on the character of solutions to coordination and bargaining problems.

<sup>27</sup> Strictly speaking, not all of these solutions are solutions in the game-theoretical sense; some of them “solve” the game by changing it. But nothing in my argument turns on it.

<sup>28</sup> Den Hartogh 2002, p. 105

Both coordination and bargaining problems are situations in which a common interest predominates but its formulation is underdetermined by reason. Reason fails to identify it either because common interest has no uniquely rational formulation or because the imperfections of our rationality or mutual knowledge prevent us from tracking it down.<sup>29</sup> As reconstructed by rational choice theory, the social impasse involved here is due to the absence of a point upon which mutual beliefs and expectations of the interacting individuals could focus. Imagine a society of two persons whose overriding interest is to coordinate their choices. A will choose X if he can expect B to choose it while B will choose X if he can expect A to choose it. The degree to which they manage to coordinate their mutual beliefs and expectations concerning each other's choices of X determines the success of interaction. But how can they know whether the other will choose X? They cannot unless, to paraphrase Schelling, X is an obvious thing to choose, so obvious that each will be sure that the other is sure that it is obvious to both of them.<sup>30</sup> If X had been a uniquely rational outcome, it would have focused the beliefs and expectations of the interacting parties in a natural way. But if it is not and if there is nothing else that distinguishes it from the continuum of possible alternatives, the interacting parties will fail to connect their actions in view of the desired outcome. In his classical work, Schelling gives a similar analysis of bargaining problems:

“Most bargaining situations ultimately involve some range of possible outcomes within which each party would rather make a concession than fail to reach agreement at all. (...) Each party strategy is guided mainly by what he expects the other to accept or insist on; yet each knows that the other is guided by reciprocal thoughts. The final outcome must be a point from which neither expects the other to retreat; yet the main ingredient of this expectation is what one thinks the other expects the first to expect, and so on. (...) These infinitely reflexive expectations must converge on a single point, at which each expects the other not to expect to be expected to retreat”.<sup>31</sup>

<sup>29</sup> Some argue that bargaining problems have a uniquely rational solution. The fact that we cannot find it must be then due either to our imperfect rationality or mutual knowledge. Among those who claim that bargaining problems do have a uniquely rational solutions are, for example, Nash 1950, Kalai/Smorodinsky 1975, Gauthier 1986 ch. 5. They reject each other's proposals, though. For an argument to the effect that bargaining problems do not have a uniquely rational solution see, for example, Den Hartogh 2002, ch. 2.3.

<sup>30</sup> Schelling 1960, p. 54

<sup>31</sup> Schelling 1960, p. 70. The question of why people tend to settle on focal points is an interesting one but would take me far beyond the topic of my discussion.

If no focal or salient point can be identified in the situation of interaction, bringing the social impasse to a close depends on whether any such point can be provided from without. To the extent that the government is instrumental in solving coordination and bargaining problems it must be because it provides it. And indeed, as Den Hartogh, for example, argues, the legislative functions of the government have just this effect: in determining what will be the law, the government's "essential contribution [to solving coordination problems], is to create a new relevant fact—a possible focus of mutual expectations".<sup>32</sup> The government solves bargaining problems in a similar way. In bargaining situations, recourse to formal ways of identifying solutions enjoys a unique rationale: what singles out a particular course of action is the fact that it is a result of consulting a certain source or an outcome of a certain procedure. So if we cannot settle the issue, we might consult an oracle, flip a coin or let an arbiter decide. In its adjudicative functions, the government takes on the role of an arbiter. In this, "[it] is basically a form of coordinating authority (...): its aim is to provide the manifest focus of mutual expectations that was apparently lacking before".<sup>33</sup> One might wonder, however, what it is that makes the directives of the government salient here: what makes consulting the law more salient than consulting any other source, say, an oracle? In the end, as Waldron suggests, the salience of the government's directives might be due to the fact that in issuing them the government claims authority or suppresses other non-governmental alternatives:

"The sheer existence of an institution as dominant and unchallenged may suffice to establish its salience, whether it is popularly supported or not. (...) In most cases, the fact that there is a state and that it is, for all practical purposes, dominant and unchallenged in a territory will be sufficient".<sup>34</sup>

So far I have said that civil justice requires obedience to the government's directives because the government's directives solve the

<sup>32</sup> Den Hartogh 2002, p. 141. It seems that Bentham assigned such a role to authority when he described it as "a common signal (...) notorious and visible to all", Bentham, *Fragment on Government*, in: Green 1983, p. 321. Similar claims about the law as an instrument for coordination have been made by Gans: "The two facts: being a legal system in force in a place and being comprehensive, make legal systems the most salient normative system in a place. It is therefore most reasonable that a system of concordant expectations will evolve round this system, producing coordination", Gans 1981, 342. Boardman 1987 argues that the law solves coordination problems in a way analogous way to Lewis's conventions i.e., by being salient.

<sup>33</sup> Den Hartogh 2002, p. 149, see also ch. 6 and 7.11.

<sup>34</sup> Waldron 1993, p. 25. Emphasis in the original.



coordination and bargaining problems with which the tasks of interpretation and execution of natural duties present us. Following rational choice theory, I next explained that the government's directives solve coordination and bargaining problems by virtue of their salient character i.e., I said that the government's role in solving them, both in its legislative and adjudicative functions, consists in the fact that its directives mark certain courses of action as salient. All the elements of the argument to the effect that civil justice requires us to take the directives of the government in a content-independent way are now in place. For consider the nature of a salient point as a guide for action. Salient points derive their action-guiding force not from *what* they prescribe but from the fact *that* they prescribe it. The content of the prescription, i.e., the quality of the action prescribed is irrelevant to the job it is supposed to do. As Lewis put it, a salient point "does not have to be uniquely *good*; indeed, it could be uniquely *bad*. It merely has to be unique in some way the subjects will notice, expect each other to notice, and so on".<sup>35</sup> If we are required to take the directives of the government as a salient guide for action, we are to take them irrespectively of their content. By way of illustrating this point, Edmundson asks us to consider the character of the tax systems imposed by governments:

"the salient solution to a coordination problem need not be the optimal one, in terms of the parties' preferences, much less the one that is morally best. Think of the tax code. It is very hard to believe (...) that the governmental scheme of levies and expenditures (...) is any clue to what we would independently and antecedently have a duty to do with our money".<sup>36</sup>

Given that civil justice requires us to take the directives of the government as a salient guide for action and given that salience operates through content-independent reasons, I conclude that civil justice requires us to follow the directives of the government irrespectively of their content.

Before closing this section, I would like to signal an interesting implication of the argument I have made and to address a worry that the argument might give rise to. I will begin with the implication. I argued that, by solving coordination and bargaining problems, the government's directives allow us to settle on a common interpretation of natural duties and to establish cooperation schemes for the purpose of their execution. If we accept this claim, we concede that the government's directives allow us to establish a relation of

<sup>35</sup> Lewis 1969, p. 35. Emphasis changed.

<sup>36</sup> Edmundson 1998, p. 58. See also Den Hartogh 2002, p. 107, 114

civil justice with those with whom we interact. The government's directives typically take the form of legal regulations. To say that legal regulations issued by the government establish an order of civil justice between us is to conceive of the legal order in normative terms. It is to say that the legal order is a valuable form of human relation and that, in binding all relevant individuals in a network of rights and duties, it makes for a practical manifestation of civil justice.

The worry has to do with the content-independent character of obedience to the government's directives that civil justice requires of us. I can formulate it in the form of the following question: does the fact that civil justice requires us to take the directives of the government in a content-independent way imply that the government is entirely free to determine the content of our political obligations? In answering this question, we should keep in mind that the obligation to obey the government's directives irrespectively of their content derives from more basic obligations we have toward one another by virtue of civil justice. Given that civil justice has its supervenience basis in our natural duties, this means that if the government's directives are in conflict with our natural duties, obedience to them would be in conflict with civil justice. In such cases, on pain of contradiction, civil justice cannot require obedience to the government. Accordingly, we cannot speak of political obligation. The answer to our question, then, is that the government is not entirely free to decide the content of our political obligations. Civil justice limits the space within which we are obligated to obey its directives irrespectively of their content. The limiting considerations signaled in the previous section apply here. If the government's directives are not continuous with the general moral intent of the natural duties the content of which they are meant to specify, then they cannot bind. Similarly, they cannot bind if they require actions irrelevant to fulfilling them. Furthermore, the government's directives should be consistent with perfect and uncontroversial natural duties i.e., those natural duties the specification and execution of which does not require the government's intervention. This means that the government's directives cannot conflict with our negative natural duties, for example, those that forbid harming or lying, etc. Another limiting condition on the scope of the government's authority follows from the interdependent character of civil justice. Given the interdependent nature of civil justice, no obligations of civil justice with regard to the government can bind us unless we are assured that others act on them too. This means that the obligation to obey the government and, correlatively, the authority of the government, depend on the existence of common knowledge concerning the general recognition of civil justice as a

moral motive to obey. Correspondingly, the force of civil justice in governing our relation to the government weakens as the number of those who do not recognise it as a moral reason to regulate their relation to the government, increases. The same counts for the situation in which there is a lack of common knowledge concerning the reasons governing the relation to the government.<sup>37</sup>

The limiting considerations listed above have an important implication for the scope of political authority claimed by the government. Many analyses of the concept of political authority have pointed out that, in claiming to provide content-independent reasons for action, the government does not recognise any antecedent limitations upon the scope of authority it claims. The import of the argument above is that this claim of the government to unlimited authority is false. In claiming this, I join those who like Raz, Green or Morris argue that the government does not possess the authority it claims to possess.<sup>38</sup>

## 7. The Particularity Requirement

I have established the sense in which civil justice requires taking the government's directives in a content-independent way. I have established, thereby, that an account of political obligation grounded in civil justice meets the first of the requirements that a satisfactory account of political obligation should meet. The Particularity Requirement is the second one. Ever since Simmons introduced it, the Particularity Requirement has been endorsed as reflecting the intuitive way we conceive of our relation to the government *viz.* that our political obligations do not bind us to governments in general but mark a special relation to a particular state, typically, the one of which we are citizens. Before we test whether the civil justice account of political obligation satisfies the Particularity Requirement, we should specify in more detail the conditions that it requires an account of political obligation to meet, for they are not what they initially seem to be.

First, surprisingly, the Particularity Requirement does not exclude the possibility that we might have political obligations to more states than just one. The Particularity Requirement explains the special character of our political

<sup>37</sup> It is a fair question to ask how detailed our common knowledge has to be for civil justice to generate obligation for us. Only very few of us possess a detailed knowledge of all existing laws. Most of us do not know many of the existing laws and come to know them only when they apply to us. So how can we have mutual knowledge about each other's compliance? Possibly the following answer will do: we have a duty by virtue of civil justice to obey this particular government's directive or law as long as we can assume that others, reasoning in the proper way, will obey it if it is relevant for them.

<sup>38</sup> Raz 1975, p. 150-152, Raz 1986, p. 76-77, Green 1988, p. 82-83, Morris 1998, ch. 7.

allegiances on the model of those special relations, which like promise, consent, acceptance or receipt of benefits, bind us to one particular obligee. Political relation would bind us to one particular government just like a promise binds us to a particular promisee and the acceptance or receipt of benefits to the particular party that has provided them. Green, for example, argues in the following way:

“[according to the Particularity Requirement] citizens are normally bound only to the laws of their own state. This condition seeks to capture the directionality common to political obligation and other special obligations. Just as promising creates duties to particular persons only and not to the world at large, political obligations bind them to certain states only”.<sup>39</sup>

Now, although every special relation binds us to a particular party only, there is nothing that prevents us from having parallel special relations. For example, although a given promise binds us to a particular promisee only, there is nothing that prevents me from binding myself in similar ways to other persons by making promises to them. Accordingly, the claim that political obligation marks a special relation to one particular government does not preclude that our relations to other governments might be in a similar way special. The possibility of parallel special relations to particular other governments implies the possibility of parallel political obligations. Simmons admits this in his original formulation of the Particularity Requirement:

“The sorts of principles of obligation in which we will be interested will (...) characteristically mention special relationships with the state into which an individual can enter (e.g., by promising, consenting, accepting or receiving benefits, etc.). It is these special relationships which bind the individual to one particular set of political institutions (...). [P]articularised principles of this sort do leave open the possibility of conflicting obligations (e.g., when an individual contracts with two different governments), [yet] each of these obligations still binds the individual to only *one* state”.<sup>40</sup>

The same understanding of the Particularity Requirement is endorsed by Green:

<sup>39</sup> Green 1988, p. 227. Emphasis cancelled.

<sup>40</sup> Simmons 1979, p. 34. Emphasis in the original.

“We feel that political obligation, if it exists at all, stops at borders in ways that [general moral considerations like justice or utility] do not. We must not overstate the point. The claim is not that it is paradoxical or impossible for individuals to owe duties to more than one country. Some obviously do. (...). While the condition of particularity need not be understood as excluding plural obligations, it does exclude general ones”.<sup>41</sup>

This understanding of the Particularity Requirement has the following logical, though again surprising, consequence: insofar as resident and visiting aliens, next to the citizens of a given state, might come to stand in a special relation to it, they can acquire obligations of the same sort. In this reading of the Particularity Requirement, there is nothing that would make it impossible for resident and visiting aliens to bind themselves to the state of their residence or the state they visit by any of the principles that, according to Simmons, satisfy the Particularity Requirement i.e., to promise, consent, accept or receive benefits from it and, in consequence, acquire the corresponding obligations. The following remark of Green seems to confirm it:

“In the standard case, [the special relation which political obligation expresses binds individuals] to the state of which they are citizens. But this is not necessarily so. Where the source of the obligation is promissory, its direction follows that of the promise. A visitor, for example, may be required to promise to obey the law in order to be granted an entry visa or a work permit”.<sup>42</sup>

Our intuitions will revolt against deriving this consequence from the Particularity Requirement: we would find it illegitimate, for example, to draft foreign tourists for the military actions of the state they are visiting. Note, however, that we can admit that such intuitions are correct without denying that the political obligations of aliens are compatible with the Particularity Requirement. We can say that such intuitions are correct insofar as they voice the idea that the scope of political obligations should reflect the scope of the special relation in which individuals place themselves to a particular government. Note that all properly particularised principles listed by Simmons allow for various degrees of commitment: insofar as the value or the amount of benefits one accepts or receives can vary, one’s obligations can vary as well. In the same way, the range of issues to which one consents can determine the scope of one’s resulting obligations. Thus, if we are reluctant to have resident and visiting aliens drafted for the military purposes of the state of their

<sup>41</sup> Green 1988, p. 228

<sup>42</sup> Green 1988, p. 227

residence or visit, this can be because we are reluctant to burden them with duties that exceed the formula of the special relation in which they have placed themselves to the state of their residence or the state they visit. If they are not eligible for the draft it is because the formula of their relation to the state is far less encompassing than that of the citizens of that state.<sup>43</sup>

As I have reconstructed it, the challenge with which the Particularity Requirement presents theories of political obligation is not that they warrant the exclusivity of our political bonds but that they warrant their particularised character. Let us see whether the civil justice account of political obligation meets this challenge.

Civil justice is a general moral value. With the exception of Waldron's account, all other accounts that derived political obligation from general moral values turned out to be incapable of meeting the Particularity Requirement and were, therefore, unsuitable as a ground of political obligation. As Simmons argued, the source of the problem was their unlimited scope of application: general values like justice or utility have a grip on us independently of how, if at all, we relate to the arrangements through which they manifest themselves. In consequence, our political obligations cannot be properly particularised: wherever there are governments that promote justice or utility, even if we have never heard of them, they all call on our allegiance: "general duties to promote justice or happiness can bind me no more to, say, pay taxes to my own just state than they can to make contributions to some needier just state elsewhere".<sup>44</sup>

Civil justice is not susceptible to this objection. Although, like justice or utility, it is a general moral value, its normative grip on us, unlike that of justice or utility, depends on our position in respect of the arrangement through which it manifests itself. This feature is shared by all values internal to relations: supervening upon a relation pattern, they come to bear on us through interaction only. This means that the scope of their obligating force is determined by and limited to our direct interaction partners. Although universal, they are particular in application. Compare the value of friendship: although a universal moral value, obligations of friendship bind us only toward our own friends. Even if I recognise the value of friendship between you and X then unless I am X's friend too, no obligations of friendship toward X follow for me from this recognition (though I may be required not to undermine it). In the same way, the requirements of civil justice will bind us only within a network of

<sup>43</sup> This is how Den Hartogh suggests to think of political obligations though he presupposes that this reading is precluded by the Particularity Requirement. I think it is implied by it. See Den Hartogh 2002, p. 99

<sup>44</sup> Simmons 1999, p. 753.

social relationships in which we participate and not beyond it. This means that even if there are more states through which civil justice manifests itself, we will not be required to obey them all (though we may be required not to undermine them). For, just as not every manifestation of civil justice engages us, so not every requirement to obey the government it supports can engage us either. And if we are not required to obey the government wherever civil justice requires it, the civil justice account of political obligation is not susceptible to the particularity objection.

The particularity objection could get a hold on the civil justice account of political obligation only if it had been the case that civil justice, in the particular manifestation in which it addresses us, required obedience to governments in general. But we have already seen that that is impossible. Civil justice requires obedience to the government as a device to solve coordination and bargaining problems confronting the participants in a particular interaction pattern upon which it supervenes. Solutions to such problems are characterised in terms of salience. Insofar as the government solves them, its directives mark certain courses of action as salient. It is difficult to see how obedience to governments in general could play the instrumental role so specified. Salience cannot be the property shared by the directives of more governments at the same time. Thus, even if all governments, *per impossibile*, provided solutions to the particular coordination and bargaining problems pertaining to a given local interaction pattern, the nature of the intervention required to solve them—salience—would exclude obeying them all.

It seems, then, that there is no way in which the particularity objection could form a danger to the civil justice account of political obligation. In closing our discussion on this issue, let me note that the civil justice account of political obligation does not exclude parallel political obligations. Insofar as we come to participate in other interaction patterns, we acquire obligations of civil justice toward their participants. Their weight will be determined by the scope of our interaction as measured, for example, by its duration. In its outermost case, our obligations will equal those of its participants. Yet, as I have argued, this consequence is not in conflict with the Particularity Requirement.<sup>45</sup>

<sup>45</sup> Two points need further clarification. First, not every interaction will give rise to political obligation in virtue of civil justice. For example, by exchanging e-mails with a Chinese businessman I will not become obligated, in virtue of civil justice, to the Chinese state. As I have signalled already civil justice is a holistic notion which can only be applied to a number of people who are related to each other by a network of patterns of interaction (A interacting with B, B with C, C with D, and D again with A). Under modern conditions, this condition can only be fulfilled in the case of spatial proximity. So an additional condition for political obligation to arise in virtue of civil justice is special proximity to our interaction partners. Hence the

## 8. Political Authority

Before I conclude that the civil justice account of political obligation presents us with a new and plausible theory of political obligation, I should demonstrate that the relation of obedience to the government it establishes can account for the relation of political authority. This requirement reflects the link that modern and contemporary political thought has drawn between the concept of political obligation and political authority. I argued that there are two dimensions along which we can think of our relation to the government as a relation of political authority. Accordingly, an account of political obligation, if plausible, should account for both what makes our relation to the government a relation of *authority* and for what makes it a *political* relation.

Traditionally, the dimension of *authority* ascribed to the government has been spelled out in terms of its right to command. The view that the government's right to command arises in the same act in which one acquires an obligation to obey it conveys the sense in which political obligation has been thought to be a conceptual correlate of political authority. The *political* in the political authority relation, I argued, should be spelled out in terms of public, as

territorial character of the modern state. But precisely because modern technology makes it more and more possible for this condition to be fulfilled globally, there is a tendency for political organisation to acquire supra-state dimensions. The second issue that needs clarification is the scope of obligations that visiting aliens acquire by virtue of civil justice. Visiting aliens come to stand in a relation of natural duties to the participants in the scheme (citizens) they enter. If civil justice is to govern the relations between the visiting aliens and the citizens, both parties should decide on one interpretation of natural duties and they should coordinate their actions for the sake of the execution of natural duties. The salient solution to this problem is the government-run scheme already operating among the citizens. Civil justice requires visiting aliens to join in. Does this imply that visiting aliens have the same political obligations toward the country they visit as its citizens? For example, do they have a duty to serve in the army of the country they visit? My response is the following: obligations of civil justice will be the same but in many cases their exact content will have to be adjusted to the actual duration of the civil justice relation. Sometimes the requirements binding visiting aliens to the citizens in virtue of civil justice will be identical to those binding the citizens (e.g., traffic regulations, criminal code). In other cases, while the obligations of civil justice that visiting aliens acquire toward the citizens will be the same, their exact content will have to be adjusted to the actual duration of their stay. For example, Japanese tourists on a 2-day long visit in the Netherlands cannot be taxed by the Dutch Tax Office over a period of one year. Taxing them for the period of one year would mean imposing obligations of civil justice on the Japanese tourists over the period in which they did not stand in a civil justice relation to the Dutch. However, it is not implausible to argue that the Japanese tourists could be taxed for the period of the two days they spent in the Netherlands. Possibly, this is covered by the tourist tax. Some obligations that bind the citizens cannot be feasibly imposed on visiting aliens at all. Such is the institutional version of the natural duty of protection i.e., military service. Adjusting the character of military service to the various length of the visit of the many millions tourists would make the whole system of military service inoperative. Possibly, visiting aliens can discharge their civil justice duty to protect which they acquire toward the citizens in a different way, say, by a fraction of the tourist tax.



opposed to private, reasons to obey. Many theories of political obligation discussed in the previous chapters were unable to account for the relation of obedience to the government as a relation of political authority. Some of them could not identify a party endowed with a right to command that would correlate to the obligation to obey and thus failed to present the relation of obedience as a relation of *authority*. Others failed to present the authority relation as a *political* relation: instead, we were faced with a series of private and normatively separate relations of domination and submission. The civil justice account has overcome the latter problem. By specifying political obligation in terms of public reasons to obey, it accounts for the *political* in the political authority relation. But does it account for what makes the political authority relation a relation of *authority*?

I have said above that the government's authority has been traditionally defined in terms of its right to command. The right to command has been conceived as composed of three elements: the power to issue instructions for action, an obligation to obey them in a content-independent way and a correlated claim-right to obedience. Compare Raphael:

“The authority to issue commands is (...) a right against those to whom the commands are addressed that they should do what they are commanded to do. It is a right to receive obedience, and it corresponds to an obligation on the part of the others to give obedience”.<sup>46</sup>

Given this specification of the right to command, the question as to whether we can account for the concept of authority within the framework of civil justice can be helpfully rephrased. In its rephrased formula, it asks: can we, within the framework of civil justice, conceive of obedience to the government as a matter of obligation the performance of which can be claimed as a matter of correlated claim-rights?

In section 4 above, we saw that the requirements of civil justice are a matter of mutual and multilateral claim-rights. This means that when civil justice dictates obedience to the government, obedience to the government is an obligation the performance of which can be claimed as a matter of correlated

<sup>46</sup> Raphael 1976, p. 69. This view has its roots in Locke's *Two Treatises of Government* I, 120 and in contemporary political philosophy is endorsed by Wolff 1976, ch. 1, Simmons 1979, ch. 8.2, Simmons 1999, p. 746, Raz 1986, ch. 1, Green 1988, ch. 8.4. In chapter 1 I signalled a dissenting view according to which political authority consists merely in the liberty or power to create duties for its subjects and exercise coercion. The dissenting view has its roots in Hobbes' *Leviathan* and in contemporary political philosophy, it is endorsed by Ladenson 1980, Wellman 1996, Edmundson 1998, Copp 1999, Morris 1998.

claim-rights. This suggests that the relation of obedience that civil justice establishes is a relation of authority. But there is a small complication. We have identified three elements that turn a relation of obedience into a relation of authority: the power to issue instructions for action, an obligation to obey them and a correlated claim-right to obedience. Note that the way in which these elements are distributed between the parties to the relation of obedience established by civil justice is different from the way one commonly thinks of it. Commonly, it is the government that is seen as the claimant of our obligations to obey.<sup>47</sup> This idea was most evident in consent theory: clearly, by consenting to the government, one confers on the government a correlated claim-right to obedience. Now when the obligation to obey the government is derived from civil justice, it is not the government that is its claimant. I argued that claim-rights to what civil justice prescribes reside in our fellow-participants in the interaction pattern upon which civil justice supervenes. The government is not our interaction partner in this sense. It is not an agent whose condition can be described in terms of natural rights and duties and, thus, it is not a party to the interactions governed by them. Rather than a participant in the interactions upon which civil justice supervenes, the government is an artificial creation of its participants. If the government is not a party to the interactions through which obligations of civil justice and correlated rights arise, it cannot acquire claim-rights in virtue of civil justice. Thus, even if its directives determine the content of our political obligations, it does not have the correlated right to claim their performance. This right rests with our fellow-citizens. Unless we show that this relocation of the claim-right to obedience does not undermine the authoritative character of the relation of obedience established by civil justice, the conclusion that the civil justice account of political obligation and the concept of political authority are in a conceptual agreement has not been secured.

The relocation of the claim-right to obedience seems problematic because it seems to require a modification in our view of the nature of the government's power to issue instructions for action. The idea according to

<sup>47</sup> Compare Raphael: "It follows logically that if the state is authoritative, i.e., has the right to issue orders to its citizens and the right to receive obedience from them, the citizens are obliged to obey those orders. The recipient right of the state to be obeyed by the citizens, and the obligation of the citizens to obey, are simply two different ways of expressing one thing, the metaphorical tie or bond between the two parties", Raphael 1976, p. 78. Green: "One believes in political obligation only if one thinks that states have the authority they claim, and what they claim is supreme power to determine our rights, obligations, and powers and to have our compliance with their requirements independent of our assessment of the merits of what is required", Green 1996, p. 8. See also Klosko 2005, p. 21

which the government would be endowed with a claim-right to have its directives obeyed allowed us to present its power to issue instructions for action as a normative power. Without claim-rights to our obedience its power to influence our choices by issuing instructions for action appears as a mere physical ability to make us act in the way it wishes. One might worry here that by denying the normative sense to the government's power to issue instructions for action, its authority can only have *de facto* rather than *de iure* status. To be more precise: the problem here is not that the exercise of *de facto* power can never amount to an exercise of *de iure* authority. As Raz has argued, where the case for having authority rests on its instrumental ability to solve coordination and bargaining problems, *de facto* power is a necessary condition of *de iure* authority.<sup>48</sup> The problem is rather that in the absence of the claim-right to obedience of its subjects, there might be no other factor capable of turning its *de facto* power into *de iure* authority.

My reply to this worry is that the absence of claim-rights to obedience of its subjects cannot endanger *de iure* authority of the government because possession of claim-rights is irrelevant to it. The worry is thus unfounded. For recall that the normative power in terms of which we define *de iure* authority is the power to create new or cancel existing obligations of others.<sup>49</sup> If we conceive of *de iure* authority in this way, the possession of a claim-right to obedience cannot be its necessary attribute. This is because possession of a claim-right to obedience is not a necessary condition to create new or cancel existing obligations of others. In order for one's directives to create or cancel the obligations of others it is sufficient that they be a focus of their obligations to obey. Now, as it makes sense to speak of others' obligations to obey one's directives even if they are obligations they owe to a third party, one can be said to exercise *de iure* authority even if one lacks a claim-right to obedience. This argument becomes stronger if we place it in the context of delegated authority: were authority defined in terms of claim-rights to obedience of its subjects, then no delegated authority could ever be said to exercise *de iure* authority.

If possession of claim-rights is irrelevant to *de iure* authority status, the relocation of claim-rights involved in my analysis of the authority relation cannot undermine the authoritative character of the relation of obedience established by civil justice. It cannot undermine it because, being irrelevant to it, it cannot affect it at all. And this result provides us with the assurance we needed to conclude that the relation of obedience established by civil justice is a

<sup>48</sup> Raz 1979, p. 8-9, 1986, p. 56, 76

<sup>49</sup> e.g., Raz 1979, ch. 1

relation of authority or, in other words, that the civil justice account of political obligation is in conceptual agreement with the concept of political authority.<sup>50</sup>

The aim of the last three sections has been to test the civil justice account of political obligation against three requirements that a plausible account should meet: content-independent character of obedience, the Particularity Requirement and the conceptual agreement with the concept of political authority. The result of this test is positive. I conclude that a plausible case for the civil justice account has been made.

<sup>50</sup> The way I have reconstructed the relation of obedience established by civil justice as a relation of authority opens up a conceptual space that was inaccessible for us before. For example, it allows us to re-think the question as to whether unjust governments can exercise authority. We commonly think that authority can be the property of only just governments because we think, rightly, that an unjust government cannot hold a claim against us to have its directives obeyed. But this argument relies on a view according to which the government can exercise authority only if it is the holder of claim-rights to obedience. Yet the view of the authority relation that emerges from my discussion does not rely on this presupposition. Even though the authority of the government depends here on its directives being the focus of obligations to obey the performance of which is a matter of correlated claim-rights, we saw that such claim-rights need not and are not located in the government. If the government does not have to hold a claim-right against us for its directives to have authority, the idea that only just governments can exercise authority does not follow. We have to argue for it in a different way or drop it. Note here that the idea of unjust government exercising *de iure* authority gains in plausibility with the degree in which it can effectively solve coordination and bargaining problems of its subjects. The Razian argument according to which effective power is a necessary condition of *de iure* authority makes this scenario at least conceptually possible. In the model I propose, the problem will turn on the following question: can directives of an unjust government become a focus of obligations to obey we have in virtue of civil justice? I will address this question in the next chapter.



## Obligations of Civil Justice and Unjust States

In the previous chapter, I developed an account of political obligation grounded in civil justice. In this chapter, I will invoke sociological and historical data in order to show that civil justice is indeed among the factors that govern our relation to the government. My discussion will also bear on a more general claim I have made throughout my thesis. It will provide support for the argument that public reasons, whether associated with civil justice or with other principles of political obligation, are constitutive of our political condition: it is their presence that makes a political society emerge and it is their absence that makes it collapse.

With the help of the empirical data I will invoke, I also want to illustrate two implications of the civil justice account, both of which will make that account distinct from the accounts of political obligation discussed earlier. First, I want to show that the political obligations we acquire in virtue of civil justice can bind us even under unjust governments. Usually, theories of political obligation claim that we have political obligations towards (nearly) just governments only.<sup>1</sup> Second, I want to show that disobedience to the government's directives may be the object of our political obligations. Usually, theories of political obligation claim that it is obedience to the government or other acts supporting it that is the object of political obligation; when disobedience is required, it is by virtue of independent considerations that override political obligation.<sup>2</sup> According to the civil justice account,

<sup>1</sup> With the exception of Tamir 1992, p. 136-137

<sup>2</sup> With the exception of Horton 1992, MacIntyre 1984

disobedience can be the object of our political obligation in the same way in which obedience can.

The concern to demonstrate the implications of the civil justice account for the case of unjust states has governed my choice of an empirical example that organises my discussion below. In my argument, I will refer to a state, which as a matter of historical fact, has come to be regarded as a system of “organised injustice”: the Polish communist state.<sup>3</sup> I want to emphasise, however, that the mechanisms through which civil justice obligations arise remain the same for (nearly) just states. Let me begin my discussion by introducing the case study.

## 1. The Polish Case

The communist system in Poland has been characterised as a totalitarian or, alternatively, as an authoritarian or dictatorial state.<sup>4</sup> It was installed in Poland as a result of the 1945 Yalta and Potsdam agreements, which, in their design of the post-war order, included Poland into the sphere of Soviet political influence and control. The installation of the communist system in Poland, assisted by the Red Army, NKVD and Soviet officials, was accompanied by terror and repressions that reached all social strata. After the death of Stalin, terror was reduced but, as the possibility of resort to force remained among the prime instruments of the communist government, an atmosphere of fear remained. Until its collapse in 1989, the monopolistic and internally undemocratic party supported its uncontrolled rule by an expanded network of political police, security apparatus, censorship, mass media licenses and the system of nomination (the “nomenclature”) to all top posts. Social life was subjected to a uniform ideological scenario. Although the rules of the ideological scenario were meant to regulate the entire domain of social life, they were insensitive to natural social mechanisms. The communist government allowed no space for any spontaneous developments reflecting social or cultural processes. Nor could one hope that economic processes would correct for or reduce the coercive character of the arbitrary, and often inefficient and absurd, rules. The communist scenario imposed on social life was detailed enough to curb the trajectory of individual life: every unauthorized group or broader informal contacts among persons, and any initiative, however innocent from the point of

<sup>3</sup> Kurczewski 1993, p. 67

<sup>4</sup> The exact classification is a matter of debate, see: Kersten 1991, Paczkowski 1991, 1999, Swida-Ziemba 1997, Dudek 2000, Walicki 1990

view of the system's scenario, were immediately noticed, treated as a threat to the stability of the system and suppressed. Lack of social control written into the formula of the system led to impunity of the power holders and invited abuses of power. This reinforced its oppressive character because in such a situation, everybody depended on the whims of the power holders or on the personal changes in the power apparatus: human rights, even if some of them used to be officially proclaimed, were fictitious.<sup>5</sup>

What makes the Polish communist state a good empirical test-case for the civil justice theory of political obligation is the sociological research conducted into the way people coped with the reality imposed by the oppressive government.<sup>6</sup> The results of the empirical studies allow us to reconstruct both the character of people's vertical relation to the government and the character of their horizontal interactions. If civil justice governed people's mutual relations and their relation to the government, this empirical data should suffice to establish it.

Neither the character of people's relation to the government nor the character of social interactions prevailing in Polish society remained the same throughout the period of the communist rule. Anticipating my presentation of the empirical data let me say in advance that the changes they had undergone were correlated. From the perspective of these changes, I will divide the period of the communist rule into four episodes: the post-war and the Stalinist period (1945-1956), the period that followed the death of Stalin and the "Polish October" (1956-1979), the Solidarity period (1980-1981) and the period that followed its suppression by the communist government (1981-1989).<sup>7</sup>

<sup>5</sup> The authoritarian character of the Polish communist state is a subject of a great number of both historical and sociological analyses. I have relied on Paczkowski 1999 and Swida-Ziemia 1997

<sup>6</sup> Between 1948 and 1956 sociological research in Poland was interrupted by the turmoil and repression attending the establishment of the new political order. Sociology was banned from universities as a bourgeois science. The few studies that were conducted were written and "shelved". In 1956 sociologists were able to resume their studies. Despite the political control of the research topics and methods and the institutional enforcement of Marxism, Polish sociology managed to retain its multiparadigmatic character when seen from the point of view of theory and methodology. The Polish Sociological Association (PTS) established in 1957 was an island of independent and democratic organization of scholarly activity during the whole socialist period. From 1956 through 1989 valid studies were conducted even if not all topics could be addressed, e.g., the political organization of society. As Sztompka said, Polish sociology "was normal sociology in an abnormal world, after 1956 it functioned normally, which was a unique achievement amongst the soviet block countries", Sztompka 2002, p. 6. On the condition of Polish sociology under the communist regime see also Nowak S 1981, p. 23, Swida-Ziemia 1997, p. 103-106, Mucha&Zalecki 2002, p. 1-5, Nowak S 1982, p. 120-121, Podgorecki 1994, p. 5-7.

<sup>7</sup> The analysis that follows might be seen as aspiring to provide a full explanation of what determined the relation of society members to the Polish communist government. It does not have this aspiration. I ask whether the standards internal to interaction *viz.* civil justice could



## 2. The First Episode

The first decade of communist rule in Poland marks the most oppressive period in the history of the regime. The system of consequent terror drove people to self-defensive conformity to the state. The deliberate atomisation policy planted mutual fear and distrust in the sphere of social interactions.<sup>8</sup> Fear and mutual distrust can effectively displace civil justice or, for that matter, any other moral principle of political obligation in regulating the public domain. Therefore, it is important to consider how effectively these factors controlled it in the Stalinist period. Would we exhaustively describe the situation if we said that the public domain under Stalinism did not exist and we dealt merely with a collection of atomised and mutually distrustful individuals who were driven to obey the government by fear and the self-preservation instinct? One of the few existing studies of the topic conducted by Swida-Ziemba suggests a more complex picture.<sup>9</sup>

Swida-Ziemba studied the mechanisms that governed people's actions under Stalinism. Her study reveals that the attitude of conformity to the communist government, which emerged in response to the oppressive measures it employed, was characterised by three features. First, it was a form of camouflage meant to conceal people's hostility to it.<sup>10</sup> In the situation of terror and mutual distrust created by the communist government, such concealment was a matter of survival. Second, the formula of conformity

govern the relation to the government. In other words, I focus on what was happening at the level of interaction among individuals. I omit, therefore, all those macro-political factors (political events, macro-economic phenomena, the geopolitical situation, the dependence on the Soviet Union, deliberate actions of the power holders like the system of repressions and the atomisation policy), which played a significant role in determining the dynamics of social interaction. A full analysis would have to include them, but they are not separately analysed here. See, for example, Kersten 1986, Nowak S 1984, Kurczewski 1993, Swida-Ziemba 1997, Marody et al., 1991. Further, in my analysis below I refer to results of empirical studies conducted by various authors, using various samples and various methodological instruments. I treat them as an illustration of my thesis rather than as evidence that should prove its correctness. As I have tried to interpret most of the empirical data in the broader framework of my discussion, it might acquire a different reading than the one it had in the context of the research from which I have taken it.

<sup>8</sup> On the terror and the atomization policy see, for example, Kersten 1999, Kemp-Welch 1999, p. 5, Swida-Ziemba 1997, p. 114-122

<sup>9</sup> Swida-Ziemba 1990, 1997

<sup>10</sup> Similar observations are made by historians. Kersten: "[after 1947] the idea of camouflage was coming to the fore. This could take many forms: (...), a feigned passivity, acceptance of the yoke, in order to preserve an internal, tightly concealed independent identity. It seems that [it] describes the path chosen by a large part of the society", Kersten 1997, p. 4

contained elements that allowed people to recognize one another under the camouflage:

“Survival required taking measures to ensure personal safety. These measures involved various forms of ostensible conformity. One of them (...) was concealing one’s real opinions and attitudes. It was essential that one be able to recognise (...) the agents of the oppressive apparatus of the government so that one could mislead them by sending false signals. However, given that (...) that recognition was not always possible, a general ‘camouflage’ became the dominating social strategy, taken off only in the presence of those most trusted. Further, that camouflage had to allow for mutual recognition (hence we knew we were in the overwhelming majority) and, at the same time, it had to protect us should our apparent ally turn out to be an agent of the political police. Thus, the camouflage consisted of various coded but, for us, decipherable signs (sentences, gestures, facial expressions, phrases). One of them—seemingly neutral—involved revealing to newcomers who, in the community, was a party member”.<sup>11</sup>

Third, the mechanism of mutual recognition placed limits on the scope of conformity that was admissible in social consciousness. For example, no acts of

<sup>11</sup> Swida-Ziemba 1997, p. 136. The recognition signs built into the camouflage were of non-verbal or verbal character. Consider how the practice functioned in the secondary schools environment where the pressure on conformity was particularly strong: “When Stalin died (...) we were exchanging glances of relief and hope but everybody, according to the headmaster’s directives, saw to it that in his or her classroom there would hang a carefully made obituary notice with the portrait of the ‘leader’”, Swida-Ziemba 1997, p. 139. “The way we used to exchange information [about how to cope with the pervasive presence of ideology in the education programme] is a good illustration of how the camouflage worked (...). We used to discuss the upbringing and education of young people. No critical comments concerning the ideological load or absurd education programme were ever made. Neither did we ever say that our methods of work aimed at what they really did. Nevertheless, from the content and form of our remarks we could discover that we treated our tasks in a similar way; moreover, without criticising anything we exchanged experiences concerning possible ways of minimising the compulsory ideological load”, Swida-Ziemba 1997, p. 153. “Some tried to keep silent or to direct the conversation to neutral subjects. Others tried to make a translation ‘from Polish to Polish’ i.e., to express their own suggestions in the compulsory language of the ideological slogans in order to obtain some results. [Here is] an example. The school directors were held accountable for the “education level statistics”. This made them exert pressure on the teaching staff to give undeserved pass-marks to the students. A teacher who wanted to protect the school from such practices would say at the School Board meeting: “We cannot forget that our graduates will realise the Six Year Plan. If we will not prepare them well but grant diplomas, what will be the results of the Plan?”. (...). Finally, there were the verbally zealous (often the fiercest anti-communists). It was they who, at the meetings and social gatherings, made profuse use of the ideological slogans and lavished compliments on the ‘system constructors’, while privately thinking and trying to do their ‘own’. The kind of ‘disguises’ people employed were subject to silent public evaluation. That evaluation was expressed by coded gestures and in conversations with trusted persons. One judged the zealous critically in reciting slogans and compliments; silence was considered the most appropriate course of action; translation ‘from Polish to Polish’ was accepted if it served something one considered relevant”. Swida-Ziemba 1997, p. 137

conformity that involved harm to others were socially accepted. Neither were voluntary acts of conformity: the social permission extended only to those acts of conformity that were inescapable given the external coercion:

“Non-verbal public opinion determined the limits of conformity. The basic category that indicated the limit of conformity was encapsulated in the phrase ‘he had to’. This phrase had a dual function. On the one hand, it conveyed acquiescence in behaviour mandated by the circumstances of terror. On the other hand, it signalled a lack of social tolerance for those conformist acts that could not be explained by external coercion. Acquiescence entailed moral rehabilitation for those who ‘had to’ more than others, but it also entailed condemnation of those who, by their own initiative, realised the system’s scenario. (...). Access to the PZPR was abhorred in public opinion. (...). Such an act was met with strong moral disapprobation and contempt and (...) led to the refusal to consider such a person as “one of us.”<sup>12</sup>

The limits that the mechanism of mutual recognition placed upon the scope of conformity can be explained in instrumental terms: beyond the designated limits to conformity, the recognition signs could not be operative. For one could not consistently want to be recognised in terms of values one voluntarily abandoned. The lack of social tolerance for acts of conformity that involved harm to others could be explained in a similar way: one could not consistently want to signal affiliation with others and at the same time act against them.

As presented by Swida-Ziemba, conformity to the government was not merely an individual reaction to the oppressive measures it employed but also a social practice. The claim I want to defend is that in its normative consequences the mechanism of mutual recognition built into this practice sustained a relation of civil justice among people. I will begin my argument by explaining the role that this mechanism played for the participants in the practice.

Phrasing one’s conformity in the language of socially recognized signs had nothing to do with conformity considered as a means of survival. To secure one’s survival it would have been sufficient if one merely put on a mask of loyalty to the government. In light of the available empirical material, the practice of signalling the qualified character of one’s conformity should instead be interpreted as a way in which people coped with the moral costs that conformity imposed on them. Both the historical and the sociological sources report that conformity to the government involved in the camouflage led to a conflict between commitments and actions. This disparity was experienced as a loss of moral integrity. Kersten:

<sup>12</sup> Swida-Ziemba 1997, p. 147, 146, 149.

“[Conformity written in the idea of camouflage] secured survival, but for many members of the generation, faced with more or less significant choices, it became destructive, causing, through the corruptive effect of inordinate compromises, spiritual devastation. (...). A significant part of the society (...) could not live according to the values that they believed in”.<sup>13</sup>

The moral loss could not be undone by taking off the mask of loyalty to the government. Terror and the atomisation policy entrapped a big part of the society in fear- and suspicion-based interactions. As a result, even though people knew *that* they constituted an overwhelming majority, they did not immediately or necessarily know precisely *who* from those they currently interacted with could be counted among them. In this situation, taking off the mask could expose one to repressions. The system of recognition signs built into the formula of conformity allowed people, without taking off the mask, to recover the sense of moral integrity. Signalling the qualified character of conformity was a way of saying that one’s conformity was, indeed, only a disguise and that under the disguise, there was a person whose commitments remained intact. If you recognised the person behind his disguise of conformity and responded, your response acknowledged the merely ostensible and apparent character of his conformity. In your response, he could see, without taking off the mask, his true face. This mechanism of identity re-constitution was interdependent: it was only by recognising others under their masks that they could become the mirror in which one could see one’s own true face. The moment of mutual recognition was, thus, the moment of mutual re-constitution of identity. Swida-Ziembra:

“Interpersonal relations strengthened our sense of identity; they were evidence that social order continued to exist in accordance with our values; they were also assurances of the formal character and clear boundaries of conformity. (...) The capacity to see one’s true face in the mirror of interpersonal relations consolidated identity and integrity. It saved us from the error of descending into complete conformity and [moral] disorientation”.<sup>14</sup>

Note that people would not be able to see each other as persons of moral integrity unless the disparity between the signalled commitments and their denial involved in the acts of conformity appeared as justified. Because justification was a pre-condition of mutual recognition, the face you saw in my

<sup>13</sup> Kersten 1997, p. 3, see also Swida-Ziembra 1997, p. 136, 137

<sup>14</sup> Swida-Ziembra 1997, p. 154

response was a face of a person whose conformity was justified. In the mirror of interpersonal contacts, your compromised integrity was re-constituted. Insofar as an act of recognition conveyed justification, the mechanism of mutual recognition can be seen as an interactive mechanism of re-constitution of people's status as intact moral agents.

I have said that in its normative consequences the practice of signalling the qualified character of one's conformity made it possible for people to restore each other's status as intact moral agents. In the previous chapter I argued that a relation pattern in which people acknowledge and respond to each other's status as moral agents is intrinsically valuable. I called the value that resides in that relation *civil justice*. From this perspective, the mechanism of mutual recognition, as reconstructed above, could be seen as sustaining a relation of civil justice among interacting individuals. The fact that the sphere of interpersonal relations in our case study was indeed perceived as valuable speaks in favour of this thesis. Sociological research reveals that the sphere of horizontal interactions between members of society enjoyed a separate normative status in social consciousness. Throughout the whole period of the communist rule, one of the most important dimensions in terms of which people perceived the social structure was a distinction between "us" and "them". "We" were the "people", "society", "Polish nation", "employees", "workers". "They" were the "power holders", "government", "Central Committee", "Party members", "communists" and later, "red bourgeoisie".<sup>15</sup> As Nowak reports, people conceived of the moral norms regulating their interactions in the "world of people" as different from the norms regulating their interactions with the "world of institutions". The forms of interactions constitutive of the "world of people" were seen as intrinsically valuable.<sup>16</sup> When participating in them, people conceived of themselves as members of a moral community. Similar observations are present in Swida-Ziemba's study:

"Outwardly, the system functioned faultlessly. People played their roles in accordance with the system's scenario. At the same time, other values, hidden and deep inside, permeated social life. The relations between people (...) left their mark on the social landscape. They eased the nightmare, partly erased the sense of humiliation, and made everyday life bearable and valuable".<sup>17</sup>

<sup>15</sup> Bakuniak 2005, p. 193

<sup>16</sup> Nowak S. 1979

<sup>17</sup> Swida-Ziemba 1997, p. 157-8

I have suggested that the mutual recognition mechanism sustained a relation of civil justice among people. Once a relation of civil justice emerges among interacting individuals, it provides them with new reasons for action. Can we detect such reasons in the way people related to the government?

First of all, could civil justice provide people with any reasons to obey the government? In the previous chapter, I argued that civil justice would govern acts of obedience to the directives of the government just in case they specified the otherwise underdetermined formula of what people owe to each other as participants in the valuable relation. One might doubt whether any acts of obedience could be motivated in this way in the Polish case. The communist rule was imposed on a society whose standards of interaction had been established by tradition, custom, or other independent social or political processes. From this perspective, what we owed to one another as participants in a normative order of civil justice had been determined long before the communists seized the power. The framework of action they imposed, even if not in conflict with the independently formulated social standards of action, was redundant. This objection is right but not entirely. For, recall that the situation in which the communists seized the power coincided with the end of World War II. The basic structure of social life in Poland was devastated. Without institutions constituting the basic infrastructure of social life—without, for example, a healthcare or judicial system—the established formulas of what people owed to one another as participants in the relation of civil justice could no longer be operative. Moreover, it seems plausible to assume that the new tasks that were related to the necessity of rebuilding the country placed people's interactions in a new context. In this case, the independently established principles of civil justice, unless modified, could not apply either. In this situation, the directives of the communist government could be seen as providing a new specification of what people owed to one another as participants in the valuable relation that the mutual recognition mechanism made possible. Insofar as the directives of the communist government had this role, civil justice would require obedience to them. How much support for this thesis can we find in the available empirical material? The historical and sociological sources reveal that joining the actions coordinated by the communist government for the sake of the reconstruction of the basic infrastructure of social life was often seen, at least in the first post-war years, as a moral requirement. People thought they came under this requirement as members of the community they formed independently of the government and to which, as I showed above, they ascribed intrinsic value. Participation in the government-coordinated actions for the sake of the reconstruction of the basic

infrastructure of social life was seen as a duty owed to one's fellow society members and not to the government. Compare the following statement from a document urging engagement in government-coordinated activities that were aimed at rebuilding the country from the destruction of war:

“the responsibility of discharging the duty of economic reconstruction of the country so as to guarantee its inhabitants' basic needs lies, to some limited extent, with the society (...). People directly or indirectly responsible for (...) the Polish economy have to understand the difference between the nation as an enduring factor in our history and the transiently destructive nature of the current government's policies (...). Our government and our troubles are temporary, but by no means can the same be said about the responsibility of our generation for the future of the Western Polish Provinces. Most importantly and despite everything, we hereby declare our active co-operation in the rebuilding of the country”.<sup>18</sup>

As presented above, the requirement to join the actions coordinated by the communist government had two features: it was of horizontal character and it bound individuals as members of a valuable community. While these features are characteristic of obligations of civil justice, they might also suggest that we are dealing here with associative duties derived from special relations that membership in the nation established between people. Taking a closer look at the content of the requirement to cooperate with the communist government should help us specify its nature with more precision. We saw above that the cooperation with the communist government was justified insofar as it was instrumental for the reconstruction of the basic infrastructure of social life. What conferred the urgency on this task was the concern with the basic needs of others:

“Professional activities continued in institutions that were appropriated by the coercive apparatus of the State. And yet, that was not the full story. Institutions were treated by us as environments for self-fulfilment and social service. (...). Although we perceived Stalinism as a reality we were condemned to ‘forever’, we never recognised it as our own (...). It was for us a foreign imposition. Poland was ‘our’ country and this society was

<sup>18</sup> Wolnosc 1945, quoted after Kersten 1990, p. 8. This is only a single voice of the Polish underground but, as historians emphasise, the attitude of “compromise but not capitulation” that it expresses was endorsed by the majority of the society. This orientation was the basis of the political activities of the PSL (Polish Peasant Party) under the leadership of Mikolajczyk and the Labour Party. The particular quote above, however, comes from a different political camp, which, in the political spectrum, represented the strongest anti-communist attitudes. As the quote evidences, however, even the most determined anti-communists did not preclude cooperation with the communists. See: Kersten 1997.

'our' society. Government institutions, despite their communist structure, could still serve certain social functions. And, thus, treating patients, educating and caring for young people, building houses, serving customers, etc., were treated by us as something independent from the imposed regime. This was not 'their' domain; 'they' were intruders. This domain was 'ours'. The self-preservation instinct did incline us to conform to the rules laid down by the system, but work was by many performed for the sake of society. Doctors discussed difficult cases and progress in the medical sciences; engineers were concerned to make sure that, for example, houses would be well built; clerks derived satisfaction from being able to resolve complex issues for their clients; the principal topics between teachers were the problems of pupils (their skills, characters, pedagogical vicissitudes, principles of just treatment etc)".<sup>19</sup>

On a closer analysis, the content of the requirement to support the communist government can be reconstructed in terms of meeting the basic needs of others. Meeting the basic needs of others is typically the object of our natural duties. The link between the requirement to support the communist government and natural duties speaks in favour of the civil justice interpretation of the requirement to support the government. For, while the content of associative duties may reflect the content of natural duties (e.g., associative duties can prescribe the non-general performance of natural duties),<sup>20</sup> such a formulation of the content of associative duties is not a central element of the associative account. Yet it forms the core of the civil justice account. Obligations of civil justice bind us by virtue of our status as members in the valuable order we form when acting on natural duties toward each other. The requirements of civil justice have, then, the particular formulation natural duties acquire when they are considered from the perspective of a social order that arises when people approach each other in the way natural duties require.

I have suggested above that the new design of the basic infrastructure of social life imposed by the communist government was instrumental in giving a determinate formula to what people owed to one another in terms of civil justice that governed their relation. One might object to this suggestion by saying that the oppressive character of the government invalidates the instrumental role its directives could otherwise play. But this argument does not hold. As I argued in the previous chapter, the instrumental role of the government in specifying the content of rights we hold against each other by virtue of civil justice consists in its establishing coordination or arbitration schemes that correct for the imperfect or controversial character of our natural

<sup>19</sup> Swida-Ziemia 1997, p. 149-150

<sup>20</sup> cf. Tamir 1996, p. 100-1



duties that constitute the supervenience basis of civil justice. The government does this insofar as its directives provide a salient point upon which mutual beliefs and expectations of the interacting individuals can focus. Salient points derive their action-guiding force not from what they prescribe but from the fact that they prescribe it. From this perspective, the character of the body issuing directives for action is irrelevant to the job its directives are supposed to do. In this way, for example, the otherwise unjust or oppressive character of the government does not matter for the salient role its traffic regulations play in directing the cars to the right, rather than to the left side of the road. If the directives of the government are instrumental in this way, civil justice requires obedience to them in a content-independent way. (What can invalidate the government's directives as the foundation of the civil justice relation pattern is their conflict with natural duties. Insofar as this is not the case, civil justice requires obedience to them.) In our case study, people's engagement with the state had a similar content-independent character. As historians reported, "the conviction about the necessity of active involvement in the rebuilding of the country" was held "independently of what government is actually in power".<sup>21</sup>

I have argued that in the first post-war years, joining the actions coordinated by the communist government for the sake of the reconstruction of the basic infrastructure of social life was often perceived as a moral requirement and I suggested interpreting that requirement as a requirement of civil justice. This argument, if correct, holds only for a limited number of situations in our case study. It is limited to those situations in which the government's directives could be said to play a constitutive role for the pursuance of the relation of civil justice that the mutual recognition mechanism made possible. What about situations in which the government's directives could not play such a role or, even worse, where they upset the relation of civil justice between people?

In the previous chapter, I argued that in cases in which the framework for action designed by the government would upset the normative order of civil justice among people, civil justice would require reducing obedience to it. Such cases occurred whenever acts of obedience required by the government went beyond the limits of conformity the observance of which was necessary for the maintenance of the mutual recognition pattern. Any too far-reaching conformity would render people unrecognisable to one another and make the civil justice relation between them impossible. Given that civil justice dictates sustenance of the relation pattern upon which it supervenes, it seems plausible

<sup>21</sup> Kersten 1986, p. 18. Emphasis added.

to argue that civil justice would make the observance of the limits to conformity a matter of moral duty. The attitudes of moral rejection and contempt that corresponded to any acts of moving beyond the socially determined limits to conformity reported by Swida-Ziembra support this thesis. Such reactions typically correspond to duty violations.

When the framework for action designed by the government upsets the normative order of civil justice among people, civil justice might also require modifying it in the direction that would serve it. The requirement to modify the state is a broad one. Depending on feasibility conditions, it might mean pursuing small-scale actions meant to compensate for the wrongs that cannot be eliminated or supporting a process leading to the replacement of the government. Given the barriers placed by the communist government to any spontaneous actions, modifying the system could concern only very simple, modest goals that would not evoke suspicion of undermining the system's scenario. For example, if the formula of civil relations, in the form established prior to and independently of the communist government, contained a certain principle of distribution of goods, it would require struggling for a just division of scarce goods, which the communists distributed according to various clique arrangements. Or, insofar as civil justice required mutual help, it would require humanizing the work of the government-run social service institutions.

The paradox of the situation was that when pursuing the requirements of civil justice, insofar as they dictated modifying the organisational framework of the state, some degree of conformity was inescapable. This was because nothing could be organised without entering into various arrangements with the government. For example, given that one could not communicate in any other way but in the language of official ideology, any action involved at least verbal acknowledgement of the rules of the communist state i.e., the leading role of the Party. More importantly still, the pursuance of what people owed to one another in terms of civil justice depended on the decision-making power that rested with the power holders and on the availability of resources, which were entirely in their hands:

“Those who wished to realise any extra-systemic values, had to play according to the rules laid down by the system (...). They had to network and make connections, gain access to those with power and influence, sign political declarations (...), win over the Party secretaries or other notables of the state, make fictitious plans, express approval of the ideology and social hierarchy of the totalitarian state, etc. (...). If, for example, a group of psychology graduates tried to find common employment in a detention centre, an orphanage, a psychiatric hospital or a school in order to humanise (...) these institutions (such that they performed the functions they were formally required to

perform), then, in order to realise these extra-systemic goals, they had to play according to the rules of the system, speak the newspeak, make certain concessions, establish contacts with influential persons".<sup>22</sup>

As a result, the requirement to modify the government-run framework for action often conflicted with the requirement to minimise obedience to it. In such cases, civil justice required steering a middle course between obedience and disobedience:

"Realising one's values in professional activities required (...) minimising features emerging from the Stalinist scenario and focusing on the tasks which appeared to be (...) politically safe (...). Despite appearances, this was often possible. At schools or universities, the ideological façade could be reduced to activities that were absolutely necessary, treated as formal requirements, on the basis of ticking off inevitabilities. In this way, rival 'pupil brigades' and lists of the 'Leaders of Science' were established, and celebrations and parades, etc were organised. At the same time, everyday life at school could be infused with other concerns and values. (...). There was a chance that the teaching process did not have to be conducted along the semantic lines of doctrinal slogans. The method of realisation of programmatic catchwords could be carried out in such a manner that not only was (albeit selectively) valuable information imparted, but also such that independent and critical thinking was developed. (...). The system's scenario was both followed and not followed. (...). Steering a middle course between obedience and disobedience so that our values would be at least partly realised was a difficult and complex matter. Nevertheless we treated such a task as a moral duty".<sup>23</sup>

The material analysed in this section leads me to conclude that the oppressive character of the government does not necessarily prevent moral reasons from regulating relations among its subjects. A similar claim allowed Margalit to say that in communist Czechoslovakia, despite the "nondecent" character of the institutional organisation of political life, the relationships between members of the society retained a "civilized" character.<sup>24</sup> My discussion has focused primarily on reasons of civil justice operating between citizens, though I have not excluded that other considerations, for example, associative duties, could have governed the public domain under Stalinism, too. As far as civil justice is concerned, we saw that, at times, it required obedience to the oppressive government and, at other times, it required reducing obedience to a minimum. Given that civil justice meets all the conditions

<sup>22</sup> Swida-Ziemba 1997, p. 75, 76, 77

<sup>23</sup> Swida-Ziemba 1997, p. 151, 152

<sup>24</sup> Margalit 1996, p. 1

required of a plausible account of political obligation, these findings provide a correction to the dominant conception of political obligation. First, in demonstrating that civil justice can bind us under unjust governments, they correct for the idea according to which political obligation can bind us to just governments only. Second, in demonstrating that civil justice can require circumventing the government's directives (or open disobedience to them if it is not impossible or too risky), they correct for the idea according to which it is obedience to the government that is the proper object of political obligation.

### 3. The Second Episode

In the previous section I demonstrated that the oppressive character of the government under the Stalinist period was not able to eliminate public reasons and, in particular, reasons of civil justice, as a force regulating the relations among its citizens. In this section, I will indicate the factors that made public reasons disappear from social life. Again, my focus will lie with reasons of civil justice. The sociological picture corresponding to the disappearance of public reasons is one of the dissolution of political society.

The change in Party leadership following the October 1956 events put an end to the Stalinist period in Poland.<sup>25</sup> In spite of the initial promises of the power holders, the period that followed did not bring about politically relevant changes.<sup>26</sup> As compared to the Stalinist period, however, the post-October period brought about a certain liberalisation in the sphere of private life. This was experienced, after the deprivation people suffered in this domain under Stalinism, as a great improvement. The relief and satisfaction people derived from being able to improve their standard of living and build an interesting and safe sphere of private life placed such concerns at the centre of their attention:

<sup>25</sup> Following the death of Stalin in early 1953, unrest and desire for reform and change among both intellectuals and workers began to surface throughout the Eastern Block. The de-stalinisation of official Soviet dogma following Khrushchev's 1956 attack on Stalin's cult of personality stirred ferment in Poland and conflict in the ranks of the Communist Party. Khrushchev's speech, the increasing criticism of methods of governance, calls for systemic reform as well as economic crisis and associated social unrests (strikes and street riots in Poznan in June 1956 quelled by army troops) led to the October events as a result of which a more liberal faction of the Polish Communist Party (of Gomulka) gained power. His pledge to follow a "Polish road to socialism" caused many Poles to interpret the Polish October as a sign that the end of dictatorship was in sight.

<sup>26</sup> In the beginning, limited political liberties had been introduced, but they were quickly withdrawn.

“People’s needs, the deprivation of which was particularly prevalent during the Stalinist period, could now (...) be satisfied. Their deprivation had been so painful that the possibility of satisfying them provided full comfort and relief. (...). Farmers could work on their own, workers were not forced into excessive work, the intelligentsia was given opportunities to travel abroad, to go on attractive holidays, and to enjoy an interesting cultural and social life. New prospects for professional and personal life emerged. (...). What focuses people’s attention is the trajectory of their personal lives and the achievement of their personal goals, as determined by the parameters of the system”.<sup>27</sup>

As the government remained the only distributor of goods and opportunities, the focus on private concerns tied individuals to the government. This dependence was stimulated by the government as an element of its new strategy to secure people’s obedience. If under Stalinism the government ruled by reference to punishments, now the society was conditioned by reference to rewards: the government set out to buy the loyalty of citizens by appealing to their self-interest.<sup>28</sup> This strategy attained its climax with the change of the political elite in 1970. Misztal:

“the new leadership of the Communist Party sought to identify itself with new values such as increased consumption. The idea was to attract individual attention to the possibility of enriching oneself through the systematic acquisition of material goods. (...). The symbols of this new era have become the Fiat automobile and color television. Although these and other goods were produced in large quantities, they were not universally available; access to them was controlled by the authorities through coupons issued only as a reward for some display of political conformity”.<sup>29</sup>

The focus on private interests, stimulated by the government, gradually weakened people’s concern with the public reasons that regulated their relations in the previous decade. From the perspective of the new opportunities that opened up in 1956, people saw their earlier political attitudes as outdated and inadequate to the situation that, in comparison to Stalinism, constituted a relevant improvement. Taking the communist government as an environment in which they could realize their personal needs, people pushed the normative dimension of common life out of the range of their concerns.<sup>30</sup> Nowak’s research registered this trend over the whole period from the late 1950s through to the 1970s:

<sup>27</sup> Swida-Ziemba 1997, p. 178-179, 35.

<sup>28</sup> cf. Swida-Ziemba 1990, p. 326, 328-9, Feher 1982, Tarkowska&Tarkowski 1991, p. 106

<sup>29</sup> Misztal 1985, p. 7. For a thorough analysis see Krzeminski 1984.

<sup>30</sup> Swida-Ziemba 1997, p. 178, 182, 179

“Between the 1950s and the 1970s (...) our studies (...) revealed diminished interest in social issues in general and increased interest in private and personal affairs, a ‘reprivatisation’ of the people’s ideology (...). Cars and summer houses became the engrossing topics of conversation among intellectuals”.<sup>31</sup>

Both civil justice and the associative considerations that governed people’s actions in the previous decade fall within the range of concerns the disappearance of which Nowak’s findings describe. Below I will concentrate on civil justice.

While the reasons that were associated with the normative order of civil justice dictated minimising conformity to the minimum that was inescapable given external coercion, the concern with private interests urged people to extend the scope of conformist behaviour by emphasising the personal gains it could bring about. Already in the late 1950s, the tension between the concern with private interests and civil justice was resolved in favour of private interests and sociologists observed an increase in conformity. For example, if in the previous decade the number of Party members was relatively low, after 1956 the number of party members gradually increased. The motives for joining the Party were of a pragmatic character: getting a job, a flat, promotion at work.<sup>32</sup> The pervasiveness and the scope of conformity received its culminating point in the 1970s. As Koralewicz-Zebik observed, “opportunistic reactions (...) seem to have been the *signum temporis* of the 1970s. It is legitimate to talk of a flowering of an opportunistic ethos marking both attitudes and behaviour”.<sup>33</sup> The increase in conformity was followed by the disappearance of civil justice as a factor regulating people’s interactions and their relation to the government. I said that civil justice required reducing conformity to the minimum that was inescapable by external coercion. The type of motives involved in conformist attitudes between the late 1950s through 1970s—cars, summer houses, promotion at work, colour TVs, trips abroad or large sums of money—could not qualify as inescapable given external coercion. Acts of conformity done in exchange for such advantages were at odds with the limits to conformity dictated by civil justice. Given the holistic nature of civil justice and the interdependent character of the reasons for action it provides, violation of its requirements deprived it of its binding force. Recall that the holistic nature of civil justice means that both our acts are necessary for a valuable relation between us to arise. This implies that for me to have a reason to sustain the

<sup>31</sup> Nowak S 1981, p. 30

<sup>32</sup> Swida-Ziemia 1997, p. 182

<sup>33</sup> Koralewicz-Zebik 1987, p. 15

valuable relation between us, you must act in the relevant way, too. If you refrain from doing so, you make it impossible for me to realise the valuable relation between us and, thus, you deprive me of reasons I might otherwise have to do so. Accordingly, in our case study, your violation of the limits to conformity dictated by civil justice made it impossible for me to preserve the relation of civil justice between us and, consequently, deprived me of reasons to do so. Here is another way to illustrate this point. Recall that people could participate in the relation of civil justice *via* the mutual recognition mechanism. Observing limits to conformity was the condition under which the mutual recognition mechanism was operative. In moving beyond the limits to conformity, the mutual recognition mechanism ceased to be operative.<sup>34</sup> Not being able to recognise one another, the sustenance of the civil justice relation among people became impossible.

How did the disappearance of civil justice manifest itself in social life? I will illustrate it by investigating what happened to the manifestations of civil justice I analysed in the previous section. I argued there that civil justice was among the factors contributing to the work ethos that developed among society members: despite the alien and hostile work environment, people conceived of their work as a way to serve the needs of others as members of the same valuable community. After 1956, sociologists observed the decline of the work ethos: most people attributed strictly instrumental value to work by relating it to the income it guaranteed. Sociological studies also revealed that people, acting in their professional roles, became insensitive to the needs of others. Only an insignificant minority conceived of work as serving the good of others.<sup>35</sup> It is interesting to note that people justified the decrease of their social engagement by pointing to the similar behaviour of others.<sup>36</sup> Pointing to others' violation of certain norms as a justification of one's own violation reveals the interdependent character of moral norms in question which, as I argued, is characteristic of civil justice.

Civil justice describes a situation in which people respect one another's status as moral agents. In our case study, recognising one another as intact moral agents under the masks of conformity to the oppressive government was

<sup>34</sup> People lost the capacity to recognize one another: "In the years after the October events (...) a very significant change emerged on the map of social relations. More particularly, the patent polarisation of society along party and non-party lines and along pro-system and anti-system positions disappeared. (...) Often we did not even know who belonged to what category", Swida-Ziemba 1997, p. 181

<sup>35</sup> Nowak S 1979, p. 157

<sup>36</sup> Nowak S 1984, p. 419, Pawlik 1985

the only way to restore the damage to moral integrity that concealing and denying one's true convictions otherwise involved. An important consequence of the disappearance of the relation of civil justice among people would then result in a socially widespread sense of moral discomfort. Indeed this is what sociologists reported:

“The most important consequence of [the opportunistic] ethos in terms of individual psychology was an internal split of the personality and a loss of identity”.<sup>37</sup>

“People, who in the first part of the last decade [the 1970's] were persuaded to enter into a peculiar transaction: a small fiat car for the price of resigning from real [political] participation and influence, even if they accepted it, paid for it with the sense of loss of dignity. (...). The threat to the sense of dignity (...) on the mass scale was one of the elements of the impending crisis”.<sup>38</sup>

With the disappearance of public reasons associated with civil justice, the concern with private interests gained in force in regulating people's relation to the government. The way it influenced the formula of their political relations illustrates the argument I made in the previous chapters: driven by private reasons, political society dissolves into an (institutionalised) state of nature. How did this process proceed in our case study?

First, the focus on private interests made individuals concentrate their attention on their own lives. The attitude of “enlarged individualism”<sup>39</sup> inclined people to withdraw into small groups: family and friends and informal networks of persons connected by instrumental bonds of mutual services. Sociologists observed a disintegration of the society into a collection of small groups already in the late 1950s. Nowak described the Polish society of this time as a “federation of primary groups”.<sup>40</sup>

Second, in the absence of a common normative perspective, there was nothing that could stop individuals and groups from making private arrangements with the government. Given the role of the government as the exclusive centre of the distribution of goods, the strategy of resorting to private connections with government officials was only rational. It was stimulated by the distribution policy employed by the government in which the socialist principle ‘to everyone according to one's work’ was in practice replaced by ‘to

<sup>37</sup> Koralewicz-Zebik 1987, p. 15

<sup>38</sup> Nowak S. 1984, p. 418.

<sup>39</sup> Podgorecki 1976, p. 27

<sup>40</sup> Nowak S. 1979, p. 158-161, 1984, p. 416, Podgorecki 1976, p. 27



everyone according to one's loyalty to the authorities".<sup>41</sup> Thus, as Tarkowski argues:

"the rational strategy of individual and group actions was to resort to connections with government officials; this enabled not only easier access to the resources of the 'Great Distributor' – thus circumventing the need for access gained by hard work and effort – but it often constituted the only way to acquire scarce goods".<sup>42</sup>

Atomisation of the society and resort to private connections with government officials changed the pattern of social relations. Given that the situation of scarcity of goods inclined to rivalry rather than to cooperation, the domain of social interactions became a battlefield of private forces: each individual or group tried to arrange the best terms of political submission possible and to extort from the government—the Great Distributor—as many gratifications as possible. One's success could only be limited by the greater bargaining forces of others. In the situation of consumption rivalry, individuals and groups competing for scarce goods employed various means to increase their bargaining power. Sociologists reported an increase of various methods of political and economic violence: bribery, nepotism, and other forms of corruption.<sup>43</sup> As a result, the relations in the society became increasingly governed by power:

"Gierek's era brought the tendency to use one's power as a means of exchange or extortion. Power was a means of access to scarce goods and, since consumerism was the driving force, those in power were able to acquire wealth or prestige in exchange for this access".<sup>44</sup>

In the social consciousness, the private mechanisms of distribution of goods and privileges entailed by the particularised relations to the government had all the marks of exploitation.<sup>45</sup> This increased hostility and mutual distrust among people both at the individual and at the group-level. Research revealed "plenty of interpersonal aggression among people in their everyday contacts".<sup>46</sup> Attitudes of resentment and envy stirred collective conflicts due to clashes of

<sup>41</sup> Pankow 1982, p. 43

<sup>42</sup> Tarkowski&Tarkowska 1994, p. 274, 275

<sup>43</sup> Glinski 1983, Tarkowska&Tarkowski 1991, 1994, Pawlik 1985

<sup>44</sup> Misztal 1985, p. 7. See also Krzeminski 1984, Nowak S. 1984, p. 421.

<sup>45</sup> Raport 1980, p. 118, Koralewicz-Zebik 1984, p. 228

<sup>46</sup> Nowak S 1982, p. 131

the interests of groups that participated unevenly in socially desired goods.<sup>47</sup> Note that even if the distribution of goods was not exploitative, the lack of social control deprived people of the assurance that it was not so. Lack of assurance, in turn, gave them reasons to outwit others in the quest for scarce goods by entering into private relations with government officials—possibly exploitative for others. Now, if the terms of political subjection that individuals arranged for themselves with the government were exploitative for one another, they were in the state of war. And if they were not sure, they were trapped in a collective action problem called the assurance problem. Both situations are standard descriptions of the state of nature. Sociologists did not hesitate to describe the de-socialised Polish society of the late 1970s—dissolved into a collection of atomised small groups, mutually alien, unfriendly and hostile and driven by mutually conflicting interests<sup>48</sup>—in this way. Tarkowski described it as a state of “war of all against all”.<sup>49</sup> Pawlik described it as “jungle”:

“In the perception of respondents, society is perceived as a ‘social jungle’, whose laws may or may not be accepted, but to which one has to conform. Ideas such as battle, survival, and rivalry over the means necessary for life, permeate, to a large extent, the mentality of everyday behaviour: “We are now living beastly lives, such that everyone is happy when they succeed in arranging their own affairs, with no thought of anyone else. Save yourself first and foremost [mechanic, 32 years]”.”<sup>50</sup>

One might object to calling the situation described above as the state of nature by pointing to the existence of the government. But the government, as we have seen above, only reified and strengthened the power relations among individuals and groups. If it was not the state of nature in its pure form then it was its institutionalised version.

In this section, I have drawn a link between the disappearance of civil justice and the dissolution of political society. I take it to provide partial support for the more general argument I have made throughout my discussion, namely, that public reasons in terms of which we relate to the government are constitutive of our political condition: it is their presence or absence that marks the distance between a political society and the (institutionalised) state of nature. I say that the material presented in this section provides only partial

<sup>47</sup> Koralewicz-Zebik 1984, Raport 1980, p. 83ff

<sup>48</sup> Tarkowska&Tarkowski 1994, p. 266

<sup>49</sup> Tarkowska&Tarkowski 1991, p. 105

<sup>50</sup> Pawlik 1985, p. 137-8

support for this thesis because reasons of civil justice do not exhaust the range of public reasons that may govern the *political*. I conceded that there are other principles of political obligation that operate through properly public reasons, namely, the special relations variant of the associative argument, Waldron's version of the natural duty account, and the fairness principle. When discussing the Stalinist period, I signalled that such considerations, and, in particular, associative duties might have operated parallel to civil justice. Unless we know more about the role that these considerations played in the post-October period, we cannot exclude that they kept operating even after civil justice had ceased to exercise its normative force. As we cannot exclude this, we cannot exclude that the dissolution of the society I associated with the disappearance of civil justice was only partial.

The focus on civil justice does not leave me much space to analyse the role that public reasons associated with alternative principles of political obligation played in the post-October period. I will confine myself to the following remarks. Given the value system of the Polish society, the hypothesis that such considerations kept operating even after civil justice had ceased to exercise its normative force is not implausible. Sociological research conducted after 1956 revealed that people had endorsed a certain set of values associated with the communist ideology and accepted those aspects of the new political organisation that were meant to implement them. For example, people endorsed various aspects of the egalitarian ideology propagated by the communists. Endorsement of the idea of equality of opportunity for all citizens, irrespectively of their social background, made people accept the abolition of pre-war class structure and even the idea of preferential opportunity for the underdog.<sup>51</sup> For similar reasons, the nationalisation of industry and land reform were accepted by society: they brought about an unprecedented increase of upward social mobility and the related sense of social promotion. Insofar as the egalitarian ideas expressed what people considered right, it is plausible to say that supporting the organisational framework of the communist state that claimed to implement them was a matter of obligation. For example, insofar as people thought that equality of opportunity was due to everybody simply as a person, the support for the system could be understood as being required by natural duties. Alternatively, contribution to the scheme of social organisation that made the implementation of the egalitarian ideas possible could be seen as a requirement of fairness. What is important to keep in mind when considering these hypotheses, however, is that the post-October

<sup>51</sup> Nowak S. 1981, p. 23; 1982, p. 123-127; 1988, p. 2-5

period was characterised by an increasing gap between the ideas propagated by the government and their practical implementation. For example, the system of privileges upheld by the government led to the polarization of economic conditions in which people lived. There arose a class of those who, in an egalitarian socialist society, were “more equal than others”. The increase of economic and social inequalities made it impossible to legitimate the policy of the government by an appeal to egalitarian ideas. Correspondingly, no appeal to natural duties phrased in terms of egalitarian ideas, could justify the obligation to obey the government. Another effect of the government policy was the fragmentation of the society into a collection of small and mutually hostile groups. Given that, from the perspective of one’s own small group, others appeared as alien rather than affiliated, the fragmentation of the society must have weakened the force of associative duties between people. The impact of the social disintegration on the considerations of fairness between society members must have been similar. The focus on the interests of one’s own group inclined people to see others as rivals to a limited pool of goods rather than as co-operators in a common project. As a result, on the plane of the society as a whole, the type of relations between people in which duties of fairness arise must have disappeared. All this suggests that the force of public reasons associated with principles other than civil justice was diminished too. Further research, however, is required to settle the issue. Unless this is done, I cannot exclude that there existed some domains in which public reasons associated with natural duty or fairness retained their force.

#### **4. The Third Episode**

In the previous section we observed the process of dissolution of political society. I argued that its causes lay in the disappearance of public reasons governing people’s mutual relations and their relation to the government. I focused on reasons of civil justice. In this section we will observe the political re-constitution of the society. The sociological analyses of this period present us with a process of social re-integration that culminates in the establishment of the Solidarity social movement in 1980. Sociologists see in it the emergence of a society organised in opposition to the oppressive government.<sup>52</sup> I will argue that the driving force behind the political re-constitution of the society was civil

<sup>52</sup> Nowak K/Bakuniak 1987, p. 401, Krzeminski 1987, p. 1, 1989, p. 20, Markus 1985, Szajkowski 1985, Arato 1981, Misztal&Misztal 1988, Paczkowski 1996, p. 472, Swida-Ziemia 1990, p. 194, Nowak S 1984, p. 428

justice. In my view, empirical analyses support this argument. Sociologists emphasize that the social re-integration proceeded in the sphere of values rather than group interests. For this reason, the events in Poland were often described as a “moral revolution”.<sup>53</sup> Sociologists ascribe the central role to the value of dignity. Nowak:

“there are important concepts that are not easily measured by batteries of indicators but that nonetheless are necessary for the proper understanding of some social situations. One cannot understand the events in Poland without reference to restored human dignity”.<sup>54</sup>

Krzeminski: “the motivation for individual and collective action focused on the concept of human dignity. This was the central value”.<sup>55</sup> I will argue that we can distinguish three different conceptualisations of dignity in the course of the process of social re-integration. In its final formula, it corresponds to what I have proposed we understand as civil justice. The argument of this section, then, is that it was civil justice that drove Poles out of the institutionalised state of nature of the late 1970s and led them back to the political condition.

The political reconstitution of the society began with the sense of humiliation with which the 1976 confrontation with the government left society—it began, thus, with a negative conceptualisation of dignity. In principle, there was nothing new about it. A crisis of dignity, as I signalled in the previous section, had been reported throughout the decade. But unlike in the previous years, the sense of humiliation that appeared in 1976 was not experienced as an individual deprivation but as a common predicament.

The 1976 protests were provoked by a sudden price increase, which, in the social consciousness, amounted to the breaking of the unwritten contract which the society had been persuaded to accept at the beginning of the decade: for the price of resigning from political aspirations and influence on political and economic decisions, the people received the promise of visible improvements in living standards in the immediate future.<sup>56</sup> In suppressing the protests, the government employed a method of collective responsibility. In the propaganda of the state, the protests were pictured as excesses of hooligans and

<sup>53</sup> Krol 1983, p. 3. Similar descriptions can be found in other analyses: Touraine 1983, p. 51, Garton Ash 1983, p. 280, Marody/Nowak K 1983, Sulek 1984, p. 255-256, Krzeminski 1985, 1987, 1988

<sup>54</sup> Nowak S 1981, p. 31.

<sup>55</sup> Krzeminski 1985, p.113. Also: Marody/Nowak K 1983

<sup>56</sup> Nowak K/Bakuniak 1987, p. 406

criminal elements but, at the same time, entire local communities were held responsible and economic repressions were applied to whole regions. Secondly, the government employed a method of public shaming: groups of workers were forced to apologise publicly (on television) to the power holders for strikes and riots. Other groups of society were either forced to act as prosecutors or made witnesses to the prosecution. As an unintended effect of these methods, there emerged a sense of being part of a group among members of society.<sup>57</sup> The new social consciousness had a negative character (“we have been an object of deceitful machinations [of the authorities]”),<sup>58</sup> yet it marked a significant change from the previous period when one’s situation was interpreted in terms of individual failure and success. The 1976 events allowed people to see their individual deprivations as a common plight. This broader perspective became a foundation of the changes that were still to come:

“The inclusion in social conscience of two experiences: the humiliated dignity of me as a person and the humiliated dignity of us as a collective laid down the foundation for the idea of an organisation that, in the common perception, was to realise both ideals [i.e. personal and collective liberation]: the idea of Solidarity”.<sup>59</sup>

The event that took people to the second stage in the process of political re-constitution was the Pope’s visit to Poland (his native country) in 1979. In his speeches, the Pope provided people with a vocabulary that allowed them to translate their sense of humiliation into a set of positive postulates. The major concepts of the new vocabulary were the concepts of natural rights that are due to every person by virtue of his human dignity: rights to truth, justice, the right to govern one’s own fate and to defend one’s interests. This vocabulary became

“a psychological earthquake, an opportunity for mass political catharsis. The Pope expressed in public what had been hidden for decades—the people’s private hopes and sorrows, their longing for uncensored truth, for dignity and courage in defense of their civil and human rights”.<sup>60</sup>

This language extended the sense of humiliation people experienced in their relations to the government to other aspects of social life. Relations of power,

<sup>57</sup> Bakuniak/Nowak K 1987, p. 410, 423, Krzeminski 1988, p. 90

<sup>58</sup> in-depth interview 1980, quoted after: Bakuniak 2005 (1983), p. 189

<sup>59</sup> Bakuniak 2005 (1983), p. 189.

<sup>60</sup> Szajkowski 1983, p. 72. See also Garton Ash 1983, p. 29, Bakuniak/Nowak K. 1987, p. 413-414, Kennedy 1991, p. 44-45.

corruption and hypocrisy were now conceived as violations of respect, justice and truth that are due to people by virtue of their human dignity. Phrasing dignity in terms of natural rights made it possible to formulate a remedy to its violation. What was being postulated was that people's natural rights, violated by the government, should be respected. The emancipatory power of this vocabulary was strengthened by the public manner in which people endorsed it. The practical absence of governmental control during the papal visit made mutual camouflage unnecessary.<sup>61</sup> Participating in mass meetings with the Pope, people saw that they numbered in millions sharing the same commitments. As Garton Ash put it, "for nine days the state virtually ceased to exist, except as a censor doctoring the television coverage. Everyone saw that Poland is not a communist country—just a communist state".<sup>62</sup> The discovery that they shared the same values generated a sense of unity that overrode the divisions and conflicts that had emerged among people throughout the decade.<sup>63</sup> This took the process of social re-integration a step further. A collection of humiliated individuals were transformed into a collective of individuals united by the postulate that the natural rights due to them by virtue of their human dignity should be respected:

"Following the papal visit (...) the definition of social identity took on a more distinct shape (...). It was identification of the highest degree describing values concerned with, on the one hand, the human condition, and on the other hand, the fate of (...) a community of people. There was no design for any particular social order resulting from this but only a claim that certain values should be realised in every type of a social order. What is significant is that these values were strictly universalistic".<sup>64</sup>

<sup>61</sup> "During the days of the Papal visit a wave of freedom swept through Poland. In cities and regions of the country [visited by the Pope] one could behave and express oneself in public without fear", Krzeminski 2005 (1983), p. 122.

<sup>62</sup> Garton Ash 1983, p. 29.

<sup>63</sup> "The 'objective' economic interests of different groups within Polish society were, of course, different and often conflicting. (...) They had been exploited by Gierk in his strategy of economic 'divide and rule'. (...). The Pope's visit probably marks the point at which the subjective reality of social (...) unity overtook the 'objective' reality of social division. Intense unity of thought and feeling which previously had been confined to small circles of friends (...) was now multiplied by millions", Garton Ash 1983, p. 29-30. See also Bakuniak/Nowak K 1987, p. 412-413, Pomian 1981, p. 88, Kennedy 1991, p. 44.

<sup>64</sup> Bakuniak/Nowak K 1987, p. 417. The 1979 Papal visit marked also another important development. The visit became a practical school of organisational action and self-government for society. The visit was organised outside the state i.e., the state did not provide organisational support. Society did it on its own, without the help of the state. In this sense "the Pope's visit was a dress rehearsal for the formation of the self-organised and self-governed trade union. People learned that they could organise themselves to pursue goals they themselves

The 1980 strikes initiated the last stage of the process of political reconstitution of society. At this stage, natural rights—in terms of which dignity was being reclaimed at the previous stage—were translated into practical postulates concerning the organisation of social life. In that way, the concept of dignity got linked to a project of social order. With the discovery of the interdependence of their natural rights, as translated into political postulates, a collection of individuals re-constituted themselves into a society. I will now follow this process in more detail.

The 1980 strikes differed from the strikes of the previous periods in two respects. The first difference concerned the mode of validation of the strike demands. As sociologists reported, the 1980 postulates were justified by reference to the moral categories introduced during the papal visit. This could be observed even in the case of economic demands. Thus, for example, while in 1976 the motive for action was getting what was due to us because it was promised, now the demands were justified on the grounds of natural rights: what was due to us was not just a matter of promises; rather, certain things are due to every human being and no one should live as we are now living.<sup>65</sup> When, in the course of the strike in the Gdansk Shipyard, the postulates moved from an economic character to address the general situation of the country, this link became even clearer. The major postulate of free trade unions (i.e., independent from the communist government) was a direct translation, closest to the aim of the working majority of the society, of the right of people to govern their own fate.<sup>66</sup> Krzeminski:

“The task of creating an independent trade union emerged not so much from the desire to protect living standards as from the idea that the right to collectively defend their life interests was due to people by virtue of fundamental human rights.”<sup>67</sup>

Bakuniak/Nowak:

“In supporting the Gdansk strike demands, all workers on strike gave a [new] definition of their aims and their social situation. The definition was based chiefly on (...) the categories (...) introduced by John Paul II during his pilgrimage in Poland. They offered

established”, Kennedy 1991, p. 45. See also, Bakuniak/Nowak K 1987, p. 412-417, Misztal 1985, p. 8-9

<sup>65</sup> Bakuniak/Nowak K 1987, p. 418-419

<sup>66</sup> Bakuniak/Nowak K 1987, p. 424.

<sup>67</sup> Krzeminski 1987, p. 79. Other postulates included the right to strike, freedom of speech and publication, full public information on the socio-economic situation of the country, and the possibility of participating in discussions on a reform programme.



a universalistic justification for the practical demands (...) and legitimated the motive of collective interest and concrete aims arising out of it but, at the same time, they were a clear motive for action, independent of practical goals".<sup>68</sup>

Second, the dynamics of the strike actions generated new categories in thinking about oneself and one's relation to the society. A sense of dependence of one's own well-being on the well-being of others replaced the particularism and individualism that were characteristic of the past decade. Again, this development found its most powerful expression during the strike in the Gdansk Shipyard: despite the fact that the workers of the Gdansk Shipyard had received promises concerning the realisation of their own demands, they decided to continue the strike in support of the demands of other factories, which, because they were smaller and weaker, could not press their demands hard enough. Krzeminski:

"What was striking about August 1980 was the shift from the defensive-egocentric attitude that was characteristic of the previous period, i.e. the narrowly understood concern with one's own well-being or the well-being of one's closest group, to that of solidarity with others (...). One's own life prospects became to be thought of as dependent on the life prospects of others. In the strike in the Gdansk Shipyard, a new social consciousness that had been forming in Poland for some time found its culmination. Personal dissatisfaction, and personal interests, needs and values turned out to be dependent on the participation in a common life (...). The interdependence of one's fate and the fate of other people was experienced as something substantial and real".<sup>69</sup>

These changes in social consciousness were reflected in the domain of social relations. As sociologists reported, the barriers that had isolated social groups were broken down and the processes of inter-group and inter-class integration could be observed.<sup>70</sup> The features that had turned the late 1970s into a state of nature—hostility, distrust, aggression in interpersonal relations and the attitude of "enlarged individualism" that inclined people to withdraw into small groups—disappeared.<sup>71</sup> The concern with public affairs took over the

<sup>68</sup> Bakuniak/Nowak K 1987, p. 423.

<sup>69</sup> Krzeminski 1987, p. 79 and Krzeminski 2005 (1983), p. 109

<sup>70</sup> Nowak S 1981, p. 31, Nowak S 1984, p. 428, Sulek 1984, p. 257, Giza 1984, Koralewicz/Wnuk-Lipinski 1987, p.218

<sup>71</sup> Nowak S 1981, p. 131

concern with the private realm.<sup>72</sup> These changes, as sociologists argued, marked a re-constitution of the society: “the strikes marked the birth of a new society”.<sup>73</sup> The Solidarity trade union, the establishment of which the government was forced to accept, became the organisational frame of the re-constituted society.

As presented above, the political reconstitution of society was a process of discovery of the interdependence of natural rights in terms of which people reclaimed their dignity. In the previous chapter, I described civil justice as a value supervening upon a state of affairs defined by the interdependent recognition of natural rights and duties. From this perspective, the political re-constitution of the society in our case study was a process of the re-discovery of civil justice.

The re-discovery of the normative dimension of common life manifested itself in several ways in social consciousness: first, in the way people perceived the social entity they formed. In their self-image, people formed a “moral community”. Participation in common life and action was an experience of value:

“the strikes marked the birth of a new society insofar as this term implies the existence of a moral community”.<sup>74</sup>

“In the course of the August 1980 events and in the process of the formation of Solidarity, the community took on a special character. Not only did the community itself become an intrinsic value, but it was also founded on intrinsic values. (...). Its justification was expressed by reference to the most universal values”.<sup>75</sup>

Second, the social order people thought their common action would realise was perceived as intrinsically valuable and not only as instrumental for the pursuance of individual and group interests.<sup>76</sup> Its value was located in the

<sup>72</sup> Nowak S 1984, 440, Sulek 1984, p. 259-260. A good measure of the increase of pro-social attitudes is the amount of postulates in which people spoke up for others who were not members of their closest reference groups, see Krzeminski 1987, p. 81 and 1988, p. 88.

<sup>73</sup> Krol 1983, p. 3, see also Kuczynski/Nowak K 1988, p. 136

<sup>74</sup> Krol 1983, p. 3

<sup>75</sup> Giza 1984, p. 323. People perceived the Solidarity trade union in the same way: “People perceive the new free trade unions as necessary instruments for the implementation of important social and individual goals. To regard these unions as instrumental associations only, however, would greatly disparage their true nature; they are (...) communities with their own autotelic (...) value”, Nowak S 1981, p. 30

<sup>76</sup> For example, as Marody/Nowak observed, the democratic procedures that would guarantee the participation of all in the political process were perceived not only as instrumental in the

relations of mutual respect for each other's natural rights that it should make possible:

"The most essential aspirations (...) that motivated people to act in the Solidarity movement, find their fullest expression in the idea of civil society. (...). This idea took on a different garb in the self-awareness of those in the Solidarity movement [than it had in traditional political thought]. (...). The idea of civil society is a kind of bond linking the rights and interests of an individual to the rights and interests of others under the canopy of the 'common good'".<sup>77</sup>

Third, the normative dimension of common life manifested itself in the value that common social thinking ascribed to the idea of the rule of law. I argued in the previous chapter that civil justice is not only a property of the relations defined by an interdependent recognition of natural rights and duties. It is also a property of the relations governed by rights and duties that have no direct equivalent in the domain of natural morality. They are rights and duties created by coordination or arbitration mechanisms when these settle the controversial or otherwise indeterminate character of natural duties. Insofar as law is instrumental in this respect, civil justice is also a property of legal relations between people. In other words: insofar as a legal framework makes relations of civil justice among people possible and sustains them, legal rules are an actualisation of civil justice. It was in such normative terms that people conceived of the legal order. Krzeminski:

"Concern with the social protection of people's dignity manifests itself most completely in the postulates demanding the rule of law. (...). In 1980 one can observe an almost exaggerated disposition towards legalism. At the same time, however, law is understood as (...) an embodiment of universal values. A legal norm exists and is justified only to the extent that it does not endanger, and that it contributes to, the embodiment, within the life of the community, of ethical order. (...). The significance of legal norms lies in their conferral of moral value on the community".<sup>78</sup>

The process of the political re-constitution of the society had its symbolic culmination in the rejection of the unwritten contract that had governed people's relation to the government throughout the decade. In the in-depth

realization of the individual interests of various individuals and groups but also as intrinsically valuable, Marody/Nowak K 1983, p. 20. See also: Markus 1985, p. 60, Bakuniak/Nowak K 1987, p. 427-428.

<sup>77</sup> Krzeminski 1987, p. 1, Krzeminski 1985, p. 110-111

<sup>78</sup> Krzeminski 1987, p. 84-85, 12

interviews conducted during the 1980 strikes, the respondents described the exchange of political aspirations for improvements in the living standard into which they had been persuaded in the 1970s as humiliating and as stimulating behaviour that was destructive for relations between people:

“Already in the last few years I began to observe that the government treats society disdainfully. It thought of members of society as children who have to be constantly lead by the hand and to whom one must promise a bright future, but only if they are obedient and well-behaved.”

“People continued to be at variance with each other in relation to these increased premiums. To one this award, to another that award, and people continue to fight each other, whereas we should stick together.” “It seems to me that someone is destroying society from the inside.”

“Everyone sought only to earn the most amount of money and looked at everyone else with suspicion. The mentality of Polish people became...simply put, perverse.”

“According to me it is first necessary to change interpersonal relations. That is the basic thing – that society has been taught to treat each other inappropriately. Types, such as the con man, the fraudster, emerged, and they do not lead to anything.”

“Because these last years, they have been terrible...people...each was horrible to the next...when one was drowning, then another would push him in further. Everyone was so driven by self-survival. Now we are still driven in this way, but...still...people help each other, because if you are in Solidarity, then you should be loyal to each other”.<sup>79</sup>

I have presented the process that drove the Polish society out of the institutionalised state of nature of the late 1970s and led it to its political re-constitution. I interpreted it as an emergence of a relation of civil justice between people. It is a fair question, however, whether the re-constitution of the political community could not be described in terms of forces other than civil justice. For example, one might argue that we should see the political bonds that emerged between people in 1980 in terms of the links that natural duties and rights establish between people on the model of Waldron’s account discussed in chapter 3. Alternatively, one could argue that the driving force behind the political reconstitution that took place in the course of the 1980 strike actions was fairness. According to still another proposal, the

<sup>79</sup> Quotes are respectively from: Bakuniak 2005 (1983), p. 211, Marody 2004 (1981), p. 105, 106, Kruczkowska 2005 (1983), p. 365 and Marody 2004 (1983), p. 107.

reconstitution of society would follow the restoration of associative bonds between people. Before I close my argument, I would like to consider how well these interpretations account for the events in 1980 in Poland.

Interpretation of the motives that governed people's actions in 1980 in terms of natural duties seems natural if only because the concern with civil justice necessarily presupposes a concern with natural duties. This interpretation, however, cannot account exhaustively for the *political* domain that re-emerged in Poland in 1980. In chapter 3 we saw that when natural duties govern our political relations, the currency of our political concern with each other, i.e., the ground of our mutual and multilateral claim-relations, are natural rights. The objects of natural rights are the basic interests of their holders simply as persons. In my discussion of Waldron's version of the natural duty account, I argued that in a society in which the currency of our mutual concern is our own basic interests or rights, we are concerned with others' basic interests and rights only insofar as their recognition or violation (in)directly affects our own basic interests and rights. Unless we stand in a natural duty relation to others, their well-being and rights matter to us only because they can affect our well-being and rights. In light of this explanation, the dynamics of the 1980 strike actions must appear puzzling. For example, we cannot explain why the workers of the Gdansk Shipyard did not withdraw from common action after they had received promises concerning the realisation of their own demands, but rather continued the strike in support of the demands of other factories. If one's natural rights set the limits to one's political concern with others, they would have a reason to support others' postulates only insofar as the satisfaction of others' interests would have (in)direct consequences for their own interests and rights. The course of the events shows, however, that the satisfaction of others' postulates could not have any such consequences: at the moment the decision to continue the strike was taken, the postulates of the Shipyard workers had already been met and whatever would happen to the postulates of others could not have any influence on them. If anything, the continuation of the strike might mean a risk of an escalation of the conflict and the loss of what they had already won. So, unless the Shipyard workers' decision to support other plants is not to be judged unreasonable, there must be another factor that can explain it.

The civil justice interpretation supplies such a factor and this makes it preferable to the interpretation of the 1980 events in terms of natural duties. As compared to the natural duty account, civil justice moves us beyond self-regarding concerns in regulating our political relations. The object of civil justice is the just society we form when treating each other rightly. To be

concerned with civil justice is to be concerned with the preservation and maintenance of this valuable relation pattern. In this conceptual framework, we are concerned with others not because the satisfaction or violation of their interests and rights has consequences for our own interests and rights but because it bears on the just society we form together when treating one another rightly. From the perspective of civil justice, we can demand respect for others' basic interests as a matter of our political rights because respect for their interests and rights is the condition for the preservation of a just society in which we live together. In this context, the decision of the Shipyard workers is not puzzling: they had a reason to support others' postulates because others' rights and interests were the object of their right to live in a just society. The civil justice interpretation of the 1980 events also has another advantage over the natural duty interpretation. The natural rights that Waldron places at the centre of our political concern with others are the rights that correlate to our negative duties toward them. In this account we might explain the Gdansk Shipyard workers' concern with others' negative postulates, like those demanding that the government media stop lying. However, we would have a difficult time explaining their support for their positive postulates, like those demanding the right to strike or demanding the 5-day working week.<sup>80</sup> Civil justice can justify this broader scope of mutual political concern because the natural duties upon a pattern of which civil justice supervenes can be both of a negative and a positive kind.

Fairness offers another possible interpretation of the 1980 events in Poland. In a similar way to the civil justice interpretation, a proponent of this interpretation might argue that the political reconstitution of the society was due to people's discovery of the interdependence between their rights and interests. He would argue, however, that the interdependence was merely of instrumental character, in the sense that it was only via the coordinated action that the independently defined interests of each of the parties on strike could be satisfied. As in such a case the rational course of action would be to free ride and the Shipyard workers did not do so, their actions must have been governed by the principle of fairness. The principle of fairness, as I reconstructed it in chapter 5, requires that we refrain from using or manipulating others in order to better our situation. According to this interpretation, the Shipyard workers continued the strike in support of the workers of other factories because, after having profited from their support, a failure to reciprocate it by supporting their demands would amount to manipulating or taking advantage of them.

<sup>80</sup> This postulate was raised in Szczecin Shipyard 1980

This interpretation of the 1980 events in Poland has an important weakness, namely, it fails to account for the importance that the workers on strike ascribed to the concept of natural rights in terms of which they formulated their postulates. Fairness would require supporting whatever demands others might have raised—independently of whether those demands were formulated in terms of natural rights or not. The fact that the workers' postulates were formulated in terms of natural rights would not have an independent explanatory significance. If we have reasons to interpret the 1980 events in terms of civil justice, it is because civil justice does account for the importance that the workers on strike ascribed to the concept of natural rights in terms of which they formulated their postulates. From the perspective of the civil justice interpretation, the object of the cooperative effort during the 1980 strike actions was not so much the satisfaction of the independently defined interests of each of the parties on strike but the establishment of a just society. Given that such a society is defined in terms of respect for natural rights of every individual, respect for others' natural rights is a necessary element of it. This explains the importance that the workers on strike ascribed to formulating their postulates in terms of natural rights and the support the Shipyard workers provided to workers of others factories: satisfaction of others' natural rights was a necessary element of the just society in which the Shipyard workers claimed membership.<sup>81</sup>

Finally one might wonder whether we could not interpret the political reconstitution of the Polish society in 1980 in terms of the restoration of associative bonds between people. Before I let the empirical data decide the issue, I would like to spell out the difference between the associative and the civil justice account. The civil justice account, just as the associative accounts I discussed earlier in this thesis, derives reasons for action from special relations in which persons stand to each other. In this sense, we can think of it as an associative approach. However, the civil justice account explains the reason-giving force of special relations between persons in a different way than the associative accounts I discussed in chapter 4. The associative accounts discussed earlier in this thesis deny that the normative force of special relations can be explained in universalistic terms without renouncing the non-

<sup>81</sup> Altruism is another possible explanation of the link between one's own interests and the interests of others that appeared in the social consciousness. Again, however, the course of events precludes this interpretation. The historical reports and the memories of the strike participants make clear that the decision to continue the strike in the Gdansk Shipyard was motivated by the idea that by ending the strike they would fail others in the duties they owed to them (Walesa 1988, p. 121-122). This motivation cannot be explained by altruism because altruism knows only duties *about* others but not duties *owed to* others.

reductionist position they adopt about the normative force of special relations. They explain the normative force of special relations in particularistic terms. The civil justice account explains the normative force of special relations in universalistic terms. It does this without renouncing the non-reductionist position endorsed by the associativists: if we say that a relation between persons is a source of reasons for action because the way persons relate to each other is valuable from a universal point of view, we do not explain the normative force of their relation in terms of considerations external to it. Which account better describes the nature of the bonds between people that were established in the course of the 1980 strikes? Had the political community reconstituted itself in terms of the associative bonds as traditionally conceived, its members would have described their concern with one another in particularistic terms. But as the course of the events demonstrates, they did not. The Shipyard workers did not motivate their support for the workers of other factories in any particularistic terms: they were not concerned with them as members of their nation, their social class, their industry branch, their economic region, etc. Rather, they claimed affiliation with others simply as persons and as subjects of rights that are due to every human being. If they saw their affiliation with others as a reason for action i.e., a reason to continue the strike, that must have been a reason that had its source in relations between persons described merely in terms of their humanity. This understanding of the normative force of affiliation corresponds to what I have proposed we understand as civil justice and, therefore, civil justice offers a better explanation of the 1980 events in Poland than an interpretation in terms of associative bonds as traditionally conceived.

## 5. The Fourth Episode

The declaration of martial law in December 1981, following the growing tension in the relations between Solidarity and the government, put an end to the social movement inspired by civil justice. The military takeover wiped out the Solidarity's legal structures, its leaders were arrested and the army and special police units seized control of the country.<sup>82</sup>

The initial social response to the declaration of martial law was the mobilisation of social energy in defence of the reconstituted society and

<sup>82</sup> The motives of this act remain unclear. Jaruzelski later claimed that he acted to avoid the greater evil of an imminent Soviet invasion; detractors dismissed this explanation as a pretext for an attempt to salvage party rule.



preservation of the values it stood for. This attitude was supported by a conviction that the situation created by martial law could only be temporary:

“Despite the imposition of martial law, the reality of solidarity continued to exist and set the standard for communal living (...). People refused to accept that the triumph of power and force would last forever. For several months the nation held on to the conviction that ‘the winter is yours, the spring will be ours’. (...). Society remained invulnerable to attempts at breaking up its unity (...) setting in motion effective mechanisms aimed at preservation of the community and its value”.<sup>83</sup>

Given that most organizational structures were suspended, social bonds were sustained at the level of informal contacts among people.<sup>84</sup> Common action moved underground and, as compared to the previous period, took on a more defensive character: “refusal and resistance and not a triumphant, rebellious attack (...) became the primary (...) goal of action”.<sup>85</sup> People concentrated on the preservation of organisational structures and on the pursuance of trade union activities, on the provision of help to the imprisoned and the dismissed, on the publication and distribution of leaflets, independent periodicals and books, and on the various acts facilitating such projects. Many engaged in acts of protest against the policy of the government. Boycott of state television by actors, suspension of expositions in state exhibition centres by artists, demonstrative walks in the emission time of the evening journals, and participation in demonstrations can serve as examples. The acts of resistance and protest against the policy of the government signalled the firmness of the people’s conviction that the rights animating the project of the social order formulated by Solidarity were due to them. By engaging in acts of resistance and protest, people manifested their recognition of one another as subjects of these rights and, thereby, sustained a relation of civil justice among themselves. In this sense we can interpret Krzeminski’s observation that participation in acts of protest and resistance “provided people with a sense of membership in the society and enabled them to participate in common values”.<sup>86</sup> Following the declaration of martial law, sociologists also registered an exceptionally vital ethos of mutual help and solidarity among people.<sup>87</sup> Acts of mutual help were

<sup>83</sup> Swida-Ziemia 1990, p. 197, 196. See also Nowak S. 1984, p. 431, Krzeminski 1989, p. 30, Misztal 1985, p. 13-14

<sup>84</sup> Nowak S 1984, p. 432, Koralewicz 1987, 19

<sup>85</sup> Swida-Ziemia 1990, p. 193

<sup>86</sup> Krzeminski 1989, p. 29

<sup>87</sup> Jakubowska 1984

driven by a sense of moral obligation. As Jakubowska observed, they were justified by the norms of “generalized mutuality” and referred to a vision of a society in which everyone helps one another.<sup>88</sup> Conceiving of the principles of action in this way suggests that despite the blockade of the public way of pursuing it, civil justice continued to motivate people’s actions.

After 1983, social resistance began to weaken.<sup>89</sup> Four major factors were responsible for that. The first one was fear of repression. The second one was the decline of the conviction, which supported the attitude of resistance, that the situation created by martial law could only be temporary. As it turned out, despite the lifting of martial law in 1983, a battery of new restrictive regulations was introduced and the government did not change its policy toward the opposition. Additionally, in the period directly following the repeal of martial law a series of political murders took place and the police terror increased. “The sense that the triumph of force was only apparent and that the current situation was only temporary, [which helped people to keep up their spirits], was rendered problematic”.<sup>90</sup> Shattered in their confidence, people became more vulnerable to manipulation techniques oriented at breaking their unity. Their impact on the social consciousness was the third factor that rendered the social resistance weaker. For example, Swida-Ziemba pointed to the consequences of the attack that the communist government launched against all symbolic manifestations of people’s affiliation with the banned Solidarity. This war against symbols was won relatively easily by the government because people, judging their symbolic behaviour in pragmatic terms, gave it up relatively easily. Yet the consequences of the disappearance of this domain of symbolic interaction could not be judged with the same lightness with which it was surrendered. By depriving people of the symbolic manifestations of their affiliation, the government deprived them of their identification attributes.<sup>91</sup> The more illusive the community became, so the reasons for holding on to the attitude of resistance became less clear and the more rational it seemed to give it up. The impact of government propaganda on people’s consciousness further weakened social resistance. By emphasising the power of the regime and the weakness of the resistance movement, the government created an atmosphere of failure and hopelessness that put into doubt the sense of continuing resistance. A conviction took hold that “no action can be effective if actions

<sup>88</sup> Jakubowska 1984, p. 391, 392-394, 400.

<sup>89</sup> Krzeminski 1989, p. 30, Swida-Ziemba 1990, p. 220-221

<sup>90</sup> Krzeminski 1989, p. 31. See also: Marody 1988, p. 10, Krzeminski 1989, p. 30, Swida-Ziemba 1990, p. 220-221

<sup>91</sup> Swida-Ziemba 1990, p. 205-210.

supported by 10 million people proved to be ineffective”.<sup>92</sup> In-depth interviews registered an increased frequency with which statements like “we can do nothing, because they won’t allow it”, and “we must surrender to them because they have the power” were uttered by the respondents.<sup>93</sup> Swida-Ziemia described the process in the following way:

“Not much has changed in our consciousness, in the way we perceive the system, or in our axiology. However, more and more often we succumb to tiredness, hopelessness, powerlessness, a sense of irreversible failure. We lose the energy and dedication needed to sustain the social bonds, to effectively complete certain activities. More and more often, we experience a need to escape and to withdraw into privacy. Our concern with public affairs weakens, and our actions lack the old zeal and the sense of meaningfulness”.<sup>94</sup>

The final factor weakening the social resistance lay in the domain of the economy. By the beginning of the 1980s, the economic breakdown of the mid 1970s had developed into an open economic crisis.<sup>95</sup> As the shops were running out of goods and the queues were growing, the relative importance of political matters diminished:

“Economic problems troubling ever more individuals and various (...) unconventional methods of making money have become a common object of interest and the primary topic of everyday conversations, pushing political issues into the shade”.<sup>96</sup>

Fear of repression, a sense of powerlessness and the need to focus on the material necessities of life undermined the strength of social resistance. With the exception of small circles of political opposition elites, the ideas that inspired Solidarity were less and less often translated into action. This process was followed by a gradual disappearance of civil justice as a standard governing

<sup>92</sup> Marody 1986, p. 27

<sup>93</sup> Krzeminski 1988, p. 47, 49.

<sup>94</sup> Swida-Ziemia 1990, p. 204. See also Misztal 1985, p. 14, Krzeminski 1989, p. 75,76., Marody 1986, p. 23, Ziolkowski 1987, p. 60, 62, Giza-Poleszczuk 1991, p. 93-94

<sup>95</sup> “If one takes into account the rapidity and extent of the consequent changes in living patterns, and also the element of surprise, the fall in consumption levels in the years 1980-82 was for Polish society a traumatic experience. It is true that the stagnation in consumption levels had begun earlier, but the ruthless regress in standards of living was a process that occurred in the space of two years, and its most spectacular symptoms emerged within just a few months. Later attempts to introduce economic reforms did little to change the material reality of individuals and their families”, Marody 1991, p. 234. See also Ziolkowski 1989, p. 24

<sup>96</sup> Ziolkowski 1989, p. 24. See also Marody 1988, p. 10, Marody 1995, p. 18

people's interactions. For, recall that by engaging in acts of resistance, people sustained a relation of civil justice among themselves. With their withdrawal from pursuing acts of resistance, the force with which civil justice had governed people's actions weakened. Given its holistic nature, civil justice, as a force that animated resistance to the government, was losing its normative grip even on those who otherwise remained invulnerable to the factors discouraging it. For, by unilaterally holding on to resistance, they could not sustain the relation of civil justice with those who withdrew their engagement. And, therefore, their reasons to do so lost their action-guiding force.

Suspension of political aspirations and gradual withdrawal from the public domain went hand in hand with a tendency to concentrate on private interests. The focus on private interests triggered two processes that reinforced the erosion of civil justice as a standard guiding people's everyday behaviour. The first of those processes was the escalation of corruption in the society. During the crisis, private interests took the form of economic interests. Attempts to counteract the drop in the standard of living led individuals away from the institutional framework of the system and into the domain of the second economy.<sup>97</sup> Success in the second economy required employment of various semi-legal or corruptive practices. Such methods of getting access to goods and services are structural elements in every shortage economy.<sup>98</sup> And thus, bartering on the black market, and bribing shop assistants and administration officers in return for goods and services that were on short supply, became an important element of the everyday life of people in Poland. So were various forms of patronage, nepotism, influence peddling, and other forms of fraud involving enterprises or local communities and people in power positions.<sup>99</sup> Their effectiveness in protecting people from the impact of the

<sup>97</sup> Nowak S 1984, p. 456, Nowak S 1988, p. 9, Nowak K 1988, p. 149, Krzeminski 1989, p. 78, Marody 1989, p. 66, Marody 1991, p. 235. When speaking of the second economy I have in mind here both various semi-legal or illegal economic activities (e.g., speculative activity, illegal private work during hours of employment, street vending, income from the sale of produce from private allotments, income from undeclared services performed in private firms, foreign travel for profit, etc) and the attempts to exploit the opportunities that economic reform opened for private enterprises. According to the estimates of some economists, this second economy accounted for between 10,2% and 12,1% of personal incomes, Marody 1989, p. 65. According to Ziolkowski 1989, the second economy involved 24% of the workforce, and constituted 20% of the national product in 1980 and 32% in 1983 revealing a growing tendency, Ziolkowski 1989, p. 14

<sup>98</sup> Tarkowski 1983, p. 505, Tarkowski&Tarkowska 1994, p. 278, Marody 1991, p. 261.

<sup>99</sup> Tarkowski&Tarkowska 1994. Such private networks of informal contacts often evolved into what Podgorecki called "dirty togetherness": a closed community of cooperation established by the mutual use of illegal means or the acceptance of illegal goals: "Dirty togetherness [is governed by] the principle of reciprocity according to which one could, or even one should, use one's

economic crisis is one aspect of such practices. Another aspect is their negative impact on social relations. By pursuing private interests through corruptive practices, people thwarted the interests and rights of others:

“Many spheres of our life function in such a way that individuals, satisfying their own personal interests, often jeopardise the general interest of the society (...). The emergence of the unofficial system, the second economy, illegal private work during hours of employment for much higher payment, together with the use of the company’s tools, facilities, means of transportation, (...), the functioning of separate markets, the purchase of goods that are on short supply by resorting to bribes and informal contacts, or the acquisition of beds for private use in hospitals are only some examples of this type of activity”.<sup>100</sup>

The corruptive practices that flourished in the Polish society in the 1980s, just as people’s withdrawal from pursuing acts of resistance, undermined the relations of civil justice between people. Corruption involves viewing institutions and practices established for public use as a tool to further private interests. In exploiting them for private goals, one creates a situation in which others are not able to fulfil their needs or exercise their rights. In this way, for example, “private” beds in public hospitals were readily available to those who belonged to the network of informal contacts of their “owner” but not to others, no matter how urgently they needed them. By risking a setback to the interests and needs of others when pursuing private interests by means of corruptive practices, people broke the link between their own rights and well-being and the rights and well-being of others, which I have suggested we should understand in terms of civil justice. The link between corruption and the disappearance of civil justice finds support in the way people justified their conduct. When justifying their resort to corruptive practices, people pointed to the similar behaviour of others:

“The conviction that other people also have the possibility of informal access to certain goods (...) is a form of absolution that social actors formulate for their own use. The belief that such informal connections and redistribution patterns are widespread makes this excuse – in their own eyes – even more plausible (...). “I know that I should not

official position to arrange private matters for oneself, one’s family, and—most important—for those who would later reciprocate with similar favours (...); for example: the acceptance into medical school of a daughter of a highly placed person in return for the possibility of buying inaccessible cement for building a house; the privilege of immediately buying a car in exchange for admission to a well-equipped, specialised hospital for an elderly aunt”, Podgorecki 1993, p. 95, 1979, p. 203.

<sup>100</sup> Ziolkowski 1987, p. 59. See also Pawlik 1985

accept bribes” – says one of the respondents – “but I do. Sometimes I say to myself: others are also accepting bribes, so why shouldn’t I? If I knew that my colleagues wouldn’t accept bribes, that the doctors would not accept them, then perhaps I would not accept them either... But everyone proceeds from exactly the same assumption, namely: others accept bribes, I accept bribes, we simply all accept them [waiter, 29 years]”.<sup>101</sup>

Pointing to others’ violation of certain norms as a justification of one’s own violation reveals the interdependent character of the moral norms in question. This, as I have argued, is characteristic of civil justice.

The second process that was set in motion by the people’s focus on private interests was the fragmentation of society into small groups built around family and friends, and extended by informal networks of persons connected by instrumental bonds of mutual services:

“The motivation to act for important common goals is disappearing. (...). It is possible to observe withdrawal from public activities and broader [social] interests, and [a tendency to] withdraw into small groups and to concentrate on private interests. This is similar to the process one could observe in the 1970s”.<sup>102</sup>

Narrowing down the strategy of action to small groups made people perceive the social world as divided between “our people” and “strangers”.<sup>103</sup> This fragmentation of the social world went hand in hand with the privatisation of moral concerns:

“Some moral principles are accepted as binding only with regard to individuals or groups nearest to a particular individual, while the opposite behaviour toward strangers passes as moral or positive in character”.<sup>104</sup>

By limiting the binding force of the otherwise universal moral norms to one’s own closest reference group, people denied others—the “strangers”—the status of equal moral agents. Given that civil justice supervenes upon a pattern of acts through which people recognise each other’s moral status, this withdrawal of respect toward others made the relation of civil justice between people impossible. It is in terms of the disappearance of mutual respect, which I take

<sup>101</sup> Pawlik, 1985, p. 145, 153. See also Giza-Poleszczuk 1991, 77-8, 83

<sup>102</sup> Sulek 1984, p. 269. See also Marody 1995, p. 32, 41

<sup>103</sup> Tarkowska 1988, p. 234, Tarkowski&Tarkowska 1994, p. 267-271, Marody 1991, p. 262-263

<sup>104</sup> Tarkowski&Tarkowska 1994, p. 268. See also: Marody 1991, 261-263

to be the subvenience basis of civil justice, that Giza-Poleszczuk interprets the situation that emerged in Poland in the second half of the 1980s:

“Relationships between social actors (...) have ceased to be based on a shared and commonly recognised basis of rules and patterns of mutual interaction. (...). If we assume that the basic forms of interaction between people presuppose and express mutual respect of the interacting individuals—their mutual recognition as interaction partners—then we can call the factor that lies at the bottom of this phenomenon a deficit of social respect. In employing the adjective ‘social’, I want to emphasise that I am not referring to the personal respect one can acquire as a result of one’s conduct or attitude, but rather, to a respect that is owed to everyone, even to those one does not personally know; a respect that flows from the fact that one is a human being and a member of the same community”.<sup>105</sup>

Eventually, the late 1980s, just like the 1970s, instantiate the argument I made in the previous chapters: when private reasons displace public reasons in regulating people’s interactions, political society dissolves.

In a similar way to the 1970s, the decline of civil justice as a common standard governing people’s interactions opened a space for power in social relations. The rule governing the social domain became, as Kwiatkowski put it, “privation in the name of the slogan ‘let everybody do his best to save himself’”.<sup>106</sup> Empirical research registered an increase of physical as well as economic and political violence in the second half of the 1980s. Respondents reported an escalation of ruthlessness, aggression, brutality, disregard for others, impudence, cunning, harshness, and cynicism.<sup>107</sup> Social relations proceeded “in the atmosphere of fierceness, loss of control, unrestrained emotions, and aggression”.<sup>108</sup> These tendencies were reinforced by two factors. The first one was rivalry in the quest for scarce goods stirred by the situation of economic shortages: “aggression was directed against practically all other citizens because each was a potential competitor in the limited pool of goods”.<sup>109</sup> The second factor related to the private and informal contacts people employed to access otherwise unavailable goods and services. Lack of social control over such private distribution channels deprived people of the

<sup>105</sup> Giza-Poleszczuk 1991, p. 79. See also Marody 1991a, p. 111, Krzeminski 1988, p. 89

<sup>106</sup> Kwiatkowski 1988, quoted after Tarkowski/Tarkowska 1991, p. 103

<sup>107</sup> Giza-Poleszczuk 1991, p. 76-77, 87. See also Nowak S 1988, 32-33, Pawlik 1985, Tarkowski&Tarkowska 1994, p. 272, Roszkowski 1992, p. 390

<sup>108</sup> Giza-Poleszczuk 1991, p. 81

<sup>109</sup> Tarkowski&Tarkowska 1994, p. 274. See also Tarkowska 1988, p. 232-233, Marody 1991, p. 263, Giza-Poleszczuk 1991, p. 82-83

assurance that others did not profit to their disadvantage.<sup>110</sup> Lack of assurance concerning the legitimacy of the distribution pattern gave them reasons to outwit others in the quest for scarce goods by entering into private relations with the government—possibly exploitative for others. The logic of individual- and group-survivalism governing people's actions pulled people away from one another. As in the 1970s, sociologists observed an increasing atomisation and atrophy of social bonds: society dissolved into a collection of atomised small groups, mutually unfriendly and hostile and driven by mutually conflicting interests.<sup>111</sup> The concept of the state of nature once again became an accurate description of the social domain. In her analysis of how people experienced the sphere of social interactions in the late 1980s, Giza-Poleszczuk did not hesitate to invoke the famous Hobbesian description of the state of nature:

“The domain of social interaction is perceived as pathological (...) and even threatening to one's personal dignity, life and health. (...). The picture of the society that emerges here is one in which ‘everybody is everybody's enemy and life is solitary, poor, nasty, brutish and short’”.<sup>112</sup>

The same mechanisms that disintegrated the society were undermining the framework of the state, already shattered by the economic crisis. Various illegal and corruptive practices employed to deal with the crisis were effective only because of the weaknesses of the system. They capitalised on the absurdities of the communist economy and contributed to the disorganisation of government institutions, which further weakened the system.<sup>113</sup> Given the degeneration of social bonds, it was impossible to mobilise any cooperative effort needed to support the economic reform launched by the government in 1982: “there is no social motivation for any cooperative effort. Everybody pulls

<sup>110</sup> “[In social perception,] the social system stimulates dishonesty, (...), slyness, the defrauding and taking advantage of others, all kinds of abuses and corruption, and the making of loud demands for what is “mine”. It promotes and rewards the loyal, subservient and obedient who do not ‘stand out’, who are fully subordinated to and at the disposal of the authorities. It gives credit to those who enter the sphere of political power and to those who directly contribute to its reinforcement and sustenance - party members, militia, secret service. In situations of limited and scarce resources, it has all the characteristics of harm and exploitation: the privileges of some exist at the cost of others”, Giza-Poleszczuk 1991, p. 91. See also Tarkowski&Tarkowska 1994, p. 274, Kwiatkowski 1987, Nowak S 1988, p. 16

<sup>111</sup> Nowak S 1988, p. 34-35, Tarkowska 1988, p. 232, Tarkowska&Tarkowski 1991, p. 105, Marody 1991, p. 263.

<sup>112</sup> Giza-Poleszczuk 1991, p. 77, 79

<sup>113</sup> Marody 1991a, p. 110, Marody 1986, p. 62, Marody 1991, p. 249



his own way and thinks only about himself. Common issues matter little”.<sup>114</sup> If between 1983 and 1985 some improvement in the economic situation could be observed, in 1985 the reform came to a standstill. Social unresponsiveness aside, it floundered over bureaucracy, incompetence and unwillingness of the state management, which was afraid to lose its power. Above all that, however, it got stuck in the constraints of the ideology and the economic dependence on Moscow.<sup>115</sup> All expectations people had vested in the reform were disappointed. Poland was mired in a deadlock, with no reasonable prospect of resuscitating the stricken economy or achieving political harmony. “You simply can’t live here”, a statement one could repeatedly hear in people’s daily conversations in the 1980s, formulated in a nutshell the general perception of the situation.<sup>116</sup> Social surveys and the emigration rate signalled increasing social frustration. Sociologists warned against the danger of an uncontrolled social explosion.<sup>117</sup> The threat of a social outburst was the more serious, the more likely it seemed that the existing elites of the banned Solidarity would take charge of it. Given no immediate perspectives of solving the economic impasse, political concessions seemed to be the only way open to the communist authorities to reduce social tension. The *perestroika* changes in the Soviet Union, initiated by Gorbachev, created a favourable climate to undertake such political experiments. When Gorbachev announced the withdrawal of the Soviet forces from Afghanistan in 1988 and announced that the Soviet Union would abandon the Brezhnev Doctrine<sup>118</sup> and allow the Eastern Block nations to determine their own internal affairs, the ultimate argument that could be used to justify the political *status quo* disappeared. This gave an additional stimulus to the idea of striking a compromise with the political opposition. When in the summer of 1988, a new wave of strikes swept over the country and a new generation of alienated workers demanded a pay increase and called for representation by Solidarity,<sup>119</sup> the communists, facing widespread predictions

<sup>114</sup> Kwiatkowski 1987, p. 5. See also Marody 1995, p. 40-41

<sup>115</sup> Paczkowski 1996, p. 547.

<sup>116</sup> Marody 1991, p. 245

<sup>117</sup> Roszkowski 1992, p. 391

<sup>118</sup> The Brezhnev Doctrine was the Soviet foreign policy principle that justified Soviet intervention (including of a military kind) in the internal affairs of other socialist states, where there was any reason to fear for the future of communist rule in that state. The doctrine was used to justify the invasions of Czechoslovakia that terminated the Prague Spring in 1968.

<sup>119</sup> “The attitude to Solidarity was different to that in August 1980. The call to Solidarity was not an expression of the relation between members of a delegalised union and its leaders, but rather a summons, as if from the outside, addressed at the political opposition elites, whom those who struck could not induce themselves. It was a spontaneous expression of the will to change, rather than an expression of the previously existing forms of organisation”, Marody 1995, p. 57.

of a social explosion, took the momentous step of beginning round table talks with the banned Solidarity and other opposition groups. The evolutionary change of power and the dismantling of the oppressive communist government followed. Yet, as both sociologists and historians emphasise, the society, in a state of internal decomposition, was not there to claim its eventual victory over the government. Swida-Ziemba:

“The end of the 1980s marked a period of complete exhaustion of the social dynamic; people were tired of the unproductive fight for survival (...). The only desire that was left was a desire to withdraw mentally [from reality], to retreat into a self-created asylum, to stimulate in oneself only those mechanisms that could secure personal survival (...). The moment at which the round table talks began (...) demonstrated an unfortunate lack of synchronisation between political chances and the condition of the society. The medication that the social organism needed so much at the beginning of the 1980s was delivered only when this organism, after many years of dramatic self-defence, found itself in a state of extreme exhaustion, paralysis and decay. [1989] is an absurd synthesis of two factors: objective political possibilities and the condition and mood of the people (...). I do not belong to those who cultivate the illusion that the freedom that came [in 1989], had been won by anybody. It was simply a consequence of the internal decomposition of the communist world. Poland stood at the edge of an economic catastrophe. The threat of an outburst of social anger, retaliatory acts and general decay loomed large. In such conditions, the communists relinquished responsibility for a world that was falling apart (...). In this unexpected manner (...), they left the scene and handed over the ruins to those who had been fighting against them and enjoyed the trust of the society”.<sup>120</sup>

The Round Table talks mark the end of the communist rule in Poland. It is a natural place to end my discussion. In my presentation I could not hope to present this 44-year long period in its full complexity. My goals were limited in that I focused on the reasons that governed people’s relation to the communist government. First, I wanted to illustrate that, in political practice, civil justice is a real force governing the political domain. Second, I wanted to illustrate that

<sup>120</sup> Swida-Ziemba 1990, p. 352-352, 351. See also Marody 1995, p. 67. A similar diagnosis was offered by historians e.g., Roszkowski 1992, p. 417-418. “One of the signs of social apathy is the electoral turnout to the first partly democratic elections in June 1989 (in accordance with the round table agreements, Solidarity would gain the right to post candidates in parliamentary elections but 65% of the seats in the Sejm would be guaranteed to the candidates of the party and its allies, elections to the Senat would be entirely free): in the first round, fewer than 62% of eligible voters went to the polls, in the second round only 25%. Furthermore, as sociologists emphasise, the result of the election – the overwhelming victory of Solidarity – was “not so much a vote *for* Solidarity as a vote *against* the power holders, against the political system they represented and against the nonsense of the reality created by them”, Marody 1995, p. 65

obligations of civil justice can bind us even under unjust governments. Third, I wanted to illustrate that in regulating our relation to the government, civil justice may require obedience as well as disobedience to the government's directives. The Stalinist period and the Solidarity period provided examples of these points. If accepted, these points provide a correction to the dominant conception of political obligation according to which political obligation binds us to just governments only and according to which it is obedience to the government that is the proper object of political obligation.

My analysis of reasons in terms of which people related to the government also bears on another argument I have made throughout my discussion. The link between the disappearance of civil justice and the dissolution of political society I drew when discussing the post-October and the post-Solidarity period provides partial support for the claim that it is the public reasons in terms of which we relate to the government that are constitutive of our political condition. As I remarked earlier, the support that my discussion provides for this claim is only partial because reasons of civil justice do not exhaust the range of public reasons that may govern the *political*. With the focus on civil justice, I did not have enough space to analyse the public reasons associated with alternative principles of political obligation. I cannot, then, exclude that they kept operating even after civil justice ceased to exercise its normative force. Further empirical support of my argument will have to await further research.

## Conclusion

We often become aware of the problem of political obligation only at times of political unrest. My own preoccupation with the topic dates from the turbulent period of protest and opposition against the communist government in Poland in the 1980s. When times are quiet and citizen agitation against the government is at a minimum, our relation to the government is not among our daily concerns. This does not mean that the problem does not exist. We are reminded of it, for example, when a tax form arrives in our postbox: certainly some of us ask ourselves why the government's say-so should obligate us to part with some of our hard-earned money and we wonder whether a tax collector is any different from a thief. In this thesis I have endeavored to find out whether our relation to the government can be described in terms of obligations of obedience to the government's directives and under what conditions, if any, the government's claim to authority is justified. The answer that I have formulated to the problem of political obligation so characterized bears on our relations to the government both in cases of unjust and (nearly) just governments. While I used it to reflect on my own political experience under an unjust government, those who wonder how the tax system of their otherwise just governments differs from a system of institutional plunder can resort to it to solve their puzzlement, too.

I have established that there are four classes of reasons in terms of which we can speak of our relation to the government as a relation of political obligation and, correspondingly, as a relation of political authority. Three of these classes of reasons belong to the range of proposals that are regularly defended in contemporary debate. Thus, I accepted that political obligation is possible by virtue of natural duties (Waldron's account), by virtue of fairness and, by virtue of special duties (the associative argument from special relations). Although my acceptance of these accounts was not uncritical, these accounts, with necessary modifications, withstood the critique that turned out to be fatal to other influential theories. In accepting these accounts, I accepted,

thus, that those who view the government tax system as a system of institutional plunder have three reasons to abandon this view. Instead of viewing the government tax system as a system of institutional plunder, they should see it either as a system of contributions to a cooperation scheme in which they are bound to participate by virtue of their natural duties or as a system of fair contributions to the cooperation scheme from which they benefit, or, finally, as a means instrumental to the preservation of the special relation in which they stand toward others by virtue of their membership in the same political association. The fourth class of reasons in terms of which we can speak of our relation to the government as a relation of political obligation is novel. It anchors political obligation in the class of values internal to relations, and, in particular, in the value of civil justice that inheres in a state of affairs in which persons treat each other rightly in the way specified by their natural duties and rights. Insofar as the directives of the government specify the otherwise often indeterminate content of our natural duties upon which civil justice supervenes, following them realises civil justice between us. Those who wonder how the government tax system differs from a system of institutional plunder are invited to see its requirements as a reformulation of our otherwise indeterminate natural duties, the acting on which places us in a valuable relation to each other.

How shall we position the civil justice account vis-à-vis other accounts of political obligation? I have touched on the affinity of the civil justice account with Waldron's version of the natural duty theory at several places throughout my discussion and I will recall it briefly below. First, however, I want to place the civil justice account in relation to the associative tradition. Or rather, as I will argue that the civil justice account belongs to the associative tradition, I want to clarify its place within it.

Civil justice, in supervening upon networks of interaction, creates moral relations between participating individuals. These relations, unlike the relations in which we stand to everyone, are selective and contingent. To say that such selective and contingent relations are a source of duties is to say that the duties those relations create are limited in range: rather than toward persons in general, we owe obligations of civil justice only toward those persons with whom we participate in the relevant relation patterns. In other words, obligations of civil justice are relative to the agents that participate in the relations. Moreover, we do not have an obligation to enter into relations of civil justice with those to whom we do not have them (just like we do not have an obligation to enter into a relation of friendship with everyone). These features

of the obligations of civil justice suggest the associative character of the civil justice account.

In deriving obligations from special relations in which we stand to others, the civil justice account seems to be a variant of the associative argument from special relations. It differs, however, from the associative arguments from special relations discussed earlier in this thesis. The difference concerns the way in which the civil justice account describes the normative character of the obligation-generating relations. As we saw in chapter 4, the associative approach to political obligation is characterised by its non-reductionist approach to the normative force of special relations. This means that associative theories are committed to the view according to which, unless we suffer from too many thoughts, we cannot explain the value of special relations in terms of normative considerations external to those relations. The proponents of the associative accounts discussed in chapter 4 take this idea to imply that the normative force of special relations cannot be explained in terms of universal values. They are thus committed to explaining the normative force of special relations in particularistic terms which has, as I showed in chapter 4 (section 5.1.), counterintuitive, if not absurd, consequences. The civil justice account differs on this point from the associative theories discussed in chapter 4. It demonstrates that non-reductionism about the normative force of special relations does not preclude accounting for the value of special relations in universalistic terms. In this sense, the civil justice account is an example of the two-tier argument in terms of which I suggested to reformulate the associative argument. As I argued in chapter 4 (section 5.1.), a two-tier approach to the normative force of special relations combines two ideas. According to it, we have reasons for action because we relate to each other in certain ways though, it says, the relation's being valuable from a universal point of view is a necessary condition of the validity of those reasons (in other words, only valuable relations are sources of reasons for action). Civil justice combines these two tiers: we have reasons for action because we relate to each other as compatriots and the way we relate to each other as compatriots in the way described by civil justice is valuable from a universal point of view. I suggested to understand the normative force of friendship in a similar way: we have reasons for action because we relate to each other as friends and the relation of friendship is valuable from a universal point of view. The non-reductionist character of this two-tier account is warranted by virtue of the fact that the relation (i.e., your being my compatriot or friend) preserves its primary role as a source of reasons for action: in other words, the relation's being valuable from

a universal point of view does not change the fact that it is because we relate to one another that we have reasons for action.

Another way of demonstrating that the civil justice account does not renounce non-reductionism about the normative force of special relations is by showing that, by explaining special obligations between compatriots in terms of civil justice, we do not invoke normative considerations external to the special relation of co-citizenship. It helps to keep in mind that civil justice, just like friendship, is a way of relating to each other—we cannot think of it in terms other than as a relation between persons. Thus, when we point to civil justice, we point to the relation that constitutes it or, alternatively, we point to the features that describe this relation (*viz.* interdependent recognition of natural rights and duties). In the same way, when we point to friendship, we point to the relation that constitutes it or, alternatively, we point to the features that describe this relation (*viz.* intimacy, common history, mutual understanding, etc). By pointing to the relations that constitute civil justice or friendship or, alternatively, by pointing to the features that describe those relations, we do not point to normative considerations external to those relations. Thus, when we account for the special obligations between persons by referring to civil justice or friendship, we account for those obligations in a non-reductionist way.

I have said above that the civil justice account, in arguing that we can acquire special obligations by virtue of universal moral values, provides a novel interpretation of the associative argument from special relations. It is interesting to note that civil justice also challenges our other philosophical ideas: contrary to how we usually think about it, universal moral values are not only the sources of general moral duties; there are universal moral values, *e.g.*, civil justice, that create associative duties and provide us with agent-relative reasons for action.<sup>1</sup>

I have placed the civil justice account in the associative tradition, yet it also has a certain affinity to Waldron's natural duty account. This affinity is, however, limited. While I said that civil justice supervenes upon relations that are governed by natural duties and rights, I said that, unlike natural duty theories, it does not derive political obligation from natural duties directly. Rather, civil justice describes a just social order that arises when we treat one another rightly in a way specified by natural duties. We engage with civil justice by taking a holistic look at people approaching each other in the way natural duties require. Thus, while the requirements of these two theories can overlap,

<sup>1</sup> In a recent article, Nagel proposed a similar interpretation of Rawlsian duties of justice: he argued that duties of justice are associative duties and not, as is usually thought, general moral duties, Nagel 2005

they derive their normative force from different sources. Furthermore, political associations described by, respectively, civil justice and natural duties, differ in important respects. This is because each of these accounts understands the nature and the scope of the concern with our fellow-citizens—that lies at the foundation of our political interactions—differently. When our political interactions are governed by natural duties, then unless we stand in a natural duty relation to others, their well-being and rights matter to us only because they can affect our well-being and rights. For example, in the case of senseless violence in another part of the country, I would not be able to demand that the offender be stopped or punished because he violates the rights of his victims. In a society governed by natural duties, the only ground upon which I could demand it as a matter of my political right would be that in violating the rights of others, the offender creates an (in)direct danger to my natural rights too. Civil justice moves us beyond self-regarding concerns in regulating our political relations. The object of civil justice is the just society we form when treating one another rightly. In this conceptual framework, we are concerned with others not because the satisfaction or violation of their interests and rights has consequences for our own interests and rights but because it bears on the just society we form together. Thus, in the case of senseless violence, I have a claim-right against the offender that he refrains from violence even if his act does not pose an (in)direct threat to my basic interest or rights. I have that claim-right because his violation of the basic interests and rights of others strikes against the just society we form together. Finally, civil justice also broadens the scope of our political engagement with our fellow-citizens. The natural rights that Waldron places at the centre of our political concern with our fellow-citizens are the rights that correlate to our negative duties toward them. Given that the natural duties that serve as the supervenience basis of civil justice can be of both a negative and a positive kind, civil justice provides us with reasons to be concerned with both the negative and the positive rights of others. The scope of our political concern with others finds its reflection in the formula of the government that could be justified in both accounts. In Waldron's natural duty model, the legitimate functions of the government will be limited to providing guarantees for rights that correspond to the negative natural duties we have toward others, most notably, to providing guarantees of bodily security and arbitrating conflicts. The kind of government, then, that Waldron will be able to justify is rather minimal. Civil justice, on the other hand, makes it possible to assign to the government more extensive functions, for example, welfare policies, without which it would be difficult to imagine any contemporary state.



The political association governed by civil justice also importantly differs from a political association governed by the principle of fairness. In chapter 5, I identified two weaknesses of the fairness account. First, we saw that the idea of cooperation for mutual advantage upon which the fairness account models our political interactions excludes certain classes of people from citizenship. In particular, severely handicapped individuals who can be expected to contribute far less than most to a cooperative endeavour will be denied citizenship. This political indifference to the plight of those who otherwise belong to our interaction networks runs contrary to our intuitions. The civil justice account does justice to this intuition. In the civil justice account, unlike in the fairness approach, the point of our political condition is not mutual advantage but a form of mutual relationship based on respect for human dignity. The civil justice account departs from the idea that there is a value supervening upon a situation in which we treat one another rightly in the way prescribed by our natural duties and rights. This perspective commits us to say that, insofar as we have natural duties to care for the disabled, there is a value inherent in a situation in which we do so. Given that this is an aspect of the valuable form of relationship that our political life is meant to realise, such persons will be accorded full citizenship in the society we form and our political life will accommodate their needs for special attention. Here is another way to put this point: if we have an obligation to obey the government by virtue of civil justice, it is because we stand in a natural duty relation to, among others, such persons. Our obligations of obedience to the government are a reformulation of our otherwise indeterminate natural duties of help or care for those with whom we interact among whom there are also handicapped persons. The second weakness of the fairness account consisted in the insensitivity of the fairness principle to possible injustices in the pattern of distribution of cooperative benefits. We saw, for example, that the principle of fairness would allow a policy denying a certain ethnic minority access to the public health care system as long as this denial were followed by lowering the taxes of the minority group accordingly. I said that we are dealing here with a violation of the positive part of the second formula of the Categorical Imperative: in denying others certain basic benefits, we fail to treat them as ends-in-themselves or, in other words, we fail to treat them with the respect and concern they deserve as autonomous moral agents when it comes to distributing cooperative benefits. I argued that the principle of fairness faces this problem because its normative force is anchored only in the negative part of the Kantian injunction and makes no reference to its positive part. In the political domain governed by civil justice, distribution of cooperative benefits would not face the problem I pointed to in

the context of the fairness account. Given that civil justice, directly or indirectly, corresponds to natural duties that are owed to people by virtue of their human dignity, its requirements can be interpreted as an equivalent of the positive part of the Kantian injunction. Insofar as civil justice makes according others what is due to them by virtue of their humanity a matter of political obligation, civil justice ensures that no individual or group is denied benefits which, if accorded to others, can be claimed as due to persons by virtue of their humanity. We can say that civil justice supplies the fairness account with the element that the fairness account missed.

I have positioned civil justice vis-à-vis other principles of political obligation. From this comparative perspective, the civil justice account is an interesting proposal in one more respect. Most accounts of political obligation do not address themselves to our relations to unjust governments, even though the question of the grounds and limits of the obligation to obey the government in such cases is recognised as pressing. The civil justice approach fills this gap. It says that insofar as an oppressive government issues directives that specify the content of those natural duties that are otherwise indeterminate, it can exercise political authority. It is important to emphasise, however, that while extending the possibility of political obligation to our relations with unjust governments, the civil justice account clearly recognises the limits to the authority that the government—just or unjust—can exercise. In other words, political obligations acquired by virtue of civil justice do not require us to obey all directives of the government on all occasions to which they apply. Political obligations acquired by virtue of civil justice can even require us to disobey the directives of the government—a feature that again makes the civil justice account distinct from other theories of political obligation. I argued that the conditional character of the obligations of civil justice is due to three reasons. First, on pain of self-contradiction, the force of civil justice cannot be conferred on those directives of the government which are at variance with perfect and uncontroversial natural duties. Second, it cannot be conferred on those directives of the government that specify the content of imperfect or controversial natural duties in a way that falls beyond the negotiation area on this issue. The final condition is mutual knowledge concerning the general recognition of civil justice as a moral motive to obey: given its interdependent nature, civil justice cannot create obligations unless we are assured that others act on it too. The conditional character of political obligation grounded in civil justice has important consequences for the concept of political authority. As many analyses of the concept of political authority have pointed out, in claiming to provide content-independent reasons for action, the government's

claim to authority is unlimited. When political obligation dictates content-independent obedience only conditionally, the conditions under which obedience can be granted set limits to the scope of the authority of the government: in those domains in which no obligation to obey arises, no authority of the government exists.

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# Nederlandse Samenvatting

De “staat” is een vorm van politieke organisatie die wordt gekenmerkt door zijn claim van totale en ultieme autoriteit over alle inzittenden van een bepaald gebied. Houdt dat in dat al die inwoners van dat territorium een morele verplichting hebben om de staat te gehoorzamen? Welke morele principes zouden hieraan ten grondslag kunnen liggen? Deze vraag, onder de naam van *het probleem van politieke verplichting*, behoort tot de oudste problemen van de politieke filosofie. De eerste discussie over dit onderwerp is te vinden in Plato’s *Crito* en *Apologie* en sindsdien is de geschiedenis van de politieke filosofie rijk aan pogingen om de filosofische fundering van deze plicht te vinden. In deze dissertatie bespreek ik de meest invloedrijke hedendaagse theorieën van politieke verplichting en zet ik een nieuwe theorie van politieke verplichting uiteen. Deze gebruik ik vervolgens om een empirische casestudy te analyseren.

Ik begin mijn discussie met het uiteenzetten van het concept van politieke verplichting. Zoals dit concept wordt gebruikt in de moderne en hedendaagse politieke filosofie, moeten politieke verplichtingen inhoudsonafhankelijk zijn, d.w.z. gehoorzaamheid aan regels zoals uitgevaardigd door de staat mag niet afhankelijk zijn van de eigen opvattingen van burgers over de kwaliteit van de voorgeschreven handelingen. Deze eis wordt vergezeld van een clausule: politieke verplichtingen moeten verplichtingen zijn die ons ten opzichte van één staat binden en niet ten opzichte van verschillende staten of ten opzichte van staten in het algemeen. Hoewel ik dit begrip van politieke verplichting onderschrijf, beargumenteer ik dat het aangevuld moet worden. Indien wij een verplichting om de staat te gehoorzamen als een *politieke* verplichting willen opvatten, moeten wij een verzameling van individuen die naar hun politieke verplichtingen handelen kunnen beschrijven als een politieke gemeenschap in tegenstelling tot de natuurtoestand. Dit kan alleen als de redenen voor gehoorzaamheid aan twee eisen voldoen. Ten eerste moeten ze interdependent



zijn, d.w.z. ze kunnen ons binden alleen als ze anderen ook binden. Ten tweede moeten deze redenen aanleiding geven tot het ontstaan van claim-rechten tussen alle ingezetenen.

Aan de hand van dit concept van politieke verplichting toets ik de plausibiliteit van de belangrijkste hedendaagse theorieën van politieke verplichting. Ik neem theorieën onder de loep die politieke verplichting afleiden van persoonlijke instemming van de geregeerden (hoofdstuk 1); benaderingen die zich beroepen op principes van reciprociteit zoals dankbaarheid voor de ontvangen gunsten (hoofdstuk 1) of op het zogenaamde *fair play* beginsel dat vereist dat wie profiteert van een gemeenschappelijke regeling doordat anderen er zich aan houden, zelf ook moreel verplicht is zich er aan te houden (hoofdstuk 5); theorieën die de normativiteit van politieke verplichting lokaliseren in de betekenis die talige conventies aan dit begrip hechten (hoofdstuk 2); theorieën volgens welke politieke verplichtingen gebaseerd zijn op natuurlijke plichten (hoofdstuk 3); en theorieën die politieke verplichting als een vorm van bijzondere plicht opvatten en afleiden van verwantschap of bijzondere relaties waarin mensen tot elkaar staan als burgers van dezelfde staat (hoofdstuk 4). Ik onderzoek in hoeverre deze theorieën inhoudsonafhankelijke gehoorzaamheid tot een *verplichting* maken en of het een verplichting is die ons ten opzichte van één bepaalde staat bindt. Vervolgens onderzoek ik in hoeverre deze redenen voor gehoorzaamheid aan de voorwaarden voldoen om onze handelingen ten opzichte van de staat een *politiek* karakter te geven. Ik concludeer dat alleen een bepaalde variant van de theorie van natuurlijke plichten, de associatieve benadering die zich beroept op bijzondere plichten, en de fairness-theorie aan de eisen voldoen. Andere theorieën verklaren niet hoe inhoudsonafhankelijke gehoorzaamheid een *verplichting* kan zijn, of ze verklaren niet wat deze verplichting tot een *politieke* verplichting maakt.

In hoofdstuk 6 stel ik een nieuwe theorie van politieke verplichting voor. Deze theorie geeft een nieuwe invulling aan het associatieve argument dat zich beroept op bijzondere plichten - plichten die voortvloeien uit bijzondere relaties. Ik introduceer het concept van waarden die inherent zijn aan bepaalde vormen van menselijke relaties. Ik beargumenteer dat een type samenleving waarin personen elkaar rechtvaardig behandelen, zoals bepaald door hun natuurlijke rechten en plichten, een intrinsieke waarde heeft. Ik noem de waarde die zo'n samenleving karakteriseert *civil justice*. Alhoewel *civil justice* voortkomt uit een patroon van handelingen die gemotiveerd zijn door natuurlijke plichten, heeft *civil justice* toch een eigen normatieve dimensie die

niet reduceerbaar is tot die van de onderliggende natuurlijke plichten. Ik verdedig de stelling dat de waarde van *civil justice*, zoals belichaamd in een aldus gerealiseerde rechtvaardige samenleving, een grond is om de staat te gehoorzamen. Voor zover de wetten van de staat de vaak op zichzelf onbepaalde inhoud van de natuurlijke plichten specificeren, brengen wij *civil justice* tot stand door deze wetten op te volgen.

De benadering die politieke verplichting van *civil justice* afleidt is een interessant voorstel niet alleen omdat het moeiteloos voldoet aan de eisen die worden gesteld aan het concept van politieke verplichting, maar ook omdat het onderwerpen adresseert die de andere theorieën buiten beschouwing laten. De meeste theorieën van politieke verplichting gaan voorbij aan de vraag of men verplicht kan zijn om een onrechtvaardige overheid te gehoorzamen, al wordt deze vraag wel als belangrijk erkend. De *civil justice* theorie vult deze lacune aan. Ze zegt dat voor zover een onderdrukkend regime regels uitvaardigt die de vaak onbepaalde inhoud van de natuurlijke plichten specificeren, dit regime legitieme politieke autoriteit kan uitoefenen. Het is echter belangrijk om te benadrukken dat, alhoewel de *civil justice* benadering de mogelijkheid toelaat dat burgers politieke verplichtingen hebben ten opzichte van een onrechtvaardige overheid, zij grenzen stelt aan de autoriteit die de (rechtvaardige of onrechtvaardige) overheid kan uitoefenen. Met andere woorden, politieke verplichtingen aangegaan op grond van *civil justice* vereisen niet altijd dat wij alle regels gehoorzamen zoals uitgevaardigd door de staat en onder alle omstandigheden waarop ze van toepassing kunnen zijn. In het bijzonder, politieke verplichten aangegaan op grond van *civil justice* kunnen ons juist noodzaken om de regels zoals uitgevaardigd door de staat niet te gehoorzamen - een eigenschap die het *civil justice* argument opnieuw onderscheidt van andere theorieën van politieke verplichting. Beide implicaties van de *civil justice* benadering illustreer ik aan de hand van sociologische onderzoeken in hoofdstuk 7. Hierin beschrijf ik de redenen die de houding bepaalden van de Polen tot de Poolse communistische staat (1945-1989).



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