

Political Obligation: Some Problems and an Attempted Solution

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1 Introduction

Political obligation' is a broad notion and covers many things. Some have said, for example, that the citizen has an obligation or duty to vote. Others have claimed that citizens may have a duty to serve their country and possibly even to fight in its defense. Most people who talk of political obligation, however, have one thing in particular in mind: the citizens' duty to obey the laws in their own country.

The issue I want to discuss in this article is whether people do in fact have good and justifiable reasons for complying with laws that go beyond mere fear of punishment. And if so, whether they're *bound* or obligated by those reasons to comply.

Often the reasons people cite (in regard to obligations) are moral reasons. But I do not want to suggest that these are the only, or even the best, ones. Let's first turn, then, to a sample of some of the main considerations that have been offered.

2 Some Standard Arguments for a Duty to Obey the Law

Socrates had to decide whether to disobey an *unjust* but legal decision; the remarkable thing is that he decided to obey, for what he thought were sound reasons, in circumstances that would cost him his life. Socrates believed people had a *moral* duty to obey the law. It is a very strict duty based on an agreement they have made.¹

What is distinctive about the agreement argument Socrates assented to (in the *Crito*) is that it puts the issue in terms of justice or morality. In our own political tradition there is an argument somewhat like the Socratic one; it stresses not the morality of keeping agreements but, rather, the connection between a legitimately constituted government, on the one hand, and a citizen's duty to obey the valid laws issued by such a government, on the other. This obligation is a strict one; it attaches to all laws and can be overridden, if at all, only in exceptional cases.

In this theory, usually associated with Hobbes and Locke in particular, a contract (sometimes called 'consent to government') is said both to authorize a government to make laws and to bind subjects to strict obedience. Actually the theories of Hobbes and Locke are not quite so simple as this.

Locke argues that, at a certain point (that is, upon reaching the age of adulthood and then by staying on, more or less voluntarily, in the face of an unexercised right of emigration), people become members or parts of a particular body politic. The main function of any such body is to create a constitution or form of government and, presumably, there is a consensus (what Locke calls a majority) among the citizens as to where – that is, in what institutions – the main powers of government (legislative, executive, etc.) have

¹ For that part of the *Crito* which contains the Socratic arguments against disobedience to law, see Plato, *Five Dialogues*, tr. by G.M.A. Grube (Indianapolis, IN, Hackett, 1981), p. 52-56.

been lodged. Indeed, Locke says, if there were not this consensus the body politic would come apart, would simply disintegrate, and could only be held together by obvious and clearly improper force. Now, from these two facts (that one is a member of a body politic and that there is a consensually-based constitutional government for it) it follows for Locke, as a matter of logic, that each citizen (each member of a political society so organized) is strictly bound to obey the laws duly issued by such a constitutional government. Or it follows from these two facts plus one other – if laws were not obeyed people would in effect have returned to the unwanted state of nature – that each member has the strict obligation in question. One has, in short, not consented (contracted, promised) in so many words to obey the laws; rather, one has consented to be a member of a body politic and from that fact, plus one or two others, it follows logically that the citizen has a strict duty to obey laws duly issued. One is thus obliged *as if* one had in fact expressly consented to obey.²

For the ‘contract’ theorists, just as for Socrates’ idea of an agreement, the relationship of citizens to the government and its laws is construed on an analogy with some nonpolitical undertaking, like promising, agreeing, consenting, or signing a contract, which is obligation-creating in character. It is the fact of agreement or the act of consent that *grounds* the obligation to obey the law in all these theories.

I can see two main problems with this overall approach. First, there’s the problem of what counts as consent. And, second, there’s the problem of whether consent so conceived can really bind people to obey all or almost all valid laws, simply because these laws were issued in the correct way by a legitimate or effective government.

What counts as consent? All of the theorists count mere residence, permanent residence, during adulthood. Hobbes adds the interesting twist that a resident could even bow one’s head and go on living under a conqueror, on pain of death if such ‘consent’ were not given, and that would count fully as consent. Many people are reluctant to think that mere continued residence should count, especially under the condition Hobbes envisioned, as having exactly the force of an explicit and solemn promise.

Some have said that voting in a free election should so count. Well, so voting might commit you to accepting the outcome of the election, we might grant. But why should it commit you to accepting, being obliged to accept, all the laws issued by those elected? Some of those laws might be foolish or unconstitutional or even wicked. Suppose you voted on the losing side. Your candidate didn’t win. You voted that way because you didn’t want a certain bad law passed. And now the candidate you voted *against* has, along with others, supported that very law. Or suppose it was a really wicked law, like the U.S. law in the 1850’s which required runaway slaves to be recaptured and returned to their owners,

² For the main points (body politic, constitutional consensus, avoidance of state of nature), see Locke, *Second Treatise*, sect. 97; and also sects. 89, 95-96, 98-99. Locke’s account of the powers of government is found in *Second Treatise*, chs. 11 and 12. Locke’s discussion of *express* consent, that is, the permanent or standing consent of citizen-members, occurs in *Second Treatise*, sects. 116-118; and his further account of it and contrast with *tacit* consent, that is, the temporary consent of visitors, etc., is found in *Second Treatise*, sects. 119-122.

and you were a voter in the state of Massachusetts who didn't like the idea of such a law and who had voted for a candidate who opposed it, a candidate who was then elected but whose vote against this law was then defeated in the next meeting of the national legislature. These examples suggest that it goes a bit far to say that simply by voting in a general election you're committed to accepting this law, and are obliged to obey it.

But what about an explicit and solemn promise, a full-bodied agreement to accept all valid laws and to be bound by them? Would that work? Not too well. Most citizens have never consented or contracted, in a way that can be regarded as really counting, to obey the laws of the country in which they reside. For example, not everyone (certainly not every citizen) has engaged in a meaningful act of consent in Britain or North America or Scandinavia; in fact, relatively few people there have done so. So, if full-bodied actual consent is required, then the contract theory cannot account for an obligation to obey the law in such countries.

One could always reply: well, if everyone had freely and explicitly promised to obey the laws in their own country (in a solemn oath of some sort), *that* would surely count. We could still ask, even if such a promise counted as consent, whether such explicit consent would or could *bind* those who had taken that oath, could *oblige* them, to obey all the valid laws of the land simply because they were the country's laws. Is the strict obligation to obey laws grounded merely in the bare existence of consent to do so or is it grounded in whatever good reasons (excluding fear of punishment, of course) one might have for so consenting in the first place?

Clearly, if we simply cited the reasons (but without an act of explicit consent by the people involved) then we no longer have actual consent as the ground of obligation, contrary to what the contract theory requires.³ Suppose, though, we cited both the fact of an explicit and widespread agreement in a given country and good reasons for making such an agreement. One could still question whether the fact of explicit consent really added anything to these reasons.

Consider. If we regard our obligation to obey our country's laws as a moral obligation (as did Socrates in the *Crito*), then we probably also believe that most or very many of these laws have a good moral content (such as do the laws that prohibit murder, kidnap, rape, or physical assault). But wouldn't the prohibitions in such laws (given their good moral content) control our conduct, morally speaking, even if they were not set down in law? By the same token, they would also control our conduct, morally speaking, even if we had never explicitly and solemnly promised to obey the laws of the land.

³ The idea I've just suggested – that there might be good reasons for people to act *as if* they had explicitly consented – is sometimes called hypothetical consent. For an important criticism of this whole 'hypothetical consented' approach, see Ronald Dworkin, *Justice and rights* (originally published in 1973), reprinted in Dworkin's *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1978); see esp. p. 150-158. There continue to be sophisticated defenses of hypothetical consent (as conveying the best insight into traditional consent theory). Among those I particularly recommend are Thomas Lewis, *On using the concept of hypothetical consent*, *Canadian Journal of Political Science* 22 (1989), and Cynthia Stark, *Hypothetical consent and justification*, *Journal of Philosophy* 97 (2000).

The matter becomes more complicated when we consider laws that are morally indifferent. I would think a question of *moral* obligation could arise in such cases only where what the law required (eg., the payment of income taxes) could be shown to be necessary or substantially important to the government's continuing ability to encourage people's compliance with those laws that do have a morally good content.

When we come to wicked laws (laws with a bad moral content, like the Fugitive Slave Law mentioned earlier, or Nazi laws against the Jews) I think the matter changes considerably from what it was in the two earlier cases (the case of laws with good moral content and the case of laws with morally neutral content). I do not think it possible to ground the *moral* precept of obedience to law on a foundation of indifference with respect to whether the laws are, in most cases and in the long run, of a morally good or at least a morally acceptable content. The moral presumption here is surely against evil laws, and this presumption will tell against any morally based obligation to obey such laws. In the analysis we have given, a promise to obey evil laws could not be morally justified and any such promise, even the promise to obey *all* laws (just and unjust), would not have obliging weight.

Dissatisfaction with consent theory has led political theorists to consider other possible grounds of an obligation to obey law. Thus, it is often alleged that the receipt of benefits obliges one, as based on a proper sense of gratitude, to show appropriate responsive conduct. Some have said (as it was said, for example, in Plato's *Crito*) that when the benefit comes from the government, the appropriate responsive conduct is to obey the laws.

Let us examine these arguments, briefly. We can grant that many benefits are positively sought (and accepted) or are at least voluntarily received, knowingly and willingly. These it might be said are the ones for which one clearly owes a duty of gratitude, and appropriate responsive conduct is owed to the benefactor.

The question is, though, Where these benefits are positively sought or voluntarily received from government, does one owe obedience to law as one feature (perhaps the main feature) of one's appropriate responsive conduct? Does one, indeed, have an obligation to obey *all* the laws on such a basis?

Consider. A black student (age 19) in South Africa during the period of apartheid requests and receives admission to a state-run high school and some monetary aid (to cover costs and fees) from the local education authority, support that is paid for out of tax revenues. Suppose it's believed that the student might now owe a debt of gratitude, to be paid back in some sort of appropriate responsive conduct. But what conduct is appropriate? Contributing to state-supported education in the future (through donation of one's time or contributing financially to a scholarship fund) might well be. But it can hardly be alleged that one now is obliged, morally obligated, to support the government and obey all its laws (including the laws that maintain apartheid). The same could be said of a white student in similar circumstances. That student might be thought to be obliged to contribute to state-supported education in the future, but there's no good reason to say that this student, who has probably received more benefits overall than the black student, is morally obligated, any more than is the black student, to support the government and obey *all* its laws.

Indeed, we could vary the picture somewhat, to include important benefits people receive (but without assuming their voluntary acceptance). For instance, both our students (black and white) might have benefited greatly from public health measures (clean water, sanitation, vaccination and other disease control programs). Would it follow from this that either is morally obligated to support the government and obey *all* its laws?

The basic point I'm making, that there's no obligation to obey *all* the laws of the land in such cases, would probably hold even if the evil apartheid laws were completely removed from the picture. The fundamental question here is whether the appropriate responsive conduct, said to be owed in these two cases of education and public health, can reasonably be thought to include supporting the government and obeying all its laws. More to the point, if you were to run through a wide number of cases, of various benefits actively sought or voluntarily received from government or of important benefits merely received, and reach the same conclusion in each case, then you don't think gratitude for benefits received does ground an obligation for recipients to obey *all* the laws of their country.

Some have pointed to a special version of benefit theory, called fair play, to make the case for a duty to obey law. Here's the picture they present. People are engaged in a joint activity, a practice or an enterprise, that is widely beneficial (like conserving water in time of drought or reducing electricity use in the face of a brownout). The benefits of this activity can only be obtained if most people join in, but doing so carries certain costs for each of them. Fair play theory alleges that I'm obligated, by my participation in this practice (in particular, through my voluntary receipt of benefits and the costs to others of these benefits being provided), to do my share, to return in kind the benefits I've received. And this often means complying with the laws.

Now let's say that I (a temporarily disabled worker) am engaged in such a practice (in a scheme of things) in which others are doing something to benefit me (like paying their taxes) and I've voluntarily accepted benefits so generated; now it comes my turn, after a few months have passed, to pay taxes (for I've re-entered the workaday world). Fair play theory alleges that I'm obligated, by my participation in this practice (in particular, through my voluntary receipt of benefits and the costs to others of these benefits being provided), to do my share, to return in kind the benefits I've received, by paying my taxes. And this means complying with the tax laws. (And to keep matters simple, let's suppose that these laws are not unfair.)

Again, the issue we're raising here is whether the appropriate responsive conduct, said to be owed in this one case of receipt of benefits (in the form of unemployment or disability payments) from tax revenues raised and spent, can reasonably be thought to go beyond conformity to the tax laws to include supporting the government and obeying all its laws. Surely, it doesn't. And if we took each relevant practice up in turn, one after the other, we'd reach the same conclusion in every case. Thus, a person who had benefited from other people's obedience to laws against theft should obey those same laws, were the circumstance to arise. You owe it to these others, in fair play, so to act. But there

would no generalized duty, a duty that went beyond conformity to anti-theft laws, to obey *all* the government's laws.

Indeed, if you ran through a wide number of cases, envisioning people's participation in a variety of practices or joint activities (where they voluntarily received benefits in each of them) and lumped them all together, you might conclude that the persons involved should do their share, to pay back in kind the benefits they've received. And this may well involve a duty to obey several, even many, laws. But none of this would mandate the conclusion that fair play (in the case of benefits voluntarily received by participants in a wide variety of practices) would ground an obligation for each of them to obey *all* the laws of their country.

We won't have time in the present study to canvass further the arguments for a generalized duty, a duty of everyone, to obey all laws. Suffice it to say that a number of political theorists have looked at all three of the standard arguments – the arguments based on consent, on gratitude for benefits, and on fair play – and have argued that each one fails.

Some have concluded from this that there simply is no obligation, no *moral* obligation, for everyone to obey all laws in their own country. In fact, there may not be a standing obligation, for some at least, to obey any of the laws.⁴ Others, looking at this same sample, have concluded that none of the standard arguments will work but these theorists have left open that another, radically different approach might work. And some have even suggested the main lines of such an approach.⁵ I tend to side with this second view, suitably qualified.

3 Some Materials for a New Start

In considering how to make a new start, let's first note an interesting point of similarity in all three of the standard theories: they all treat the obligation to obey the law as primarily a *general* one. Thus, the grounds they emphasize are distinctively general grounds (often general moral grounds) for obeying law – grounds operative in all or almost all societies, grounds that could cover all laws or, conceivably, all persons – and they disdain reasons which are local or distinctive only of a particular society (or specific kind of system). But their analysis, by its very nature, creates a deep problem; for they cannot show that the duties so generated – by reference to such general grounds as agreement or

⁴ John Simmons, in his book *Moral Principles and Political Obligations* (Princeton, NJ, Princeton, NJ, 1979) discusses a number of such grounds: fidelity or consent (chs. 3 and 4), fair play (ch. 5), Rawls' natural duty of justice (ch. 6), and gratitude or repayment (ch. 7); *see* also p. 15-16, 54-55. Simmons reaches the conclusion I have identified in ch. 8 of his book; many anarchist theorists would, of course, echo this conclusion.

⁵ John Horton, in his book *Political Obligation* (Atlantic Highlands, NJ, Humanities Press International, 1992), surveys these same grounds in chs. 2 (on consent) and 4 (fair play and gratitude) and finds all of them wanting. His suggestion that we take a different basic approach is developed in the final chapter of his book (ch. 6). For a similar line of attack with a similar conclusion, *see* Ronald Dworkin, *Law's Empire* (Cambridge, MA, Harvard University Press, 1986), ch. 6.

express consent or gratitude for benefits received or fair play - can ever be duties of all people in a given country to obey all the laws there. Or so it has been argued. The quest for such generality has proven to be a hopeless and unrewarding one.

A second feature of the standard approach also needs bringing out. The favored grounds cited in this approach all have in common that they invoke some *voluntary* act on an agent's part. Typically, the agents are here said voluntarily to have consented or, alternatively, voluntarily to have received benefits, or, as yet another alternative, to have knowingly participated in a practice or joint activity from which they have voluntarily received benefits of the very sort they're now being asked to provide in turn. The main point relied on in all these cases is the same: having an obligation implies that one has *voluntarily* taken on that obligation through some sort of (morally approvable) transaction.

This pronounced emphasis on voluntariness may be out of place. One can have duties which are not based on voluntary acts at all. For example, children (say teenagers) could have duties to their parents which are not based on voluntary transactions on the young persons' part; among the benefits they've received are many that were not voluntarily sought or voluntarily taken (for example, the enormous number of such benefits they received when they were infants or very young children). More to the point, it may be the relationship they're in, with their parents, that counts entirely (or for the most part) for the duties they have.

Consider now a parallel case. The requirements on people's conduct that the law imposes are often there because of the status these individuals have (as innkeeper or employer or, quite typically, as member and fellow citizen) in a given political society. The normative directions for conduct laid down in the law often come with the territory and are imposed simply by the rule-making actions of government officials. These requirements are, thus, unlike standard voluntary obligations in a number of important respects. They do not necessarily involve undertakings or determinate transactions that serve to bring a citizen specifically under a given requirement; they are not, in many typical cases, owed to definite or named individuals (but, rather, to all citizens). We need, in short, to be able to discuss the duty one might have, to conform to such laws, without assuming that the duty is there on the basis of some voluntary undertaking or determinate transaction that has served to bring the citizen specifically under that requirement.

Another dimension to this important matter of voluntariness needs mention as well. Most people are in fact citizens or lifelong members of only one country during their entire lifetimes. They are born in that one country and they will spend their whole lives there. Many others have joined them, for reasons of their own, and have in effect cast their lots there; this we must grant. But we must be able to make a case for a duty to obey laws for this vast majority (those who were born there), if we're going to have any serious case for the claim that citizens have or may have a duty to conform to laws. We need, in short, to be able to discuss the duty one might have, to conform to laws in the country of their birth, without assuming that the duty is there and can only be there on the

basis of some voluntary undertaking or determinate transaction that has served to bring the citizen specifically under that duty.⁶

One final point is worth making. People often talk about a duty to conform to law which is system-specific. Here one's obligation to obey laws is not represented as a general one at all; rather it is thought to be based on some feature of the political system itself. Thus, someone might allege that in a democratic state the norms of democracy require that one accept democratically established law as law, as binding law, and be willing to comply with it so long as it remains in force.

The problem with taking a very general approach to political obligation (where we consider *only* general reasons, often general moral reasons, that would bind all people at all times and places to obey all the laws in their country) is not just that it won't work, a point I've already made, but also that it deflects attention from the notion of any sort of special obligation to laws *as laws*. It seems we should determine what it is about laws simply insofar as they are laws and about the specific political system in which they occur that might initially engender and justify such a duty. If we can't do this, one might wonder if we're really talking about *political* obligation at all. We should, then, if we want to take seriously the issue of an obligation toward laws as such, make system-specific reasons our first line of attack in determining the grounds of one's obligation to obey the law.

I do not want to be misleading here. When I talk about the typical or characteristic standing of the citizen toward the law, in particular respecting whether the citizen owes compliance or not, I mean that person's institutional standing or expectation of compliance as determined within a particular political system. Or, to put the point differently, the notion we're trying to capture in this new approach is an individual's proper standing, given the political practices and conventions of a society of a particular kind. Political obligation (if I may use that term) is one's institutional obligation within a particular political system.

Let me summarize the main themes, now, of our suggested new approach to assessing political obligation. First, we should emphasize the case of people who are born in a given country and are lifelong residents there. And we should not assume that any duty to obey laws, should there be one, is a duty voluntarily taken on or one involved in a transaction of some sort. Second, we would do well, at least as an initial step, to focus on specific features of the political system of the country in which these people reside, to see if these features give rise to any sort of duty to obey the laws there. And, finally, we should give up the quest for generality, of trying to find general reasons that would underwrite

⁶ The approach I have just outlined in this paragraph has been taken by several theorists. See, for example, John Rawls, *Theory of Justice* (Cambridge, MA: Harvard University Press, revised ed. 1999), sect. 19 and ch. 6, esp. sects. 51-3; R. Martin, *A System of Rights* (Oxford, the Clarendon Press, 1993), ch. 8; also Jeremy Waldron, *Special ties and natural duties*, *Philosophy and Public Affairs* 22 (1993), and the chs. in Horton and in Dworkin cited in the previous note. For criticisms of this approach, see Richard Dagger, *Membership, Fair Play, and Political Obligation*, *Political Studies*, 48 (2000).

an obligation of all people at all times and places to obey all the laws in their country.

To follow out the new approach just suggested does not preclude us from asking moral questions. We can still ask whether a given system of political conceptions and institutions, in which the elements of political obligation have been established as embedded, can be morally approved. Or we can ask whether most laws generated by such a system can be morally approved. This is the same as asking whether a system-specific political obligation can be morally justified.

But the questions we are asking here can only be asked and answered in the order I have given. Without first showing that an obligation is owed to the laws *qua* laws and that such obligation can be given a system-specific justification, any program for a moral justification of political obligation would seem to be off target. It could not tell us whether (or why) we have a duty to comply with laws simply insofar as they were laws. And this would be to miss the point of raising the issue *political* obligation in the first place. Or so I would argue.⁷

4 Another Try at Political Obligation

Using the new approach I've been outlining, we can take a brief look at an example of how such an account might play out. Let us imagine a simplified sketch of a political system which would include at a minimum such notions as fundamental constitutional rights (or basic civil rights) and democratic procedures.

Active civil rights are political rights universal within a given society. They are ways of acting, or ways of being treated, that are specifically recognized and affirmed in law for each and all the citizens there (or, in the limiting case, for all individual persons there) and are actively promoted.

When we have such rights, issued and applied and coordinated, we have a system of civil rights rules. And we could not have such a system without agencies to do those things. These agencies, in turn, would have to exhibit some degree of coordination themselves. Here, then, government as a coordinated set of agencies would enter the picture as instrumental to the production of a system of civil rights.

But how could agencies of government issue rules which constituted, or at least helped define, civil rights of individual persons? What basis could we have for believing that the rules and practices generated by governmental action were really rights rules, really rights practices? This is a hard question, but it might be answered that this is where democracy comes in.

It could plausibly be argued that democratic institutions – universal eligibility to vote (on a one person, one vote basis), regular and contested voting operating at two distinct levels (the level of parliament and the level of general elections), and majority rule – can, acting as a set (and on a majority electoral base), effectively provide the setting required by civil rights. It could be claimed that democratic procedures are a stable and relatively reliable way of identifying, and

⁷ For elaboration, see my book *A System of Rights*, ch. 1; also p. 186.

then implementing, laws and policies that serve interests common to the voters or to a large number of them, presumably at least a majority.

Civil rights identify ways of acting, or ways of being treated, which could be claimed by all persons for themselves individually. Claimed because these ways of acting (or being treated) are part of what benefits each person or are instrumental to it. People see these ways as means to or part of things they regard as valuable.

Let me fill in behind this idea just a bit. Here each person is presumed to be able to reflect and to think reasonably carefully about important matters. Each is here presumed, then, to focus and to reflect on a single consideration: whether this particular way of acting or this particular way of being treated (if it were in effect for all) would on the whole (a) be beneficial for that person (as beneficial in itself or as a reliable means to some other good thing) and (b) that person can see how it would be beneficial to others as well, now and in the foreseeable future. If everyone (or almost everyone) could say, upon reflection, that this is so in their view, then the standard is satisfied. A way of acting (or of being treated) that has been identified and sustained in law and that can be supported, arguably, as in the interest of everybody, in the interest of each and all the citizens, is *justified* as a civil right.

It is often said that rights, certainly justified rights, correlate with duties – meaning thereby that a right always implies or has attached some closely related duty of others. The point here, put precisely, is that any genuine right must involve some significant normative direction of the behavior of persons other than the holder. And it is this truth, crucial to the concept of rights, which I want to emphasize.

Thus, for each right (for each established way of acting or of being treated on the part of a rightholder) there is some significant sort of normative direction given to the conduct of other persons. In a system of civil rights, the rights of individuals are maintained, at least in part, by the action of people on whom the relevant duty (the relevant normative direction) falls, for these are the persons on whom the *primary* directives for conduct have been imposed. Sometimes a given requirement is imposed on *all* the citizens (e.g., the prohibition against murder). And other times the ‘duty’ requirement is imposed on some only.

But the point is, given the whole range of cases, that each citizen has toward the other citizens (all of whom are right holders) the status of duty holder in the case of many determinate civil rights. And each rightholder can call on the government, or on others, to help maintain these rights – to enforce these rights – when the primary duty holders fail to act correctly, fail to act as directed. Hence, every individual citizen, in the argument so far, has some requirements imposed on his or her conduct – but variously – by civil rights.

We assume here, as background, that the main democratic institutions are in place (universal franchise, competitive voting, majority rule) and that the civil rights laws have been duly enacted under these institutions. Here, accordingly, it is a reliable presumption that these laws do incorporate a benefit of each and all the citizens in the various ways of acting, or of being treated, that the law guarantees for all persons across the board. I’m not suggesting, by the way, that democratic institutions always achieve the result identified. Not in every case,

certainly. But the point is, if democratic institutions stay in line with that which justifies them in the first place, they will in fact *tend* to produce civil rights laws (among other things) and they will not act so as to supersede or otherwise impair such rights.⁸

Where rights are stated in democratically based laws (as they are in the system of civil rights we are investigating), it is the laws that carry the relevant directives for the conduct of other persons respecting those rights.

Obviously, rights don't count for much unless they're maintained. And the principal way in which they're maintained is for people to do their duty and conform to the civil rights laws. It follows, then, that the typical member (or citizen) in such a society has definite duties to conform to rights-defining and rights-maintaining laws. For, where rights are defined and maintained by law, to do one's duty under a given right simply is to comply with the law(s) in question.

Thus, the typical citizen in a democratic system of rights does have a peculiar or special duty there, the duty to obey civil rights laws. This is not a duty to the laws *qua* laws; for there are, we can suppose, some valid laws in that society that would not come under the duty in question. Rather the duty to conform with law is owed precisely to those duly enacted laws that define or maintain civil rights. This duty, in the simplest case, is a system-specific duty that holds good for every citizen there.

Rights laws are binding on conduct not because laws are involved but because rights are. It is not, then, that each is to conform to the applicable rights norms because these are stated in laws, toward which, independently of that rights character, the citizens have a standing duty; it is, rather, the reverse. Citizens are required to obey rights laws – and correctly understand themselves to be under such a requirement – insofar as those laws properly state (as we can presume they do) relevant normative directions on conduct appropriate to the rights involved.

Citizens there would have a standing commitment to abide by those laws. It should be clear, moreover, that the rights each person supports by law-obedient conduct are rights which *that* person has. Thus, the reciprocity of a system of civil rights, and the background idea that justified civil rights are beneficial to each and all, provide the main rationale or justification for the citizens to do their duty by obeying rights laws.

Whether the idea of a system of rights requires compliance with *all* its laws or whether it involves *strict* compliance even with all civil rights laws are clearly matters for dispute. But I doubt there is any real dispute that the citizens' positional or institutional duty, the standing of the citizens toward the law in this particular system, is a special one. It is a standing that attaches to the laws that formulate and help maintain civil rights and to reasons for action that are appropriate to a system of rights.

8 The linking of these two main elements – civil rights and democratic political institutions – is developed and argued for, at considerably greater length, in my book *System of Rights*, esp. chs. 6, 7, 12, and the Appendix. For a convenient elaboration of the main argument here, see my short paper *Basic Rights*, *Rechtstheorie*, Beiheft vol. 15 (1993).

Our analysis meets the standards we set earlier for any new and improved theory of political obligation. In developing this analysis we have not tried to find general reasons that would underwrite an obligation of all people at all times and places to obey all the laws in their country. Rather, we have focused throughout on a system-specific reason, as given by the idea of a democratic system of civil rights, for saying that citizens have a duty to obey the rights laws there. This particular duty is not one that we assume to have been voluntarily taken on, nor is it said to be there on the basis of a transaction of some sort. And, finally, we have set things up so as to emphasize and take account of the case of people who are simply born in a given country or who are lifelong residents there; these are the primary progenitors of any such system of civil rights in that country, just as they are its primary beneficiaries.

What we have been looking for, in carrying through this analysis, are reasons specific to a given political system that could bind people to conform with the laws, simply as laws, in such a system. If such a system actually exists to an appreciable degree in the country in which a group of people live, then we have found reasons that will bind such people to the laws there, merely insofar as these are duly enacted laws. Or will bind them with respect to an important subset of these laws.⁹ In following out the lines of the new approach we have come up with a definite and workable notion of political obligation.¹⁰

⁹ See *System of Rights*, ch. 8, for a more detailed working out of the notion of political obligation (or allegiance, as I prefer to call it) developed in the present section. A complete text, together with abstracts of the entire book and of each individual chapter (abstracts written by me in 2003), was put on line by Oxford University Press in 2003, at “www.oxfordscholarship.com”.

¹⁰ For a considerably more extended account of matters discussed in section two, see my article, *Political Obligation*, in Richard Bellamy and Andrew Mason (eds.), *Political Concepts*. Manchester, England: Manchester University Press, 2003, p. 41-51, at p. 41-46. An earlier and shorter version of the present paper appeared in Spanish under the title “Obligación Política: Algunos Problemas y Un Intento de Solución,” *Doxa*, 25 (2002), p. 247-260. “Political Obligation: Some Problems and an Attempted Solution,” with a number of additional revisions, is published in English for the first time in the present volume.