Social Contract and Associative Obligation

Albert Weale

Address for correspondence:

Department of Political Science
School of Public Policy
University College London
29/30 Tavistock Square
London
WC1H 9QU
UK

Tel: 44 (0)20 7679 4993
Email: a.weale@ucl.ac.uk

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In *Political Obligation* and the related papers in *Political Studies* John Horton sets out an associative account of political obligation. The two principal theses argued for in this account are, firstly, 'that political obligations are a concomitant of membership of a particular polity' and, secondly, that a polity is 'a form of association that has as its generic value the goods of order and security' (Horton, 2010: 191). For Horton the essence of a satisfactory theory of political obligation is contained in these two propositions. The plausibility of each proposition is derived by informal empirical arguments, which run as follows. Firstly, as a matter of fact, most people, at least those in stable polities, think of themselves as having a special connection with the society in which they were born and grew up, and this social fact makes political obligation a concomitant of membership of a particular polity. Secondly, polities are forms of association that have distinctive value for their members through their unique ability to supply the goods of order and security. So, the associative theory rests upon a social fact that explains why any particular polity is the object of obligation – people as a matter of fact do feel a special connection with their polity – as well as the social fact that order and security are generally goods for human beings under almost any likely social order. This union of the particular and the general is just what we are supposed to need in a theory of political obligation, according to Horton. The associative account captures two requirements that we should want of any theory of political obligation, namely that the obligation is not owed to everyone but to a particular polity and that it is non-voluntary (Horton, 2010: 148).

There are a number of tricky issues involved in the statement and articulation of this theory that any proponent of this view has to deal with. For example, such a proponent needs to distinguish between institutional and moral obligations, seeing political obligation as a special case of the latter. The proponent also needs to be clear how far beyond the scope of legal obligation runs the writ of political obligation and why what we have in the case of associative theory is an account of actual, rather than merely subjectively perceived, obligations. However, I do not propose to discuss these issues in any detail in this paper. This is largely because Horton's account deals with them very well, rebutting some obvious objections and so adding plausibility to the associative account. Rather than be concerned with the substance of the theory, I shall be principally concerned with issues of method. Horton's account of associative obligation is accompanied by some interesting and thoughtful methodological theses that are part of the support for his own distinctive substantive thesis. And it is to these methodological theses that my attention will be principally directed.
Why is it worth focusing on the methodological aspect of Horton’s work? The first reason is that Horton is self-conscious about his methodological approach. He offers his approach as an interpretative theory. Although he does not offer an extended abstract argument in favour of his approach, we are invited to see an account of political obligation growing out of a reflective interpretation of ordinary moral consciousness and a few elementary truths about the goods that only a political community can provide. However, although there are a number of remarks made about method throughout the text of *Political Obligation*, its methodological programme is largely worked out through an exhibition effect. We are invited to see the value of the method by showing its utility in the working out of a particularly well-known and intractable problem. One question lurking around here is how far method determines, or at least shapes, content.

It is helpful in this context to place Horton’s interpretative method in a broader characterisation of methods in political theory. The methods of political theorists are linked to their styles of reasoning. These styles of reasoning may be placed on a scale running from the demonstrative to the oracular. At the demonstrative end are those theorists who work from a limited number of assumptions – assumptions that may be taken as self-evident, axiomatic or the core of a particular value system – from which they derive conclusions through a deductive process of reasoning. Formal social choice theorists fall into this category, but so do those normative theorists who aspire to one of the many forms of fact-insensitivity. At the opposite end are the oracular theorists, of whom Nietzsche is the paradigm. Oracular theorists are theorists of discontent and therefore theorists hostile to forms of argument that concede the capacity to reason demonstratively to their intended audience. Instead, the task is to produce a vivid picture of an alternative way of conceiving obligations and political relations. Their style is the opposite of deductive; it is aphoristic, poetical, provocative.

Of one methodological truth I think we can be sure. There has to be a large range of options between these two extreme alternatives. Horton's approach is one of the most interesting of these intermediate options. It shares with the oracular approach a scepticism about the reach and scope of deductive reasoning, seeing at crucial places the need to put a certain picture before our minds rather than set out a chain of inference. However, it shares with the demonstrative approach a preference for seduction over provocation. It invites readers to reflect upon a certain set of assumptions that they take for granted, and then offers an explication of those assumptions in a form that entices those readers towards a particular destination.

On my understanding of the issues, the place of reflection, and the distinct but related notion of reflective equilibrium, is central to how we are to evaluate this method. For the two extremes I have already referred to – the unabashedly demonstrative and provocatively oracular – both dispense for their own reasons with any attempt to anchor normative arguments in an understanding of ordinary moral
consciousness. Horton takes the opposite approach. The content of ordinary moral consciousness provides a constraint upon what we can say in our theories. The aim is not produce a reflective equilibrium, since such an equilibrium presupposes a relationship between abstract theory and the contents of ordinary moral consciousness, and Horton rejects the appeal of abstract theory. He has a particular conception of what a normative theory is, and on that approach there is no abstract theory to come into relation with moral consciousness.

The Methodological Stance

Horton is remarkably clear about his preferred methodological position, which is stated towards the beginning of Political Obligation in a passage I shall quote at length:

'Much of contemporary political philosophy is strongly normative. That is, it sees itself as primarily in the business of seeking moral justification for political institutions, practices or principles. It also tends to operate with a particular model of what a moral justification should look like. Typically, it is thought that moral justifications need to be grounded in first principles that are intuitively appealing or that are part of a broader picture that convincingly hangs together…. In what follows I do not entirely depart from a weaker reading of what this involves, but I also see the theoretical or philosophical task as more one of interpretation, more "hermeneutical", than a matter of justification from first principles. Interpretation can itself be understood as a kind of justification, and to some extent that tends to be how it plays out in the subsequent argument. However, it is a rather more informal and relaxed conception of justification than many philosophers would find acceptable. My preferred designation is that what is sought is a philosophical or theoretical explanation. For my guiding thought is that if we can make sense of the idea of political obligation in a way that is intellectually coherent and morally unobjectionable then this constitutes a convincing theoretical or philosophical explanation of it.’ (Horton, 2010:9).

Horton takes one central implication of this approach to be that any account of political obligation 'should seek to accommodate the central features of ordinary thought about these matters', 'especially if its central features are widespread across many different societies and deeply embedded in social life' (Horton: 2010: 9). He also urges that it meets a number of other requirements that we should impose of any theory of political obligation, in particular: it explains the standard case, where people are born into a polity; it deals with cases where obligation is significant; and it meets the particularity requirement (Horton, 2010: 10).
The methodological thesis raises an interesting second-order question about how we are to go about determining the plausibility of the method itself. What should be our method for evaluating the force and reach of these methodological claims? Are we, for example, supposed to be as relaxed about this evaluation as Horton says we should be about our understanding of first-order justification? Could we simply say that another method would produce a different, but equally plausible, theory of political obligation? To this last question, the answer has to be ‘no’. If the methodological thesis is right, then no theory that does not square with ordinary moral consciousness can be justifiable, but it is that methodological requirement that yields the distinctive content that the associative theory contains. To see this, consider a parallel case. Suppose we accept that, in the ordinary moral consciousness about economic justice, considerations of desert figure strongly and so we should want our theories of economic justice to make the idea of desert central. Yet, as a matter of fact, pretty well all the major theories of economic justice are sceptical about the role that the notion of desert can play as the ground for a just distribution of resources. So, if we adopt the interpretative method, on the model recommended by Horton, and say that we must anchor our theory of economic justice in an account of desert, we should reject all the major current theories of economic justice on methodological grounds alone. Method constrains content. Conversely, if we regard Horton's discussion of political obligation as some sort of exhibition project for the interpretative method, then anyone who finds the content of associative theory attractive will have difficulty detaching it from the method used to justify the theory. If content does not exactly vindicate method, it comes close to doing so.

Determining the method for methods is one of those occasions in life when, like swimming in the sea, it is better to plunge it briskly rather than agonise on the shore about how cold the water is going to be. So here is the outline of my brisk plunge. I shall first seek to clarify the meaning of ‘explanation’ in the account of method that Horton offers. Secondly, I shall say something about the role the phenomenological method plays in Horton's argument, drawing attention to what may be thought of as an anomalous relationship between the presuppositions of that method and the occasions on which the problem of political obligation typically arises. That leads on, thirdly, to an exploration of what it means to provide reasons to agents for their political obligations in situations in which the phenomenology of obligation cannot be taken for granted. Finally, I shall offer a sketch of one version of a contractarian account that is intended to provide not only an account of reasons for obligations but also an account of the powers that members of a community might have for enforcing the governance that is part of a political community.

What Is Interpretative Explanation?
In order to understand what an interpretative explanation is, let us return to three sentences in the methodological manifesto:

'Interpretation can itself be understood as a kind of justification, and to some extent that tends to be how it plays out in the subsequent argument. However, it is a rather more informal and relaxed conception of justification than many philosophers would find acceptable. My preferred designation is that what is sought is a philosophical or theoretical explanation.' (Horton, 2010: 9)

So the crucial equation here is between 'interpretation' and 'a philosophical or theoretical explanation'. How are we to understand this relationship?

Sometimes explanation is contrasted with interpretation. The principal reason for making this distinction is that an interpreted item clearly bears a logical relationship to its original whereas the relationship between explanans and explanandum, on at least some influential views, is logically distinct. Explanatory variables relate on only contingently to explained variables. It is partly for this reason that von Wright distinguished explanation from understanding. An explanation is nomethetic whereas understanding provides us with the reasons that make an agent act according to the logic of the practical inference, by which an action is the conclusion of a practical syllogism. Of course, if we have a broad concept of explanation, for example following Braithwaite's definition as an answer to a why question that gives intellectual satisfaction, then we are not pressed to make the distinction between explanation and understanding. However, as a matter of terminological convenience, if nothing else, there is some reason to keep this distinction in mind.

So what Horton calls 'philosophical or theoretical explanation', I shall call 'understanding', meaning by this an explication of the meaning of concepts and their implications. This is a logical analysis, though it may rely upon some empirical claims in explicating the rationale of particular concepts. It is important in the way that Horton constructs his theory that the concepts with which he is concerned are concepts that appear in the mental life of the members of society. It is this that leads him to the phenomenological method.

The Phenomenological Strategy

The phenomenological method plays a central role in Horton's account. It provides a way of meeting the particularity condition, which is one of the conditions that he makes a requirement of any adequate theory of political obligation. It is a fact that people feel a special association with their polity. They are conscious of themselves as members of their polity. This does not mean that they are complacent or
content with their polity. Indeed, their membership may lead them to be especially critical of the government of the their polity because they are acting in the name of the members of the polity but contrary to the reflective convictions of (at least) some members of the polity.

From one point of view, the phenomenological approach embodied a modest intellectual strategy. Rather than focus upon theoretical idea of sometimes doubtful cogency – like tacit consent or a hypothetical contract – the phenomenological strategy focuses our attention on the more mundane considerations of what people think. Thus, in a crucial passage at the beginning of the defence of the idea of associative obligations, Horton ‘reminds’ us of what we already know. There is no reason why even when leading a reflective social life, we should already know about tacit consent or hypothetical contract. In some sense these are esoteric matters. By contrast, the sense of belonging and identification that people have with their political community is not esoteric at all. It is a fact of the common moral consciousness of which we may need to be reminded, but not something that requires deep ratiocination. We may need to be reminded because alternative pictures threaten to hold us captive, but once we are reminded in this way, our theorising can begin.

Note that consistency with the demands of the ordinary moral consciousness plays a central role in the articulation of the argument. It figures among the first condition that Horton states as a requirement on a satisfactory account of political obligation. In passing it is worth noting that there is a great deal to be said for this condition. That normative theories with seemingly impressive intellectual pedigrees can produce counter-intuitive results is not simply a matter of philosophical or theoretical interest. We have examples in practical public reasoning of the influence of theories that have a malign effect. For example, when the theory of the optimal allocation of scarce health care resources first started to be implemented, it rapidly became clear that it gave counter-intuitive results. In Oregon for example, it would have led to a situation in which a clear benefit for a few – appendectomies – remained unfunded because of a modest benefit to many. More generally, we can never have the distinction between a striking and interesting result and a *reductio ad absurdam*, unless we introduce some requirement of consistency between the judgements of ordinary moral consciousness and the implications of a well-developed theory.

From this point of view, the phenomenological strategy is a modest one, both in the sense that it requires us to inspect something that should already be familiar to us and is not esoteric in any respect and in the sense that our conclusions should not stray too far from what ordinary moral consciousness would deliver. On the other hand, the phenomenological strategy is a bold one. Here is a problem – the problem of political obligation – that has been with us in one form or another since the days of Socrates. The collection of people who have written about it sounds like a roll call of the great books of the past: Plato, Sophocles, Aquinas, Hobbes, Locke, Rousseau, Kant, Hegel, Thoreau, T.H. Green up to the leading
theorists of our own day. A problem that puzzled and prompted all these minds into writing is going to yield to an analysis in which the scrutiny of ordinary moral consciousness dissolves a significant part of the problem. I conjecture that it was these bold implications from what appeared to be a modest method that attracted those like Margaret MacDonald and Thomas McPherson to the sort of ordinary language analysis by which long-standing philosophical problems were dissolved rather than solved. At the time, the effect of ordinary language analysis was an emancipatory one, since people felt themselves freed from the burdens of traditional theorising. Of course, Horton accepts that conceptual analysis alone will not enable us to derive a theory of political obligation (Horton: 2010: 143). Nevertheless, he does want to capture the spirit of the conceptual argument (Horton, 2010: 145).

An account of obligation is an account of what reasons can be properly offered to people to explain to them why they have any obligations, including political obligations. It follows that if the associative theory is correct, then it should point to the reasons that can be used to persuade people that they do have political obligations. Reflecting on the fact of attachment by those living in a society to that society’s institutions and practices and bearing in mind the virtually unique capacity among other associations of a political community to supply security and order should lead people, as well as theorists, to think that they genuinely have reasons for accepting their political obligations. If they understand these two propositions in a sufficient full meaning, those inclined to doubt that they have political obligations are provided with good reasons to quell their doubts, at least in the central case where individuals are born into a polity. According to Horton, the precise scope of these obligations need not be determined by the philosophical theory of obligations and we cannot infer that all of those over whom a polity asserts its authority are necessarily properly subject to that authority. Nor can we draw much by way of inference to stateless societies or societies that have complex layers of authorities within their system of governance. However, Horton thinks that it is straining too much at the limits of political theory to expect it to settle such matters. Sufficient unto the day is a coherent and plausible account of political obligation in the central, paradigm case.

In this context I want also to notice a tension between Horton's use of the phenomenological method and his account of the occasion on which the problem of political obligation arises. The phenomenological method relies 'taken for granted' assumptions. As Horton says, 'Where citizens are generally tolerably content with the political arrangements of their society, they may not choose and will not be compelled to think much about their relationship to the political community of which they are members' (Horton, 2012: 2). By contrast, the occasion of theorising about the problem of political obligation is said to be the great crises of identification, from Socrates onwards. In these crisis situations there is deep, if not always widespread puzzlement and questioning about the grounds of political obligation within societies in which theories of obligation are articulated. Horton notices that there is a tension here, but thinks that he can turn it to his advantage: 'Yet, although it is in circumstances such as these that political obligation will
most probably be experienced as a problem, it is to less troubled times that we should look for an "answer" (Horton, 2010: 2), holding that it is ironic that it is in those times when our need for an answer is most urgent that it is most difficult to give an answer.

Within this irony, we are detecting an important ambiguity about the nature of reasons in our understanding of political and social life. It is a conceptual truth of human action that there cannot be action without reasons. To say that someone is acting is to characterise their intention in acting, and intentions and purposes are stipulated in terms of reasons. However, we can distinguish the role of reasons in helping us understand why someone behaves as they do from reasons as providing agents with considerations having merits as to why they should do what they are going to do. Sometimes this distinction is marked as that between 'subjective' and 'objective' reasons, but I will mark it simply by the distinction between having reasons and having good reasons, whereas a good reason is distinguished from a reason by its having some warrant for its adoption. To go beyond phenomenology is to point to this warrant. To explore this theme, I want to step back from Horton's own approach to reflect on what is involved in the problem of obligation.

**What Is the Problem of Obligation?**

Let us step back for a minute from the details of Horton's own approach to consider the problem of political obligation in general. Political obligation is a special case of moral obligation in general, and the problem of moral obligation was well put by Prichard a century ago:

> ‘Any one who, stimulated by education, has come to feel the force of the various obligations in life, at some time or other comes to feel the irksomeness of carrying them out, and to recognize the sacrifice of interest involved; and, if thoughtful, he inevitably puts to himself the question: "Is there really a reason why I should act in the ways in which hitherto I have thought I ought to act?"' (Prichard, 1912: 1)

On this account the problem of obligation is that the fulfilment of duty is irksome. Duty contrasts with inclination or with a sober calculation of self-interest, leading actors to question the rational foundations of their obligations. In this situation, is there a form of reasoning that can be offered to individuals that will make the fulfilment of duty the pursuit of the agent’s own reasoned purposes? In particular, is there any way of showing that the fulfilment of duty is somehow rational?

Prichard's statement of the problem is not exactly accurate when we think about obligations in general, let alone political obligations. In the first place, there is a distinction implicit in what he says but a
distinction that needs to be brought out, namely that between finding a reason that counteracts the siren voice of prudential self-interest – perhaps the distinctively 'irksome' element of obligation – and the need to find a reason enables us to evaluate what we have come to believe through education and upbringing, a stock of understandings that we may have adopted unreflectively. Obligation becomes problematic when it threatens either personal profit or habit induced by tradition. However, Prichard's statement also needs to be modified in respect of a quite distinct kind of case, namely the one in which duty becomes irksome because if conflicts with another duty, which we may think of as the Antigone case. Here a political obligation becomes problematic because it conflicts with some other deeply held conviction. Now from one point of view, this case is different from the profit or habit case, since in those cases the perplexed person is asking what role does obligation of any sort have when confronted with self-interest or unlearned habit, whereas in Antigone situations the person confronting the choice is not questioning the weight of obligation as such, but the weight of particular obligations. Nonetheless, all three share a thrust to question some form of political obligation, although for the present I want to concentrate on the straightforward case, where there appears to be a conflict between prudential self-interest and political obligation.

Prichard's statement is also useful because it reminds us that there are two strategies for dealing with the problem of obligation. The first is to deny the premiss that leads to the questioning; the second is to provide an answer to the question. Accounts of obligation use one or both of these tactics. Thus, there are various ways of denying the premiss. (Compare Austin's distinction between excuse and justification.) Consider the range of approaches that fall into the first class. On some approaches obligation is not irksome because there is a conceptual connection between being a member of an association and having obligations. Denying an obligation is like being asked to perform the impossible. You cannot play football without a ball, and if you try you have simply failed to understand what it is to participate in the practice of football. Or, an alternative approach, one's identity is somehow constituted by one's membership of a political community, so to deny one's obligations is to deny some aspect of oneself, and this would be more irksome that affirming one’s identity through acceptance of the obligation. Or, one can deny that there is anything self-evident about acting in one's own prudent self-interest, a line that has been taken by Barry and Williams (hardly birds of feather!) among others. On these accounts, a reason is a reason is a reason. If you have reasons for fulfilling your political obligations, then those reasons are all of a par. There is nothing irksome in acting for the best reasons.

The alternative response to the Prichard dilemma is to accept that there is a genuine dilemma – there is for example something prima facie odd in agents acting against heir own self-interest – but to insist that it is possible to provide an account of why such seemingly non-prudential actions can be justified. It is this response that takes us beyond phenomenology.
Beyond Phenomenology?

Suppose a group of people is puzzled as to why they have an obligation to uphold and play their part – however modestly that part may be defined – in the maintenance of a political order, largely out of concern for their prudent self-interest. Someone who favours the associative theory of obligation will point out to them that they stand in a special relationship, namely that of membership, to the polity. Members, it will be urged, typically feel a special sense of attachment to their polity. However, our putative dissenters may not deny that in some sense they members; rather they are not moved by that thought. They treat is as a contingent fact of their biography, and not by itself a reason to action or compliance. At this point the second strand of argument will come in and the theorist of associative obligations will say that the political association provides the goods of order and security. Our dissidents acknowledge this, and accept that these goods are valuable. However, they deny that these facts form a ground of obligation. They accept that it is valuable to have these public goods, but they do not see why they should contribute to them. They do not see why they should pay their taxes or lead a law-abiding way of life. Moreover, since the distinctive political goods of political association are pure public goods in the economists' sense – that is to say, if they are available to anyone they are available to everyone – there is an opportunity to free ride, and our dissidents do not see why they cannot be free riders. For them the burdens of compliance are greater than the benefits.

It is at this point that we need to go beyond both the phenomenology and the fact of there being benefits to a theoretical account. This is the tradition of Hobbes and the other contract theorists, and it is the tradition that has been revived in modern contract theory by the work of Grice (1967) and Gauthier (1986). The key insight within this tradition is that as long as constraints on the freedom to act in one's self-interest can be rationalised in terms of the interests of the individuals to whom those constraints are applied, then it can validly be said that it is protecting those persons’ own interests. In an early exposition of modern contract theory, Grice (1967: 100) captured this feature well by saying that to claim that some action \( X \) was prima facie obligatory in a society was to claim that in that society it would be in everyone’s interest to make a contract with everyone else to do \( X \). Thus, for Grice it would not be true to say of someone for whom it was irksome to keep a particular promise that it was in that person’s interest to do so. However, it would be in their interests to make a contract with everyone else in which promise keeping was prima facie obligatory. In an analogous way, Gauthier frames his account of obligation as one in which society is seen as a co-operative venture to mutual advantage such that ‘in certain situations involving interactions with others, an individual chooses rationally only in so far as he constrains his pursuit of his own interest or advantage to conform to principles expressing the impartiality characteristic of morality’ (Gauthier, 1986: 4). Thus, there is a reason – understood as valid by virtue of the extent to
which it protects an individual's share in a common interest that is the ground of his or her own separate interest – for individuals to accept some irksome social obligations. The good of each depends upon the good of all, but only because the good of all is made to depend upon the good of each. It is this second structure of answer that I think is correct, but it takes us beyond the phenomenology in an interesting way. It requires us when seeking for reasons for political obligation not only to note the social fact that people generally take it that they have reasons, but also to explore the extent to which these otherwise taken-for-granted reasons are good reasons.

One problem with social contract theory is that as a theoretical construction, it is hard to know what assumptions to make about the reasons that actors would entertain when forming a contract. My own solution to this problem is to borrow a line of analysis from Brain Barry and say that the way to build an account of the social contract is to use the empirical method. In particular, we find empirical examples of social contracts formulated under conditions that incorporate the circumstances of justice: limited altruism, moderate scarcity and rough equality of power. There are examples of such empirical social contracts and they are to be found in the work of Elinor Ostrom (1990) on common pool resources. With common pool resources there is both a public dimension and some rivalness in use, since appropriation by some, in particular appropriation by a sufficiently large number of people, will deplete the value of the resource for any particular individual. Examples of common pool resources of this type cited by Ostrom include fishing grounds, groundwater basins, grazing areas, irrigation canals, bridges, parking garages, mainframe computers and streams, lakes, oceans and other bodies of water. These common pool resources are typically large enough to make it difficult, if not impossible, to exclude potential beneficiaries within a community from use (although the ability to exclude members from other communities turn out to be significant). However, the actions of the non-excludable potential beneficiaries can spill over onto the use by others, as the example of over-fishing illustrates only too well, or as can be experienced by anybody who has tried to park their car at a busy time of the day in a public car park.

Ostrom’s approach to examine empirically cases in which such common pool problems have been successfully managed (sometimes over centuries) by contrast with those cases in which they have not been managed successfully. She identifies a number of conditions that make common pool resource regimes stable over time. This is not the place to discuss these conditions in detail. I shall simply note here that using such empirical examples as evidence of what would be agreed by persons in an initial situation of equality yields an account of what people would agree in the allocation of resources and the structure of political authority.

The fundamental conception of society that lies behind social contract theory is then one in which the members of society share certain common interests and equality of status. The corresponding conception
of the person that this requires can be stated in terms of the requirements for a theory of rational human action. The key element in such a theory is the ability of persons to have a sense of their own interests on the one hand and the ability to make commitments to others to maintain common interests on the other. It follows from these twin requirements that rationality must be more than consistency of rank-ordered choice exhibited by agents at any particular time in the face of given alternatives. It must at least require that individuals be able to see enough of the consequences of their choice to make some present sacrifice in order to achieve some future good. This is compatible with saying that individuals always act from reasons thought of as their present desires, including their present desires for their future good. It is not to say that all action from present desires is effective in securing future good.

The conception of individuals and society that underlies the social contract model proposed in this work is thus a mixture of elements that are common to any account of social contracts, consistent with certain methodological and empirical assumptions, as well as elements that are specific to the particular contractual model being advanced. The general elements include the ideas of society as a system of rules, roles and relations (Emmet, 1966) requiring norms of co-operation as well as institutions for the regulation of competition. Individuals living in a society are only boundedly rational and so their individual and collective reasoning is defeasible, being liable to revision in the face of experience and the particularity of circumstance. Since social co-operation involves reasoning, we have to take this element of boundedness into account in our theory. That theory's specific elements rest upon the idea that a satisfactory account of obligatory norms in society conform to a social contract the terms of which provide some reason for individuals to constrain their otherwise free action. That contract will be just when it is made under conditions of a rough equality of power among participants. We thus have the ideas of common interests (the focus of the co-operative element), approximate equality (the constraining element on competition) and reasoning towards common collective action (which is nonetheless bounded and defeasible).

How does such a conception of society, particularly one stated in a highly abstract way, help us devise a theory that will bring together an account of justice in property and democratic deliberation on the other? One answer is that it serves to highlight the significant elements of society that will form models for such a theory. Actual societies vary in their regimes for property and political control. However, there is an empirically observable sub-set that meet the conditions of common interest, approximate equality and rational collective action, such that we can use their workings as a model, and therefore an indication, of what are the requirements for just and democratic design. The chief example to which I appeal are successful common pool resource regimes (Ostrom, 1992). In accounts of successful regime governance, we can understand how the parties will reason about public purposes and what concessions and burdens they will accept as fair.
Within a social contract approach, the principle of fair play emerges as a solution to the common dilemma that participants in the regime face. A simple appeal to generalisation will not suffice, since there is no valid inference from 'not everyone can free ride' to 'no one can free ride'. So the appeal has to be to a substantive principle, but it is a principle that can be given a rationale and which is related to a plausible conception of social life, at least under the circumstances of equality in which people can plausibly expect reasons to be offered them.

**Conclusion: Reflective Equilibrium?**
Obviously I have not tried within the limits of this paper to offer an alternative account of political obligation to that offered by Horton. There are too many loose ends left for that ambition to be plausible. However, I hope that the sketch of social contract theory explains how we might go beyond the social facts revealed by the phenomenology of identification and the connection between political association and order and security.

In the methodological manifesto that I quoted at the beginning of this paper, Horton contrast an approach to normative theory in terms of justification from first principles with his own phenomenological approach. There is a danger that this may be misread as a contract between deduction and reflection. I do not think this intended, but the passage could be read as posing an unnecessary opposition. We are either to take the concerns of ordinary moral consciousness seriously or we are to work from first principles. Some political philosophers who work in a first principles model do reject the anchor of the common moral consciousness, denying for example that reflective equilibrium plays a role in their methods. However, whilst it may be true that only if you are a justificatory theorist can you reject reflection on the common moral consciousness, it does not follow that if you believe in justificatory reasoning in a strong sense that you reject ordinary moral reasoning. That it just the importance of the method of reflective equilibrium.

The need for a theory of normative reasons arises when our first-order convictions are uncertain or come into conflict, that is to say when there is not the coherence of view at the phenomenological level that associative theory requires.

That brings us to the second problem characteristic of modern social contract theory, namely that of content. The problem of content is one that arises because of disagreements at a first-order level about what the right course of action might be in relation to specific types of issue. For example, how can we resolve disagreements about what it is that justice requires of us (equality, desert, free appropriation or some other principle) or about the right way by which individual preferences are aggregated into a collective choice (majority rule, super-majority rule or unanimity)? This problem of content can itself be understood as a combination of two related problems, that of indefiniteness and that of conflict. To see how these two issues combine, consider an example from Henry Sidgwick, namely the indefiniteness of the individualist idea of contractual exchange free from force and fraud. Sidgwick (1891: 84) notes that one element of an individualist theory of contract is the requirement that there be no wilful or negligent misrepresentation of material facts by those participating in the contract. Yet, what does wilful or negligent misrepresentation imply? This seems to be a question of clarification. Yet, it can also be cast as a question of conflicting principles, once we realise that one way of reducing the ambiguity is to define different possible relevant principles. For example on one definition of avoiding wilful or negligent misrepresentation, sellers should divulge all they know to a purchaser; on another version, each party to a
contract is entitled to take advantage of such knowledge as they have lawfully acquired. By choosing one of these principles we have clarified the meaning of wilful or negligent misrepresentation, but in doing so we have also specified the choice between incompatible principles.

In the face of these problems of indefiniteness and clarification, social contract theory presents itself as a method of political ethics. That is to say, it is supposed to provide an intellectual device for determining principles of justice and enabling us to reconcile otherwise conflicting judgements and principles. This is a constructivist project. It is the project of constructing a theory such that we have a coherent understanding of how principles relate to one another and what the content of a political morality might be. It achieves this by formulating a theoretical decision procedure for ethics. However, this has to be tested against ordinary moral consciousness. But only a theory of this order will perform the requisite task I submit.
References