Obligations: (local) Politics or (universal) Reason?

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Obligations is both a local institution, influenced by politics, and a universal institution, influenced by reason. It is a distraction to ask which vision should be allowed to predominate: neither truth should be allowed to obscure the other. The real question is how best to accommodate both.

Obligations is a local institution. We consider cases in our home jurisdictions, resolving them from our own traditions, and paying due attention to authoritative political norms on how disputes should be resolved, and our sense of what is best in the community’s interests. We listen, no doubt, to wider concerns – how such a dispute might have been resolved in the past, how it might be resolved elsewhere or in the future – but ultimately each case calls for resolution here and now, rather than in some heaven of pure concepts.

But Obligations is also a universal institution. Its reasoning makes sense across the world and across time. Reason is not limited by national or cultural boundaries, and does not respect local notions of hierarchy – if a thing is true, it should not matter who says it. As reasoning beings we listen, of course, to narrower concerns, but ultimately should make a judgment based not on what is most convenient for those around us, but on justice and reason.

Our dilemma is that both of these accounts are true. Obligations is necessarily local, and influenced by politics. No-one should ignore where they are, or what time it is – nor can they conscientiously ignore the good of the community. A timeless and placeless theory of Obligations will never correspond very closely to local realities, and indifference to what the people actually want from their legal system is no virtue. But Obligations is also necessarily universal, and influenced by reason to a greater or lesser extent. Every issue we consider has been considered many times before, seen from many angles, by legal thinkers with at least as much claim to understand the implications as we have – and in some cases more. And allowing temporary local expedience to become the main consideration in our discourse is a denial of legality, in any sense that we understand that term.

My paper explores this tension, which underlies many of the high-level disputes over modern Obligations. Is obligations about Justice, seeking to be fair, or is it Instrumental, seeking to achieve politically-legitimated policy goals? Is Obligations really about rights, and if so, how to we define those rights – by local standards, or by some principle of universal reason? Is Obligations really about rational principles of personal responsibility, or has it become simply a local administrative mechanism for insurers to adjust their mutual liabilities? If we re-state the law, who should produce the restatement, and to which principles may the re-staters appeal? And should Obligations develop by reference to reason, or so as better to serve our local communities?