Moving Beyond
Solidarity Rhetoric
in Global Health

THE CONCEPT OF *OBLIGATIO IN SOLIDUM:* A CLASSICAL STUDY

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1. INTRODUCTION

The expression *obligatio in solidum* has become a buzz phrase in contemporary discourse on acts of solidarity and cooperative endeavours. Consequently, it is appropriate that the expression is elucidated from its ancient Roman source as a preliminary to its appreciation. This paper aims to give reflective attention to the expression, citing relevant instances from its earliest Roman sources. The expression *obligatio in solidum* (hereinafter *OS*) is an amalgam of the substantive *obligatio* ('duty' 'obligation', 'commitment' or, 'responsibility') and the prepositional substantive phrase *in solidum* (preposition *in* + the accusative *solidum* ('whole' 'wholly', 'altogether', 'total' etc.). In its stark simplicity, *OS* means an imperative, a requirement, or a professed duty to a given whole. What is the 'whole' which requires obligation or commitment? We answer this question by exploring (1) *obligatio* and (2) *in solidum*, and *OS*, corresponding to the three main sections that follow this introduction.[1]

[1] Note that *obligatio* is one of the most discussed topics in ancient Roman legal discourse. Given the limited space we have, we are far from promising any detailed discussion of it in this paper. The latest discussion of *obligatio* is that of Ibbetson, D. '*Obligatio* in Roman Law and Society', In Du Plessis, P. J., Ando, C., Tuori, K. (eds.). *The Oxford Handbook of Roman Law and Society* (Oxford: Oxford University Press, 2016), 569–81. Ibbetson however does not discuss the intentionality and deliberative agential capacities which underscore *obligatio*.

2. OBLIGATIO

2.1 *Obligatio*

In the standard Latin Dictionary of Lewis and Short, *obligatio* simply means an 'obligation', 'duty', 'binding together', 'engaging or pledging'.[2] Etymologically, *obligatio* comes from the preposition *ob* ('on account of', 'because of', 'for the sake of', etc.) + *ligo* ('a tie'), a 3rd declension substantive. The verb form *obligare* comes from *ob* + the infinitive *ligare* ('to tie').[3] For instance, *obligo* translates as *I bind or tie together*, *fasten together*, etc.[4] Therefore, whenever one has an obligation to do something it basically means that one ties oneself to do that thing. Consequently, to fulfil an *obligatio*, be it explicit or implicit, means to untie oneself from the said task, like contract or undertaking. As Gaius neatly puts it in the case of *obligatio* pertaining to a contract, "one who gives with the intent (*animo*) to pay means to untie (*distrahere*) rather than tie (*contrahere*)."[5] In this section, we seek to explore some features of *obligatio* as the Romans understood it, keeping strictly in mind how these features underscore *OS*.

Being committed to a whole or performing an obligation to achieve some particular effect indicates, first and foremost, that *OS* is associated with performative actions. And we shall

2 Lewis, C. T. and Short, C. *A Latin Dictionary* (Oxford/Clarendon Press, 1879), 1236.

3 Latin translations which are not ours will be indicated.

4 The contemporary understanding of obligation retains this pristine meaning. The *WebWord* lists the following meaning of obligation: (1) "The act of binding oneself by a social, legal, or moral tie to someone"; (2) "a social, legal, or moral requirement, duty, contract, or promise that compels one to follow or avoid a particular course of action"; (3) "a course of action imposed by society, law, or conscience by which someone is bound or restricted." The *Oxford English Dictionary* also has "an act or course of action to which a person is morally or legally bound; what one is bound to do; a duty, commitment." These modern senses testify to how *obligatio* is closely connected to intentional actions.

5 Translation is taken from de Zulueta, F. *The Institutes of Gaius: Text with Critical Notes (Part 1)*. (Oxford: Oxford University Press, 1958).

OS is associated with performative actions.

argue that these performative actions could only be intentional and determinate act. We are guided by the conviction that if two or more people bind themselves to a given whole, they do so to achieve a particular outcome which they willingly want or are motivated to do so and not something imposed on them, and they regard the expected effect or outcome as purposeful. But first, let us state what we will not do. If *obligatio* entails the idea of tying oneself to something, then it implies some kind or degree of compulsion. Speaking about compulsion, it is important to identify individuals to whom one owes an obligation. Compulsion entails the idea of doing something against one's will (*voluntas*). More specifically, it "involves coercing, forcing, or bending the will of someone to undertake something they will not do naturally or freely."[6] In some contexts, we are compelled by our (for instance, natural) deficiencies or inadequacies to enter into collaborative enterprises with others by way of dealing with them. As when Plato says in his *Republic*: "Come… let us create a polis from the beginning, in theory. Its real creator, it seems, will be our needs" (*Republic* 369c7-9).[7] We may roughly refer to this sort of compulsion as 'natural'. We contend that the kind of *obligatio* associated with *OS* excludes natural obligations, like the compulsion to eat. It also excludes the following instances of obligation: (1) when one is tasked to perform a responsibility one would not willingly do, or (2) one would perform a task due to a distinction in social status or biological relations. Let us consider these two instances.

Concerning (1), in Rome, the imperative from a master to a slave counts as *obligatio* but does not have anything to do with *obligatio* associated with *OS*. This is because for the Romans a slave could not enter into a contract or any joint enterprise with the master, not even after the slave has been manumitted. Linguistically, the master could say that "I oblige you to do" (*obligo te rem facere*); the slave cannot use any of the active voiced verbs in relation to his master. The situation of the slave, therefore, points out a cardinal condition of the passive voice of *obligare*, as Ibbetson draws our attention to. Ibbetson writes that the passive voice of the verb *obligare* "could refer to the momentary act of becoming bound and the continuing state of being

Obligatio *associated with OS.*

6 Peprah, S. O. 'Re-Examining the "Compulsion Problem" in Plato's Republic', *Plato Journal* 22 (2021): 180.

7 Cooper, J. M. and Hutchinson, D. S. (eds.). *Plato: Complete Works* (Indianapolis: Hackett Publishing Company, 1997).

bound. Hence, a person might be *obligatus*; that is to say, he might have become obliged and still be obliged."[8] For reasons to be demonstrated in Section 3, we conclude here that *OS* entails a sense of *obligatio* that has nothing to do with doing something against one's will or sympathetic transmission of feelings. Thus, unlike the condition of the slave, there is a terminus to the obligation owed someone in the case of obligation associated with *OS*: one does not owe if one fulfils the total financial responsibility owed. In the case of (2), *obligatio* could emerge in the form of a responsibility we owe to individuals with whom we have sympathetic relationships, such as obligation to one's parents or former master. For instance, it was repugnant for a manumitted slave to renege on a 'voluntary' duty to his former master, especially if the master is medically needy or is in financial difficulty and the manumitted slave is in a position to offer the needed assistance but refuses. As when Justinian says: "the greatest loss of status is the simultaneous loss of citizenship and freedom, exemplified…in a freedmen condemned for ingratitude to their patrons."[9]

That noted, we now spell out the features we consider to be characterising the sense of *obligatio* in the expression *OS*: (1) the *obligatio* in *OS* is a voluntary act. Thus, contracting parties have the liberty (*libertas*) to make choices to attain some effect or outcome without duress or compulsion; (2) it is a determinate and intentional act, in the sense that the obligation emanating from acts of *OS* is purposefully, deliberately and positively conceived as a goal to be achieved or the performative instrumental act to attain the said goal; (3) it is properly associated with the conveyance, performance or enjoyment of right (*ius*),[10] and (4) could characterise contractual relations between individuals considered equal. In exploring these features, we consider the works of two Roman authors, Justinian and Gaius. Even though the works of these two authors are usually classified by scholars as 'post-classical' (perhaps, after Roman Republican period), we believe that their take on *obligatio* captures features (1)-(4) characteristic of almost all the periods of Roman history. In fact, they provide the most authoritative source of Roman law of obligation. That noted, we proceed as follows. Given the contrast between the sense of *obligatio* one owes to one's parents and *obligatio* arising from contract (*contractus*) or undertakings, it becomes apparent that the fecundity

8 Ibbetson, 'Obligatio in Roman Law and Society', 570.

9 Justinian, *Inst*. 16. Translated by Moyle, J. B. *The Institutes of Justinian* (Oxford: Oxford University Press, 1913). Note the distinction between free persons (*ingenui,* i.e., those born free) and a freed person (*libertini*, i.e. individuals manumitted from lawful slavery, see Justinian, *Inst*. 1. 9).

10 It is right to translate *ius* as 'right', 'just', and 'justice'.

of *obligatio* is revealed in its legal, moral, social and political senses.[11] But since *OS* was a legal expression used in Roman law, our focus henceforth shall be on the legal sense. On the legal sense Justinian's definition comes to mind.

2.2 Justinian and Gaius on *Obligatio*

We learn from the *Institutes* of Justinian the following sense of *obligatio*: "an *obligatio* is a legal tie (*vinculum iuris*) which binds us to the necessity of making some performance in accordance with the laws of our state".[12] Plessis observes rightly that even though this definition from Justinian is post-classical, it "aptly evokes images of the concept of personal liability (seizure of the debtor's body) in archaic [and early Republican] Roman law."[13] Justinian's definition apparently captures the legal sense of *obligatio*, and it invites a consideration of how our four features come to the fore. In the first place, we get the understanding that an *obligatio*, legally speaking, is an intentional and determinate act. The legal tie mainly instantiates as a contract or undertaking some individuals voluntarily incur or create. A classic example is contracting loan from a creditor or the exchanging of consumables. Contracting parties create or incur such responsibility because that is what they want or need (voluntary from the Latin *volo* = 'I want') and not something imposed on them by an external agent. Consequently, the principles emanating from a given contract are what the parties who voluntarily incur the obligation seek to abide by. We understand Gaius clearer that pertaining to contracts "one who gives with the intent (*animo*) to pay means to untie (*distrahere*) rather than tie (*contrahere*)."[14]

Here, Plessis is right that legal obligation (*obligatio iuris*) creates relationship between the person and the law, for instance, with respect to contracts between a creditor and debtor.[15]

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11 For instance, in his letter to Brutus, Cicero state a moral instance of obligatio as follows: "the obligatio to our mind and judgment, especially in matters pertaining to others, is more difficult and graver than the obligatio to [sic. search for] material wealth" (Cic. ad. Brut. 1.18.3).

12 Justinian, *Inst*. 3.13.

13 du Plessis, P. J. *Borkowski's Textbook on Roman Law (5th Edition)* (Oxford: Oxford University Press, 2015), 253.

14 Translated by de Zulueta, *The Institutes of Gaius: Text with Critical Notes (Part 1)*.

15 Lewis, C. T. and Short, C. *A Latin Dictionary* (Oxford/Clarendon Press, 1879), 1263.

Thus, for the Romans, contract is understood as a form of agreement between two or more individuals who concur to engage in intentional and determinate act to generate a perceived or real outcomes. The agreement Justinian speaks about (Justinian, *Inst*. 3.13) is 'intentional and determinate' because it could not be the outcome of an accident or mere coincidence. Nor does it come to be an instance where a party is coerced. The general principle is that when people enter into contract, each of them thinks about the perceived or real beneficial outcome and the appropriate means to acquire the outcome, and each concludes that the relative merit of the contract is perhaps far greater than what their solitary endeavours could guarantee. Therefore, in the type of contract where the parties reciprocally owe some service to each other (like in real obligations), it means that each of them comes to the bargaining table with some reasoned considerations and expectations, such that when the contract comes into force each agent expects the other to fulfil their part of the bargain. Therefore, all the contracting agents are collectively responsible for the outcome of the agreement. In another sense, the 'legal bond' (*vinculum iuris*) could also instantiate as a sortal kind in situations where only one of the contracting parties owes some duty to the others. We may want to follow Plessis to call this latter type of contract 'unilateral,' i.e., an agreement where only one of the contracting parties promises and engages to the other, to give, do or refrain from doing, something.[16] Whether an agreement is unilateral or bilateral, explicit or tacit, all Roman contracts and undertakings were legally enforced, even though the contract itself was initiated by individuals.[17] Moreover, any such bond could only be among equals, i.e., adult male Roman citizens. We shall return to this point in the next section.

'Intentional and determinate.'

The important point here is that for the Romans, *obligatio* pertaining to contracts had a direct connection with legality. In other words, the Roman law of obligation deals with rights and duties individuals owe to each other, especially in matters relating to social arrangements like contracts.[18] In fact, commentators are of the view that the principal source of obligation emerges from contractual liability.[19] An instance of a legislation in early Republican Rome

16 du Plessis, *Borkowski's Textbook on Roman Law (5th Edition)*, 258.
17 du Plessis, 258.
18 du Plessis, 243.
19 du Plessis, 243.

that bears this fact out is the following provision in the Twelve Tables (the first codified Roman law in 451/450 BCE). A debtor was legally required to pay his debt in thirty days. When the thirty days elapse but the debtor still refuses to pay his debt, the law grants the creditor many rights to deal with him to recoup his money. For instance, the creditor had a legal backing to seize the body of the debtor and arraign him before the court. Also, in the event the debtor refuses to execute the judgment of the court, i.e., pay their debt, the law further grants the creditor the right to bind the debtor either with thong or with fetters. The debtor could also face capital punishment or be sold into slavery for defaulting payment. We see that *obligatio* creates duty, wherein we have a duty-bearer of an intentional act and a receiver of the effects of the act. Therefore, *contractus* puts both the duty-bearer and the claimant of some right within the reins of justice (*ius*), in the sense that one could sue another if the latter fails to fulfil an obligation, together with its conditions, he has previously agreed to, and the former could also be sued if he reneges on a duty, he owes another contracting party. As Gaius puts it, we sue for our right and a penalty together against defendant who denies liability.[20] Justinian's take on *obligatio* is closely related to Gaius.

Gaius speaks about *obligatio* arising from contract (*contractus*) almost in the same way as Justinian. In Gaius' understanding, the law of contractual obligations is fourfold: contracts arise from either (1) *re* (from the holding of things, real obligations), (2) by verbal contracts (*verbis*), (3) by writing (*contractus litteris*, literal contracts), or (4) by consent (*consensus*). Our four features underscore all these fourfold types. For instance, in the case of (1), Gaius writes that "real obligation (*re obligatio*) is contracted, for instance, by conveyance on loan for consumption (*mutui datione*), and such a contract takes place properly in the case of things that are accounted for by weight, number, measure, including things such as money, wine, oil, etc."[21] In this instance, two parties agree to benefit from a cooperative enterprise in the sense that the conveyance of a thing in the form of a loan from one party to the other explicitly spells out a kind of agreement between them. In that case, we insist that the act is intentional and determinate and both parties are rational actors engaged in some activity that they really want to engage in and not something imposed from without. This point is clear. We now move on to discuss issues pertaining to *obligatio* that could not count as contractual. This exercise will help us in our discussion of *OS*.

20 Gaius, *Inst*. 4. 9.

21 Gauis, *Inst*. 3.90

We hinted at this in the beginning of our discussion in the case of one's obligation to the parent. Gaius draws our attention to other instances that are not obvious but crucial to understanding contractual *obligatio*. We have established that from Roman laws, all contracts are intentional and determinate acts and are grounded firmly on the principles of mutual interdependence and reciprocity. Contracts are also enforceable by civil law (*civile ius*). This is evident in the fact that one can sue and be sued for any breach of the agreed upon principles or terms of the contract, precisely because legal *obligatio*, which is a characteristic feature of *OS*, does not put contracting parties outside the domain of justice. Justinian invites us to consider the following scenario where real obligation (re *obligatio*) obtains even when there was no initial contract. Suppose you accidentally receive a sum of money and spend it. Does the sender have the right to claim any contractual agreement between the two of you? It is easy to answer that there is no such contract. Justinian and Gaius share the prima facie Roman response: "a man is bound by a real obligation if he takes what is not owed him from another who pays him by mistake; and the latter can, as plaintiff, bring a *condictio* against him for its recovery."[22] *Condictio* is approximate equivalence of our contemporary writ of summon. Here, the plaintiff could plead in court that the defendant is bound to pay precisely as if the defendant (accidental recipient) had received the payment by way of loan.[23] However, Justinian further draws our attention to some instances where real obligation obtains but fails to count as contract. In the event the accidental recipient happened to be either a slave, a ward (*pupillus*) or a woman (*mulier*). These entities could be liable for any such obligation only if their contractual agreements were sanctioned by the authority of their tutor (*tutoris auctoritas*).[24] Needless to say, these individuals were considered to lack rational deliberative agency to self-determine and must, necessarily, need the counsel or guidance of an adult male tutor. Therefore, since what was sent was not received with the explicit consent of the tutor, the accidental recipient could default payment, since, as Gaius puts it, "this sort of *obligatio* doesn't seem to be founded on contract, because one who gives with the intent to pay means to untie rather than to tie a bond."[25] It is true a real obligation is created by virtue of the thing conveyed, i.e., the money. The real question is whether the said conveyance was

22 Justinian *Inst*. 14.1.

23 Gaius *Inst*. 3.91

24 A different instance is where a transaction with a son or slave has been entered into with the sanctioning of the father or master, the father is fully held accountable. Gaius says that "this is right because a transaction in such circumstances gives credit to the father or master rather than the slave or son." Gaius *Inst*. 4.70

25 Gaius *Inst*. 4.70

accompanied by verbal, written or consensual obligation. As Gaius states, verbal obligation, for instance, is made by questions and responses as follows:

> 'Do you solemnly promise conveyance?" I solemnly promise conveyance'; 'Will you convey?' I will convey'; 'Do you promise' I promise'; 'Do you promise on your honour? I promise on my honour; Do you guarantee on your honour? I guarantee on my honour; Will you do? I will do'.[26]

None of these questions and responses preceded the conveyance of the thing to either the woman or the ward. Here, *re obligatio* obtains but the tutor could defend their person of interest that no contract was ever occasioned between the sender and his accidental recipient of the thing conveyed.

We conclude this section as follows. *Obligare* is grammatically an active-voice verb, an antithesis of passive voice. This is however not to say that *obligare* lacks passive force. We noted earlier that one could be compelled by an external imperative to bind oneself to do something. The passive recipient of the imperative lacks the agency and power (*imperium*) to give similar command. Slaves, children, and women could be classified as passive recipient. On the other hand, since for the Romans all contracts are mutualistic, the sense of *obligatio* characterising any contract implies the willingness of the contracting agents to attain some intentionally conceived goals. Contracts cannot be accidental and the obligation emanating from it puts the contractors within the reins of justice. This means that contractual agreements, and the principles that emerge from them, can only occur between rational deliberative agents, at least from the Roman's experience. Rational deliberative agents in ancient Rome, we have remarked, refer exclusively to only adult males, i.e., fully recognised members of the Roman society. Moreover, we established that contractual agreements cannot be undertaken based on compulsion or under duress. In that case, freedom and rational deliberation underscores the performance of an intentionally and determinately conceived obligation. One needs to pay attention to Roman laws of contract and obligation before one unhesitatingly avers that the attribution of rationality and deliberative agency to the Romans sounds anachronistic. We now consider *OS* in the next section.

[26] Gaius *Inst*. 3.92

3. *OBLIGATIO ET IN SOLIDUM*

We are now in a position to see how *obligatio* plays out in the expression *obligatio in solidum.* But first, we need to say something briefly about the expression *in solidum*. The *solidum* in *in solidum* is the accusative of the substantive *solidus*, which means 'whole', 'complete', 'indivisible', 'solid', 'solidity', 'compact', etc (L & S 1719). It is also identically related to the verb *solidare*, which means "to make firm, dense, or solid; to make whole or sound; to strengthen, fasten together" (L & S ibid). The range of meanings can now guide us to make sense of the prepositional substantive phrase *in solidum*. In Latin, when the preposition "*in*" takes the accusative of a given substantive, like *solidum*, the expression has many senses including, but not limited to: (1) it indicates 'motion towards'; (2) establishes a relation in which one aims at or is inclined or striven toward a conceivable thing; (3) establishes a relation between the object of view, regarded also as the motive of action or effect (L & S 58). We are inclined to believe that the sense of *in solidum* in *OS* captures the teleological senses in (2) and (3). That is, one aims to make a conceivable thing solid or complete or attain it and that thing is the motive for engaging in some particular action, or that thing can be the specific object of, say, alethic inquiry such that in the event that thing is attained the inquiry comes to an end. This point neatly connects *obligatio* and *solidus* in respect of the pursuit of intentional and determinate acts or effects. The connection is clearly seen as follows. Suppose *P* and *Q* enter into a contractual agreement to do Y. Suppose further that *P* and *Q* willingly thought through what *Y* involves and subsequently committed themselves to doing it. If Y is a *solidum*, i.e., a whole, which *P* and *Q* are committed to engaging or fastening together or accomplishing, both *P* and *Q* are considered as rational deliberative agents who are committed to such joint intentionality. It is because *P* and *Q* are rational deliberative agent that both are expected to bear whatever outcome of their pursuit of Y.

In solidum *is the accusative.*

This supposition is clearly seen as a joint intentionality, and it pretty much captures the main sense of *OS*. A very familiar form of *OS* is spelt as follows: should two or more people borrow an amount together, each of the borrowers is liable for the payment of the whole amount.[27] To schematise, suppose A and B contract a loan to venture into business. *OS* stipulates that A and B are each liable for the whole amount, such that the obligation is annulled in the event one or both fully pay the debt. Pothier's classic treatise on obligations, *A Treatise on the Law of Obligations and Contracts (trans. W. D. Evans, London: 1806)* provides an important explanation:

> When one contracts the obligation of one and the same thing towards several persons, each of those to whom it is contracted is creditor of this thing only for his part; but it may be contracted towards each of them for the whole, when such is the intention of the parties; so that each of those whom the obligation is contracted may be a creditor for the whole and yet that payment made to any of them may discharge the debtor as to all.[28]

We see immediately that *OS* is a kind of *obligatio iuris*, a legal obligation, which, in the case of bilateral relationship, proceeds from agreement between individuals to engage in some pursuits for mutual advantage – a pursuit which requires that each perform a task, i.e., share the burden. This type of obligation grants that each individual consciously and deliberatively engages in some purposeful act to derive some expected benefits. It is for this reason that it is often said that in Rome an obligation arising from contract could only occur among parties who had the capacity to make it, and that what is considered as doable are things within the capacities of the contracting parties.[29] This last point needs further motivation, and we do so in the next section where we look into *OS* proper.

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27 See e.g., Gaius 3.121

28 R. J. Pothier, *Treatise on the Law of Obligations and Contracts* (trans. W. D. Evans, London: 1806), p. 149

29 Celsius, *Digest*, book 8, as cited in Plessis ibid. 262-263.

4. OBLIGATIO IN SOLIDUM

Our two main sections can now provide us with the necessary information to explore OS. We have established that OS is almost always applicable to contractual agreements. So, let us consider bilateral agreements. In the event one enters into a contractual agreement by responding “I solemnly promise conveyance” to the question “Do you solemnly promise conveyance”, we have remarked that one binds oneself to be the beneficiary of the conveying object. Therefore, when one says that ‘I have an obligation to fulfil in respect of the thing promised’, one implies that one *can* fulfil such obligation. Therefore, in a civil suit against a defendant who had previously professed his competence to undertake a certain obligation, like paying debt, the judgement would confirm that ‘you ought to have paid your debt, having agreed to commit to this whole’ implied ‘you could have paid your debt, having agreed to commit to this whole.’ That is, ought implies can in legal cases where *OS* is applicable. This claim is motivated as follows. Philosophers have rightly pointed out that it is not always the case that ought implies can.[30] For, ‘can’ always implies capabilities to do something. It is misplaced to tell a five-year-old that he ought to lift a television; his lack of the requisite capacity is pretty obvious.

We are inclined to believe, therefore, that if some individuals enter into contractual agreement, not only is it the case that the individuals willingly grant initial equal value to each other but that they also think that each has the requisite competence to carry out whatever whole they intend to achieve. In the case of a debtor and creditor, the latter gives out, for instance the loan of consumption (*mutuum*) with the inclination that the debtor has the capacity to pay. On this basis, we believe that whenever *OS* is applicable, at least in the Roman experience, the sense of obligation exacts compliance to a previously agreed principle between individuals who are considered equal. This point returns us to our discussion of instances where *OS* could not be applied. From Gaius we learn instances of nonbinding verbal con-

30 See for instance, Zimmerman, M. J. *The Concept of Moral Obligation* (Cambridge University Press, 1996), 2.

tracts. Consider the following: “if the thing for conveyance of which we stipulate is one that cannot be conveyed… for instance if one were to stipulate for conveyance of a free man who one wrongly thought to be a slave, or dead slave whom one believed to be alive, or sacred or religious place which one thought to be subject to human law.”[31] As mentioned above, the Romans believe, as Gaius specifies, that there cannot be any contractual agreement between a fully recognised member of the Roman society (adult male citizen) and any of the following persons: a slave, a daughter under the power and protection of the father (*pater potestas),* and women are incapable of incurring contractual obligation “not only to him to whose power they are subject, but also to anyone at all.” Moreover, “that a dumb man can neither stipulate nor promise is obvious. The same is accepted also in the case of a deaf man, because it is necessary both that the stipulator should hear the words of the promisor and that the promisor should hear the words of the stipulator. A lunatic is incapable of any transaction because he does not understand what he is doing.”[32]

The same non-binding obligation obtains in instances where the individual is in equal standing with one another but the terms of the agreement was not stipulated, or if the obligation is ambiguous, or is targeted at the wrong referent. Gaius says for instance: “The stipulation is also void if the promisor does not answer the question put to him, for example, if I stipulate for 10,000 sesterces and you promise 5,000 or if I stipulate for conveyance to a person whose authority we are not subject, the stipulation is void (*inutilis stipulatio*).”[33] By the expression ‘a person whose authority we are not subject to’ (*cuius iuri subjecti non sumus*), Gaius is referring to a relationship between equals. As repeatedly mentioned, a slave, children, and women could be said to be under the authority of someone. Gaius draws our attention to the fact that should the ‘whole’ be, for instance, a debt that one did not stipulate clearly, one bears the consequences associated with the stipulation:

> If we stipulate for conveyance to oneself and to one whose authority (*iuri*) we are not subject, the stipulation is void. Hence a question has arisen how far a stipulation for conveyance to oneself and to whose power we are not subject is valid. Our teachers hold it to be completely valid, and that the whole (*solidum*) of what is promised is due to him alone who put the stipulation, just as if he had not added the

31 Ibid. 97.

32 Gaius *Inst*. 3.104

33 Gaius 3.102.

> stranger's name. But the authorities of the other school consider that half is due the stipulator, but that the stipulation is void as to the other half.[34]

The point here is not that one cannot enter into contractual agreement with a person whose authority we are not subject to. In fact, as said above, that is the only way a contract could obtain. The point is that in the event where one wants to stipulate a conveyance to such a person, there must be an initial verbal agreement to the effect that the person would be aware and act accordingly. Another interesting instance is the following. Suppose one stipulates thus: "Do you solemnly promise conveyance to me or to Titius"' Here it is agreed that the whole (*solidum*) is due to me and that I alone can sue on the stipulation, though you are discharged if you pay Titius."[35]

The various instances thus discuss confirm our conviction that *OS* is characterised by the following. That it is originally associated with bearing full responsibility, be it a loan contracted or a partnership entered into to achieve some outcome. In the light of this, we hope to have shown that in agreements characteristic of OS, the contracting parties have the liberty (*libertas*) to make choices pertaining to attaining some effect or outcome without duress. They do so because the aim to achieve something meaning and purposeful; and that it can only characterise sorts of agreement between individuals with some degree of equal social standing in the society.

Associated with bearing full responsibility.

34 Gaius 3. 103.

35 Giaus 3. 103a

4. CONCLUSION

From the foregone excursus, we have shown that *obligatio in solidum* as used in ancient Rome primarily conveyed a legal sense. However, this legal obligation also carried a moral connotation, because the original sense of entering into a contractual agreement that bound one also had the force of moral suasion. For purposes of this paper though, we have highlighted the legal sense. That is not to say that, in instances where a group's or individual's *obligatio* is called into question there had to be the threat of a sanction before they made good. An example from the early Republic would suffice here. According to Livy, *AUC*, 2.32, during the plebeian secession to the Aventine in 494 BCE at a time that Rome faced mortal peril from the Latin league, Menenius Agrippa used the Parable of the Limbs and Belly to remind the plebeians of their obligation and duty to Rome, the whole (*in solidum*). The plebeians rallied to the defence of Rome, but not without exacting from the Senate election of tribunes of the people, who were sworn to defend the commoners. Thus, even in this show of *obligatio in solidum* in practice on a national scale both parties, patricians and plebeians, felt obligated to abide by the terms they established for themselves.

Obligatio in solidum *as used in ancient Rome.*

Moving Beyond
Solidarity Rhetoric
in Global Health