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OBLIGATION IN THE *DISCOURSES*

Three of the most distinctive ideas of the *Social Contract* are linked with obligation: the identification of political, legal and moral obligation, moral agency and obligation, and what it takes for a law to be just. The first matters because it entails that legal disobedience is morally unjustifiable, the second as Rousseau's contribution to moral philosophy, the third as one of the best attempts to explain just law. Given these outcomes, it is useful to consider: what conception of obligation does Rousseau have prior¹ to the *Contract*? The purpose of this essay is to answer that question with reference to the discourse *On the Arts and Sciences, Inequality* and *Political Economy*.

To enable reflection upon the alternatives open to Rousseau, I shall begin by listing the variety of conceptions of obligation current in Rousseau's time. The next step is to draw a quite general distinction between two questions: What are our moral obligations and by what method do we determine what they are? What is moral agency, that is, what is it to be an agent of moral obligations? I shall contend that paying attention to the second question is the most interesting way to understand Rousseau's conception of obligation. However, I have to confess that this interpretation is one that I read into Rousseau. Rousseau does not say that he recognizes the difference between the two questions and that he chooses to concentrate upon the second. It is rather that at certain places in the arguments of the *Discourses* he encounters theoretical difficulties concerning obligation. In attempting to deal with them, he is led toward a conception of agency involved in moral obligation. Thus, he comes upon a difficulty in the first *Discourse* that he attempts to overcome in the second. One is conscious of moral agency again through being aware of the absence of it at the end of the argument of *Inequality*. It is still absent in Rousseau's discussion of just law in *Political Economy*. But what draws

1. A more complete treatment would include the First Version of the *Social Contract* or the *Geneva Manuscript*.

awareness to its absence in *Political Economy* is a contradiction so gross that Rousseau could not have written the *Contract* without repairing it.

In the closing pages of the essay I shall go beyond the *Discourses* to suggest that Rousseau attempts to overcome this contradiction by means of an acceptance theory of just law. Explanation of it will allow me to return to the linkage of obligation with the three distinctive ideas of the *Contract*.

There are several understandings of obligation, stemming from writers of natural law, natural religion and from Hobbes, that Rousseau could have in mind:² obligation, in the strict and original sense of being bound or tied by a voluntary undertaking such as a contract or promise. Obligations, in the wide sense, as prescriptions of natural law. (*O.C.*, III, 124) Obligation as justified by some end, such as the common good. Obligation as commanded by God, and justified as being God's command. Obligations as natural, not the product of any will and in this sense neither arbitrary nor artificial. Obligation distinct from self-interest; obligation derived from self-interest. Obligations as dictates of conscience. (III, 30) Obligation as the contrary of a right or liberty such that if I have an obligation to do X then I do not have a right or the liberty to fail to do X. Obligations as mere means to commodious living lacking moral value in themselves.³ Obligations as duties that men as such owe to one another.⁴

It is well beyond the aim of this essay to track down Rousseau's judgments on these various ideas of obligation. There is, however, a more general and fruitful way of thinking about obligation, one divisible into the two questions mentioned above: first, what are our moral obligations and

2. The best full-length account of Rousseau in this connection is still that of: Robert Derathé, *Jean-Jacques Rousseau et la science politique de son temps*, (Paris: Librairie Philosophique J. Vrin, 1970).

3. This conception and the one before belong to Hobbes. See T. Hobbes, *Leviathan*, chapters 14 and 15. For Rousseau's comment on the second, see *O. C.*, III, 125.

4. This conception, which pairs "obligations" and "duties." is the one most frequently used by Rousseau in the *Discourses*. I follow Rousseau in treating "obligations" and "duties" as interchangeable.

how can we know or identify them? Second, what is the nature of the being who is the agent of obligations, that is, one who voluntarily controls his conduct by reference to them?

Since the distinction encompassed in these two ways of thinking of obligation is necessary to my analysis of obligation in the three *Discourses*, I need to discuss it briefly. Obligations in the first sense are certain acts, or kinds of acts, that agents are required to perform. As such, it is not necessary that they be done from a certain motive. For instance, if I owe you a sum of money then I fulfill my obligation in giving it to you. Carrying out one's obligations, in other words, is performing the required kinds of acts. It is necessary, however, that the agent apprehends the acts as obligatory, as ones morally required of him. Whereas obligations pertain to acts; obligation, in the second sense, is a quality of the agent. Why is it that we restrict the having of moral obligations to human beings? In terms of what human qualities is possession of them different from other duties such as those of one's job or voluntary associations of which one is a member? Does possession follow directly from being a human being or does it presuppose certain capacities or, again, does it follow from particular actions of the agent? In part, to have obligations refers to certain capacities of the agent to recognize required acts, to voluntarily regulate his conduct by reference to them and, sometimes, to understand that an obligation, in the first sense is his, rather than someone else's, because of what he has done in the past. Both senses of obligation are independent of moral virtue. Moral virtue refers either to the entire character of the person or, more specifically, to the disposition or motives that influence his action. My reasons for distinguishing, however briefly, the two senses of obligation from one another, and both from virtue, are two in number: first, lacking a clear conception of obligation, Rousseau sometimes confuses all three, but, secondly, the aspect of obligation connected to agency gradually becomes the more important.

The Arts and Sciences

In the opening paragraph of the *Discourse on the Arts and Sciences*, Rousseau remarks on the grandeur of man's understanding of nature and adds that an even nobler aim is that of "going inside oneself to study there man and his nature, his duties and his end." (III, 6; my translation) A natural interpretation of these words is to understand Rousseau as commencing to answer the question of the nature of moral agency. In truth, however, it is more likely that Rousseau thinks of them in relation to the first question, that is, once the end of man is truly understood then he will know therefrom what his obligations are.

However, the remainder of the argument of the *Discourse*, as it bears upon obligation, does not pursue either of these themes. The bulk⁵ of that argument is best represented in the rhetorical question dramatically posed towards the end of Part One: "What ! Is uprightness the daughter of ignorance?" (III, 16) The morally upright are those peoples, ancient or primitive, who live the crudest of lives: lives characterized by simplicity, poverty and ignorance.

Doubtless, this view of morality reflects the wider argument within which it occurs: those uncorrupted by the arts and sciences are morally superior to those who have been corrupted. The latter act from vanity, cupidity and ambition and are insincerely governed by mere politeness. However, even if we allow for the influence of the wider argument, Rousseau means two things that he says: one, uncorrupted people are not inflamed by artificial passions; two, the morally upright are ignorant.

Both create problems for the moral philosopher. It might be argued that Rousseau means that the ignorant are upright because of their ignorance of the sciences and the arts and the kind of life that knowledge of them engenders. But there is too little evidence in the text to support this conclusion. Rather, the ignorant are upright because of their circumstances. Simplicity, poverty, ignorance and righteousness

5. Cato and Socrates, for example, are exceptions.

causally go together. So understood, moral uprightness is a matter of luck.⁶ Some are fortunate to live very plain lives. Their circumstances are such that their desires are limited by them. Their lives are so "poore and brutish" that, if I may so put it, they have no choice but to be morally upright. One problem, of course, is that this morality of the ignorant is accidental and not responsible. If conduct is totally the result of circumstances then it deserves neither moral praise nor moral blame.

Another problem caught up in the defence of the thesis that the ignorant are upright is that if it is about morality at all, it is about virtue and not about obligation. The only argument that Rousseau gives, besides the one just mentioned, is that the ignorant are *not* inflamed by the artificial passions. Neither from their circumstances nor from their freedom of motives of artificial passions does it follow that they in fact fulfill moral duties.

At the conclusion of the discourse, Rousseau introduces another conception of obligation, one that does not apply to the righteous ignorant but to those of his readers to whom it can apply:

Oh virtue! Science sublime of simple souls . . . Are not your principles engraved in all our hearts, is it not enough to learn your laws to return inside oneself and to listen to the voice of conscience in the silence of the passions. (III, 30)

This passage is of interest for four reasons. First, it returns attention to the first question concerning obligation by saying that the method of knowing what our obligations are is that of attending to the dictates of conscience. Secondly, it comments on the second question to the degree that a moral agent is equipped with a conscience to tell him right from wrong. Thirdly, it implies that certain acts are in themselves right or wrong, and thus obligatory, and that conscience is the faculty by which they are known. Fourthly, it states a doctrine that the argument of the *Discourse on Inequality* contradicts.

6. For an interesting account of moral luck, although one differently aimed, see: Bernard Williams, *Moral Luck*, (Cambridge: Cambridge University Press, 1981), chapter 2.

Inequality

In one important sense, the argument of *Inequality* is a repudiation of the argument of the *Arts and Sciences*. The virtuous ignorant were the effect of a combination of causal circumstances including poverty, innocence, simplicity and ignorance. In Part Two of *Inequality* Rousseau argues that this combination no longer exists as a basis of morality amongst modern men, overcome by *amour propre* and the attendant divisive social passions of envy and ambition. These new passions cannot be silenced. Rousseau now places simplicity, innocence and ignorance in the original state of nature. But here man is *amoral*.

The difference is important in a number of ways. The Socratic injunction to "know thyself" that begins the argument again is to be taken more seriously. The question to be answered is: what is the origin of moral inequality? (III, 131-132) This question, on some occasion, should be treated as the question: what, according to Rousseau, is the origin of morality? For a close reading of the argument shows that one of the two things that Rousseau is concerned to explain is the development of moral consciousness through successive developments of the moral capacities. (142, 162, 193)

The most significant feature of the argument when it is taken this way is that it involves what may be called "the negation of the negation"; for Rousseau's contention now is that the amorality of the state of nature must be negated by immorality as the condition of the existence of morality. Men in the state of nature, he says, "having between them no kind of moral relation, cannot know their duties" nor can they be good or bad. (152) To be subject and agent of moral obligations presupposes knowing right from wrong, and choosing to do right or wrong by an act of free will. (141) Morality is no longer a matter of ignorance: moral obligation consists of an agent who knows both right and wrong, who can freely choose either and who can will to do what is right.

But this contention, and the argument that goes with it, is frequently lost sight of in Rousseau's scorching criticism of modern man's immorality. The closing pages of *Inequality*

are best understood as Rousseau's lament that man has alienated his moral nature through his desire for the esteem of others. What is profound here is that the alienation occurs through the characteristically human desire to be desired. But, in combination with other causal antecedents, it leads to beings who are always demanding of others what or who they are and what their worth is. (193)

In *Inequality* it is evident that Rousseau is addressing questions that are properly expressed as questions concerning the nature of moral agency. How are need, desire and reason related to one another? Why is it that while need creates co-operation, it also creates dependence? What is the role of self-perfection and free will in the maturation of moral consciousness? Even if man is only dimly conscious of obligations to others as equals, why does he deny his equal nature as a moral being? The argument of *Inequality* only partially answers the question of moral agency. But there is now no good reason to deny, at the conclusion of the *Inequality*, that Rousseau is aware of it.

Political Economy

In the *Discourse on Political Economy*, Rousseau turns to another aspects of obligation: the moral obligation to obey the law. The source of law, Rousseau argues, is the general will of the state that has as its object the common good of its citizens. So understood, law is the rule of what is just and unjust. (245) Rousseau continues with one of the most remarkable eulogies of law ever delivered. Law, he claims, enables all to obey while no one commands. It restores natural equality amongst men. To it alone is owed justice and liberty. By rendering man obedient only to public reason it teaches him how to act according to his proper judgments; it frees him from contradiction with himself. (248)

These claims are so similar to those made on behalf of law in the *Social Contract* that one has to remind oneself of what is missing. In the *Discourse* the people are *not* the sovereign legislators of the law. Indeed, in one place Rousseau denies any necessity of ascertaining the will of the people; admittedly, in a qualified way. (250) Instead, the idea

is that the ruler can himself know the general will merely by knowing the common good.

Rousseau's argument here faces a twofold difficulty, one aspect of which is not contradictory, whereas the other is. The first is that he provides no assurance that the ruler will know the common good. In consequence, if the ruler makes a law that the people obey, there is no assurance that it is for the common good and therefore just. The second is a good deal more complicated.

He holds, on the one hand, that the law of the state is just and that, therefore, all are morally obligated to obey it. It is for the citizen a certain rule of what is just. (245) It is in this context that he claims that the duty to obey the law takes precedence over the duties that one may have as, say, a priest or a soldier. (246) But he argues, on the other hand, that the law of a particular state is just only for it, and can well be unjust when considered from the point of view of the general will of mankind that he equates with natural law. Moreover, natural law, in this sense, determines the moral rightness and wrongness of *all* human actions. It is, therefore, the most certain rule of what is just. In this context, he contends that one's moral obligation as a man takes precedence over one's moral obligation as a citizen. (246)

Plainly, there is contradiction here. If the law of the state says: "you morally ought to do X" and the natural law says: "you morally ought not to do X" then I can't do both; whichever I do will be unjust. If X is for the common good of the state, but against that of mankind, it is morally unjust according to natural law. If it is for the common good of mankind, but against that of the state, it is morally unjust according to the law of the state. And, of course, the contradiction destroys the claims made on behalf of law and legal obedience. If I do what the law commands knowing it is unjust from the universal point of view then I cannot possibly believe that my act of obedience carries with it the virtues that Rousseau claims for it: rather I must believe, as of old, that "an unjust law is not law at all." The contradiction also leaves moral obligation in entire disarray.⁷

7. The contradiction remains in the First Version of the *Social Contract*. (286-7)

This contradiction between one's moral obligations as a citizen and as a man is so blatant that Rousseau could not go on to write the *Social Contract* without somehow repairing it. Arguably, the obvious deficiency exists in the moral agency of the general will in *Political Economy*, for the agent of the general will of the state, in so far as there is one, lies in the ruler and there is no agent at all of the general will of mankind. With this suggestion in mind, we may now go beyond the *Discourses* to the *Social Contract* and to the consideration of what I called Rousseau's acceptance⁸ theory of just law.

Social Contract

However, explanation of that theory requires some preparation. In *Inequality*, Rousseau expresses his doubts about natural law by two questions: If the obligations of natural law are natural then why do ordinary agents, persons who are not metaphysicians, fail to know them? If they do know them, why do they fail to act upon them? To more fully understand the problem it is necessary to distinguish *natural* morality more drastically than Rousseau does.

One could hold that voluntary actions are divisible into three kinds: morally right, morally wrong and morally indifferent, that moral obligations pertain to the first and the second, and that such actions are morally obligatory *independently* of human agency. Let morality be natural in this sense. In other words, a kind of act is not made morally right by being known, felt or willed. The act is morally right by its own nature as one that is right. Of course, the theory of natural morality can maintain that human agents are such that they do know right acts from wrong acts, that they can will to do the former and refrain from doing the latter and from

8. I owe the idea of thinking of Rousseau's theory of just law as an acceptance theory to reflection on Ronald Dworkin's highly insightful essay on Rawls' theory of justice, "Justice and Rights," *Taking Rights Seriously*, (London: Duckworth, 1977), pp. 159-183. In this essay, Dworkin distinguishes between two models of moral theory, the one natural and the other constructive. Rawls, he holds, follows the constructive. What I call the acceptance theory is close to the constructive, but I have altered the distinction to suit my own purposes.

these features moral obligation obtains its significance. But the features are not necessary ones. An act could be obligatory without them. The moral righteousness of acts is a discovery, although not a difficult one, rather than a human invention. It is a contingent, although universal, truth that moral beings do know their obligations and can fulfill them if they will.⁹

As Rousseau presents his theory of just law in the *Contract* it has two constituents: it comes from all equally and applies to all equally. (379) There is nothing new in the idea that law should apply equally; it is contained in Aristotle's precept of justice "treat like cases alike." But, as H. L. A. Hart argues,¹⁰ equal treatment applies to the just administration of law. Just administration is consistent with unjust law provided all to whom the unjust law applies are treated equally. In Rousseau's theory what is different, and makes a difference, is that the law "comes from all equally." More fully, Rousseau stipulates the combination of "from equally, to equally" as meaning that a law is just if, and only if, all citizens participate in its legislation, it is made for the good of all, and applies to all and to all equally.¹¹

As a result, Rousseau's theory of just law is best understood as an *acceptance* theory of just law and the opposite of a natural one. It is an acceptance theory in the sense that a law is just, and morally obligatory, if those who make the law and are subject to it agree that it is just. Thus, the essential emphasis is not on an act being independently just, rather it *be-*

9. My object in this characterization of the theory of natural morality (or natural justice) is to obtain a description that is logically clean, one that contrasts radically with Rousseau's acceptance theory. However, features of the theory of natural morality are plainly observable in two moral philosophers of the eighteenth century, namely Ralph Cudworth and Richard Price.

10. H. L. Hart, *The Concept of Law* (London: Oxford University Press, 1961), pp. 155-159. See also Ch. Perelman, *The Idea of Justice and the Problem of Argument*, (London: Routledge and Kegan Paul, 1963), pp.1-60.

11. In the *Attorney General of Canada v. Jeannette Lavell*, Mrs. Lavell was denied her property rights for reason of marrying a non-Indian, although a male Indian may marry a non-Indian without loss of his property rights. In giving the Reasons of the Court, Justice Ritchie held, in effect, that "equality before the law" entails only that Mrs. Lavell receive like treatment to that of other Indian women in like circumstances! See: *The Attorney General of Canada v. Jeannette Lavell*, 1974, *Canada Supreme Court Reports*, (Ottawa: The Queen's Printer for Canada, 1975), pp. 1372-3.

comes just by being agreed upon in accordance with the specified conditions.

Rousseau's acceptance theory of just law has two things going for it. First, it is strong in terms of motivation. If all agree that a proposed law is just then not only will an individual be inclined to obey it because he has agreed, he will be the more inclined in having the belief that others will as well. Second, it is strong on grounds of justice. If, Rousseau could argue, all are agreed that this law does benefit all equally and all agree to abide by it then what more could one possibly ask of a law for it to be just? That it really be for the good of all? But who is better able to judge that than the individuals themselves?

From this background of argument, Rousseau can explain the identification of political, legal and moral obligation¹² and why it is that legal disobedience is morally unjustified. The citizens contract, in effect, to obey nothing but just law. And since no one individual can make law just, only all together can do that, no one individual can decide that a law is unjust and, therefore, morally ought to be disobeyed. The only moral ground for disobedience is denial of my right, i.e., my right to participate in legislation of the law. But denial of that right is excluded by definition. The law is unjust if it does not come from all equally. Hence, morally justified legal disobedience is logically impossible.

The importance of agency to moral obligation is now evident. For it is only moral agents who can be both legislators and subjects of law. It is they alone who accept that a law is just and accept to be governed by and even punished under just law. (376) In this sense, animals do not have rights, for they are not members of the moral community.¹³ In this sense, Rousseau must take back, or rather clarify, the claim

12. In one obvious sense, the identification is misleading, for not every moral obligation is also a political and legal one. What I mean is that for Rousseau something cannot be politically or legally obligatory without also being morally obligatory.

13. Rousseau's is also a contractarian theory of morality. "The natural constituency for contractualism consists of those to whom you could conceivably try to justify your actions — in the simplest interpretation, other moral agents." Bernard Williams, *Ethics and the Limits of Philosophy*, (London: Fontana Paperbacks, 1985), p. 75 and following.

that a basis of moral obligation and right is the capacity to suffer pain. (126) Animals suffer pain but in not being moral agents, able to legislate justice, their moral status can only be that of a locus of moral obligation. Those, and only those, who can have moral obligations are those who have moral rights. The logical implication runs that way for they, and only they, are moral agents. Understanding of Rousseau's acceptance theory of just law also aids interpretation of a puzzling piece of diplomacy that Rousseau uses to express his touchy relationship with natural law as it is standardly understood in his time: "Without doubt there is a universal justice that emanates from reason alone; but this justice to be accepted amongst us must be reciprocal." (378)

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