

Rousseau's Theory of Natural Law as Conditional

Author(s): John B. Noone, Jr.

Source: *Journal of the History of Ideas*, Jan. - Mar., 1972, Vol. 33, No. 1 (Jan. - Mar., 1972), pp. 23-42

Published by: University of Pennsylvania Press

Stable URL: <https://www.jstor.org/stable/2709055>

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <https://about.jstor.org/terms>



University of Pennsylvania Press is collaborating with JSTOR to digitize, preserve and extend access to *Journal of the History of Ideas*

JSTOR

ROUSSEAU'S THEORY OF NATURAL LAW AS CONDITIONAL

BY JOHN B. NOONE, JR.

There is little doubt that Rousseau considered himself primarily a moralist. His quite definite judgments of right and wrong, just and unjust, are reflected in the loathing with which he contemplated the immorality of contemporary society in general and of the upper classes in particular. And yet, in *Le Contrat Social* (1762), he apparently argued the conventional character of society, and society as the foundation of morality.¹ If there is no morality properly speaking in a state of nature, and if contemporary states, lacking legitimacy, are in a moral context reinstitutions of the state of nature, what is the theoretical basis which gives substance to Rousseau's moral criticisms?

Traditionally moral judgments in opposition to prevailing mores or law were made within the framework either of revelation or of that most rubber-like conceptual device, natural law. But the creed of the Savoyard vicar clearly indicated Rousseau's reluctance to accept the authority of a Bible whose interpretation was so vehemently disputed on all sides.² This rejection would seem to have left him no option but recourse to some version of natural law theory. In its most common and general form this theory postulated a law known by reason, and morally obliging man on the ultimate authority of a God also known by reason.

However, there are several elements in Rousseau's thought which strongly suggest that this version was unacceptable to him. In the first place, his *Second Discourse* and *Essay on the Origin of Languages* give an account of a cultural evolution which, for the most part, clearly undermines the relevance of a natural moral law. Primitive man was a creature of isolation, seldom coming into contact with his fellows. This description is but the corollary of his far more radical position that man is not naturally, i.e., of necessity, a rational animal. Others, such as Hobbes, had previously denied man's natural sociality, but not his rationality. Locke, for example, comfortably fit into that tradition which bifurcated thought and language. In the simplest terms, this theory implied a natural, languageless thought,

¹*Social Contract*, Bk. 1, Ch. 1. All citations from this work are from *Rousseau: Political Writings*, trans. and ed. F. M. Watkins (New York, 1953).

²Rousseau held Jesus in the highest esteem, but this admiration was based on his belief that the life of Christ was the perfect embodiment of a morality that he, Rousseau, independently supported.

with a conventional vocabulary and syntax extrinsically added to antecedent and independent thought processes.

Rousseau rejected this dualism, insisting that only the most elementary kind of thought is possible without words to solidify abstract ideas and relations. Though man has the potential for higher thought, without language this capacity can never be realized. The crucial point is that beyond a natural language of grunts, groans, and gestures, there is no biological necessity which decrees the inevitable development of language as we know it today. There is a dialectical interaction between language, reason, and society such that it is impossible to understand a development in one without a parallel development in the others. If, then, man is not by nature a language using animal, he is not by nature either rational, in any significant sense, or social.

Once this aspect of Rousseau's thought is grasped it becomes problematic whether he could consistently admit natural laws other than physical. If the parallel development of reason, language, and society is but the effect of a whole series of unknown "accidents," what is to be thought of a purported moral law which prior to language could not be known and which, save for chance factors, might never have been applicable? It is true that if a moral law has as its end the peaceful resolution of conflicts, there is, in a most extended sense, a kind of natural law in Rousseau's state of nature. Unlike Hobbesian man, Rousseauian man is neither naturally aggressive nor proud. In his original environment he lives content with himself and wishes no gratuitous evil to his fellow man. As Rousseau describes primitive man's condition, the only possible, though unlikely, source of conflict that might arise is when two men compete for food necessary to sustain life. In this case of radical scarcity there is no natural law which defines food as the property of one creature rather than another. Only in such extreme and improbable cases would conflicts be resolved by force. In the early stages of evolution man is by nature "moral" in the sense that by nature he is protected from the possibilities of those conflicts which can arise only in society; he is naturally good.

There are other reasons which some have seen as evidence that Rousseau rejected natural law. In his first version of the *Social Contract*, there is a chapter which contains a critique of natural law as expounded by Diderot in an article for the *Encyclopedie*. Neither the idea of God nor of natural law is innate since both have to be taught to men. It may be a law of reason, but the reason sufficient to apprehend it develops only after the rise of those passions which render it dictates impotent.³ This contention reflects Rousseau's belief that

³*The Political Writings of Jean Jacques Rousseau*, 2 vols., ed. C. E. Vaughan (Oxford, 1962), I, 449.

the unfolding of man's rational capacities is a result of a prior growth of the passions. A dialectical process occurs wherein mind develops itself in its search to satisfy some passions, and this in turn, thanks to its new prowess, provides new objects of passion. It is only at a very late stage that reason and language attain a perfection which in principle allows for the possibility of the independent and highly abstract pursuit of truth. But by this time, which presupposes society and all the turbulent passions it engenders, most men are, for want of the necessary discipline, practically incapable of voluntarily doing the good they might know.

It could be argued that a man who renounces natural duties logically must renounce natural rights, and thus reduce all human affairs to a matter of force. Rousseau accepts this but points out that in this state of nature, such an individual is at less a disadvantage than had he fulfilled the law when there was no guarantee that others would meet their obligations toward him: vice generally triumphs over virtue.⁴

Religion is hardly an adequate support for natural law because the gods which the masses have worshipped throughout history in no way resemble that pure conception of the godhead necessary to ground the sublime ideas of justice and goodness.⁵ But even if one admits the existence of a natural law there is no self-evident reason why it should be followed. After all, the first law of nature is that of self-preservation, and this hardly motivates a man to forgo his personal interests on behalf of the counter-interests of the species.⁶

Finally, history argues against the theory. It was only at a late date that it was introduced by philosophers, and it gained a measure of acceptance only with the spread of Christianity. For the greater part of recorded history, moral rules were peculiar to groups and applicable only among the members of the group. Behavior which was not permissible within the community was perfectly proper with respect to strangers, and, indeed, the very word "stranger" was quite often synonymous with "enemy."⁷

The above observations, if not completely decisive, provide a strong case for those who would argue either that Rousseau rejected the very idea of natural law or at least held the existence of a natural law to be irrelevant. On the other hand, a good case can be made for the position that not only did he believe in natural moral law but that this belief was essential to his entire moral theory. Though it may be questioned whether the creed of the Savoyard vicar is an exact mirror image of Rousseau's personal convictions, there is much independent evidence that he shared the vicar's beliefs on God, immortality,

⁴*Ibid.*, I, 450.⁵*Ibid.*, I, 451.⁶*Ibid.*, I, 452.⁷*Ibid.*, I, 453.

final judgment, and conscience.⁸ As will be seen below the paradox of Rousseau's attitude toward natural law theory is that though he strongly *believes* his version, he despairs of establishing it apodictically: there is always the possibility that the materialists are right.

Rousseau is less insistent on the punishment of vice than he is sure of the reward of virtue. But in any case these beliefs don't make sense unless man somehow is able to know the rules of a game whose stakes are so high. Moreover, the rules in question would have to be God's rules in order to provide that objectivity of obligation which is the hallmark of any natural law theory. If the only rules which bind men are *wholly* of human origin, it is difficult to see either the relevance or justice of invoking God as some sort of cosmic umpire. The ultimate source of law is one with the ultimate authority of law, and if this be man, then it is a human and not a divine concern to render justice as defined by the law.⁹ Moreover it is impossible to read the *Emile* and not be convinced that in Rousseau's eyes there are objective rights and wrongs independent of society. In fact this work can be read as a guide for a moral man forced to live in an immoral society.

⁸The first three beliefs are reaffirmed in the Civic Creed of the *Social Contract* (Bk. 4, ch. 8). In the third promenade of his *Reveries*, he states that the vicar's creed is essentially his though he admits that there are objections he cannot answer. But these objections are "... nothing but quibbles and metaphysical subtleties, which are of no weight after the fundamental principles adopted by my reason, confirmed by my heart, and which carry the seal of interior assent in the silence of my passions" (*The Reveries of a Solitary*, trans. John G. Fletcher [New York, 1927], 68–69). Charles Hendel has pointed out the circumstances which led Rousseau to include the vicar's creed in the *Emile*, a creed which is a clear disavowal both of formal Christianity and the materialist position of many *philosophes*. Hendel notes that from a dramatic point of view the length of the creed is far more than the unity of the *Emile* demands, and can be explained only as a general profession of Rousseau's personal creed. (Charles W. Hendel, *Jean Jacques Rousseau: Moraliste* [New York, 1962], II, 124 ff.) Finally, not to cite individual letters expressing these beliefs, there is the clear testimony of the *Moral Letters*, addressed to Mme d'Houdetot, which contain a reasoned defense of a belief in God, immortality, and the supremacy of conscience. Because of Rousseau's skepticism toward all empiricist or rationalist metaphysics, his own position is offered with even less certitude than the relatively cautious presentation of the vicar. (*ibid.*, I, 298ff.) But the issue at hand is not what Rousseau felt he could satisfactorily prove but what he personally believed.

⁹It is true that Rousseau maintains that a man is obligated only by self-imposed laws, that the ultimate authority of law resides in the sovereignty of the people, and that the contract which establishes sovereignty is the result of convention. Law as conventional and law as rooted in the divine will would seem to be incompatible. A partial resolution of this incongruity is presented as the article proceeds. Suffice it to note here that the convention which establishes society is unique. "The clauses of this contract are ... everywhere the same, everywhere tacitly admitted and recognized..." (*Social Contract*, Bk. I, ch. 6). This universality would be most improbable if the ultimate authority of law as conceived by Rousseau is conventional in the ordinary sense of that term.

The case for Rousseau's belief in natural law can be strengthened if his objections to it in the first version of the *Social Contract* can be explained. This, I believe, is possible to some degree. First of all it should be noted that Rousseau did not flatly reject the concept of natural law in general but rather those versions which demanded a sophisticated reason as a source of promulgation, or, as in Diderot's case, those that implied the existence of a general society of mankind prior to established civil societies. There were many elements in Rousseau's thought which demanded that he reject the latter assumption, and, in his own eyes, he felt that he had a more satisfactory theory of natural law than that of the law of right reason.

In the *Second Discourse* he had rejected the rationalist version of natural law primarily on the grounds that reason is too precarious a faculty to serve as a mode of promulgation. Nature acts with far greater economy and certainty. This economy is found in the voice of conscience:

O virtue! sublime science of simple souls, are so many difficulties and preparations needed to know you? Are not your principles engraved in all hearts, and is it not enough in order to learn your laws to commune with oneself and listen to the voice of one's conscience in the silence of the passions? That is true philosophy. . . ."¹⁰

Again, in the *Emile*, the vicar discussing moral principles says, "I do not derive these rules from the principles of the higher philosophy, I find them in the depths of my heart, traced by nature in characters which nothing can efface."¹¹

What complicates Rousseau's idea of conscience is that it is only one of three factors in a moral decision. Reason supplies the knowledge of the good, conscience the love of the good, and free will the power to effect the good. Rousseau, following Locke, rejected innate ideas but not innate feelings. Man is not born with a knowledge of good and evil but, ". . . as soon as his reason leads him to perceive it [the good], his conscience impels him to love it; it is the feeling which is innate. . . ."¹² It does not take a philosopher's reason to apprehend the good. "The reason which teaches a man his duties is not very complex; the reason which teaches a woman hers is even simpler."¹³

¹⁰*The First and Second Discourses*, ed. Roger D. Masters, trans. R. D. Masters and Judith R. Masters (New York, 1964); *First Discourse*, 64.

¹¹Jean Jacques Rousseau, *Emile*, trans. Barbara Foxley (New York, 1966), 249. Rousseau would seem to support this position and also the vicar's statement that, ". . . it [conscience] is to the soul what instinct is to the body; . . ." because in a footnote Rousseau defends the existence of instincts as against philosophers who would deny them. (*ibid.*)

¹²*Emile*, 253.

¹³*Ibid.*, 345. These are Rousseau's words and not the vicar's.

The requisite knowledge is within the competence of even the ignorant and unlettered.

What is distinctive about Rousseau's doctrine of conscience is that it pinpoints the limitations of reason as a self-sufficient source of moral obligation. It takes very little sophistication to understand the nature of a prudential obligation. Most, if not all men, have at one time or another found themselves in situations where prudence dictated a course of action contrary to their desires. An individual may not wish to part with his purse but confronted with a gun he undoubtedly feels prudentially obliged to do so. Similarly, if the only force behind the obligatory authority of a purported natural law were fear of eventual divine retribution, this obligation would be viewed primarily, if not exclusively, as no more than prudential. But Rousseau's point is that moral obligations are of a different species. Like the prudential variety they usually oblige against immediate self-interest, but unlike them they oblige even when there is not prudential fear of evil consequences attendant on disobedience.

From Rousseau's point of view rationalists are unable to satisfactorily bridge this gap between a prudential and a moral obligation. Even leaving aside the many epistemological difficulties concerning value judgments, there always remains what might be called an affective difficulty. What meaning could a moral imperative have for a man whose affective life was completely dominated by pure self-interest. He could never be obliged against his interests because on this assumption he would lack the power to fulfill his "obligation." In a word, he would not be obliged because he would lack the freedom to act other than in his own interest. Those natural law theories whose first practical principle is, "Do good and avoid evil," involve themselves in a circle or an infinite regress. Even granting a specific content to good and evil, one cannot ground the obligatory character of a given law by reference to an ultimate rational principle because one can further ask why this principle is obligatory. Unless some different kind of principle is invoked it seems impossible to view morality as anything other than a form of prudence.

Rousseau's "solution" to this impasse generates its own characteristic difficulties, but it at least has the merit of adding a new dimension to the traditional theories. If there is a natural law, then to be obligatory nature must have endowed man with not only the capacity to know it, reason, but also the affective capacity to feel obliged. This is the role of conscience. Whatever else it is, it is something in man's nature which incites a love of the good and, therefore, furnishes it with a motive, sufficient under certain circumstances, to do a good contrary to selfish interest. Though reason may be a necessary condition of morality, in the absence of feeling it is not sufficient to initiate action.

It is within this context that one can understand why Rousseau who, with the possible exception of Montesquieu, was the most sociologically oriented mind of the eighteenth century, was forced to insist that conscience was not a socially induced phenomenon.¹⁴ And this tends to reinforce the argument that he believed in natural law, for nature would have acted in vain if it had supplied man with the capacity to love the good and failed to provide an existential ground for the good. At this point Rousseau had to be careful not to go too far and turn conscience into such a powerful force that moral behavior would be assured by the predetermining power of a natural disposition. The third condition of morality is that man have free will. Rousseau is convinced that he does, and he bases this not on metaphysical arguments, but on an introspection which reveals a feeling of freedom too strong to be defeated by all determinist arguments to the contrary.

The three conditions of morality are thus summed up: God has “. . . given me conscience that I may love the right, reason that I may perceive it, and freedom that I may choose it.”¹⁵ Rousseau was aware that there were difficulties in precisely delimiting each of these elements and expressing their interrelations. To the extent he shares the vicar's views he saw man as a divided creature subject to drives that raised him to the sublime and debased him to the level of sensual slavery:

No; man is not one; I will and I will not; I feel myself at once a slave and a free man; I perceive what is right, I love it, and I do what is wrong; I am active when I listen to the voice of reason; I am passive when I am carried away by my passions; and when I yield, my worst suffering is the knowledge that I might have resisted.¹⁶

Because man is both free and driven by other passions, conscience, though ever a part of man, is not always the decisive principle:

She [conscience] speaks to us in the language of nature and everything leads us to forget that tongue. Conscience is timid, she loves peace and retirement; . . . the prejudices from which she is said to arise are her worst enemies; . . . [before them] she is silent; . . . when she has been scorned so long, it is as hard to recall her as it was to banish her.¹⁷

The sociological factor is reintroduced. Though conscience is innate its efficacy can be curtailed by socially induced passions and obscured by a socially generated pseudo-conscience.¹⁸

But if conscience implies some sort of natural law, why, in the

¹⁴*Ibid.*, 252.

¹⁵*Ibid.*, 257.

¹⁶*Ibid.*, 241.

¹⁷*Ibid.*, 254.

¹⁸It is interesting to note that something of Rousseau's analysis of conscience is incorporated in contemporary evolutionary theory: Konrad Lorenz, *On Aggression*

unpublished version of the *Social Contract*, does Rousseau maintain that he can find no reason why a man ought to obey it in a state of nature? The published version supplies an answer:

That which is good and conformable to order is such by the nature of things, independent of human conventions. All justice comes from God, and *He alone is its source*; but if we knew how to receive it from so great a height, we should need neither government nor laws.

Undoubtedly there is a universal justice derived from reason only; but justice, to be admitted among us, must be mutual. From a human standpoint, the laws of justice are inoperative among men for lack of natural sanctions; they are but the fortune of the wicked and the misfortune of the just, when the latter observes them toward everyone, and no one observes them toward him. Conventions and laws are necessary, therefore, to unite rights with duties, and to accomplish the purposes of justice.¹⁹

There is a natural law but in order for it to be operative certain conditions must be fulfilled; in the absence of these conditions it is not obligatory. This idea of a conditional natural law is by itself enough to differentiate Rousseau's version from the absolutist versions of tradition. His reason for making *legitimate* laws conditional constitutes the very heart of the *Social Contract*.

A natural physical law is by definition self-enforcing. As related to man it bears equally on all, so that barring miracles no man can walk on water, resist the forces of gravity, and so forth. Precisely because these limitations are universal they cannot meaningfully be spoken of as limitations of freedom since they define the area of impossibility. A natural moral law on the other hand, though it proscribes certain types of behavior, is not self-enforcing since the behavior in question falls within the area of possibility, i.e., the area of natural freedom. By definition the proscribed behavior, though a limitation of natural freedom, is not a limitation of moral freedom. This is an important distinction and must be accepted in some form by all those who accept the idea of a morality. Individuals can argue whether a given law is an infringement of moral freedom but insofar as moral discourse is admitted there must also be conceded *some* area of behavior defined in terms of "ought not." This "ought not" is the moral equivalent of physical impossibility. Were it the case that "ought nots" were always observed by all men there would be no

(New York, 1966), ch. 13. For example, "In reality, even the fullest rational insight into the consequences of an action . . . would not result in an imperative or in a prohibition, were it not for some emotional, in other words instinctive, source of energy supplying motivation. . . . Man as a purely rational being, divested of his animal heritage of instincts, would certainly not be an angel—quite the opposite" (239).

¹⁹*Social Contract*, Bk. II, ch. 6. Italics added. Note that Rousseau doesn't admit any incompatibility between a natural law, "derived from reason alone," and a conventional basis for justice.

complaint of a loss of freedom for a condition of equality would be maintained.

Just as equality, universality, and impersonality of application are the signs of a physical law, equality, universality, and impersonality of application constitute the necessary conditions for the authority of a moral law. Because he had rejected all theories that implied moral inequality, Rousseau could not admit a law as legitimate if it exempted some portion of humanity, large or small. In the case of a physical law it is not necessary to distinguish the content of the law and its enforcement since it is the *de facto* enforcement of the law which defines its content. The case of a moral law is quite obviously different. Built into the very notion of a moral obligation is the idea that there is no inevitable connection between content and enforcement.

Because of this split there is the ever present threat of inequality where some men live by the rules and others do not. Rousseau's point is that if mutuality is the essence of justice and morality, where such mutuality is not guaranteed there can be no moral obligation. An individual is morally obligated only to the extent that all other individuals are equally obligated. In a state of nature this mutuality, being nonenforceable, is assumed to be nonexistent. Because the law of self-preservation is the first law of nature there can be no moral obligation which puts an individual at a serious disadvantage in relation to his fellows, and this is exactly the situation virtue finds itself in, relative to vice. In short, though there is a natural law, it is not morally obligatory since it is not enforceable in a state of nature.

This observation alone could suffice to explain Rousseau's attack on Diderot's position that in the state of nature there was not only a natural law but that it was obligatory. However, Rousseau's critique in the first version is far more detailed: it is a summary of points previously made in the *Second Discourse*. What is fundamentally at issue is the question of a general society of mankind and what that idea entails.

For Rousseau "mankind" is a collective term, which doesn't imply any real unity. When it is conceived, as by philosophers, to denote a moral person with a common sense of humanity and activated by a natural moral law, difficulties arise. Since man is not by nature social, in the early stages of the state of nature men lived as solitaries; associations were casual and temporary; lacking reason there was no knowledge of the good and bad implied by natural law. What led men to unite was their common greed. "Our feeling of weakness comes less from our nature than our cupidity: our needs draw us together in proportion to the passions which divide us;"²⁰ The very factors which cause men to unite make enemies of them. Man-

²⁰Vaughan, I, 447ff.

kind as a community dictated by nature is a chimera, for the reason necessary to know its laws develops only after the passions have made compliance impossible.²¹

Thus, the real thrust of Rousseau's argument in the first version is not to deny that there is an objective standard of justice but to question whether the state of nature embodied conditions under which there would be an interest in being just. The "independent man" (presumably Rousseau himself) argues, "It is not a question of teaching me what justice is; it is a question of showing me what interest I have in being just."²² Even if one were to suppose a general society in the state of nature there would still be no compelling reason for a man to be just. But there was no such society, and whenever men did unite they became both unhappy and wicked. However, there may be some hope for man if a new form of association could be devised which reconciled justice and self-interest.²³ This hope, of course, is the *Social Contract*.

Aside from the inherent difficulties in Diderot's position, two basic beliefs of Rousseau demanded an attack on the conception of a general society and its attendant theory of natural law. The first is psycho-sociological. The affective bonds which unite a society have their origin in the smallest unit, and from there expand. It is only when men find security in their own society that they can begin to look upon foreigners as humans not to be harmed.²⁴ In the *Emile* Rousseau criticizes Plato for downgrading the family: "Can devotion to the state exist apart from the love of those near and dear to us? Can patriotism thrive except in the soil of that miniature fatherland, the home? Is it not the good son, the good husband, the good father, who makes the good citizen?"²⁵ Before men can affectively embrace the idea of humanity they must be affectively shaped in particular societies. To argue, as did Diderot, the existence of a general society antedating civil society would be to reverse this order of affections. The love necessary to unite mankind in a society can only arise, if it can, from the prior loves a man feels for his family and fellow citizens.

A second consideration also demands the priority of civil society to the purported general society. The mutual respect citizens bear one another becomes concrete in actions. From these transactions are "... born the rules of reasoned natural right, different from natural right properly speaking, which has its source in a feeling which though true is very vague and often stifled by self-love."²⁶ It is only within society that *distinct* ideas of justice and injustice arise. Since it is the law which shapes society, "law is anterior to justice, and not justice to the law."²⁷ Law, for Rousseau, is the expression of a general will, and

²¹*Ibid.*, 449.

²²*Ibid.*, 452.

²³*Ibid.*, 453–54.

²⁴*Ibid.*, 494.

²⁵*Emile*, 326.

²⁶Vaughan, II, 494.

²⁷*Ibid.*

for a general will to be heard it must be institutionalized. But how can one imagine an institution in the state of nature common to all men spread out as they were over the face of the globe? If justice requires the strict enforcement of the law, then in the state of nature there could not have been any natural justice because there was no institution capable of enforcing natural law throughout the world.

To summarize Rousseau's objections to Diderot: the issue is not natural law in general, but natural law as conceived by sophisticated rationalists. In the state of nature the reason sufficient to promulgate such a law is lacking. Reason develops dialectically with the passions, and these passions rule out the possibility of unorganized individuals voluntarily obeying rules which abridge their interests. In the absence of institutions which insure equal enforcement of laws, the only obligations which bind men are prudential. Moreover, without institutions there can be no society, and, thus, the term "mankind" as applied to a state of nature signifies not a general *society* of man, but simply the *aggregate* of all men. The idea of a natural law, however conceived, is irrelevant in the state of nature; if it is to acquire relevancy, certain political conditions must be met. An analysis of these conditions is to be found in the final version of the *Social Contract*. The law written in the heavens, then, is a necessary but not a sufficient condition of obligation; there must be a reasonable assurance that it will be enforced universally, and, given the nature of things, this guarantee demands some sort of government. So insistent is Rousseau on the necessity of complete and full enforcement of the law that he denies government the right of pardon, and "... even its [the sovereign's] rights in this matter are not very clear."²⁸

In an ideal state the question of a natural moral law becomes in a sense superfluous. Given the theory of the general will it is difficult to imagine an assembly legislating contrary to natural law. For, if natural law is directed to man's perfection and good as man, it can hardly be thought of as prescribing something all men judging with a spirit of generality would proscribe or vice versa. The general will and the process which accompanies it is a kind of collective reason and has as good a claim as any individual's reason to speak in the name of natural law when this is at issue. Even conceding a case where the sovereign is wrong, individuals are nevertheless obligated because disobedience, threatening the decision process as a whole and thus inviting a return to a state of nature, would frustrate the ends of natural law.

But unfortunately most if not all states, from Rousseau's point of view, are far from ideal, and laws bear unequally on subjects. Accord-

²⁸*Social Contract*, Bk. II, ch. 5.

ing to his analysis in the *Social Contract* this constitutes at least a partial reconstitution of the state of nature, and the only obligation subjects have toward rulers is prudential. Thus, from the moral point of view, subjects are in a state of nature *vis-à-vis* their rulers. But some questions suggest themselves, none of which are explicitly handled by Rousseau though his general principles provide clues as to how he might have answered.

Granting that subjects are only prudentially obliged by governments, by what sort of obligations are they bound in their interpersonal relations? Due to the socializing process individuals undoubtedly *feel* under moral obligations, but the question from a theoretical point of view is whether or not they really are if obligation is something more than a psychological phenomenon. Rousseau's answer would seem to be yes and no. Even a despotic government in its own interests enforces the law to some extent, and to this extent there is some degree of assured mutuality, i.e., bad men are punished and good men protected in their virtue. If the relation in question falls within the purview of a natural law, and the rights and duties it involves are enforced by the civil powers, the conditions defining moral obligation would seem to be adequately fulfilled. On the other hand one can conceive of all kinds of cases where the moral way would lead to, maintain, or augment a relation of inequality. Let it be supposed that it is wrong to tell a lie; but would it be wrong for a peasant to mislead a tax collector when the tax rates are inequitable? It would appear that Rousseau would allow this and much more, especially in the relations between peasants and the nobility.²⁹

Once society is articulated and despotism instituted, an individual's choice for a moral life pretty much reduces to some combination of two extremes. One may withdraw as far as possible from society, and while not doing much good at least does no evil. This is the passive morality which colors Rousseau's *Reveries*. Or one can live in the world and do as much good for others as circumstances permit. This is the life recommended in the *Emile*. If the former meets the minimum demands of morality, the latter is a counsel of perfection. For Rousseau an immoral life is simply not worth living; it constitutes a kind of slavery to one's animal nature and destroys any idea of human dignity. Paradoxically, the issue of morality becomes most acute in an immoral society. The true value of man resides in his freedom.

²⁹*The Confessions of Jean Jacques Rousseau*, trans. J. M. Cohen, (London, 1954), Bk. 4, 159. Rousseau had sought a meal at a peasant's cottage. At first he was given milk and coarse bread. When the peasant was assured that Rousseau was not a tax spy, he produced from hiding a wheaten loaf, ham, and a bottle of wine. Rousseau departed indignant, not because of the peasant's stratagem to avoid taxes, but because of the oppressive tax system which necessitated such deceptions.

In any society much of his natural freedom is circumscribed. In an immoral and, therefore, despotic society, he is deprived of his civil freedom. All that remains to him is the possibility of moral freedom, the voluntary submission to a self-imposed law. It is only as a moral being that a man can sustain an image of his worth and value.

But what is this self-imposed law but a variant of natural law? In the absence of rules determined by the collective decision of the people, the individual is thrown back on his own resources; he must be his own general will. The self-imposed law which gives a moral dimension to an individual is not a product of his particular will, i.e., that will which looks to his advantage, but of his general will, i.e., that will which never concedes him a right over others he would not willingly concede others over himself. This principle of generality and equality responds to what otherwise is known as natural law, and goes to the very roots of what Rousseau means by morality. To live according to this rule is to be moral because by so doing an individual preserves moral equality to the extent that lies within his power. Moral rules may be objective as rooted in the will of God, but the individual can be moral only insofar as he voluntarily internalizes these rules—another instance of the relationship between objectivity and convention.³⁰

The above discussion of morality under despotism can be conveniently summed up. After Emile has seen the ways of the world, the tutor explains:

Under the name of law you have everywhere seen the rule of self-interest and human passion. *But the eternal laws of nature and order exist.* For the wise man they take the place of positive law; they are written in the depths of his heart by conscience and reason; let him obey these laws and he is free; for there is no slave but the evil-doer, for he always does evil against his will. Liberty is not to be found in any form of government, she is in the heart of the free man, he bears her with him everywhere. The vile man bears his slavery in himself; the one would be a slave in Geneva the other free in Paris.³¹

It seems to be evident that Rousseau believed in natural law though his version significantly differs from traditional accounts. It is also clear that ultimately he linked the fate of morality with the existence

³⁰This idea of freedom as obedience to a self-imposed law is grossly distorted in those subjectivist versions which view each individual as a law unto himself. Rousseau attaches a very special meaning to the term, "law": "... the object of law is always general, ... the law considers subjects collectively and actions abstractly; it is never concerned with an individual man or with a particular action ... the law is universal both in its will and in its object, that which any man ... ordains on his own authority is not a law at all." (*Social Contract*, Bk. II, ch. 6.)

³¹*Emile*, 437. Italics added.

of God. In a letter to M. Moulton in 1769 he firmly stated that if "... you reject the First Cause and have everything done through matter and motion, you take all morality from human life."³² But what is interesting to note is that most of his discussions on morality proceed independently of any knowledge of God's existence. This is true whether he is giving a purely formal analysis of moral obligation as in the *Social Contract* or a psychological analysis in terms of Conscience. Conscience is an introspective fact which Rousseau interprets as an infallible guide to right and wrong. From a logical point of view, religion would seem to be a postulate or corollary of morality rather than vice versa. In an ideal society God would be less necessary for morality since in such a society it must be assumed that vice is always punished, and virtue, if not a reward for its own sake, still does not work to the relative disadvantage of the virtuous. But, as it is, this ideal is practically impossible and virtue most often comes off second best. Under these circumstances what motive can most individuals have for being good? On Rousseau's principles the obligatory power of natural law or any law depends upon almost certain sanctions. Since this is not the case in this world, it would never be the case unless there were a God who rewards and/or punishes after death. From this point of view religion is a practical postulate of moral experience.

But where an avenging God is required as a motive for moral behavior and a check on vice a new difficulty arises. The real glory of man according to Rousseau lies in his moral freedom, and that consists in acting according to a self-imposed law. This sort of freedom would appear to be impossible where the overriding motive of morality lies in a hope of reward or fear of punishment, for these motives seem more appropriately related to prudential rather than to moral obligations in the strict sense. This poses no problem with respect to the generality of mankind since it can be assumed that Rousseau saw little prospect of their attaining moral perfection. And the tension is somewhat reduced in the case of an elite since Rousseau doubted the existence of a hell. Man's weakness and God's justice rules out the possibility of eternal punishment. He wonders if it might not be the case, "... that the souls of the wicked are annihilated at death, and whether existence and consciousness are not themselves the reward of a good life."³³ Psychologically there is something less prudential about an act motivated by hope than one motivated by fear. And it should be added that in the personal case of Rousseau the reward he hoped for was more in the nature of a just recompensation for the

³²*Citizen of Geneva: Selections from the Letters of Jean Jacques Rousseau*, ed. Charles W. Hendel (Oxford, New York, 1937), 367.

³³*Ibid.*, 148.

many afflictions he imagined his justice suffered at the hands of the unjust.³⁴

Even if it is possible to reconcile moral freedom and the necessity of religion as a motive for morality there are several difficulties that confront any attempt to harmonize Rousseau's moral-religious views and his *Second Discourse*. In this work Rousseau argues that man is not by nature social and that for countless ages primitive men lived solitary lives with only the most casual and temporary encounters. Man is naturally good but in the state of nature he is not virtuous because, lacking reason, he has no idea of a duty which could conflict with his private interest, the very essence of morality. The various stages which intervened between this original state and the socialization of man are not clear but they were the results of "accidents." Save for these fortuitous events man would have remained but a superior animal, happy and amoral.

As against this account there is Rousseau's emotion-charged belief in divine Providence. Though this Providence might not be viewed as preordaining every individual event, its direction certainly extended far beyond the mere biological preservation of the species. Were species-survival its only function, it is hard to see how it could so deeply have touched his religious sensibilities. Moreover, despite his constant depreciation of reason, Rousseau leaves little doubt that he regarded civilized man as infinitely superior to the solitary primitive. Though man loses some advantages in contracting out of the state of nature,

. . . he gains so many in return, his faculties are exercised and developed, his ideas are broadened, his sentiments ennobled and his whole soul elevated to such an extent that if the abuses of this new condition did not often degrade him beneath his former state, he ought unceasingly to bless the happy moment which wrested him forever from it, and turned him from a stupid and limited animal into an intelligent being and a man.

. . . To the foregoing we might add that . . . man acquires moral liberty, which alone makes him truly master of himself; for the impulse of mere appetite is slavery, and obedience to self-imposed law is liberty.³⁵

If the true perfection of man is his capacity for morality and his ultimate destiny, union with God, the question immediately arises, "What is the role of Providence in the history of mankind?" Why for so many eons did a beneficent Providence leave man in an animal-like state? Such men, no less than civilized men, had immaterial souls. What was their fate after death? Since they were not yet

³⁴If all this sounds quite Kantian, we must recall that Kant was thoroughly familiar with Rousseau's writings and was probably the only famous 18th-century thinker who understood him in depth.

³⁵*Social Contract*, Bk. I, ch. 8.

developed, God would have nothing to judge with respect to reward or punishment. At what point in man's evolution does he become liable to divine justice? Monotheism, the heart of the natural religion which anchors Rousseau's conception of morality, is an extremely late development in man's intellectual history and is by no means universally admitted. Within the divine economy, what purpose did pre-rational man serve? If his emergence to the level of society is but the effect of "accidents" how are we to understand the interrelation between God as Providence and God as source of moral law? It is perhaps possible, though doubtful, that Rousseau could supply rational resolutions to these and allied questions. But on the face of it there seems to be a lack of harmony between Rousseau the moralist and Rousseau the anthropologist, between his religious faith and his naturalism.³⁶

Disregarding the *Second Discourse* and Rousseau's personal beliefs, all of the preceding can be read in a slightly different way. If there is to be a moral obligation it must be defined according to the process described in the *Social Contract*. The various steps in this process, "are everywhere the same, everywhere tacitly admitted and recognized. . . ."³⁷ This universality implies that the process and the laws which result are natural laws. However, at this stage of the argument it need not be assumed that they are natural in the traditional sense decreed by God. They may be viewed simply as so rooted in the nature of man that no man would as a matter of fact acknowledge a moral obligation on any other terms. This type of natural law is conditional because there is no antecedent obligation which demands that a man enter the contract, and there is no transcendent norm which obliges him to bind himself in perpetuity. This is clearly evident in the case of the people as a whole: ". . . there is no fundamental law in the state which cannot be revoked *not even the social compact*."³⁸ Such an action would legitimately bring back the state of nature and natural liberty, ". . . which has no other limit than the might of the indi-

³⁶His belief in Providence and the outlines of a theodicy are expressed in a letter to Voltaire dated Aug. 18, 1756. (*The Age of Enlightenment*, ed. Lester G. Crocker [New York, 1969], 90–93.) Moral evils are rooted in man's freedom. It is not denied that individuals suffer but, "The question is not whether each of us suffers or not; but whether it is good that the universe exists and whether our sufferings are inevitable in its constitution." It is not that everything considered individually is good but that everything is good for the whole. This cannot be proved pro or con by some materialist analysis, but optimism derives its principles, ". . . from an induction of the perfections of the divinity who presides over everything." It is his hope, a species of faith, which "solves" for Rousseau the problem of evil. This same faith, presumably, reconciles anthropology and morality.

³⁷*Social Contract*, Bk. I, ch. 6.

³⁸*Ibid.*, Bk. III, ch. 18. Italics added.

vidual,”³⁹ In theory at least, the amoral state of nature is as much an option as the civil state. In this sense, moral norms are at once natural and conventional: *if* man decides to be moral, he will obligate himself only on certain terms.

Granting the content of moral obligation, it becomes fully obligatory only when it is backed by nearly infallible force. This is the principle of mutuality. From a purely rational point of view the general outlines of a naturalistic ethics are complete. They can be evaluated on their own terms without reference to a deity. But then psychological and historical considerations enter the picture. Over a period of time, is it reasonable to expect that everyone will continue to legislate in the spirit of generality and that the laws will be enforced impartially? Apparently not. Man being what he is, is constantly tempted to seek his individual advantage to the detriment of the common good, and the fear of violating human justice is not always an adequate deterrent. To help check this tendency the civil creed with its promise of divine retribution becomes an integral part of the social contract. The atheist is barred from the community “not for impiety, but for unsociability, for being incapable of sincerely loving law and justice, and of sacrificing his life to his duty when necessary.”⁴⁰ Religion, by itself, may not be a reliable support of equality but without its basic tenets inequality and immorality are inevitable. In his letter to D’Alembert, Rousseau is quite explicit in stating the necessity of religion as a basis for virtue. “I do not mean by this that one can be virtuous without religion; I held this erroneous opinion for a long time, but now I am only too disabused.”⁴¹

From a theoretical point of view the Civil Creed could have been dispensed with if there were an alternative way of motivating men to check their natural selfishness. Unaware, save from books, of that nationalistic spirit of which, ironically, many have judged him the prophet, Rousseau thought there was no alternative way. But the point is that in theory the *Social Contract* can be read as a self-contained ethics without theological presuppositions and without a commitment to traditional law. Where the question of religion becomes vital and central is in the context of moral man and immoral society. The *de facto* inequality which pervades contemporary states renders the *Social Contract* more or less politically irrelevant save as a witness to a universal lack of legitimacy.

Under these circumstances, the purely naturalistic aspect of his theory might advise maximization of self-interest within the limits of

³⁹*Ibid.*, Bk. I, ch. 8.

⁴⁰*Ibid.*, Bk. IV, ch. 8.

⁴¹Rousseau, *Politics and the Arts: Letter to M. D’Alembert on the Theatre*, trans. Allan Bloom (Glencoe, Ill., 1960), n. 97.

prudential fear. But there still remains the insistent voice of conscience which punishes transgressions with painful remorse. For Rousseau, duty, guilt, remorse and the like are natural, not socio-psychological phenomena. They are as real as the pangs of hunger, but unlike the case of hunger, it is not empirically evident that they bear the same relation to man's well-being. Do not eat and you die. Do not listen to your conscience and soon enough its voice and remorse will be stilled. This line of thought Rousseau could not accept, but neither could he find an adequate naturalistic motive to be moral in an immoral society. In a moral society one can find happiness in the common good and one is never disadvantaged by virtue. But in an immoral society there is no real common good, and vice is its own reward.

If there is no secular justification for morality and yet the desire to be moral is strong, justification must be sought elsewhere. It is in this context that Rousseau's leap of faith is best understood. And it is a leap of faith because, despite the natural religion expressed in the vicar's creed, Rousseau in his private letters is by no means certain that reason is capable of deciding the issue of God's existence one way or the other. In a letter to M. Vernes he declares that he needs religion probably more than any man alive, and that his atheist friends have not succeeded in shaking his faith though he is unable to counter their objections. But this is not decisive for,

Philosophy, which has neither bottom nor shore in these matters and lacks the primary ideas and elementary principles, is nothing but a sea of uncertainty and doubt, whence the metaphysician never extricates himself. So I have abandoned reason to its fate, and consulted nature, that is to say, the internal sentiment which directs my belief independently of my reason. . . . I have no other reason for not believing them [materialist interpretations] except the fact that I do not believe. [That may be prejudice] But what can reason do, rude though it be, against a prejudice which is more persuasive than itself?

He affirms his belief in God and the conviction that God would not be just if souls were not immortal. Even if his faith is mistaken it is salutary as helping him endure all the misfortunes he has experienced. In any case, “. . . if virtue does not always make man happy, he cannot possibly be happy without it,”⁴²

There are other letters which express similar doubts about the efficacy of reason, but there is perhaps no more fervid and poignant affirmation of the faith which grounds his religion than what he says in a letter to Voltaire. “All the subtleties of metaphysics will not make me doubt for a moment the immortality of the soul or a beneficent

⁴²*Letters*, pp. 147–48.

Providence. I feel it, I believe it, I want it, I hope for it, and I shall defend it to my last breath."⁴³

Reason has its share in Rousseau's religious beliefs in the sense that it provides evidence, though inconclusive, on their behalf, and also raises counter objections to the materialist position. But the ultimate appeal to sentiment must be interpreted as an act of faith, for what is fundamentally at issue is the justification of another sentiment, viz., conscience, and it is evident that one feeling cannot legitimate another without circularity.

The fact that Rousseau's natural religion turns out to be less than natural, being ultimately based on faith, leads to an unusual dualism. The *content* of morality retains its natural status as revealed by a combination of reason and conscience, but its *sufficient motive* is to be found only in an act of faith in a God who will reward virtue. Rousseau is never in doubt about the sufficiency of nature to provide an insight into what is morally required; he *knows* right from wrong. The question is, "What doth it profit a man if he saves his soul and loses the world?" And the answer is to the effect that though he loses the world his faith insures him that he will be amply recompensed in heaven.

This dualism seems strange because in the rationalist tradition the content of the law carries its own absolute imperative, and this union of content and imperative carries over into the logic of our moral discourse. Rousseau's position in this terminology would seem to reduce to the contradiction, "I ought to do such and such but I am not obliged to do so save under certain conditions." But I do not believe this is what he is saying. He is saying, when speaking of an ideal state in purely naturalistic terms, that *if* men would be moral this is what they ought to do provided the law is rigidly and equally enforced. This involves one absolute and two conditions. There is no transcendent obligation to be moral—this is a matter of convention—and this convention is binding only as long as the laws are enforced. But granting these two conditions, the content of the law is not really conventional but a matter of that objective analysis which determines the general will.

Since the above conditions are not practicable, Rousseau shifts his ground without changing the content of morality. The new formulation becomes, "You are obliged by such and such rules if God exists, and God exists." In this syllogism the two previous conditions are removed or, rather, replaced by an act of faith which in relation to reason is a kind of condition. These two positions, the naturalistic and the semi-naturalistic, though formulated in different contexts, are not incompatible because in both formulations moral rules are derived in

⁴³Quoted in Peter Gay, *The Party of Humanity: Essays in the French Enlightenment* (New York, 1964), 125.

substantially the same way, and in both the full obligatory force of the law depends upon the presence of some surefire mode of enforcement.

To summarize, then, Rousseau's attitude toward natural law. There is a natural law which man can grasp independently of any knowledge of God. It is natural in the sense that in a given set of circumstances man by a combination of simple reason and conscience can know what is right and wrong, just and unjust. However, its obligatory character is conditional. In the one case it depends on the ascertainable fact of human enforcement, and in the other, on a strong inner faith in the existence of God. If both of these faiths are in vain, the whole question of natural law becomes at best academic, and the ideal of moral freedom, quixotic.

Queens College, Flushing, N.Y.