

MARRIAGE AND THE ETHICS OF OFFICE

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This Article aims to retrieve the neglected concept of the “office,” as in “the judicial office” or “corporate officer” or the “office of deacon or lector.” It aims to present a thorough account of what that term means. It inquires into the ethics of office, advancing the thesis that to hold and exercise office is a good thing, not only in the obvious instrumental ways—it serves a function and it gets results—but also as a part of the “final,” noninstrumental good of the officeholder and even, in some arrangements, of the recipient of the officeholder’s services. Office is an aspect of human flourishing.

Further, this Article aims to establish that marriage is an office. It proposes that marriage is good in the ways that office is good and that marriage suffers when a society neglects its office-like features.

Office involves duty. That seems to be clear from common usage and general belief. Someone who holds no relevant office may or may not help you when you are sick, but if you are a patient in a hospital your attending physician *must* do so. Someone who holds no relevant office may or may not help you vindicate your legal rights when they have been violated, but the policeman or the district attorney or the judge must assist. Your boyfriend, your girlfriend, or a casual acquaintance may or may not stick by you in good times and bad, but your spouse must be faithful. That is because physicians, policemen, district attorneys, judges, and (it is here argued) husbands and wives are holders of offices and have special obligations. So to explore the nature of

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office a good way to start is with the nature of obligation. To develop an account of the goods involved in office, it will help to explore the question of how obligation can be good.

PART ONE: THE NATURE AND GOOD OF OBLIGATION

"How blessed is anyone who delights in the commandments! . . . [H]is uprightness stands firm forever."¹

I. THE NATURE OF OBLIGATION

Obligation has been defined as "being tied, required, or constrained to do (or from doing) something by virtue of a moral rule, a duty, or some other binding demand."² The derivation of "obligation" is "*obligatio*," a binding up. So to be under an obligation is to be tied.

As this suggests, propositions about obligation have a special character, different from many propositions about ethics. They do not describe a good; rather they direct a person to act or refrain from acting. "Feeding the hungry is good" does not quite express obligation; "you *must* feed the baby" may express one. And they go beyond recommending, they insist. The following explores these features more thoroughly.

A. *Obligation Involves Ethical Traction: The Three Sectors of Ethics and Where Obligation Fits In*

Normative statements usually have something to tell us about these elements: ends, actions, actors, and how to think about actions. It helps to distinguish among three sectors.

1. *Psalms* 112:1-3 (The New Jerusalem Bible).

2. OXFORD COMPANION TO PHILOSOPHY 632 (Ted Honderich ed., 1995); see also GERMAIN GRISEZ, CHRISTIAN MORAL PRINCIPLES 255 (1983) ("Not all morally good acts are obligatory—for example, feeding the hungry is good yet not obligatory. The reason is that an act of this kind can have an alternative itself morally good.").

The linguistic philosophers had a debate during the 1950s and 1960s about whether there is a difference between "duty" and "obligation." See R.B. Brandt, *The Concepts of Obligation and Duty*, 73 MIND: NEW SERIES 374 (1964) (arguing that obligation is paradigmatically about contract and promise whereas duty is paradigmatically about the requirements of office). The present Article uses "obligation" and "duty" interchangeably.

Both "obligation" and "duty" are sometimes made to refer to the action or even the outcome rather than to the bond. This is the way the term "duty" is used in the statement "I did my duty." Another example defines obligation as "[a]n action that is required of one." SIMON BLACKBURN, THE OXFORD DICTIONARY OF PHILOSOPHY 267 (1994). In this Article "obligation" is understood to refer to the bond rather than to the action which we are bound to take.

First, actions and the ends of actions usually take center stage. The phrase “those with income must pay taxes” supports or commends paying taxes. The phrase “the wealthy should give to the poor” supports giving to the poor. Likewise, the phrase “you must not slander” derogates slander. The area which concerns actions and their ends can be called the “first sector” of ethics.

A second set of components—who should pursue the ends, who should take the actions, with what degree of commitment, subject how readily to any excuses—often receives less attention. Some normative statements do not even allude to them explicitly. Examples of such statements include “beauty is good,” and “burping is rude.” But most normative statements do refer to them, deploying persons in service of appropriate ends and mandating or recommending modes of deployment. “Those with income must pay taxes” deploys by the phrase “those with income must.” “The wealthy should give to the poor” deploys by the phrase “the wealthy should.” These matters—they might be called “proximate ethics” because they concern the interface between first-sector matters and the actor—are the most directly relevant to obligation and office. The area into which they fall is here referred to as the “second sector” of ethics.

The third area concerns the deliberations of the ethical actor and, more generally, all his intellectual and affective responses to first-sector and second-sector matters. Important components here include perceiving and apprehending the good, considering and assessing rules and principles, and structuring plans and attitudes in ways which respond to them. (Or, perhaps, rejecting them.) This area is here called the “third sector.”

Obligations fall into the second sector. A world without good or right could have people but no obligation; a world without people could have good (beautiful trees) but no obligation: you need both for obligation because obligation involves the intersection. A statement about obligation tells how a norm or an aspect of the good *impinges upon* some person; how it applies. It tells about what might be called “traction.” It falls into a cluster of terms in which other examples might be “vocation” or “calling” (as in “a calling to be a teacher”). Statements about obligation involve assertions about how a norm or an aspect of the good bears upon the life of the obligated person.

Academic ethics mostly concerns the first sector. But “on ground level” ethics is more about the second sector and how it relates to the third. People in trouble, pondering the forks on life’s road ask, “Where do my commitments lie? How am I

bound to act? What am I called to do?" Saint Augustine, in the period leading up to his crisis, already understood a great deal about the good. His difficulties concerned its bearing upon himself. He knew that chastity was a virtue, but his problem lay in taking it on as an obligation. Ultimately, "I submitted my neck to your easy yoke," he wrote, "and my shoulders to your light burden."³ Similarly, people looking back with regret, repenting, often reflect not only on the badness of the acts they performed and the bad consequences which ensued, but also on the error of misapprehended attachments and inappropriate commitments.

B. *Obligation Is a Demanding Variety of Ethical Traction*

Within the second sector, obligations lie at the strong end of a continuum. Suggestions, recommendations, and other weak bonds lie at the other extreme. Obligations are demanding. To be obliged is to be firmly bound, as with a rope. In marriage, sexual fidelity is obligatory, entertaining conversation and a good income are merely desiderata. In the political community, to avoid supporting the enemy in wartime is obligatory; to pay taxes is obligatory; to become well-informed and send intelligent letters to the editor on political issues are extras.⁴

C. *Obligation Is Bipolar: Both Ends Point the Rope*

As a rope tying a person to an action and its good, obligation has a bipolar quality. Your obligation to feed a child may be affected by his situation (the obligation may disappear if he ceases to be underfed); and the obligation may also be affected by your circumstances and activities (it may diminish if your parents fall into need; it may augment if you adopt the child). Overlooking this bipolarity distorts thinking about the good of obligation, as will emerge.

3. SAINT AUGUSTINE, *CONFESSIONS* 155 (Henry Chadwick trans., Oxford Univ. Press 1991) (quoting *Matthew* 11:30).

4. The distinction is not between precepts which leave choices and those which do not. Feeding your children is an obligation even though you can choose which foods. Rather, the distinction is between norms which lie within a strict core of ethical requirements and those which fall outside, in a supererogatory penumbra. See generally DAVID HEYD, *SUPEREROGATION: ITS STATUS IN ETHICAL THEORY* (1982); see also GREGORY MELLEMA, *BEYOND THE CALL OF DUTY: SUPEREROGATION, OBLIGATION AND OFFENCE* (1991); cf. *THE OXFORD DICTIONARY OF JEWISH RELIGION* 211 (R.J. Zwi Werblowsky & Geoffrey Wigoder eds., 1997) ("Duty (Heb. *hovah*), an obligation or due *Hovah* is distinct from *mitsvah*, which can also signify a commendable, but not necessarily obligatory, action").

II. WHAT IS THE GOOD OF OBLIGATION?

A. *The Question*

It helps to start by noticing two things this question is *not* inquiring into. First, it is not a question about pedigree or the power to initiate obligation: it does not ask whether obligation is valid without consent, or whether the state possesses the power or capacity to create it. Second, it is not a question about basic skepticism: it does not ask whether there are any obligations or whether there is such a thing as the good or the true or the knowable.

Rather, it will help to stick with the common apprehension that we do live in a world which is rich in real obligations, arising from various sources and really binding really obliged individuals, and in that frame of mind to follow out the analysis of this article, which is designed to answer the question “what is the good of them?” Why accept any or bind yourself to any by contract? Why, if you have the authority to do so, impose any obligation on others? What makes an obligation good? What might justify the world as we see it—thick with obligation?

B. *Why It Is a Hard Question*

Distinguishing the good involved in obligation (or any ethical traction) is difficult because one’s view can easily be obstructed by the much more vivid goods involved in the first sector of ethics. The obligation not to lie at first seems to be all about the bad of lying, for example, or the good of fostering true belief. And indeed this appearance does reflect some of the reality of the situation since the good of an obligation has something to do with the good of what it accomplishes when it is fulfilled.⁵ But much of the remainder of this Part One is devoted to showing that this is not the whole story.

Distinguishing the good involved in obligation may also be difficult because of the need to disentangle matters in the third sector of ethics. It may seem that the good of obligation really boils down to the good of one’s inward response to obligation—the good of “commitment,” for example. It may also seem that the good of acting according to obligation is an extension of this inner state—a part of “authenticity,” for example. Again, there are some *realia* behind these appearances, since obligation does not participate much in the good when it is ignored entirely. But this Article is devoted to demonstrating that this is not the whole story.

5. See *infra* Part I.H.

C. *The Sanctions-Based Account of Obligation*

One prominent account of obligation defines it based on threat of harm:

A party lying under a duty is liable to evil or inconvenience (to be inflicted by sovereign authority) if he disobeys the Command. This conditional evil is the *Sanction* which enforces the duty; and the party bound or obliged, is bound or obliged, *because* he is liable to this evil, if he disobeys the command. That bond, *vinculum*, or *ligamen*, which is of the *essence* of *duty*, is, simply or merely, liability to a *Sanction*.⁶

The major thrust of this kind of theory has to do with the positivist project of developing accounts of law, obligation, duty, rights, and so on which separate them out from and create of them a system which works independently from ethics. This is a difficult project, and may not be achievable. Even if it is, it would result in a system of norms would hardly seem to matter; a system populated by "obligations" which it would be wrong to discharge and "legal systems" which it would be wrong to comply with.⁷ In any event, the project is of little interest here because this article is about ethics. It aims to determine the good of obligation, not whether that term could be given a coherent meaning independent of the good.

Another thrust of this kind of theory is more destructive, and aims to present an account of obligation which aims not only to separate out from but to supplant relevant ethics altogether. A sanctions-based theory proposing itself in this way violates common sense. Your baby is hungry and cold and no one can know that but you. You have no obligation to care for her. I threaten to lash you with a wet noodle if you feed or clothe her. You have an obligation *not* to care for her. Those are the preposterous implications.

6. JOHN AUSTIN, LECTURES ON JURISPRUDENCE OR THE PHILOSOPHY OF POSITIVE LAW 199 (Robert Campbell ed., 1913); *accord* JOHN AUSTIN, THE PROVINCE OF JURISPRUDENCE DETERMINED AND THE USES OF THE DUTY OF JURISPRUDENCE 14 (Isaiah Berlin et al. eds., Weidenfeld & Nicolson 1954) (1832) ("Being liable to evil from you if I comply not with a wish which you signify, I am *bound* or *obliged* by your command, or I lie under a *duty* to obey it.") (emphasis in original).

7. See J. Raz, *Hart on Moral Rights and Legal Duties*, 4 OXFORD J. OF LEGAL STUD. 123, 131 (1984) (stating that if the sanctions-based account of duty is correct then "either it is not wrong to fail to fulfil [sic] one's duty or . . . acting wrongly is not something one has a reason not to do.").

D. *Contractual Accounts*

Another leading approach attempts to reduce obligation to consent, promise, and contract. There is more than a grain of wisdom in this, since obligations are often instituted by some sort of acceptance. Marriage, for example, usually commences with an impressive exchange of vows, and some theorists identify marriage as a contract.⁸

It seems, however, that a contractual account cannot supply the whole story. First, such an approach would entirely exclude obligations of other sorts: noncontractual, nonpromissory, unchosen obligations. Children, we apprehend, have obligations to parents, citizens to country, and man to God. Parties who have not yet entered into a contract but are preparing to do so have duties, we apprehend, to negotiate in good faith and not to lie to one another. Parties not even preparing to enter into a contractual relationship have obligations, it seems, to return lost property or at least not to destroy it and to remit funds paid by mistake. Even complete strangers have duties to one another, for example, to drive carefully and to pay damages when their carelessness causes accidents. These are the conclusions of Aristotle, the Roman jurists, the Justinian compilers, as well as many other thinkers.⁹

A second point extends the first by applying it to close relationships. Many affiliations which are not contractual in the commercial meaning of that term are widely regarded as rich fields of obligation: guardianships, trusts, and marriage, for example. Many of these obligations go unmentioned in any formal avowal. Husbands and wives have obligations not mentioned in the wedding vows. The groom does not swear to live with his spouse or to support her materially or to help with the babies.¹⁰ Even where there are comprehensive promises, the obligations

8. See, e.g., GARY S. BECKER, *A TREATISE ON THE FAMILY* 43 (1991) (“‘[M]arriage’ [is] the term for a written, oral, or customary long-term contract between a man and a woman to produce children, food, and other commodities in a common household.”); see also JOHN WITTE, JR., *FROM SACRAMENT TO CONTRACT: MARRIAGE, RELIGION AND LAW IN THE WESTERN TRADITION* 194 (1997) (describing the rise of the contractual understanding) [hereinafter WITTE, *SACRAMENT TO CONTRACT*].

9. See generally Samuel Scheffler, *Relationships and Responsibilities*, 26 *PHIL. & PUB. AFF.* 189, 201 (1997) (“[T]he existence of a relationship that one has reason to value is itself the source of special responsibilities, and those responsibilities arise whether or not the participants actually value [or have agreed to] the relationship.”).

10. And many affiliations which people regard as freighted with obligation are initiated without a contract in the central, exchange-of-specific-promises sense of the term “contract.”

seem to have some deeper, subpromissory basis. No one would think he had an excuse for adultery if he could reread his wedding vows in some future year and discover that they had omitted the part about "forsaking all others."¹¹

A third point notes that even the classic contract of the negotiated, exchange-of-promises type does not seem to stand exclusively on a morality of promise. We apprehend, and our legal system demands, that a contract be interpreted based in part on public policy and requirements of conscionability.

A final point is that all the contractarian account achieves is to attach all other obligations to one particular kind of obligation. We are left asking what the good of that is: asking why contract, promise, and consent obligate.

At present, the leading theory about the good of contract is one based on utilitarianism—on economic thought—the nub of which is that contracts ought to be respected and enforced because they maximize utility. It is a consequentialist theory, and this article gives careful attention to the merits and limitations of consequentialist approaches in the next subsection.

E. *Accounts Based on Consequentialist and Deontological Ethics*

Suppose there were no obligation. Suppose, if you can, that people were to obligation as jellyfish are to rope. Suppose, in other words, that somehow no norm ever applied with special force to one person more than to another and that no norm, however firm a basis it might have for its first-sector components, ever took hold of anyone in more than a mild, suggestive way.

This supposition may be difficult to wrap your mind around. Thought experiments can be hard enough to perform when they posit a *factual* world vastly different from the real one, but here is a thought experiment which posits a divergent *normative* world. You might first imagine, by way of comparison, a world which is different in respect to its *positive* norms. All the statutes are framed as general suggestions. One statute would read, "It is suggested that people not murder." Another might say, "Legislative bodies are advised to make no law respecting an establishment of religion." Now, with the assistance of this analogy, try imagining a world in which *nonpositive* ethics is like that as well. In this

11. As a thought experiment, imagine a couple whose wedding was the illusory trick of some Genie. If this couple lives and thinks as though man and wife for many years, only now to discover the illusory nature of their vows, have they significant ties to one another? You may deny that they are fully married, but if you conclude that they have some such ties then you believe that express contract and promise is not the entire story.

world, you might say, "It is better to avoid adultery and commendable for you (and anyone else) to feed your children when they are hungry," or, "It is admirable when a physician completes the surgery." You might also say, "Promises and even the most solemn oaths are not to be taken too seriously." You have imagined a permissive world, a world of soft and cloudy ethical traction—a world of "ethics lite."

What would be wrong with such a world? What does our world, charged as it is with obligation, have of the good that such a world would lack?

1. The Consequentialist Account¹²

One answer to the question relies on the good and bad effects of action. To justify the proposition "you have an obligation to feed your children," consider the good of nourished children. To justify the proposition "you have an obligation to give to the poor," consider the needs of the poor. To justify the proposition, "the surgeon should complete the operation," consider the needs of the patient.

"But," the consequentialist may be asked, "why *obligation*? Why *me*? Why *must I*?" As to "why *you*" the consequentialist may answer "because of your unique efficiency" (the surgeon is the most efficient, especially during the surgery) or "because of your special influence" (the surgeon can affect trust and loyalty generally) or "because *no one*" (no one should ever perform some acts, such as rape, because of their invariably bad effects). As to "why *must you*," the consequentialist may insist that *all* oughts are musts, concluding that "it is always wrong for a man knowingly to do anything other than what he believes to be most conducive to Universal Happiness."¹³

12. This Article discusses consequentialism by referring to classic act-utilitarianism: the type that makes pleasure the key and that "holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness. By happiness is intended pleasure, and the absence of pain; by unhappiness, pain, and the privation of pleasure . . ." J.S. MILL, UTILITARIANISM 55 (Roger Crisp ed., Oxford Univ. Press 1998) (1861). There are many varieties of pleasure-based and similar experience-based utilitarianism. *Id.* at 33–35; see also Martin Hollis & Robert Sugden, *Rationality in Action*, 102 MIND 1, 5–7 (1993) (discussing preference-based utilitarianism); see generally Amartya Sen, *The Formulation of Rational Choice*, 84 AM. ECON. REV. 385 (1994) (also discussing preference-based utilitarianism).

13. HENRY SIDGWICK, THE METHODS OF ETHICS 492 (7th ed. 1907) ("[The] distinction between Excellence and Strict Duty does not seem properly admissible in Utilitarianism . . . For a Utilitarian must hold that it is always wrong for a man knowingly to do anything other than what he believes to be most conducive to Universal Happiness."); see also Robert Merrihew Adams, *Motive Utilitari-*

2. The Deontological Account

Another account locates the good of obligation in the nature of the act rather than its consequences. To justify the proposition, "you have an obligation not to lie," point to the intrinsically objectionable nature of lying. To justify the proposition, "you have an obligation to pay a debt or return another's lost goods," point to the disordered nature of profiting at another's expense. Here, this account is called the "deontological."¹⁴

Deontologist and consequentialist thinking afford some strong grounds for supporting obligation, but can they be the whole story?¹⁵

3. The Dispensability Criterion

If the consequentialist's ends would all be achieved without it—and all the intrinsically good acts would be performed and the intrinsically bad acts would be avoided—would we be as well

anism, 73 J. OF PHIL. 467, 478 (1976) (noting the "triviality of . . . some of the obligations that act utilitarianism would lay on us.").

The consequentialist can often explain promissory and contractual obligation in these ways. A promise often induces special reliance, placing the promisor in a position where he is uniquely situated to perform the beneficial act. The surgeon likely promised the patient. And breach of the promise is liable to undermine the security of promises and the reliability of contracts.

14. See generally DEONTOLOGY (Stephen Darwall ed., 2003).

15. To approach this question, it helps to attend to the Aristotelean distinction between things that are good only instrumentally and those that are good noninstrumentally as well—between acts that we choose for the sake of something else and those that we choose for themselves. Aristotle concluded:

If, then, there is some end of the things we do, which we desire for its own sake (everything else being desired for the sake of this), and if we do not choose everything for the sake of something else (for at that rate the process would go on to infinity, so that our desire would be empty and vain), clearly this must be the good and the chief good.

ARISTOTLE, *Nicomachean Ethics*, in 2 THE COMPLETE WORKS OF ARISTOTLE 1729 (ll. 1094a18–22) (Jonathan Barnes ed., W.D. Ross et al. trans., 1984) [hereinafter ARISTOTLE, *Nicomachean Ethics*]; see also ROBIN ATTFIELD, A THEORY OF VALUE AND OBLIGATION 25 (1987):

Literally, what is of intrinsic value is what is of value in itself, rather than of value instrumentally. If something is valued simply as a means to a further state of affairs beyond itself, it is being regarded as of instrumental value only. But not everything which is of value . . . can be so only instrumentally. Some things are of value in themselves and for no reason beyond themselves And whenever this is so the state of affairs in question will supply a reason for action which is independent of other desirable end-states or values, and which derives from nothing but itself. Thus, intrinsically valuable states of affairs will be ones which there are nonderivative reasons for fostering, desiring or cherishing.

Id.

off dispensing with obligation? Imagine a world in which there is no consequentialist point to obligation. Imagine that in this world, "Koloremundo," all the good consequences at which an action might aim—beauty, health, pleasure, whatever—could be as well served without obligation as with. Perhaps they have all been perfectly achieved already, or perhaps the world is populated entirely by persons who on balance do just as much and just as well and just as efficiently in the service of those goods without obligation as with it. They are perfectly efficient and skillful in all the arts and crafts from the moment each sets his hand to the plow. So the training-related efficiencies of long-term commitment are not needed. They experience no temptation to serve trivial or evil ends, so the stiffening effects of obligation are not needed. The recipients of their services need make no accommodations to receive them and perfectly foresee the time and manner in which services will be rendered, so the reliance-supporting effects of obligation are not needed.¹⁶ Imagine further that there is no deontological point to obligation because no one ever has the occasion or temptation to commit intrinsically bad actions and everyone is given sufficient reason in pleasure alone to commit the intrinsically good ones.

If you are an unmitigated consequentialist or deontologist you find no reason for imposing, recognizing, or honoring obligation in Koloremundo. You see no point in burdening yourself with strong duties. You might, of course, perform various good actions. But you would proceed according to no firm order or structure. You might accept some order, but only order held weakly in place by suggestive norms rather than firm mandates and which allowed that the action it recommended might just as well be performed instead by someone else.

What sort of life would you lead? Perhaps that of the man described in Plato's *Republic*:

[H]e . . . lives along day by day, gratifying the desire that occurs to him, at one time drinking and listening to the flute, at another downing water and reducing; now practicing gymnastic, and again idling and neglecting everything; and sometimes spending his time as though he were occupied with philosophy. Often he engages in politics and, jumping up, says and does whatever chances to come to

16. As an alternative, imagine a world in which as we went along with projects we did them not better and better but worse and worse, and in which those who received the benefits of our actions received them more readily and effectively the first time, progressively worse on subsequent occasions. (The impressionists may have believed something like this about art and beauty.)

him; and if he ever admires any soldiers, he turns in that direction; and if it's money-makers, in that one. And there is neither order nor necessity in his life, but calling this life sweet, free, and blessed he follows it throughout.¹⁷

He displays contempt for the "necessary":

[F]or the sake of a newly-found lady friend and unnecessary concubine such a man will strike his old friend and necessary mother [and] for the sake of a newly-found and unnecessary boy friend in the bloom of youth, he will strike his elderly and necessary father¹⁸

"Necessary," "*anankaion*," is used in a special sense here. It does not refer to what you need to keep yourself alive such as food and water, nor does it refer to what you must do to avoid trouble. That man no longer finds his mother and father necessary for purposes like those. Rather, the term refers to a bond or tie within a friendship or a family. The root of *anankaion* may be "*ankon*," which means "arm." Therefore, perhaps the underlying concept is that your "necessary" people are those who grip you by the arm, obliging you to honor their wishes and to help them when they are in distress.¹⁹ Another sense of *anankaion* makes it refer to that which is morally compulsory.²⁰ An excellent person recognizes more things as morally binding than ordinary people might do, but a debased person, it appears, will acknowledge fewer.

The man described in the *Republic* is unsteady. He is inconstant. He turns abruptly from pursuing this pleasure to that, and from engaging in one project to another. His soul is "tender"

17. THE REPUBLIC OF PLATO 239–40 (ll. 561c–d) (Alan Bloom, trans. & ed., 2d ed. 1991).

18. *Id.* at 255 (ll. 574b–c). This assertion is actually posited as a question by Socrates, but it is clear in context that Socrates expects to receive an affirmative answer and that he approves of it once he receives it. *Id.*

19. Or perhaps it refers to those whom you have grasped or embraced. See CELAS SPICQ, THEOLOGICAL LEXICON OF THE NEW TESTAMENT 97–100 (James D. Ernst trans., Hendrickson Publishers 1994) (1978).

20. Cf. DAVID WIGGINS, NEEDS, VALUES, TRUTH 26 (3d ed. 2002) ("Aristotle's contribution . . . resides in his having signalled . . . that *need* [necessity] is a modal concept of a special kind and imports the linked ideas of a situation and a non-negotiable (or in-the-circumstances-non-negotiable) good, which *together* leave no alternative . . ."). In another passage, close by in *The Republic* to those quoted above, Socrates discusses necessary and unnecessary desires and proposes two grounds on which a desire might be called "necessary": "those we aren't able to turn aside [and] those whose satisfaction benefits us. The desire for bread . . . is presumably necessary on both counts, in that it is beneficial and in that it is capable of putting an end to life." THE REPUBLIC OF PLATO, *supra* note 17, at 236–37 (ll. 558d–559d).

and abhors restraint.²¹ Obligation-free man is “human being lite.”

Extend the thought experiment to social and political things: imagine a family or a city in Koloremundo. Again, circumstances undermine the consequentialist and deontological cases for obligation. The city has no enemies. The houses have no mortgages. The citizens experience no temptation to lie. If you are an unmitigated consequentialist or deontologist, you may find little reason to support civil law or family rules or filial loyalty. If everyone thinks like you then the positive order will recognize none. This will make for a world strikingly different from our own because nations and families here in the real world are obligation-rich environments. What sort of political or social situation will emerge in Koloremundo? Probably one like that in the “Beautiful City” described by Plato:

And isn't there license in it to do whatever one wants?

....

[And] where there's license, it's plain that each man would organize his life in it privately just as it pleases him.

....

... [T]he absence of any compulsion to rule in this city . . . even if you are competent to rule, or again to be ruled if you don't want to be, or to make war when the others are making war, or to keep peace when the others are keeping it, if you don't desire peace; and, if some law prevents you from ruling or being a judge, the absence of any compulsion keeping you from ruling or being a judge anyhow, if you long to do so—isn't such a way of passing the time divinely sweet for the moment?

....

Isn't the gentleness toward some of the condemned exquisite? Or, in such a regime haven't you yet seen men who have been sentenced to death or exile, nonetheless staying and carrying on right in the middle of things; and as though no one cared or saw, stalking the land like a hero?

....

[And this regime] spatters with mud those who are obedient, alleging that they are willing slaves of the rulers and nothings . . . while it praises and honors . . . the rulers who are like the ruled and the ruled who are like the rulers . . .

....

[A] father . . . habituates himself to be like his child and fears his sons, and a son habituates himself to be like his

21. THE REPUBLIC OF PLATO, *supra* note 17, at 242 (ll. 563d–e).

father and to have no shame before or fear of his parents . . . and metic is on an equal level with townsman and townsman with metic, and similarly with the foreigner.

. . . .

. . . [T]he teacher . . . is frightened of the pupils and fawns on them, so the students make light of their teachers [T]he old come down to the level of the young; imitating the young, they are overflowing with facility and charm, and that's so that they won't seem to be unpleasant or despotic.

. . . .

Then, summing up all of these things together . . . do you notice how tender they make the citizens' soul, so that if someone proposes anything that smacks in any way of slavery, they are irritated and can't stand it? And they end up, as you well know, by paying no attention to the laws, written or unwritten, in order that they may avoid having any master at all.²²

Plato characterizes it as a city of "license." Professor Arlene Saxonhouse characterizes it as a city with "blurring of form" and "forgetfulness of form."²³ It is a Woodstock of a city.

There is something amiss here, some loss of *gravitas*, some weakness of focus. If our own country descended into such a condition it would not be the nation we belong to today but instead a "United States lite." The same for your family or your university. Something would be lacking: something unknown to the consequentialist or the deontologist. And the same for each individual. A city of soft and cloudy ethics would be populated by soft and cloudy citizens.

4. The Parsimoniousness Criterion

Apply a criterion of parsimoniousness. If some amount of obligation would suffice to "do the job" from a consequentialist and deontological point of view, we would—if those theories tell the whole story—see no point in further duties.

But in fact it seems that we do, in some important cases, accept obligations and perform what they require more fully than that criterion would recommend and that we honor others who do the same. Recent studies establish that husbands and wives often undertake more chores than what the parsimoni-

22. *Id.* at 235–42 (ll. 557b–563d).

23. Arlene W. Saxonhouse, *Democracy, Equality, and Eide: A Radical View from Book 8 of Plato's Republic*, 92 AM. POL. SCI. REV. 273, 280 (1998).

ousness criterion would suggest.²⁴ The “bigger,” more epic figures of history seem to be those who embrace obligations in a fulsome way. Odysseus remained true to Penelope and she to him. Abraham Lincoln returned the penny. Horton hatched the egg.

5. A Variant of the Dispensability and Parsimoniousness Criteria

Another approach invites us to consider the lives led by those who reject obligation.

Of course, if a poor man rejects the obligations of his job consequentialist disaster ensues and if a man of evil inclination rejects the obligation not to kill deontological offenses are sure to follow. So consider instead the non-criminal wealthy person. Perusing the biographies of the rich and famous discloses two basic types. The first type, Andrew Carnegie is an example, develops obligations and embraces duties beyond what circumstances require.²⁵ The second type lives a life of unusual disconnectedness. For example, J.P. Getty purchased one of Henry VIII's former residences and lived there with several mistresses simultaneously, as though monarch of a private kingdom.²⁶ People seem to require obligation. Unless obligation is thrust upon them, they invent it or they deteriorate.

A related approach looks to our attitudes and our feelings. If consequentialism and deontology were the entire story we might be expected to display a “parsimoniousness of the spirit” and to take towards all obligations the same bored attitude we take towards filling out the tax return or showing up at work on time. In fact, however, there seem to be some demanding responsibilities, especially of a familial, patriotic or religious nature, which elicit enthusiasm and an outpouring of the spirit. Thus the Psalms repeatedly refer to “delight” in the Law.²⁷ Psalm 119 states: “I run the way of your commandments, for you have given me freedom of heart.”²⁸

24. For studies of work allocation within marriage, see SARAH FENSTERMAKER BERK, *THE GENDER FACTORY: THE APPORTIONMENT OF WORK IN AMERICAN HOUSEHOLDS* 197–98 (1985); Suzanne M. Bianchi et al., *Is Anyone Doing the Housework? Trends in the Gender Division of Household Labor*, 79 *SOCIAL FORCES* 191 (2000).

25. See generally ANDREW CARNEGIE, *AUTOBIOGRAPHY OF ANDREW CARNEGIE* (John C. Van Dyke ed., 1920).

26. RUSSELL MILLER, *THE HOUSE OF GETTY* 234 (1985).

27. See, e.g., *Psalms* 119:35 (The New Jerusalem Bible) (“Guide me in the way of your commandments, for my delight is there.”).

28. *Psalms* 119:35 (The New Jerusalem Bible).

6. A Personalist Quality

Finally, obligation seems to have a strong personalist element. It is integrated into our lives in a way that is responsive to who we are and who we wish to become. As with a rope, so with an obligation: it, so to speak, “pulls on you,” and it may damage you if you try to pull away. And it changes you much for the better if you accept and fulfill it.²⁹ To be obliged is a part of what it means to be a person.

F. *The Basic Goods of Ethical Traction in General and Obligation in Particular*

What about an account which is neither entirely consequentialist nor deontologist? In ethics generally, such an approach can be founded upon Aristotle’s *Nicomachean Ethics*³⁰ and on theories impressively propounded in recent decades by Professors John Finnis³¹ and Germain Grisez.³² Their accounts base ethics on a set of goods such as justice, friendship, and knowledge. An ethical precept makes sense when it proposes actions which participate in those goods. You do well to study and read; it is good to be knowledgeable and wise, apart from any further use to which you might apply your learning. Can something like that be said about obligation?³³ What are the final, noninstrumental goods involved in obligation? How is it a part of human flourishing?

First take a step back and inquire about the good of ethical traction of any sort. Suppose there were little or almost none. Imagine a world with second-sector ethics of only the weakest varieties, those located at the furthest end of the continuum from obligation—a more extreme Koloremundo. Your children’s hunger implies little for you and no more for anyone else; just that feeding them would be nice; pretty good; not quite a total waste of time. Suppose that murder is to be avoided, in pretty much the same way as boring speech. Imagine a world of soft second-sector ethics. It would almost be a world of entire

29. This is symbolized by the installation ceremonies for many offices, which involve shedding one’s garments and donning new ones. See Meyer Fortes, *Of Installation Ceremonies*, Presidential Address (1967), in *PROCEEDINGS OF THE ROYAL ANTHROPOLOGICAL INSTITUTE OF GREAT BRITAIN AND IRELAND*, 1967, at 5.

30. See, e.g., ARISTOTLE, *Nicomachean Ethics*, *supra* note 15.

31. See, e.g., JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* (1980).

32. See, e.g., GRIEZ, *supra* note 2.

33. See generally S. Aiyar, *The Problem of Law’s Authority: John Finnis and Joseph Raz on Legal Obligation*, 19 *LAW & PHIL.* 465 (2000) (discussing Professor Finnis’ approach to obligation).

ethical neutrality. Not exactly though—things would still be good and bad. Moreover, you could understand their goodness and badness, but only in the remote way in which you might understand metaphysics.

In such a world, action of any sort would have little point and deliberation on action would serve little purpose. Perhaps you would act seldom, and after only brief deliberation. Perhaps you would live *ad libetem*, practicing random acts of kindness, guided only by habit and the rhythms of the emotions. You might cultivate goodness and beauty only in the same spontaneous way in which Wordsworthian breezes and showers cultivate the daffodils.

What would be missing? What does that world lack that traction would import? Here, I propose several answers:

1. Self-Control; Self-Command

First, ethical traction constitutes a primary component of self-control, self-command, and firmness of character. This kind of good is persuasively located by Aristotle in the *Nicomachean Ethics* at a fundamental layer of the virtuous character. It is not enough just to do what is right. Fully good deeds are only those which are performed “as a result of choice and for the sake of the actions themselves.”³⁴ Choice involves balanced and mature assessment. Choice involves “consideration and deliberation” and “arises out of deliberate opinion.”³⁵ Choice, consideration, and deliberation can only arise from a self-governing, steady character. To act justly and temperately, someone must be in a certain condition: “in the first place he must have knowledge, secondly he must choose the acts, and choose them for their own sakes, and thirdly his action must proceed from a firm and unchangeable character.”³⁶

Only the self-governing, steady person, steadily reflecting and firmly choosing, “is at one mind with himself” when he acts and so to speak puts his entire self behind each action.³⁷ Only

34. ARISTOTLE, *Nicomachean Ethics*, *supra* note 15, at 1807 (ll. 1144a19–20).

35. ARISTOTLE, *Eudemian Ethics*, in 2 THE COMPLETE WORKS OF ARISTOTLE 1942 (Jonathan Barnes ed. & W.D. Ross et al. trans., 1984) [hereinafter ARISTOTLE, *Eudemian Ethics*] (ll. 1226b8–9).

36. ARISTOTLE, *Nicomachean Ethics*, *supra* note 15, at 1745–46 (ll. 1105a26–1105b1).

37. The wicked, on the other hand, are “at variance with themselves” and “rent by faction.” *Id.* at 1843–44 (ll. 1166b6–7, 1166b19). See generally SUZANNE STERN-GILLET, *ARISTOTLE’S PHILOSOPHY OF FRIENDSHIP* (1995) (discussing Aristotle’s treatment of the concept of unity of self).

the steady man acts “with an eye to [his] life in its entirety”³⁸ and so embeds his action in a “complete life.”³⁹ Only the steady person can fully display and instantiate his virtuous character in all its fullness across the years and consistently through various projects and circumstances.⁴⁰

Conformity to a norm and adherence to the pursuit of a good, especially when some effort is involved because appetite protests and the desires oppose, involve an exercise of the will and the subordination of the spirit. Fail to achieve supremacy of the will and you remain immature, inappropriately child-like, even when fully grown.⁴¹ Lacking this trait is the major reason why, in Plato’s city of license, the man he depicts there is “lite.”

Of course, any action of more than the most transient nature calls for some degree of self-control. But action embraced because of the traction of a norm or the pursuit of a good, rather than *ad libitem*, demands more than action casually engaged in. It involves a firmer and more systematic discipline of the impulses and appetites. And it deploys more “self”—one’s reasoning, norm-respecting, good-appreciating side of the self takes charge.

When the traction is strong—when *obligation* applies—the man may achieve a yet stronger form of self-control which might be called “self-command” and “self-possession.” Ethics with a mild traction may impose only a mild sway upon the desires and appetites; obligation compels them to submit entirely. Obligation is a field for the instantiation of self-command.

Aquinas makes a similar point in his discussion of vows. What is the good in taking a vow and carrying it out, over and above the good of the action you promise to take? Why not just do the good thing without the vow? Aquinas answers that vowing

38. A.W. Price, *Aristotle’s Ethical Holism*, 89 MIND 338, 342 (1980).

39. See ARISTOTLE, *Nicomachean Ethics*, *supra* note 15, at 1735, 1738 (ll. 1098a18, 1100a5) (stating that a “complete life” is a condition of *eudaimonia*).

40. Cf. Price, *supra* note 39, at 342 (“[I]t must take a lifetime to display [firm and unchangeable character] fully.”).

41. See ARISTOTLE, *Nicomachean Ethics*, *supra* note 15, at 1855 (ll. 1174a1–6):

[N]o one would choose to live with the intellect of a child throughout his life, however much he were to be pleased at the things that children are pleased at, nor to get enjoyment by doing some most disgraceful deed, though he were never to feel any pain in consequence. And there are many things we should be keen about even if they brought no pleasure, e.g. seeing, remembering, knowing, possessing the excellences.

Id.

adds a “necessity” which “strengthens the will.”⁴² He also maintains that “[A] vow fixes the will on the good immovably and to do anything of a will that is fixed on the good belongs to the perfection of virtue”⁴³

2. Knowledge

Knowledge, wisdom, and the activities which constitute them—thinking, reconsidering, developing one’s understanding, extending it or correcting it—are good things in themselves, above and beyond some profit to which they might be turned. One develops these traits and engages in these activities, not only for the consequentialist reasons for which you might seek a cart at the grocery store or a train to the financial district, but because they are a large part of what it is to flourish as a human being.

Obligation is a component of ethical knowledge. Ethical traction not only gets you to knowledge and knowing, but also constitutes a part of what you have when you know, and what you do when you exercise knowledge. This seems to be true in two ways, one involving knowledge of an experiential type, and one involving more abstract ideation.

3. Experiential Knowledge

To pursue the meaning of experiential knowledge, take as an analogy the good of culture. Why would it be “lite” not to belong to one? It is not simply because you would find no schools or libraries. Culture is one of those widespread attributes of the human situation which a thoughtful person seeks to understand and on which he will often reflect. And you cannot really know it from the outside: the remote anthropologist can know its components in one way, but a member of a culture, bound by its traditions and shaping his life in conformity to what

42. See SAINT THOMAS AQUINAS, *SUMMA THEOLOGICA*, II-II q. 88 a. 6 ad 2, at 1571 (Fathers of English Dominican Province trans., Benzinger Bros., Inc. 1947) (1265) (“According to the Philosopher, necessity of coercion, in so far as it is opposed to the will, causes sorrow. But the necessity resulting from a vow, in those who are well disposed, in so far as it strengthens the will, causes joy.”). Thomas uses the term “vows” to mean promises to God, but may imply a similar point about promises generally. See JOHN FINNIS, *AQUINAS: MORAL, POLITICAL AND LEGAL THEORY* 198 n.68 (1998). Finnis states that in a promise, an intention is affirmed in the sense of “asserted,” but also in the sense of “made firm.” *Id.* Also note his use of the phrase “exercises of self-mastery to characterize promissory obligations.” *Id.* at 199.

43. AQUINAS, *supra* note 42, II-II q. 88 a. 6c, at 1571. Aquinas continued, “[A]ccording to the Philosopher, just as to sin with an obstinate mind aggravates the sin, and is called a sin against the Holy Ghost.” *Id.*

they demand, knows them in special ways. Only the member of a culture can enjoy experiential knowledge of human culture, a personal knowledge integrated into his experience of life.

The good, ethics, is a part of the basic human condition in an even more fundamental way than is culture and is similarly one important component of the proper study of a knowing person. It seems that we can understand good and bad and right and wrong more comprehensively when they bear upon our own lives. With the optic of men rather than gods, we see things most clearly when we can take their sightings along our own roads. We know things in a special way when we encounter them as parts of our own necessary projects. We learn more about them, and see a special dimension. As with culture, so with ethics: if it had no bearing in shaping our lives we could never know it so well as we do when we must write it on our doorposts and take it into account at many important junctures.

You cannot thoroughly know a precept until you ponder the demands which it imposes upon you. You cannot really understand a course of action without placing it in the context of a life; and you cannot understand either an action or a life in the abstract: each has its own quiddity, and indeed *your* life has a special quiddity, knowable thoroughly only by you; you cannot understand a precept fully until you have written it on your heart and complied with its requirements. Those numerous passages from the Psalms which lyrically commend the law and knowledge of the law use a Hebrew word for knowledge—*yada*—which refers not only to abstract but also to experiential knowledge.⁴⁴ Ethical traction is a component of full ethical knowledge because it connects first-sector ethics to the lives we lead.⁴⁵

But could you not make the same argument in favor of war, pestilence, and famine? Those also are recurrent aspects of the human condition, and Defoe, von Clausewitz, and many other thinkers back to Homer have made them their study. Still, it seems we could do without war but not without culture. Perhaps this is because the good of war is outweighed by its evil. Perhaps,

44. See JOHN PAUL II, *THE THEOLOGY OF THE BODY* 99 (1997) (“‘To know’ (jadic) in biblical language does not mean only a purely intellectual knowledge, but also concrete knowledge, such as the experience of suffering (cf. Is 53:3), of sin (Wis 3:13), of war and peace (Jgs 3:1; Is 59:8). From this experience moral judgment also springs: ‘knowledge of good and evil’ (Gn 2:9-17).”) [hereinafter *THEOLOGY OF THE BODY*].

45. Cf. KAROL WOJTYLA, *THE ACTING PERSON* 155 (Anna-Teresa Tymieniecka ed. & Andrzej Potocki trans., D. Reidel Publishing 1979) (1969) (“[A]ction serves to approach and crystallize the experience of truth, good, and beauty.”) [hereinafter *THE ACTING PERSON*].

more basically, this is because the good that comes from war is something that could just as well arise outside of war, so that indeed the heroism of a man of war like Achilles is liable to be outclassed by the heroism of a man of peace like Thomas More. Culture is like peace not war. There is much permanent good in a human culture which is not outweighed by any intrinsic evil and which is not likely to be replicated by anything outside.

The same can be said of obligation. Biting hard on our lives, obligation “gets our attention” and provokes a keen experience and therefore vivid experiential knowledge. Binding our actions firmly, it takes a lasting and prominent place in our deliberations. Focusing our projects unwaveringly on their proximate ends, it provokes us to sustained reflection on the larger goods which justify those ends. Certainly, some experiential knowledge is attainable in Koloremundo. A man might visit the Trappists one week and train with the pit racers the next.⁴⁶ He might learn a bit from each experiment, just as an anthropologist could amplify his knowledge of a culture if he lived among its people for a time. But the full pallet of ethical knowledge cannot be found in any form of ethical tourism.

4. Abstract Knowledge

Obligation can also be a central component of a more rarified intellection—the kind which involves abstracting from one’s experience of things the differences and attributes which really count—making worthwhile distinctions and establishing sound and coherent categorizations.

A fundamental aspect of the good of obligation is that it provides a ground for instantiating this kind of knowledge in respect to the good and to the precepts of practical reason. The obligation-rich, traction-spectrumed world in which we live, in which the goods bear in different fundamental respects upon our own lives, provides a rich field for fundamental ideation of the good and an array of things to ponder as to their import. Obligation demands recognition of distinctions. To honor your obligation is to discern and adhere to a fundamental distinction between one sort of thing and all the others, between what counts for much and what counts for little.

The absence of obligation is part of what makes the city described in *The Republic* a place of “blurring of form” and “forgetfulness of form.” The residents of Koloremundo experience cloudiness of vision and thought for the same reason that they suffer from weakness of will. They see fewer distinctions because

46. But would there be Trappists or pit racers or only people dabbling?

there are many important distinctions which they do not wish to observe. As expressed by Plato in *The Republic*:

He doesn't admit true speech or let it pass into the guard-house, if someone says that there are some pleasures belonging to fine and good desires and some belonging to bad desires, and that the ones must be practiced and honored and the others checked and enslaved. Rather, he shakes his head at all this and says that all are alike and must be honored on an equal basis.⁴⁷

5. Virtue: Disposition Towards the Good

Further, obligation is a field for the integration of virtue. This is the case to some extent with any moral action. As Pope John Paul II has stated:

Human acts . . . express and determine the goodness or evil of the individual who performs them. They do not produce a change merely in the state of affairs outside of man but, to the extent that they are deliberate choices, they give moral definition to the very person who performs them, determining his *profound spiritual traits*.⁴⁸

It seems that a fully human act, aimed at a good, disposes the character towards the good, and, more specifically, towards acting for that good again, and that it involves the character with that good in other ways as well.⁴⁹ Professor Germain Grisez uses the term "integrate." "[I]n choosing to act . . .," he writes, "one integrates the good . . . into one's moral self . . ."⁵⁰

Action performed in acknowledgment of the obligatory, it seems, involves a firmer instantiation of virtue. The man who feeds a hungry person as a "random act of kindness" may develop only a casual appreciation of the good of nourishment and benevolence and develops the trait of aiming at those goods on a sporadic basis only. The man who accepts an obligation to do so

47. See THE REPUBLIC OF PLATO, *supra* note 17, at 239. Obligation is an analogue of knowledge itself.

48. JOHN PAUL II, *Veritas Splendor*, in THE ENCYCLICALS OF JOHN PAUL II 674, 732 (J. Michael Miller ed. & Vatican Press trans., Our Sunday Visitor, Inc. 1996).

49. See Karol Wojtyla, *The Person: Subject and Community*, in PERSON AND COMMUNITY: SELECTED ESSAYS 219, 235 (Theresa Sandok trans., Peter Lang Publishing 1993) (1979) ("In fulfilling an action, I fulfill myself in it if the action is 'good,' which means in accord with my conscience (assuming, of course, that this is a good conscience, a true conscience). By acting in this way, I myself become good . . .").

50. GRISEZ, *supra* note 2, at 235.

develops, it seems, a firm appreciation, a fixed willingness to contribute, and a deeper integration of virtue.

6. Knowledge of the Self-Possessing, Good-Oriented Self

A fifth set of points puts the first four in combination. Knowing that ethics asks much of us and possessing ourselves in the effort to comply with its demands, we can know ourselves as ethical choosers, undertakers of obligation, ethical actors, commanders of the self, and fulfillers of obligation. We can see and experientially know the good and bad of our ethical choosing and acting. We can discern and abstractly know our own making of distinctions among our choices and commitments. We can know the good which we have chosen in a new context—not only outside ourselves but also inside—embedded in our dispositions to action. When you accept obligation you become, as Scripture puts it, “witnesses to yourselves.”⁵¹

Obligation enters into many passages of the thoughtfully lived life: examination of conscience, regret, repentance, self-reorientation, renewal, reform, and, in the end, justified retrospection. These activities involve the consideration and reassessment of our duties and our modes of compliance. Knowledge of self is constituted, in significant part, by knowledge of obligation. Reflection upon ourselves is in important part comprised of reflection upon our duties and upon how well or poorly we have responded to them. So the Psalmist observes:

Oh, how I love thy Law!
It is my meditation all the day.
Thy commandment makes me wiser than my enemies,
for it is ever with me.
I have more understanding than all my teachers,
for thy testimonies are my meditation.⁵²

Professor Karol Wojtyla has referred to “the drama of good and evil enacted on the inner stage of the human person by and among his actions . . . [a drama in which] man has the experi-

51. *Joshua* 24:22 (The New Jerusalem Bible). Here is the fuller context: Joshua then said to the people, “You will not be able to serve Yahweh, since he is a holy God, he is a jealous God who will not tolerate either your misdeeds or your sins.” [The] people replied to Joshua, “No! Yahweh is the one we mean to serve.” Joshua then said to the people, “You are witnesses to yourselves that you have chosen Yahweh, to serve him.” They replied, “Witnesses we are!”

Id. 24:19–23.

52. *Psalms* 119:97–99 (New Oxford Annotated Bible).

ence of good and evil simply in himself”⁵³ The obligation-governed man is a protagonist in this drama and also an observer of it.

G. *Real Obligations or Just “Commitments”: Some Reflections on the Relationship Between Second and Third-Sector Ethics*

What about the man who has no obligation but “commits” to act? What about the possibility, in other words, that the good of instantiating virtue in the character is really not a good of obligation but a good of choice or commitment alone?

Suppose a resident of Koloremundo were to mimic obligations by intending and acting as though he had some. He could not participate fully in their good. It seems that the Koloremundian whose dispositions towards action are based on fiat can never arrive at quite the condition of the man whose obligations are based in major part outside of himself. He is never “up against it” the way a person bound by real obligation can be. He is “up against” himself rather than some external “it.” He must always know that the same fiat which he used to initiate the commitment could also be used to terminate it.

H. *What Obligations? Some Reflections on the Interaction Between First and Second-Sector Ethics*

A critic might assert that the accounts set forth above imply a system of obligation detached from first-sector ethics, leading to meaningless or silly duties, perhaps even duties to do bad things. But this does not seem to be the case. First, consequentialism and deontological considerations, both directing attention to first-sector goods, count as well. Outside Koloremundo, the thought experiment, they supplement the goods identified above and shape obligation. Furthermore, self-control, steadfastness, and other second-sector goods identified in this Article not only justify obligation, they also mold it. If you embraced a “duty” to philander and desert, you would become less steadfast, not more. You would be like a person tethered to a wild animal. Your increment of knowledge would be trivial. After all, how educational is yet another one-night stand? The drama enacted on your inward stage would be a bedroom farce.

53. THE ACTING PERSON, *supra* note 45, at 49. The quote continues: “[H]e thereby experiences himself as one who is either good or evil.” *Id.*; see also *id.* at 148–49 (discussing obligation).

PART TWO: THE NATURE AND GOOD OF OFFICE; HOW MARRIAGE FITS IN

I. THE DEFINITION OF OFFICE⁵⁴

Office has an affiliational orientation; a social and sometimes even a political character.

An office is often a role in a big organization, but that cannot supply the key. Not everyone in a big corporation holds office. The tycoon who owns the whole outfit and whose "job" is just to crank it for profit, for example, does not seem to hold office. Furthermore, not every corporate officer derives his role entirely from the company. Lawyers and accountants are two examples. Further still, not everyone *outside* an organization *lacks* office. For example, a midwife seems to exercise an office, as does a wet-nurse or a sole-practitioner doctor. Midwives and matchmakers, tutors and nannies, executors and guardians hold offices, just as innkeepers, shepherds, and haywards held offices in medieval England.⁵⁵ Status in an organization cannot be taken as the basic feature.

Status or position in society generally might be a key. For example, the midwife and the lawyer and so on have a recognized place in many communities. Of course, so too has the wealthy man from an old family and the famous novelist or political pundit. These positions do not seem to be offices.

Rather, the key can be found in purposes and ends. Office is a specialized ministry. It is a position which has as its purpose the serving of the good of others, and which aims at service not in any way or all ways but in some specialized way. And office is defined by reference to rules and principles which guide the officeholder to that sort of end. Here is a definition: "An office is a ministry to the good of others in some special respect, exercised under the guidance of a system of rules and principles which impose obligations."

54. One cluster of meaning—not the one discussed in this Article—has "office" refer to one or another specific duty-fulfilling action. Thus an encyclopedia definition reads: "a duty or service, particularly the special duty cast upon a person by his position; also a ceremonial duty, as in the rites paid to the dead, the 'last offices.'" 16 *ENCYCLOPEDIA BRITANNICA*, INC., *ENCYCLOPEDIA BRITANNICA* 712 (16th ed. 1952). This reflects an extension of meaning similar to that for the words "duty" and "obligation" discussed earlier. These words can mean the bond, but they can also mean that which one is bound to do. *See supra* note 2.

55. *See generally* MORRIS BISHOP, *THE MIDDLE AGES* (1968).

A. *Ministry to the Good of Others*

"Office" is social. A person who plays solitaire is not the holder of an office. Office is social not just in the sense that it involves social interaction, but in the more basic sense that the officeholder aims at other people's good. A drug smuggler is not the holder of an office, even if he is the agent of a club of drug users, because although he is acting on behalf of others, he serves them in a way that is bad for them rather than good. Thus, your conclusions as to which roles involve office will depend on your understanding of what is good, and a community's sense of office will change as its morality changes. In the United States twenty years ago, few might have considered the proprietor of a casino to hold office, but today many people might think that he does hold one.

A litigant—plaintiff or defendant—is usually not the holder of an office (although a representative of a plaintiff class in a class action may be) because a litigant is usually out for his interests alone. So in a trial, the judge, the law clerk, and the stenographer all hold office, but the parties usually do not.

What about athletes in spectator sports? We do not consider tennis player to be an office. Perhaps that is because the good the player confers on others is, from the player's point of view, a side effect. The player plays to win, not to please the crowd—just as the plaintiff litigates to win, not to amuse the courtroom spectators. The spectators may be even better amused if he loses.⁵⁶

What about a doctor who is just out for his fee? It seems that he does hold and exercise office, although perhaps not in the noblest way. His case is different from that of the tennis player because he aims to promote the good of the patients, although only in order to earn a fee. If he is a just person, he will not seek to earn it in any other way. Curing patients is more than a side effect.

Many officeholders exhibit a high degree of commitment to the success of their ministries. Many physicians, United States Marines, priests, ministers, and rabbis embrace a self-sacrificial commitment to the good of those in their charge and regard their compensation as of secondary importance. On the other hand, many people of a less heroic stripe, such as corporate officers and executors of estates, take no such attitude. Office, it seems, invites but does not require an especially strong dedication to the good of the ministry.

56. Team players, a first-baseman or quarterback for example, do seem to be holders of office since they are playing for their teammates' good, as well as their own.

Whether an outcome is the direct purpose of the action or merely a side effect may be established from the structure of the situation, as in the case in which the agent's compensation is contingent on his ministering successfully. But sometimes there is no remuneration; sometimes whether something is a direct purpose depends on the intentions of the actor and, perhaps, on what other people involved or society generally have come to regard as normal. Guardianship of a minor may provide a good example. Early in English history, the guardian was entitled to the revenues of the ward's lands, and it is a fair guess that many people took on guardianships mainly with profit as their motive and did not make the comfort or education of the ward their direct aim.⁵⁷ Later in history, people came to believe that decency required a gentleman to take proper care of his ward, and guardians aimed at that directly. During the earlier period it might not have been accurate to call guardianship an office, but during the later period it would have been correct.

So the extent of office in a society depends on its moral system. A society of nihilists would recognize no offices. A society of classical utilitarians might recognize few.

B. *In Some Special Respect*

Philanthropist is not an office. To hold office is to exercise a specialized function. That we all have duties to one another does not make us all holders of office. Brother's keeper is not an office. Social activist is not an office. Office generally involves ministry to a special group or even a single person (the client, the patient, the ward, the nursling), and it always involves aiming at a special kind of good, not any or all sorts of benefit. Sometimes office involves ministry to all and sundry, but again, only in a special way. The fireman may have obligations to everyone but only in respect to conflagrations.⁵⁸

57. Survival of the ward might have been a direct (instrumental) aim, but his comfort and education might have been conferred only owing to the happenstance of his living in the guardian's household.

58. A priest holds office. In the Catholic Church, it seems right to identify the ordained priest as the holder of an office (and of course Pope, Bishop, and Deacon), but not the lay person—even though lay persons have a priestly character of their own and are members of the "common priesthood"—because the ordained clergy have many closely defined duties involving a ministry to others. See LIBRERIA EDITRICE VATICANA, CATECHISM OF THE CATHOLIC CHURCH ¶¶ 1546–47 (United States Catholic Conference, Inc. trans., 1994) [hereinafter CATECHISM].

C. *Guided by a System of Rules and Principles*

Artist is not an office.⁵⁹ Nor is dancer nor companion, at least not in our society. They might be offices in a society which had formalized and ceremonialized those roles. Geisha in traditional Japan, for example, was an office.

The rules and principles are often laid down by the government or by some private entity such as a corporation, a club, or a team. But they may be established by custom too. A matchmaker or a wet-nurse—a patron towards his clients in Republican Rome or a Squire to his people in Jane Austen's England—was what he was because of customary standards.

The rules and principles ought to be reasonably well ordered to the good—reasonably consistent with one another, stable, and appropriate to the ministry. After the storming of the Bastille some effort was made by the revolutionaries to define a role for Louis XVI, but it is doubtful that these efforts ever established a true office. Opinion shifted day to day as to what, if anything, such a position entailed.⁶⁰

Might the rules and principles which define office be founded in non-positive, "natural" morality? It seems that they might. If you observed, for example, that some of the rules and principles which define effective medical care are implicit in the nature of health and disease and the availability of medications, you might infer some rules of practice for the health care profession—"wash your hands before surgery," for example. If you inferred a lot of rules like that, you might decide that "physician" is a non-positive or natural office—one which might exist even where there was no government or settled social order. The same might be said of the offices of midwife, the wet-nurse, the guardian, and the matchmaker.

The rules and principles which define office might be partly positive and partly natural, as in the case of a physician or a nurse where there is a government or a social order which regulates those roles. The requirement of systemic consistency and good order would then have to be applied with both sorts of norms in mind.

59. To be sure, artists are subject to laws and precepts of positive morality as regards their activities in buying paint and selling their paintings. But they act *ad libitem* when they paint, subject only to their inward promptings. How, when, and in what style an artist paints is completely up to the artist. Merchant and stock-market speculator also seem to not be offices for just this reason.

60. And if it was an office, did Louis XVI ever occupy it? It seems that to enter into office requires acceptance of its rules and principles.

This logic leads to the insight that a Nazi “doctor,” for example, was not really the holder of the office of physician. In his case, the requirement of consistency among rules and principles would not have been satisfied because of the Nazi rules which required him to neglect the health of some patients and perhaps to attack the health of others. That would be true even if the positive rules and principles of the regime were clear and not in conflict with one another. They would nevertheless have been severely dissonant with the natural rules and principles for a physician.

D. *Obligation*

Like obligation, office is firmly binding. Social host and guest are not offices because the principles which define proper conduct have only a weak ethical traction.

Lover is not an office, except perhaps among medieval followers of the rules of courtly love.

Office has a juristic quality. A society of radical romantics would recognize no office. There were no offices at Woodstock.

II. SOME FURTHER CHARACTERISTICS OF OFFICE

There are several other characteristics which often, but not always, accompany office and enhance what makes office good.

A. *Perdurance; Stability*

Office tends to persist across time, and it often maintains a high degree of normative stability in the teeth of changes in circumstance and fluctuations in society’s ideological moods. Office is seldom a matter of one-off hits. Acting as a member of a jury, or a member of a posse, or a special prosecutor may be a unique episode in the life of an individual; but it replicates itself and works according to the same rules for those who held the same offices before and those who will hold them thereafter. Office seldom operates according to one set of standards one month, and another set the next. Office is seldom much-revised and certainly is not reinvented by each holder in turn. Rather, the rules and principles of office last and last, endure and endure, in sickness and in health.

B. *Recurrence; Replication*

Most offices can be held by several people all at the same time (and by a series of people, one after another). Several

judges occupy seats on the same court at the same time, and one judge succeeds to the office of his predecessor.⁶¹

C. *Expertise*

Office often requires a sizeable body of knowledge, learning, or proficiency in a craft.

D. *Dedication; Preeminence of Mission; Priority of the Office's Rules and Principles*

Officeholders often place the fulfillment of their ministry—the success of their line of service—especially high on their scale of values, set especially high standards as to quality, place the effort to satisfy those standards ahead of personal comfort and monetary reward, and persist until successful. You might not rescue the drowning man if the danger were great, but a good life-guard would do so. You might comply with a businessman's request for a quick, inexpensive job of plowing snow off his parking lot, but a good attorney would not agree to do a slapdash job on a legal brief or bond indenture, even if he knew that he would not be compensated in full for the time required to produce a fine product.

A close corollary establishes that holders of different offices may reach differing results regarding the level of priority to be accorded the same project. In July and August of 1916, the polar explorer Sir Ernest Shackleton regarded it as his obligation to arrange the rescue of his starving men on Elephant Island in the Antarctic, but the officials at the Admiralty, with a total war on their hands in Europe, were reluctant to commit resources.⁶² Both attitudes were correct applications of the morality of their respective offices.⁶³

61. See Fortes, *supra* note 29, at 6 (“[E]very constituted office outlasts the passage of its incumbents. Funeral ceremonies detach office from the deceased holder; installation ceremonies fill it again.”).

62. ROLAND HUNTFORD, SHACKLETON 607–09 (1986).

63. This sort of moral prioritizing occurs in the context of professional morality. See ALAN H. GOLDMAN, THE MORAL FOUNDATIONS OF PROFESSIONAL ETHICS 2–3 (1980). Goldman discusses the “strongly differentiated” professional role, in which the professional is:

[P]ermitted or required to ignore or weigh less heavily what would otherwise be morally overriding considerations [Such a] professional must elevate certain values or goals, those central to his profession, such as health, or legal autonomy of clients, or profits, to the status of overriding considerations in situations in which they might not appear overriding from the viewpoint of normal moral perception.

Id.

E. *Alteration of Character*

When Ashanti rulers were installed, ceremonial “drinking and eating with the ancestors . . . imbue[d] [the new rulers] . . . with the mystical virtue . . . which enable[d] them to do their chiefly work.”⁶⁴ When Saul was initiated as King of Israel, the spirit of Yahweh “seized” him and he became “another man.”⁶⁵ When a bishop is ordained, according to Catholic theology, a special character is conferred.⁶⁶ And even apart from religious aspects, it seems that office may change the officeholder deeply. When the office is one of those which perdure, demand expertise, and call for extensive dedication, the holder must change to exercise the office well. He must study, develop his skills, and commit to the ministry.

F. *Solidarity of Ministry*

Although not always (a fireman may never meet the person whose house caught on fire), office holding often involves affiliation with the beneficiaries of office. Doctor with patient, local lawyer with local business proprietor, for example.

Sometimes they socialize and become personal friends, but that is not the point. The point is, rather, that the officeholder-beneficiary connection sometimes is an affiliation, an analogue of a friendship. Affiliations involve thinking and knowing together; lawyer and client must know and judge jointly as to many complex problems. Affiliation involves reciprocal benefits—physician treats patient and patient compensates physician. An officeholder and those to whom he ministers may develop special bonds which reflect intense reciprocities, shared knowledge, and commitment to the good.

The bonds of ministry may acquire an important personal character. They may draw the officeholder to take action himself even when others could minister more effectively. Newly returned from a near-fatal expedition:

Shackleton . . . could not rest . . . while Marshall and Adams were still out on the Barrier. Shackleton had had no proper sleep for fifty-five hours. There were several men on board, rested and well fed, who could have led the

64. Fortes, *supra* note 29, at 19. Many cultures apply installation ceremonies “divesting a person of his lay, secular, ‘profane’ social identity . . . and creating him over into the personality that is the proper, ritually pure vessel for the office” *Id.*

65. 1 *Samuel* 10:6 (The New Jerusalem Bible); *see also* 1 *Samuel* 10:9 (The New Jerusalem Bible) (“God changed his heart.”).

66. CATECHISM, *supra* note 58, at ¶ 1558.

relief party. Shackleton insisted, however, that it was his duty as leader to go back himself.⁶⁷

G. *Solidarity Among Officeholders*

Officeholders often develop a close affiliation with those who hold the same office by joining with them in a guild, meeting and dining with them frequently, and establishing with them a ranking and hierarchy as to prestige and perhaps for governance. Geishas in traditional Japan had such arrangements; hostesses in modern America do not. Officeholders often honor those who held the office previously, sustain their practices, and emulate their virtues. They enter into a sort of solidarity with their predecessors.

H. *Solidarity Between Officeholders and a Wider Social Order: A Public Face*

One kind of office is created by the political order, as with the President and judges. Another kind is created by private groups like trusts and corporations. And a third kind takes its rules and principles either from public opinion or by defining its ministry—as for example a physician might during an epidemic—from an aspect of the public good. Even in instances in which the ministry might seem to be a private office, it often shows a public face. The rules and principles of office are often publicly recognized and embraced, so that officeholders who live by them are publicly honored and those who violate them suffer a decline in public regard.

The culture of office often participates in the public culture. Some officeholders wear special garments and bear special honorifics (doctor, judge, colonel, and, in the terminology of an earlier era, “goodwife”). They get invited to march in processions, and when they die their offices are mentioned on their tombstones. In medieval times, people were often named by office, or at least closely identified with it even in daily parlance—even in very ordinary offices occupied by very ordinary people such as those in *Piers Plowman* who greet Glutton in a tavern:

Cissy the seamstress was sitting on the bench, Wat the warren-keeper and his wife too, Tim the tinker and two of his servants, Hick the hackneyman and Hugh the needle-seller, Clarice of Cock’s lane and the clerk of the church, Sir Piers of Pridie and Parnel of Flanders, Dave the ditch-

67. HUNTFORD, *supra* note 62, at 291.

digger and a dozen others . . . Gladly treated Glutton to drinks of good ale.⁶⁸

J. *Clear Boundaries of Entry and Exit; Proprietary Exclusivity of Function*⁶⁹

Lawyers think only lawyers ought to practice law. Medieval shoemakers had a guild and thought you ought to go through the normal entry procedures before setting yourself up in that craft.

III. MARRIAGE AND THE DEFINITION OF OFFICE

The conditions of husband and wife include the raw materials which define office and many of those elements which extend it. To be spouses is to shoulder special ministries—each spouse looks after the domestic well-being of the other, and both are responsible for raising the children. Rules and principles help and are a recurrent feature of the well-ordered household, as well as a universal aspect of the social systems surrounding marriage.⁷⁰ Obligation makes sense, as the relationship is founded on oath and involves goods of high priority. James Q. Wilson tells us that:

In every community and for as far back in time as we can probe, the family exists, and children are expected, without exception, to be raised in one. By a family I mean a lasting, socially enforced obligation between a man and a woman that authorizes sexual congress and the supervision of children.⁷¹

Perdurance and a high degree of commitment to ministry are readily to be found in marriage.

The social features and solidarities of office are notably present within marriage. Solidarity of ministry could hardly be more strongly expressed than in the marriage rite (“love, honor, and cherish”); marriage involves a distinctive reciprocal character

68. WILLIAM LANGLAND, *WILL'S VISION OF PIERS PLOWMAN* 49 (E. Talbot Donaldson, trans., Elizabeth D. Kirk & Judith H. Anderson eds., W.W. Norton & Co. 1990) (1550).

69. See, e.g., ALAN H. GOLDMAN, *THE MORAL FOUNDATIONS OF PROFESSIONAL ETHICS* 18 (1980) (defining “profession” as involving “the application of a specialized body of knowledge in the service of important interests of a clientele.”).

70. See JAMES Q. WILSON, *THE MARRIAGE PROBLEM: HOW OUR CULTURE HAS WEAKENED FAMILIES* 30 (2002) (arguing that society embeds marriage in an elaborate set of rules designed to protect the fragile parts of marriage from the interests of a wandering male).

71. *Id.* at 24 (footnote omitted).

where each spouse ministers to the other. Solidarity of office is readily to be found since, after all, many people are husbands, many people are wives, many people raise children, and most people descend from a line of ancestors who occupied those positions as well. Those who marry join a culture which runs back past the Wife of Bath to Penelope and Odysseus. Social solidarities are common since in many cases and in many cultures to become a spouse is to assume other social roles as well: son-in-law, daughter-in-law, sister-in-law, sometimes family business partner, and even member of a political alliance.⁷²

The public side of marriage should be obvious as well. That is why marriage confers, or did confer in our culture until very recently, a special honorific ("Mrs.") and why it is commonly recognized in political thought and in religious authorities as a foundation of the civil order.⁷³ To raise children is to form the next generation of citizens.

Different societies and religious traditions have emphasized different aspects of marriage, but these solidarities recur. John Witte Jr. identifies a "core insight of the Western tradition":

[M]arriage is good not only for the couple and their children, but also for the broader civic communities of which they are a part. The ancient Greeks and Roman Stoics called marriage variously the foundation of republic and the private font of public virtue. The church fathers called marital and familial love 'the seedbed of the city,' 'the force that welds society together.' Catholics called the family 'a domestic church,' 'a kind of school of deeper humanity.' Protestants called the household a 'little church,' a 'little state,' a 'little seminary,' a 'little commonwealth.' American jurists and theologians taught that marriage is both private and public, individual and social, temporal

72. *Id.* at 30, 40 (describing the embedding of marriage in a "universal feature of all human societies, the kinship system" and noting that "[u]ntil recently . . . [a] family was a political, economic, and educational unit It participated in deciding who would rule the community").

73. *See, e.g.,* THE SECOND COUNCIL OF THE VATICAN, GAUDIUM ET SPES [PASTORAL CONSTITUTION ON THE CHURCH IN THE MODERN WORLD] (1965), *reprinted in* VATICAN COUNCIL II: THE CONCILIAR AND POST CONCILIAR DOCUMENTS 956 (Austin Flannery ed., Roman Lennon et al. trans., 1975) ("The family is the place where different generations come together and help one another to grow wiser and harmonize the rights of individuals with other demands of social life; as such it constitutes the basis of society.").

and transcendent in quality . . . a pillar if not the foundation of civil society.⁷⁴

Most of the various models or paradigms of marriage—perhaps until recently all of them—have made it an office in one way or another, differing only as to which forms of ministry were emphasized and which of the social solidarities were the most intimate.

On the other hand, other circumstances of husband and wife make it possible to redirect marriage along lines which do not reflect office. Lover, host, hostess, companion, and best friend are not offices.⁷⁵

It seems, then, that couples, cultures, and societies enjoy some degree of flexibility as to the matter. To the extent that they emphasize the ministerial, obligation-bearing, norm-guided, and social or public features of marriage, they make it more office-like and to the extent that they downplay those aspects, they make it less office-like. To the extent that they develop a romantic, antinomian, wild and free understanding of intimacy and love and place marriage on such a foundation, they make it incompatible with the exercise of office.

As our own society emphasized the “companionate” side of marriage more strongly during the nineteenth and twentieth centuries, it made the affiliation less office-like. And as Roman Catholic theology emphasized the intimate and personalist side of marriage in modern times it seemed to some to endorse a move away from emphasizing duties, obligations, and office. As various romantic and psychological movements derogated discipline in favor of the wild, the free, the authentic, and the unrepressed, they undermined the office-like aspects of marriage.⁷⁶

IV. THE GOOD OF OFFICE AND OF MARITAL OFFICE

Suppose there were no office. Picture a world in which those who acted for the good of others did so outside of any specialized obligational ministry. Suppose, for example, that people

74. John Witte Jr., *The Tradition of Traditional Marriage*, in MARRIAGE AND SAME-SEX UNIONS: A DEBATE 47, 58 (Lynn D. Wardle et al. eds., 2003); *see also*, WITTE, SACRAMENT TO CONTRACT, *supra* note 8.

75. *See generally* DAVID MATZKO MCCARTHY, SEX AND LOVE IN THE HOME: A THEOLOGY OF THE HOUSEHOLD (2001) (criticizing the “personalist” account of marriage, and also accounts of the household which would make it an instrument of reform for the general social and political order).

76. *See* BARBARA DAFOE WHITEHEAD, THE DIVORCE CULTURE: RETHINKING OUR COMMITMENTS TO MARRIAGE AND FAMILY 56–61 (1998).

who acted with beneficence did so *ad libitem* or guided only by the sort of ethics that might apply to the philanthropist or the artist.

This world is not quite Koloremundo. People there are bound by some obligations: not to lie, not to speed through crowded pedestrian walkways. But their obligations are not organized into bundles systematically directing them to specialized service. There are no firemen, although people do put out fires. There are no tutors or guardians, although one person or another steps forward from time to time to help bring up the local children. Political leadership is episodic. Households are fragile and transient. Sex is uncommitted. What would be deficient?

A. *The Insufficiency of the Consequentialist and Deontological Explanations of Office*

Office resembles obligation in that consequentialist and deontological analysis is helpful, but it cannot provide a complete account.

1. The Dispensability Criterion

As before, imagine out of the picture any circumstance which supports a consequentialist or a deontological account. Suppose again that people are born with all the skills, recipients of services have all the foresight—get the consequentialist and the deontologist out of the argument. Everyone is a fine fireman without holding that office. Anyone could be the sheriff. A village could raise the children.

Still, a planet without offices seems to be a fragment of a world. Little girls there do not become Brownies. Little boys cannot hope to grow up to be policemen. In this world's version of "High Noon" Gary Cooper does not wear the badge and the cowardly judge is just a cowardly anybody. The world lacks stability of service. Tasks that are here continuously committed to one or a few persons there can be shifted from one person to another as readily as binder clips on a business report or horses for a race. Political leadership floats about like the leadership of a therapy group. Such a world displays more than a trace of Koloremundian liteness.⁷⁷ It is not quite Woodstock, but it may be Disney World.

77. Though Plato tells us almost nothing about the institutional structure of the formless democracy, he does have Socrates say at one point that "for the most part, the offices in it are given by lot." THE REPUBLIC OF PLATO, *supra* note 17, at 235. It is hard to see how such a city could have much of an institutional

And of course in this world there is no *marital* office; no specialized system of rules and principles applicable to husband and wife. Neither spouse is bound by a system of obligations requiring ministry to the other or to the children. People may live together in long-term relationships but are not bound to maintain them or to shape them along one set of lines rather than another. They are bound not to assault one another and not to lie or cheat. But either partner can move out at any time or withdraw his love. Actually, in the real world, shacking up is usually just like that.⁷⁸

Like the world without obligation, the world without office is soft, occasionally licentious, cloudy, unsatisfying, and "lite."⁷⁹

2. The Parsimoniousness Criterion

Here in the real world, it seems that we make more of office than can be explained by its obvious consequentialist advantages and deontological merits. We develop office, exercise it, and rejoice in it in ways that go beyond what it takes to "do the job." We make someone Editor Emeritus not primarily in order to get his input into the editing process and we elect someone Homecoming Queen for reasons unrelated to the functioning of the student government.

We often expect the duties of office to be fulfilled with an unswerving dedication which exceeds what would make sense to a consequentialist, and we honor those who make sacrifices in the attempt. Even the Postal Service, quoting Herodotus, proclaims on the façade of its main Manhattan building: "Neither snow, nor rain, nor heat, nor gloom of night stays these couriers from the swift completion of their appointed rounds." In marriage, similarly, couples often seem to make much of their duties and extend them beyond their utility. Some cultures have even

structure or any sort of offices. How could there be the judges Plato refers to, and what sort of soldiers in what sort of army would there be for the cloudy citizen to aspire (transiently) to emulate? Perhaps the judges and soldiers are all soft, cloudy, and transient as well, so that what this cloudy man hankers to join is but a dissolving afterimage of the judiciary and military of the superceded constitutional order.

78. See LINDA J. WAITE & MAGGIE GALLAGHER, *THE CASE FOR MARRIAGE: WHY MARRIED PEOPLE ARE HAPPIER, HEALTHIER, AND BETTER OFF FINANCIALLY* 37–38 (2000) (describing the "cohabitation deal" and its lack of commitment).

79. See JOSEPH RAZ, *THE MORALITY OF FREEDOM* 310–13 (1986) (arguing that there is value in "social forms," such as those in law and medicine and marriage).

honored the extension of marital chastity beyond the death of the other spouse.⁸⁰

What are the goods of office, then, beyond those familiar to the consequentialist and the deontologist? What are the goods of *marital* office?

B. *The Basic Goods*

Office participates in the goods of obligation. And, since office involves affiliation—ministry, solidarity with other office-holders, a culture, and a public face—office also participates in some of the goods involved in close associations.⁸¹

1. Self-Command; Self-Possession

Obligation instantiates self-command; office does so more deeply because its obligations are numerous, systematic, and ministerial, and because often they perdure across much of a lifetime and require self-sacrifice.

Office involves a wide range of the *self* in the self-possession. Especially when the office is perdurant, committed, well understood, and accorded moral priority, to conform to the requirements of office is to act under the guidance of one's deliberative nature. It is to apply rules and principles which one has embraced and made one's own.

The offices of husband and wife involve this good in a special way. Durkheim notes:

[B]y forcing a man to attach himself forever to the same woman [marriage] assigns a strictly definite object to the need for love, and closes the horizon. This determination is what forms the state of moral equilibrium from which the husband benefits. Being unable to seek other satisfactions than those permitted, without transgressing his duty, he restricts his desires to them. The salutary discipline to

80. SUSAN TREGGIARE, *ROMAN MARRIAGE: Iusti Coniuges* from the Time of Cicero to the Time of Ulpian, 233–34, 501–02 (1991) (noting that for a widow to remarry was socially acceptable and even sometimes encouraged, but for her to refrain from remarriage was commended in literature and bestowed upon her the special right, not held by those who remarried, to sacrifice to the goddess Pudicitia).

81. According to Aristotle, friendship—not only close intimate friendships but affiliations and associations of many sorts—involves the goods of knowledge and benevolence. See generally A.W. PRICE, *LOVE AND FRIENDSHIP IN PLATO AND ARISTOTLE* (1989); SUZANNE STERN-GILLET, *ARISTOTLE'S PHILOSOPHY OF FRIENDSHIP* (1995); John M. Cooper, *Aristotle on the Forms of Friendship*, 30 *REV. METAPHYSICS* 619 (1977); David Konstan, *Altruism*, 130 *TRANSACTIONS AM. PHILOLOGICAL ASS'N* 1 (2000).

which he is subjected makes it his duty to find his happiness in his lot, and by so doing supplies him with the means. Besides, if his passion is forbidden to stray, its fixed object is forbidden to fail him; the obligation is reciprocal. Though his enjoyment is restricted, it is assured and this certainty forms his mental foundation.⁸²

Recent studies support this “moral equilibrium” thesis, establishing that married people are steadier employees: less likely to miss work, less likely to show up hung-over or exhausted, more productive, and less likely to quit.⁸³ Married persons are steadier in many other ways as well: less likely to overindulge in alcohol, drive too fast, take drugs, smoke, or get into fights.⁸⁴ Professors Linda Waite and Maggie Gallagher attribute some of these benefits to the obligatory bond: “husbands and wives know their partners’ well-being depends on them.”⁸⁵

Although it seems for some unknown reason to be a perennial source of amusement, the fact is that control and governance are part of the story of the good of marriage, including control of the husband by the wife. A recent study finds that a husband’s refusal to accept his wife’s influence is a key predictor of divorce.⁸⁶ There is a lot of wisdom along these lines in the tale of the Wife of Bath, whose moral is that what women desire most is sovereignty over their husbands. The Tale concludes with the following petition:

[M]ay Christ Jesus send
Us husbands meek and young and fresh in bed,
And grace to overbid them when we wed.
And—Jesu hear my prayer!—cut short the lives
Of those who won’t be governed by their wives . . . !⁸⁷

82. ÉMILE DURKHEIM, *SUICIDE: A STUDY IN SOCIOLOGY* 270–71 (John A. Spaulding & George Simpson trans., 1951). Durkheim continues: “The lot of the unmarried man is different. As he has the right to form attachment wherever inclination leads him, he aspires to everything and is satisfied with nothing When one is no longer checked, one becomes unable to check one’s self.” *Id.* at 271.

83. See WAITE & GALLAGHER, *supra* note 78, at 97–109; Margaret F. Brinig, *Unmarried Partners and the Legacy of Marvin v. Marvin*, 76 NOTRE DAME L. REV. 1311, 1316–17 (2001).

84. See WAITE & GALLAGHER, *supra* note 78, at 47–64.

85. *Id.* at 62.

86. John M. Gottman, et al., *Predicting Marital Happiness and Stability from Newlywed Interactions*, 60 J. MARRIAGE & FAM. 1, 5 (1998).

87. GEOFFREY CHAUCER, *THE CANTURBURY TALES* 310 (Nevill Coghill trans., Penguin, 5th ed. 1977). The stated moral is “A woman wants the self-same sovereignty/Over her husband as over her lover,/And master him, he must not be above her.” *Id.* at 304.

2. Knowledge

Like other affiliational modalities, office involves knowledge in a special way.⁸⁸ Only through being a physician can you fully know what it is to be responsible for a patient, to treat disease, and to heal. Only through being a husband or a wife can you fully understand what it is to be a spouse, to be responsible for another spouse, and to be a part of a married couple raising a child. Marriage involves, as one of the documents of the Second Vatican Council puts it, “an affectionate sharing of thought and common deliberation.”⁸⁹ These aspects of knowledge within close affiliations help explain and support the numerous findings in recent studies emphasizing the importance of self-revelation within marriage.⁹⁰

Through exercising office you grasp what it means to isolate out a social role, to discern what rules define it and what ministry justifies it, and to participate in a social order composed of a set of interlocking roles. Like obligation, office requires you to discern distinctions. Offices are the forms of a social order.

You cannot indulge in forgetfulness of distinctions when you are engaged in the exercise of one of the more demanding forms of office. There are no Koloremundians practicing medicine on the surgical floors of the Massachusetts General Hospital. No committed spouse loses sight of the boundaries or forgets what “forsaking all others” means.

3. Knowability

Everyone knows what a doctor is. Everyone knows the judge, the miller, and the friar and what is involved, roughly, in being a husband or a wife. Everyone knows, because the office shows a public face. Even if you do not wear a special gown or hat, everyone knows a great deal about where you stand in the world and

88. Affiliation involves “mutual recogni[tion] as bearing goodwill and wishing well to each other.” See ARISTOTLE, *Nicomachean Ethics*, *supra* note 15, at 1826 (ll. 1156a4–5). And full friends know each other’s choices and think and know together as a part of choosing together. Full friendship involves “reciprocal choice of the good and pleasant.” ARISTOTLE, *Eudemian Ethics*, *supra* note 35, at 1960 (ll. 1237a31–32). And in order to choose together (“reciprocally”) they must, it seems, think and know together, since “[c]hoice arises out of deliberate opinion.” *Id.* at 1942 (ll. 1226b8–9). Thus, as part of choosing, reciprocal reasoning, and judging, friendship involves “sharing in discussion and thought.” ARISTOTLE, *Nicomachean Ethics*, *supra* note 15, at 1850 (ll. 1170b11–12).

89. THE SECOND COUNCIL OF THE VATICAN, *GAUDIUM ET SPES* *supra* note 73, para. 52.

90. See MILTON C. REGAN, JR., *ALONE TOGETHER: LAW AND THE MEANING OF MARRIAGE* 22 (1999) (describing numerous studies).

what is expected of you in life as soon as you are introduced as "Doctor" or "Rabbi." Beneficiaries especially know. No one appreciates health and knows disease and understands which is which better than the man who has been sick and now has been healed. Moreover, his knowledge of the subject and that of the physician who healed him reinforce and double one another. The patient and the member of the congregation know a great deal about what is expected of their physician and their clergyman. The institution of office in this way is a component in the knowledge—experiential and abstract—of the community.

Only office—office which perdures, office with a public face, office with settled and known and knowable standards of conduct—makes possible the institutional forms that develop critical knowledge and ensure its application. If medicine was practiced episodically rather than through office, there would be no American Medical Association, no *New England Journal of Medicine*, no medical schools, and no learned books on the physician-patient relationship. Critical knowledge involves apprehending the good of a practice, discerning the principles of conduct which serve it, and holding up the practice against the measure. The spurts of beneficence towards the sick that pass for the practice of medicine in *Koloremundo* would receive no such critique because no one would have the stabilized knowledge necessary to mount one.

4. Knowledge "Doubled" Within Friendship

Before taking up office, consider friendship. Knowledge which arises within friendship has a special character. It is strengthened and "doubled." Your knowledge becomes in part hers; you see the world as she does; and you know yourself as you are known by her. As Aristotle states: "[t]o perceive a friend must be in a way to perceive one's self and to know a friend to know one's self."⁹¹

To understand this doubling, start with a fairly superficial mental process: observation. When you take an action in the presence of someone who is a friend, so that the friend can observe you as you act, you can, in a sense, see what she sees. This is because friends to some extent see the world through each other's eyes. Your seeing what the friend sees enables you to observe yourself "from the outside." You experience a doubling of observation.

This doubling goes beyond the experience of seeing exactly the same scene twice: rather, you see something again from a

91. ARISTOTLE, *Nicomachean Ethics*, *supra* note 15, at 1974 (ll. 1245a36–36).

second vantage point. You see yourself as the friend does. When you act alone, you focus on the object of your action—your goal. When you observe someone else act, you see more—you see the goal and the pursuer; the act and the actor. When you act under the observation of someone else, she sees the goal and observes you pursuing it; the act and you, the actor. When the observer is your friend, you see things from her external point of view as well as your own internal one.

[When I pursue projects alone] my projects are . . . transparent on to their objects, so that my focus is upon the objects, not my pursuit of them; but joining in those projects with a friend I become conscious of his pursuing them, and so conscious in a new way of pursuing them myself (for we are pursuing them together). I thus become explicitly aware of myself not just abstractly as an agent, but as an agent with a certain character, thereby achieving not a bare self-consciousness but a real self-knowledge.⁹²

This doubling process extends beyond observation to the deeper projects of understanding and judging. None of us is a perfect judge of his own actions. Even the most fair-minded can observe and judge only within the framework of his own way of looking at things. Someone else who takes the time and trouble to contemplate your actions can understand and judge them from the outside and from the standpoint of her special mentality. And when this other person is a friend of yours, you participate in this understanding and judging. Since you and a friend think and judge together and, as Aristotle puts it, “share . . . thought,” you can understand yourself somewhat as she understands you, and judge about yourself as she might.⁹³

92. PRICE, *supra* note 81, at 122.

[I]n perception we become transparent to what we are perceiving . . . (something like seeing outside and seeing through a window). That is one way of being aware of oneself, yet without achieving self-consciousness. It is for the latter that one's fellows are so valuable For as, say, I see a friend looking into my eyes, his looking is to me not transparent (as it is to him) but opaque, so that I see him looking into my eyes without thereby seeing them myself It is from him that I can learn most easily to distinguish the perceiver from the perceived; I then generalize to my own case. All this just carries one from consciousness of one's perceiving fellows to an abstract self-consciousness *qua* perceiver.

Id. at 121–22.

93. Friendship involves “sharing in discussion and thought.” ARISTOTLE, *Nicomachean Ethics*, *supra* note 15, at 1850 (ll. 1170b11–12); *see also* PRICE, *supra* note 81, at 123–24.

5. Knowledge Doubled Within Office

Doubling of knowledge can arise outside the confines of personal friendship. It can occur in other important affiliations as well. People who work together at a common craft—shoemakers, soldiers, and brother officers, for example—see their achievements and also their shortcomings as they appear to their fellows.

The genius of the institution of office is to instantiate this special kind of knowledge between people who may never have met. Examples include physician and physician; physician and potential patient; patient and newly hired nurse; nurse and newly hired physician. Because they know one another through office they can understand and judge one another and—doubling—see, understand, and know themselves through office. The lawyer and the client may not know one another very well otherwise, but each can see and assess what the other is thinking of his performance.

6. Knowledge Doubled Between Office and the Social Order

The genius of those many offices which show a public face is to encourage the doubling of knowledge between the individual officeholder and his social order. The public holds up a mirror to the officeholder and enables him to see himself from the outside in much the way one sees oneself through the eyes of a personal friend. Cicero writes:

My election as quaestor meant for me that the office was not only conferred upon me but committed and entrusted to me. While I carried out my duties of quaestor in the province of Sicily, I felt all men's eyes directed upon me and me only; I fancied myself and my office staged in a theatre where all the world was an audience⁹⁴

The public may have observed many officeholders' efforts to exercise that same office. It may observe many others doing so simultaneously. The mirror it holds up to each displays these others as well.

As with friendship, with office more is involved than simple observation. Understanding and judgment are doubled as well. Observing the exercise of office on many occasions, the public develops criteria, expectations, standards and tastes in the performance of holders of office—especially holders of governmental and public office—and communicates them in many ways to

94. 2 MARCUS TULLIUS CICERO, *The Second Speech Against Gaius Verres*, in *THE VERRINE ORATIONS* 507–09 (L.H.G. Greenwood trans., 1953) (1928).

each officeholder. Thus, the president and the prime minister need not be philosopher kings and develop their own political theories. Critically assessing each holder's actions, the public displays to him its critical appraisal. The president and the prime minister need not be their own biographers and critics. For many office-holders, the greatest reward of effective service is "honor," seeing a favorable reflection of themselves in the public eye and receiving a favorable appraisal. Their greatest fear is disgrace.

7. Virtue: Disposition towards the Good within Office

To embrace office and act to fulfill its ministry instantiates virtue. It integrates the goods to which the office is aimed into the character of the officeholder.

Any moral action may to some extent integrate the good in the character of the actor, and any morally obligatory action may do so with special firmness and stability, as argued above. Action in the exercise of office does so in a special way, it seems, since it is "bundled" into a complex of activities aimed in a coordinated way at the goods to which the office ministers. Office involves and develops character, often to a fairly comprehensive extent.

8. The Doubling of Self-Command, Virtue, and Knowledge in the Office of Marriage

The goods of office interact and mutually reinforce, nowhere more so than in marriage. Self-command and self-possession are doubled within a close affiliation. The ropes run both ways. I can steady myself from her steadfastness of character. She can instantiate and fulfill the good of the office of wife by making calls on my office as her husband.⁹⁵ John Donne compared a couple to the two arms of a draftsman's compass:

Thy firmness draws my circle just
and makes me end where I begun.⁹⁶

Knowledge can be doubled with special intensity within marriage. In his play *The Jeweler's Shop*, Karol Wojtyla (Pope John Paul II) portrays an engaged couple encountering one another as though by chance in a city street. Andrew says:

I met Teresa when she had just paused
in front of a large window . . .
I stopped by her quietly and unexpectedly —

95. WAITE & GALLAGHER, *supra* note 78, at 56–57.

96. John Donne, *A Valediction Forbidding Mourning*, quoted in JOHN GARVEY, *WHAT ARE FREEDOMS FOR?* 35 (1996).

and suddenly we were together
 on both sides of the big transparent sheet
 filled with glowing light.
 And we saw our reflections together,
 because behind the window display
 is a great, immense mirror
 . . . [W]e found ourselves all of a sudden
 on both sides of the great mirror
 here alive and real, there reflected⁹⁷

Teresa observes:

[T]he window has turned into a mirror of our future;
 it reflects its shape.
 [I] already saw, as in a mirror,
 myself, in a white wedding dress, kneeling with Andrew
⁹⁸

A wide mirror displays not only the observer but also the scene around her.⁹⁹ Teresa and Andrew can see one another in the mirror, and also the world around and behind them; and each can see the world in it as it looks to the other. Andrew and Teresa grow in awareness, each of how the other experiences the world, and each comes to see things from the other's perspective. Each grows to see how the other is conscious of herself.¹⁰⁰ Andrew can be conscious of how Teresa's consciousness of him is structured. Andrew can become conscious of himself *in the way that* she is conscious of him. Because he knows her well, he can see how he looks to her.

Doubling of knowledge reinforces doubling of self-command. I can see better how to exercise self-command from seeing how she does it herself. I can judge whether I am walking a steady line by observing how my peregrinations look to her. I perform the difficult feat of self-command because I surely do

97. KAROL WOJTYLA, *THE JEWELER'S SHOP* (B. Taborski trans., Hutchinson Pub. Group 1980), *reprinted in* *THE COLLECTED PLAYS AND WRITINGS ON THEATER* 278, 285 (1987) [hereinafter WOJTYLA, *THE JEWELER'S SHOP*].

98. *Id.* at 287, 288. These passages appear in the opposite order from that set forth above.

99. The mirror is a recurrent metaphor in Wojtyla's writings. *See, e.g.,* KAROL WOJTYLA, *The Samaritan Woman Meditates, in* *EASTER VIGIL AND OTHER POEMS* 13 (J. Peterkiewicz trans., 1979) ("I – yes I – conscious then of my awakening as a man in a stream, aware of his image,/is suddenly raised from the mirror and brought/to himself, holding his breath in amazement,/swaying over his light.").

100. Andrew's consciousness of Teresa embeds even awareness of her suffering: "that discreet suffering [he calls it] which at the time I did not want to know, and today am willing to regard as our common good." WOJTYLA, *THE JEWELER'S SHOP*, *supra* note 97, at 284.

not wish to see weakness of character reflected in her eyes when she observes me.

As it is with a president or a prime minister, so it is with a husband or a wife. In order to be a good one, you should not find it necessary to develop a philosophy of the social order or a theory of the family. It should not be necessary to do so because the social order already can know what marriage involves, communicate its wisdom on that subject to everyone in the society, and facilitate the application of those lessons by supporting those who apply them and those who expect their spouses to do the same.¹⁰¹

Two philosophers make this point about monogamy. Joseph Raz writes: "Monogamy . . . cannot be practised by an individual. It requires a culture which recognizes it, and which supports it through the public's attitude and through its formal institutions."¹⁰² And Robert George comments: "[L]arge numbers of people will . . . fail to grasp the value of monogamy and the intelligible point of practicing it . . . unless they are assisted by a culture that supports, formally and informally, monogamous marriage."¹⁰³

A well ordered "social constitution" (one very different from that in *Koloremundo*) promotes and distinguishes social forms one from another, discourages the blurring of their boundaries, identifies marriage as one of them, embodies a morality of marriage, and communicates it directly through social discourse and indirectly through a culture of narratives, myths, and symbols. It tells young men what to expect and what is expected of them when they bring their bachelorhoods to a close. It also tells a future wife what she can expect of her husband and what he may expect of her.

You do not have to do social and political theory to get the idea any more than Churchill or Roosevelt or MacArthur had to do political constitutional theory. Professor George's passage continues:

What is true of monogamy is equally true of the other marks or aspects of a morally sound understanding of marriage. In other words, marriage is the type of good that can be participated in, or fully participated in, only by people who properly understand it and choose it with a proper understanding in mind; yet people's ability properly to

101. See generally STEVEN L. NOCK, *MARRIAGE IN MEN'S LIVES* 11-42 (1998).

102. RAZ, *supra* note 79, at 162.

103. Robert P. George, *Neutrality, Equality, and "Same-Sex Marriage,"* in *MARRIAGE AND SAME-SEX UNIONS: A DEBATE*, *supra* note 74, at 119, 128.

understand it and then to choose it depends upon institutions and cultural understandings that transcend individual choice.¹⁰⁴

The young couple can see themselves reflected accurately in the mirror of their social order. A social order has which a wise “form” of marriage will make them wiser about themselves. During times of faltering it will hold them steady and during periods of domestic peace it will deepen their love.

104. *Id.*; see also RAZ, *supra* note 79, at 162.

