

RAWLS ON PROMISING

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Suppose I promise to give you part of the produce from my garden in the fall if you will help me water and weed it in the summer. I take it that all would agree that if you do help me in the summer, I am 'under a moral obligation' to allow you part of the harvest in the fall, at least if nothing has happened in the meantime to excuse me from my promise. In this paper I will consider the account which John Rawls gives in *A Theory of Justice*¹ of how this moral obligation arises.

Rawls' account of promising involves two parts: (1) a social practice or institution defined by a public system of constitutive rules and, (2) a moral principle, "the principle of fairness," which says "that a person is under an obligation to do his part as specified by the rules of an institution whenever he has voluntarily accepted the benefits of the scheme or has taken advantage of the opportunities it offers to advance his interests, provided the institution is just. . ." (pp. 342-43). (Whether the institution is just is then determined by reference to Rawls' two principles of justice which he explains elsewhere in his book.)

The act of promising is made possible by the fact that there is an institution created by constitutive rules. According to Rawls, the most basic of these rules, "the rule of promising," is that "if one says the words 'I promise to do X' in the appropriate circumstances, one is to do X, unless certain excusing conditions obtain" (p. 345). Whether or not this institution is just is determined by whether or not the "appropriate circumstances" and the "excusing conditions" set out by the constitutive rules of promising meet the standard of Rawls' two principles of justice (pp. 60-65). *Only if* the institution is just is one under an obligation to keep one's promises. "The obligation to keep a promise is a consequence of the principle of fairness," Rawls says (p. 346). And "no moral requirements follow from the existence of institutions alone. Even the rule of promising does not give rise to a moral obligation by itself" (p. 348).

So Rawls' basic idea here is that one makes a promise by invoking the constitutive rules of the institution of promising in the appropriate way but that one is only under an obligation to keep one's promise because a moral principle, the principle of fairness, applies. That there is something wrong with this account can perhaps best be seen by looking more carefully at what Rawls calls "the rule of promising," i.e., that "if one says the words 'I promise to do X' in the appropriate circumstances, one is to do X, unless certain excusing conditions obtain" (p. 345). Consider especially the phrase "one is to do X." Presumably what this means is that

one is required to do X or that one is under an obligation to do X. In Searle's account of constitutive rules and promising,² to which Rawls refers, the "essential condition," according to Searle, for making a promise is the speaker's intention that his utterance of the appropriate words "place him under an obligation." And it is part of another condition that the speaker intend his utterance to produce in his hearer the knowledge that the utterance *is to count* as placing the speaker under an obligation (Searle, p. 60).

But if this is what is meant by the constitutive rules of promising then Rawls' account seems to be redundant. For, on the one side, he is saying that by uttering the words "I promise to do X" in the appropriate circumstances I place myself under an obligation to do X and, on the other side, that I am under an obligation to keep my promise in virtue of the justice of the institution of promising and the (moral) principle of fairness which says that I am obligated to do my part in just institutions when I voluntarily engage in them.

Since Rawls does not think that the institution of promising is just by definition (p. 345), the question arises as to whether or not I am under an obligation to keep my promises if it should turn out that this institution is *not* just. Since I have invoked the constitutive rules of the institution which place me under an obligation it would seem to follow that I would be under an obligation. On the other hand, if the institution is not just and so the principle of fairness does not apply, it would seem to follow that I would *not* be under an obligation to do what I promised. So it would seem that if the institution of promising is not just, Rawls will have to say both that we are and that we are not under an obligation to keep our promises.

Is there any way of saving Rawls' account of promising from this conclusion? I will discuss three 'moves' that might be attempted here, the first two of which derive from things Rawls himself has said. The first is this. In the same section of *A Theory of Justice* in which he discusses promising Rawls argues that there is a difference between "institutional requirements," such as legal duties, which derive from social practices, and moral obligations and duties which "arise only in virtue of ethical principles." "In this way, he says, "we can distinguish two kinds of norms. The terms 'duty' and 'obligation' are used in the context of both kinds; but the ambiguities stemming from this usage should be easy enough to resolve" (p. 349).

So the suggestion here would be that we can resolve the apparent contradiction of saying both that I am and that I am not under an obligation to keep my promises when the whole institution is not just by the time-honored method of saying that we have here two different senses (or

perhaps 'usages') of the term "obligation," because of the two different kinds of norms involved. But do we in fact have two different senses of "obligation" here? I am not at all sure that we do. For one thing, it is not clear to me in general why the fact that there are two different kinds of norms involved should be thought to show there are two different kinds of obligation, rather than one kind of obligation arising from two different sources. In the particular case of promising, this doubt becomes even stronger. For the basic constitutive rule of promising, according to Rawls, is that we are to do as we promised "unless certain excusing conditions obtain." And I suppose that here Rawls is thinking that if, for instance, I could only let you have the garden produce I promised at the cost of someone's life, I would thereby be excused from my promise. But the obligation (or duty) to save another's life is surely moral if anything is. So Rawls will have to say, presumably, that at least some of the excusing conditions specified in defining the 'constitutive rule sense' of "obligation" involve the 'moral sense' of this term. *Perhaps* this is alright but it seems rather odd if we really have two different senses here.

Beyond this I am not sure what to say because Rawls himself says nothing about the differences between these supposed two different senses of "obligation." If we discover tomorrow that the institution of promising is not just it will then follow, on Rawls' view, that we are no longer under any 'moral' obligation to do as we have promised (and in fact never really were) but that we are still under another kind of obligation which arises from the constitutive rules of this institution. But what does this mean? That we don't *really* have to keep our promises after all? Then in what sense is this supposed other sense of "obligation" an *obligation*? And if we *do* still have to keep our promises then what exactly has been denied by saying that this is not a 'moral' obligation?

I conclude, then, that this double sense doctrine for "obligation" is, at best, quite implausible. The other suggestion which might be used to attempt to meet the objection I have raised to this account for the obligation to keep a promise derives from what Rawls says in "Two Concepts of Rules."³ In this earlier paper Rawls suggests that it is the utilitarian principle, rather than the principle of fairness, which ought to determine the moral status of the institution of promising. But in fact his view seems to have changed not only about which moral principle applies but also about how the principle applies. His earlier view was that it would be a mistake to apply the utilitarian principle to each instance of promising. Rather, he said, we decide whether or not one is under an obligation to do as he promised by appeal to the constitutive rules of the institution. We only use the moral principle here to determine whether or not the institution as a whole is justified. So this earlier view is like his present

account in that both hold that the institution of promising must be judged by a moral principle but the two differ in that on the earlier view it is the constitutive rules of the institution, not the moral principle, which create the (presumably moral) obligation to keep one's promises. Thus to adapt this earlier procedure to Rawls' current account of promising would be to say that whether one is under an obligation to do as one promised is determined by the rules of the institution and that whether the institution as a whole is worth having is determined by the principles of justice.

That Rawls would not accept this revision of his view seems clear since, as I said above, he explicitly denies that institutions alone give rise to 'moral' obligations. *Why* he thinks this, however, is not so clear. It may be that he has the following problem in mind. If one says that the rules of the institution give rise to moral obligations and that moral principles such as the principles of justice can only tell us whether or not the institution as a whole has any moral worth, the way is then left open for the existence of unjust or, indeed, completely evil institutions the rules of which will give rise to binding moral obligations. In such a case we would have to say that even though the institution ought not to exist (e.g., that there should be no such thing as promising), still those engaged in it are under a moral obligation to follow its rules. And this seems a rather bitter pill to swallow.

Are there then any other ways Rawls might attempt to get around the problem I have posed for him? I will suggest one other possibility the discussion of which will, I hope, make clear why this is a rather more serious problem than at first sight it might seem. The suggestion is this. Since the problem here seems to arise from the fact that Rawls gives, really, two different accounts of the obligation to keep a promise, why not just give up one, or perhaps both, of these accounts? This might, in fact, seem like the simplest and most obvious solution. But I think that this is much more easily said than done. If, on the one hand, we want to give up the idea that constitutive rules give rise to the obligation here, then we would seem to have to deny not only Searle's version of the 'speech act' analysis of language, an analysis which has taken promising as one of its main examples, but also, seemingly, any analysis of institutional requirements in terms of constitutive rules, e.g., H. L. A. Hart's analysis of a legal system. Of course these theories may be mistaken. But at the very least this needs to be shown before they are cast aside.

But if it is difficult to give up the constitutive rule account it is, if anything, even more difficult to give up the view that moral obligations arise from rationally justifiable moral principles. For if one wants to hold of any specific act that it is morally right, wrong, obligatory or whatever, one would seem to be thereby committed to a general principle to the

effect that acts of the same *kind* are right, wrong or obligatory, i.e., to a general moral principle. And not all such principles refer to constitutive rules. For instance, the principle that it is wrong to cause needless suffering does not seem to refer in any way to constitutive rules. Once one has gone this far and agreed that, as seems obvious, some of the goods and evils of the world are so because their conformity, or lack of it, to moral principles, it is then very difficult to resist the next step, i.e., the view that such an account applies to all the goods and evils of the world. Otherwise, as I said above, one may find oneself having to say that someone has a moral obligation to do what these principles declare to be evil.

It seems to me, therefore, that there are very strong motives for accepting each of the two accounts of obligation that are contained in Rawls' explanation of promising. On the other hand, I hope I have shown that both views together cannot be accepted.

NOTES

¹John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971). Unless otherwise noted, page numbers in parentheses refer to this book.

²John R. Searle, *Speech Acts* (Cambridge: Cambridge University Press, 1969). Constitutive rules are discussed in chapter 2, section 5, promising in chapter 3, sections 1 and 2 and in chapter 8.

³John Rawls, "Two Concepts of Rules," *Philosophical Review*, Vol. 64 (1955), 3-32.

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