

## Obligation without Rule: Bartleby, Agamben, and the Second-Person Standpoint

In Herman Melville's *Bartleby, the Scrivener: A Story of Wall-Street*, the anonymous narrator finds himself involved in a kind of moral relation whose sense he finds very difficult to articulate. The narrator, a lawyer, had recently enjoyed a large increase in his business and so had hired a third scrivener, Bartleby, to help with the additional work. At first, Bartleby produced an extraordinary quantity of work, copying documents day and night. But things began to change on the third day when the lawyer made a routine request of his new scrivener: summoned to help proofread his own work, Bartleby informed the lawyer that he "would prefer not to." In the following weeks, it became clear that Bartleby would prefer not to do any of the work he had been hired to do. The lawyer, it seems, would have been well within his right not to tolerate this behavior. But from the moment Bartleby first declared his preference not to proofread the documents, the lawyer understood himself as standing in some kind of relation with him that made it appear morally impermissible to dismiss him. Throughout the story, the lawyer experimented with different moral vocabularies to try to comprehend what was at stake in this relation, but none of these quite made sense of his conviction. Perhaps this should be taken as evidence that the lawyer was mistaken, that he in fact had no morally compelling reason to continue to take care of Bartleby. But I would like in this paper to pursue the possibility that the lawyer was not entirely mistaken. In what follows, I will argue that we can understand the lawyer's relation to Bartleby, up to a certain point, in terms of Stephen Darwall's influential account of the phenomenon of obligation. But I will also argue that there is a dimension of moral sense in the relation that is foreign to the phenomenon of obligation as Darwall understands it. Specifically, I want to argue that what is brought out in the relation between Bartleby and the lawyer is the separation of the experience of moral necessitation from the rule that would give its content. I will conclude by arguing that this obligation without rule is a genuine moral phenomenon and that we can begin to understand it in terms of the ideas of love, singularity, and potentiality as these are developed in the work of Giorgio Agamben.

### I. Obligation and the Second-Person Standpoint

According to the influential account articulated by Stephen Darwall in *The Second-Person Standpoint*, obligation is an irreducibly second-personal phenomenon. What this means, most fundamentally, is that obligation arises only within intersubjective relationships in which persons engage with each other as "self-originating sources of valid claims" (Rawls 1980, 543). These claims are to be understood not epistemically, as propositions purporting to state how the world truly is, but rather morally, as demands or claims addressed directly to the will of another. In genuinely second-personal relationships, the participants recognize each other as authorized to address these claims and recognize themselves as answerable to them. This means that the mere fact that a person has addressed a claim against one gives one a reason to act in accordance with the claim, completely independent of any reasons for action that one might already have had. Darwall provides a helpful example of this kind of second-personal authority near the

very beginning of *The Second-Person Standpoint*: suppose that someone has stepped on my foot, thereby causing me pain and inconvenience, and that I would like the person to move his foot and put it down somewhere else. One way I might go about trying to convince him is by getting him to see that there are reasons to which he is already committed that count in favor of his moving his foot. For example, if I know that he is a hedonistic utilitarian, I might tell him that his stepping on my foot brings about a world with a lower net total of happiness than the one that would be brought about if he moved his foot. In this case, I do not engage with the man second-personally, presenting myself to him as a self-originating source of valid claims. The only kind of authority I present myself as having is epistemic: I claim to have knowledge of the different states of the world that would be produced by the man's moving or not moving his foot. In describing these different states, I appeal to reasons for action that he already has. The other way I could proceed would be to assert my authority to demand that the man move his foot. Here the authority I claim is not epistemic at all: I do not present myself as having a bit of knowledge, moral or otherwise, that the other person either lacks or needs to be reminded of. The authority I claim, rather, is simply the authority to demand that he respect me, that he act toward me only in ways that are justifiable to me, second-personally, and not merely in terms of agent-neutral principles and values. It is only in this second-personal kind of relationship that the phenomenon of obligation arises. In asserting my claim against the man, I am not merely trying to get him to acknowledge that moving his foot would be the best course of action, all things considered. Rather, I am trying to make him recognize that he *owes* it to me to move his foot and that he wrongs me if he does not (Darwall 2006, 5-10).

When we address second-personal reasons to each other, Darwall thinks, we commit ourselves to various normative presuppositions (Darwall 2006, 82). Unpacking these presuppositions will help to clarify what obligation is and how it differs from neighboring practical concepts. First, second-personal reason-giving presupposes relations of mutual respect. When we address others second-personally, we summon them to determine their own wills on the basis of the reasons we give them. In so doing, we respect them as free beings with the right rationally to determine their own wills. By proposing reasons for action, we renounce the strategy of determining others' wills through deception, rhetorical trickery, or brute force. And in taking our proposed reasons seriously, considering them as bases for the determination of their own wills, others respect us as free, rational beings with the standing to address claims (Darwall 2006, 20-22). In sum, then, engaging with each other from within the second-person standpoint commits us to recognizing that "free and rational persons have a dignity or authority in common to address (and be addressed) second-personal reasons" (Darwall 2006, 21). The second presupposition to which the second-person standpoint commits us is that those to whom we address claims are capable of holding themselves responsible for the determination of their own wills. Darwall refers to this as Pufendorf's Point, as it develops an important insight first articulated by the early modern natural law theorist Samuel Pufendorf in his *On the Law of Nature and of Nations* and in *On the Duty of Man and Citizen According to Natural Law*. When we make a demand, Pufendorf thinks, we presuppose that our addressee is capable of addressing those same demands to herself. If our addressee were incapable of taking our reasons as principles for the determination of her own will—that is, if she could not adopt the second-person standpoint in relation to

herself—then she would have no experience of obligation. She would have no sense, in other words, of her will as being bound by principles that she herself accepts as legitimate. To be obligated, on Darwall’s account, is to hold oneself accountable to others and to their justified claims. A person who could not hold herself accountable in this way could be coerced, cajoled, tricked, or simply overpowered, but she could not be obligated (Darwall 2006, 22-25).

These presuppositions that are built into second-personal relations point in the direction of a contractualist conception of the content of obligation. According to Darwall, whenever we “attempt to hold anyone accountable by addressing second-personal reasons of any kind, we presuppose that the authority and principles we implicitly invoke are ones our addressee can be expected to accept, or not reasonably to reject, as a free and rational agent who is apt for second-personal address” (Darwall 2006, 300-301). If I genuinely respect another’s dignity as a free and rational agent, then I cannot reasonably demand that he pursue a given course of action simply on the grounds that I want him to. The attitude of one who would make such a demand is self-conceit, which Immanuel Kant characterized as a “lack of modesty in one’s claims to be respected by others” (Kant 1996, 579). Darwall describes this attitude as “a fantasy about second-personal status. It is the conceit that one has a normative standing that others don’t have to dictate reasons just because of who or what one is” (Darwall 2006, 135). Such an attitude is incompatible with the presuppositions of good-faith participation in second-personal relations. What mutual respect within the second-person standpoint demands is that I hold others accountable not to my own preferences but rather to principles that they could not reasonably reject. And in order to determine whether or not a principle is reasonably rejectable, I must adopt a second-personal relation to myself, asking myself whether I would be willing to determine my own will in accordance with the principle. The content of my obligation then, according the contractualist account entailed by the presuppositions of the second-person standpoint, is whatever the moral community could justifiably demand that I do.

## II. Bartleby and the Presuppositions of the Second-Person Standpoint

What I would like to argue in this section is that we can begin to make sense of the lawyer’s moral confusion by understanding his relationship to Bartleby in terms of the second-person standpoint and of the contractualist account of obligation that it supports. Specifically, I want to show that the lawyer’s confusion arises from the fact that he takes on all of the normative presuppositions of the second-person standpoint in his relations to Bartleby, but that Bartleby does not take on those presuppositions in his relations to the lawyer. Throughout the story, the lawyer presents himself to Bartleby as a maker of claims the legitimacy of which he is prepared to justify. At no point does the lawyer evince an attitude of self-conceit, demanding that the employees in the office respect his will simply on the grounds that it is his will. He does not attempt to overpower his employees or trick them into carrying out his will. Rather, he addresses claims to them that he takes to be supported by his legitimate authority as their employer and remains open to reasons addressed by his employees to him. For example, the second time that Bartleby indicates his preference not to proofread some documents, the lawyer supports his demand that he do so with reference to well established norms: “Every

copyist is bound to help examine his copy. Is it not so?” And when Bartleby states once again that he would prefer not to proofread the documents, the lawyer asks, “You are decided, then, not to comply with my request—a request made according to common usage and common sense” (Melville 1987, 22)? Later, when Bartleby tells him that he would prefer not to answer any questions about his past, the lawyer responds in a way that expresses respect for Bartleby’s second-person competence: “But what reasonable objection can you have to speak to me” (Melville 1987, 30)? And when Bartleby refuses to leave the office after having been dismissed, the lawyer asks, “What earthly right do you have to stay here” (Melville 1987, 35)? In all of these examples, the lawyer attempts to relate to Bartleby under conditions of mutual accountability: he provides reasons supporting the legitimacy of his demands and he invites Bartleby to provide reasons justifying his own conduct. What is more, the demands that he addresses to Bartleby seem to satisfy the contractualist criterion of justifiability: it is hard to see how Bartleby could reasonably reject the principle according to which he ought to do the copying and proofreading that he was being paid to do. In sum, the lawyer regards Bartleby as obligated to act in accordance with his demands, but he also regards himself as obligated to make himself accountable to Bartleby.

Bartleby, on the other hand, takes up the second-person standpoint in relation to the lawyer only to a minimal degree. He does not address demands to the lawyer, insisting on any kind of *right* not to do his work. Indeed, he does not even try to give the lawyer reasons to believe that his refusal to work is excusable. All he says is that he would prefer not to do the things the lawyer asks him to do. This is true even in those cases where the lawyer explicitly asks Bartleby to make himself accountable. When asked, for example, what objection he could have to answering the lawyer’s questions about his past, Bartleby says, “At present I prefer to give no answer” (Melville 1987, 30). When asked what right he had to remain in the lawyer’s office after having been dismissed, Bartleby gives no answer at all (Melville 1987, 35). And when the lawyer implores him to be reasonable in responding to his demands, Bartleby expresses as clearly as possible his reluctance to take up the second-person standpoint, informing the lawyer that he “would prefer not to be a little bit reasonable” (Melville 1987, 30).

Nonetheless, the lawyer never abandons the second-person standpoint in his relation to Bartleby. He continues to treat Bartleby’s statements as if they were demands or justifying reasons, and as a result he continues to regard himself as accountable to him. At first, the lawyer seems to believe that he owes it to Bartleby not to dismiss him, despite the fact that he had made it very clear that he was not going to do any copying or proofreading. Later, after having moved into a new office and leaving Bartleby behind, the lawyer apparently views himself as duty-bound to try to find him a new occupation and new place to live. In both of these cases, it is clear that the lawyer does not view his beneficence toward Bartleby as supererogatory. Neither does he view his acts as merely permissible. He seems to view himself, rather, as obligated to take care of Bartleby. For example, after having resolved to dismiss Bartleby for refusing to reveal anything about his personal history, the lawyer experiences an attack of conscience: “...I strangely felt something superstitious knocking at my heart, and forbidding me to carry out my purpose, and denouncing me for a villain if I dared to breathe one bitter word against this forlornest of mankind” (Melville 1987, 30). Later, when Bartleby’s strange behavior began to damage the lawyer’s professional reputation, he strategizes about ways to rid

himself of Bartleby. But again, he clearly regards his options as being limited by the stringent obligations he owes to the scrivener: “What shall I do? what ought I to do? what does conscience say I *should* do with this man, or rather ghost?” After considering the option of thrusting him out the door, the lawyer quickly recognizes the moral impermissibility of such a cruel act: “No, I will not, I cannot do that” (Melville, 1987, 38). And finally, after having offered to secure new employment for Bartleby, the lawyer feels as if he had done everything he could “with regard to [his] own desire and sense of duty, to benefit Bartleby, and shield him from rude persecution” (Melville 1987, 42).

The lawyer’s understanding of his obligation to Bartleby does not seem to make sense in terms of the second-personal account developed by Darwall. In none of the different cases does the purported obligation pass the reasonable rejectability test. Without a doubt a person could reasonably reject the principle according to which he must continue to employ someone who has stopped doing the work he was hired to do, who does not even provide any excuse for not working, and who has given every indication that he will not start doing the work again anytime in the near future. And certainly one could reasonably reject the principle according to which one must seek out new employment opportunities and new living arrangements for a former employee who refuses to leave the premises. Moreover, I believe we would arrive at the same results without explicitly applying the reasonable rejectability test, relying simply on the pre-theoretical moral intuitions that contractualism formalizes: I suspect that most people, if they were in the lawyer’s position, would regard themselves as fully justified not only in firing Bartleby but also in calling the police to have him forcefully evicted.

Why, then, does the lawyer experience himself as obligated to Bartleby in these ways? At various points in the story, he tries out different practical vocabularies in order to try to make sense of his moral experience, but none of these seem especially plausible. Near the beginning of the story, the lawyer tries to make sense of his unwillingness to dismiss Bartleby in straightforwardly prudential terms: “He is useful to me. I can get along with him.” If he were to turn Bartleby out, he might end up with another employer who would treat him much less indulgently. Indeed, he might be driven to unemployment and eventually to starvation. By retaining Bartleby, then, the lawyer “can cheaply purchase a delicious self-approval. To befriend Bartleby; to humor him in his strange wilfulness, will cost [him] little or nothing...” (Melville 1987, 23). But as the story continues, it becomes increasingly clear that Bartleby is not useful to the lawyer at all, and that he is in fact a liability. Later, after Bartleby has refused to leave the office after having been dismissed, the lawyer arrives at the conclusion that he had been assigned by God the task of caring for Bartleby: “Gradually I slid into the persuasion that these troubles of mine touching the scrivener, had been all predestined from eternity, and Bartleby was billeted upon me for some mysterious purpose of an all-wise Providence, which it was not for a mere mortal like me to fathom” (Melville 1987, 37). But the lawyer seems not to have held this view very sincerely, since he abandoned it just as soon as his scrivener’s strange behavior began to adversely affect his reputation among other lawyers within the community.

Perhaps the best explanation of the lawyer’s experience is simply that he is mistaken, that he misunderstands the nature of the relation in which he stands to Bartleby and that he therefore misunderstands the moral requirements that issue from that relation. Most importantly, he wrongly believes that Bartleby is second-personally competent: he

interprets Bartleby's words as claims that he is willing to support with reasons and he trusts that Bartleby is willing to determine his own will in accordance with valid claims addressed by others. For the most part, the lawyer does not adopt toward Bartleby what P.F. Strawson calls the objective attitude, suspending the engaged, interpersonal relationship and viewing him third-personally as an object "to be managed or handled or cured or trained" (Strawson 2008, 9). The lawyer's commitment to treating Bartleby as a full partner to second-personal interaction, and not merely as an object to be managed, is brought out especially clearly when he becomes angry at Bartleby for refusing to disclose any information about his personal history. From the lawyer's point of view, Bartleby "seemed ungrateful, considering the undeniable good usage and indulgence he had received from [him]" (Melville 1987, 30). Gratefulness, in Strawson's terms, is a reactive attitude: it makes sense to expect it from another only within the context of a second-personal relation. But why does the lawyer expect Bartleby to be grateful? And more generally, why does he continue to engage with Bartleby second-personally, taking on all the normative presuppositions of that kind of relationship, even as the evidence comes to suggest more and more strongly that the objective attitude would be more appropriate? I believe Strawson's account of the reactive attitudes in "Freedom and Resentment" is once again helpful here. Generally speaking, he argues, it is difficult for human beings to step outside the participant attitude; we can do so when we deal with young children or with the mentally ill, or when we try as philosophers or social scientists to formulate theories about the human world, but we typically cannot sustain the objective attitude for very long (Strawson 2008, 10). This is almost certainly true within an office environment of the kind depicted in *Bartleby, the Scrivener*, which is structured through and through by norms and expectations whose second-personal validity is simply taken for granted. Perhaps, then, the lawyer's confusion regarding his obligations toward Bartleby can be attributed to the difficulty that human beings generally have in stepping outside the second-person standpoint, even in cases where the evidence suggests that it would be appropriate to do so.

### III. Love as Comportment toward Being-such

I do not believe this is quite right, though. Specifically, I do not believe the lawyer's understanding of the moral relation that obtains between him and Bartleby is completely mistaken. In order to show how this is the case, I want to argue in this section that there is a moral phenomenon, which I will call obligation without rule, that arises in the midst of second-personal relations and that is not entirely captured in Darwall's contractualist conception of obligation, or indeed in any of the accounts of obligation that have been most prominent in the history of western philosophy from the early modern period up to the present. More specifically, I will attempt to show how others are given, or at least can be given, within the second-person standpoint as something more than addressors of determinate claims in accordance with which addressees are summoned freely to determine their own wills. I will argue that we can begin to make sense of this with the help of Giorgio Agamben's ideas of potentiality, singularity, being-such, and love.

In order to bring out this excessive dimension of moral sense that arises within the second-person standpoint, I would like to begin by examining more closely what happens

in the various exchanges between the lawyer and Bartleby. What I want to show is that although the two do in some sense exchange roles as addressor and addressee of claims, they do so in a way that differs in important respects from the model that Darwall describes. Specifically, I want to argue that what Bartleby addresses to the lawyer is both less and more than a demand. First, what Bartleby addresses to the lawyer does not quite rise to the level of a demand because, as we have seen, Bartleby never explicitly calls on the lawyer to respect his *right* not to copy or proofread the documents. Nor does he present the lawyer with any reasons to excuse his not doing the work. Instead, he simply announces his preference not to. This is still a form of address, but it is a minimal form. When he responds to the lawyer's demands with his "I would prefer not to," Bartleby seems not to treat the lawyer as a second-personally competent partner in dialogue, providing reasons that might come to function as principles in the lawyer's determination of his own will. Instead, he seems simply to be giving a report of his own psychological state. Nonetheless, Bartleby's announcements of his psychological state always happen within a situation that is structured second-personally, most often in response to claims that the lawyer has explicitly addressed to him. Probably as a result of this, the lawyer typically treats Bartleby's "I would prefer not to" as a kind of poorly formed second-personal demand. Indeed, the other workers in the office eventually pick up the habit of using the word "prefer," which they come to use in a sense that is straightforwardly second personal. For example, at one point the lawyer tells his employee Turkey to leave the room, to which he responds "Oh certainly, sir, if you prefer that I should" (Melville 1987, 31). Shortly after this, Nippers asks the lawyer whether he would prefer to have a document copied on blue or white paper. In both of these cases, the employees clearly take the lawyer's preferences as legitimate demands. But Bartleby does not seem to treat his own preferences as demands addressed to the lawyer, even though they end up functioning as such. It seems, then, that Bartleby's announcements of his preference are best understood as something more than mere expressions of his own psychological state but as something less than full-fledged second-personal demands.

But there is also something more than a demand that is expressed in Bartleby's address to the lawyer. And it is here where I would like to turn explicitly to the work of Giorgio Agamben, for whom Bartleby has consistently served as a privileged point of reference. For Agamben, Bartleby is an exemplar of "pure, absolute potentiality" (Agamben 1999, 254). Agamben establishes a connection between writing—Bartleby's profession—and potentiality through his reading of the well known passage in *On the Soul* where Aristotle suggests that thought is like "a writing-table on which as yet nothing actually stands written" (Aristotle 1984, 683). The writing tablet—or more precisely, the thin layer of wax that covered the tablet and that received the impressions of the stylus—could receive any written content at all precisely because of its blankness, its lack of determinate form. The value of this analogy is that it helps to bring out an essential feature of thought: if thought itself had some particular content, then that content would manifest itself in the objects of thought, distorting our cognition of them. This is why it is necessary to conceive of the mind as having "no nature of its own, other than that of having a certain capacity," such that "before it thinks, [it is] not actually any real thing" (Aristotle 1984, 682). But as Agamben emphasizes, it is important not to understand this potential as a merely logical possibility for different actualizations. Rather, if potentiality is to be understood on its own terms, if it "is to have its own consistency and not always

disappear immediately into actuality, it is necessary that potentiality be able *not* to pass over into actuality, that potentiality constitutively be the *potentiality not to* (do or be) or, as Aristotle says, that potentiality be also im-potentiality (*adynamia*)” (Agamben 1998, 44-45). Returning to Aristotle’s analogy, then, the writing tablet is capable of being written on, but just as importantly, it is capable of not being written on. It can pass into various actualizations, but it can also not pass into those actualizations. As a scrivener who represents a figure of “pure, absolute potentiality,” Bartleby is capable of actualizing his potential to write at any time he chooses, but he retains his pure potentiality precisely in preferring not to. Agamben’s interpretation of Bartleby as a figure of im-potentiality is supported by the scrivener’s responses to the lawyer’s efforts to find him a new job. Every time the lawyer brings up a possible line of work, Bartleby indicates that he would prefer not to pursue that possibility, but insists nonetheless that he is “not particular.” Offered the possibility of a clerkship in a dry goods store, Bartleby declares that there is “too much confinement about that.” Of course the lawyer immediately notes the irony of Bartleby’s response: “‘Too much confinement’ I cried, ‘why you keep yourself confined all the time’” (Melville 1987, 41)! The point, it seems, is that Bartleby would experience any kind of actualization at all as too confining. What the lawyer demands of Bartleby, though, is precisely that he actualize his potential to write. For Bartleby, to respond to the lawyer from within the second-person standpoint would be to commit himself to reasonable principles for the determination of his own will, and thus to actualizing a potential, to *being* a scrivener, or an employee, or at very least a second-personally competent, reasonable and rational person. But this is exactly what Bartleby would prefer not to do. Again, this is the point that Bartleby makes especially clearly when he states that he “would prefer not to be a little bit reasonable.”

With his “I would prefer not to,” then, Bartleby gives expression to a sense that exceeds what can be captured in the form of a demand. On the one hand, he is obviously not affirming his acceptance of the legitimacy of the lawyer’s demand or his resolution to determine his will in accordance with it. But neither, on the other hand, is he denying the legitimacy of the lawyer’s demand or expressing his refusal to determine his will in accordance with it. This point becomes especially clear when the lawyer, frustrated with Bartleby’s “I would prefer not to,” asks for clarification: “You *will* not?” Bartleby responds, “I *prefer* not” (Melville 1987, 25). What Bartleby is giving expression to is neither an affirmation nor a refusal, but rather a potentiality whose sense exceeds these two actualizations. According to Agamben, we can understand this excess in terms of the ancient Sceptics’ idea of epoché or suspension of judgment. Confronted with the equal force or equipollence of reasons for believing competing claims, the Sceptic refrains from committing himself to the truth of any one of them. This suspension of judgment is expressed in the phrase *ou mallon*, or “no more than.” Confronted with the fact, for example, that honey appears sweet to some and bitter to others, the Sceptic states that “honey is no more sweet than bitter” (Sextus Empiricus 2000, 54-55). This statement should not be taken as expressing a determinate belief about the honey, viz. that it is neither sweet nor bitter. It functions rather to express the speaker’s suspension of judgment on the matter. In suspending his judgment, the Sceptic exercises his potentiality not to posit or negate. According to Agamben, Bartleby’s “I would prefer not to” functions similarly. Like the Sceptic, Bartleby “displaces language from the register of the proposition, which predicates something of something...to that of the announcement,



which predicates nothing of nothing” (Agamben 1999, 257). He presents himself as no more a scrivener than not a scrivener, no more “a little bit reasonable” than not “a little bit reasonable.” In short, he presents himself as something more than a member of this or that class and as more than the bearer of this or that set of properties. What becomes manifest here is neither particularity nor universality, but rather Bartleby’s singularity or what Agamben calls his being-such, the dimension of his presentation that remains irreducible to the determinate sense of that presentation (Agamben 1993, 2).

According to Agamben, the comportment that responds to this being-such is not obligation, but rather love. Building on the account of facticity developed in the early works of Martin Heidegger, Agamben argues that the comportment of love arises at the level of our being-in-the-world, which is more originary than the cognitive relation of intentionality that obtains between subject and object (Agamben 1999, 186-187). In love, Agamben thinks, we are not oriented toward objects that are present to us primarily as bearers of determinate predicates; we do not love others *qua* members of this or that class—the class of brunettes, for example, or of persons who enjoy going to the opera—but neither is our love directed toward the unqualified selves who would somehow stand behind these properties. What we love, rather, is a singularity, the other “*with all of its predicates, its being such as it is*” (Agamben 1993, 2). Or as Agamben puts the point in *The Time that Remains*, “‘I love beautiful-brunette-tender Mary,’ not ‘I love Mary because she is beautiful, brunette, tender’ in the sense of her possessing such and such an attribute” (Agamben 2005, 128). And so unlike obligation, or at least unlike obligation as Darwall conceives it, “love is without reason” (Agamben 2005, 128). There is no analogue to Pufendorf’s Point here: we are not answerable to demands for our love that are addressed to us as rational beings capable of determining our own wills in accordance with principles whose legitimacy can be determined by reference to something like the reasonable rejectability test. And we do not owe it to ourselves as rational beings only to love those who have satisfied a particular set of conditions. Love is unconstrained by considerations like these; it is gratuitous, granted to the loved one simply in virtue of her being such as she is.

Would it be best, then, to characterize the lawyer’s practical relation to Bartleby not within the framework of obligation and the second-person standpoint, but rather in terms of love? There are certainly good reasons in the text for thinking so. For example, after the first episode of Bartleby’s preferring not to do the work demanded of him, the lawyer stated that if it had been anyone else, he would have dismissed him immediately, but that “there was something about Bartleby that not only strangely disarmed [him], but in a wonderful manner touched and disconcerted [him]” (Melville 1987, 21). This is not how we typically describe relations of obligation, understood either in the rough, everyday sense of the term or in Darwall’s more specific sense. What the lawyer responds to here is something singular and therefore strange, something in excess of the determinate, interpersonally valid norms that would have oriented his relations with any other employee. It is exactly this kind of responsiveness, according to Agamben, that characterizes relations of love.

We find a second piece of evidence in the passage in which the lawyer, after having moved out of his old office, offers to secure for Bartleby any other job he might want. When Bartleby indicates his preference not to take any of those jobs, the lawyer offers to take him in at his own home. And finally, after Bartleby is taken off to jail as a

vagrant, the lawyer pays the grub-man, Mr. Cutlets, to make sure he was fed more than the standard fare. Surely the lawyer was not morally obligated to do any of these things for Bartleby; no one could plausibly have considered him blameworthy if he had not done them, for in none of these cases could Bartleby or anyone else have advanced a claim that would have passed the reasonable rejectability test and that would have morally necessitated the lawyer to act as he did. In all of these cases, rather, it seems most natural to interpret the lawyer's acts as free, rationally unconstrained acts of love.

#### IV. The Experience of Necessitation and the Content of Obligation

But I do not believe this quite captures the moral complexities of the lawyer's situation. Whether he ought to or not, he clearly does experience himself as being necessitated in a specifically moral sense. As we have already seen, after deliberating about how to go about removing Bartleby from his office, the lawyer concludes that he will not, and indeed *cannot*, simply thrust him out the door. The lawyer obviously does not mean by this that he is physically unable to thrust Bartleby out the door. What he means, rather, is that doing so is *morally* impossible. Whether he likes it or not, the lawyer finds his will constrained by the moral sense of the situation he finds himself in: even if no one else would think badly of him if he forcefully dismissed Bartleby from the office, it would be impossible for him to avoid viewing himself as blameworthy for doing so. This is what the lawyer means when he says that something inside him would denounce him as a villain if he mistreated Bartleby (Melville 1987, 30; 38). And it is this impossibility of avoiding the judgment of oneself as blameworthy that many moral philosophers have regarded as distinctive of the phenomenon of obligation. This idea is expressed perhaps most clearly in Samuel Pufendorf's *On the Law of Nature and of Nations*, where he argues that the uniqueness of obligation consists in the fact that the sanction for wrongdoing is internal: in cases of mere coercion, the will is shaken only "with an external force," whereas obligation "forces a man to acknowledge of himself" that the relevant moral rule applies to him justly and that he would be deserving of some kind of censure if he violated it (Pufendorf 1964, 91).<sup>1</sup>

But of course it does not follow from the mere fact that the lawyer *experiences* himself as obligated to benefit Bartleby in certain specific ways that he truly is obligated to do so. The most important question from the moral point of view, rather, is whether his experience of his will as necessitated is justified, whether he *ought* to regard himself as blameworthy if he does not retain Bartleby, or if he does not go out of his way to find him a new job and a new home. I suspect that most of us, if we had known the lawyer, would have insisted that he should not have denounced himself as a villain, and indeed that he should not have regarded himself as deserving any kind of censure if he had not performed the acts of beneficence that he did. We probably would have regarded his acts not as obligatory but rather as supererogatory. Nonetheless, I believe the lawyer is not

---

<sup>1</sup> Christian Wolff, whose rationalist account of obligation differs considerably from Pufendorf's voluntarist account, expresses a similar point: "Virtue can exist with natural obligation alone; everything beyond that works simply as an outer compulsion. . . . Accordingly, if one wants to guide man, one can do it in two ways: one guides him either through compulsion, like a beast, or through the aid of reason, like a reasonable creature. With the former I have, in ethics, nothing to do" (Wolff 1976, Vorrede zu der andern Auflage; Schneewind 2003, 333; 334).

entirely mistaken and that examining more closely the nature of his relation to Bartleby will help to bring out something important about the phenomenon of obligation that is not captured well, if at all, in the most influential accounts. Specifically, in spite of their deep-seated disagreements concerning the nature and the grounds of obligation, most of these accounts agree that the experience of necessitation is always given along with the content of the obligation. On the voluntarist account, for example, the command that is issued by a legitimate authority and effectively backed by sanctions is always a command to do or refrain from doing some determinate thing. A command without content could not obligate because it would fail to satisfy the condition that Darwall calls Pufendorf's Point, viz., that the addressee of the command be able to take up the authoritative command and address it to himself. On rationalist accounts of the kind advanced by Leibniz, Malebranche, Clarke, and Wolff, the content of the obligation is given by the moral truths that we perceive clearly and distinctly. Because we perceive them clearly and distinctly, our minds cannot help assenting; this is the element of necessitation as the rationalists understand it (Malebranche 1992, 84; Malebranche 1997, 10).<sup>2</sup> And on the Kantian account, the fact of reason is not merely the consciousness that our wills are necessitated, but rather our unmediated consciousness of the bindingness of the moral law, which of course gives the content of the obligation.

What we see in the relation between Bartleby and the lawyer, though, is the coming apart of these two elements: the lawyer experiences himself as obligated toward Bartleby, but without the rule for that obligation being given. This, I believe, can be explained partly in terms of Darwall's conception of the second-person standpoint. The interactions between Bartleby and the lawyer take place within an office environment where the norms and expectations connected to the second-person standpoint are for the most part taken for granted. And as Strawson argued in "Freedom and Resentment," we find ourselves answerable to others just in virtue of taking up the second-person standpoint in relation to them. But the lawyer's case is importantly different from the kinds of cases that Darwall takes to be exemplary of the second-person standpoint in that the other person to whom the lawyer finds himself answerable is given as something more than a maker of particular, determinate claims; what is most salient about Bartleby is his singularity. And this fact undermines what is perhaps the most important part of Pufendorf's Point: although the obligated subject must be able to adopt the second-person standpoint in relation to himself, holding himself responsible to the moral sense that he receives as the addressee in second-personal relations with others, it is not necessarily the case that this moral sense can be articulated in terms of determinate demands whose authority the subject himself acknowledges. As we have seen, what the lawyer responds to is not any particular claim at all, but rather the manifestation of Bartleby's singularity or being-such. No authoritative principle is given, then, for the determination of his will; there is no particular rule that he is rationally constrained to address to himself from the second-person standpoint. And yet he must respond to Bartleby in some particular way. As Bernhard Waldenfels has argued, this practical impossibility of not responding in some way or other is the source of the necessitation that is proper to the phenomenon of

---

<sup>2</sup>According to Malebranche, clear and distinct perceptions "oblige the will to give its consent;" we cannot refrain from giving our consent "without feeling an inward pain and the secret reproaches of reason."

obligation (Waldenfels 2010, 78).<sup>3</sup> The obligated subject, then, is in a position similar to that of the lover as described by Jacques Lacan: he “gives what he does not have, but what is nonetheless demanded of him” (Waldenfels 2010, 79; Waldenfels 1994, 620). The lawyer experiences himself as practically necessitated to do right by Bartleby, but he lacks the principle that would tell him how to do so. He lacks the principle precisely because *qua* singularity, Bartleby presents him with a moral sense that exceeds what can be captured in any determinate formulation. He is thus obligated without rule. If the lawyer is to respond appropriately to the excessive moral sense given in his second-personal relation to Bartleby, all he can do is improvise responses that in each case disregard the kinds of intersubjectively valid rules—such as the reasonable rejectability test—that govern what purport to be the more standard cases of second-personal interaction.

The most influential accounts of obligation in the western philosophical tradition do not account well, if at all, for the kind of obligation without rule that is presented in *Bartleby, the Scrivener*. One might argue, of course, that this is not a problem for any of these moral theories: *Bartleby* is a work of fiction after all, and the interpersonal relations that Melville depicts simply do not correspond to the kinds of interactions that we are familiar with in everyday life. Perhaps the kind of obligation depicted in the story is not a genuine moral phenomenon that needs to be taken seriously at all. I do not believe this is correct. Although this is presented in an exaggerated form in *Bartleby*, all of us manifest a potentiality of sense that exceeds the sense that can be actualized in the determinate claims we make against others. And all of us stand unavoidably in second-personal relations in which we are called upon to respond appropriately to others’ sense. If this is right, and if it is true that the necessitation proper to the phenomenon of obligation has its origin in the necessity of responding, then I believe we must regard obligation without rule as a genuine phenomenon that an adequate moral philosophy must be able to account for.

---

<sup>3</sup> “We cannot not respond. The double ‘not’ points to a *must* in the sense of a practical necessity.” Translation mine.

## References

- Agamben, Giorgio. 1993. *The Coming Community*, trans. Michael Hardt. Minneapolis: University of Minnesota Press.
- Agamben, Giorgio. 1998. *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen. Stanford: Stanford University Press.
- Agamben, Giorgio. 1999. *Potentialities: Collected Essays in Philosophy*, ed. Daniel Heller-Roazen. Stanford: Stanford University Press.
- Agamben, Giorgio. 2005. *The Time that Remains: A Commentary on the Letter to the Romans*, trans. Patricia Dailey. Stanford: Stanford University Press.
- Aristotle. 1984. *On the Soul* in *The Complete Works of Aristotle*, Volume One, ed. Jonathan Barnes. Princeton: Princeton University Press.
- Darwall, Stephen. 2006. *The Second-Person Standpoint: Morality, Respect, and Accountability*. Cambridge: Harvard University Press.
- Kant, Immanuel. 1996. *The Metaphysics of Morals* in Immanuel Kant, *Practical Philosophy*, The Cambridge Edition of the Works of Immanuel Kant, trans. and ed. Mary J. Gregor. Cambridge: Cambridge University Press.
- Malebranche, Nicolas. 1992. *Treatise on Ethics*, trans. Craig Walton. Dordrecht: Kluwer.
- Malebranche, Nicolas. 1997. *The Search after Truth: With Elucidations of The Search after Truth*, trans. and ed. Thomas M. Lennon and Paul J. Olscamp. Cambridge: Cambridge University Press.
- Melville, Herman. 1987. *Bartleby, the Scrivener: A Story of Wall-Street* in *The Writings of Herman Melville: The Northwestern-Newberry Edition, Volume 9* Evanston: Northwestern University Press.
- Pufendorf, Samuel. 1964. *De Jure Naturae et Gentium Libri Octo*, trans. C.H. Oldfather and W.A. Oldfather London: Wiley & Sons.
- Rawls, John. 1980. "Kantian Constructivism in Moral Theory," *Journal of Philosophy* 77(9): 515-572.
- Schneewind, Jerome, ed. 2003. *Moral Philosophy from Montaigne to Kant*. Cambridge: Cambridge University Press.
- Sextus Empiricus. 2000. *Outlines of Scepticism*, ed. Julia Annas and Jonathan Barnes. Cambridge: Cambridge University Press.
- Strawson, P.F. 2008. "Freedom and Resentment" in *Freedom and Resentment and Other Essays*. New York: Routledge.
- Waldenfels, Bernhard. 1994. *Antwortregister*. Frankfurt am Main: Suhrkamp Verlag.
- Waldenfels, Bernhard. 2010. "Responsive Ethik zwischen Antwort und Verantwortung," *Deutsche Zeitschrift für Philosophie* 58(1): 71-81.
- Wolff, Christian. 1976. *Vernünftige Gedanken von der Menschen Thun und Lassen, zu Beförderung ihrer Glückseligkeit* in *Gesammelte Werke, Band 4*. Hildesheim: Georg Olms Verlage.