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## **CHAPTER FIVE: THE PROBLEM WITH PROMISING**

Hume regarded a part of ordinary morality as deeply problematic in that it is hard to see how it would make any sense for people to conform to its rules, except when extraneous considerations were in play. I'll focus particularly on what Hume says about promising but he sees property rights and the power of consent as raising essentially the same issues. What makes Hume's discussion so compelling is that it is driven by two widely held assumptions - one about human action, the other about obligation - assumptions which appear to conflict.

The widely held assumption about action (which we encountered in Sec. 2) is that people can be moved to do something only if they can see some point in doing it and that they can see some point in doing it only if doing it strikes them as good or desirable in some respect. In Hume's hands this becomes the claim that 'the Will exerts itself when either the good or the absence of the evil may be attained by any action of the mind or body' (Hume 1978: 439).<sup>1</sup> Other philosophers may prefer the normative claim that a *reasonable* agent must see some good in what he does. In one form or another this assumption is shared by philosophers who differ dramatically both about what makes it the case that something is good and about precisely how facts about what is good enter into our thinking about what to do.

The widely held assumption about obligation comes out in a question Hume puts to himself 'may not the sense of morality or duty produce an action, without any other motive?' (Hume 1978: 479). We often keep a promise or respect someone's property rights out of a sense of obligation and without regard to any good this might do. Nor do we think this irrational. Breach of such an obligation is something most people would seek to avoid even though it appears to constitute what I called a *bare wrongdoing* (Sec. 11). The tension between our two assumptions generates the problem of bare wrongdoing.

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<sup>1</sup> Thus Hume is, in my sense, a rationalist (Sec. 2). I shall not go into the vexed question of whether Hume is also a psychological hedonist. Certainly one could endorse rationalism without being a hedonist.

## 22. The Problem of Bare Wronging

Let's begin with property:

Here are two persons who dispute for an estate; of whom one is rich, a fool and a bachelor; the other poor, a man of sense and has a numerous family. The first is my enemy; the second my friend. Whether I be actuated in this affair by a view to public or private interest, by friendship or enmity, I must be induced to do my utmost to procure the estate to the latter. Nor would any consideration of the right and property of the person be able to restrain me, were I actuated only by natural motives. (Hume 1978: 532)

Once we eliminate all the extraneous reasons for respecting someone's right to inherit, the admitted fact that it is still *theirs* seems a negligible consideration, one which shouldn't weigh with us *at all*. Now promise:

I suppose a person to have lent me a sum of money, on condition that it be restored in a few days; and also suppose that, after the expiration of the term agreed on, he demands the sum: I ask, *what reason or motive have I to restore the money?* (Hume 1978: 479)

For what if he be my enemy, and has given me just cause to hate him? What if he be a vicious man, and deserves the hatred of all mankind? What if he be a miser, and can make no use of what I would deprive him of? What if he be a profligate debauchee, and would rather receive harm than benefit from large possessions? What if I be in necessity, and have urgent motives to acquire something to my family? In all these cases, the original motive to justice would fail; and consequently the justice itself, and along with it all property, right and obligation. (Hume 1978: 482)

Hume concludes:

From all this it follows, that we have naturally no real or universal motive for observing the laws of equity, but the very equity and merit of that observance; and as no action can be equitable or meritorious where it cannot arise from some separate motive, there is here an evident sophistry and reasoning in a circle.  
(Hume 1978: 483)

Now Hume finds neither obligation nor the idea of acting on an obligation intrinsically problematic.<sup>2</sup> For example, Hume says that ‘A rich man lies under a moral obligation to communicate to those in necessity a share of his superfluities’ (Hume 1978: 482). Here it would make perfect sense for the rich man to discharge this obligation for he would thereby serve an obvious human interest. So why do the obligations generated by promising, property etc. and the wrongings associated with them seem any more problematic to him?

To see why we should re-formulate the first of Hume’s assumptions as follows:

*Rationalism*: It makes sense to do something because you are obliged to do it only if the discharge of this obligation would serve some interest.<sup>3</sup>

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<sup>2</sup> Though he does have his own ideas about what an obligation is. For Hume, one is obliged to do something when (a) the non-performance of it would displease us and (b) this sentiment is one we would endorse on reflection (Hume 1978: 517).

<sup>3</sup> On some views, whether we should perform an action depends on whether that action would manifest dispositions, motives or traits of character that we ought to have: the value of an action depends on the value of the motives etc. which it manifests. Indeed Hume himself seems to hold this (Hume 1978: 477-8). *Rationalism* might appear inconsistent with such a view since it suggests that whether we should fulfill an obligation depends not on whether we should be motivated or disposed to fulfill it but rather on whether we should perform a specific action: the action of discharging it. As many authors have pointed out, these questions may have different answers (a generally valuable motive might be counterproductive in a particular instance, or might have beneficial effects on things other than the agent’s actions). But *Rationalism* is consistent with the view that we ought to assess actions by first assessing the motives etc. which give rise to them. What *Rationalism* does is to place a certain restriction on motives for action, namely that an agent must see some good in what he is doing, though it need not even appear to be the best option all things considered: motives on which he acts must be to that extent directed at the good. This is a constraint that Hume, for one, clearly accepts.

A human interest in X makes sense of wanting or at least valuing X by ensuring that X is good for us in some respect. Here I shall confine myself to the interest human beings have in the fulfillment of a promise. So stated, Hume's first assumption is a close relative of what I called the *Injury Hypothesis*, namely the thought that one wrongs a person only if one acts against some interest of theirs (Sec. 11). In our discussion of the *Injury Hypothesis*, I emphasized the variety of human interests and so of forms of injury. One may wonder if Hume finds promising etc. problematic only because he ignores that variety.

Things are worth wanting or valuing for many different reasons. Hume implies that these considerations all, in the end, concern human welfare.<sup>4</sup> The 'natural' obligations he recognizes (to care for one's children, or help the needy, or even return favours rendered (Hume 1978: 478-9)) involve a desire to benefit people, or to avoid harming them. Exactly whom one desires to benefit will depend on other factors – who your children are, who will benefit the most, who has been good to you – but the promotion of someone's welfare is the aim in all cases. Now in the examples Hume describes, nobody will be harmed should he violate his obligations, not Hume, nor the beneficiary, nor the public and some will be much better off; hence the problem of bare wronging.

Is Hume taking too narrow a view of what constitutes a harm or a benefit? Perhaps human beings have an interest in knowing what is going to happen, even if no further interest would be served by this knowledge. One important method of securing such knowledge is by making wills and accepting promises. And if this epistemic interest is what moves people to extract promises and make wills and if it is always damaged whenever a promise is broken or the terms of a will are ignored, perhaps Hume's characters are harmed after all.

It is doubtful whether being given a false belief, even a false belief about a matter of interest to you, is in itself a harm. The Russian anthropologist Maklay promised not to photograph a Malayan servant who feared the loss of his soul and so refrained from doing so even whilst the servant was asleep (Foot 2001: 47-50). Can Maklay have supposed

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<sup>4</sup> This welfarist assumption should not be confused with utilitarianism or consequentialism. A strict deontologist might object to coercion or deception on the grounds that they involve unjustified harm.

that he would be harming the servant by taking the photograph simply because he would be falsifying one of the servant's beliefs about what would happen to him? Even if there is a harm here, this proposal fastens on something inessential to a breach of promise. Hume's debauchee might be so debauched that he neither knows nor cares whether his affairs are being managed honestly or whether promises made to him are being kept. Still he can be wronged in either fashion. A more sober character might forget the promise or have little faith that the promisor will perform without thereby invalidating the promise.

Can we avoid Hume's problem by instead abandoning the assumption that human beings are concerned only with the promotion of human welfare? As already noted, human beings naturally take an interest in people's getting a fair share, in issues of distributive justice.<sup>5</sup> Suppose what would constitute someone's fair share can be determined without knowing either what they own or which promises have been made to them. Then our concern with fairness could motivate compliance with an obligation without presupposing a prior concern with obligation.

We do distinguish between whether someone *deserves* to have something (given their talents, efforts, what they have already got, what use they will make of it and so forth) and whether they are actually entitled to it (Grotius 2005: 88-9; Feinberg 1970a: 85-7). We are able to consider whether it is appropriate or fitting for them to have it apart from whether they have a right to it (e.g. because they own it).<sup>6</sup> It is a moot point whether satisfaction of this interest in fairness makes our lives go better. Perhaps our interactions with others tend to lose their savor unless they are informed by fair principles of co-operation (Scanlon 1998: 161-4). On the other hand, fairness may simply be something in which we reasonably *take* an interest even though its frustration would make our lives no worse. I shall leave these questions open since I doubt that an interest in a fair or reasonable distribution can explain why we take bare wrongings seriously, however that interest is to be understood.

In the cases Hume considers neither of the characters entitled to the money deserve to have it: they have too much already. Other people deserve it more and things would be fairer if they got it. Still these others are not entitled to it and many (Hume

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<sup>5</sup> See Sec. 11. Hume includes 'equity' on his list of 'natural virtues' (Hume 1978: 578).

<sup>6</sup> Something like this notion of what is fair or reasonable plays a foundational role in various accounts of moral obligation. See, for example, Scanlon's notion of reasonable rejection (Scanlon 1998: 191-7).

included) would think that the money ought to go to those who are entitled to have it. So the problem remains even once we allow that human beings are moved by their fellows' deserts as well as by concern for their wellbeing. A bare wronging does no one any harm. Nor is it wronging because it deprives someone of an item they deserve or gives someone an item they don't deserve. A bare wronging has no *wrong-base*. How, Hume asks, can we take such bare wrongness seriously as a guide to action?

### 23. The Problem of Normative Power

As well as property-based and promissory obligations, Hume discusses at some length the obligations generated by the commands of our rulers. What all these obligations have in common is that they are created (or abolished) by the exercise of normative powers.

As I noted in Part One, some obligations exist because someone has communicated the intention of imposing such obligations (on themselves or on someone else) by communicating this very intention.<sup>7</sup> For example, the promisor is obliged to perform because he has communicated the intention of putting himself under an obligation to perform by communicating this very intention.<sup>8</sup> Of course, the promisor will need to do things in order to communicate this intention and, where he succeeds, his obligation will be a product of this (intended) activity (speech or whatever). But, unlike for example the decision to accept a gift, what makes this activity generate an obligation is the fact that it communicates the choice of this obligation. This is an obligation you *undertake* rather than *incur*.

It is not just promissory obligations that have what I called the third grade of choice-dependence (Sec. 1). When I order you to do something I impose an obligation on you by communicating the intention to do exactly that. When I give you my car, I impose on myself and on others an obligation not to use it (without your consent) precisely by communicating the intention of creating such obligations. These examples all involve the

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<sup>7</sup> They may communicate this complex intention without actually having it, so whilst the communication must be intentional, the imposition of the consequent obligation need not be. See Sec. 35.

<sup>8</sup> This communication is not sufficient for the imposition of the obligation. As I argue in Chapters 9 and 10, various procedural conditions must be satisfied and there may also be substantive constraints on the content of a valid promise. Still, the communication is a distinctive necessary condition for the imposition of the obligation.

exercise of *a normative power*, of a power to change what people are obliged to do by communicating the intention of so doing. People often exercise such normative powers by employing a conventional forms of words: 'I promise' (give, consent, marry, order etc) and philosophers have used the notion of a *performative* to pick out this class of verbs. But one can communicate the intention to undertake an obligation without using a dedicated form.

Hume expresses doubts about the intelligibility of this sort of speech act: how can the mere fact that someone has promised, given, ordered etc. make sense of our behaving differently from the way we would have behaved before? Speaking of promising in the *Treatise*, he says:

'tis one of the most mysterious and incomprehensible operations that can possibly be imagined, and may even be compared to *transubstantiation*, or *holy orders*, where a certain form of words, along with a certain intention, changes entirely the nature of an external object, and even of a human creature (Hume 1978: 524)<sup>9</sup>

How does this problem of normative power relate to the problem of bare wronging? I suggest that these problems are two sides of the same coin. What makes breach of promise a wronging is that someone has communicated the intention that it be a wronging by making a promise or signing a will etc. Now something can be declared to be wrongful in this way whether or not it is harmful or constitutes unjust enrichment, or has any further feature in which human beings might sensibly take an interest. So such wrongfulness raises the problem of bare wronging: What sense is there in refraining from doing something simply because it has been *declared* to be wrongful? Conversely, how could bare wrongs, wrongs which had no adverse effect on anything that matters to us come into being unless we do indeed have the power to create them by declaration?<sup>10</sup>

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<sup>9</sup> (Durkheim 1957: 175-95) expounds the problem of normative power in terms very similar to Hume (though without referring to Hume himself), placing great emphasis on the ritual element.

<sup>10</sup> According to the sanction theory of obligation (cf. Section 12) obligation comes into the world when sanctions are attached to the non-performance of acts which there is some obligation-independent reason to perform. If promissory obligation were understood in this way then our two problems might come apart. For while, on the sanction theory, there couldn't be an obligatory act which there was no obligation-independent reason to perform (i.e. there couldn't be a bare wrong) it would still be a question as to why it

Nevertheless, it might be suggested that the problem of normative power has a life of its own. That would be an interesting result for the following reason. The problem of bare wrongdoing arises only if we impose substantive constraints on what kinds of consideration can make sense of an action along the lines suggested by *Rationalism*. And, as we shall see, constraints which are at all restrictive are also likely to be controversial. Now suppose that there were an independent problem with the idea that promising and other performatives can make something a wrongdoing. That further problem might be one we can't get around simply by expanding our list of the sorts of considerations which can motivate sensible action. But what could this further problem amount to?<sup>11</sup>

It can't be maintained that the communication of an obligation-creating intention makes literally no difference to the situation. After all, this communication is a real event and why shouldn't its occurrence be enough to make sense of our tendency to behave differently in the light of it? Perhaps the utterance of something like 'I promise' can make the right sort of difference only if 'I promise' means something which it can't possibly mean. For example, Anscombe asks rhetorically

how on earth can it be the meaning of a sign that by giving it one purports to create a necessity of doing something – a necessity whose source in the sign itself, and whose nature depends on the sign? (Anscombe 1981: 100).

But precisely what prevents one creating a motive, a motive which can explain why something is done, by communicating one's intention so to do to another human being? Any answer must invoke a substantive doctrine about the range of motives capable of making sense of human action. And such a doctrine will render promising problematic only in so far as it makes breach of promise look like a bare wrongdoing.

It may be objected that the wrong of breach of promise is never created *simply* by declaration. All sorts of conditions need to be satisfied for a promise to bind: the declaration must have been made by a competent party, not acting under duress nor the victim of a trick; the action promised must be feasible and, some reckon, morally

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is appropriate to sanction non-performance of such an act simply because someone has declared this to be appropriate (i.e. the problem of normative power remains).

<sup>11</sup> I'm grateful to Shelly Kagan for pressing this question on me.

permissible also. Further conditions might be added but none of this resolves Hume's difficulty. Each of these conditions may be satisfied without ensuring that breach of promise is anything other than a bare wrong and this is so because mere declaration plays a crucial role in creating that wrong.

Most breaches of promise are not bare wrongings because most promises encourage some sort of reliance on (or at least expectation of) their fulfillment. Nevertheless, if my discussion is along the right lines, the atypical promise whose breach does no harm is in a way the central case of promising. Most frequently the wrong of breach of promise, the wronging created by declaration, is embedded in various other wrongings. Because promisors generally think that it is wrong to breach a promise, their promises tend to generate expectations of performance and this fact tends to make breach of promise wrong in other ways. To appreciate what worried Hume about promising we must pare off these other wrongings. We must focus our attention instead on *pure* cases of breach of promise, where breach of the promissory obligation is the only wrong done.

I'll assume that Hume's puzzlement about promise derives from his commitment to something like *Rationalism*. That is what generates the problem of bare wronging and so the problem of normative power. Can this problem be solved without abandoning *Rationalism*?

## CHAPTER SIX: *THE PROMISSORY INTEREST*

Any account of promissory obligation must address a pair of questions:

(A) Why make or accept a promise?

(B) Why keep the promises you make?

In what order should these questions be taken? There are three possibilities: (i) (A) may be prior to (B), (ii) (B) may be prior to (A) or (iii) (A) and (B) must be answered together. In my view, question (A) has priority but I'll first review the other options.

Reid maintained that we have an 'immediate perception' that breach of promise is a wrong, prior to any appreciation of the social utility of fidelity to promises (Reid 1969: 444). Reid's answer to (B) appeals solely to the intrinsic wrongfulness of breach of promise. It does not presuppose any particular answer to (A) nor even that there is an answer. However, it does suggest one form such an answer might take. Given that breach of promise is wrong, those who are not corrupt will be disposed to keep their promises simply because they know it would be wrong to breach (Reid 1969: 443-4). And if people are disposed to keep promises, it will often be possible to control their behaviour by extracting promises from them. Hence it is no surprise that people make and accept promises. On this view, far from the social usefulness of promising explaining its binding force, as it does for Hume, such utility is a by-product of this binding force.

Reid's view raises the problem of bare wronging. If breach of promise is intrinsically wrong then there need be nothing about a breach of promise which makes it wrong other than the fact that it is a breach of promise. In particular, no human interest need be threatened by this breach. Anyone worried by the problem of bare wronging will balk at this. They will doubt that question (B) can be answered prior to question (A) and they will look for a human interest which might move people both to make and accept promises and to keep the promises they make.

According to most writers, people make and accept promises in order to further their co-operative endeavours and people keep the promises they make out of a proper

regard for this very same interest. So questions (A) and (B) are answered together. Such a view suggests that wrongful breach of promise is never a bare wronging and it (usually) has a wrong base in harm to our interest in social co-ordination, the very interest which leads us to make a promise in the first place. Where no interest is at stake, it makes no sense to keep the promise.

In this Chapter, I chart a middle course between these two views. On the one hand, the problem of bare wronging needs to be addressed by relating the wrongfulness of breach of promise to genuine human interests. It makes no sense to care about the wrongfulness of breach of promise unless it is somehow linked to things that matter to us. On the other hand, I doubt that human interests ground promissory obligation in the way implied by *Rationalism* (Sec. 22). Breach of promise need not damage the underlying promissory interest and fulfillment need not serve it. That interest is a *normative* interest, an interest in being able to impose obligations on people and thereby make certain actions into wrongings. The wrongness of these actions then explains why we should avoid these actions, why we should keep our promises. So we do indeed resolve question (B) by first resolving question (A).

## **26. The Function of a Promise**

I am assuming that there is a promissory interest, an interest which explains why promises are taken seriously. I'm looking for a *functional explanation* of promissory obligation, an explanation which derives the binding force of a promise from its function, from the interest which explains why people go in for promising. In this section, I shall say more about what a functional explanation of promissory obligation involves but let's ask why we should be looking for such an explanation in the first place.

Does promising have a function? Don't people, make, accept and keep promises for all sorts of reasons? For example, I can accept a promise in whose fulfillment I have no interest out of simple politeness and the promisor can fulfill their promise to me solely to please a third party. Still certain reasons for making, accepting and keeping promises may stand out in that they explain why we have the practice of promising that we do. This is the view of those who accept the social co-ordination hypothesis. They should

allow that people make, accept and keep promises for reasons that have nothing to do with the value of social co-ordination whilst regarding these other reasons as parasitic in the following sense: unless promises were made and accepted to facilitate social co-ordination, promising would not exist. A promise is a social co-ordination device because (a) it can serve our interest in social co-ordination and (b) the fact that it can serve this interest explains why promises exist and are taken seriously.

A homely analogy may help. A hammer can be used for all sorts of purposes: to prop open doors, to decorate a wall etc. but if we wish to explain why hammers exist, why we have a tool with the features distinctive of a hammer, we should ignore these uses of a hammer and focus on one in particular. It is that use which constitutes the function of a hammer (Wright 1973: 154-68). Hammers are designed by people with this use in mind but the notion of function can be applied to undesigned social tools like a promise. These social tools can also be used for various purposes but if we are looking to explain why a tool with the features distinctive of a promise exists, we should focus on one specific use.

So what are the features distinctive of a promise which we might hope to explain by appeal to its function? First, normative features e.g. the fact that promise binds to performance, that promises extracted under duress or by deception frequently do not bind, that promises must be accepted to be binding. Second, linguistic features e.g. the fact that promises communicate the intention to hereby undertake an obligation and are sincere only if the promisor has that intention. Third, social features e.g. the fact (if it is so) that promises do not bind unless people are in the habit of taking promises seriously. In Part Three, I shall attempt a functional explanation of several such features. I shall also argue that the account of these features offered by my own hypothesis is clearly superior to any available to its main competitor the social co-ordination hypothesis. The purpose of this chapter is to introduce my favored hypothesis about the function of a promise by considering how best to explain the fact that promising generates bare wrongings and the fact that promissory obligation is practice-dependent.

I maintain that promise wears its function on its sleeve. The effect of a valid promise is to give the promisee the right to require performance from the promisor. If you promise to meet me at the bus stop tomorrow, you are obliged to show up unless I release

you from your promise. Your promise puts me in authority over you in the matter of whether you appear at the bus stop. We need look no further to discover the function of a promise. In saying that promising is here to serve our interest in authority over others, I am not asserting that people always or even mostly seek promises to serve their authority interest. Frequently, what people want out of a promise is a simple assurance that the promised action will occur. The fact that they get this assurance by assuming authority over the promisor rather than in some other way may be immaterial to them.<sup>12</sup>

Nevertheless, as already observed, the most common use of a promise need not be the use which explains the distinctive features of a promise. Hammers might be more frequently used as doorstops than as hammers.<sup>13</sup>

Must promise have a single function? Perhaps promises are here to serve more than one human interest and wouldn't exist or be taken seriously unless they did. These multiple interests may be served in tandem, sometimes one, sometimes the other, sometimes both at once. Or else the one interest might have usurped the other: having been introduced to serve the first, promising came to serve the second and it is the latter which explains promising's persistence. I shall not attempt to consider all the possibilities. In the end, I would be content if it turned out that the authority interest plays a large and indispensable role in a multi-functional account of promissory obligation. But let's see how far the authority interest alone can take us and in particular, how much better it is at accounting for the distinctive features of a promise than our undoubted interest in information about what other people are going to do. Indeed, I think it better explains the undeniable fact that promising is used to serve this information interest.

Does my hypothesis imply that promises might *never* be used as a source of information about the promisor's future behaviour? And is this a real possibility? Hammers might never be used as door stops. All hammers might be too small to serve or else we might have no need for door stops at all. Surely promising is a different case? True. A device whose function is to serve our authority interests will inevitably be used

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<sup>12</sup> Pink says that 'the promisee need not be, in most everyday cases will not be, concerned with receiving rights over the promisor' (Pink 2009: 405). That claim is consistent both with my present view and with that defended in earlier work (Owens 2006b: 75).

<sup>13</sup> Unless rival theories of promissory obligation (e.g. the *expectation theory* discussed in Chapter 9) are read as accounts of the function of a promise, they are vulnerable to fairly obvious counterexamples (e.g. valid promises where there is no expectation of performance).

to serve information interests also. But once we understand what is involved in having authority, we can see why this might be so even if *the* function of a promise were to serve our authority interest.

It is hard to imagine a world in which people's *only* concern is to have authority over one another. If people have any social interests at all, surely these concerns must extend to non-normative matters. And how could we cater to our non-normative social concerns without collecting information about how others are going to behave? Though a world in which people need hammers but not door stops is perfectly conceivable, a world in which people need authority over one another but not information about one another is not. Could promises provide such information, people would use them as sources of information.

I shall argue that authorities exist and promises are valid only in a social context in which people are in the habit of recognizing the obligations they generate. To recognise these obligations is, amongst other things, to be in the habit of giving the promise a certain role in your practical deliberations. This implies that promises as such tend to carry information about what the promisor is likely to do and so we have the desired result that promises *must* serve out information interest. Of course, an individual promise may not tell us anything much about what the promisor is likely to do. But it couldn't be that all promises were like that. All hammers might be too small to serve as door stops but some promises must carry information about how the promisor is likely to behave.

By putting these facts together, we can explain why a speech act which grants authority will inevitably be used to garner information also, will inevitably serve *both* as an information gathering device and as a device for exercising control over the normative situation. That does not give promising a dual function. Rather promising may be a device with a single function but one which, given the general conditions of human life, will inevitably be used to serve a further purpose.

## 27. The Authority Interest

I maintain that promising exists because it serves our *authority interest*, our interest in having the right to oblige others to do certain things. My claim will be that human beings have an interest in the possession of authority for its own sake, regardless of any further purpose this authority might serve, and that this fact accounts for the distinctive features of a promise.<sup>14</sup> The authority interest is a normative interest: it is an interest in the possession of a certain right, the right to impose an obligation.

If this is correct, the fundamental promissory interest is an interest of the promisee rather than the promisor, namely the promisee's interest in gaining authority over the promisor. And indeed we think of a promise as primarily<sup>15</sup> a benefit to the promisee rather than to the promisor – it is the promisee who should be grateful for the promise, not the promisor – but since it is the promisor who makes the promise, this raises the question as to what interest the promisor has in the matter. The answer is reasonably obvious: we all have an interest in being able to satisfy the needs of others should we so wish. Where the promisee has an interest in acquiring authority over the promisor, the promisor often has an interest in being able to grant this authority, an interest in having the power to make promises. Furthermore, the promisor has an interest in being able to grant this authority by declaration, by simply communicating the intention of so doing. Why so? Because the promisee has an interest in being able to acquire authority simply by communicating the intention of so doing, simply by accepting the declarations of the promisor (Sec. 42).

Many suspect that a normative interest cannot be a fundamental human interest, that one can have an interest in possessing a right only in so far as one's possession of that right serves some further interest whose object can be described in non-normative terms. In particular, one might think that our concern with authority is a reflection of a more fundamental *control* interest. On this view, a right to require a certain performance

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<sup>14</sup> The possibility of something like an authority interest is noted in passing by both (Raz 1986: 191-2) and (Scanlon 1998: 313) but neither puts any weight on it nor gives it any role in their theories of promissory obligation.

<sup>15</sup> Of course the ability to bind yourself to another by declaration may be of great instrumental value for time to time but I doubt that it is to be valued for its own sake apart from the wish of others that you be bound to them.

is sensibly valued only in so far as (a) the performance would be a good thing and (b) your possession of that right gives you actual control over whether that performance occurs. An advocate of the social co-ordination hypothesis would find this reductive claim attractive, for our interest in social co-ordination can be served by anything which enables us to control the activities of others and thereby renders them predictable.

I deny that our normative interests can be reduced to non-normative interests. In particular, I deny that our authority interests are really interests in having control over others. I establish this point in two stages. First I argue that we all have an interest in having the right to perform certain actions which is irreducible to our interest in controlling our performance of those actions. Second, I argue that this interest in rights implies an interest in being in authority over the actions of others, an interest which is irreducible to any interest in having the ability to control those actions.

Each of us has an interest having the right to decide how we will act. To have the right to decide how you will act involves two things. First, it involves being able to act in various ways without wronging anyone else; you are subject to someone else's authority when they can require you to act in certain ways. Second, it involves others being unable to act in certain ways without wronging you. You do not have the right to sit down if someone else can prevent you from sitting down (say by holding you up) without wronging you.<sup>16</sup> Sometimes you wrong nobody by acting in a certain way without your having the right to act in that way. Suppose you are permitted to sit down if you can but that others wouldn't wrong you by preventing you from sitting down if they can. Here you can sit without wronging but this does not satisfy your interest in having a right to sit.

This interest in rights must be distinguished from an interest in physical control. A smoker might well have an interest in not being prevented from giving up smoking if they so decide. This is an interest in having physical control over that aspect of their life. In general, we have an interest in controlling those aspects of our lives that matter to us. But now suppose that our smoker is very weak willed and knows it. They have physical control over their smoking but this control is of very little use to them since they know they are unlikely to exercise it in a sensible way. Such physical control is much less

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<sup>16</sup> As we shall see in Sec. 29, the matter is more complicated. One can respect someone's right to X whilst declining to give them X. In these cases, by declining to give them X one does not wrong them.

important to them than it would be to someone who could employ it well.<sup>17</sup> Nevertheless, our akratic smoker still has an interest in having the *right* to determine whether or not he will smoke. That is the smoker has an interest (a) in its not being the case that they wrong someone else by either smoking or not smoking and (b) in its being the case that others cannot decide the matter for them without thereby wronging them. Our akratic smoker's interest in having this right may be just as strong as that of a continent smoker. The fact that you are weak willed need not render you indifferent to whether other people have the right to tell you what to do or to force you to do it. A smoker's interest in having the right to smoke is clearly distinct from their interest in controlling whether they smoke.

How does this normative interest in rights over one's own life extend to other things and other people? There is little I can do without the world's co-operation. Returning to control for a moment, if I have an interest in controlling whether or not I smoke, I must also have an interest in controlling the availability of both cigarettes and nicotine pills: one does not really control what ends one sets oneself unless one also controls the means one must use to pursue them. And this is equally true where the means involve the actions of others. If the availability of cigarettes or pills depends on what other people do, someone with an interest in controlling whether they smoke or not will have an interest in controlling whether others make cigarettes or pills available to them. Our control interests extend well beyond our bodies and the same is true of our normative interests.

To have an interest in having the right to decide whether or not you smoke is also to have an interest in having the right to require other people to make either cigarettes or nicotine pills available to you. The right to decide whether to smoke is of no value to someone who has no right to decide whether cigarettes or pills are made available to them. The right to attain the end is worth something only to someone who has the right to obtain the means necessary to attain that end. So someone with an interest in having the right to smoke or not has an interest (a) in its being the case that they can obtain either cigarettes or nicotine pills without thereby wronging anyone else and (b) in its being the case that other people cannot prevent them from doing so without thereby wronging

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<sup>17</sup> Might our akratic smoker have a further interest in not being *forced* not to smoke? I doubt any significant interest of his would be violated if some force of nature prevented him making a choice he knows he would not have made anyway thanks to his own weakness.

them. And where other people can determine where the cigarettes or the nicotine pills go, the only way to secure this result is to get the right to determine what they will do. Then it is *they* who would be wronging *you* if they failed to provide either cigarettes or pills when you asked for them.

Note an interest in a right to the end does not generate an interest in a right to the means because possession of a right to the means makes it more likely that one will actually get the end. It might not. Suppose by far the best way for our smoker to give up is to take nicotine pills regularly. Yet they know perfectly well that they cannot bring themselves to do so because the pills taste foul. Nevertheless, they have an interest in its being the case that they would not wrong anyone by taking the pills and that others would wrong them by stopping them, an interest which is as strong as their interest in having the right to give up smoking. If the sale of nicotine pills were forbidden, they might sensibly resent this and feel wronged in much the same way as a regular user even though they lack effective control over whether they use the pills.

Where another person's actions matter to us, we often have an interest in possessing authority over them, whether or not we can exercise effective control over them. Since something can matter to us because it is a means to something that matters to us, we can value having authority over that means, whether or not we can actually control the means and thus whether or not we can actually get at the end by way of the means. The point may be pressed further. I can have an authority interest in respect of the nicotine pills even if consuming pills would do me no good (e.g. because smoking was good for me). Recall Maklay's Malay (Sec. 22). He has an interest in being able to make it wrong for Maklay to photograph him even though, we assume, he has no interest in not being photographed. So our authority interests extend to many things that we take to be of concern to us, regardless of whether they actually are.

The deontic interests which underwrite obligations of involvement are directly dependent on certain non-normative interests (Secs. 11 and 21). For example, it is in my interests for Tim to be obliged (or permitted) to do X out of friendship for me only in so far as X would do me some good. Since promises can generate bare wrongings, our authority interests can't be directly dependant on our non-normative interests. In particular it isn't the case that Tim can be obliged to do X because he promised me that

he would do X only if X would do me some good. But we shouldn't conclude that our authority interests are just independent of our non-normative concerns. Imagine a world in which the idea of smoking a cigarette was about as appealing as that of eating the proverbial plate of mud. The idea has never occurred to anyone, or only occurred to them with disgust. In such a world, would the character described in the last few paragraphs still have an interest in having a right to nicotine pills and would they have the authority interest needed to make promises concerning the provision of nicotine pills bind, should they be mad enough to solicit one? I'm doubtful. But I don't doubt that someone can have an interest in the right to have the pills without having an interest in the pills. Thus we should keep open the possibility that our authority interests depend in some fashion on our non-normative interests. I'll explore this idea further below (Sec. 33 and 47).

## **28. The Normativity of Promising**

We have an interest in authority over others which is irreducible to any interest in control over others. Before investigating the nature of the authority in which we have an interest, let's see how the postulation of such an interest helps resolve the problem of bare wrongdoing and its close relative the problem of normative power

In the example of the nicotine pills, I have a clear interest in taking the pills if I wish to give up smoking. But a breach of a promise to give me them will not harm me since I won't take the pills anyway. So unless there is some further interest at stake here it looks as if breach of that promise would be a bare wrongdoing. No harm would be done and no unfairness perpetrated by the breach (perhaps others deserve the pills more). Yet, as already observed, I might sensibly value having the right to require others to give me the pills. I might sensibly wish for the power to make it wrong for them not to give me the pills. How does that interest of mine explain why they would be wronging me if I chose to require them to provide the pills and they failed to do so?

We began with two questions:

(A) Why make or accept a promise?

(B) Why keep the promises you make?

I have proposed that people can always make and accept promises in the service of an authority interest. But can promisors keep their promises out of regard for the same interest? How exactly does the promisee's authority interest move the promisor to keep their promise?

The authority interest is an interest in the possession of authority. That interest is usually undamaged by a breach of promise. After all, a valid promise gives Hume's creditor and Maklay's Malay the relevant authority (i.e. the authority to require performance) regardless of whether either Hume or Maklay actually keep their promises (Sec. 22). The promisee's authority interest would be harmed by this breach only if the breach somehow undermined the validity of the relevant promise, or at least threatened the promisee's ability to accept binding promises in the future. But it is hard to believe that many breaches of promise have this effect, let alone those which pose the problem of bare wronging. So if it would be a wrong for Hume and Maklay to breach their promises, how can *that* wrongness be explained by reference to the promisee's authority interest?

Reviving the *Injury Hypothesis*, the questioner is assuming that S's interest in X can explain why we should do Y only if by failing to do Y we *act against* S's interest in X (Sec. 11). When some control interest or interest in social co-ordination is at stake in a promise, it is often true that we act against these interests when we fail to perform. For example, to fail to show up at the bus stop when I promised that I would is often to harm you by failing to serve your interest in coordinating our commute, the very interest which led you to accept my promise in the first place (we may suppose). But with an interest in the possession of a normative power, things are different. An authority interest is an interest in something's being a wronging should I say so. That interest is not harmed provided it *is* a wronging if I say so and its being a wronging does not usually depend on whether it actually happens. Now, according to *Rationalism*, it makes sense to fulfill an obligation only when such fulfillment will promote some good or avoid some evil (i.e. serve some interest). It is this assumption which drives the thought that an interest in X can explain why we should do Y only if by failing to do Y we act against S's interest in X. But the rationalism behind the *Injury Hypothesis* is untenable. It does make sense to

discharge an obligation even where there is no reason independent of the promise to do so because there is non-instrumental value in its making sense for your deliberations to be shaped by promises and other obligations (Sec. 16).

Our *normative* interest in certain things being wrongings, in its making sense for people to avoid doing those things, explains why we should avoid them and it does so rather differently from non-normative interests. Suppose I make a promise to someone in the service of their interest in authority over me. Their authority interest is an interest in its being the case that I would wrong them by failing to perform (unless they release me). So my promise serves their authority interest when it makes it the case that I wrong them in failing to perform. Furthermore where my promise makes it a wrong for me not to perform, it also ensures that it makes sense for me to perform and it does so even though the authority interest my promise serves would not be harmed by non-performance. Here the goodness is in the wrongness, not in my forbearance. There may be no good in keeping my promise but to do otherwise would be to wrong the promisee and since it is good that this is so, it makes sense for me to keep my promise. Thus our answer to question (A) delivers an answer to question (B).

The issue I have just been discussing is a close relative of the problem of normative power or Prichard's problem (Sec. 24) and it might clarify matters if I respond to that problem directly. As Prichard observes, the practice of promising is a practice of giving oneself a reason to keep a promise by communicating the intention of hereby giving oneself such a reason. If we accept the rationalist's view of the nature of reasons this puts the intelligibility of such a procedure in doubt, for one can't make it the case that there is some good in doing something simply by communicating the intention of making it the case there is some good in doing that thing. Certain adherents of the social coordination hypothesis respond to this difficulty by pointing out that it would be greatly to everyone's advantage if one could do this since it would hand us an important social tool. But, Prichard replies, the fact that we are all better off if everyone believes that this procedure is intelligible, or acts as if it is intelligible, does not make it intelligible. We have done nothing to rule out the possibility that the whole practice is fundamentally confused and keeps going only because the confusion is so useful to us.

Can we solve Prichard's Problem by appealing to our interest in authority rather than to our interest in social co-ordination? Such an appeal might seem vulnerable to the same objection: the fact that we have an interest in the intelligibility of a certain procedure cannot guarantee the intelligibility of that procedure. At several points in this book, I express doubts about our capacity to influence the normative situation by choice. For example, there might be wrongs so grave that forgiveness is simply impossible (and not just psychologically impossible) (Sec. 9) and this may be so even if we would greatly benefit from being able to forgive these wrongs and thereby render resentment inapt. Similarly I doubt that we can bind ourselves by means of vows even though the prospect of appropriate guilt might be just what need to get ourselves to act (Sec. 42). And Prichard might wonder whether promising is in any better case. How can the admitted fact that others have an interest in our being able to bind ourselves to them ensure that it possible for us to do so?

I agree that we can't establish the reality of a normative power or the intelligibility of a normative procedure simply by showing that its possession would have great instrumental value. That might be true of all manner of delusions. Thus we can't establish either that universal forgiveness is possible or that vows are binding by observing that this would place an extremely useful instrument in our hands. The issue is not the usefulness of the procedure, it is whether the ability to influence the normative situation in that fashion is valuable for its own sake. Those who doubt the possibility of universal forgiveness doubt that the ability to forgive grave wrongs would have that sort of value. And I doubt that vows bind in the way that promises bind because I doubt that being able to bind yourself by means of a vow is valuable for its own sake in the way that being able to bind yourself by means of a promise is (i.e. that it can serve an authority interest). According to the diagnosis offered in the last Chapter, those who doubt that the ability to bind yourself to a promisee by declaration is valuable for its own sake do so because they adhere to Injury Hypothesis. Thus they regard any procedure for influencing the normative situation which produces bare wrongings as devoid of the relevant value. Once that hypothesis has been set aside, we have lost our grounds for doubting the intrinsic value and thus the intelligibility of the procedure. What better grounding of a

normative procedure could there be than the observation that that the availability of this procedure is valuable for its own sake?

## 29. Promises and Practices

I have explained why promises bind given that people have an interest in authority over others. Our answer to question (A) delivers an answer to (B) also. But how are we to understand this interest, this value? I'm supposing that it is *good* for people to have authority, that the simple possession of authority over certain matters makes their lives go better (*ceteris paribus*). The source of the normative force of a promise is this fact about human well being. What must authority be like for it to be possible for you to have an interest in the possession of it? What must obligation be like for it to be good for you if others have obligations to you? At least two things must be true: (i) authority is something you can lack whilst still retaining an interest in it and (ii) *ceteris paribus* it is good for you to have it rather than lack it. To satisfy these conditions, authority must be a social reality.

I maintain that promises bind in a given social context only where people are in the habit of recognizing promissory obligations. In this section I shall explain the notion of *recognition* and in the next say what a *habit* of recognition involves. I take the notion of a social context for granted. Even those who reject conventionalism about promising should allow that some normative facts depend on social convention: for example, one is permitted to slurp one's soup in Japan but not in the United States. In analyzing promising, I am appealing to the notion of social context which is needed to elucidate any conventionalist claim. What must be said about habits of recognition is rather more distinctive.

A promisee's right to require performance from the promisor may be recognized in one of three different ways. The first and most obvious way is when the promisor *fulfills* his promise because he feels required to do so. But this is not in fact the most fundamental way of recognizing a promissory obligation. It is possible for a promisor to breach a promise without thereby wronging the promisee, without infringing their right to performance, provided the promise has played a certain role in the promisor's practical

deliberations (Sec. 14). A promise should exclude a certain range of considerations which count in favour of non-fulfillment from the promisor's deliberations when he comes to decide whether to fulfill his promise. If non-fulfillment is justified by considerations not excluded by the promise then the promisor can *respect* his promise without fulfilling it. So respect for a promise is consistent with a failure to perform.

Furthermore, where a promissory obligation is neither fulfilled nor respected it may still be *acknowledged* (Sec. 15). Such acknowledgement can take various forms. The promisor might offer compensation. The promisor might express remorse. The promisor might express regret or sorrow at breach. And third parties may react with indignation, regret or even offer compensation themselves. But what I called the blame reactions (guilt, remorse, resentment, indignation etc.) are the crucial way of acknowledging the existence of an obligation. Promissory obligation exists only where the promisor is vulnerable to blame.

As we have seen, the promise need not raise the probability of its own fulfillment in order for it to be of value to the promisee. For example there are cases in which the promisee happens to know that performance will turn out to be impossible. He might still be glad to receive the promise because he values the promisor's willingness to ensure that it makes sense for the promisor defer to the promise in his deliberations and to render himself vulnerable to blame should he not defer. The promisee might be glad that the promisor was willing to put himself in this position. True there are promisors who care nothing for their promise and if everyone took that attitude there would be little or no point in accepting a promise. But even if the promisor couldn't care less, recognition of one's promise may come from third parties who react with indignation to the breach and thus affirm the reality and the value of one's promissory rights.

I shall say that a promise is *recognized* when it is either fulfilled, respected or acknowledged. How much recognition is needed before someone's right has been recognised, before it becomes a real benefit to them? Some things can be said about this but they don't add up to a precise answer. Certainly having this right is compatible with one's seldom getting the performance. I would say it is also compatible with one's right to the performance being often disrespected. But it isn't compatible with its rarely being either respected or acknowledged. Authority must be recognized to some extent. To what

extent must it be recognized? The only general answer to that question is: to the extent that is required to make your right a reality. We can't dispense with notions of right (and obligation) when specifying the authority interest.<sup>18</sup>

I'll now address two objections to the account as so far presented. First, there is the worry that promises may be binding regardless of whether there is a practice of recognizing promises in the social context in which they are made. Locke claims that

The Promises and Bargains for Truck etc. between the two Men in the Desert Island, mentioned by Garcilasso de La Vega, in his History of Peru, or between a Swiss and an Indian, in the Woods of America, are binding to them, though they are perfectly in the state of nature, in reference to one another. For truth and keeping of faith belong to Men, as Men, and not as members of society. (Locke 1988: 277)

In considering such thought experiments we must first be sure that it is promissory obligation that is in question and not, say, the obligation to take due care of the expectations one has knowingly aroused. The latter obligation may well be practice independent (Scanlon 1998: 296-7) but it is not a promissory obligation (Secs. 40-1). Second, we must be equally sure that the parties are not tacitly relying on the fact that they were both brought up in social contexts in which promises were recognized (as the Swiss and the Indian surely were). Why go through these motions with a total stranger unless one is assuming that other human beings are likely to have been taught to respect promises of some sort?<sup>19</sup>

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<sup>18</sup> (Nagel 2005: 92-3) maintains that we are all better off simply in virtue of being possessors of 'moral' rights and regardless of whether these rights are recognised but he does not explain how the fact that we are wronged by torture and so forth makes our lives go better. He says that the relevant notion of well-being presupposes the possession of moral status but that implies only that nothing counts as better or worse for us unless we have moral status, not that possession of moral status makes things go any better.

<sup>19</sup> It is hard to imagine a case in which one person succeeds in communicating the intention to hereby undertake an obligation to another person but where neither has had any contact with a social world in which promises are taken seriously. The nearest approach I can manage is by thinking about how we treat our own children (Shiffrin 2008: 509-10). Promises made to and by fairly young children are not taken as seriously as promises made to and by adults, yet at least some of those treated as children have as good a grasp as many adults of what it is to communicate the intention of hereby undertaking an obligation. Do such promises have less weight because they are treated less seriously? Again the point is debatable. I can't see how to make progress here by appeal to brute intuition about such marginal cases. Rather, we should

Now to the second objection. I have argued that a society without promising would leave an important human need unsatisfied. We all have an interest in having rights over our own lives and therefore we all have an interest in being able to acquire that authority from those on whom our actions depend. Does it follow that we all have an *obligation* to establish and maintain such a practice? And if it does, wouldn't this practice-independent obligation be the true source of promising's normativity?<sup>20</sup> I doubt it.

First, why think we are *obliged* to facilitate the making of promises just because there is a general human need for promises?<sup>21</sup> There is deep and pervasive human need for friendship and for the social forms which make rich and satisfying forms of friendship a possibility. Yet individual people can live decent lives without making either friends or promises, confining themselves (like Rousseau perhaps) to co-operative relations which require only sincere expressions of intention and an impersonal benevolence. Can't one refuse either to make promises or to accept them without wronging the supplicant or anyone else? Perhaps, living cheek by jowl with others, one is sometimes obliged to make or accept a promise. But couldn't we arrange things so that we are never compelled to undertake such commitments? This might be a strange way to live but it wouldn't show a lack of conscientiousness, rather the reverse. And if one could lead a blameless life without promising once the practice of promising had been established, why couldn't one do so beforehand? If a Rousseau does no wrong, why should it be a wrong to allow promising or friendship not to exist at all? Second, even if we are all under some obligation to facilitate the making of either promises or friends, it remains the case that until the relevant practice comes into existence, there is no wrong of breach of promise or

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allow our reaction to such cases to be informed by a general view about the value or function of a promise, a view based on a much broader range of data.

<sup>20</sup> (Shiffirin 2008: 522-3) presses this question against Humean conventionalism about promising.

<sup>21</sup> In his discussion of property rights, Kant adopts a form of conventionalism which delivers a positive answer to this question (Kant 1996: 410-21 and 450-2). On the one hand, he joins Hume, Hobbes and Rousseau in denying that we wrong one another by interfering with each other's possessions in the state of nature. On the other hand, he thinks that, even in the state of nature, we can acquire a 'provisional right' to something by taking possession of it. The significance of this 'provisional right' is twofold. First, we are entitled to exercise and retain control of the thing i.e. we do no wrong in fending others off. Second, we are all under an *obligation* to leave the state of nature and establish a civil society in which such provisionally rightful possession will be recognized and thereby be rendered conclusively rightful. (Kant 1996: 452) also implies that, in the state of nature, one does not wrong anyone in making them an insincere promise.

disloyalty in friendship. Without such a practice one can't wrong someone in *that* way, even if one does somehow wrong others by refusing to get involved.

### **30. Habits of Recognition**

Having described the forms of recognition, let's turn to the notion of a *habit* of recognition. To be in the habit of recognizing a certain authority involves more than merely being disposed to recognize that authority. Someone can be disposed to recognize an authority without ever having done so in that he would recognize it as an authority if the opportunity arose. Such a person has no habit of recognition. Having a *habit* of recognition involves having actually recognized someone's authority on a sufficient number of occasions. And a *practice* of recognition exists only where a sufficient number of people in the relevant social context have acquired a habit of recognition.

The notion of a habit needs far more attention than I can give it. A few points are particularly worth noting. First, many things can be a matter of habit. One can be in the habit of acting in a certain way and also in the habit of having certain thoughts and feelings. Second, when actions are in question, habits range over everything from sub-intentional phenomena like sniffing to highly sophisticated activities like musical composition. Almost any activity can become a matter of habit but when you do something out of habit, the implication is that your activity is not the product of deliberation about whether to engage in them: if you are composing out of habit then you are not composing because you deliberated about whether to compose today. Similarly, if you are outraged by the use of the word 'disinterested' to mean 'uninterested' because you are in the habit of being thus outraged, your outrage can't, at least on this occasion, be the product of deliberation about whether it is merited. A habit pre-empts deliberation.

People can be in the habit of doing something without doing that thing out of habit on every occasion. For example, I may be in the habit of keeping my promises but, on a particular occasion, I may decide that deliberation is required because there are reasons which count against fulfillment, reasons which are not excluded by the promise. I may still keep the promise because the reasons counting in favour of fulfillment outweigh these other considerations and here respect for the promise does not require me to keep it

out of habit, though respect for the promise probably does require me to exclude excluded reasons out of habit i.e. without deliberating about whether to exclude them.

What is the relationship between habits, customs and practices on the one hand and such things as dispositions and propensities on the other? It is tempting to treat dispositions as prior to habits since one can't be in the habit of say voting Democrat unless one is disposed to vote Democrat in a sufficiently wide range of circumstances, whilst one can have the disposition without having the habit. But we shouldn't infer that habits always manifest pre-existing dispositions. On the contrary, one can acquire a disposition to do something (e.g. listen to classical music) by getting into the habit of doing it. In these cases one may have a prior disposition to acquire the habit of listening but the disposition to listen and the habit of listening are coeval.

Something like this notion of a habit (usually a habit of obedience) is employed in a good many accounts of social authority.<sup>22</sup> Speaking of kings, Hume tells us that

Time alone gives solidity to their right; and operating gradually on the minds of men, reconciles them to any authority, and makes it seem just and reasonable. Nothing causes any sentiment to have a greater influence upon us than custom, or turns our imagination more strongly to any object. When we have long been accustomed to obey any set of men, that general instinct or tendency, which we have to suppose a moral obligation attending loyalty, takes easily in this direction and chooses that set of men for its objects. 'Tis interest which gives the general instinct; but 'tis custom which gives the particular direction (Hume 1978: 556).

There are a number of ways in which 'custom' could underwrite a leader's authority.<sup>23</sup> First, it could create a sense of personal loyalty to the leader, a sense that we owed him obedience as an individual and not just *qua* occupant of a certain office. Second, it could constitute a tradition of obedience either to an individual or (more likely) to the occupant of an office, a tradition whose sheer longevity gave us some reason to subscribe to it. Traditional authority is authority 'hallowed by time'; the longer it is thought to have

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<sup>22</sup> For example, (Bentham 1988: 40) and (Austin 1995: Lecture 6).

<sup>23</sup> Here I draw on Weber's discussion of three sources of political legitimacy: charismatic, traditional and legal. See Chapter III of (Weber 1947).

existed, the greater it is. I'm interested in a third role custom can play, one that does not depend on its perceived longevity and does not involve purely personal ties. Custom could establish a certain authoritative social role by constituting a practice of deferring to the occupant of that role.

A theory of social authority would have to investigate both customary and non-customary sources of that authority. My purpose here is not to provide (or presuppose) such a theory but only to highlight an aspect of social authority which helps to elucidate the idea of an authority interest. For those purposes, I want to focus on the third way in which custom generates authority (setting tradition and personal loyalty to one side). I offered both a skeptical and a non-skeptical reading of Hume's account of promising (Sec. 24). I think we can do the same with his customary theory of social authority, so understood. I'll begin with the non-skeptical reading.

On this reading, the value of a social authority lies in its ability to keep the peace and maintain social order. Our interest in the existence of a social order is essentially the same as our interest in promissory obligation i.e. our need to be able to co-ordinate our behaviour with others in order to achieve together what we could not achieve alone (Hume 1978: 544-5). Social authorities meet this need by promulgating and enforcing certain rules of conduct and by arranging for the provision of various social goods. For Rex to be a suitable king, a suitable social co-ordinator, it is not enough that Rex be good or even wise, it must also be the case that (i) a sufficient number of us are disposed to obey Rex and (ii) this fact is common knowledge between us. Nevertheless, as Hume realises, Rex's mere suitability as an authority does not put him in authority over us until his authority is *actually* recognized. Why so? Why isn't our common knowledge of our propensity to obey Rex enough to put him in authority over us, even before this propensity is realised? Hume might argue that people become disposed to obey Rex only by actually obeying him and people acquire knowledge of the dispositions of others only by observing what they actually do. Without the relevant history, these authority-constituting dispositions won't exist. Hume might add that, even where these dispositions do already exist, there is no reason to expect that only one person will qualify as a potential authority. Many of us would be good enough kings (or queens) if given the chance but more than one monarch may be worse than none at all, so a pattern of actual

obedience is needed to focus our loyalties: “‘tis custom which gives the particular direction”.

I doubt these claims will support the idea that authority inherently requires habits of recognition. Mightn't Rex be the only suitable candidate, one we know we are all inclined to obey in advance of any actual obedience? In that case, in Hume's view, the absence of a suitable history of obedience should make no difference to the normative situation. Rex should be in authority over us regardless of the fact that nobody is in the habit of obeying him. But he is not. Suppose people are at loggerheads. Rex appears. His wisdom and magnetism are obvious to all. We're all disposed to obey him and we all immediately know this fact. And only he can save us. In this situation, the need for social co-ordination arguably generates an obligation to obey Rex as the only way of satisfying this social need. We would do wrong if we failed to obey him and perhaps wrong each other. Nevertheless, none of us yet owes obedience *to* Rex. He cannot claim that *he* would be especially wronged by such disobedience. No doubt he will argue that we ought to obey him and he will do so by appealing to collective self-interest or the needs of our fellow citizens etc. And, having thought the matter through, we may obey him for these very reasons. But only once a sufficient number of us have started to obey him out of habit, without that sort of reflection, can he invoke his own authority, can he demand obedience on his own account etc. How is Hume to explain this?

Let's now turn to the more skeptical strand in Hume's treatment of social authority. In the quoted passage, Hume says that obedience to authority '*seems* just and reasonable' and we '*suppose* a moral obligation attached to loyalty'. This implies that there is no such obligation of loyalty, only a tendency to fall under the socially useful illusion that there is. History and practice cannot really create such an obligation but they can mould a beneficial disposition, directing it towards a suitable object. Recall that Hume spoke of the promisor 'feigning' the act of putting themselves under an obligation to the promisee. If our feigning this procedure really is essential to human social life then we might have an obligation to feign it, we might be wronging our fellows if we did not feign it. But any such obligation would be owed not to the promisee *qua* promisee but rather to all who share our social world. The idea that the promisee would be especially wronged by breach of promise is no more than a socially useful illusion. On this skeptical

reading of Hume, the same should be said of the idea that we owe obedience to established authorities.

There is something right about such skepticism. If an exercise of normative power binds only once there is a practice of recognizing its binding force, we must distinguish two stages: what happens before the practice is established and what happens afterwards. Before the practice is established, people who purport to exercise the relevant normative power are bluffing but once the bluff has worked sufficiently frequently, it is bluff no longer. Let's describe this two-stage structure in the case of social authority and then move back to promising.

Suppose we know we are all inclined to obey Rex but none has actually done so. Suppose it occurs to Rex to issue an 'order' and he issues his first 'order' to me, that is he communicates the intention of putting me under an obligation. I may well do as he says – after all Rex is very charismatic – but I will not act out of a sense of obligation to Rex, nor would he seriously expect me to. So there is a way in which his first order is a bluff.<sup>24</sup> But the whole procedure isn't bluff. Rex presses on issuing more orders and once enough people have done enough of whatever Rex ordered them to do out of deference to Rex, his orders are being taken in the spirit in which they were intended. By presenting his statements as orders from the outset, Rex is looking forward to the time when they will become binding on us and after a while his gambit works. People think of Rex no longer as an impressive Pretender but as being *in authority* over them (Anscombe 1981: 154).<sup>25</sup>

I maintain that this practice-dependent notion of authority is what grounds promissory obligation. A promise cannot put the promisee *in authority* over the promisor

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<sup>24</sup> I'm assuming that Rex is starting from scratch. If he can represent himself as someone's successor, or associate himself with some authoritative institution, no bluff is required.

<sup>25</sup> (Thomson 1990: 304) implies that if promises bound only after a period in which they were treated as binding, a binding promise could never eventuate. If this were correct, it would be hard to account for much of human social life since a similar process of evolution generates many conventional obligations. For example, a medium of exchange is an intrinsically worthless substance which people are obliged to accept in return for valuable items because of the great social value of having an obligatory medium of exchange. How might this obligation develop (as it did) without the aid of banks, exchequers and so forth (Hume 1978: 490)? Suppose some people start by treating the medium as possessing a certain value and come to feel that they owe it to the other parties involved to carry on. Once enough people of the relevant social group have relied on other's acceptance of the medium, it will be the case that further members of the social group who have never used the medium are obliged to accept it on first contact. There will be a transitional period when it is unclear whether this obligation does extend beyond those who have already relied on the medium.

unless both live in a social context in which people are in the habit or have the custom of recognizing promises. We can test this claim by re-considering Reid's *Innateness Hypothesis* (Sec. 25).<sup>26</sup> Reid asks us to suppose that we are born with an 'innate disposition' to 'fidelity on one part and trust on the other' (Reid 1969: 445). Does this mean that we think of ourselves as bound to fidelity regardless of the habits of those around us? There are three different things which could be meant by the phrase 'an innate disposition to fidelity'. The first is an innate disposition to  $\phi$  when you've said you'll  $\phi$ . Reid discusses the innate disposition to fidelity in the same breath as our innate disposition to 'veracity and candour' (Reid 1969: 444) and this might suggest that it is grounded in the need to avoid harmful deception (or perhaps just insincerity). So understood fidelity presupposes no exercise of normative power, no exercise of a power to bind yourself simply by communicating the intention so to do. Alternatively, Reid might be referring to an innate disposition to participate in the practice of promising once it exists. No practice theorist should object to the idea that once we find ourselves surrounded by people who are in the habit of recognizing self-imposed obligations to perform, we tend to acquire this habit ourselves. The third and problematic reading for the practice theory is that on which 'innate disposition to fidelity' refers to a disposition to  $\phi$  because you have *bound* yourself to  $\phi$  by the exercise of a normative power and regardless of whether anyone around you has manifested this disposition.

Our account of how Rex gains authority over us relied only on dispositions of the first two sorts. We started out obeying the wise Rex because of the need to avoid social disorder etc. and without thinking that he had the *right* to command us. Once Rex has

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<sup>26</sup> We can also test it by considering a thought experiment of a sort suggested by Thompson. Suppose a massive coincidence: two exactly similar social communities have grown up in adjacent mountain valleys with exactly similar authorities ruling over them. Now suppose the two authorities, wittingly or unwittingly, switch places. All will accept their authority as before but surely they would, at least in the beginning, be making a mistake. These people are not in authority over them since their habits of recognition are directed at someone else. (This is so even if everyone would go along with the switch were it discovered). Thompson suggests that the point carries over to contract (Thompson 2004: 371-3). If members of the two communities meet, they will both imagine that they can conclude a contract but, he says, they would be wrong. The case is less clear. It may be doubted whether these people really understand one another when they say 'I promise' etc. since it may be doubted that they share a language (Thompson 2004: 362-3). But if *these* doubts are set to one side and we allow that they do manage to communicate the intention of hereby undertaking an obligation etc, then it seems to me that they can promise simply because they are all in the habit of recognizing such communications. The origins of a shared habit matter only in so far as they affect the object of that habit.

gone through the motions of issuing orders and once a sufficient number of people have acquired the habit of obedience, we start to feel that we *owe* him obedience. Similarly, once enough people have gone through the motions of binding themselves to act and have then kept their word out of an innate disposition to do what one has said one will do (a disposition which could come into play regardless of whether one actually *promised* to do it) they'll come to feel bound to perform.<sup>27</sup> But they couldn't start off with this idea any more than they could start off with the idea that they owe Rex obedience simply because of his wisdom.<sup>28</sup>

In the case of social authority, the establishment of habits of recognition resolves certain indeterminacies. In particular, they fix the authority's identity, jurisdiction and the stringency of their commands. As to identity, they select from amongst those with the minimal qualifications for being a suitable authority the person who is actually in authority. (That person need not be (and usually isn't) the best qualified person.) As to jurisdiction, they determine who is ruled by *this* authority rather than by other equally suitable candidates. As to stringency, they determine how grave a wrong it is to flout the orders of this authority or at least they set the limits of acceptable views on this matter. Should Germans take their laws more seriously than Italians i.e. should their habits of fulfilling, respecting and acknowledging their laws be stronger, then it is appropriate to feel worse about violating the law of Germany than the law of Italy.

Do these indeterminacies have analogs in the case of promising? I'm assuming all humans have some interest both in the possession of certain normative powers and in having the chance to exercise them. Though the weight of this interest might vary from individual to individual, I'm assuming there are no systematic differences between adults which ought to be registered in the practice of promising. If so, a practice is not needed to resolve the indeterminacies of identity and jurisdiction which inevitably arise in the case of political authority. But in the matter of stringency to a significant extent the issue is

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<sup>27</sup> As with social authority, one need have no thoughts about the longevity of the habit once it has been established. Someone might keep promises because they thought of themselves as subscribing to a tradition of keeping promises but this would be an unusual and indeed questionable attitude.

<sup>28</sup> Reid himself (445) distinguishes the 'innate disposition' to fidelity which we have 'in early years' from the feeling of 'obligation to fidelity' which we have 'in riper years'.

left open by the underlying authority interest and it remains open unless and until the practice resolves it.

Let's focus on the pure case of breach of promise, the case in which breach of promise would be a bare wronging. How serious a wrong is it? I have said that there is a consensus on the following point: a decent person should feel some compunction about breaking such promises. If Maklay or Hume took their commitments lightly, that would be a mark against them. So we agree that, say, breaching such a promise even in order to further human knowledge or culture in a significant way (Maklay) or to help the indigent (Hume) would wrong the promisee, though it might well be justified. After all, these are just the sorts of consideration the promise was meant to rule out. That is why a decent person would feel bad about doing it. But how bad should they feel?

Different cultures will answer this question in different ways and some cultures may give it no answer. Think of deathbed promises. Some would feel awful about breaking such a promise, would regard it as a terrible thing to have to do to someone, quite on a level with inflicting serious physical harm. Others will regard such scruples as overblown. In their view, there is no comparison between breach of even a solemn commitment which passes unnoticed and does no harm on the one hand and a physical assault on the other. Where the latter attitude prevails, the right thing to say is that the obligations imposed by deathbed promises are not particularly stringent. Where neither group predominates, there is no right thing to say. We can only remark that some people get more worked up about this sort of thing than others and that a wide range of such reactions is apt.

Note it would be a mistake to suppose that the stringency of a promise is fixed on a case by case basis by the communicated intentions of the parties. The communicated intentions of the parties do indeed fix the *solemnity* of a promise, that is (to put it crudely) how much effort the promisor must make to keep his promise (Sec. 43). And the seriousness of his breach will, of course, be determined by how far short of that standard he falls. So *ceteris paribus* a very solemn deathbed promise will merit more blame than its casual cousin. But that is not because the parties have between them determined the significance of the wrong of breach. Rather what the parties have determined is what would constitute keeping the promise and thus how close the promisor came to keeping

it. The normative significance of his coming as close as he did – the aptness of blame and so forth – is determined by the practice, not by them.

In Part Three, I shall argue that the interest in authority we share with other human beings and which underlies promissory obligation does settle various aspects of the normative structure of promissory obligation. For example, it ensures that promises extracted under duress do not bind the promisor. But I suspect that this shared interest in authority does not settle exactly how serious breach of promise is as such. We all have an interest in being able to create bare wrongings by declaration but different people will give this interest a different weight in their lives and different societies will give it different weight in their practices of recognition. If that is correct then our innate disposition to form habits of recognition in respect of promises cannot settle the stringency of those promises. Only our shared habits of recognition will do that, or not as the case may be.