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Promising, Intimate Relationships, and Conventionalism

Seana Valentine Shiffrin

The old chestnut about promising poses a puzzle about the generation of moral obligations. Some philosophers worry whether it could be possible that, just through an individual's declaration, an obligation can come to exist.[1] They find it incredible that the mere expression of an individual's will to alter her moral status can be effective in doing so *in just the way she intends*.[2] Other obligations arise from the need to prevent, respond to, or remedy events and states of affairs that have moral

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1. This worry is articulated by, among others, Baier (1994, 111); Hume (1978, 455, 524); Anscombe (1981b, 97, 100); Prichard (2002a, 257); Markovits (2004, 1417, 1442–43); Murphy (n.d.); Den Hartogh (1998, 352).

2. This latter clause distinguishes cases like that of gratuitous insults, in which the issuer wishes to assert superiority over another but may, through the expression of her will to assert superiority, create the unintended duty to apologize or make other amends.

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significance independent of the bound agent's will to be so bound, such as harm, suffering, the deception of another, or the weakening or abuse of a valuable social practice. Promises seem like peculiar entities because it is only through the expression of the will that the duty is created.

Grappling with this concern, what I will call the *generative problem*, has given fruit to important disputes about whether the moral force of promises derives from or depends on a useful social convention that is, at the outset, morally discretionary.[3] I have never felt the magnetism of the problem nor the attraction of the conventionalist solution, despite their distinguished careers.[4] As I will argue, a fuller appreciation of the moral role and need for promises in central human relations justifies nonchalance toward the problem and resistance to any interesting form of the conventionalist solution.

I will use 'convention' or 'social convention' broadly and interchangeably to refer to a social practice or custom.[5] I take the conventionalist position to involve two components: first, the conventionalist endorses the view that the moral force of promises is not morally fundamental and does not, in fact, derive directly from the expression of an individual's will to be bound. Rather, their moral force depends upon another moral obligation concerning the proper use of a convention, such as the duty not to free-ride on or undermine a mutually beneficial social practice or custom, or the duty not to harm someone who is

3. For positive discussions of whether or how the moral force of a promise depends on convention, see Fried 1981, 12–17; Hume 1978, 516–25; Rawls 1999; 1971, 344–50; Kolodny and Wallace 2003; Murphy n.d. Kolodny and Wallace's concern is not so much whether a communicative act could affect what is morally permissible but whether such acts could create an obligation *to* a particular party. Criticisms of, and alternatives to, conventionalism can be found in Raz 1982, 916, 927; Scanlon 1999, 295–327; Thomson 1990.

4. It isn't merely that the solution is unattractive. I do not find it fully illuminating. For instance, why is acting against *this* convention that redounds to mutual benefit *morally* wrong, whereas mere misuse of the language (a socially beneficial convention) is typically thought to be a mistake, perhaps a sign of intellectual vice, but not morally wrong? Those who believe misuse of the language can be of moral concern must still explain why the significance of such failures to abide by useful conventions, even when potentially influential—as with journalists' sloppy language—pale in comparison with the moral significance of promissory breaches, even when these may not have any widespread influence on the maintenance and health of the convention. Contemporary conventionalists who single out promising as strange seem most vulnerable to this concern. Hume and Anscombe (1981a, 10–21) stressed similarities between promising and language, but did not address this issue in particular.

5. I will not restrict myself to the more confined meaning of a social practice or custom that solves a coordination problem. See, for example, Lewis 1969, 78–79.

vulnerable because he or she has relied on one's invocation of conventional understandings and practices.[6] Second, the conventionalist takes the position that the moral obligation that *is* at the foundation *is* activated only by the happenstance that a social convention of promising has developed, the major and minor details of which are also socially contingent and subject to change.[7]

6. The first two justifications, each of which concern the proper use of a social practice, appear in Kolodny and Wallace 2003, 121, and in Murphy n.d. Rawls (1971, 346–50) appeals to the principle of fairness to explain the requirement of fidelity. On the third justification, the moral power of the convention is more indirect. The essential wrong is in doing harm, rather than in undermining or free-riding off the convention as such; it is more like the duty to drive on the right side of the road in jurisdictions in which that is what others do. The third justification shares with the other conventionalist arguments that the activity to be done, or refrained from, need not have important moral significance as such but may matter only because a convention of similar practices has developed.

7. An alternative, weaker conventionalist position is available. It maintains that although it may be possible for the obligation to exist in some other way absent a social convention, a systematic social convention could generate duties that entirely replaced whatever nonconventional duties were in place absent the convention. In some domains, social conventions (and other intentional human institutions) have the capacity to substitute for and substantially alter the structure of nonconventionalist duties. Many who hold conventionalist views of real property arrangements hold some view of this kind: absent a social convention, some "natural" duties of property may arise between individuals, perhaps grounded in appropriative efforts based on need or labor; but, these duties need not hinder or operate as substantive constraints on the development of a system of socially engineered property rights. It is perfectly just to establish social institutions that allocate and distribute property based on more rigorous standards of distributive justice, resulting in quite different property rights and duties.

Similar positions are often held concerning the right of self-help within a state of nature and its susceptibility to replacement by social institutions of tort and criminal law. I am open to both accounts, but I do not think promising adheres to this structure. Neither the main content of promissory duties nor their moral significance is eligible for near-complete replacement or eradication by social conventions. The argument I give in the text about the essential and fundamental importance of the power to promise for elemental interpersonal relations provides the basis for this view. Why the duties associated with property relations and self-protection are, by contrast, more susceptible to transformation by social conventions than those associated with promising is a subject whose full pursuit is better suited for another occasion. Here, I merely note that the motivations for conventionalism about real property and the proper means of defense do not stem from any source like the generative problem that drives conventionalism about promise; rather, they stem from concerns about our equal standing with respect to material resources and the need for clear rules to enable respectful forms of joint social life. I discuss the relationship between promise and contract, a social convention operating within close territorial waters, in Shiffrin 2007.

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Both conventionalists and nonconventionalists agree that many features of promising have conventional components that are not intrinsically morally significant—including which words, gestures, or conditions of silence create commitments. They even agree that some morally significant aspects of our promissory relationships may vary according to custom. What is at issue is whether the *basic* moral relation of promissory commitment and its associated duties derive from duties activated by social conventions and the moral principles that govern our use of them.

Many others oppose conventionalism, yet some prominent modern nonconventionalist accounts implicitly make unnecessary and problematic concessions to the conventionalist's core instincts about the mystery of promises and the necessity of deriving the moral force of promises from something outside the agent's expression of her will to be bound. I have in mind the near ubiquitous endorsement of the requirement that binding promises involve the promisee's belief that the promisor will perform; the related view that through the promise, the promisee and promisor share an end;[8] and finally, the tendency to take promises between strangers, rather than intimates, as the prototypical promises around which to build a satisfactory account of promising.[9]

After discussing why we should reject these features, I will pursue a relational account of promising that does not make these concessions and finds its motivation in their rejection.[10] Many suspect that the bindingness of promises does not depend upon social conventions but also that it cannot derive solely from considerations about the will or integrity of the promisor, considered alone, or the disappointed expectations or disappointed reliance of the promisee. Something about the

8. Judith Jarvis Thomson's (1990) account does not suffer from this flaw. The text at 297–98 is somewhat ambiguous about the sort of recipient uptake she believes is required. It seems the sort of recipient distrust that makes it the case that an offeror fails to give her word is distrust in the offeror's sincerity, not distrust about the offeror's carry through. Thomson does seem to endorse a requirement that the promisee accept the promise, whereas I believe all that is warranted is a requirement that the promisee not reject the promise. See text accompanying note 20 and ibid., 294–312.

9. Dori Kimel and Daniel Markovits, however, take promises between intimates seriously. See Kimel 2003, 57–89; Markovits 2004, 1438–46. Kimel (2003, 30–31) regards promises between strangers and mere acquaintances, however, as fairly anomalous and as so transformative as to render strangers no longer quite strangers. I worry that his account thereby falls subject to the inverse implausibility. Markovits's account has many strengths but implausibly relies on appeal to the notion of shared ends and to the promisee's belief in performance. I criticize such reliance in sections I.i and I.ii.

10. Joseph Raz has gestured at a more relational view but not elaborated its details. See Raz 1977; 1981, 103, 125; 1982, 928; 1986, 173–75.

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relationship between the promisee and promisor makes a promise binding. But what it is about the relationship between them that underwrites the bindingness of promises has seemed elusive.

I hope to put the matter in closer reach. The main claim I will advance is that: the power to make binding promises, as well as to forge a variety of other related forms of commitment, is an integral part of the ability to engage in special relationships in a morally good way, under conditions of equal respect. This claim, if true, poses a problem for the conventionalist.[11] The argument proceeds by examining what would be missing from intimate relationships if we lacked the power to promise. I argue that the power to promise is an essential tool to forestall and neutralize morally problematic inequalities between people and that moral agents must possess the power to engage in morally respectful relations with others.

I emphasize the *power* to promise because, as I will argue, our ability to engage in other forms of commitment (such as the ability to induce morally weighty reliance through communication) depends on the same power that is in question with respect to promises; if the issue is whether we can generate obligations by willing and communicating their existence, these obligations stand or fall together. Further, other sorts of commitments, especially the ability to induce morally weighty reliance, gain much of their force and determinacy in a context that includes the opportunity to make formal, explicit, and stringent promises. So, by arguing moral agents must have the "power to promise," I mean to encompass the full range of powers to make commitments; this set includes what I regard as the foundational anchor of the set, the power to make a full-fledged promise, as well as lesser commitments of different strengths and contents.

Finally, I conclude by returning to conventionalism and addressing the objection that the essay's argument shows only that we have a duty to create a convention of promising, not that the convention is, so to speak, morally superfluous. Although I resist the thrust of this objection, I also argue that its premise represents a significant concession that greatly reduces the distance between conventionalism and nonconventionalism. Once it is granted that there is a duty to create the convention for the sorts of interpersonal reasons I adduce, then the sting of the

11. Although Charles Fried (1981, 13) connects promising to individual autonomy, he adopts a conventionalist position that is not especially concerned with individual relationships.

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conventionalist challenge is ameliorated and the conventionalist position loses its moral distinctiveness.

I. Desiderata

Before embarking on the main argument, I will defend some desiderata for a plausible view of promising. The desiderata are not meant to capture all the foundational aspects of promising. Rather, they reflect some dissatisfactions with some other nonconventionalist accounts that, in part, motivate my approach.[12]

The desiderata are as follows: First, an account of a binding promise should not depend upon what I will call the promisee's belief in performance, that is, her belief or trust that the promisor will actually do what is promised. Second, a binding promise need not forge or reinforce a relationship of shared ends. Third, a satisfactory account should not take promises between intimates as unusual, strange, or as outlier cases. Let me say more about each desideratum in turn, beginning with the rejection of the requirement that the promisee believe performance will occur.

I.i. Promisee's Belief in Performance

An important corner of the promising literature explores whether the wrong of breach of promise should be analyzed in terms of the promisee's disappointed expectations alone or in terms of the detrimental reliance taken by the promisee based on her expectations.[13] Both expectation-based and reliance-based views presuppose that the promisee must form the expectation that the promisor will perform whatever is promised for the promise to bind (or perhaps for it to have been formed at all). They disagree as to whether *action* on this expectation is also necessary for the promise to bind.

To support the expectation-based view, Scanlon offers the case of the guilty secret. Harold extracts a promise from a friend, call her Hedda, to keep mum to Harold's new colleagues about an embarrassing

12. With minor exceptions, these dissatisfactions do not pertain to Judith Jarvis Thomson's nonconventionalist account, however. My position is largely complementary to hers, although our argumentative paths substantially differ.

13. Representatives of the expectation-based view include Fried (1981) and Scanlon (1999); representatives of the reliance-based view include P. Atiyah (1983), MacCormick (1972), and, in law, Fuller and Perdue (1936).

incident from Harold's past, although the promise cannot affect Harold's course of action. Scanlon (1999, 302–3) contends the promise is binding, although there is no actual or potential reliance by Harold. I agree the case is convincing and shows expectation-based views to have the better of the dispute.

But the example could be taken further in a direction that calls into question both accounts' shared supposition that the promisee must believe the promisor will perform. Suppose again that Harold extracts a transparently sincere promise from Hedda not to reveal the embarrassing incident. But, in this case, Harold is inflated with self-importance. Overestimating the salacious value of his secret, he suffers high anxiety. He believes it nearly inevitable that Hedda will be unable to resist the temptation to gossip. Suppose further that Harold is vocally neurotic and tells Hedda of his fears. The promise still binds, although betrayal will only confirm the low expectations Harold has broadcast to Hedda.

As this extended case shows, the promisee need not believe the promisor will perform nor need the promisor believe the promisee believes this. Other cases support this position, including Scanlon's "Profligate Pal" (although Scanlon [1999, 321] intends it to confirm just the opposite). Pal borrows money from Lender and sincerely promises to pay it back. Lender has been burned by Pal before and does not believe Pal will repay him though he takes Pal's promise to be sincere.

I submit that Pal owes the money simply because he has promised repayment. On the expectation-based view, however, Pal is not bound in light of the promise because Lender has developed no expectations of repayment. Scanlon concedes that it is counterintuitive to think Pal has no duty to repay but contends that Pal is bound for other reasons, such as those of gratitude.

I find this explanation unconvincing. Notice that an appeal to gratitude fails to explain why Hedda is bound in the extended case of the Guilty Secret. Perhaps it may be argued that duties of kindness fit that bill. In light of Harold's distress, the kind friend would abstain from gossiping—promise or no. But suppose Hedda knows that nothing untoward will happen if others know Harold's secret, but Harold's anxiety will be calmed. Perhaps the *kind* thing to do is to relieve Harold of his secret. If Hedda *promised* to keep the secret, she would be bound, even when telling (and not promising to begin with) would be what's kind.

Whether kindness could act as the fill-in value in Harold's case or not, this strategy of fossicking for a fill-in value has other hazards. The strategy attempts to defuse the sense that the promises in these cases

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are binding *as such* by reexplaining the sense that there is a duty in these cases through appeal to another value such as gratitude or kindness. But this error theory may prove too much. It might undermine the more general view Scanlon aims to defend—namely that promissory duties do arise when expectations develop in response to a promise. If the existence of a further moral obligation can dispel the impression that there is a promissory duty in cases like the Profligate Pal, why won't it do the same for many of the promissory duties Scanlon does recognize? For many serious promises, there is often a strong moral reason to make them in the first place. One's obligations of kindness, gratitude, or beneficence will typically be engaged as well. If the appeal to gratitude in the Profligate Pal case is effective, the underlying strategy threatens to be overinclusive.

I am not sure the explanation works even in that case. We are to think this is not a loan secured by a promise to repay, but a gift; yet it typically violates norms of gratitude to return the *very* gift that was given.

There are other reasons for doubt. Let's sharpen the Profligate Pal case. As presented, it is ambiguous whether Lender regards the proffered promise as a farce but reacts gracefully to let Pal save face, or whether Lender, knowing repayment is unlikely, still takes the promise to be sincere. Suppose the latter. Lender takes Pal's promise to be sincere, even if hopelessly unrealistic. Lender would like Pal to keep the *promise*, for the reason that Pal promised, and takes Pal to be bound to repay, even if Lender would not care to wager that Pal will do so. Lender clarifies: "I am not a charitable giver. I want you to shape up and repay me because we are making a deal. Otherwise, consider the money the bounty of your immoral character."[14] Is Lender's position that Pal is morally bound really undermined by his realistic assessment of Pal's moral fortitude? I take it that Pal is morally bound to repay Lender, despite the fact that—as Pal knows—Lender has formed no expectation that Pal will repay. Given Lender's clarification, it is highly questionable that gratitude is the proper, much less the sole, motivation for Pal's duty to repay.

14. I am not sure gratitude can be directly forbidden. But at least certain forms of expression of gratitude can be made inappropriate where the giver makes clear that that expression would not be a fitting response. The giver could make standard forms of gratitude inappropriate where the giver denied that a gift was being made at all; the giver could also make particular expressions of gratitude inappropriate where the giver deliberately disclaimed an interest in them.

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Moreover, I doubt the force of a promise could depend upon the promisor's reputation. Why should a public history of prior breach make a contemporary breach morally insignificant?[15] Such a position poses obstacles to a significant form of moral rehabilitation. Someone with a prior record of infidelity is unlikely to convince colleagues that she will act as promised. But if she cannot make a binding promise, how can she show that she is now capable of fidelity?[16] It is unclear how she could build or draw upon trust in the future, at least if she is among colleagues who know of her history. Nor can she *practice* fidelity to develop the virtue.[17] To exclude a person permanently from the realm of those who can make binding promises seems unduly harsh, an extreme form of moral punitiveness. Of course, a conception of moral obligation is not impugned simply because it might, on occasion, have harsh consequences. But, if the ability to make binding promises is an important aspect of participation in morally healthy relationships, as I will go on to argue, this would give us grounds to question an account of promises that renders binding promises inaccessible to autonomous agents whose imperfect, but not monstrous, pasts are known.

The promisee belief requirement has also been a source of vulnerability to conventionalist attack. It renders Scanlon's account open to charges of circularity, similar to those mounted by Hume and Anscombe against prior nonconventionalist accounts.[18] Scanlon's argument for the bindingness of promises derives from a principle directing parties not

15. Even worse, why should a *false* perception of a history of prior breach exert that moral impact?

16. See also Kimel 2003, 17, 19–20.

17. She could practice on the unwitting or the gullible. But, the defense of a moral theory should not rely on the prevalence of these figures. She could also act upon her declared intentions, but this is not the same as keeping a promise; her actions could not be described as performing her moral duty by keeping a promise. Acting on one's declared intentions may sometimes draw upon the same character virtues and involve resisting or having resisted the same temptations to defect as are involved in keeping a promise, but it is not always so. So too with other sorts of trustworthy behavior. There are some I expect to be steadfast when only their own sense of honor to themselves is at stake but not necessarily when a commitment to another is, and vice versa. In the imperfect person, also known as the standard moral agent, moral reliability does not always run across the board.

18. See, for example, Kolodny and Wallace 2003; Pratt 2003. Pratt (2003, 115) takes the problem as an argument for rejecting, as I do, the requirement that the promisee develop an expectation of performance, although he endorses requirements that I reject, namely, that the promisee wants assurance of performance and the promisor knows this. Another more general and sympathetic exploration of the circularity

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to intentionally elicit others' expectations and offer assurances only to let them down. Niko Kolodny and R. Jay Wallace challenge Scanlon's presupposition that, absent a social convention, a person could generate expectations of performance in recipients merely by communicating an intention to φ on the grounds that this very communication creates a moral reason for the promisor to φ. Kolodny and Wallace contend that Scanlon's principle creates a binding obligation only subsequent to the recipient's belief. But, the acquisition conditions of the recipient's belief and content of the offeror's communication already presuppose the existence of a binding obligation. Hence they claim that Scanlon's account suffers from circularity. This forms the basis of their case for conventionalism as a means by which one could generate a promisee's expectation that the action will be performed because it is the promisor's duty. Their argument supports the case for conventionalism only if we accept what we should reject, namely, the premise that the promisee must believe (or at least feel assured) performance will occur in order for there to be a binding promise. Abandoning the requirement of promisee belief would, therefore, defang one motivation for conventionalism.

Given these difficulties and their source in the promisee belief requirement, why is the requirement presupposed by most prominent accounts of promising? Strangely, it is not explicitly addressed by its adherents. It may stem from the sense that valid promises are, in some sense, perceived by the promisee as sincere. But, a requirement of belief in performance should be distinguished from some sort of requirement that the promisee take the promise to be sincerely proffered, for example, that it not be a joke.[19] Once belief in performance is distinguished

problem that likewise depends on the assumption that a promise must generate an expectation of performance is pursued in Den Hartogh 1998, 354–56.

19. Framing a plausible sincerity condition is a delicate matter because even transparent lying promises may bind. The lying promise is binding because the promisor aims in earnest to communicate a commitment. It therefore differs from cases in which both parties know or should know the proffer is meant in jest and may differ from cases in which the promisee knows the proffer is based on fundamentally mistaken facts. What matters is whether the promisee either believes the promisor intended to communicate an intention to perform or intentionally engaged in an objective manifestation of an intention to communicate an intention to perform. The promisor should act such that she provides warrant for a justified belief in the promisee that the promisor intends sincerely to convey a commitment to be understood as such, or that the promisor acts in a way that standardly, given the context, and the parties' mutual knowledge of one another, would reasonably be taken to communicate such a

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from the promise's sincerity, it is difficult to locate strong motivations for requiring the former, and there are good reasons to abandon it. Although it is often present in promissory situations, that fact does not render it a necessary condition of a binding promise.

I also suspect that the attachment to this requirement is related to the often-posited, but also questionable, requirement of *acceptance* of a promise by the promisee.[20] Promisees have a clear interest in being able to avoid the sometimes charged relation of moral debtor to the promisor. But protecting this interest entails only that the potential promisee have a right (and a low-cost opportunity) to reject the promise or to waive performance.[21]

To be sure, some promises are offered only to induce reliance or to evoke particular expectations. The promisor may be willing to offer them, and the promised actions may make sense, only in situations in which the promisee will actually develop the relevant expectations or react in certain ways upon receipt. Otherwise, the promisor would better expend her efforts and commitments elsewhere. In such cases, the promissory offer may implicitly contain a requirement of acceptance or

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commitment. Perhaps it is also reasonable to require that the promisee receives and understands this communication. What I question, however, is whether the promisee must also have faith the promisor will later perform.

20. See for example, Thomson 1990, 296–98. Thomson argues that promises are formed when the promisor invites reliance by the promisee and the promisee "receives and accepts the invitation (there is uptake)." Kolodny and Wallace (2003) argue that this requirement cannot be met within a nonconventionalist account on the grounds that either uptake requires belief and is subject to the circularity problem, or uptake requires action by the promisee, which they contest as a precondition for forming binding promises. The concerns Thomson articulates, however, would be fully met by the more modest requirement that the promisee must understand what is being offered and does not *reject* the offer. In at least those cases where the promisor and promisee do not know one another and it is unclear why the promisor's offer would be directed at the promisee—Thomson's case of a newspaper ad promising she'll go to bed by midnight nightly—rejection of the offer may not even have to be communicated to the offeror. See also Watson 2004. Watson (2004, 70) asserts that "promising presupposes the promisee wants or needs assurance. If it becomes mutual knowledge that this presupposition is false, then, whatever else you are doing, you are not promising," but the footnote supporting this claim hinges on an example in which the promisee attempts to *reject* the promise.

21. See also Raz 1977, 214. What about campaign promises? While many are cynical about their sincerity, and more doubt the likelihood of their fulfillment, their status as promises is rarely challenged. Yet they do not seem accepted by their audience. Could the mere ability to vote on the candidate really be thought of as the opportunity to reject what is offered?

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of belief, depending on the situation. "If you will believe I will perform φ (or, if you will accept my promise) should I make a promise to you to φ, then I thereby make a promise to φ." The recognition that some promises have this conditional form need not bleed, however, into insisting that all binding promises take this shape.[22]

Thus I reject the requirement of belief in performance. An account of promissory bindingness should not depend on the promisee's dependence on, or the belief in, the promisor's performance. Hence I also reject both expectation and reliance accounts.[23] Because I cannot locate a compelling motivation for the requirement, I am inclined to speculate that the promisee belief requirement represents an implicit, unintentional vestige of one impetus behind conventionalism[24]—namely, the sense that duties arise in response to some

22. What of Charles Fried's strange case in which complete strangers send me a note promising to have only two children? See Fried 1981, 41–43. The promise, if it is one at all, does not seem binding. Mightn't this support either an acceptance requirement, a requirement that the thing promised or the promise itself at least appear, reasonably, to the promisor as something desirable to the promisee, or a disjunctive combination of the two requirements? For the reasons mentioned in the text, I think the cost of either alternative is high. The case could be handled otherwise, by positing that where there is no connection between the promisee and the promised thing or the promisor, so that it would be perverse to think the promise or the promised thing could be of interest to the promisee, these promises be interpreted as having a conditional form such as "If you accept my promise to you to φ, then I thereby promise to φ." In such cases, an implicit acceptance requirement understood as a condition within the promise makes more sense because it establishes a connection between the promisee and the promise or promised thing. Even so, absent further motivating context (e.g., the letter is addressed to a member of some group advocating population control), I wonder whether even acceptance could make *this* promise binding.

23. I also reject such accounts of threats. A sincere threat can be wrong even if the recipient is confident that the threatener will not carry it out or will not be effective because, for example, the threatened party has a foolproof security system. There may be a distinct question of whether a threat must be credible, however, to count as a threat or for it to be wrong. That is to say, one might take the position that to be a wrongful threat, the threatened action must be the sort of thing that could possibly be accomplished. One might reject an expectation condition on threats while nonetheless endorsing a credibility requirement. If someone were to warn me that if I failed to deliver money, I would be harmed by the transmission of psychic daggers, we might doubt that this was truly a wrongful threat; nonetheless, we could still hold that it was a wrongful threat for that same person to threaten to inflict harm through standard physical means, for example, a knife, even if I, the target, took the view that the threatener was, at bottom, a softie and would never follow through. The same distinction between credibility and belief in performance could be drawn with respect to promises.

24. I do not equate the belief in a performance requirement with conventionalism. I merely suspect they have similar motivational sources. Scanlon endorses the former

external event or state of affairs—in this case, a change in the mental states of the promisee that are occasioned by the promise but distinct from its communication.[25]

I.ii. Shared Ends

Perhaps the promisee belief requirement traces back to an old notion that promises involve a meeting of the minds between autonomous agents, a way that independent parties may join together. That motivation may lie behind another feature of some accounts, including one recently advanced by Daniel Markovits (2004, 1419, 1429, 1434), namely, the idea that promising involves the creation and pursuit of shared ends. If the minds do not meet over the belief in promisor performance or through the positive acceptance of the promise, perhaps they meet over the end to which the promisor pledges or that the promise promotes. That shared end becomes an important component of the relationship, and so the promise, from respect for the relationship, should be kept.

What exactly it means to say a promise represents or creates a shared end is unclear.[26] First, it may mean that both parties take the content of the promise to be one of their ends—that what is promised is valuable to each of them, should be done, and that the promise establishes or distinctively represents this shared valuing. This, as I will argue, need not be true. Or, second, it may mean both parties take the *promise* itself as one of their ends—something valuable that should be performed. This also need not be true. Or, third, it may just mean that both of them in some way regard the promise as something on the

condition but rejects conventionalism. Furthermore, a conventionalist could well posit that the reigning convention is to keep one's word whether or not the recipient believes the word-giver will keep it.

25. This theme lurks in Anscombe's writing. See Anscombe 1981b, 98–99.

26. It is difficult to parse exactly what happens in Markovits's description (2004, 1431–32, including n. 27). He says the promisor adopts the ends "associated with the promised performance." He then declares that these ends are available to the promisee—that is, it is conceivable the promisee could adopt them—and that they are *ordinarily* adopted by the promisee. The footnote makes room for the possibility that the promisee may hope the promise is broken, but the text then goes on to say that "the ends of the promisor *therefore* coincide with those of the promisee." I am not sure how the "therefore" corresponds to the claim of what ordinarily transpires and to the baited recognition of the exception in the footnote. As the text progresses, what seems to be shared is just the recognition that the promisor transfers power to the promisee over whether the promisor will perform the act. I am not certain this transfer of power and mutual acknowledgment of it is properly understood as an end, shared or no.

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agenda of that which should be done. Something along the third line seems correct, but I am not sure that mutual recognition that an action is to be done constitutes an end; in any case, understood in this way, it is not clear that saying promising involves shared ends illuminates anything about promises that is not already captured by the fact that the parties understand that promises have moral weight.

On the first two possible characterizations, the claim that promising involves shared ends often holds. But if the idea that promises *necessarily* involve shared ends is taken to posit an illuminating requirement or a necessary feature of all binding promises, it is false for important and interesting reasons.

First, the promisor and promisee may already have a shared end, prior to any promise between them; the promise need not add an additional end to their portfolio. They may both be committed to themselves or to others to pursuing the same goal and even for the same reasons. Promises may create shared ends in those cases in which a commitment from another is a condition of one or both parties' adopting the end, but they often occur between parties who already share ends. Consider the following example: you and I plan to review the department's job applications tomorrow. We concur that we should get an early start and that 9 a.m. would be a civilized, sensible time to begin. In a conversation confirming our plan, you say "I'll see you at 9 a.m.," and I reply "Yes . . . Do you *promise* to be on time?" You respond, "Yes, I'll be on time." We have not created or generated any new shared end through this exchange, at least not in any interesting way; our ends remain the same. By asking for the promise, I communicate perhaps a concern about your past tardiness and a desire for you to acknowledge the special significance of resisting your tendency to interpret starting times in a loose way. You undertake a special obligation to be on time and therefore to pay close attention to the temptations and habits that have previously led you astray. The promise alters our moral situation, but does not add a new end. We already had the end of meeting for a shared purpose at a specific, agreeable time. Further, I may regard it as regrettable, rather than valuable, that a promise need be sought or relied upon.

Second, a person may promise to perform an action that the promisee does not especially value or regard as an ingredient of any end. Suppose in the Profligate Pal case that the absurdly wealthy lender has no particular interest in receiving the money back as such. The lender would have preferred to have made an explicit gift. But, since the Pal asked for a loan and promised to repay, the lender takes the Pal to be

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bound—even though there is no distinct end the lender values to which repayment contributes. Or take Joseph Raz's case. A nephew promises an uncle to forswear drinking. The uncle does not have any particular concerns about the nephew's drinking and is not of a mind that social drinking is to be avoided. Nonetheless, if the nephew makes this promise to the uncle, and the uncle does not reject it, the nephew may be bound even though the uncle does not value what the nephew has promised.[27]

In some cases neither party wants the promise or the promised thing. Two parties, perhaps aristocrats toward the close of their era, may feel bound by their roles to make and receive a promise, although neither party values the promise or what is promised. Still, they may reasonably feel bound by the promises. *Some* arranged marriages may have these features.[28]

Cases in which the *promisee* does not share, much less value, the end facilitated by or motivating the promise may seem peculiar. It is more commonplace for the promisee to value the promise, but for reasons not shared by the promisor. For instance, although Amy quite confidently reviles the voice of Charo, Bernard asks Amy to listen to Charo's

27. Raz (1977, 213–14) describes an even more complex case in which the promisee is both uninterested in the object of the promise and actively wishes the promisor to breach because breach will reveal a true character flaw to another party under the misapprehension about the promisor's virtue. In a further, yet not implausible, twist, it turns out the promisor is wise to the promisee's scheme; he knows the promisee does not desire the promised object but makes the promise anyway, hoping to keep the promise and thereby frustrate the promisee.

28. As discussed in the last section, some proffered commitments may be rejected by recipients. Perhaps some proffered commitments are sufficiently repellant, and so obviously so, that they should be presumed to be implicitly rejected unless the putative promisee accepts. These facts can be accommodated without going so far as to characterize a promise as a shared end. Alternatively, the commitment may be a threat, in which case in contrast with promises, it does not proffer the recipient the power to neutralize or waive the commitment. These two options represent other ways to accommodate the considerations Thomson gives to support her claim that while giving one's word does not require that the recipient care about what one has asserted, the special case of giving a promise does. See Thomson 1990, 300–301. There is a lingering difficulty about threats, however; the inability of the recipient to neutralize or waive the commitment is not a sufficient condition of threats. What should we say of a parent who commits to set up a trust for a child, which the child now wants, if the parent is clear that the commitment will hold irrespective of the child's later effort to waive the obligation? The parent clearly has not threatened. Has the parent promised? Can a promise be nonwaivable by its now-willing recipient? I'm unsure. Perhaps it represents another sort of commitment such as a vow of honor or some such.

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new album, hoping the new album will change Amy's mind. Bernard begins to detail the album's virtues. Amy wishes to avoid the tedious point and counterpoint about Charo's talents and defects and the ritual airing of the charges that Amy is close-minded. Instead, Amy promises to listen. But what shared end is there here? It isn't to avoid a discussion—there is nothing Bernard would like more than to detail Charo's merits. And, it certainly is not Amy's end that Amy will change her mind. Amy promises to listen to Charo, but that does not make listening one of Amy's ends, at least not in any interesting sense. While they don't share an end because of or through the promise, the promise allows Amy to commit to pursue an end that is not actually held or valued by her. This is an important feature of the power to promise.[29] To be able to commit to a course of action, without valuing it as the promisee does, can facilitate healthy dynamics within relationships, as I shall elaborate. But first a final related desideratum must be addressed, pertaining to the sorts of relationships and the sorts of promisors and promisees that should be accommodated by an account of promising.

I.iii. Promises between Intimates

Many accounts of promising take promises between strangers to be the standard cases around which to construct an account of promising.[30] Two parties approach one another without mutual concern or the basis for trust, but cooperation between them would be to their mutual advantage were it secure from exploitation. The promise is somehow meant to form the basis for trust.[31] From this vantage point, promises

29. One might resist and say that there is a shared end, something like the end of sharing a relationship bound by the trust created by a promise or the end of sharing a relationship marked by fidelity, and that these ends are present even in the cases described above. But this cannot be what is meant by the idea that promising necessarily creates shared ends, especially if this feature is to tell us anything interesting about promises and their binding force. True, a promise creates a relationship that involves a promise. If that is all that is meant, though, it seems a triviality. For it to be a significant shared end or form of relationship, we would need a distinct account of why that kind of relationship mattered and why fidelity to it mattered. But that is what we are after in the first place. This notion of a shared end and the idea that promises create them do nothing to further that project.

30. See, for example, Baier 1994, 112, 118. Baier claims the main users of promises are strangers, although she treats promise and contract rather interchangeably.

31. Although, rather predictably, and especially if one requires promisee belief in performance, this creates difficulty. For how are strangers without a basis for trust supposed to come to trust one another just by declaring some intentions to make that

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between intimates seem anomalous because, typically, intimates both trust and care about one another; so, it may seem unclear what problem promises between them are meant to surmount. On such models, promises between intimates seem aberrational at best and difficult to fathom at worst.

But accounts that place promises between intimates at the periphery are difficult to square with our experience—with the prevalence of promising within the family, for instance.[32] Promises are learned fairly young[33] and play a significant role in the parent-child relationship. If you spend time around young children, you notice how assiduously many children seek (and remember) promises and how prominently they loom in children's moral consciousness. Children may exaggerate their significance, but a theory of promising seems defective to the extent that it cannot make some sense of this behavior or regards these promises as abnormal or illusory. Whereas, a theory of promising that could motivate practices of promising among those who already care for and trust one another would not only square with our experience, but might illuminate our understanding of the function promises serve.

An account of promising should treat promises within friendly and intimate relationships as central, though not exclusive, cases. Indeed, I will argue that an account of morally decent relationships

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the case? See, for example, Hume 1978, 3.2.5; Kolodny and Wallace 2003, 141–43. Scanlon's discussion begins with stranger and neighbor cases to which he returns (Scanlon 1999, 296–97 and 305), although they are not his only examples. (Recall Harold and the prior acquaintance.) His starting points may represent an effort to avoid implicit reliance on special understandings between friends and intimates. Liam Murphy motivates the arms-length assumption on the grounds that promises make up for an absence of trust but that intimates who already enjoy trust and care for one another's interests have less need for promises. See Murphy n.d. Both Kimel (2003) and Markovits (2004) also reject this assumption. See note 9.

32. See also Raz's perhaps stronger complaint (Raz 1982, 931): "Promises between strangers are the exception, and any attempt to understand the practice of promising by focusing on these unusual promises is only too likely to breed distortions."

33. A short overview of the literature on children's cognition of promises can be found in Lyon 2000, 1058–63. Some contend that children do not achieve a complete understanding of promising until they are nine or even eleven. Lyon argues that this evidence is surprising in light of the parental experience of younger children's appeal to others' past promises. He further argues some of the experimental evidence is misleading and may reflect complications in experimental design. His own experimental research provides some evidence that nonabused children had a good understanding of the distinction between "I will" and "I promise" by age six and that mistreated children lagged behind by one to two years.

must include the power to promise. I do not claim that special, voluntary relationships could not develop without (explicit, formal) promises. But, being able to promise plays a role in forestalling some morally undesirable dynamics within special relationships and in reinforcing an important aspect of equality within them. This claim underscores a difference in emphasis between my account and other nonconventionalist accounts, one broached in the earlier discussion on shared ends. Many focus on promises as ways to induce others to act in ways they would not otherwise. What has been relatively neglected is the way promises may contribute to the character of, and emotions associated with, actions that would be undertaken anyway.

II. Intimate Relationships and the Need for Promising

Having articulated some desiderata for an account of promising, I propose now to draw attention to the significance of promising in personal relationships, and thereby to shed new light on the controversy over conventionalism. One way to oppose conventionalism is to attack its central motivation, namely, the puzzle about willing obligations into existence. I will express some doubts about this puzzle, but I will not attack it directly, in part because the nature of the mystery remains opaque to me. A second strategy would demonstrate directly that promising could arise without recourse to a convention. This has been Scanlon's strategy with which I have sympathy. As he develops it, however, Scanlon's approach, as I have just argued, appeals to values extraneous to the bindingness of promises—specifically, to the wrong of disappointing cultivated expectations. One could try again without relying on those values, but if, as I suspect, the power to promise and the associated moral duties are fairly fundamental, then it will be hard to demonstrate this directly in a way that is illuminating.

My strategy is indirect. It offers a reductio of the distinctive elements of conventionalism and a transcendental argument for concluding we have the power to promise. The conventionalist story has it that promises are not among the fundamental moral elements, so to speak. Rather, they are conventional constructs. The wrong of promise breaking and the power to make promises are derivative of these conventions, coupled with distinct moral principles against harming, free-riding, or undermining a beneficial social practice. On this theory, promises are inventions that we could have failed to invent and still gotten by morally, although perhaps less well and less efficiently. But is it really plausible to

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imagine a morally acceptable world—or even simply morally acceptable, complex, and close relationships—without the power to promise?[34]

Positively, I assume that we are capable of minimally morally decent interpersonal relationships and that autonomy rights encompass the right to form some such relationships. This assumption presupposes what I take to be a relatively uncontroversial conception of minimally morally decent interpersonal relationships; the assumption may rest either on an invocation of a rather modest version of ought-implies-can or perhaps another source of moral optimism. I further assume this capacity itself is not the direct product of contingent conventions, but is a noncontingent capacity, albeit one that like many noncontingent capacities—moral and otherwise—may be enhanced by, and sometimes depend on, a conducive atmosphere.[35] Although special relationships are clearly influenced and often given support by conventions, they are not usually thought to depend on contingent social conventions for their existence or for their minimal moral health among willing, compliant moral agents. (I will return to this assumption.) I will then argue that our capacity to conduct our relationships in a minimally morally decent way depends on our having the power to promise (as well as related, derivative powers of commitment). Therefore, given our noncontingent capacity and its dependence on the power to promise, we must have the power to promise. To pursue this strategy, I identify some features of promises that make them or their possibility morally indispensable to special relationships.

34. Hume (1978) describes other conventions, such as the convention of property, as "necessary for the establishment of human society" (Treatise III.ii) and seems to take a like view of promising: "Tis on the strict observance . . . [of the law of performance of promises, alongside respect for property] . . . that the peace and security of human society entirely depend; nor is there any possibility of establishing a good correspondence among men, where these are neglected" (Treatise III.vi). What he seems to have in mind, however, is what is necessary for civil society. His examples involve relationships between strangers, neighbors, partners for mutual advantage, and those engaged in business transactions; he is not advancing claims about what is necessary for morally decent interpersonal relationships.

35. That is, the capacity could exist without the invention or maintenance of contingent conventions. In some contingent social circumstances, including our own, it might be that we could not eat or breathe or drink unless certain contingent conventions, inventions, and institutions were in place; if this were so, we also could not exercise our noncontingent moral capacities and abilities. But this sort of reliance on conventions is itself contingent and not direct in the relevant sense.

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II.i. Consent

I preview the argument about promising by first running a parallel, but simpler, argument about a related communicative activity with similar features, namely consent. Many worried about the generative problem focus exclusively on promising as though promising uniquely involved the generation of morally significant relations merely through the expression of the will to do so. But, promising is not singular in this respect, as the example of consent shows.[36] The idea that an agent can intentionally form an obligation through the exercise and expression of her will alone (and not by first transforming the state of affairs around her) comes part and parcel with any plausible conception of an autonomous agent.

When an agent gives consent to another—to a doctor to perform an examination or to a worker to enter the agent's apartment—she transforms, in the way intended, the moral situation between the parties simply through the transmission of her will to do so. Prior to conferring consent, the agent's right to control her body, and her property, forbade touching or entering as forms of assault and trespass. Simply by expressing her will, the consenting agent morally transforms the situation as intended, thereby generating a permission for another. A new obligation arises too. The agent becomes obliged not to raise complaints that she otherwise could make about entry into her personal space and has a duty to inform the recipient if she wishes to revoke the permission.[37] Thus, consent also reconfigures the moral landscape of permissions and

36. There are other pertinent examples as well, such as commands. Still, some may think that commands gain their force from an authority relation that in turn depends on some sort of commitment and perforce, the power to make commitments. That topic is too broad to take up here.

37. Here, I differ from Raz (1981, 120–22). He argues consent differs from promise in that consent need not impose an obligation on the consenter but may affect his normative situation merely by waiving a right. Raz also argues for two other distinctions between consent and promising. First, he contends that consent, unlike promising, may be given without the purpose to do so, as when one enters a park to walk but where one is on notice that entry renders one subject to its rules. Second, promising, unlike consent, may confer a "right of recipience" on another, "e.g. a right to be paid a certain sum of money," whereas consent may only confer a "right of action . . . e.g. a right to join the expedition." These distinctions do not bear directly on my argument, but I have reservations about them nonetheless. Within some contexts of understanding, one may make a promise through silence even if that is not one's purpose; one is just lazy. Also, one may, by consent, convey a right of recipience, though perhaps only indirectly. Suppose a default mechanism is programmed to supply a monthly payment to me, but must first go through your checkpoint. By failing to

obligations through the mere transmission of the intention to do so and without first altering the independently describable state of affairs.

To be sure, consent and promising can differ. First, consent need not involve commitment into the future. It often exerts power in the present or may be given and later withdrawn. By contrast, promises are pro tanto irrevocable and, typically, bind the agent into the future. Those forms of consent that bind into the future may seem more like hybrids—disguised promises not to later revoke, or to obey later. Second, consent's primary moral impact is to create a *permission* for another to act in an otherwise unauthorized way. The obligations generated are its subsidiary consequences. Whereas, a promise's primary moral impact is to generate an obligation on the promisor and powers and permissions for the promisee (namely, to come to expect or rely on what is promised, with grounds for complaint if disappointed, and the power to relieve the promisor of obligation).

But, these two differences do not bear on the feature underlying the putative puzzle about promising's invocation of a putatively mysterious moral power. They both alter moral status without a change in circumstances that is independent of the parties' wills. Why then has consent seemed so unexceptional, sufficiently invisible so as to render sensible the idea that promises are unique in this respect?[38] Perhaps it is because this moral power flows so naturally from a plausible understanding of a meaningful right of autonomy.

One *could* imagine a conception of autonomy without consent in which an agent exercised complete sovereignty over her body and other personal spaces, such as the home, but had no ability to share or transfer

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exercise your veto, you consent to my receiving the money, though you do not confer a right of action.

38. Annette Baier (1985, 183–86), however, discusses consent and promising together, tracing the (somewhat inconsistent) connection Hume drew between the activities (Hume 1978, 498, 520, 525). In Hume's discussion, as in Baier's, however, consent is understood narrowly, as authorizing the transfer of real property, where property and the rights connected to it are understood as stemming from a convention-based practice. Other sorts of consent, including the sorts necessary for human physical interaction, go unnoticed. While I find it plausible that systems of real property, and the rights associated with them, are conventional, I do not think that basic rights of moral control over one's body could be fully conventional. Prichard also notes the similarity between promising and giving and exchanging. See Prichard 2002a, 257 and also Prichard 2002b, 266–67. Giving and exchanging, like promising, involve the sort of consent that involves, or at least borders on, a promise—because they involve a commitment to allow another use of a thing permanently and thereby give one's irrevocable, future-regarding consent.

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these powers to others. That is, the agent could not grant consent to others to exercise these powers in lieu of or alongside herself. Such a structure is imaginable but so impoverished as to be utterly implausible. As Joseph Raz (1986, chap. 14) has argued, the development and realization of our central autonomous capacities requires a diverse and rich set of meaningful options. Rights of autonomous control that were inalienable to this degree would render (morally) impossible real forms of meaningful human relationships and the full definition and recognition of the self (not to mention making medical and dental care cumbersome, dangerous, and awfully painful). To forge meaningful relationships, embodied human beings must have the ability to interact within the same physical space, to share the use of property, and to touch one another. They must therefore be able to empower particular people. A plausible account of autonomy would have to reject the isolation the constricted model of self-sovereignty would enforce as inconsistent with affording opportunities to lead a decent life and realize one's central capacities. It would have to include the power of consent to share at least some of the powers associated with self-sovereignty.

II.ii. Promising

I will now proceed to construct a similar argument about the power to promise. Just as a picture of individual autonomy without consent is implausible, a conception of a moral world without the power to promise seems unsustainable. The implicit conventionalist assumption that promises are a contingent construct that, morally, we have done and could do without is absurd. The autonomy of moral agents must be capable of being exercised within and through respectful relations with others. For this to occur, the right of autonomy must contain the power to make binding promises. The backbone of the argument is: An autonomous life requires the opportunity to engage in meaningful, moral relations with others. Meaningful, moral relations depend on agents having the ability to make binding promises.

So, what *would* our personal relationships lack were we without the power to promise? Parties could not bind themselves through the communication of their intention to do so. At most, they could say to one another "I intend to φ," but this would always ride alongside an implicit disclaimer: "but I am not morally bound to you to φ just because you know of my intention through my declaration; nor would I be bound if you acted in reliance upon my declaration." In such a world,

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parties could often coordinate: they could declare their wants and their intentions and then hope for the best. If I wanted to attend a concert but only the one you were attending, I could inquire about which concert you intended to attend, tell you my desire and intention, show up, and hope that you had not changed your mind. You would be in the same situation too. Should either of us change our minds in the interim, we might fail to coordinate; at least one of us may be disappointed.

Some part of our social life is like this. We declare our plans to other parties who may be interested, making mutual adjustments based on what we learn through such communications, and we delight when things work out and minds change. But, really, this part of social life is rather uncommon. Reiterated interactions of this kind do not develop into or sustain strong relationships. Could an intimate relationship thrive on healthy terms (or develop) if this were all we could do?

Let's consider a case—two people who are or who aim to be friends, who take each other to have equal moral standing, and who care about one another. How will they fare without the power to promise? A few additional assumptions will isolate the work of promises and disentangle them from the work done by other tacit moral understandings inside interpersonal relations. Both parties are forthcoming. They tell the truth about their desires, beliefs, and intentions, and each knows the other to tell the truth. Let's also suppose the parties are transparent, pedantically so if necessary, and articulate in their speech about their attitudes and perceived moral relations toward one another. As we work through the case, the parties cannot—even implicitly or without awareness—use the resources, even in more casual or less stringent ways, provided by the power to promise. So, the parties know they are not morally bound to protect other parties' reliance interests that develop merely because of what a party says about what he or she intends to do. I will later defend this assumption at greater length. Put briefly, the motivation behind this assumption is that the considerations that motivate the conventionalist account would also call into question the moral force of reliance interests absent a convention that allowed people to rely reasonably on others' declarations.

On these assumptions, we would need promises. Then, I will return to the assumption about reliance and explore whether the moral obligation to protect others' reliance interests is logically prior or subordinate to the notion of promissory-type powers. Even if relaxing the assumption about reliance weakened the power of the thought experiment I pursue, if the idea that reliance exerts a moral force in some way

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depends upon having promissory-type powers, the general argument for the foundational necessity of a promissory power would still be vindicated.

Back to the example: A strongly wishes to φ, but only if B φs as well. For A, φ-ing is important or worthwhile only if it is a joint activity with B. Assume that we are discussing some matter of importance, not merely the philosopher's staple of picking a person up from the airport or meeting someone for lunch. Promises about relatively insubstantial matters are common, but it is peculiar to fixate on them and to ignore the weighty subjects involved in many promises. φ is an activity that will make a difference to the character of A's and B's lives, for example, moving to a particular city. A states her intention to φ as a joint activity. B states his current intention to φ with A, but it is clear that B has less of an interest in φ than A. B finds some of the alternatives to φ-ing, alternatives open only to B, quite attractive and close competitors. From B's current vantage point, it is not perfectly clear whether φ or its alternatives are preferable, though φ seems preferable now. Closer to the time of action, more information will be available that will reveal which option is more worthy. On our assumptions, both A and B are aware that B's declaration of intention does not morally bind him to φ.

In this situation, A and B are unequally situated with respect to φ. This may affect their relationship. What is A to do? Both are equally entitled to reconsider, yet A's interest in φ-ing with B is much stronger than B's interest in φ-ing with A, given B's alternatives. A is more vulnerable. If A prepares to φ, her risk that her investment will go unredeemed for reasons beyond her control is higher than B's corresponding risk. This greater vulnerability may, in some cases, lead to feelings of powerlessness or frustration that can further make the relation more fraught. Or, A might, out of self-protection, fail to invest or preemptively alter her intention, to avoid risking disappointment and to eliminate the source and exposure of her vulnerability. A's withdrawal may cut against both B's and A's interests, partly because such behaviors can sour relationships and partly because what may be best for them both is to φ.[39]

39. I focus here on the negative underpinnings of the perhaps more familiar positive point that promises may create the conditions necessary for parties to engage in joint activity that they otherwise would not perform absent the security provided by a promise. These negative underpinnings are, I believe, prior to the positive potential promises provide.

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Or, A might react in the opposite way to try to make it more likely that B will not reconsider. Without the ability of B to give, and of A to elicit, a commitment, the difficulty A faces is that, given what A wants, A must just hope for B to want what A wants and to use the resources at her disposal to bring this about. What could A do in light of her position? She could sweeten the pot by announcing intentions to do other things B wants should B φ, to make φ clearly superior. *Ex hypothesi*, A's intentions are not binding. Nonetheless, if A implements them, they may replace the inequity of vulnerability with a more substantive inequity—a transfer of goods or services from A to B. Such transfers can make sense within the substance of a good relationship when doing φ already objectively redounds to A's greater benefit or is objectively more costly to B, but that is not the situation I describe. Here, the transfer of goods is not proper compensation to B based on a substantive and unfair inequality between them, but a concrete realization of their disproportionate vulnerability. A's situation makes her both vulnerable to exploitation by B and at risk that she will be tempted herself to initiate exploitative arrangements.[40]

Again, this is not a healthy dynamic for equal participants to play out, at least not with respect to important matters, especially when sustained over time. B may rebuff these offers, or attempt to exclude them from his deliberations. But it is unclear how he can quell them from A from the get-go if φ is not clearly best to B and B is morally free to

40. I assume exploitation *can* occur when A transfers goods to B to induce B to perform an activity even when, taking into account the cost of the transfer from A, the activity B is induced to perform will make A better off in material respects than A otherwise would be. Suppose A and B both enjoy an equal level of resources, calibrated in the proper way to take account of any disabilities or relevant differences in their abilities to make use of resources. Activity Q would benefit A and B equally relative to their starting baseline, but alternative activities R and S are available to B, though not through any merit on B's part, and would benefit B no more than Q; no such alternatives are available to A. Other things being equal, were A to transfer 80 percent of the benefit Q supplies to A to induce B to elect Q over R and S, and were B to accept, this arrangement would be, prima facie exploitative (at least between friends)—even though A desires Q more than B, and even though A's transfer still makes Q worthwhile to A. The substantive, objective inequality between A and B, achieved just through B's superior bargaining position, is exploitative. See also my discussion of objectionable exploitative arrangements that nevertheless benefit the exploited in some way in Shiffrin 2000, 205, 233–34. A full account of exploitation requires criteria to determine what sorts of transfers count as exploitative, especially when the party receiving the transfer has greater opportunity costs, but that task cannot be pursued here.

change his mind. This gives A an incentive to try to influence B's deliberations by making φ more attractive. Or it may encourage A to make not φ-ing less attractive. A could announce or act on intentions—to make other activities of B's that A typically facilitates more costly should B change his mind. This produces a different, but no healthier, dynamic.

Finally, A might redouble her efforts to persuade B of the superiority of φ over other options. She may continue to provide B with reasons, argue with B, and even cite her own potential disappointment if B does not φ as a reason for B to do it. Such activities are not intrinsically destructive in relationships. Quite the contrary. But in some situations, prolonged over time or where there is a sense of urgency, they can become dangerous. What if B does not care to discuss the matter further? B may declare a lack of interest in continued conversation, but this declaration may itself make the relation more strained. If B is really unconvinced of the superiority of φ, B cannot mislead A, and so cannot staunch the conversation without risking tension of another sort. Or suppose it is not so much that B has tired of discussion but that either A or B find it degrading or just awkward and unseemly for A to have to dwell openly upon her potential disappointment and her vulnerability. What can B do if B nevertheless wishes to give A a reason to feel she need not go to lengths to persuade him of the superiority of φ?

If B were able to promise to A to φ, B could end or preempt the conversation and the continuing deliberation. Promises are, interestingly, conversation-stoppers. So much so that if A were to persist with reasons in the face of B's sincere promise, it would represent a certain insensitivity or thickness, even rudeness; it is like being a poor winner. Even if B were transparently unconvinced of φ's superiority, it would not matter because a promise would represent a waiver of B's right to decide the matter based upon the perceived merits of φ alone. B would have transferred that power to A.[41] The capacity of a promise to end a conversation is not valuable merely because it forestalls tedious discussions that may kindle conflict or open wounds. It represents the power promises give friends to navigate around the fact that they are not identically motivated and may not always share the same agenda. The ability to promise provides a crucial tool to permit mutual engagement among

41. Although promises act as conversation-stoppers, the fluidity of the linguistic means by which a promise is made generates the possibility of inadvertently issuing a promise. This risk may prompt greater discussion and precision in the articulation of intentions to make clear what they are supposed to signify.

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equals, who are nevertheless distinct and diverse, without either party feeling the pressure to homogenize.

But is the ability to promise really necessary? Couldn't B just state an intention to φ because it is what A wants or declare an intention not to reconsider on the grounds that reconsideration would be bad for the relationship? If B cares for A and wants A's good, shouldn't B declare an intention to φ not merely on φ's merits but for A's sake? Wouldn't this be sufficient to forestall A's preemptive activities? Communicated intentions of this kind can do some work, but they are not always sufficient. As stipulated, the mere declaration of an intention to φ does not bind the declarer nor authorize the recipient to hold the declarer responsible for φ or any lost investment costs. Morally, B is free to change his mind. So long as that is true, the underlying currents that arise from contingency remain. Further, for the declaration against reconsideration to be fully convincing, B may have to voice the hazards to the relationship of reconsideration. In some circumstances, this recital itself is part of the destructive dynamic B is attempting to circumvent.

Could B publicly vow, to himself, on his honor, not to change his mind, thereby giving B greater reason to stay steadfast, reason that would be evident to A? This move seems unavailable to the conventionalist, at least not one motivated in the traditional ways. How could B lack the power to bind himself *to A* through a declaration of intention to do so but have the power to bind himself to himself through a declaration of intention to do so?

Further, what is importantly missing from solutions that involve increasingly more complex nestings of intentions, declarations, and vows is any involvement of A. Because no statement of intention by B creates an obligation to A, A remains a bystander to B's decision and B's future action. But that is the crux of the problem they face in the first place—the fallout from a localized imbalance of power.

By contrast, a promise by B involves A directly by creating a moral obligation to A and the power in A to insist on or to release B from performance. Thereby, the power to promise provides an opportunity to preclude the development of the other destructive potentials within the situation. Promising to φ conveys B's willingness to forswear the moral right to alter course. B's participation is no longer dependent on how B perceives the merits of the activity at the time of action. The promise acknowledges A's investment in the situation in a way that includes A rather than making A a bystander to what unfolds (as intention-based solutions do). The promise to A does not just increase the likelihood

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of B's performance (if it does so at all) but actively affirms A's status as a free person, capable and worthy of exercising sound judgment about what is to be done. B's relinquishment *and* transfer of that power to A works to neutralize aspects of the situation's hazards and to restore an equal standing between A and B in this local domain.[42]

Of course, the issuance of a promise does not guarantee performance. A promisee may become vulnerable to the promisor in new ways on the occasion of a promise: the promisee may worry whether the promisor will perform; the promisee may rely on the promise, making him or her more vulnerable than before; and the promisor may directly exploit or inadvertently disappoint the promisee's expectations through breach.

I agree that the prospect and reality of broken promises may introduce further or new inequalities into a relationship. So may the extraction of promises by a stronger party that do not serve the weaker promisor's interest. But these facts do not undermine my point. I do not mean to suggest that promises magically repel all vulnerabilities, repair all inequalities, and lock down the future. Rather, for moral agents acting in moral character, promises provide a unique and indispensable tool to manage and assuage vulnerabilities. This claim is compatible with the fact that this moral tool may be misused by those who do not act morally well and that the prospect and reality of misuse may create new, distinct problems and tensions. The complications posed by immoral action are not unique to promising. Other moral devices and duties may be perverted or misused. For instance, the virtue of beneficence may be misapplied. It may give rise both to overweening interference and unhealthy forms of dependence. The less needy may portray matters so as to manipulate morally motivated help and service from the more needy. The possibility of misuse does not, however, impeach the essential importance of duties and virtues of beneficence to establishing and maintaining morally good relations. So too the possibility of misuse, breach, and overreliance on promises does not serve to undermine the

42. Compare Barbara Herman's (2002) reconstruction of Kant's argument for the necessity of marriage—a legal contract—to repair and regulate the inequalities inherent in sexual relations. Kant considers the narrower matter of the inequalities and indignities that arise from sexual desire and being its object. He is both perhaps unduly pessimistic about the necessity for legal relations to resolve them and overly optimistic about the potential of legal relations to do so. Our accounts, however, share a sense that agreements may redistribute or manage power in ways that regulate its hazards.

claim that the ability to promise is essential to morally good relations between people.

It will not have escaped attention that the example rehearsed in this section involves one party providing the other assurance. Earlier, however, I argued that the need for assurance, achieving assurance, and producing promisor belief in performance are not necessary conditions on or features of promising. Examples involving assurance can highlight the significance or function of promising without relying on assurance as a *necessary* feature. Notice that, even in the example, work is done even if A is not successfully assured. B no longer has a moral permission to change his mind and thereby has a new reason to φ. Further, B's failure to φ will alter his moral status with respect to A and, justifiably, A's view of B's moral character. Other examples underscore that assurance may not be necessary for the function of promising to be served. The Profligate Pal may proffer a promise to repay, even if he is not deceived about the recipient's beliefs about his fidelity. Nonetheless, the promise serves as a concrete manifestation of the borrower's willingness to surrender the right to keep the money and his effort to reestablish himself as a person capable of being trusted. Likewise, a friend may offer a promise, even where there is no sign of insecurity or need for assurance, to show good faith and to offer a foundation for security and manifest the willingness to handle localized power well, by empowering the other cooperating party. Still, although assurance need not be the aim or effect of promising, it is certainly a common aim and effect of promising—even a central use of promising.

The suggestion that the power to promise provides an important way to manage vulnerability may be reinforced by returning to the case of children. Their need for promises arises independently of the quality of parenting and is directed at even the most loving, nurturing, devoted parents. It is implausible to attribute children's strong desire for promises predominantly to parental failures to attend to their needs or even to their insecurity about whether they are loved and important. The parent-child relationship, though, does carry an important, emotionally charged, power imbalance. What happens to children is largely determined by their parents; children have little official power. In seeking promises, they seek some measure of acknowledged control over their experience. To promise a child is, in a limited domain, to share power with him or her. Providing a promise on any particular occasion may be morally discretionary, but once given, the state of vulnerability

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and subordination of the child with respect to that issue is, at some official level, suspended.[43]

To allow children to be promisees is part of preparing them for operating as an equal, exercising autonomy of their own, having power of various sorts. Of course, promisees must wait to see whether the promisor will act in character as a moral agent or violate the trust. But that aspect—true of many cases in which one is the object of a duty—is not what is distinctive about the status and powers associated with the promissory duty and the relationship. Being a promisee is not a fully passive state; the promisee officially wields power ceded by the promisor.

Children also seek the status of promisor. This too makes sense. To assume the mantle of promisor represents an effort to assert oneself as a responsible agent, an adult-in-coming, a person who does not merely have needs and vulnerabilities, but who also is needed, has some local forms of power, and is willing to acknowledge his or her power and to commit to use and share it in ways responsive to the needs of others.

II.iii. Reliance

Before circling back to conventionalism, let's revisit the assumption behind the essay's main example. That assumption was that if there were no power to promise, there would be no reliance duties. Sincere declarations of intention about one's future activity that triggered listeners' actions would *not* necessarily generate an obligation to act to avoid the losses of the listener if one later acted otherwise. I do not endorse this assumption as an ultimate moral principle. I suspect some version of a reliance principle with this structure is correct, though its details are

43. I have been focusing on the quite specific and often quotidian promises parents give to children through typically explicit linguistic utterances such as "I promise to take you to see the Mets on Saturday." Another layer underlies these promises. The trivial promise may often serve as a symbolic reinforcement or reaffirmation of the commitment of real magnitude underlying the parent-child relationship, namely that the parent will care for the child indefinitely, in ways that evolve over time. This commitment is, I believe, communicated early on—usually at birth—through both linguistic and nonlinguistic means. Its force does not depend on the child's full cognition of it. In fact, the commitment persists even in light of the child's later expressions of disdain and nonchalance toward it through tantrums, fits of anger, rebellion, rejection—the general episodes of the adolescent years. These phenomena further reinforce my earlier claim that acceptance and promisee belief in performance cannot be requisites of a binding promise.

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difficult to pin down and depend heavily on context.[44] The point of the assumption was rather to avoid implicit use of the power to promise in a different guise, namely, through the recognition of duties of reliance triggered intentionally by communication. Put another way, I question whether whatever moral principle that captures the sense that we have some duties toward those who act in reliance on our stated sincere intentions could both be sufficient to do the necessary work promises do *and* be logically prior to the powers assumed by the principle of promising.

Even were a reliance principle logically prior to or independent of the powers assumed by a promising principle, it would be insufficient to do the work for which we (sometimes) need promises. As I will further discuss in a moment, without the power to promise, it would be unclear when and why declarations of intention generate reliance duties on the issuer just because the listener acted on them. This instability

44. Although Scanlon (1999, 301) is correct to assert that there are *some* requirements to attend to the losses others may suffer because of expectations one has induced in them, the principles he endorses, such as principle L, seem overly broad. Principle L would require that one *always* take steps to prevent another's significant loss just because that loss is occasioned by a disappointed expectation about one's action if one intentionally led a person to develop that expectation, albeit without committing to act in a particular way. This doesn't seem correct. Much depends on the relationship between the parties and the context, as Charles Fried's example of a potential buyer of land illustrates (Fried 1981, 9). A potential buyer asks the neighbor of the plot under consideration whether the neighbor intends to develop her land for commercial purposes because the potential buyer does not want to live next door to a commercial property. Hoping the potential buyer will purchase, the neighbor sincerely reports that she has no plans to develop and cannot imagine wanting to; consequently, the questioner realizes his potential and purchases the land. Five years later, a change in financial circumstances prompts the neighbor to reconsider; she entertains an offer to develop her property commercially. It doesn't seem true that the neighbor is obligated not to accept the offer even though the buyer only bought because the neighbor intentionally led the buyer to expect that she would not develop. Although the buyer may suffer significant losses such as losing the enjoyment value of his property, opportunity losses to buy a different property, and lowered property value, and the buyer's vulnerability to this loss can trace back to his reliance on the neighbor's stated intention, I don't see why this binds the neighbor to prevent the buyer's loss. Maybe this reaction is influenced by the fact that the buyer could have asked the neighbor for a promise or, more realistically, could have paid the neighbor for a guarantee the neighbor would not build. Given that he might have done so and did not, this might explain my sense that the neighbor owes little more than the courtesy of informing the buyer of the neighbor's change of heart. If the power to promise were unavailable, would my sense of the case alter? I don't think so for the reasons given in the text.

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would generate problems of the sort I have already discussed.[45] Further, it seems implausible that any form of reliance action by a listener, even if based on a reasonable supposition that the declared intention was sincere and likely to be realized, could generate a duty to protect the reliance interest and yet be compatible with healthy relationships. A stand-alone reliance principle would encourage unhealthy forms of overinvestment in what people say and might motivate investment just to make the speaker bound. This might in turn discourage full, forthcoming communication, again disserving the parties and the relationship. And, in any case, a reliance principle would fail to protect the interests within relationships between parties in which one party is vulnerable but unable to act in such a way as to create a reliance interest. Recall here Scanlon's case of Harold's guilty secret.

But the main difficulty is in supposing there could be robust reliance duties even if we lack the sort of power implicated in the power to promise. In a world without the power to promise, why would another person's action based upon one's sincere declaration of intention provide a duty to implement one's intention? Why wouldn't the listener act at his or her own risk? There are two issues here: first, whether the listener's reliance could be reasonable and, second, why one's declarations would create a duty to protect another's reasonable reliance upon them. The guesses observers make about our future behavior may typically be accurate but do not generally generate duties to do as predicted. Why would the voicing of the intention make *that* difference? The communication might, after all, be offered merely to provide probabilistic information.

To recognize a robust reliance-based duty (one that would have content distinct from any general duty of benevolence to avoid harm and would in some way constrain what would otherwise be permissible self-chosen pursuits), one must start to think that one's communication attempts to influence the conduct of another in a way that generates a duty to that person *because* it is one's intention to make oneself bound by one's communication. This is not the same as the full-fledged notion of promising, to be sure. But, it already partakes of the same essential idea that is supposed to be controversial in the first place, namely, that

45. Some indeterminacy and instability surrounds reliance interests as they now stand even within a context that includes the power to promise. These difficulties are controlled to some degree by the ability to clarify by asking for a firm promise and by what is communicated by the failure to give or to ask for a promise.

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of generating an obligation through intentional efforts to do so through communication. Whatever its scope, the duty to protect others' reliance interests based on one's declarations of intention seems to rely on the same power that underlies the power to create promissory duties—not the other way around. Why else could the duties associated with reliance be deactivated through the speaker's efforts to ward off the hearer's reliance, that is, through statements of the kind "I intend to eliminate the garden's breeding ground for mosquitoes *but don't count on it*"? If there is no power to generate a duty through declarative fiat, it is questionable that what would otherwise create a duty can be *avoided* by declaration. Notice also that it seems implausible that we must protect the reliance activity of listeners in those cases where the listener reasonably misunderstands what we say, but through no fault of our own. What obligations we have to protect the reliance activities of others hinges importantly on what we actually say—on what we intend to make ourselves responsible for through our intent to do so via communication. The reliance principle seems to be a variation of the promising principle, invoking similar generative powers.

If our moral and metaphysical world were one in which we could not, merely through our expressed intention to do so, generate a duty to others to act in a certain way, how could it be that our communication of our intention to act in a certain way could nonetheless generate a duty to others to act as we said we intended because they believed what we said and took action on it? This seems a very fine hair to be able to split—especially for those who, *ex hypothesi*, have only limited powers. To be sure, the reliance principle is typically thought to generate less onerous duties than full-fledged promises do; the reliance principle is thought to make one owe either performance *or* compensation *or* merely a timely warning that one has changed one's mind to those who might rely on one's declaration. But it should be irrelevant how light or strenuous the duties are if the problem is one of being unable to generate duties through the expression of a will to do so. If it is impossible to do so, then it shouldn't be possible to create a duty to φ by intentionally declaring that one will φ in the hopes of eliciting or providing the foundation for another's reliance.

The problem seems to be this: either the reliance principle invokes a power to create duties through communicating one's will to another or the duties posited by the reliance principle arise because of the effects of such communication, not the intentions to create moral relations generated by such communication. If it is the former, then

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it would seem that the principle should stand or fall with the promising principle but could not precede it. If it is the latter, then the account has to provide some way to explain how the effects of communication are generated and how they ground a duty. We would need an account of why reliance occurs and whether it can be reasonable within a context in which the speaker cannot successfully intend to become bound through the communication of her intention. So, either the reliance account presupposes—and therefore cannot ground—the essential power behind the power to promise, or, the reliance account remains importantly underspecified and mysterious.

II.iv. Formal Promises, Implicit Promises, and Other Commitments

At this point, we can relax the implicit, overly simplistic binary assumption of the main example, namely that either a mere intention to act in a certain way is voiced or an explicit, full-fledged promise is given. Once we acknowledge the existence of the power to promise, we are situated to acknowledge the full spectrum of moral relations sparked by intentions to create them, at least one of which includes some version of a reliance principle. They run the gamut from statements of intention that are meant to generate some legitimate expectations but not a right to performance, to declarations meant to create some basis for, and security behind, reasonable reliance, to strong, full-fledged promissory declarations. Intermediary relations of created commitment often transpire implicitly, doing some of the work I ascribed to firm commitment as such but in a myriad of subtle, flexible ways, employing moral gradations based on the knowledge and comfort level of intimates.[46] Variations may occur, not only with respect to what language is used, if any, but also in the moral consequences of failure to keep the commitment, what conditions should excuse the commitment, and under what conditions the promisee should release the promisor. Most of us use the language of promises and promising *as such* infrequently with friends for good reason; too much precision and formality between friends tends to grate. Yet, friends do not abstain from promissory commitment; rather, they tend to rely on these more implicit and intermediary relations that

46. This degree of plasticity and flexibility may also cut against the conventionalist thesis, at least on those understandings of conventions in which they are understood to resemble games—with rules that are well defined and fairly rigid, even if in principle changeable. See, by way of comparison, Cavell 1979, 294–99.

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are available to those who know each other well. That is why I remarked earlier that it is quite uncommon to have one's social life depend on bald declarations of intentions without commitment; between friends, statements like "I'm going to that concert; I hope to see you there," typically carry with them *some* flavor of obligation to show up, though perhaps less than a full-fledged promise. The same fluidity does not hold if the same utterance is directed at a stranger on a train. Often, special trouble must be taken to clarify that all that one conveys to a friend is a mere intention; one must append an additional "but I can't commit." Although explicit promises between friends may be uncommon, implicit commitments (that involve exercise of the power to promise) are prevalent.

Between friends and other close associates, the formal language of promise tends to be used to negotiate potential fault lines and to emphasize the special seriousness of a particular commitment, as in the case of the colleagues who already had committed to meet at 9 a.m. by declaration; the explicit language of promise signaled the recognition of the importance of, and commitment to, making an extra effort to resist a persistent weakness. Between strangers who lack these forms of mutual understanding, who are attempting to connect and to manage their vulnerability, explicit promises are more common. This may explain why promises between strangers have seemed more salient to commentators.

I have been emphasizing the role of promises in counteracting or forestalling the development of certain negative dynamics within relationships. There is a complementary positive power that full-fledged promises and these other forms of created commitment may bring—namely, to enable a first-person perspective on joint activity. Suppose we just have the ability to state our intentions. You say "I intend to φ with you," and I say "I plan to φ with you," but it is clear, by hypothesis, that this occurs against the backdrop of the ability and moral permission to change one's mind. In this case, when I say "we plan to φ" (or when I think it), my attitude or perspective toward φ-ing is not the same as when I declare to myself "I plan to φ." In the latter case, I can take a fully first-personal attitude to my intention and statement. I may recognize that I am morally free to alter my stance, but I also have grounds for a special form of confidence and resoluteness in my statement. What I do is up to me and under my control. It is not merely that I can make further plans based upon this intention with a high degree of confidence. I am not in a position of forecaster. The relation is as intimate as it can be. By

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contrast, when we have just announced our coinciding intentions, the 'we' statements I make must have the flavor of prediction and forecast. Given your ability and your moral permission to change your mind, I can reason only as to what we are likely—perhaps even virtually certain—to do. It would be presumptuous of me to think otherwise, for what you will do is not up to me. I merely have reliable information. But if this were the limit to our relations, something would be terribly missing. But because the power behind making promises, as well as the paler and more implicit forms of commitment often deployed, involves the transfer of a party's power to change one's mind to another party, and so, a consolidation of the power to determine what the two parties will do, it enables a fully first-personal perspective on joint activity.[47]

Although my focus has been on the way promises help to manage the dynamics within existing relationships, many of these same points illuminate how promises facilitate the creation of relationships as well as less robust interactions between strangers. The positive role that promises and their paler, often implicit, cousins can play in enabling the plural first-person perspective makes this quite explicit and direct. And, of course, promises and their paler relatives, as well as the mere opportunity to ask for and make them, can ameliorate concerns about exposing oneself to a variety of the local hazards within relationships and render them safer. Thereby, promises can play a role in both the creation of a relationship and its moral substance.[48]

I have been arguing that we must have the power to make binding promises to permit relationships of some complexity with the right moral dynamics to develop and flourish. In a fuller account, greater

47. I suspect that the power involved in promising enables the first-person perspective on joint activity, but I do not endorse the view that all we-intentions are based on an exchange of full-fledged promises. The criticisms of that view are rather convincing (Gilbert 1993, 627–49; Roth 2004). Rather, the sorts of intermediary and often implicit commitments that range on the spectrum between promising and mere statements of intention seem involved. In some cases, all that may be involved is the implicit granting of permission, perhaps reciprocally, for the other party to speak for oneself. Because this permission often ranges into the future and there are at least minimal commitments not to change one's mind at whim and to provide reasons if one does (Roth 2004), the powers involved seem to lie between the more spare forms of consent and the broader, more committal forms of full-fledged promissory commitments.

48. For different parties, the shape and formality such commitments take may vary considerably. This point is well illustrated by Patricia Williams's account of her perceived need for formal contractual promises to rent an apartment and her colleague's perceived need to avoid formality and to use more informal commitments to achieve the same end (Williams 1991, 146–47).

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detail would be provided about how the *power* to promise can often suffice, even when undeployed, why promises need not always be made, and the role of promising among strangers. But in the limited space I have here, I want to return to how this argument bears on the bindingness of promises and the arguments about conventionalism.

II.v. Bindingness

In a sense, the argument for the bindingness of promises falls out quite naturally. The conception of the ability to promise for which I have been arguing is one on which a promisor has the ability to transfer a right to make a decision and to act on certain reasons to another party.[49] I have been arguing that they must have this ability if they are to have the ability to conduct relationships of adequate moral character. It thus parallels the argument about consent I made at the outset—that consent involves the ability to transmit a moral permission to act in certain ways and that this power is essential to the ability to conduct meaningful relationships; if autonomous moral agency is possible, this power must be possible. If this argument succeeds, then the argument for bindingness isn't so difficult. By promising to φ, the promisor transfers his or her right to act otherwise to the promisee. To not φ, then, is to act in a way the promisor has no right to do, and to φ is to act in a way the promisee has a right that she (the promisor) do.

This account of promissory bindingness may seem fast. I have argued that we must have this power, but I have not given a direct argument about how this power is possible; that lacuna may feel especially troubling to those who are already skeptical of the model of promising on which something like a right to do otherwise or a right to decide whether to act based on certain reasons is transferred from the promisor to the promisee. I do not harbor such doubts, but the conclusion that promises are morally binding absent special circumstances may be arrived at through a redescription of the argument's themes that makes the basis for bindingness more vivid. Apart from whether or not a promise provides assurance, or whether it spawns expectations or reliance by the promisee, a promise represents a solicitation of trust

49. See also Owens 2006 for a largely complementary, but distinct, defense of the view that promising involves a transfer of authority. The significance of the transfer of the right to act a certain way to the promisee is also stressed by Gilbert (2004, 83–109) and Hart (1955, 183–84).

addressed to the promisee from the promisor. The promisor forswears certain opportunities that may or may not be to the promisor's advantage and represents herself as willing to act, with respect to those opportunities, as specified unless the promisee releases the promisor.

Why would this forswearance be morally binding? One could appeal to a more general principle of the following sort: other things being equal, it is wrong to *solicit* another's trust and then to act in a way that is inconsistent with that invitation.[50] If one invites trust in a particular way—for example, by offering a gift or by declaring that one is the sort of person in whom another could safely confide—it is wrong to retract the offer (unless it was clear that a timely acceptance was necessary) or to act in ways that undermine its value. The wrongness does not essentially lie in the gift or in the offer's intrinsic significance to the recipient, but because such actions belie the invitation of trust. The offer need not have already been accepted or valued by the recipient for retraction or undermining behavior to be offensive. So, too, gratuitous lies are wrong whether or not the hearer cares about the content, or relies on, or even believes what is represented; such lies are wrong even if the lie is retracted before the hearer comes to believe or rely upon the liar's misrepresentation. When one solicits trust through the forswearance of opportunities and a representation that one will abide by another's discretionary judgment on the matter, but nonetheless acts on the forsworn opportunity, one has acted inconsistently with one's solicitation of trust.

My argument may be understood as an argument about why nonepistemic trust (that is, trust concerning whether people *will do* what they sincerely say they will, as contrasted with the trust involved in gauging the sincerity and accuracy of their claims about their intentions, beliefs, and the world) is essential to moral relationships, and so why acting in ways that are inconsistent with solicitations of nonepistemic trust is wrong. The situations I have described, in which there is a need to solicit trust and to cultivate trust, underscore the moral stakes. Promises often involve the solicitation of trust in situations in which there is a local imbalance of power or vulnerability, or the potential for this to

50. Compare Thomson 1990, 298, which also emphasizes the responsibilities attendant to sincere invitations of trust that are recognized as such by the recipient. Compare also Kimel 2003, 14–29, 57–64; Fried 1981, 16. Kimel's account, though, hinges on promisee belief in performance and respecting the trust that grows from it. Fried's language is ambiguous as to whether the invitation itself activates the duty or action on the invitation, that is, the actual development of trust.

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develop, although it is not necessary in any particular case that this be so. The promise does not only involve the solicitation of trust but the solicitation of trust through a representation that certain opportunities to exploit the imbalance or vulnerability, to leave someone vulnerable, or to allow the hazards of vulnerability to unfold will be forsworn. This may reasonably be taken as a further representation that the conditions of the relationship matter to the offering party, that the party represents that at least some aspect of the relationship will be conducted on terms sensitive to, and respectful of, the potential for vulnerability and in a way that reinforces the recognition of the equal needs and status of the participants in the relationship. To solicit trust that a certain form of power will be managed in a respectful way that will try to control the hazards of vulnerability and to then act in a way inconsistent with such a solicitation seems doubly violent toward the values of trust.[51]

III. Conventionalism Revisited

One may object that even if this account explains why we must have the power to promise and why, generally, breach of promise is morally wrong, it does not disrupt conventionalism. The argument does not establish that the right or ability to make promises is an integral part of individual autonomy but rather, the power to make promises is the sort of thing that enhances our lives and makes the options available to us as autonomous agents richer and more attractive. This is compatible with the view that in suitable circumstances, we have an obligation to initiate and follow a convention that makes this power available so as to

51. Scanlon also adverts to related principles of due care and against manipulation to provide the backdrop for the principle of fidelity he puts forward. Although something about the wrongness of manipulation, attempted manipulation of others, and the failure to take due care to avoid manipulation seems foundational, Scanlon's formulations of these principles are overly narrow. His principle banning unjustified manipulation focuses only on cases in which one person courts another's expectations in order to induce action, where that action may bring *significant loss* to the agent (Scanlon 1999, 298). The principle of due care also focuses on the risk of *significant loss* (ibid., 300). As I have already argued, the requirements of belief, risk of loss, and reliance are unnecessary in this domain. The wrongness of manipulation seems more likely to be located in what manipulation represents about the manipulator's view of how another may be treated. This view and the willingness to act upon such a motive underwrite the wrongness of the behavior. They render sensible the emotional reaction to manipulation and the feelings of betrayal that occasion discoveries of manipulation, even when no significant loss was at stake (something Scanlon's principles cannot explain).

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provide a full set of options for autonomous agents. So understood, this may be an argument for establishing a certain sort of convention and not necessarily an argument against conventionalism.

I will not try to establish definitively that the power to conduct meaningful, equitable relationships is inherent in the capacities of an autonomous moral agent. Cursorily, the ability to live freely on an equal basis with others seems central enough to the foundations of morality and the significance of individual autonomy as to render it plausible that the power is inherent in the basic rights and capacities of self-governing individuals. This depends on the idea that the fundamental powers contained within autonomy include those necessary to comply with morality's minimal demands; it thereby relies on a fairly minimal version of ought-implies-can (though it could derive from a stronger notion of autonomy, one more intimately connected to moral identity). For agents such as ourselves, whose embodiment and development must necessarily involve dependent, interdependent, and mutually enriching relationships with others, it seems implausible to posit that the right of autonomy must be understood in such a stark individualist way that it would not include the powers necessary to become full agents and to help others become full agents who can recognize and be recognized by others in morally respectful and empowered ways.

But what of the simple fact that promises depend on language, which is conventional?[52] For that matter, don't minimally complex and rich relationships between persons depend on language and thereby depend on conventions?

Promises depend on the ability to communicate, but, as Scanlon has argued, they may not necessarily depend on the parties' sharing a common language. A commitment of some brute sort may be communicated extralinguistically, albeit without the nuances accessible through a common language (Scanlon 1999, 296–97). Further, what matters for the issue at hand is where the contingency enters. While the details and contents of any particular language may be conventional, the impetus, ability to, and need for communication are not conventional for rational, moral agents, at least those who are separate individuals with limited epistemic capacities. Or so I submit.

In that vein, we should distinguish those cases in which conventions and other inventions help us to overcome persistent weaknesses, even in invaluable ways, but do not supply any essential assistance. For instance, labor-saving devices and birth control methods may

52. See Anscombe 1981b, 99; Lewis 1969.

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facilitate the achievement of gender equality by dampening the effects of, and controlling tendencies toward, domination. But the duties associated with gender equality do not depend essentially on these inventions. In contexts in which inequities often develop—such as the care of children—the demand for an equal division of labor and burden could be articulated and supplied even absent such inventions. The invention of labor-saving devices is not necessary to address the inequity; rather, they help us evade the difficulties posed by persistent failures to do one's equal share and to create the expectations and socialization processes that would render this more commonplace.

By contrast, the tensions and hazards within intimate friendships I have been describing do not emanate from arbitrary and unreasonable forms of power that arise because of differential physical powers or morally arbitrary social valuations of characteristics. Rather, they represent persistent tensions arising between rational agents who are separate and distinct—who have wills and interests of their own—and who can and need to form special relationships. Our distinctness makes enriching, meaningful friendship possible but also creates hazards associated with vulnerability; this connection is not, of course, accidental. Not only are the hazards inherent in the possibility of friendship, but the salve offered by promising differs from the role played by labor-saving devices with respect to gender equality. A promise is not a more convenient way to do what could be done with complicated forms of exchanges of intentions. Nor is it a way to circumnavigate around the morally unfortunate fact of difference or heterogeneity. Difference and heterogeneity are not unfortunate states. It is not a moral failure that we do not and cannot anticipate our friends' every need and wish and then coordinate perfectly to act together with complete and emotionally safe harmony. Promises provide a method to manage hazards and tensions between distinct, different people; the opportunity they supply does not merely substitute for or make easier moral behavior that could or should have been achieved just through moral awareness, firm resolve, or true care.

Suppose, however, it is insisted that the most my argument shows is that it is quite important that we have the power to promise to have morally respectful relations with others. This is consistent with its being the case that promising is not morally elemental and that, rather, we have a duty to create a convention that creates the power to promise.

I suspect this view reflects an inadequate appreciation of how fundamental the power to promise and its relata are, but I am disinclined to press these points further. Once we have arrived at this juncture, though

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my position differs from the conventionalist response I have just outlined, little of significance remains at stake between conventionalists and nonconventionalists about promising. If it is conceded that there is a *duty* to establish a convention of promising to facilitate morally healthy relationships, then much of what seems distinctively problematic about conventionalist accounts has evaporated. On such a view, the existence of the convention would no longer be optional and its internal structure would be significantly constrained in light of the moral purpose to which it was being put.

Furthermore, this version of conventionalism also embodies a substantially different understanding of the nature of the promissory obligation than that offered by standard conventionalism. If there is a duty to create the convention that arises from the requirements associated with sound moral relations with others, then the duty to comply with the convention cannot be completely described in terms of duties not to undermine or free-ride on a useful convention. The relevant duty would have deeper roots, more interpersonal at their source. The underlying duty giving rise to the impetus to create and maintain the convention would be a duty owed to those with whom one has or would have direct interpersonal relations.[53] To breach a promise, then, would not merely be to act in a way contrary to those obligations associated with useful conventions, but, in doing so, to act in a way that was disrespectful of the moral claims of individuals with whom one has direct relations.[54]

53. Described in this way, the moral phenomenon of promising would then be analogous to a version of nonpositivism about law. Nonpositivists concede that legal systems standardly involve conventions and that the unpacking of most legal duties will involve some reference to conventionalist explanations. But nonpositivists typically deny that conventionalist explanations suffice to account fully for the existence and content of these duties. On one strand of nonpositivism to which I am sympathetic, we individuals who share social relations have a duty to create legal systems in order to maintain proper relations to one another, to establish the social conditions that embody and facilitate justice, and, perhaps, to establish a common voice and identity. These duties to one another provide the moral impetus to create legal institutions, moral constraints on and moral inputs to their form and content, and the underlying moral basis for (and limits on) the duties to comply with legal requirements. This structure looks quite similar to the revised conventionalism about promising I imagine in the text, except that the underlying duties in the promising case concern direct interpersonal relations, whereas the underlying duties in the case of law are duties we as a group owe to one another as group members.

54. Wallace and Kolodny have argued that conventionalist accounts are compatible with, and a prerequisite to, accounts that stress a more directly interpersonal duty between the promisor and promisee. See Kolodny and Wallace 2003, 119–20, 150–54.

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On this rendering, the conventionalist view sheds its association with contingency, comprehensive plasticity, and a purely convention-based account of the obligation to keep promises. Instead, it becomes a view about a set of practices we are obliged to one another to create and maintain. Once conventionalism has transformed itself this completely, it loses its moral distinctiveness.

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Their rendering of the duty associated with the convention itself, however, is quite traditional and spare, stressing the duty of fairness and the duty not to free-ride. The stronger version of my argument challenges their prerequisiteness claim. The weaker version suggests that conventionalism is not merely compatible with directly interpersonal duties, but conventionalist duties themselves rest on a deeper foundation of duties arising out of the moral claims that emanate from interpersonal relationships.

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