1. **Last time: artificial promissory obligations**

Conventionalists and rule-utilitarians share the view that promissory obligations are artificial

* dependent on a particular social practice or convention
* contingent to human existence
* contingent to morality (we could be moral without the practice)

Some theories disagree on this point and maintain promising is integral to morality

Most if not all theories fall on something of a spectrum between these two poles. Today we move gradually further away from the artificial pole of that spectrum

1. **Rawls’ Contractualism**

Contractualism: a moral principle is valid iff it is acceptable to all of those who are party to an original (hypothetical) agreement that establishes it

Contractualism about promises: the principle that we ought to keep our promises is valid because it was accepted by all in a foundational deliberation, or it would be endorsed by all in a hypothetical situation of founding the practice

Rawls’ contractualism in *A Theory of Justice*:

* principles of justice apply to our social institutions, which by turn determine the rules of a just society.
* principles of justice are arrived at by a representative group of members of society deliberating under the condition of the Original Position
* in the Original Position all are under a Veil of Ignorance about their contingent personal and social features –age, gender, sexuality, race, social class etc.
* deliberators are to arrive at agreement on what principles should govern society.

Rawls argues for a number of principles via this method. The most notable for this lecture is:

**The principle of fairness:**

“[A] person is required to do his part as defined by the rules of an institution when two conditions are met: first the institution is just (or fair)…and second, one has voluntarily accepted the benefits of the arrangement or taken advantage of the opportunities it offers to further their own interests.”

John Rawls, *A Theory of Justice* Harvard University Press, 1971, p.112

Why isn’t this just conventionialism?

1. For a promissory obligation to be binding, its institution must be just
	1. (And note that the justice of the institution is not a question of utility)
2. Institutional obligations apply to a person only if that person has voluntarily accepted the benefits of the institution

Thus Rawls’ (later) account of promissory obligation:

If you make a promise under a just institution of promising, then you are obligated to obey the rule of promise-keeping within that institution because to do otherwise would be to ‘free-ride’, and this transgresses the principle of fairness

(For more detail from Rawls on promising see section 52 of *A Theory of Justice*)

1. **Problems for Rawls’contractualism**

Problem 1: Circularity

1. Rawls needs the principle of fairness to demonstrate promissory obligation
2. The principle of fairness is based on an original agreement
3. But that original agreement can only be binding if promises obligate
4. Hence Rawls assumes what he is attempts to demonstrate

# See: Michael H. Robins, Promissory Obligations and Rawls's Contractarianism *Analysis* Vol. 36, No. 4 (Jun., 1976), pp. 190-198

Problem 2: wronging the institution and not the promisee

Problem 3: promissory obligations don’t rely on a social institution

(similar to 2 of the objections to conventionalism and rule-utilitarianism considered last week)

Reply to problem 2: the principle of fairness can be articulated in the way that Herbert Hart articulated it:

“When a number of persons conduct any joint enterprise according to rules and thus restrict their liberty, **those who have submitted** to these restrictions when required **have a right** to similar submission from those who have benefited by their submission”

HLA Hart (1955) ‘Are there any natural rights?’ *Philosophical Review* 64

Counter-reply 2: but then the wrong is against all others who partake in the promising practice without freeriding, not against the promisee

1. **Scanlon’s contractualism (aka an expectations account)**

Expectationists generally think:

1. Promises invite the trust of the promisee
2. Betrayal of that trust causes harm to the promisee

Such a view is attractive to utilitarians, but they run into problems (see last week). But the wrong of b needn’t be understand as a matter of negative utility

Scanlon’s more general contractualism is similar to Rawls’:

fundamental moral principles are those that would not be rejected by reasonable people in a foundational deliberation situation

The main difference: Scanlon removes institutions and conventions altogether

False promises are prohibited by a moral obligation not to ‘unfairly manipulate’ others.

E.g.1 the stranded equipment on the other side of the river

E.g. 2 the manipulative farmer

But what about sincere promises later broken?

The principle that Scanlon proposes to cover breaking of sincere promises is the following:

The Principle of Fidelity: If (1) *A* voluntarily and intentionally leads *B* to expect that *A* will do *X* (unless *B* consents to *A*'s not doing so); (2) *A* knows that *B* wants to be assured of this; (3) *A* acts with the aim of providing this assurance, and has good reason to believe that he or she has done so; (4) *B* knows that *A* has the intentions and beliefs just described; (5) *A* intends for *B* to know this, and knows that *B* does know it; (6) *B* knows that *A* has this knowledge and intent, then, in the absence of special justification, *A* must do *X* unless *B* consents to *X*'s not being done.

(TM Scanlon 1998, *What We Owe To Each Other*, Cambridge: Harvard University Press. P.304)

This is very condensed; note some things the principle is designed to capture:

1. Promises differ from simply communicating intentions
2. Promises that bind cannot be escaped by warning the promisee that I will not act as previously promised e.g. the difference between promise to meet someone and promise to keep a secret
3. The mutuality captured in 4-6 distinguishes a binding promise from cases of indirect manipulation e.g. an adapted version of the farmer case (see Scanlon’s chapter for his account of the example
4. **Problems for Scanlon**

Problem 1: Scanlon fails to show that promises generate obligations distinct from the duty not to mislead people

(Elinor Mason, “We Make No Promises”, Philosophical Studies, 123(1–2): 33–46.)

Problem 2: circularity again!

1. The function of promises is to generate reasonable trust
2. 1 is achieved only if the promisee is confident that the promiser (a) has a valid promissory obligation and (b) is obligation-responsive
3. Grant (b) is evident to the promisee
4. If the promisee is an expectation theorist, they will think (a) is the case only if they have trust in the promiser, which ought not to be betrayed. But this returns us to 2, and we are stuck in a loop.
5. **Normative powers**

The normative powers view is a rather ingenious combination of conventionalism and more direct moral duty theories of promissory obligation

* Like conventionalists, NP theories maintain that we do create these obligations ourselves
* Unlike conventionalists, that creation is a direct intervention into the distribution of non-artificial moral rights and duties

Normative Powers view: promising as a NP, and like other NPs (such as consent) it plays an integral role in our moral lives. We could not be moral without it!

Consider Seana Shiffrin’s transcendental argument for both the value and existence of the normative power of promising

(a transcendental argument here means the postulating of the existence X, the identification of the conditions for the possibility X, and the concluding inference that those conditions must hold because X exists)

Shiffrin argues that “morally meaningful” interpersonal relationships would be impossible without the normative power of promising

Consider: two friends, A and B, discussing whether they will move together to a new city. A is evidently very keen to move, B could take it or leave it. How might that conversation go without the possibility that B could promise A they will move?

See Seana Shiffrin, 2008, “Promising, Intimate Relationships and Conventionalism”, *Philosophical Review*, 177(4): 481–524

For David Owens (another NP theorist) the aim is to give a functional explanation of the capacity we have to directly intervene in what obligations we have

And such a functional explanation relies on the concept of deontic value: just as states of affairs can have value, so too can rights, duty, and obligations

We can ask: would it be good if X state of affairs were the case? So too we can ask: would it be good if we were obligated to PHI?

See David Owens, 2012, Shaping the normative landscape. Oxford University Press, (the above is based on chapter one, but promises are covered throughout the book)

Note that this account is particularly good at tackling some non-standard examples:

e.g. A – accepting a challenge

e.g. B – strengthening one’s resolve

See Joseph Raz, 1977, “Promises and Obligations”, in P.M.S. Hacker and Joseph Raz (eds.), *Law, Morality and Society: Essays in Honor of H.L.A. Hart,* Oxford: Clarendon press, pp. 210–228

1. **Criticisms of normative powers theories**

Problem 1: the fact that it would be valuable to be able to create obligations at will doesn’t mean we can

# See Michael G Pratt, Promises, Contracts and Voluntary Obligations, Law and Philosophy, Vol. 26, No. 6 (Nov., 2007), pp. 531-574, specifically p. 567

Reply 1: Shiffrin’s transcendental argument seems to help us with this

Problem 2: healthy relationships require the ability to communicate a commitment. But is that enough to generate a binding obligation?

**Next lecture:** the validity of consent

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