

PROMISING WITHOUT INTENDING*

Words can change the world. In particular, they can change the normative situation. Just by speaking I may affect what I, or someone else, is entitled to have or obliged to do. This can happen at least two different ways.

First, I may change the normative situation by influencing my audience. Suppose I communicate an intention. If my words convince my audience that I shall behave in a certain way, that fact may oblige me to take their expectations into account when the time comes to execute that intention. Suppose I communicate a belief. If my words mislead my audience that may oblige me to compensate them for any harm suffered. In these and many others ways, words communicating the speaker's state of mind can change the normative situation. For this to happen it is not required that the speaker intend to change the normative situation in saying what he says. He may envisage this change but his words have their normative impact regardless.

Now suppose I say "Here is my car. Take it," or "I order you to leave." What I must purport to be doing for these words to have their normative impact is to be speaking with the aim of thereby changing the normative situation—of giving you the right to use my car or of requiring you to leave the room—precisely by expressing the intention of so doing. It is because I purport to be speaking with the intention of thereby changing the normative situation that my words have the envisaged effect. Very often, those who use these words also want certain things to happen. I may want you (and not the local car thief) to have the use of my car. I may want you out of my sight. But I need not intend these outcomes, nor even purport to intend them.

Those who give and command are exercising a certain *normative power*, a power to change the normative situation by communicating the intention so to do. As we shall see, such communications do not always succeed but success does not require the speaker to declare that he intends the world to live up to the demands that he is imposing on it. Nor does it require him to declare that he believes the world will live up to those demands. He may have these intentions or beliefs and

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he may communicate them to his audience but such communications are inessential to the exercise of a normative power.

I have drawn a sharp line between communications of belief or plain intention and exercises of normative power. But are there ways of changing the normative situation by saying something that resist such neat classification? Consider promising. A promise very often puts the promisor under an obligation to fulfil their promise. This happens because the promisor deliberately communicates the intention of hereby taking on that very obligation. Yet many writers hold that in promising to \emptyset one must also communicate the intention of actually \emptyset -ing.¹ If they are right, promising is unlike giving and commanding in that a sincere promisor must intend not just to change the world in its normative aspect but also to make the world live up to these new requirements.

I shall deny that a promisor must purport to intend to fulfil his promise. At bottom, promising is just like giving and commanding, an exercise of a normative power. We find promisors who succeed in putting themselves under an obligation to perform by deliberately communicating the intention of so doing without communicating the intention of actually performing.

NORMATIVE POWERS

One who exercises a normative power communicates a certain intention. When does an utterance *communicate* a given intention? I cannot offer a serious analysis of the notion of communication. Rather I shall formulate two (related) tests of what is communicated by an utterance, tests which serve to indicate which notion of communication is in play.

Many utterances involve the speaker's communicating that he is in a certain mental state. Suppose that utterance U communicates that S is in mental state M . It follows that if S utters U without being in mental state M , there is something wrong with S 's utterance. I will call this a wrong of insincerity.² To apply this first test, we need not know

¹ For example, Hume holds both that a promise consists in the expression of a will to undertake an obligation and that "when a man says *he promises anything*, he in effect expresses a *resolution* of performing it"—*A Treatise of Human Nature* (New York: Oxford, 1978), p. 522. American law appears to support this idea. *The Restatement (Second) of Contract* (American Law Institute, 1981) says that "a promise is a manifestation of an intention to act or refrain from acting in a specific way, so made as to justify a promisee in understanding that a commitment has been made" (section 2). For scepticism about whether the making of a legally binding contract must involve the communication of an intention to perform, see Ian Ayres and Gregory Klass, *Insincere Promises: The Law of Misrepresented Intent* (New Haven: Yale, 2005), chapter 2.

² This is not the only kind of utterance which might be called insincere. For example, I think someone can make an assertion where it is common knowledge between speaker

what sort of wrong insincerity is. Nor need we deny that people ought sometimes to be insincere, all things considered. I assume only that there is something wrong with insincerity: insincere utterances are flawed utterances.

As to the second test, when this flaw is made explicit the resulting utterance is odd in a distinctive way. Someone who proclaims the insincerity of their own utterance makes a statement which is absurd without therefore being self-contradictory. Insincere statements can be true and they can remain true even when they acknowledge their own insincerity. If so, we have a second way of discovering whether, for a given utterance U and a given mental state M , someone who utters U communicates that they are in M : take someone who utters U whilst stating that they are not in M and ask whether their utterance is incoherent in that distinctive way. I shall call such incoherence *Moorean absurdity*.³

Let us now apply these tests to various exercises of normative power in order to discover what, if any, mental states they communicate. I say “I give you my car.” Here I communicate the intention of giving you my car. And since to give you my car is to ensure that you acquire certain rights and that others acquire the corresponding obligations, am I not communicating the intention of changing the normative situation in just those ways? This hypothesis certainly seems to pass our two tests. First, someone who said those words in all seriousness without having any intention of changing the normative situation would be guilty of a form of insincerity. Second, if he made this explicit by saying “I give you my car but I do not intend that you should hereby acquire the right to use it,” he would be saying something absurd.

It might be suggested that a giver does not merely *communicate* the intention of changing the normative situation, he must *actually* intend to change it. Perhaps one who does not mean to augment the rights of his audience is not really giving, whatever words he might say. And perhaps someone who says “I give you my car but I do not intend that you should hereby acquire the right to use it,” is uttering an outright

and audience that the assertion is untruthful. This assertion might be called insincere even though there is no attempt to communicate any information, either about the world or the speaker. In this paper, I use the notion of insincerity to mark flaws in communication.

³ See G.E. Moore, *Selected Essays*, Thomas Baldwin, ed. (New York: Routledge, 1993), p. 210. By using Moore’s name, I do not wish to commit myself to any particular analysis of statements like ‘ p but I do not believe it’. In particular I am not assuming that the oddity of such statements depends on assertion’s role in communication. There may be more than one variety of Moorean absurdity.

contradiction, is uttering a sentence which could not possibly be true. Not so.

For a start, it is perfectly possible to unintentionally make a gift. Suppose that, so far as I know, I do not own any of the umbrellas in the rack but you clearly need an umbrella to get yourself home without a soaking. You are not prepared to steal but I devise a cunning ruse to get around your scruples. I point to one of them and say "Take my umbrella," thereby communicating the intention of giving you the right to use it. Here I am not just joking; my utterance is perfectly serious because I mean to represent myself as speaking with a certain intention. But I am being insincere because this is an intention I do not have. I cannot intend to give you the right to use the umbrella because I do not believe that I own it.

Now suppose that I am the unwitting owner of the umbrella to which I point. Then when I say "Take the umbrella," I succeed in giving it to you inadvertently. The first thing this shows is that one can give someone a gift unintentionally, provided one intentionally communicates the intention of so doing. It is the communication of the intention to give, not the giving itself which must be intentional. The second thing this shows is that the sentence, "I hereby give you my umbrella but I do not intend you to acquire the right to use it," could be true.

It may now be wondered whether the communication of the intention to create an obligation must itself be intentional for it to bind the speaker. A speaker may inadvertently give his audience the impression that he is communicating the relevant intention. Provided a reasonable hearer would believe that he had spoken with the requisite intention, could that be sufficient for the speaker's words to bind, whatever he may actually have intended?⁴ I doubt it and I shall illustrate my doubts with a case of promising.

One cannot make it true that someone has promised by misunderstanding them, however well founded one's misunderstanding. Many misunderstandings turn on the difference between merely expressing an intention to do something and promising to do it.⁵ Talking to you on the phone, I take myself to be communicating a present intention to holiday with you while you take me to be promising to holiday with you. There need be no fraud or insincerity here, nor even any negligence; perhaps some subliminal noise on the line dulled your hearing at the vital moment. Neither of us is to blame for the miscommunication. When the confusion becomes apparent, I should not just brush

⁴ Patrick Atiyah, *Promises, Morals and Law* (New York: Oxford, 1981), pp. 146–48.

⁵ Other misunderstandings turn on the difference between giving and merely loaning and on that between ordering and merely requesting.

you aside. I should do what I can to join you. Still, I did not promise to join you and if I do not you might accuse me of a lack of consideration but not of a breach of faith. Suppose instead that I (alone) was aware that there had been some interference in the line but did not bother to check whether my nuanced reply got through. I am now at fault and would need to do more to make up for the misunderstanding. In some circumstances I might even have an obligation to go but, if so, the basis of this obligation would be your reasonable conviction that I promised and the reliance you placed on that impression, not the fact that I did. I am required not to honor my word but to take responsibility for the confusion I caused.

What is true of promises is equally true of gifts and commands, at least in so far as all of them are thought to affect the “moral” situation, that is, the appropriateness of such reactions as blame and guilt. For their words to constitute exercises of the relevant normative power, givers, commanders, and so on, must intend to communicate the relevant norm-creating intentions.⁶ But is this all that is required of them? Must not a sincere giver or commander at least intend that the world be a certain way, that it conform to the new normative situation he has created? I doubt it. True, these utterances do on many occasions communicate information about what further intentions the speaker has in exercising his normative powers but such communications are not required for this exercise to occur.

Often the speaker either has very little influence over whether the world will conform to the normative situation he is creating or else is unwilling to exercise whatever influence he has. I may give you my car because I am tired of fending off the car thieves in my neighborhood. As a decent person, I may wish that your property rights in the car will be respected without having any confidence that this will occur and without having any intention of helping to fend off the thieves. I am giving you the car precisely to rid myself of this responsibility. So far as I can see, my behavior here is impeccable. In any case, there is no wrong of insincerity. And I might be quite explicit about why I am doing what I am doing without courting absurdity: “Please take the car off my hands, if you think you will have better luck keeping hold of it.” Were I indifferent to whether your car was stolen this would be a

⁶ The law often holds people to gifts and contracts (though not marriage contracts) even though they had no intention of entering into them provided they appear to do so or went through the prescribed procedure. (This may be for evidentiary reasons.) The same may be true of the moves people make in games. My notion of normative power covers only those norms which determine the appropriateness of reactions like guilt and blame. Legal liability is a different matter.

count against me but even here the fault would not be a wrong of insincerity. And if I made my unfortunate attitude explicit, whilst you might resent my indifference, my words would be perfectly intelligible and I would still succeed in changing the normative situation.

We have considered examples in which I communicate the intention of changing the normative situation without communicating the intention of making the world conform. Are there cases in which I communicate the intention of ensuring that the world ought to be a certain way, while also declaring that I shall do what I can to ensure that it will not be that way? A present might be given with a view to attracting the attention of thieves and a command may be issued with a view to provoking disobedience, thus creating the opportunity for punishment. I do not see why such a malevolent intention cannot be made explicit. By making it explicit, the speaker exposes his malice to public view and that may be to wrong its object even more. But the wrong exposed here is hardly a wrong of insincerity; the speaker is being far too blatant for that. Nor do his words invalidate either the gift or the order. Indeed, his audience may be happy to accept this exercise of normative power, confident that his plans will be frustrated.

I conclude that givers and others who exercise normative powers do so by communicating the intention of hereby exercising them. While so doing, they may communicate other intentions or mental states. Conversely they may communicate the intention of exercising a normative power by communicating some quite distinct mental state (for example, I may give someone a present by saying “I am sure you would like this”). But what is essential to the exercise of a normative power is the communication of the intention of hereby exercising that power.⁷

IS PROMISING THE EXERCISE OF A NORMATIVE POWER?

What intention does a promisor communicate? If promising is anything like giving and ordering, a promisor must purport to speak with the intention of hereby changing the normative situation by putting himself under an obligation to perform.⁸ As with these other exercises of normative power, a promisor need not actually have the intention he purports to have, though he must deliberately purport to have it.

⁷ I have written as if anyone with the relevant normative power who intentionally communicates the intention of changing the normative situation thereby succeeds in so doing. This is not right. For example, a giving by someone who owns the object in question and deliberately communicates the intention of giving it away may be invalidated by further factors like duress or deception or the recipient's declining the gift (see Owens, “Duress, Deception and the Validity of a Promise,” *Mind*, cxvii, 462 (April 2007): 293–315).

⁸ Joseph Raz, “Promises and Obligations,” in P.M.S. Hacker and Raz, eds., *Law, Morality and Society* (New York: Oxford, 1977), pp. 210–28, at p. 211.

Let us apply the tests outlined above to the case of promising. A promisor need not actually intend to put himself under an obligation because he might promise assuming his promise will be void. For example, I might promise to go on holiday, only on the assumption that you will decline my kind offer.⁹ But if you unexpectedly take me up on it, I am obliged to follow through because I deliberately communicated the intention of undertaking this obligation by means of these words.

Our two tests confirm that I do indeed communicate the intention of hereby undertaking this obligation. There is something wrong with promising only on the assumption that your promise will be rejected (or will be void for some other reason), and this wrong is plausibly a wrong of insincerity. True, an offer may be sincere though I anticipate a refusal but I cannot sincerely offer only on the assumption that I will be refused. Second, making this insincerity explicit would involve a kind of incoherence. Someone who says “I hereby promise to accompany you but I do not mean to undertake any obligation to accompany you,” may happen to be speaking the truth but their utterance has the self-undermining quality of a Moorean absurdity.

Thus far promising runs in parallel with other exercises of normative power but there is an apparent difference. Someone who promises to \emptyset must at least purport to believe that \emptyset -ing is something they can themselves do. That is not true of either givers or commanders. It is up to the subordinate whether the order will be obeyed and it is up to the local thief (and others) whether the rights bestowed by my gift will be respected. The giver or commander may have some influence here but that need not be the case, nor need anyone pretend that it is. By contrast, it is essential to a promise that the promisor should represent the obligation he creates as one he can himself discharge (that is, the promised act as something he can himself do).¹⁰

Suppose the following is a general truth about obligation: X can be obliged to do something only if X can do it. Specifying what ‘can’ amounts to here is notoriously tricky: I am obliged to repay debts that I do not have the money to repay and so forth.¹¹ I shall not attempt to

⁹ I argue that for promises to bind they must be accepted in Owens, “A Simple Theory of Promising,” *Philosophical Review*, cxv, 1 (January 2006): 51–77, at p. 73.

¹⁰ There is the phenomenon of promising *that* tomorrow’s weather will be fine but one cannot sensibly promise *to* make the weather fine. He who promises *that* is not obliged to make it so, though he may take on other obligations (see Owens, “A Simple Theory of Promising,” p. 61, n.18).

¹¹ People frequently have conflicting obligations (promissory and otherwise) all of which are perfectly genuine but not all of which can be fulfilled (see p. ?? below and Owens, “Rationalism about Obligation,” *European Journal of Philosophy*, xvi, 3 (December 2008): 403–31, at pp. 419–21). Here I can fulfil each of my obligations but not all of them.

formulate an acceptable version of this claim. I maintain only that, however ‘obliged implies can’ is to be understood, this principle applies as much to those obligations generated by gifts and commands as to promises. This is enough to dispel any apparent asymmetry between promises and other exercises of normative power. If a promisor must represent himself as able to perform, this is because an obligation falls on him only if he is capable of discharging it. But it is equally true that a commander must represent his subordinate as able to obey, and so on.

There is an alternative explanation of the apparent difference between promising and other normative powers, one which invokes not the ‘obliged implies can’ principle but rather the hypothesis that a promisor communicates the intention of fulfilling his promise. Call this *Hume’s hypothesis*.¹² It is widely agreed that one can intend to do only what one believes oneself capable of doing. If so, someone who communicates an intention to \emptyset must purport to believe that they can \emptyset . Thus, Hume’s hypothesis would explain why the promisor must purport to believe that he can do what he is promising to do. Since a commander need not communicate an intention to have his orders obeyed, he need not purport to have power as well as authority over his subordinate.

At first sight our two tests of what is communicated seem to confirm Hume’s hypothesis. A promise which the promisor does not intend to fulfil is, in the eyes of most writers, a paradigm of an insincere promise.¹³ The absence of the relevant intention makes promising suspect and saying “I promise to do this but I have not made up my mind to do it,” would be odd in many salient contexts. Why would the speaker purport to be undertaking an obligation to do something unless he is also purporting to intend to discharge that obligation? But there is a danger of over-generalization here. It may often be insincere to promise without intending to perform and odd to admit that this is what you are doing without it being the case that every promise communicates an intention to perform.

¹² As already noted, Hume thinks that a promise communicates two intentions: it communicates the intention to hereby bind yourself *and* communicates the intention to perform. For Thomas Scanlon on the other hand, a promise communicates only the intention to perform. Having communicated the intention to perform, Scanlon’s promisor then acknowledges the obligation which results from this communication once it leads an audience to expect performance. Where this acknowledgement reinforces the expectation of performance, it thereby reinforces the obligation to perform. At no stage does Scanlon’s promisor communicate the intention to hereby create an obligation. See Scanlon, *What We Owe to Each Other* (Cambridge: Harvard, 1998), pp. 306–07.

¹³ See J.L. Austin, *How to Do Things with Words* (New York: Oxford, 1962), p. 50; John Searle, *Speech Acts*, (New York: Cambridge, 1969) p. 62; and many others.

I tell you that I went into a house today.¹⁴ In most conversational contexts, you would naturally infer from my way of putting things that it was not my own house that I went into. This is not something I say but, in those contexts at least, it is a clear implication (or implicature) of what I say. And if this implication is known by me to be false, many will think me insincere. However, these observations are consistent with two further facts. First, there are conversational contexts in which this implication is absent. Say we both know that I have only just returned to civilization from a house-free part of the world. Now I can exclaim “I went into a house today!” without implying that it was not my house. Second, even in contexts in which the implication would naturally be understood, it is possible to explicitly cancel it by adding “but I do not mean it was not my own house.” Without further explanation this utterance remains a bit strange—one might wonder why the speaker chose to put it that way—but there is nothing Moorean about it.¹⁵ Were Hume’s hypothesis correct, there would be.¹⁶

I shall undermine Hume’s hypothesis in three stages, thereby restoring the parallel between promises and other exercises of normative power. First, I argue that someone who promises to \emptyset need communicate no intention to \emptyset . Second, I identify some promisors who do not even communicate the intention that their promise be fulfilled. Third, I describe a promisor who communicates the intention not to fulfil their promise. I shall conclude by asking why Hume’s hypothesis is so widely endorsed and by drawing out the implications of its failure.

THE PURITY OF PROMISING: PROPHYLACTIC PROMISES

I begin with two assumptions. The first is that there is a mental state of ‘intending to \emptyset ’, a state distinct both from merely wishing or wanting to \emptyset and also from intending to make \emptyset happen. The second assumption is that practical irrationality comes in at least two forms. First there are people who do not do what they judge they ought to do because, though they intend to do it, they fail to carry out this intention. Call this *irresolution*. Second, there are people who do not do what they judge they ought to do because they cannot make up their minds

¹⁴ Paul Grice, *Studies in the Way of Words*, (Cambridge: Harvard, 1989), p. 37.

¹⁵ Grice, *Studies in the Way of Words*, p. 42.

¹⁶ Austin wobbles on this point. He maintains that ‘I promise but do not intend’ is parallel to ‘It is the case but I do not believe it’ (*How to Do Things With Words*, pp. 50 and 136) but also admits that “‘I promise to do X but I am under no obligation to do it’ may certainly look more like a contradiction ... than ‘I promise to do X but I do not intend to do it,’” (p. 54).

to do it, because they cannot even form an intention to do it. Call this *akrasia*.¹⁷ I shall briefly enlarge on these two points.

There is much controversy about how exactly the notion of intending to do something should be understood. For example, some maintain that one who intends to \emptyset must believe that he will \emptyset while others maintain that one who intends to \emptyset need only believe that he will try to \emptyset . Be that as it may, most allow that there is a state of having set oneself to \emptyset which tends to get you to \emptyset but is unlike merely desiring to \emptyset in that it involves having made up your mind to \emptyset rather than to perform one of the many alternative actions which you have some desire to perform.¹⁸ One who has decided to \emptyset will not deliberate about whether to \emptyset and will think and act on the assumption that he will (at least try to) \emptyset when the time comes.

Intending to \emptyset , so understood, is distinct from intending to ensure that \emptyset is done, that is from intending to do something which will (or might) bring it about that \emptyset is done. A clear example of the latter is where \emptyset is to be done by someone else. To intend to ensure that my partner kills our business rival is not to intend to kill our business rival. Nor is it merely to wish that my partner would kill her. It is to intend to do something which will (or might) bring it about that my partner does kill her. Such intentions are sometimes directed towards our own future activities. Suppose I must kill the business rival myself and I cannot set myself to do it: the very thought horrifies me. Still I know I might well do it while drunk so I get myself drunk in my rival's company with a view to getting myself to do it. Beforehand I do not intend to kill her, rather I intend to do something which will make me kill her.

This example brings our second assumption into play. There are two different reasons why I might need to get drunk in order to kill my rival. In one sort of case I have already made up my mind to do it: I am no longer deliberating about whether to do it and I have been thinking and acting on the assumption that I shall (try to) do it and so forth. But when I reach for the knife, I find I just cannot bring myself to use it. This is a case of irresolution, of failing to execute my intention. Here drink is needed to overcome an inhibition, an obstacle to executing my intention.

But my description of the example suggests a rather different possibility. I said I could not set myself to do it because I could not bear

¹⁷ I take this terminology from Richard Holton—"Intention and Weakness of Will," this JOURNAL, xcvi, 5 (May 1999): 241–62. Holton also distinguishes resolutions from mere intentions, a distinction which I ignore for ease of exposition.

¹⁸ Donald Davidson, "Intending," in his *Essays on Actions and Events* (New York: Oxford, 1980), pp. 83–102.

to think about the issue in any detail (and so could not even lay the necessary plans). Here the problem is that whilst I may have come to the conclusion that I ought to do it, I have not yet made up my mind to do it, I have not got into the frame of mind where I am thinking and acting on the assumption that I shall (try to) do it. I call this *akrasia*. Note that persistent experience of irresolution can itself be a cause of *akrasia*. If I have found in the past that when it comes to it I cannot bring myself to kill, this knowledge may prevent me from even forming an intention to kill.

With these assumptions in place, we can now describe cases in which someone promises without communicating the intention of keeping his promise. Sometimes a promisor cannot form the intention to do the thing he is promising to do but can still intend to do something that he believes will get him to fulfil his promise. Suppose that the making of a promise to give up smoking is itself the act that will enable him to keep it; a valid promise is the very incentive the promisor needs to ensure performance.

I have judged that I ought to give up smoking—in the interests of my family perhaps—but I cannot set myself to give up. Perhaps the attractions of cigarettes are just too obvious or perhaps experience of my past failures prevents me from even deciding to give up. So in desperation I do what I have never done before, I solemnly promise to give up.¹⁹ Being a stern man of my word, I know that this is likely to make me give up smoking. Perhaps the promise works by making me resolve to give up smoking so I am subsequently thinking and acting on the assumption that I will (try to) refrain from smoking. Perhaps it works just by making me feel too ashamed to give in to the temptation of smoking once the opportunity presents itself, whether or not the very prospect of such shame enables me to adopt this policy in advance. Either way, the promise is the incentive needed to ensure performance.

Let us now apply our two tests of whether someone is communicating an intention to perform. In the case envisaged, I am not promising in order to ensure that I will carry out a prior decision to do the promised thing. I have made no such decision and I will not make it until I am already bound by the promise, and perhaps not even then. So if a promisor must communicate the intention of doing the thing he is promising to do then I am being insincere when I promise to give up smoking. But there need be no wrong of insincerity here and I can remove any suspicion of such a wrong by being quite explicit about my situation. This engages our second test. There is no

¹⁹ Note I am promising to give up, not promising to *try* to do so. A commitment to make a serious effort to give up would not do the trick.

incoherence in saying that you are promising to do something which you have not decided to do in order to get yourself to do it. In sum, both tests are failed: our promisor need not communicate the intention of doing the thing he promises to do.

Does this example miss its target? Just as there is a difference between intending to do something and intending to make it happen, is not there also a difference between promising to do something and promising to make it happen? In these examples, perhaps I am not promising *to* give up smoking at all but rather promising to make myself give up smoking; that is, to do something which will get me to give up smoking. One who promises to make themselves give up smoking—say by taking nicotine pills—need not communicate the intention *to* give up smoking; they need only communicate the intention of making it the case that they will give up smoking. And, of course, the latter intention is one I do have because I intend to do something (make this promise) which I believe will get me to fulfil it.

The critic is surely right that promising to get myself to do something is different from promising to do it *tout court*. Nevertheless, this observation does not solve the problem. I mean to get myself to give up smoking by making a promise. What promise is that? If it is a promise *to* give up smoking then we are back where we started. We have a promise to give up smoking which is not backed by any intention to give up smoking. On the other hand, if I intend to give up smoking by promising to do something which will make me give up, we need to know what it is that I am proposing to do. If nicotine pills are available, the problem is solved: I am proposing to take the pills. But, in our example, there are no pills and no other means available except for a binding promise to give up smoking. So once more we are left with a promise to \emptyset ungrounded in any intention to \emptyset .

THE PURITY OF PROMISING: PROMISES ASSUMING RELEASE

Thus far we have focused on cases in which the promisor does not intend to perform because he is in no position to form such an intention, at least until he has made the promise. In this section I shall discuss cases in which the promisor has no intention of performing because he does not anticipate being held to his promise. Here the promisor expects to be released from his promise either by the promisee or by circumstances and he promises only on that assumption. I shall argue that someone who promises only on the assumption that he will be released may still promise sincerely.²⁰

²⁰ Thus promising on the assumption that you will be released is quite different from promising on the assumption that your promise will be refused. See pp. ?? above. In the

Before proceeding, we must first raise a general issue about intention: under what circumstances should one form a *conditional* intention, that is, an intention to \emptyset given that condition *C* obtains? All intentions are formed against a background of assumptions about the future. I decide to go to the cinema tonight assuming, for example, that the tickets will not cost \$50 each and an indefinite number of other equally obvious things. However it would be quite wrong to conclude that my intention is in fact a conditional intention, an intention to go to the cinema provided the tickets do not cost \$50 and there is no transport strike and so on. Rather I simply intend to go to the cinema at a certain time to see a certain film.²¹

Suppose you tell me you are going to the cinema this evening and I ask you what you will do if the tickets cost \$50. One likely response is a shrug of the shoulders. Why should you think about that improbable contingency? You really want to see the film and so you *might* determine that you would go regardless. On the other hand, perhaps the plan ought then to be reconsidered. But it simply is not worth the effort of deciding the point (even though it has been explicitly raised) given that the tickets will not cost that much. Here your intention to go is formed on a certain assumption but your intention is not to perform the act conditional on the truth of that assumption.

When do we form conditional intentions? We form a conditional intention when some contingency is both uncertain and crucial to how we are going to behave and we need to resolve the matter in advance. If I am intending to stay with my friend Dexter but there is some chance that he will have to leave town at the last moment, it might well be a good idea to decide in advance what I shall do if he cannot accommodate me. If I wait to see what happens before making any decisions, I risk ending up with nowhere to stay.

Let us now return to promises. I am short of money and I ask my friend Janet for a loan. I know she would be perfectly willing to simply give me the money and I also know that she will not ask for it back once it is given. But I am proud and do not want to appear to be taking charity. On the other hand, I really do not know whether I shall ever be able to pay her back. I promise to repay, sure that I will never be required to do so and Janet accepts my promise of repayment in

former case you are intending to put the promisee in authority over you, while in the latter you are not. If, as I shall suggest, the function of a promise is to serve the promisee's interest in having authority over the promisor, we should expect this difference to be crucial to whether the promise is sincere.

²¹ Davidson, "Intending," pp. 94–95.

order to save my face, even though she has no intention of holding me to it. Here I have not formed the intention of repaying. Is there anything amiss with my making the promise?

Some might doubt that this is a genuine promise given what Janet and I know about each other's intentions. But suppose we later fall out and Janet demands repayment. Will not I feel both trapped and bewildered? I am bewildered because I did not foresee this contingency and have no idea what to do. I am trapped because I am in a genuine dilemma: I have an obligation I can discharge, if at all, only with great difficulty. Of course, I will draw Janet's attention to the fact that neither of us expected that she would require me to repay and this fact is relevant: breaking a promise on which others have relied is worse than breaking a promise on which no reliance was placed. But, as Janet will doubtless reply, that does not get around the fact that I still owe her the money.

At this point, one might insist that my initial promise was sincere only if I formed the *conditional* intention of repaying the loan should Janet demand repayment.²² Does my promise communicate at least the conditional intention to repay if asked? Once again, we should apply our tests of insincerity. The first test is passed where I do something wrong in making this promise without having the conditional intention to perform. But what could my wrong be? Am I wronging Janet by putting myself under an obligation to her without intending to discharge it though both she and I are quite sure that I will never be called upon to discharge it? As we saw, it is reasonable to form a conditional intention only when it is an open question whether the condition will be satisfied and this is not an open question, at least before the unexpected falling out. Would not it be a foolish waste of time and energy to attempt to form a view on how I would balance Janet's request for repayment against the other pressing demands on my limited financial resources, given how certain I am that she will not even ask? If so, Janet could not reasonably expect me to form such an intention and could not object to my failure so to do. Since my promise is valid, I must recognize that, were Janet to require repayment, I would be under an obligation to comply. But there is quite a range of obligations I might find myself under if the future goes

²² Considering a related example, Michael Bratman maintains that the promisor must have the conditional intention of performing if required to do so. Bratman speaks of 'impermissibility' here suggesting that he thinks of this as a moral requirement. See Bratman, "Simple Intention," *Philosophical Studies*, xxxvi (October 1979): 245–259, p. 253.

in unexpected directions, some of which would conflict or be hard to discharge in other ways. Must I determine what I would do if the future puts me in such awkward and unlikely situations before I take on any of these obligations?

Let us now turn to our second test of insincerity: Can I make my attitude explicit without courting absurdity? Since both Janet and I are trying to save my face, it is hard to test this by elaborating the present example. Here is another case which lacks this troublesome feature. Suppose a rather well-known academic is asked by the much more junior editor of a collection of papers to promise to submit her contribution within six months. It is common knowledge between the editor and the contributor that the latter will not be held to her promise: should six months pass without submission, the deadline will be waived and an extension agreed. Yet the editor is requiring a promise from all the authors and he wants at least to *begin* by treating the well-known contributor as he treats the others. The contributor has no idea whether she will make the deadline nor what she will do if she does not, so she replies “I shall commit to six months like everyone else but I am sure you will not hold me to it: we will see how things are in six months time.” The contributor’s promise strikes me as binding; why else would she be so annoyed were she unexpectedly held to it? Doubtless the contributor is not behaving well in saying what she says but she could hardly be accused of insincerity, nor is her utterance in any way unintelligible. I conclude that someone who promises to \emptyset need communicate neither the intention to \emptyset nor the intention that they \emptyset .²³

I have confined myself to cases in which the promisor does not expect to be held to their promise because they assume that the promisee will not require performance. The promisor may be confident that performance will not be required of them for many other reasons. Perhaps the promise is a conditional one and, unlike the promisee, the promisor happens to know that the relevant condition will never be satisfied. Perhaps the promisor knows that the promisee will soon be dead or otherwise unable to hold them to their promise. There may often be something wrong with making a promise without forming the intention of keeping it because you do not expect to be required

²³ Nishi Shah suggested that in cases of this sort it might be indeterminate whether the speaker is being sincere or insincere in what he says. If so, it is equally indeterminate whether ‘I promise to \emptyset ’ communicates an intention to perform, for someone who communicates an intention to \emptyset without actually intending to \emptyset is definitely being insincere. So we have a definite promise without a definite communication of the intention to perform.

to keep it but that depends on the details of the particular example and the wrong in question need not be a wrong of insincerity.

I trust the argument of the past two sections has established that one can make a promise while communicating neither the intention of keeping it nor the intention that it be kept. That takes us much of the way toward restoring the parallelism between promising and other exercises of normative power. But, as we saw above, there are cases in which someone may exercise a normative power while expressly intending that the world flout the normative demands he is creating. Is there any analog of this for promising?

You and I are neighbors. Your unwashed wreck sits on the driveway beside my shiny new model. Each weekend I tell you that you ought to wash your car and each weekend you fail to do so. I am sick of your maintaining that you have no obligation to wash your car and you are sick of my telling you what to do. I set out to extract from you a promise that you will wash your car next week, a promise which I would prefer you did not keep since that would definitely put you in the wrong. You wish to terminate our conversation with your dignity intact. You say “Okay, I promise to wash the car since that is what you want but I have no intention of so doing.” I walk away pleased that you will so clearly be in the wrong, you walk away pleased at your own defiance. Perhaps you are in the wrong here even before you break your promise—to intend to wrong me may itself be a way of wronging me—but if so, the wrong you do me involves not insincerity but a rather blatant contempt.²⁴

This story makes little sense unless you succeed in making me a valid promise despite communicating the intention not to perform. And you do succeed in making me a promise because you succeed in communicating the intention to place yourself under an obligation to perform. Neither your objective nor mine can be achieved unless you bind yourself to performance. Our perversity here is neither linguistic nor logical and people who feel as we do might be glad that our language affords us this satisfaction. But why does the story make any sense at all? How could either of us think that the words you utter here are of any real significance? How could we derive any satisfaction from this exchange? To answer this question we must ask why promises are valued by those who do behave decently.

²⁴ Contrast this case with one in which one *promises* to break a promise. I doubt that such a promise is binding at least where it is understood as a promise to both \emptyset and not- \emptyset . Such an utterance could not be understood as an attempt to put oneself under an obligation to do anything. The promisor in my example is not promising to break his promise; he is merely communicating the intention of breaking his promise.

DIAGNOSIS AND IMPLICATIONS

I allow that a promise *usually* carries the implication, or communicates the information that the promisor intends to perform. What I have argued is that this implication is absent in some contexts and is explicitly cancelled in others. Why have so many writers thought otherwise? Did they simply overlook cases in which one promises without communicating the intention to perform? Or was there some deeper motivation at work here? As already observed, it is awkward to treat promising as a hybrid speech act, neither a simple expression of intention nor a pure exercise of a normative power, so it cannot have been the wish for an elegant theory that obscured these cases from view. I sense an underlying worry about the practical significance of a promise.

Most writers agree that the obligations created by a valid promise are significant; a good person will give weight to them in practical deliberation. But this raises Hume's question: How can such an obligation be created simply because someone has communicated the intention of creating it?²⁵ Most writers have accepted Hume's answer in one form or another: a promise is significant because it carries information about what the promisor is actually going to do.²⁶ Should a promise communicate the fact that the promisor intends to perform, that would give it the required significance. This answer does not quite motivate what I called Hume's hypothesis, the hypothesis that a promise always communicates the intention to perform. Where it is common knowledge that what I promise is going to happen anyway, no one will expect me to form the intention of bringing it about.²⁷ The information interest theorist should accept this qualification with good grace but he cannot be so relaxed about the counterexamples to Hume's hypothesis I offered earlier.²⁸

²⁵ Hume, *A Treatise on Human Nature*, pp. 517–19.

²⁶ This assumption is shared by both "expectation" theorists like Scanlon and "practice" theorists like Hume.

²⁷ As Zoltan Szabo Gendler pointed out to me.

²⁸ It must be admitted that acts of giving, ordering, and the like, do not carry information about performance so directly. As already noted, he who creates such obligations by the exercise of the appropriate normative power may have no direct control over whether they are fulfilled. But, it may be thought, those on whom these obligations fall are bound to obey them because of some further obligation-creating *promise*. Social authorities often get their power to issue orders from contracts of employment or association and, if social contract theorists are to be believed, political authorities derive their existence from a similar source. Furthermore, a long line of thinkers from Hobbes and Pufendorf onwards (though not Hume himself) have supposed that property rights are created by social contract and that we are bound to respect them because of that promise. The attempt to reduce all normative power to the power to promise makes perfect sense if the obligations such powers create are significant only in so far as they purport to carry information about people's propensity to honor them.

None of my examples would make much sense if the significance of a promise were always a function of the information it furnishes about the promisor's behavior. Take a case of assumed release. Where performance will likely never be required of the promisor and even if it were it is quite unclear whether it would be forthcoming, why should it matter to anyone whether a promise is made? Such a promise carries very little if any information about the promisor's future behaviour. Take the case of a prophylactic promise. Why should someone who makes such a promise feel bound to perform? Since he is so upright, his promise assures us that he will perform but that cannot be the reason why the promisor takes his promise so seriously. Rather it is the other way around: it is because the promisor takes his promise so seriously that it conveys the information it does about his future performance.

Elsewhere I have suggested that human beings have an *authority* interest, an interest in having the right to require performance from other people over and above any *information* interest they may have in being able to foresee what those people are going to do.²⁹ Promising understood as the exercise of a normative power is ideally suited to serve this interest. A promise puts the promisee in authority over the promisor in the matter of the promise, for the promisor is under an obligation to perform unless the promisee releases them. And, as we have seen, a promise may do this regardless of whether it purports to convey any information about what the promisor is likely to do. The fact that one can sincerely promise without intending to perform suggests that people have an interest in the possession of such a right which is independent of the interest they undoubtedly have in knowing who will do what.

This theory certainly makes better sense of our examples. As to cases of assumed release, I can save my face by giving Janet a promise of repayment in return for her money because that promise grants Janet the right to require me to repay. That right is something that might sensibly be valued even though my promise carries little or no information about what I would do if required to repay.³⁰ Similarly the editor is, at least initially, treating the famous contributor as he treats the others by asking for the right to require the contributor to submit. If this were not a real cost to the contributor, the whole procedure would be pointless, since she and the editor need not be attempting to deceive either themselves or the other contributors. As

²⁹ See Owens, "A Simple Theory of Promising," pp. 67–76, and "Duress, Deception and the Validity of a Promise," pp. 307–13.

³⁰ Whether or not Janet actually values this right, possession of the right has value, though it has little or no informational value.

to prophylactic promises, I may think of myself as serving the promisee's interest in having the right to require me to perform by making him a promise. And I can think of what I am doing in this way prior to thinking of myself as serving his interest in information about what I shall do. It is my respect for his authority interest which provides the motivational fuel for performance and thereby gives my promise its informational value.

The characters in my example of perverse promising also, in their own twisted fashion, acknowledge that rights to require performance have a value which is independent of the information conveyed by their possession. True, you have no inclination to respect the right you grant me by your promise and neither do I wish you to respect it. Yet both of these unwholesome attitudes depend on the idea that the sheer possession of this right has a certain value. You show your contempt for me by slighting this value and I attain the moral high ground by getting you to wrong me by slighting it. No attitude to the value of information, however twisted, could account for our behavior. Your promise conveys no relevant information. In particular, you are not showing your contempt for me by trying to deceive me about what you are going to do. And I am not trying to put you in the wrong by getting you to deceive me.

I agree that a promise normally does convey information about what the promisor will do and that people very often make and accept promises for that reason and that reason alone. Indeed, I have allowed that a promise to \emptyset usually carries the implication that the promisor intends to \emptyset , so typically something has gone wrong if their promise is not a good indication of whether they are disposed to \emptyset . Still I maintain that the distinctive features of the speech act of promising are to be explained by reference to our interest in the authority rather than in the information they convey. In particular the sincerity conditions of a promise are best explained in this way. What distinguishes a promise from those other speech acts which also convey information about the speaker's future behavior to his audience (for example, expressions of intention or predictions) is precisely that a promise conveys this information, when it does, by purporting to transform the normative situation.

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