

Rationalism about Obligation

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In our thinking about what to do, we consider reasons which count for or against various courses of action. That having a glass of wine with dinner would be pleasant and make me sociable recommends the wine. That it will disturb my sleep and inhibit this evening's work counts against it. I determine what I ought to do by weighing these considerations and deciding what would be best all things considered. A practical reason makes sense of a course of action by recommending it, by highlighting some good or desirable feature of it which could move a reasonable agent to perform it.

When thinking about what to do, we also attend to our obligations. Perhaps I have promised to remain clearheaded this evening. Given this I am obliged not to drink. How should this consideration affect my deliberations? According to Davidson, the fact that an action would be a breach of a promise 'is a count against the action, to be weighed along with other reasons for the action' (Davidson 2004: 177). This suggests that obligations are a sub-set of our reasons; they are one input into the process of determining what action would be reasonable or justified all things considered.

One can see why Davidson might say this. After all, having carefully considered the matter, I may decide not to keep my promise. Furthermore this may be the right thing to do, the most reasonable course of action available to me in the light of all the relevant factors. Nevertheless this description seems to miss something important about a promise. The fact that I promised not to drink does not merely recommend not drinking as does the prospect of a restless night; it places a demand on me. Drinking would not be just inadvisable; it would now be a wrong. And even if such a wrong might on the whole be justified, even if committing this wrong is the right thing to do, in drinking I refuse a demand, I don't just reject a recommendation.

It is widely held that a promise provides you with a *moral* reason to fulfil it, whereas the fact that drinking would make you lose sleep does not, typically, constitute such a reason. Could this contrast be used to explain obligation's special contribution to deliberation? There is a danger that we are merely shifting the difficulty. Is it really any easier to explain the special contribution that 'moral' reasons make to deliberation than to do this for obligations? Indeed, does the category of *moral* reasons, as philosophers normally understand it, carve out any theoretically interesting class of practical considerations?

Be that as it may, I don't see how to analyse 'obligation' in terms of 'moral reason' as these words are normally used. First, 'morality' may recommend a course of action without making it obligatory. Were I to give the money I spent on the wine to charity that might make me a better person even though isn't

required of me. Second, a course of action might be obligatory even though 'morality' is indifferent to it. Many of us feel obliged to reciprocate dinner invitations and to refrain from licking our plate clean at table, but few imagine that it would be *morally* wrong to do otherwise. These forms of behaviour are indeed demanded of us but not by morality.

In this paper, I shall explore the idea that if you are obliged to do something, that takes the matter out of your hands: it is no longer up to you to judge whether doing the required thing would be best, all things considered. An obligation does not shape practical deliberation solely by constituting a point in favour of fulfilling it; like a command, it also constrains or limits your practical deliberations. Hence the phenomenology of demand.¹

The idea that obligation has an imperatival force is familiar from philosophy as well as from ordinary life. When Kant introduced the notion of obligation by distinguishing the *counsels* of reason from the *commands* of reason, he was associating himself with a long philosophical tradition (Kant 1996: 69, 71 and 169). Many philosophers, Kant included, have found it natural to move from this idea to the further claim that obligations must be overriding practical considerations, that what you are obliged to do is also what it makes most sense to do. But the mere idea of a demand does not entail this. You may regard something as a valid command and yet feel justified in disobeying it. Indeed valid commands may conflict so you can't obey them. Kant himself denied that genuine obligations could conflict (Kant 1996: 378–9) but, if so, that isn't just because obligations place demands on us.

According to *simple rationalism*, duties and obligations have no special normative force attached to them and have no distinctive role to play in practical deliberation: they furnish us with ordinary reasons for action. I shall proceed on the assumption that such simple rationalism can't be right. But the following might still be true:

Rationalism about Obligation: It makes sense to do something because you are under an obligation to do it only in so far as this obligation constitutes a reason to do it and/or a reason for you to deliberate about whether to do it in a certain way.²

Joseph Raz attempts to reconcile the idea that obligation makes a demand on us with rationalism about obligation. I believe his attempt fails but by examining it we learn much about what does differentiate obligations from other practical considerations. First, I will discuss another rationalist reconstruction of the notion of a practical demand which takes the idea that obligation places a constraint on deliberation in a rather different direction.

1. The Sanction Theory

It is widely agreed that those who fail to fulfil their obligations are subject to a special form of criticism. If you ignore good advice about which presents to buy

or shares to invest in or job to take, you are criticized as unreasonable, silly or foolish. But violation of an obligation provokes a different sort of response. For example, suppose I breach my promise. Then,

- (i) blame, indignation, rebuke or reproach are *prima facie* appropriate reactions in those who learn of it and resentment in the wronged party (the promisee).
- (ii) guilt or remorse are *prima facie* appropriate in the wrongdoer

Call these the *blame-reactions*. Might the claim that blame reactions suit breach of an obligation but not simple irrationality account for the special force of demand which attaches to an obligation?

One way of understanding a demand is as a form of pressure. We speak of people being 'obliged' to do things under various forms of pressure, as when the highwayman obliges me to hand over my money. Suppose blame reactions are construed as penalties (self-inflicted in the case of guilt), as painful episodes whose undesirability is meant to provide their object with an incentive to avoid them. Then we could trace the obligatoriness of certain behaviour to the fact that we sanction it by blaming it. (Not so if blame reactions were simply negative assessments of those who breach their obligations. Demanding something of someone involves more than simply making it clear that you will think the worse of them if you don't get it.)

Several authors have adopted the *sanction theory* according to which being under an obligation is a matter of being subject to these forms of social and psychological pressure.³ This theory interests me here because it promises to elucidate the idea that being under an obligation takes the decision out of your hands in a way consistent with rationalism about obligation. The sanction theorist need not imagine that the prospect of a sanction is ever the sole reason for discharging a genuine obligation. There is a difference between being 'obliged' to do something by the highwayman and being under a genuine obligation to do it. The sanction theorist can capture this difference by stipulating that we are under an obligation to do something only if there is good reason for us to perform that action independently of the fact that non-performance would be sanctioned. (So, threats and sanctions aside, I have good reason not to tread on your toe but no good reason to give the highwayman money.) Still, one under an obligation to do A can no longer simply decide the case on its merits; rather he must take account of the pressure he is under to decide in favour of A. That pressure influences his decision precisely by providing him with a further reason to fulfil his obligation, a reason independent of the intrinsic desirability of the act he is under an obligation to perform. Obligations play a distinctive role in our practical deliberation because obligations are reasons with sanctions attached.

The sanction theory enjoys a number of theoretical advantages over simple rationalism. First, and most obviously, it differentiates what is obligatory from what it would be best or most reasonable to do since the latter need not have a sanction attached to it. Second, it allows for genuine obligations to be overridden;

even if there is good reason to keep one's promise, the best thing to do may be to breach the promise and incur the sanction. The sanction theory thereby accommodates an essential feature of the ordinary concept of obligation, namely that obligations can be more or less important. Orders vary in their stringency and promises in their solemnity. For a sanction theorist, this reflects the strength of the sanction which it is appropriate to attach to their breach. Breach of a very informal promise should provoke only a mild rebuke and so forth.

Third, the sanction theory may have the resources to differentiate kinds of obligation. Thus far we have focused on those obligations buttressed by the blame reactions. To many, it seems less obvious that blame is an appropriate response to a violation of etiquette for instance. Still, someone who licks their plate clean at table is subject to shame, humiliation, contempt, disgust etc. and these reactions might be treated as sanctions enforcing social obligations. And then there are legal obligations with the usual financial and physical penalties attached.

Finally, the sanction theory can offer to explain the scope of obligation, why there is an important sense in which obligation falls only on our actions. Deliberation about what to do involves both obligation and reasons for action. Now beliefs, desires and feelings are also products of deliberation, of the weighing of reasons. Yet deliberation about what to believe, desire or feel isn't governed by a sense of being under an obligation to believe or desire certain things or to feel a certain way. Though we can act simply because we are obliged to act, we can't believe, desire or feel a certain way simply because we are so obliged.⁴ This is something the simple rationalist will struggle to explain.

One natural thought here is that action is subject to the will—we can do what we do 'at will'—whilst belief, desire and emotion are not. Perhaps we can do something simply because we are obliged to do it only when it is the kind of thing we can do 'at will'. Elsewhere, I have argued that we can do something at will when we can bring it about simply because it strikes us as desirable (Owens 2000: ch. 5). Perhaps only what can be brought about simply because it strikes us as desirable can (also) be brought about simply because we are obliged to bring it about.

The sanction theorist can make use of this idea as follows. Deliberation about what to believe, desire or feel is in one crucial respect unlike deliberation about what to do. According to the rationalist, deliberation about whether to do something is focused on the desirability of that action and the desirability of an action is directly affected by the prospect of sanctions. By contrast, to deliberate about what to believe, desire or feel (i.e. to consider the relevant reasons) is not to deliberate about the desirability of various beliefs, desires or feelings, rather it is to deliberate about the *grounds* for them—about whether they are correct or appropriate—something not directly affected by any sanctions that might be attached to them. For example, the believer forms a view about what is so by considering evidence for the truth of the belief, not by assessing the costs and benefits of holding that view. So, though it is possible to sanction belief and possible to influence belief by means of such sanctions, sanctions can't be

expected to influence us via deliberation about what to believe in the way that sanctions on action can and do.⁵

The sanction theory raises a number of fascinating issues that I can't pursue. Prominent amongst them is the nature of blame and guilt. Are these really best understood as forms of pressure, as penalties? I shall avoid this question here. For present purposes I shall also accept the sanction theorist's assumption that these blame reactions, however understood, are normally an appropriate way of responding to a breach of an obligation. But I deny that we can explain what it is for someone to be obliged to do something by supposing that breach of obligation is appropriately *sanctioned* by blame. Any theory of obligation must provide an adequate account how the recognition of an obligation should motivate compliance with it and the sanction theory fails this test.

What role does an obligation play in the deliberations of a conscientious agent? Recognition of the obligation should suffice, other things being equal, to move the conscientious person into action. A conscientious person is one who fulfils their obligations because they recognize that this is rightly demanded of them. On the sanction theory, to recognize an obligation to keep a promise (say) is to link the non-fulfilment of that promise to certain forms of pressure. This link can be understood in several different ways, all of which misrepresent the motivational psychology of a conscientious agent.

One possibility is that, in recognizing his obligation, the agent comes to think that there is a significant likelihood of his feeling bad should he breach it and he gives this prospect a suitable weight in his deliberations. It can hardly be denied that this correctly describes the motivational psychology of many. Yet those of us who fit this description are not being moved by the recognition of their obligations as a conscientious agent would. Could we be sure of avoiding the blame (or the guilt) by careful concealment (or pharmacology) we would have no special reason to fulfil our obligations.

The sanction theorist may reply by reminding us that there must be reason to discharge a genuine obligation that is independent of the sanction attached to it. This suggests a second possibility. Perhaps the reason which recommends performance of the obligatory act must also be such as to justify the imposition of a sanction on those who don't comply. (After all, unjustified sanctions are often as likely to provoke defiance as compliance.) It follows that if our agent feels that he is under a genuine obligation, he must think of the imposition of a sanction as not just likely but also as justified. But this further stipulation won't solve the problem. A truly conscientious agent should not need the prospect of an actual sanction to move him into action, whether he thinks it would be justified or not.

A third possibility is that, in recognizing an obligation, the conscientious agent considers it appropriate for breach of the obligation to be sanctioned, without having any views about how likely that sanction might be. But it remains unclear why thoughts about even hypothetical sanctions should play any role in moving the conscientious person into action.⁶ The conscientious agent is not designing a system of incentives for getting either themselves or others to do what they ought to do anyway: they are working out what they ought to do. In the course of

deliberating about what to do they will, no doubt, consider at least some of the factors which would also be relevant to working out which behaviour ought to be sanctioned (the seriousness of the interests at stake etc.) but they will think of these factors as grounds for compliance, not as grounds for sanctioning non-compliance. Yet a fully conscientious agent can (and on some views must) keep his promise simply because he recognizes that it is *actually* demanded of him and the motivational force of this actual demand cannot be captured by reference to the appropriateness of hypothetical sanctions.

Where one is under an obligation to do something, that obligation takes the decision out of one's hands. The sanction theorist attempts to reconcile that fact with rationalism about obligation. Though the attempt fails, the sanction theory does offer to explain four distinctive features of obligation. Can any other form of rationalism account for these four features whilst avoiding the above objection?

2. Promises and Commands

In this paper, I shall use the word 'obligation' to refer to the products of an exercise of *normative power*. To exercise a normative power is to communicate the intention of imposing an obligation on someone. Promises and commands both involve the exercise of normative powers. A promissory obligation exists because the promisor communicates the intention of hereby putting himself under an obligation to perform the promised act. The commands of a legitimate authority create obligations because they communicate the authority's intention to hereby place its subordinates under an obligation. There are other normative powers but, following Raz, I shall concentrate on these two.⁷

Obligations so understood must be distinguished from that much broader class of duties which exist because of some choice one has made. By choosing to drive my car down the road I affect both my own duties and those of other people—now I mustn't be drunk and they mustn't run out in front of me—but this change does not depend on my intentions with regard to the normative situation. I may neither intend nor foresee imposing these duties by getting into my car. And even if I do both foresee and intend them, these normative changes do not depend on my communicating this intention to anyone.

How should facts about obligation shape deliberation? In particular, how should a promise shape our thinking about whether to fulfil it? For a simple rationalist there are two alternatives: either a promise provides us with a good reason to fulfil it, a reason we ought to weigh in our deliberations, or it provides us with a decisive reason to fulfil it, a reason which ought to conclude our deliberations. Neither option is attractive. People are sometimes justified in breaking their promises so even the conscientious promisor need not regard his commitment as decisive. But nor will he treat his commitment as a mere point in favour of the promised action, on a level with the pain of disappointed expectations or the damage to his reputation for reliability. That would be appropriate only if he had expressed an intention without actually committing

himself to action. Indeed, people often avoid committing themselves to act precisely so as to remain free to decide the case on its merits (Owens 2006: 69).

While discussing how the notion of wrongness might be accommodated within a rationalist framework, Scanlon makes the following suggestion:

... 'being moral' involves seeing certain considerations as providing no justification for action in some situations even though they involve elements which, in other contexts, would be relevant. The fact that it would be slightly inconvenient for me to keep a promise should be excluded as a reason for [not] doing so. Even if I am in great need of money to complete my life project, this gives me no reason to hasten the death of my rich uncle or even to hope that, flourishing and happy at the age of seventy-three, he will soon be felled by a heart attack. Against this, it might be claimed that I do have such reasons and that what happens in these cases is that I conclude that an action (breaking the promise or hiding my uncle's medicine) would be wrong and that the normative consequences of this conclusion then outweigh the very real reasons I have to do it. But this does not seem to me, intuitively, to be correct. It does not seem to be true even of most of us, let alone of a person who was fully moved by moral reasons, that the moral motivation not to act wrongly has to hold in check, by outweighing, all these opposing considerations. It is, phenomenologically, much more plausible to suppose that, certainly for the fully moral person and even for most of us much of the time, these considerations are excluded from consideration well before the stage at which we decide what to do. Being moral involves seeing reason to exclude some considerations from the realm of relevant reasons (under certain conditions) just as it involves reasons for including others. (Scanlon 1998: 156–7)⁸

This line of thought offers us a way out of our difficulties about promising. On the one hand, the fact that a certain action would breach a promise is not just one consideration amongst others to be weighed against the inconvenience of keeping the promise; rather (at least) minor inconveniences altogether lose their justificatory force in the face of a promise. Scanlon thereby gives facts about what we are obliged to do a special role in shaping our deliberations. And he does so without implying that a promise is always a decisive reason for action, for the interests of others and even major inconvenience to oneself might still justify breach of the promise. On this view, the special force of demand attaches to a reason where, and to the extent to which, it excludes other potentially relevant considerations.

For present purposes, I shall take what Scanlon says about his uncle to be correct but when applied to promises, his remarks are rather less convincing. Scanlon tells us that his own need of money is neither a reason for him to kill his uncle *nor* a reason for him to hope that his uncle will die without his intervention. Scanlon says that 'this factor is excluded from consideration well before the stage

at which we decide what to do' and 'being moral involves seeing reason to exclude [such] considerations from the realm of relevant reasons'. So it is not just that one should not *act on* this reason, it is rather that this reason loses its ability to justify anything at all, including various attitudes to what one must do and to what might happen. Presumably reluctance to refrain from hiding vital medicine and regret that one couldn't are also insupportable.⁹

Promises are different. Suppose that I am running late and to make a midday meeting with you, I must fight my way onto the first train that comes into the station rather than await the pleasantly empty one some way behind it. This is, by most standards, a minor inconvenience and not something which should get me to break a serious promise. Nevertheless, it would be strange if I forced my way onto a packed train without reluctance. Furthermore, as I stand pressed against my fellow passengers, I rue the day I made this promise and I might even wish that the train would break down at the next station, allowing us all to get off, even at the cost of making it impossible for me to keep my appointment. Here the reasons furnished by my inconvenience are shaping my attitude to what I must do even as I do it. Am I failing to take my promise seriously?

So long as what obliges me to take the train is simply my promise, rather than the further fact that the person I am meeting will suffer serious injury if I don't show up or some such thing, it seems entirely appropriate for me to regret my incarceration on the train and, if it breaks down at the next station, to feel relief as well as sorrow. These attitudes strike me as appropriate, however solemnly I promised to be there. One might doubt this because one thought that a breach of promise is serious only when the breach involves some further injury over and above the breach of a promise. Indeed, this is Scanlon's view and perhaps leads him to assimilate the case of a promise to that of the uncle. I have criticized Scanlon's theory of promissory obligation elsewhere (Owens 2006: 61–7). Here I'll just observe that many people will (however reluctantly) force themselves to board a crowded train simply because they have made a firm promise and without having any clear idea as to what, if any, further injury might be suffered by the promisee were they 30 minutes late. They'll also feel perfectly entitled to their reluctance, regret, wishes and so forth.

It seems we can't avoid our dilemma and explain the special force that attaches to the reason provided by a promise by supposing that a promise altogether deprives certain reasons favouring the breach of that promise of their justificatory force. These reasons live on to justify various attitudes to what one must do. Still the promise might prevent us from treating these reasons as having justificatory force *in our practical deliberations*. A conscientious promisor does not decide what to do by weighing the pain of travelling on the crowded train against the inconvenience that their lateness would cause the promisee. (If this *was* how you decided to keep your promise, you'd be well advised to keep this fact from the promisee.) I shall argue that this narrower exclusion is just what we need.

Such a limited exclusion might also help us to understand how forms of obligation other than a promise should shape deliberation. Take commands. Raz contrasts orders which impose obligations on others with requests which (in

general) do not. Raz maintains that to make a request is not to express a desire for the requested action (one may express a desire for something that one is not prepared to *ask* for), rather it is to communicate the intention of hereby giving the recipient a reason to perform the requested action (Raz 1986: 35–6 and 1999: 101). If someone asks you to do something, that in itself gives you some reason to do it; there is something to be said in favour of complying with their request. For example, when a passer by asks me for a light, I ought (*ceteris paribus*) to give them a light simply because they asked for one. Still I am not obliged to give them a light; I am not wronging them if I refuse (Feinberg 1970: 4–5). Requests give us reasons but they do not, in general, impose obligations.¹⁰ Commands are intended to put their recipients under an *obligation* to comply.

What does it mean to say that an order is intended to place the recipient under an obligation? Raz maintains that whilst a request leaves it up to the recipient to decide whether to comply, an order takes that decision out of their hands. The appropriate response to a request is to weigh the reason provided by the request against the other reasons which bear on the case. There is no wrong in giving the request its proper weight and then deciding to refuse it. As Raz says of the petitioner ‘if his request is turned down and he is shown that there were sufficiently strong reasons to refuse his request he may be disappointed but he has nothing to complain about’ (Raz 1999: 83).

Orders are quite different: ‘the fundamental point about authority [is that] it removes the decision from one person to another’ (Raz 1999: 193). The recipient of a valid order is not meant to judge the case on its merits. In particular he is not meant to treat the order as one factor in his deliberations, to be weighed against other relevant considerations (like the inconvenience to himself of obeying it). Rather the order is there to preempt deliberation, to take the decision out of his hands. Following Raz, I’ll suggest that this is because respect for the order requires excluding at least some of the reasons that recommend disobedience from your practical deliberations, without forbidding you either to hope that your attempts to obey will be frustrated or to groan under the yoke.

Yet how can I have reason to follow anything other than the balance of reasons? Let’s see whether Raz can explain the peculiar force of an obligation, a force which enables it to overrule the balance of reasons, whilst holding onto the idea that obligation is itself a force of reason.

3. Raz on Protected Reasons

Raz distinguishes *conformity* to a reason from *compliance* with a reason. One conforms to a reason by doing what the reason recommends. One complies with a reason by acting *on* or *for* that reason (i.e. by being motivated to follow the reason’s recommendation). Raz argues that what a reason to do A recommends is conformity, is that A be done. It is a further question whether one ought to comply with that reason. Compliance may not be the best way to achieve conformity. Where compliance is the way to ensure conformity (or else has its

own value) we have what Raz calls a positive second-order reason i.e. a reason to act on our reason to do A. But where compliance with the first order reason might inhibit conformity with this or other more important reasons, we have what Raz calls an *exclusionary reason* i.e. a reason not to act on our reason to do A (Raz 1999: 178–82).

We can now introduce the notion of a *protected reason*. A protected reason to do A combines two different sorts of reason: a first order reason which recommends doing A and exclusionary reasons which recommend not acting on various reasons which count against doing A. These exclusionary reasons may prevent one's first order reason to do A from being overridden by the set of reasons which count against doing A because it disables some members of that set. Hence they protect this reason. The reason provided by an obligation to do A is just such a protected reason. So Raz offers us a two-dimensional theory of obligation: an obligation is a combination of a first order reason to fulfil the obligation and second order reasons not to act on various other reasons which recommend not fulfilling it.

This apparatus accounts for the special normative force associated with an obligation by invoking reasons of different levels. For example, if a legitimate authority issues a command, that provides their subordinates with a first order reason to obey the command. The special force of demand which attaches to this command comes from the exclusionary reasons associated with it, reasons which recommend not acting on various reasons favouring disobedience (Raz 1986: 46). So, for example, a conscientious soldier will not consult his personal convenience when deciding how to respond to an officer's command. He leaves it to the officer to determine how the soldier's convenience should be weighed against other considerations. To that extent the officer's command takes the decision out of the soldier's hands.

Two points of clarification. First, the mere fact that exclusionary reasons have a second order content, that they are reasons not to act on reasons, will not give Raz what he wants. For all that, one might be permitted to weigh these second order reasons against the very first order reasons they give us reason not to act on. Such weighing must be disallowed if we are to maintain that a command reserves the decision to the commander by providing the commanded with exclusionary reasons.

One might meet this concern by stipulating that exclusionary reasons *cancel* the first order reasons they exclude. A reason is cancelled when its normative force is not merely outweighed but altogether removed. (Raz gives the example of a promise from which one is released (Raz 1999: 27, 184).) This is, in effect, the suggestion I attributed to Scanlon but Raz does not take this line. For him, an exclusionary reason does not cancel the reason it excludes, rather it is a reason for not *acting on* the excluded reason. The excluded reason still makes its presence felt in other ways. For example, one would be glad if the thing recommended by an excluded reason occurred without one's having to bring it about by acting on that reason, as a conscientious soldier would be glad if he somehow got to drink the tea he has just made without disobedience (Raz 1999: 185).

Instead, Raz rules out such weighing with 'a general principle of practical reasoning which determines that exclusionary reasons always prevail, when in conflict with first order reasons' (1999: 40). This principle ensures that exclusionary reasons play a distinctive role in practical reasoning:

... the very point of exclusionary reasons is to bypass issues of weight by excluding consideration of the excluded reasons regardless of weight. If they have to compete in weight with the excluded reasons, they will only exclude reasons which they outweigh, and thus lose distinctiveness. (1999: 190)

Call this the *exclusion rule*. This rule would seem to imply that if, having considered everything (including the deleterious consequences of disobedience) our soldier determines that he should take a surreptitious tea break, he is being not just less than conscientious but also unreasonable. How can this be if he is following the balance of reasons?

On this point, Raz notes an ambivalence in our attitudes. Someone who disobeys an order which, though unwise, is neither invalid nor overridden by reasons it does not exclude is, Raz says, both praised and blamed (Raz 1999: 41–5 and 75). But Raz does seem committed to the stronger claim that disobedience would be unreasonable. I'll return to this issue later. For now, I'll make do with two less contentious Razian claims. First it may make sense for a soldier to obey an order, even if in his judgement the balance of reasons tells against obedience, simply because it is a valid order. Second, if the soldier chooses not to obey, the authority is entitled to complain, even where the soldier's judgement of the balance of reasons is perfectly correct. I'll return to each of these claims.

The second point which requires clarification is the idea of 'a reason not to act on another reason'. What exactly constitutes conformity with such a reason? On one reading, you refrain from acting on a first order reason just when you don't do what that reason recommends. On this reading, our soldier will have conformed with the exclusionary reasons which protect the officer's command even if he is fully prepared to act on the first order reasons they exclude, provided he finally decides that these reasons are outweighed by those first order reasons favouring obedience. Here the soldier did not *comply* with the exclusionary reasons since his failure to act on the first order reasons they exclude had nothing to do with their exclusion. Nevertheless he may have *conformed* to this exclusion simply because he failed to do what was recommended by the reasons they exclude and thus did not act on those excluded reasons.

I am unsure how to read Raz at this point. On the one hand, Raz says that an exclusionary reason should not be confused with 'a reason to avoid thinking, considering, or attending to certain matters' (Raz 1999: 184). This might be taken to mean that one can deliberate as one pleases and still conform to an exclusionary reason so long as one does not end up acting on it. But Raz adds that 'there is little objection to actually engaging in thought about the matter' only so

long as 'the [exclusionary] reason is complied with' (ibid.), i.e. only so long as your thinking about what to do is shaped by the fact that (whatever happens) you are not going to act on the excluded reasons. It now looks as if while first order reasons recommend only conformity with themselves, exclusionary reasons recommend compliance. If so, the permitted 'thinking' about excluded first order reasons can't be *practical deliberation*, can't be thought intended to settle what to do; it must be contemplation of these reasons for some other purpose.

However Raz should be read, I shall henceforth assume that exclusionary reasons recommend compliance and not just conformity. This is because I am interested in the ordinary idea of conscientious obedience and the notion of exclusion can help us with that idea only if exclusionary reasons recommend compliance and not mere conformity. Suppose our soldier refrains from drinking his cup of tea only because he himself judges this course of action to be best. He weighs the charms of the tea against the merits of the action he is commanded to perform, the importance of not undermining the officer's authority and so forth and comes down in favour of obedience. Here he conforms to the exclusionary reason implicit in the order in that he fails to act on the reason for disobedience provided by the tea. Nevertheless he gives this reason full weight in his practical deliberations and so fails to take the order in the way it was intended. 'Weight' here is a matter of motivational force: to give a reason weight in your deliberations is to be disposed to do what it recommends. Someone who excludes a reason will not end up acting on that reason whilst someone who does not exclude it may, depending on how the balance of reasons turns out.

It is not always possible to tell whether someone really has excluded a given reason simply by following the course and outcome of their deliberations. Suppose our soldier decides to exclude from consideration the charms of his tea and so judges that he ought to obey but then akratically takes his tea break anyway. Here he intentionally goes for the pleasures of tea drinking and so acts on the excluded reason, his practical judgement notwithstanding. Conversely our soldier may, having deliberated, judge that he ought to disobey but still find himself completely unmoved by the prospect of tea drinking because of his reverence for authority. Here he really does exclude the tea; he really does discount it as a reason for action, his practical judgement notwithstanding. This soldier is behaving conscientiously in spite of himself.

For ease of exposition, I shall assume in what follows that our motivational economy is legible in our deliberations: (a) that we are invulnerable to *akrasia* and (b) that our true motives appear in deliberation, in conscious thought about what to do. Most of the time this second assumption is false, since we don't deliberate before acting, even when obligations are in play. But such action is still motivated by practical reasoning, by an appreciation of the reasons bearing on the case, albeit one which does not require conscious deliberation.¹¹ The notion of exclusion is meant to apply as much to practical reasoning as to conscious deliberation.

This account of conscientiousness has an interesting implication. One might have thought that the criterion of conscientiousness was fulfilment (or at least

attempted fulfilment) of one's obligations. But if I am correct, respecting and fulfilling one's obligations are two quite different things. As we just saw, our soldier can deliberately do what he is commanded to do without thereby respecting the authority of the commander.¹² Raz also allows for the converse possibility that our soldier may respect the officer's authority whilst failing to obey his command. Suppose there are reasons for disobedience which the officer's command does not exclude. If the soldier excludes all the reasons he should from his deliberations, he can still disobey without disrespect provided the first order force of the command is outweighed by whatever reasons for disobedience the command does not exclude. We shall come across examples of this sort when applying Raz's apparatus to promising.

Raz proposes that an obligation furnishes us with a first order reason to fulfil it protected by exclusionary reasons. Two further questions arise. First, is this a sufficient as well as a necessary condition for something to be an obligation? Raz argues that the agent's own decisions provide him with protected reasons for carrying out those decisions (Raz 1999: 65–71) and also that there are rules of thumb which it is prudent to treat as a source of protected reasons for action (Raz 1999: 59–62) but he denies that these protected reasons are obligations on the grounds that they apply only to those who have set themselves certain goals (Raz 1977: 242). Raz's stipulation is well-motivated: you can't release yourself from a genuine demand simply by changing your goals but you can thereby make it rational to revise a decision or ignore a rule of thumb. On the other hand, obligations do impose genuine demands because one can't release oneself from either a command or a promise simply by revising one's goals.

Second question: can we achieve the effect of Raz's two-dimensional structure in only one dimension by writing the zone of exclusion into the content of the command? Perhaps a command to do A is always conjunction of a command to do A and a (tacit) command not to consider various reasons which count against doing A when deliberating about whether to obey? No: the peculiar force of a command comes from something other than its content. Suppose you include with your request that I do A a further request that I not consider various reasons which count against acceding to your request when deliberating about what to do. That addition would not turn your request into an order—it would simply become a more complicated request—and I would be entitled to decide whether to accede to each aspect of it by weighing the request for that action (or forbearance) with all other relevant considerations. In particular the request for exclusion could be weighed against the very reasons whose exclusion was requested. Of course, people can be commanded to exclude certain considerations from their deliberations. But what makes this a command is not its content but the further fact that in deciding whether to obey it, the subordinate ought not to consider various reasons recommending disobedience.¹³

Both parts of Raz's two dimensional structure are indispensable. How are they to be calibrated? How weighty is the first order reason furnished by a command? And how extensive is the exclusion zone around it? I shall postpone these questions until the last section. In the rest of this section, I want to draw out some

formal implications of Raz's two-dimensional model of obligation and in the next, I shall apply it to promising.

Our discussion of the sanction theory highlighted four features of obligation which any theory must explain. The first order of business is to differentiate the obligatory from the merely reasonable and Raz has surely done so: reason can recommend an action without the involvement of protected reasons and where it does, there is no obligation. Secondly, Raz also makes room for the possibility that a perfectly genuine obligation might be overridden. Indeed we can see how some obligations can be quite trivial and should carry little weight in deliberation whilst still making a demand on us. The force of demand comes from their power to exclude some relevant considerations and thereby shape deliberation but the zone of exclusion may be small and their first order weight (i.e. their power to outweigh non-excluded reasons) negligible (Raz 1977: 223). Thirdly, there is nothing in this formal structure that ties it to first order reasons with a particular content e.g. 'moral' reasons (Raz 1977: 225). Raz can perfectly well allow that there are different kinds of obligations, different kinds of protected first order reason. The concerns underlying legal and social obligations might be quite different from those underlying so-called 'moral obligations'.

The final point to be explained was the fact that obligations lie only on actions and not on belief, desire and emotion. The sanction theorist accounted for this by observing that obligation could not play the role in deliberation leading to belief, desire and emotion that it plays in practical deliberation. That's the right sort of answer but our analysis of obligation in terms of exclusion suggests a different way of making the point. I'll focus on the contrast between practical and theoretical deliberation but I hope what is said of the latter will apply also to deliberation about what to desire and how to feel.

If our discussion so far is along the right lines every agent must have the capacity to determine which reasons have weight in his practical deliberations and which do not, otherwise he could not control whether he is being conscientious i.e. whether he is respecting his obligations.¹⁴ I have taken for granted that agents have the capacity to discount genuine reasons for action when moved by Raz's exclusionary reasons. Our soldier can be fully aware of the desirability of drinking his tea and yet choose not to give this consideration any weight in his deliberations.

I doubt that believers have a similar capacity to discount evidence of which they are currently aware in their theoretical deliberations. To 'discount' evidence here is not just to decide that it is misleading or unreliable in the light of other, better evidence: it is to put no weight on it regardless of its probative force. Can one choose to discount suspicious entries on one's partner's credit card bill in order to preserve one's belief in their fidelity? Of course people do sometimes discount such evidence because of the obvious benefits of so doing. But such wishful thinking must be subterranean: you can't get yourself to discount evidence which you recognize to be perfectly good evidence against your partner simply by reflecting on the benefits of so doing. Indeed, you couldn't get yourself to do this by reflecting on some obligation that you felt not to entertain doubts

about your partner's fidelity. You can't decide to give genuine reasons for belief no weight in your theoretical deliberations.¹⁵ In that sense, there is no such thing as conscientious believing (though one may be conscientious in performing the actions which lead to belief i.e. in gathering evidence and thinking about it).¹⁶

4. The Logic of Promissory Obligation

In expounding Raz I have concentrated mainly on obligations which are the products of command. It would be surprising if what has been said about commands did not tell us something about promises also. After all, the effect of a promise is to put the promisee in authority over the promisor in the matter of the promise: if you promise me a lift home, I have the right to decide whether you give me a lift home (Raz 1977: 211). Raz does indeed apply his apparatus to promises but his discussion of them is rather less detailed (Raz 1977: 219–23).¹⁷ In this section, I shall strike out on my own, devising examples which appear to illustrate the working of Raz's two-dimensional theory of obligation whilst using the theory to support claims some of which Raz himself may not endorse.

The distinction between excluded and non-excluded reasons is clearly present in everyday thinking about promises. Take a firm but informal promise to accept an academic job in another city. Consideration of subsequent offers is excluded by this however good they are.¹⁸ The Chair would be annoyed if she learnt that you entertained a better offer even though you eventually decided it wasn't quite good enough to justify inconveniencing her department. On the other hand, if in the meantime the promisor's marriage breaks up, it is generally understood that they are entitled to weigh their interest in staying close to their children against those of the new employer and perhaps come down against the move. Similarly, accepting a lunch invitation excludes consideration of subsequent invitations (even from a potential lover whom you have been pursuing for some time) but not of significant domestic crises.¹⁹ You have reason to care for a sick child yourself rather than attend a lunch even if you could ask a neighbour to take care of them instead. This reason may or may not outweigh the lunch but you can at least consider whether it does without being accused of a lack of conscientiousness.

So what determines whether a reason for not fulfilling a promise is excluded by that promise? Is it, for instance, that the non-excluded reasons themselves impose obligations? In fact many non-excluded reasons impose no obligation. You are neither obliged to live 5 miles away from your children rather than 150 miles nor forbidden to leave your sick child in the neighbour's hands for a few hours. Another attractive but inadequate hypothesis is that non-excluded reasons are more important or weighty than excluded reasons. The prospect of a wonderful job or a lasting romance is pretty important by most standards, yet this sort of consideration is excluded whilst many less pressing domestic needs are not. We'll take up the issue of how the zone of exclusion around a promise is to be determined in the last section. For now, relying on an intuitive sense of its dimensions, let's see what analytical work it can do for us.

The distinction between excluded and non-excluded considerations is needed to account for our reactions to breach of promise. There are at least three ways in which it can turn out to be reasonable not to fulfil a promise. In the first, the promise is invalid, perhaps because the promise was extracted by duress or deception etc. Here the normative force of the promise is altogether cancelled (as it is by release from the promise). The promisor does not wrong the promisee by breaching his promise. Furthermore, there is no (non-extraneous) reason either to fulfil it or to do anything as a substitute for fulfilling it e.g. offering an explanation or making it up to the promisee.

A second circumstance is where the first order force of a promise is outweighed by non-excluded reasons. One hackneyed example involves failing to show up to a lunch because you must help a seriously injured person (Raz 1977: 227). But, as already noted, less dramatic situations can also justify breach of such a promise. You have reason to care for your sick child yourself and this sort of reason may be weighed in the balance against the first order force of a promise to attend a lunch. Suppose it overrides that force and justifies a breach of promise. Here the lunch promise has not been cancelled, there is some first order reason to fulfil it and your failure to conform to that reason should lead you to try to make it up to the host or at least offer him an explanation for your non-attendance. Raz explains this by saying that the reason implicit in the promise lives on to justify compensatory measures, even where it does not justify fulfilling the promise (Raz 1999: 188, Raz 2004: 189–93). But in one way this promise is like an invalid promise because you don't wrong the promisee by breaching it. It is not appropriate to feel guilty about skipping lunch in order to rescue an injured person or care for a sick child; blame would be equally out of place. Here you have *respected* the promise by giving it an appropriate role in your deliberations even though you did not fulfil it.

The third case of reasonable non-fulfilment is one in which the first order force of a promise is outweighed but only once excluded reasons are taken into consideration. That person I have been pursuing for some time invites me to lunch on the day I am meant to be seeing you. Both of you are about to leave town for a while. Such a serious romantic prospect means a whole lot more to me than lunch with me means to you. Aren't I behaving reasonably in seizing what may be my only chance? Aren't I striking a fair balance between your disappointment at not seeing me before you leave town and the possibility of a life-transforming relationship? Yet consideration of such a subsequent invitation is just the sort of thing a promise to have lunch is meant to exclude. Similarly, the benefits which accrue to me from taking a job at a much more prestigious or attractively located department may greatly outweigh the passing disappointment and temporary inconvenience which my backing out causes the less well appointed department. Yet, once more, respect for my promise to take the job is incompatible with even considering a better offer.

Can it be reasonable to breach a promise for an excluded reason?²⁰ However exactly we decide to use the word 'reasonable' we must have a way of marking the fact that the balance of all reasons tells in favour of breach (even when I

include whatever damage my breach would do to people's confidence in promises etc.). In that sense a breach may be justified. Furthermore, it may be unreasonable for the promisee to refuse to release me—such a refusal may be unjustified. It would be obtuse to insist on a prospective lover keeping their lunch date and there may be little point in forcing someone to take a job when they have a much more attractive offer in hand. Still, neither promisee is obliged to release me—they are entitled to be obtuse—and if I am not released, it makes sense for me to keep my agreement. I suggest we say the following: where breach of a promise is indicated by the balance of reasons but only once excluded reasons are taken into account, it makes sense to keep the promise and it also makes sense to breach it. In that sense of 'reasonable' both options are reasonable.

So what is the significance of the fact that I have not fulfilled my promise if I have nevertheless behaved in a reasonable fashion? Because my failure to perform here constitutes a failure to *respect* my promise, I have thereby wronged the promisee. And where I wrong the promisee, expressions of remorse, resentment, the seeking and granting of forgiveness etc. are all in place. Should I decide to stand you up in favour of my romantic prospect, I will feel guilt and accept blame, though I think I did the right thing.²¹ Similarly, if I renege on my acceptance of a much less attractive job.²² Indeed such feelings are in place whenever one seriously considers breaching a promise for excluded reasons, even if one eventually fulfils it. This is not something a fully conscientious person would have done and the promisee may aptly resent it.

Like explanation and compensation, sincere expressions of remorse, blame etc. have a significance of their own. They constitute an *acknowledgement* of the promise. One who takes their promises at all seriously will sometimes fulfil, sometimes respect and sometimes acknowledge them. Conscientiousness is a matter of degree and only someone who neither respects nor acknowledges promises and fulfils them by accident alone is totally devoid of it. It is plausible to suppose that a decent person will at least acknowledge those promises he feels he can't respect. It is less clear that becoming a more conscientious person always make you a better person (Feinberg 1970: 24). I shall wrap up this section by addressing a different but related issue: is perfect conscientiousness a possibility even for the best of us?

In the examples just considered, the reasons excluded by my promise—the romantic and job prospect—are not themselves sources of obligation. But our apparatus casts light on clashes of obligation and in particular on conflicting promises. Foot asks us to imagine making a promise to be best man at two different weddings (Foot 2002: 41–2). Suppose, as one could not have anticipated, the weddings are fixed for the same day. Here one faces an agonizing dilemma. Sometimes the prior promise takes priority but not always and its mere existence does not invalidate all subsequent promises which turn out to be inconsistent with it.

Where the dilemma is real (i.e. where it can't be resolved by reference to non-excluded reasons) a good person must fail to respect *both* promises. As a decent person, you will decide what to do by weighing various relevant considerations

(how well each wedding will go without you, how much the groom wanted you as his best man etc.). Yet such weighing is exactly what a promise is meant to forestall. As to the lucky groom, if you explain that you showed up because the promise you made to him was more solemn than that you made to the other groom, he will be content and even sympathetic. If you instead report that you came because, having set both promises to one side, you judged that he needed you more, his relief that you've come will be mixed with resentment that you didn't allow him to make that call. As to the groom you leave in the lurch, guilt will soon replace the agony of decision even though you have no doubt you made the right choice. One who feels only regret here would not be taking their commitment seriously. Of course, you will try to make it up to the offended party, perhaps by buying them an especially fine wedding gift but such a gift will be well received only if it is taken as an expression of some remorse (Williams 1982: 27–30).

Rationalism about obligation has motivated some to deny that obligations can conflict in the way I describe.²³ There are no 'rational dilemmas': you can't find yourself in a situation where whatever you do will be an unreasonable thing to do (unless this alludes to a prior piece of foolishness which got you into the mess). One can deal as reasonably with the most unpalatable options as with the most attractive. In particular one can make a reasonable choice in the case of conflicting promises. Now suppose that being conscientious were a way of being reasonable, that it amounted to dealing reasonably with one's obligations. Then there could be no 'moral dilemmas' i.e. situations in which whatever you do you'll be wronging someone.

If I am correct, there can indeed be 'moral dilemmas'. The prospective best man can't avoid wronging at least one of the grooms and he finds himself in that bind through no fault of his own. I have supported this by observing that guilt and blame are familiar reactions in such a case and neither seem inappropriate. Our rationalists will allow that feelings (and expressions) of profound regret are appropriate (and even required) where one promise must be sacrificed to another. Such regret is appropriate whenever one finds oneself unable to follow the recommendations of a weighty reason. But they deny that these feelings of regret should amount to anything like guilt or remorse. A final resolution of this question must await a better understanding of these emotions. I'll briefly indicate why I think the invocation of regret alone will not capture the phenomenology of conflict between obligations.²⁴

Suppose you have a limited quantity of a life-saving drug to distribute amongst a group of sick people with whom you have no prior connection. All are equally deserving but not all can be saved. Here you may bitterly regret having to decide who lives and who dies. You may wish that this task had fallen to someone else or, more charitably, that nature would take the matter out of your hands. Once the choice is made you will (quite reasonably) feel awful about the resulting deaths, not just *qua* compassionate observer but also as someone who brought those deaths about. And these feelings of agent regret will not be assuaged by your confidence that you made the right choice. Still in so far as you

are convinced that you did the right thing, you won't think of yourself as having *wronged* those who died: in the circumstances, you were under no obligation to save *them*.

Now suppose that having promised the drug to one group of people, you then discover to your horror that more lives may be saved by giving it to another previously unknown group. Even if you are convinced that you should save the greater number²⁵ doesn't your promise alter how you would think and feel about what you must now do? (After all, using the drug to save other lives is exactly what this promise was meant to exclude.) Wouldn't you vastly prefer that you had not made this promise at all? True, you would still feel awful about having to deny the drug to anybody. But if reallocating the drug involves a breach of promise, there is a further element of distress, one which (I reckon) registers the fact that you are now (albeit justifiably) wronging those people. The rationalist must offer some account of all this.

5. Rationalism and Exclusion

Exclusionary reasons are meant to provide us with a rationalist analysis of the peculiarities of obligation. Exclusion protects a reason and turns it into a demand. If our examination of promissory obligation is anything to go by, the notion of exclusion does indeed clarify the logic of obligation but we must now face up to *The Question of Rationalism*: why regard exclusionary considerations as reasons, as contributing to practical deliberation in the way that a reason does? Why not say that an exclusionary consideration shapes deliberation so as to make sense of action but without providing us with reasons?

There are two strategies for defending rationalism: *direct* and *indirect*. The direct strategy seeks to demonstrate that the role played by exclusionary considerations in practical deliberation is essentially the same as that played by ordinary reasons, despite certain peculiarities. The indirect strategy allows that exclusionary considerations play a fundamentally different role whilst concluding that we have good *reason* allow them to constrain our practical deliberations. Raz gives us the materials to pursue both strategies. I shall consider the direct strategy in this section and the indirect strategy in the next.

To pursue the direct strategy, we must first specify the role that reasons play in practical deliberation, we must ask what form practical reasoning takes. Rationalism proposes to demystify obligation by representing deliberation involving obligation as thinking of the kind we engage in whenever we must settle what to do. For different rationalists, practical reasoning takes different forms. Many rationalists influenced by Kant regard practical reasoning as a procedure for ensuring that what the agent wills is coherent or consistent. For these rationalists, the force of an obligation must be grounded in the demand for a form of consistency so that someone who breaches a promise, for instance, is guilty of practical incoherence (Kant 1996: 57 and 74–5). If this were correct, such a person could discover that they were obliged to keep their promise in much the

same way that they could discover any other fact about what they ought to do. And they would be motivated to keep their promise by the very demand for consistency which moves them to do any sensible thing.

Raz's rationalism is tied to a quite different view of practical reasoning on which to deliberate about what to do is to weigh the reasons which count for and against the various options. These reasons indicate desirable or valuable aspects of the various options and to weigh them is to weigh these values. Obligations supposedly furnish us with reasons so understood. In this paper, I shall be addressing the Question of Rationalism given Raz's understanding of practical reasoning.²⁶

Raz's conception of practical reasoning implies that a practical consideration counts as a reason only if it is weighable against some other practical considerations. To be a genuine reason, a practical consideration need not be comparable in strength with *all* other reasons because of the phenomenon of incommensurability (Raz 1986: ch. 13). I have good reasons to become an academic and good reasons to become a journalist but reason provides me with no way of deciding the matter. That is not because the reasons in favour of being a journalist are equal in strength to the reasons in favour of being an academic, as is shown by that fact that being a journalist on a national newspaper might be clearly better for me than being a journalist on a magazine whilst neither career is better or worse than being an academic. Nor is the decision a trivial one. It is a matter of importance to me but one I must resolve other than on the balance of reasons.

Though a practical reason need not be comparable in strength with all other practical reasons, Raz does suppose that a practical reason must be connected in this way to at least some other practical reasons. He tells us that 'reasons have a dimension of strength' (Raz 1999: 25) and this includes exclusionary reasons (1999: 46). So against what reasons are exclusionary considerations to be weighed? We already know from Raz's exclusion rule that exclusionary considerations are not to be weighed against the first order reasons for action which they exclude. Nor are exclusionary considerations to be weighed against those first order reasons for action which they do not exclude: if they don't exclude them, they have nothing to say about them. So it looks as if the only possible candidates are other second order reasons.

These second order reasons fall into two classes: negative and positive. Negative second order reasons are reasons for not acting on first order reasons i.e. exclusionary reasons. Might exclusionary considerations at least be weighed against one another? To answer this question, we must look at cases in which exclusionary considerations conflict with other exclusionary considerations without simply cancelling them. Where two authorities give me conflicting orders about matters they each claim jurisdiction over and one is of a higher rank, the lower authority's order is cancelled by the higher. Since an order, once overruled, lacks any force, there is no need for weighing.

What if the authorities are of equal (or incommensurable) rank? Here there is indeed a role for weighing provided there are some first order considerations

bearing on the case which are excluded by neither command. Then one should decide what to do by weighing these first order considerations. But that is not a case of weighing exclusionary considerations against one another. So let us suppose that every first order consideration is excluded by one or other of the commands (Raz 1999: 204): the reasons which favour doing what the Papal bull dictates are excluded by the exclusionary considerations furnished by the Holy Roman Emperor's edict and *vice versa*. Here mustn't I decide what to do by weighing the merits of the action suggested by the bull against those of that suggested by the edict (Raz 2006: 1024–5)? True enough but in so doing, I would be respecting the claims of *neither* authority because I would be discounting the exclusionary aspect of both orders.²⁷ One can't successfully adjudicate the claims of these authorities—i.e. arrive at an outcome that wrongs neither of them—by somehow weighing the exclusionary force of their orders.²⁸

If exclusionary reasons are to be weighed at all, it must be against what Raz calls *positive* second order reasons, reasons to act on reasons (Raz 1999: 47).

Wherever there is reason not merely to conform to a reason but specifically to comply with it (i.e. what I called a positive second order reason in this book), it conflicts with any reason to exclude that reason in an ordinary way, and considerations of their relative importance, or of the relative damage to the goods which conformity to them will serve, determine which overrides the other. (Raz 1999: 189)

Here Raz makes the strong claim that exclusionary reasons should be weighed against any positive second order reasons to comply with the reasons they exclude. I shall first argue against this claim and then I shall suggest that the opposite is true: exclusionary reasons can never be weighed against any positive second order reason and so cannot satisfy Raz's weighability condition on reasonhood.

Consider a ticket inspector who finds an elderly passenger on a train with the wrong tickets. There is a first order reason provided by the interests of the elderly passenger for the ticket inspector not to charge them the full fare. In addition (at least where an innocent mistake has been made) the inspector has a further positive second order reason to act on this first order reason, for people have reason to act kindly towards one another (Raz 1999: 179) and kindness here recommends that the inspector act on this first order reason (and not let the old lady off on a whim for instance). Yet the ticket inspector is also under an obligation to ask the old lady to pay. Can Raz capture the full implications of this fact?

We are supposing that the ticket inspector does have an exclusionary reason not to act in the old lady's interests, namely the reason provided by the authoritative rules and directives of the train company which exclude consideration of the welfare of passengers when determining who ought to pay what fare. This delivers the result that the train inspector ought not to be weighing the old lady's welfare against the company's instruction: he is obliged

to discount the former. But, as Raz interprets it, the exclusion rule cannot prevent him weighing the reasons he has to behave kindly against the reasons he has to conform to the rules of the company. And if the inspector finds that the rules of the company are outweighed by the case for kindness, it looks as if he may let the old lady off without the company having any cause for complaint. But this is surely the wrong result. Train companies do not permit their ticket inspectors to give passengers a break because they would thereby be acting kindly any more than because this would be a helpful thing to do. Both first and second order reasons recommending indulgence are standardly excluded by the rules of the company.

Clearly exclusionary considerations can't always be weighed against positive second order reasons.²⁹ Can they ever? Suppose our train company somehow lacked the authority to exclude the conductor's second order reason to act out of kindness towards passengers from his deliberations. It is hard to see how this could be so unless the train company also lacked the authority to exclude those first order reasons provided by the passenger's interests from his deliberations, in which case neither his first nor his second order reasons to let the old lady off should be weighed against the exclusionary force of the company's regulations. Rather the regulations permit these reasons to be weighed against the (non-exclusionary) reasons which favour demanding the old lady's fare.

I don't deny that there are some reasons not to act on other reasons which can be weighed against conflicting positive second order reasons. Raz raises the possibility that there are ascetic reasons, reasons to deny yourself some genuine good (Raz 1999: 77 and 183–4). Ascetic reasons are like exclusionary considerations in that they are reasons for not acting on other reasons. Such reasons should be weighed against second order positive reasons for indulgence. For example, consider an ascetic whose friend has just won a competition. He might feel that the positive reasons to join in the celebrations (to sing for the pleasure of it etc.) outweigh his ascetic reasons on this occasion (though without thinking of himself as under an obligation either to celebrate or to refrain).

Because of this very fact, I doubt that any notion of an exclusionary consideration which includes such ascetic reasons is suited to elucidate the notions of obligation, authority, demand etc. Where the agent is under an obligation, the decision is out of his hands at least in respect of those aspects of the situation over which the company has authority. To deliver this result, exclusionary considerations must either exclude positive second order reasons, or else have no bearing on them. If our ascetic had taken an ascetic vow or if, on the other hand, he felt an obligation of friendship to celebrate, these would provide genuine exclusionary considerations and so he wouldn't be weighing his ascetic reasons in the balance against them. Rather these reasons would be either protected or excluded (or both). That would be quite different from the situation just envisaged.

In sum, it looks as if exclusionary considerations are not to be weighed against practical reasons of any order. If they exclude, they exclude; if they don't exclude, they have nothing to say: they simply allow the reasons they don't exclude

(whether they be first or second order reasons) to engage with other reasons in the normal way. In Raz's eyes, exclusionary considerations must fail to qualify as reasons. So if exclusionary considerations are needed to make sense of actions by helping to constitute 'protected reasons', the rationalist picture of practical deliberation is in trouble.

6. Exclusion without Rationalism

Considerations other than reasons can constrain our deliberations and thereby make sense of our actions. Though the direct strategy for defending rationalism about obligation has failed, a more indirect approach may still work.

In the last section, I argued that an exclusionary consideration does not (and cannot) play the role that a reason plays in practical deliberation. Nevertheless, one might have *reason* to treat an exclusionary consideration as a factor in one's deliberation, even though it is not itself a reason. Recall Raz's distinction between compliance and conformity. Reasons recommend conformity. They also recommend compliance only when compliance is the best method of ensuring conformity. An exclusionary consideration forbids compliance with some reason R. Suppose conformity with R itself (or with some other more important reason) would be enhanced by the exclusion of R from our deliberations. Then, Raz suggests, R should be excluded from our deliberations, that we should not comply with R. This is because allowing exclusionary considerations to shape our deliberations in this way will ensure that we better conform to reasons.

It is not hard to see how this idea might be implemented in the case of those exclusionary considerations generated by commands. Social authorities can be more knowledgeable than their subjects, or better placed to think the matter through. Or they can be more disinterested than their subjects and so better able to adjudicate social conflicts fairly. Or they can be the only party with the power to enforce a solution where almost any solution is better than none. In each instance (and perhaps in others also) the subjects' interests are best served by setting their own judgement aside and acting on the instructions of an authority (Raz 1986: ch. 3, 1999: 62–5 and 2006: 1012–20).

This *service* conception of authority suggests how both the strength of the first order reason yielded by a command and the scope of the exclusion zone around it might be determined. As to the latter, the scope of exclusion is fixed by facts about how reasons are most likely to be conformed with. If S is more likely to conform to the balance of the reasons bearing on whether he should do A by allowing some authority to weigh some subset of those reasons R*, then S has reason to treat the authority's decision on whether to A given R* as binding, that is as providing a first order reason to obey which is protected from being overridden by the reasons falling into the subset R*. Here the authority may be specially knowledgeable about or disinterested in the application of the R* reasons. Or the authority may be needed to resolve conflicts when R* reasons are in play but not otherwise. The authority's function is to consider R* reasons for us and

we respect its authority by not second guessing its decision as to where the balance of *these* reasons lies. But there may be other reasons bearing on the case which the authority is not especially competent to handle and we can respect it whilst weighing (the first order force of) its command against these other non-excluded reasons in working out what to do.

What of the second element in the two-dimensional structure: the strength of the first order reason favouring obedience? What weight should the command be given when in competition with reasons it does not exclude? Raz says that the reason provided by a command 'takes the place of' (Raz 1986: 46) or is 'meant to replace the reasons on which it depends' (Raz 1986: 41). Presumably the collective strength of reasons which it is the authority's business to assess (and which are excluded from the deliberations of their subordinate) somehow determines the first order strength of the reason furnished by the authority's command. I am not clear how exactly this is meant to work. I am also uncertain whether the service conception can, in any case, provide an adequate account of authority. One may doubt whether it covers the full range of social authorities thought legitimate at the present time, let alone in the sweep of human history. Raz himself concedes that he is elucidating a particular conception of authority, though one crucial to modernity (Raz 2006: 1106–12). I shall set these fascinating issues to one side and instead apply Raz's apparatus to promissory obligation.

Raz says that promises and commands pose similar problems but he is careful to acknowledge significant differences (Raz 2006: 1013–4, 1020). When discussing promising, he emphasizes its usefulness in cultivating (or perhaps constituting) valuable human relationships, a thought which plays only a peripheral role in his account of authority. These suggestions about promising are scattered and can be read in various ways.³⁰ Rather than attempt to develop and criticize them here, I shall simply note that the points Raz makes in support of the service conception of authority (and its account of the exclusionary and first order force of a command) lose their plausibility when applied to promising. Then I'll close with a sketch of an alternative treatment of the normative force of a promise.

What determines the first order strength and exclusionary scope of a promise? Raz tells us only that 'the weight of the reasons to keep a promise and the scope of its exclusionary force depend on its content and on the circumstances' (Raz 1977: 227). Indeed, it is hard to see what more he could say with the materials at hand. None of the conformity-enhancing features of an authority highlighted by Raz need be possessed by promisees in respect of the matter of the promise. Nobody imagines that promisees *as such* are better placed than promisors to decide whether the promise should be kept, nor that they are more disinterested, nor that they have greater power to ensure co-ordination. Were there a set of promise-independent reasons R^* such that respect for a promise ensured greater conformity with those reasons, both the first order weight and the exclusionary scope of a promise could perhaps be fixed by that set. In its absence, the normative force of a promise must be determined in some other way.

I propose that the key factor in fixing both the content and the normative force of a promise is the communicated intentions of the parties. Given that promissory

obligation involves an exercise of normative power, this should come as no surprise. Raz himself tells us that a promisor 'communicates an intention to undertake by the very act of communication an obligation to perform an action' (Raz 1977: 211). If a promise to do A exists in virtue of the communicated intentions of the parties, why shouldn't the normative force of this commitment be constituted in exactly the same way?

It is obvious that some promises are more firm, serious, or solemn than others. Raz's two-dimensional theory of obligation suggests that such solemnity has two aspects: the weight of the first order reason for performance provided by the promise and the zone of exclusion with which the promise protects this reason. I'll consider the former before I deal with the latter.

Let's treat the making of a promise as a two-stage process, initiated by a request from the promisee for a future performance. A promise is sometimes offered without any prior request but no binding promise results unless the promisor's offer is accepted (Owens 2006: 72–3). Given this, we may treat the required acceptance as an imputed request.³¹ Now requests are more or less urgent. One might suppose that the urgency of a request is a function of the perceived importance of its subject matter. Indeed, the parties' shared sense of the latter will often help them understand how urgent the request is meant to be. Nevertheless, the urgency of the request is not determined by the perceived weight of the interests which would be served by complying with it. You can make an emphatic request for something known to be quite trivial (e.g. to test willingness to oblige) and you can make a tentative request for something that is known to be very important to you (because you fear a humiliating refusal). Rather the urgency of a request—i.e. its first order weight—is determined by the communicated intentions of the supplicant, by how emphatic it is: a request is as urgent as it is meant to be taken to be.

Much the same is true of promises. A promise is as solemn as it is meant to be taken to be. One can make a solemn promise about a trivial matter and a much less solemn promise about something quite serious. Of course, when interpreting a promise you will have regard to various clues about how firmly a promise is intended (formality of context, tone of voice, choice of diction etc.) and one of these clues will be the parties' shared perceptions of how important fulfilment of the promise is to the promisee. Promises about matters the promisee is known to regard as important will normally be understood as firm promises. But the parties can discount this presumption; they just need to make it clear what their intentions are. I propose that the communicated intentions of the parties (when they make and agree to the imputed request) fix this aspect of the solemnity of a promise by determining the first order weight which the promisor should give to the promise in their deliberations.

What of the second dimension of promissory obligation? In making a promise you are not merely communicating an intention to fulfil a request. You can respect such a request simply by giving it an appropriate first-order weight in any future deliberations about whether to execute your intention. When you *promise* to fulfil a request, you are putting the promisee in authority over you in

respect of the requested future performance. Respect for that authority requires you to exclude certain reasons from your deliberations. Your promise protects the reason created by the accepted request with a zone of exclusion. What determines the scope of this exclusion? Once more, the crucial factor is the communicated intentions of the parties. But I suspect that elements of the social background play a greater role in determining the zone of exclusion than in fixing the first order weight of the promise.

There is a general understanding that making a social arrangement excludes consideration of subsequent invitations, however attractive, but does not prevent you from handling your child's sudden illness in the way you judge best. I doubt this understanding is based on the parties shared perception of their own individual priorities—whether they regard family as more important than friends etc.—but is rather something furnished by the social background in which they both operate. Nevertheless, the default presumption supplied by the social context can be discounted by explicit agreement amongst the parties. If you say 'I'll be there whatever happens at home' in making your lunch date with me, you shouldn't even consider whether to take your child to hospital when another option is available. And if you say 'I'll be there for lunch unless I hear from NN' you are now entitled to weigh the attractions of lunch with NN against those of lunch with me. Clearly there are limits here. You can't make a promise to have lunch that excludes nothing at all; a promise must have some exclusionary force. Nor can you make a promise that excludes every countervailing consideration—e.g. of the need to save your child's life—any more than you can make a binding promise to do something gravely immoral. Still, the solemnity of a promise depends, as much as its content, on the parties' communicated intentions.

To sum up, Raz provides us with an appealing framework for thinking about obligation but it remains to be seen whether use of this framework is consistent with any form of rationalism.³²

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NOTES

¹ The analogy with a command suggests that fulfilment of an obligation must be *owed* to someone, who can *demand* compliance. Perhaps obligation can take a decision out of our hands only by putting it into someone else's hands, someone who can demand compliance of us. The obligations I shall consider (promise and command) have this relational structure but here I want to remain agnostic about whether this is a feature of obligation as such (or of 'moral' obligation, see Darwall 2006: ch. 5).

² As I'm using the word, the rationalist is not committed to any claims about the epistemic status of facts about obligation. I say more about the notion of rationalism below.

³ See Mill 1987: 321, Feinberg 1970: 6–7, Adams 1999: ch. 10 and perhaps Freud (Velleman 2006: 132–42). I leave it open whether motivating compliance is the only function of a sanction.

⁴ You might be obliged to *do* certain things with a view to inducing a belief either in yourself or another—for example, you might promise to make yourself believe that *p*—and if you are obliged to succeed here and not just to try then you must actually produce the belief that *p*. Such an obligation will shape your *practical* deliberations and may thereby influence whether you decide to deliberate about whether *p* (amongst other things) but it will not be something you can take into account whilst actually deliberating about whether *p* as you take into account evidence for and against *p*.

⁵ In Owens 2000: ch. 8 I argue that we are appropriately blamed for beliefs and feelings but obligation is a further issue. For a critique of the sanction theorist's account of why obligation falls only on action, see Pink 2004.

⁶ In the case of some obligations (e.g. to pay a fair tax), one might feel obliged to fulfil them only if there were a system of sanctions in place to ensure that (enough of) the unconscientious fulfil them also. Still, the conscientious citizen would feel obliged to pay even if he alone could evade the sanctions.

⁷ Raz's own notion of a normative power is close to but not identical with mine (Raz 1999: 98–104).

⁸ Scanlon 2006 develops this line of thought in more detail. For some related ideas see Williams 1985: 185 and McDowell 1998: 55–6.

⁹ We need not read Scanlon as saying that the nephew is *obliged* to avoid these unreasonable feelings and attitudes, but only that he would be a worse person if he had them.

¹⁰ Raz and Feinberg may allow that some requests create obligations. For example, acceding to a friend's request may be an obligation of friendship but if so that is not because they communicated the intention of imposing such an obligation in making the request.

¹¹ For more on reasoning and deliberation, see Owens forthcoming.

¹² Indeed, should he think the consequences of disobedience sufficiently undesirable, he may be *reliably* disposed to obey without being conscientious.

¹³ Similarly for promises. A promise to *A* is not just an expression of a firm intention to do *A* plus an expression of a firm intention not to consider various reasons which count against *A*-ing when deciding whether to *A*. You could express this complex intention without *promising* to do anything at all. It is perfectly possible for people to promise to exclude certain considerations from their deliberations (see note 17) but what makes this a promise is its exclusionary force and not its exclusionary content.

¹⁴ This formulation leaves it open whether each instance of conscientiousness must involve an actual exercise of such control.

¹⁵ Raz does think there are cases in which one should discount one's judgement about certain matters of fact e.g. if one makes a complex calculation whilst tired (Raz 1999: 37–8 and 59–62). On one reading, this is a case in which the apparent force of certain evidence (your inclination to judge) is undercut by other evidence (tiredness). That is cancellation, not exclusion. On another reading, the evidence retains its normative force in so far as it justifies the judgment but it should nevertheless be discounted when you are deciding what to do. This is exclusion in the context of practical rather than theoretical deliberation.

¹⁶ This asymmetry between belief and action is, I think connected to the asymmetries described in Owens 2000 and Owens forthcoming.

¹⁷ It also has a slightly odd focus. The only promises Raz really considers are exclusionary promises, that is promises not to take a given type of reason into account when deciding certain matters (Raz 1999: 39 and 1986: 222). This sort of promise is important in human life. For example, by agreeing to be a child's guardian, I commit myself to making certain decisions on the basis of the child's interests, ignoring various considerations which might otherwise be relevant. But these promises are also atypical in that exclusion is part of their subject matter.

¹⁸ You can ask to be released from the promise or at least deliberate about whether to ask for release but that is a quite different matter.

¹⁹ I am overlooking various complexities. What if you could have anticipated the domestic crisis or the end of your marriage when you made the promise? Does that mean you ought to have considered these issues already and are not entitled to do so again? This probably depends on how inevitable it really was.

²⁰ Raz's exclusion rule, noted above, suggests not; but, as we saw, Raz admits that we feel ambivalent about such cases.

²¹ As Williams remarks in a related context, 'It may be that when it is all explained, they understand, but it is foolish to say, even then, that they had no right to complain' (Williams 1982: 61).

²² I don't know whether Raz would agree. As already noted, in Raz 1999: 41–5 and 75 he says we feel ambivalent about such cases. On the other hand, in later work Raz claims that agents who face practical conflicts are clearly not to blame, unless they are to blame for getting themselves into a mess (Raz 2004: 189). I'm unsure whether this remark is meant to include conflicts involving obligations.

²³ Joining Kant 1996: 378–9 are Foot 2002: 186, Thomson 1990: ch. 3 and Darwall 2006: 27–8.

²⁴ For a slightly more detailed discussion see Owens 2007: 294–6.

²⁵ This may or may not involve the thought that you are *obliged* to save the greater number.

²⁶ Raz's view of practical reasoning is widely shared. Among those already mentioned, Davidson, Scanlon and Foot share it. Furthermore, one could have this view without endorsing Raz's (or Scanlon's or Foot's) objectivism about value. Most desire-based theories of value characterize practical reasoning in a similar way.

²⁷ The situation with conflicting orders is much the same as that with conflicting promises, as illustrated by our best man example.

²⁸ Tossing a coin would solve the problem only if the reasons in play were evenly balanced and this is precisely what each authority would deny. Both claim to exclude the first order reasons furnished by the orders of the other and neither would be happy to hear that I obeyed *their* order only because the coin turned up heads.

²⁹ Promises also exclude reasons for acting on reasons which recommend their breach. Indeed if the ticket inspector's obligations derive from his contract of employment, this example illustrates the point.

³⁰ Interested readers can find relevant material in Raz 1977: 227–8 and Raz 1982: 927–33.

³¹ Such an imputation is consistent with any degree of reluctance or indifference on the promisee's part provided the promisee accepts the promise.

³² Many thanks to Gary Watson, Mike Otsuka, Gregory Klass, Michael Pratt, Seana Shiffrin, Peter Vallentyne, Jules Coleman, Daniel Markovits, Shelly Kagan, Matt Smith, Nishi Shah, David Velleman and Troy Cross for comments on an earlier draft.

REFERENCES

- Adams, R. (1999), *Finite and Infinite Goods*. Oxford: Oxford University Press.
- Darwall, S. (2006), *The Second Person Standpoint*. Cambridge, MA: Harvard University Press.
- Davidson, D. (2004), *Problems of Rationality*. Oxford: Oxford University Press.
- Feinberg, J. (1970), *Doing and Deserving*. Oxford: Oxford University Press.
- Foot, P. (2002), *Moral Dilemmas*. Oxford: Oxford University Press.
- Kant, I. (1996), *Practical Philosophy*, trans. and ed. M. J. Gregor. Cambridge: Cambridge University Press.
- McDowell, J. (1998), *Mind, Value and Reality*. Cambridge, MA: Harvard University Press.
- Mill, J. S. (1987), *Utilitarianism and Other Essays*. London: Penguin.
- Owens, D. (2000), *Reason Without Freedom*. London: Routledge.
- (2006), 'A Simple Theory of Promising', *Philosophical Review*, 115: 51–77.
- (2007), 'Duress, Deception, and the Validity of a Promise', *Mind*, 116: 293–315.
- (forthcoming), 'Deliberation and the First Person', in A. Hatzimoysis (ed.), *Self-Knowledge*. Oxford: Oxford University Press.
- Pink, T. (2004), 'Moral Obligation', in A. O'Hear (ed.), *Modern Moral Philosophy*. Cambridge: Cambridge University Press.
- Raz, J. (1977), 'Promises and Obligations', in P. Hacker and J. Raz (ed.), *Law, Morality and Society*. Oxford: Oxford University Press.
- (1982), 'Promises in Morality and Law', *Harvard Law Review*, 95: 916–38.
- (1986), *The Morality of Freedom*. Oxford: Oxford University Press.
- (1999), *Practical Reason and Norms*. Oxford: Oxford University Press.
- (2004), 'Personal Practical Conflicts', in P. Baumann and M. Betzler (ed.), *Practical Conflicts*. Cambridge: Cambridge University Press.
- (2006), 'The Problem of Authority', *Minnesota Law Review*, 90: 1003–44.
- Scanlon, T. (1998), *What We Owe to Each Other*. Cambridge, MA: Harvard University Press.
- (2006), 'Wrongness and Reasons: A Re-examination', in R. Shafer-Landau (ed.), *Oxford Studies in Metaethics*. Oxford: Oxford University Press.
- Thomson, J. (1990), *The Realm of Rights*. Cambridge, MA: Harvard University Press.
- Velleman, D. (2006), *From Self to Self*. Cambridge: Cambridge University Press.
- Williams, B. (1982), *Moral Luck*. Cambridge: Cambridge University Press.
- (1985), *Ethics and the Limits of Philosophy*. London: Fontana Press.