

Shiffrin on Coerced Promises

For Hobbes a promise allows us to convert might into right, escaping the lawless state of nature. Fear of a violent death makes us promise to obey the Leviathan; that promise binds and is the source of our other obligations. All of this would make little sense were fear to invalidate the promise that it obtains. In Chapter 2 of *Speech Matters* Seana Shiffrin, starting from Kantian rather Hobbesian premises, finds something in Hobbes's line of thought. Though Shiffrin rejects the Hobbesian view that all obligation originates in contract, she does maintain that some coerced promises enable more decent forms of human interaction and that this fact explains why such promises bind.

Let's start with Shiffrin's target:

Invalidate: A promise creates no promissory obligation where the promise is induced by wrongful coercion applied to the promisor by the promisee for the purpose of obtaining the promise.

Shiffrin maintains that *Invalidate* overlooks a crucial distinction. On the one hand there are *scripted promises*, as when a mugger simply requires you to make the maximum withdrawal from your ATM on pain of serious injury and you promise to do so. Here, Shiffrin agrees, your promise creates no obligation. Whatever you end up doing, your promise should play no role in your deliberations. But she says things are different when we are dealing with an *initiated promise* like the following: a mugger demands your wallet threatening harm. Since you need the cash, you offer him your ring instead (represented as being of equal value) promising that if he takes the ring rather than the wallet and leaves you unharmed you will not report the crime (61). Here Shiffrin maintains that your promise does affect what you are obliged to do. You cannot simply 'pretend the promise was never made' (64).

The distinction between scripted and initiated promises is not entirely transparent. Shiffrin says that with the latter 'the victim of the duress genuinely

initiates or creates the response' (50) which makes it sound as if the crucial feature of the ring and wallet case is that the promisor proposes the deal to the promisee. But what if the mugger, seeing the attractive ring and sensing the victim's reluctance to part with their cash, offered them the same deal? Wouldn't giving their victim this choice also involve 'the mugger's partial acceptance of the victim's own articulation of her own interests as having weight' (62). I'll leave this question hanging.

Their having made an initiated promise to appease the mugger, Shiffrin does not think the victim obliged to keep it as made. Shiffrin endorses the widespread view that coercion deprives the mugger of the right to full performance. But Shiffrin modifies orthodoxy in maintaining that the victim should 'ask, once she is not under duress, what it would be reasonable to honour in the light of the fact that honouring the commitment in some way is necessary to render possible a rational acceptance of these sorts of resolutions.' (64). Perhaps the victim is permitted to report the crime but only after a decent interval, enough to give the mugger an opportunity to fence the ring? That behavior would make some sense, would be something the promisor might think they could justify and, knowing that, the mugger might well think it reasonable to accept their promise. At any rate, I shan't quibble about any of this. I'll accept that initiated promises change the normative situation by obliging the promisor to partially fulfill them. I want to understand why this should be so.¹

Here are two answers that I'll call *the value of control story* and *the moral progress story*. Both stories are present in Shiffrin's text but it is the second that receives the emphasis and which she appears to regard as the more fundamental. It is certainly the bridge between Chapter 2 and the concerns of the rest of *Speech Matters*. Though the two stories are not incompatible, the value of control story seems to me both more plausible and more fundamental than the moral progress story.

¹ Here I am modifying my earlier account of these matters in the light of Shiffrin's discussion: Owens – *Shaping the Normative Landscape* (Oxford 2012): 236-9. Still, if something like the value of control story is correct, we can accommodate this point within the same theoretical framework.

Here is a datum about promissory obligation: the primary promissory obligation is the obligation to fulfill the promise (whether wholly or partially), an obligation which the promisor owes to the promisee. Where the promise binds, the promisee has a right to (a perhaps partial) fulfillment of the promise.² Why would anyone wish to bind a potential promisor in this way? Presumably they want some control over the promisor. Perhaps they could get that control by brute force but they prefer to get it in a way that gives them a *right* to control what the promisor does, they prefer to get it by extracting a promise from them. The problem with coerced promises is now clear. If the promise is itself extracted by brute force, why suppose (like Hobbes) that it can convert might into right in this way (or even extend your right beyond the scope of your might); why suppose that the mugger can launder their threats by using them to extract a promise of performance rather than the performance itself?

Here the distinction between initiated and scripted promises starts to bite. Where the coerced promise is initiated, the promisor regains an element of control over aspects of the situation that matter to them. For example, the mugger's victim might appreciate the opportunity to make a binding promise not to report the mugging as a means of ensuring that their ring and not their cash gets taken. They might sensibly value that sort of control and this fact helps to explain why their coerced promise should be of value to them and thus, why it might make some difference to what they are obliged to do.

Note the coerced promise binds because it involves the promisee's allowing the promisor to control whether they retain the cash or the ring. As Shiffrin observes, it wouldn't be all the same to their victim if the robber simply took both ring and wallet but, in their hurry, dropped the wallet leaving the victim to recover it (62). More interestingly it isn't all the same if the victim takes control

² I'm unsure whether Shiffrin thinks that partial fulfillment of an initiated promise is owed to the promisee but she never denies this and, in her examples of coerced promises that bind it is extremely plausible that the promisee would be wronged by non-performance (e.g. abusing the flag of surrender (pp. 24-5 and 37) or breaking a promise made to hostage takers to secure release of the hostages (p. 31)).

by surreptitiously removing the cash from the wallet, so that the robber ends up with just the ring (77). The victim probably would not wrong the robber by deceiving them in this way; nevertheless the victim may sensibly prefer to have the robber grant them the option of retaining their cash, rendering such deception unnecessary.

That's the value of control story. It raises many questions. One is how to measure the value of control. For example we earlier wondered whether it matters to the validity of a coerced promise who lays down its terms: the promisor or the promisee? We should settle that question by asking how the answer affects the value of the choice being offered to the coerced promisor. Other issues arise: would validating such coerced promises give people an incentive to mug in the hope of being offered a good deal by a co-operative victim, an incentive which outweighs any benefit their victims might receive from having the power to make such promises (pp. 71-3)? Is the value of control over the normative situation purely instrumental, a means of controlling other people's behavior or is such control to be valued for its own sake as an element of autonomy? I want to set such questions aside. Surely there is something to the value of control story however the details go, something that explains why we should take initiated promises seriously.

The value of control story informs Shiffrin's discussion (e.g. in the passage already quoted about the mugger's allowing the victim to articulate her own interests) but she places the emphasis elsewhere. For Shiffrin, the principal source of the binding force of a coerced promise lies not the way it serves the control interest of the coerced promisor but rather in the road to redemption that it opens up for the coercing promisee. By giving their victim the right to make a valuable choice, Shiffrin maintains, the perpetrator shows some recognition of their victim's perspective on the matter and thereby takes a moral step forward. This opportunity for moral progress is unavailable unless coerced promises are to be taken seriously. Of course it would be far better were the illicit threats rescinded altogether but to insist on moral conversion is Shiffrin says 'unhelpfully utopian' (74). The negotiation that precedes the acceptance of

an initiated promise itself constitutes an improving form of moral recognition ('the forging of a connection through honest and publically transparent mechanisms of transaction' (77)) and initiated promises bind because their availability keeps the possibility of redemption alive.

As already noted, this moral progress story is consistent with and indeed probably depends upon something like the value of control story for it is only because the initiated promise is of value to the promisor that acceptance of such a promise by the perpetrator might constitute a form of recognition of the victim and thus of moral progress on their part. But that very dependence suggests that the moral progress story cannot be the fundamental reason why such coerced promises bind. It is the value of control that is doing the work.

Take a case where the mugger puts no weight on the victim's perceived interests except as leverage in negotiation. The mugger would like the crime to go unreported and perhaps they can achieve this (without a risky murder) only by extracting a binding promise from their victim. Here the mugger need only suppose that their victim will feel bound to honour their promise (provided they are left holding the cash) and may even regard their victim's conscientiousness as simply foolish. There isn't much recognition here. Nevertheless the promise may still be valid in so far as its bindingness serves the control interests of the mugger's victim in the way outlined above.

One virtue of the value of control story is that it suggests a unified account of why promises bind. Where (as is usual) there is no unjust coercion, we may explain the validity conditions of a promise by reference to the control interests of promisor and promisee. When I make a promise to meet you at the bus stop at 4pm, it seems implausible to suppose that the bindingness of that promise depends on its ability to make us into better people; much easier to believe that it binds because it serves our control interests in the right way. Where present, coercion complicates the latter story without forcing us to look in an altogether different direction for an explanation of why some coerced promises bind. By contrast, the moral progress story has obvious application *only* to cases of

(unjust) coercion, cases where moral conversion is required and persuasion unlikely to do the job.

At this point Shiffrin may contend that we are all in need of moral improvement and that the bindingness of promises quite generally does indeed depend on this fact. Elsewhere she has argued that the function of a promise is to correct power imbalances within relationships, imbalances which surely are a ubiquitous feature of human life. For Shiffrin, correcting the balance by making and accepting promises is a form of recognition that counteracts pervasive inequality and thereby facilitates moral progress. Perhaps that is why all promises, coerced or otherwise, bind.³ On this picture, unjust threats are only the crudest manifestation of power-hierarchies that poison human life. Shiffrin does not make this argument in the present chapter and one might wonder whether promises wouldn't bind even in a world of perfect equality. After all, reasonable divergences of opinion and purpose would likely persist and so also the control interests that promising serves. In any case I'm curious to know whether, for Shiffrin, her two lines of thought converge.

David Owens

Kings College London

³ See Shiffrin – 'Promising, Intimate Relationships and Conventionalism' *Philosophical Review* 117: 4 (2008): 502-10.