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PROMISE AS PRACTICE

by

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Abstract**PROMISE AS PRACTICE**

by

William Vitek**Adviser: Professor David M. Rosenthal**

Contemporary approaches to promise have focused primarily on the question of how promises produce obligations. Some of the answers to this question include: (1) promissory obligation is defined by the constitutive rules of the institution; (2) raised expectations create promissory obligations; (3) promises merely evidence previous obligations; (4) no explanation is needed because promissory obligation is intuitively clear; and (5) intentions create promissory obligations.

My response has several parts. First, I show that all of these explanations have serious problems in explaining aspects of promise that are outside their narrow range. Second, in attempting to explain how promises create obligations, these approaches all but ignore the equally important questions of when and how promises cease to be obligatory. Third, these approaches are usually part of a larger project: a moral theory, a theory of language, a theory of intention. Promise is often used as a central case in these theories, but the actual accounts of promise lack coherency, explanatory power, and empirical content.

More specifically, this study critically evaluates five contemporary approaches to

promise. It argues that they underdescribe promise and fail to accord with its data.

The approaches evaluated are the Institutional Approach used by John Rawls and John Searle; the Expectational Approach used by Henry Sidgwick and Jan Narveson; the Evidentiary Approach used by P. S. Atiyah; the Intuitionist Approach used by H. A. Prichard and W. D. Ross; and the Intentional Approach used by Michael Robins.

In their place I posit a theory of practice. A practice is defined as conformative behavior which arises spontaneously within forms of life. Practices are created by human action not human design. They are characterized by the actions of practitioners acting within practice roles. Though constrained by certain conditions, these roles have a range of interpretations. Practices evolve as the interpretations of their roles evolve. I show that a number of human activities can be explained on a theory of practice, and that promising is one of these activities. I argue that a Practice Approach to promise has coherence, explanatory power, and empirical content.

The Practice Approach to promise is a response to the rather limited range of the methodologies used by promise theorists of this century. The Practice Approach sees promise as a social practice and seeks to explain it as such. It attempts to be as conceptually rich as the social practice of promise is complex.

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INTRODUCTION

A great deal of contemporary philosophical literature is devoted to treatments of promise. An examination of this literature reveals that accounts of promise are usually found within larger parent theories of language, ethics, law or mind. John Austin and John Searle use promise as a central case in their respective theories of language. W. D. Ross, H. A. Prichard, Henry Sidgwick, Jan Narveson, and John Rawls, among others, use promise as a central example in their moral treatises. H. L. A. Hart and P. S. Atiyah place promise within a legal perspective; and Michael Robins uses promise to address issues in the philosophy of mind. Described one way, promise elucidates a theory of language; described another, promise validates a moral theory. Unfortunately, within these larger theoretical pursuits, descriptions and explanations of promise are often lacking in accuracy and depth. In short, there are moral theorists and theorists of language, but no promise theorists.

This study is motivated by a dissatisfaction with contemporary approaches to promise. When one focuses on these approaches to promise *per se*, and not the theories and issues under which promise is often subsumed, one finds them lacking in descriptive accuracy and explanatory power. These approaches typically fail because: (1) they suffer from problems with coherency; (2) they underdescribe promise, focusing on one aspect of promise while ignoring other aspects; or (3) they do not conform to the data of promise, and hence lack empirical content.

At first glance, the approach to promise used by John Searle and John Rawls suffers from coherency problems. Searle claims that promising is a performative

speech act taking place within an institution defined by constitutive rules. These rules create institutional facts, one of which is that when Smith utters the proposition "I Smith hereby promise to pay you Jones five dollars" he creates for himself an obligation to pay Jones five dollars. But it is less than clear how rules of any kind could create institutions *de novo*. Constitutive rules may define how chess pieces are moved, but they seem less able to define the cooperative and competitive spirit that goes into playing games like chess. The same may be said of the institution of promising. The rules of promise seem to presuppose a great deal of human behavior that makes promising possible, and it is not clear how constitutive rules alone would define or create this behavior.

John Rawls holds a similar view about promising. He claims that the rules of promising are constitutive and public, but he admits that these rules are not codified, and that they are learned within the context of one's moral training. It is difficult to know how promising can be an institution, the way baseball or chess are games, if its rules are not codified, or learned in precisely the same way. What are the rules of promise that we all learn in precisely the same way? How are we to explain the almost certain differences we will find in our lists of rules?

Accounts underdescribe promise in one of two ways. First, they explain one feature of promise to the exclusion of other important features. This occurs most often when theorists attempt to explain how promises create obligations. The result is that they often ignore or pay little attention to other aspects of promise. Second, accounts concentrate on one identifying feature of promise, and use this feature to explain the whole of promise.

All of the approaches evaluated in this study engage in underdescription of the

first sort. The great puzzle to be solved about promise is how one's words or actions can create an obligation where none existed before. By focusing on this one problem, these accounts fail to consider, or under emphasize, other important features of promise. For example: How do promises cease to be obligatory? How are disagreements resolved about the contents of a promise, or the validity of the conditions which will nullify a promise? How does one make a promise? How are the variations which exist between cultures and generations regarding promise to be explained? What are the effects of the double tensed (present and future) nature of promise? How does the relationship between promisor¹ and promisee affect a promise? Why is promising such a seemingly important part of our life? When these questions, and questions like them, are ignored or discussed cursorily, the resulting account of promise suffers.

Underdescription of the second sort occurs when an account of promise is cast in terms of a single identifying feature. This occurs in accounts which see promise primarily in terms of a performative speech act, or expectations, or intentions, or the creation of reliance. The approach which underdescribes promise most dramatically is the Intuitionist Approach to promise. This view, as presented by H. A. Prichard and W. D. Ross, sees no need to explain or describe promise at all. It is intuitively clear that a promise creates an obligation. They argue that all attempts at further explanation are unnecessary. But even if this view captures the intuitive clarity of promise, it does not go far enough in explaining other important issues surrounding promise. Other accounts which explain promise in terms of a single quality fail for similar reasons. Such accounts generally fail because of a lack of breadth.

Finally, many contemporary accounts ignore the data of promise. Searle

presents an idealized concept of promise and argues that any discrepancies between his idealization and everyday conceptions must be explained away in terms of how everyday conceptions differ from his idealized version. One would think that if there are discrepancies, it is the idealization that must be changed or ignored, not the data from which the idealization supposedly originates. W. D. Ross claims that his intuitions about promise coincide with the common man of Great Britain, but this claim is made without having asked any common people about their intuitions.

P. S. Atiyah argues that unilateral promises produce little or no obligation for the promisor, and he cites legal cases as evidence of this view. But promises occur outside of the courtroom, and we need to take seriously what the common person believes about unilateral promises. There is a wide range of historical, sociological, anthropological, and psychological data that can be used in developing a theory of promise. It is unclear how a theory can be successful if it ignores these data or is unable to account for them.

These are serious problems. It is not simply a matter of filling out one or another existing approach with empirical content, or of making small changes that will resolve problems with coherency. It is the central theme of this study that contemporary accounts of promise, *qua* accounts of promise, are unsatisfactory and need to be replaced with an acceptable alternative. Such an alternative requires both a methodology which treats promise as the central phenomena to be explained and not merely as a central case within a larger theoretical concern; and a theoretical framework which is able to capture the richness and complexity of promise. I provide both below. I posit a theory of practice which is not itself part of a larger theoretical framework, and I argue that a practice approach to promise succeeds where other

approaches fail.

I begin by evaluating five contemporary approaches to promise. I evaluate these approaches in terms of their ability to describe and explain in an adequate way the central features of promise. I take these features to include: the double tense nature of promise; how promises are made; how promises create obligations; how such obligations are defeated; how the practice of promise originates, is maintained, and changes; how we learn to promise; the relational features between promisor and promisee and their effect on the practice; and the purpose of this human practice. In undertaking this evaluation I ignore the larger issues and concerns found in these discussions of promise. I do not, for the most part, discuss theories of language, mind, ethics or law. The sole purpose of this study is to evaluate theories of promise and to offer a successful alternative.

I identify the approaches to be evaluated as: (1) Institutional; (2) Expectational; (3) Evidentiary; (4) Intuitionist; and (5) Intentional. It is possible to categorize these approaches into two types: rule-governed and aspect-governed. Rule-governed approaches include institutional, game, and social contract accounts of promise. These accounts are characterized primarily by their use of constitutive rules. Constitutive rules define how promises are made, how they create obligations and, in some instances, how obligations are defeated. In essence, constitutive rules define the institution, or game, or social contract of promise. The rule-governed approach is used by, among others, John Austin, H. L. A. Hart, John Searle, and John Rawls (both in "Two Concepts of Rules" and *A Theory of Justice*). I take the work of Searle and Rawls as representative of the Institutional Approach. For the sake of simplicity I identify their work under the institutional rubric.²

Those approaches which are not rule-governed, I characterize as aspect-governed. The four remaining approaches focus on a single aspect of promise; hence I call them single-aspect accounts. The Expectational Approach explains promise in terms of creating and raising expectations. The Evidentiary Approach sees promise in terms of the detrimental reliance it creates in the promisee. The Intuitionist Approach explains promise in terms of its intuitive clarity. The Intentional Approach explains promise in terms of the intention of the promiser. As with the Institutional Approach, I evaluate representative works of each approach. Henry Sidgwick and Jan Narveson are representative of the Expectational Approach; P. S. Atiyah of the Evidentiary Approach; H. A. Prichard and W. D. Ross of the Intuitionist Approach; and Michael Robins of the Intentional Approach. So characterized, these five approaches cover a wide range of the literature on promise. Unfortunately, it is not possible in a study of this nature to make a detailed review of the literature devoted to promise, which is rather voluminous. But I believe that the authors presented and evaluated here are strong representatives of each approach. The evaluation offered is generally negative. Each of the five approaches is shown to fail for one or more of the reasons described above: (1) coherency problems, (2) underdescription, or (3) lack of empirical content.

In their place I offer a theory of practice. A theory of practice makes the following general claims: a practice is any human activity that is described and recognized as conventional behavior undertaken by two or more persons in a homogeneous community. Practices originate as a result of human action rather than human design. Practices are not conceived or designed in advance, but originate spontaneously within forms of life. Practices are characterized by roles. These roles

outline or circumscribe a practice; they give practices their shape. Practices are created, maintained, and undergo change by the actions of a community of practitioners acting within practice roles. The actual shape of any given practice must wait upon the actions of its practitioners. One learns these roles not by learning rules, but through the imitation of role-models and unconscious participation in the practice. Practice rules--or rule-like formulations--serve instead a descriptive or strategic function in a practice. They are used to talk about a practice, or to give advice about how to succeed in a practice. Unconscious learning and imitation of role-models are the primary modes of practice role acquisition. The transmission of practices depends upon the interrelationships between practitioners. Practices cannot be learned easily outside of their indigenous communities or on one's own within a community. Potential practitioners can interpret the practice roles each in their own way, though the range of interpretations is limited by tradition and the forms of life within which the practice functions. Taken collectively, these interpretations give a practice its particular shape. Practices have histories and local flavor. As interpretations of roles vary, so too do practices. They undergo change and revision; they pass in and out of existence.

A theory of practice covers a wide range of human activities. Examples of practices include dating, telling jokes, making tea in Britain, booing at sporting events, walking on busy streets, standing in elevators, tipping in restaurants, standing in lines, and promising. The last chapter of this study defends the claim that promising is best understood as a practice.

The Practice Approach to promise is clearly not a rule-governed approach. Although rules do play a role in this approach, their role is very limited. The Practice

Approach is a multi-aspect approach.³ It does not focus on one or two features of promise, but instead describes promise in terms of its many features. Because single-aspect approaches generally underdescribe promise, I believe that a multi-aspect approach is better able to provide an alternative to rule-governed approaches, specifically the Institutional Approach.

A Practice Approach to promise avoids the sorts of problems from which other approaches suffer. It is a coherent approach. Unlike the Institutional Approach, for example, it does not need to make presuppositions for which it cannot account. Second, it is able to explain not only how promises produce obligations, but how promises cease to be obligatory and why; and generally how practitioners in this social practice interact and affect the practice as a whole. Because it is a comprehensive theory of promise, it does not underdescribe promise. Third, the Practice Approach does not ignore the data. A theory of practice cannot succeed without these data. In short, a practice theoretic account of promise has coherence, explanatory power and empirical content.

Chapters One and Two are devoted to the Institutional Approach. Chapter One outlines the views of Rawls and Searle, and Chapter Two reviews the critical literature that their views have created. Chapter Three evaluates the four single-aspect approaches. Chapter Four provides an outline of a theory of practice, and Chapter Five defends the view that promising is a practice. I devote a disproportionately large number of pages to the Institutional Approach because I believe it suffers from more than a failure to capture the whole picture of promise. The Institutional Approach, while influential, is largely incoherent. It is, I believe, the least successful of the approaches evaluated. I view the Practice Approach largely in

terms of a replacement for the Institutional Approach. Of course, I think a theory of practice is the best way to approach promise, and is a superior replacement for single-aspect approaches to promise as well.

The methodology employed in this study is clearly unconventional. It is not limited by traditional distinctions, nor is it concerned with propounding or defending a theory of language, or a moral theory. It extracts theories of promise from wider theoretical pursuits, criticizes these theories, and presents an alternative which is cast as nothing more or less than a theory of promise. Based on the results of contemporary accounts of promise, I believe that such an alternative methodology is justified.

ENDNOTES

1. Alternative spellings are used to distinguish between the different senses of 'promiser' and 'promisor.' 'Promiser' is used generically to denote one who promises; 'promisor' is used when there is a contrast between the person making the promise ('promisor') and the one who accepts or receives a promise ('promisee'). Original spellings are preserved in all quotations.
2. There is a problem with terminology here. Although Rawls uses the term 'practice' in "Two Concepts of Rules," his use of the term parallels closely what Searle and others refer to as 'institution.' Despite the fact that Rawls's work precedes Searle's I shall nevertheless use 'institution' to describe both their views, and any view which sees promising as a game, or practice, or institution arising from constitutive rules. Rawls uses 'institution' in *A Theory of Justice*. As Christopher Cherry remarks in his "Two Views of Moral Practices" (*Analysis* 33 (March 1973): 118-123), "The terms 'game', 'practice', and 'institution' feature prominently but untidily in a good deal of current moral philosophy" (p. 118). In addition, I believe that 'practice' is far more descriptive of the approach I am presenting than are any of the possible alternatives.
3. A practice approach to promise is not the only multi-aspect approach available. The works of A. I. Melden and John Finnis suggest a non-ruled, multi-aspect approach to promise. I discuss in chapter five the degree to which their work parallels a practice theoretical account of promise.

CHAPTER ONE

THE INSTITUTIONAL APPROACH: RAWLS AND SEARLE

The Institutional Approach describes promise as an institution defined and guided by constitutive rules. These rules give the various aspects of the institution their meaning. Every aspect of promise is defined by these rules.¹ Rawls expresses this view when he says:

That promising [is a practice] is beyond question....(T)his is shown by the fact that the form of words 'I promise' is a performative utterance which presupposes the stage-setting of the practice and the properties defined by it. Saying the words 'I promise' will only be promising given the existence of the practice....Those engaged in a practice recognize the rules as defining it. (1955, pp. 163, 168)²

For Searle the normative claim against the promiser follows not from any "brute fact," but from the institutional fact that the promiser Jones has promised to pay Smith five dollars. This institutional fact exists as the result of the constitutive rule which states that: "A person who utters the words 'I promise to pay you, Smith, five dollars' under the right conditions, has *in fact* an obligation to pay Smith five dollars and ought to do so." As Searle says:

I started with a brute fact, that a man uttered certain words, and then invoked the institution in such a way as to generate institutional facts by which we arrived at the institutional fact that the man ought to pay another man five dollars. The whole proof rests on an appeal to the constitutive rule that to make a promise is to undertake an obligation. (1964, p. 112)³

The purpose of this chapter is twofold: first, to set out the parameters of the Institutional Approach, and to show how promise is conceived of as an institution by Rawls and Searle; second, to highlight certain problems with this approach as a way of foreshadowing the critical evaluation which is to follow in Chapter Two. I consider

Rawls's discussion of promise in "Two Concepts of Rules" and *A Theory of Justice* to be representative of the Institutional Approach, though the context of these accounts are rather different. Further, I shall be faithful to Rawls's terminology. In "Two Concepts of Rules" he uses 'practice' to identify his approach, while in *A Theory of Justice* he uses 'institution' to identify the nearly identical approach. In both cases I take him to be presenting an Institutional Approach, as described above. We begin with Rawls.

I. RAWLS

i. *Parameters of a Practice*

In "Two Concepts of Rules" Rawls uses 'practice' "as a sort of technical term meaning any form of activity specified by a system of rules which defines offices, roles, moves, penalties, defenses, and so on, and which gives the activity its structure. As examples, one may think of games and rituals, trials and parliaments" (1955, p. 144). (See 1971, p. 55 for a slightly modified definition of how he uses 'institution.')

A practice is any form of activity specified by constitutive rules that define action taking place within it. The establishment of a practice is the specification of a new form of activity in accordance with constitutive rules. As Rawls puts it, the constitutive rules of practices are logically prior to particular cases.

There cannot be a particular case of an action falling under a rule of a practice unless there is a practice....(G)iven any rule which specifies a form of action (a move), a particular action which would be taken as falling under this rule given that there is the practice would not be *described as* that sort of action unless there was the practice. In the case of actions specified by practices it is logically impossible to perform them outside the stage-setting provided by those practices, for unless there is the practice, and unless the requisite properties are fulfilled, whatever one does, whatever movements one makes, will fail to count as a form of action which the practice specifies....If one wants to do an action which a certain practice specifies then there is no way to do it except to follow the rules which define it....Only by reference to the practice can one say what one is doing" (1955, pp. 163, 164, 165)

Rawls gives examples from the game of baseball. One cannot strike out or steal a base or balk unless there are rules which define these activities. Prior to the rules which define balking it would be impossible to balk. "Unless there is the practice the terms referring to actions specified by it lack a sense" (1955, p. 164).

Constitutive rules cannot be tampered with, or altered, or changed in any way by individual practitioners. A baseball player, for example, will not be able to say to the umpire that, judging by the present situation, it would be best on the whole were he allowed to have four strikes instead of the usual three. As Rawls explains, the strike-out rule is not a description of striking out, or a summary of all past strike-outs, that can be changed on special occasions. The strike-out rule defines striking out. To strike out is simply to have three strikes. If there are to be exceptions to the strike-out rule these exceptions must be carefully defined by the rule itself. "An exception is rather a qualification or a further specification of the rule" (1955, p. 165).

Rawls contrasts constitutive rules with what he calls summary rules. Summary rules are characterized as summaries of past decisions. Summary rules differ from practice rules in that they are not logically prior to cases. "The performance of the action to which the [summary] rule refers doesn't require the stage-setting of a practice of which the rule is a part" (1955, p. 160). Summary rules function more as aids or guides, what Rawls calls maxims or "rules of thumb." Further, summary rules are generalizations from experience "and something to be laid aside in extraordinary circumstances where there is no assurance that the generalization will hold.... Thus there goes with this conception the notion of a particular exception which renders a rule suspect on a particular occasion" (1955, p. 161).

Rawls does say that constitutive rules are not the only coherent conception of

rules that exists. He believes that there are applications for both practice rules and summary rules. He also states that the distinctions between practice rules and summary rules are not meant to be exhaustive. Finally, he says that there will exist many borderline cases "about which it will be difficult, if not impossible, to decide which conception of rules is applicable;" borderline cases are especially likely "with such involved concepts as those of practice, institution, game, rule, and so on" (1955, p. 167).

An important feature of institutional rules is that they be public rules (1955, p. 163; 1971, p. 55). As a participating member of an institution one knows the rules and what they demand of him and other members of the institution. One also knows that other members of the institution know the rules and expect one to follow the rules as well. "The publicity of the rules of an institution insures that those engaged in it know what limitations on conduct to expect of one another and what kinds of actions are permissible" (1971, p. 56). Public rules place upon members of an institution both the requirement of following the rules, and the expectation that other members of the institution will follow the rules as well.

Public rules also prevent unspecified or illegitimate moves within an institution. Unless the rules of the institution of punishment, for example, are made very clear, an innocent person could be punished in an effort to stop a string of heinous crimes for which there are no suspects. To prevent this outcome the rules must be made explicit. And if there are to be exceptions to this rule, they must be clearly stated in the rules of the institution. "It is utterly crucial to know who is decide such matters, and by what authority, for all of this must be written into the rules of the institution. Until one knows these things one doesn't know what the institution is

whose justification is being challenged" (1955, p. 151).

Rawls implies in a number of places that practices are further characterized as conceived or designed, and as being chosen by members of a community. He claims, for example, that in saying an institution is a public system of rules he means "that everyone engaged in it knows what he would know if these rules and his participation in the activity they define were the result of an agreement" (1971, pp. 55-6). This characterization would seem to follow necessarily from his conception of a constitutive rule. If a constitutive rule creates an action, and if the rule is logically prior to the action, then the rule must originate from a rule-maker(s). And if the rule is made by people in advance, then the rule must be made with a particular interest in mind.

This view is expressed in Rawls's discussion of the institution of punishment. "Once the legislator decides to have laws and to assign penalties for their violation...an institution is set up which involves a retributive conception of particular cases" (1955, p. 147). In "Justice as Fairness" Rawls claims the following: (1) rational persons "are capable of tracing out the likely consequences of adopting one practice rather than another." (2) In the design of practices "the restrictions which would so arise might be thought of as those a person would keep in mind if he were designing a practice in which his enemy were to assign him his place." (3) Free persons are engaged in a joint activity settling or acknowledging the rules which define a practice. (4) The participants in a practice come to accept its rules as fair, make choices between practices, and debate the form of their common practices (1958, pp. 169-179).

It is not necessary to imagine that such designs and choices actually occurred. Rawls says that "since these persons are conceived as engaging in their common practices, which are already established, there is no question of our supposing them to

come together to deliberate as to how they will set up these practices for the first time" (1958, p. 171). And again, "I do not, of course, conceive the several parties as necessarily coming together to establish their common practices for the first time. Some institutions may, indeed, be set up *de novo*." (1958, p. 177) Rawls appears to be saying that while it is unlikely that some practices were designed or set up for the first time using constitutive rules, it is still possible to imagine that once these practices were in place--however they came about--the rules which defined them could be discussed, modified, chosen, reaffirmed, etc. by the practitioners. Even if no community or tribe or nation has actually ever come together to talk about its practices in this way, it is nevertheless a necessarily logical feature of practices that such a meeting could take place.

One final feature of practices is how they are taught to new or visiting members of the community.

It is the mark of a practice that being taught how to engage in it involves being instructed in the rules which define it, and that appeal is made to those rules to correct the behavior of those engaged in it. Those engaged in the practice recognize the rules as defining it. The rules cannot be taken as simply describing how those engaged in the practice in fact behave: it is not simply that they act as if they were obeying the rules. Thus it is essential to the notion of a practice that the rules are publicly known and understood as definitive; and it is essential also that the rules of a practice can be taught and can be acted upon to yield a coherent practice. (1955, p. 163)

One learns, for example, how to be a judge or an umpire by learning the rules which define these offices and roles. To perform well in these roles is to follow the rules; to perform poorly is to fail to follow the rules. We engage in practice roles by learning the rules which define them.

ii. *Promise as Practice*

Rawls states emphatically in "Two Concepts of Rules" that promising is a rule-constituted practice.

That...promising [is a] practice [is] beyond question. This is shown by the fact that the form of words 'I promise' is a performative utterance which presupposes the stage-setting of the practice and the properties defined by it. Saying the words 'I promise' will only be promising given the existence of the practice. It would be absurd to interpret the rules about promising in accordance with the summary conception. It is absurd to say, for example, that the rule that promises should be kept could have arisen from its being found in past cases to be best on the whole to keep one's promise; for unless there were already the understanding that one keeps one's promises as part of the practice itself there couldn't have been any cases of promising. (1955, p. 168)¹²

He says again in *A Theory of Justice*:

Promising is an action defined by a public system of rules. These rules are, as in the case of institutions generally, a set of constitutive conventions. Just as the rules of games do, they specify certain activities and define certain actions. In the case of promising, the basic rule is that governing the use of the words "I promise to do X." It reads roughly as follows: if one says the words "I promise to do X" in the appropriate circumstances, one is to do X, unless certain excusing conditions obtain. This rule we may think of as the rule of promising; it may be taken as representing the practice as a whole. It is not itself a moral principle but a constitutive convention. In this respect it is on a par with legal rules and statutes, and rules of games; as these do, it exists in a society when it is more or less regularly acted upon. (1971, p. 345)

Promising is made possible because the actions which make up a promise are defined by a public set of constitutive conventions. As Rawls indicates, promising is primarily a linguistic convention. One promises by uttering certain words, specifically "I promise" in the appropriate circumstances. This performative utterance and the circumstances in which it occurs are both defined by constitutive rules. Constitutive rules also define the exceptions which defeat a promise. To deliberate about whether one should keep his promise "is to deliberate whether the various excuses, exceptions, and defences, which are understood by, and which constitute an important part of, the

practice, apply to one's own case" (1955, p. 156).

Rawls is quick to point out how the practice of promising is different from other practices. First, whereas most institutions and practices are defined by a system of rules, the practice of promising appears to be governed by a single rule, which, by itself, specifies the parameters of a promise. In *A Theory of Justice* Rawls says that the rule of promising specifies the appropriate circumstances and excusing conditions. The rule of promise specifies that: (1) the promiser is fully conscious and in a rational frame of mind; (2) he knows the meaning of the operative rules (here Rawls uses the plural); (3) the words are spoken freely or voluntarily; and (4) the speaker must not be asleep or suffering delusions. "In general, the circumstances giving rise to a promise and the excusing conditions must be defined..." (1971, p. 345). Second, the rule defining the practice of promise is not codified the way game rules or institutional laws are codified. Third, one's conception of the nature and extent of this rule depends on one's moral training. The result of this last point is that there are considerable variations in how people understand the practice of promising.

There is some confusion in these passages as to whether promising is defined by a rule or by rules, and to what extent promising is similar to other practices. Rawls does say that there are many complications here that cannot be considered, but his meaning is unclear. He might mean that there are more conditions to be described than the four mentioned above; or that there are certain complications in how one is to understand the rule(s) of the practice of promising. Alternatively, he might be claiming that there are certain complications in understanding the practice of promising as a rule-constituted institution in the way that games and legal practices are examples of rule-constituted institutions. Despite these complications Rawls

maintains his position. "It must suffice to remark that the principles of justice apply to the practice of promising in the same way that they apply to other institutions" (1971, p. 345).

Further evidence that Rawls is concerned about the closeness of fit between promising and the Institutional Approach is found in two footnotes. In the final footnote to "Two Concepts of Rules" he says:

As I have already stated, it is not always easy to say where the [practice] conception [of rules] is appropriate. Nor do I care to discuss at this point the general sorts of cases to which it does apply except to say that one should not take it for granted that it applies to many so-called 'moral rules.' It is my feeling that relatively few actions of the moral life are defined by practices and that the practice conception is more relevant to understanding legal and legal-like arguments than it is to the more complex sort of moral arguments. (1955, p. 170)

This footnote seems to indicate one of two possibilities: either Rawls sees promising as an example of a legal practice, or he believes that promising--as an action of the moral life--is not capturable by practice rules. Assuming Rawls to accept the first possibility, promising falls under the practice conception of rules only if it is considered a legal practice. Unfortunately Rawls does not address this issue further.

In a second footnote Rawls distinguishes his views in "Two Concepts of Rules" from other positions to which it had been identified.

What I did argue was that, in the *logically special* case of practices (although actually quite a common case) where the rules have special features and are not moral rules at all but legal rules or rules of games and the like (except, perhaps, in the case of promises), there is a peculiar force to the distinction between justifying particular actions and justifying the system of rules themselves. (1958, p. 168)

It appears here as if Rawls is claiming that the practice of promising is not in fact like games or legal practices. If the case of promising is an exception, what sort of exception is it and what peculiar features make it an exception? Again, Rawls is silent.

For Rawls the obligation of a promise does not originate from the institution itself, but from the principle of fairness agreed upon in the original position.

As the discussion of promises illustrates, the contract doctrine holds that no moral requirements follow from the existence of institutions alone. Even the rule of promising does not give rise to a moral obligation by itself. To account for fiduciary obligations we must take the principle of fairness as a premise. Thus along with most other ethical theories, justice as fairness holds that natural duties and obligation arise only in virtue of ethical principles. These principles are those that would be chosen in the original position. (1971, p. 348)

In this way promising is different from other institutions and games.

By contrast, institutional requirements, and those deriving from social practices generally, can be ascertained from the existing rules and how they are to interpreted. For example, as citizens our legal duties and obligations are settled by what the law is, insofar as it can be ascertained. The norms applying to persons who are players in a game depend upon the rules of the game. Whether these requirements are connected with moral duties and obligations is a separate question. (1971, p. 349)

The obligation to leave the field after being called out at second base, whether or not it is a moral ought, is an obligation one has within the game. It is an obligation which follows from the constitutive rule of being called out. It is an obligation specific to the game of baseball. The institution of promising, however, does not work this way. Its constitutive rule(s) does not produce its obligation-creating nature. Instead, the rule(s) of the institution creates a situation where one is obligated, but the obligation itself is derived from a moral principle. For Rawls this is the principle of fairness, a principle agreed to in the original position. "All obligations arise from the principle of fairness: a person is under an obligation to do his part as specified by the rules of an institution whenever he has voluntarily accepted the benefits of the scheme or has taken advantage of the opportunities it offers to advance his interests" (1971, pp. 342-3).

This account of promissory obligation makes the practice of promising out to be

quite different from other social institutions and games. The constitutive rules of promising constitute only in a partial, non-moral way. The institution of promise depends upon additional moral principles.

To review, a practice or institution for Rawls is characterized by constitutive rules which define any form of activity taking place within it. These rules must be a public system of rules. Practice rules can be created, debated, and revised by a community of rational persons engaged in choosing their social institutions. Though some practices arise *de novo*, it is a logical feature of a practice that a meeting in which its rules are chosen could take place. Finally, one becomes conversant with a practice by learning its constitutive rules. These rules tell us everything we need to know to engage in it. Rawls believes that promising is a clear example of a practice so conceived, though he admits to certain disanalogies.

iii. Discussion

As Rawls himself seems to imply, not all institutions should be, or even can be, seen as being designed. Initial or primitive institutions, he claims, can be seen as arising *de novo*. This raises a number of questions. If we can imagine certain institutions as arising on their own, then why do we need the Institutional Approach? Why not, instead, assume that all or most of our social institutions arise *de novo* and then go on to describe the features of this conception of our social practices? Moreover, how do we distinguish institutions which were created out of pre-conceived constitutive rules from those which arose *de novo*, and how can we be certain where the institution of promising fits in? If there are *de novo* institutions, how do we evaluate, alter and adopt them in terms of their constitutive rules--as Rawls maintains we do--if they arose without such rules? In evaluating, altering and adopting

institutions in terms of rules, what sorts of rules are we dealing with? If Rawls admits the existence of *de novo* institutions, then he must be able to differentiate them from institutions which arise via constitutive rules, and argue why promising is an example of the latter and not the former. If promising is an example of a *de novo* institution, then it is unlikely that its rules are constitutive for the simple reason that constitutive rules define actions. *De novo* institutions precede any rules that might define actions taking place within them. It does not appear that Rawls can have it both ways. If the institutions which we evaluate and choose are *de novo* institutions, then their rules are not constitutive. If the rules are constitutive, then the institutions must have been designed.

A second problem concerns the presuppositions made under Rawls's conception of constitutive rules. How are institutions designed and constructed out of constitutive rules? Do the leaders of a community get together to discuss problems and ways to solve them, using as one of their solutions, rule-constituted institutions which they design and then announce to the community? If so, how do they get everyone to play by the rules? More important how, at the level of social institutions, are the rules communicated to the community unless the members of the community are already aware of the existence of the actions described by the rules? How, for example, do you introduce the institution of punishment into a community where there is no conception of punishment? The rules would be absolutely unintelligible to a community which had no concept of punishment. But if the members of the community are already aware of what punishment is, then the rules of the institution--or whatever rules the community leaders think they are promulgating--are not constitutive. And if the rules are not constitutive, then it is unclear how a community of rational persons could ever

partake in the process of choosing their institutions. The same can be said about promising. Unless such concepts as *future*, *promise*, and *obligation* are grasped, at least in a primitive way, by members of a community, there is little chance that rules defining these concepts can be understood by members of the community. But if such rules are understood, then the actions or concepts they purportedly define must pre-exist the rules. The result is that the success of the Institutional Approach depends upon presupposing concepts and actions which the rules purportedly define. As an explanatory device, then, constitutive rules succeed only if they make certain presuppositions which, in turn, make such rules redundant and unnecessary.

Third, one can question whether the Institutional Approach provides an accurate picture of the participants of an institution. One important feature of this approach is that members of a community that has these institutions are conceived of and described in terms of rules. Because institutions are defined by constitutive rules, members of the community necessarily become rule-makers, rule-followers, rule-changers, rule-interpreters, rule-breakers, etc. On this account we act spontaneously within institutions only when the rules allow us to, or when there are no specific rules prohibiting spontaneous or creative actions. We make exceptions only when the rules dictate. Further, one learns institutional roles by learning rules, even if one is unaware of these rules. One either follows a rule or breaks a rule; acts either in accordance with a rule or in such a way that is not explicitly prohibited by a rule. In later chapters I question whether such a conception captures the actions of human beings within their practices and institutions.

Fourth, there are problems when one turns to promising as an example of an institution. We have seen how Rawls seems to hedge in describing promising as an

institution. He appears to recognize certain differences between promising and other institutions. Some of these differences include: (1) the singularity of the rule defining promising versus the plurality of the rules defining other institutions (admittedly, Rawls is unclear about this); (2) the uncoded rule(s) of promising versus the codified rules of law and games; (3) the non-codification of the exceptions to a promise versus the codification of the exceptions to legal laws and game rules; and (4) the additional principles of fairness arrived at in the initial position. Such differences would appear to preclude promising from the framework of a legal institution, and of games and institutions generally. If Rawls were to deny this he would have to show how these disanalogies can be accommodated within the Institutional Approach.

Finally, Rawls maintains that promising is a performative speech act. On this view one can promise only by using the words 'I promise' or certain other well-defined words or phrases. Rawls does not mention any other alternatives, and so we should take him to mean that the words 'I promise' are the only ones available to promisers. This view denies the possibility of using informal language, or no language at all, to make promises. It seems also to deny the experience of everyday promisers who do make and keep promises made in these informal ways. Using certain well-defined words does facilitate the making of promises, but these words do not constitute a necessary condition for making promises. Indeed there are those who argue that promising is possible without an institutional framework or an appeal to performative utterances. I present their views in Chapter Two.

These are some of the more serious problems facing Rawls's development of the Institutional Approach to promise. The arguments sketched here will be worked out in greater detail in Chapter Two. Searle's account, as we shall see, avoids some of

these problems but raises new ones.

II. SEARLE

i. Parameters of an Institution

Like Rawls, the most important feature of Searle's conception of an institution is that it is defined by constitutive rules. "The activity of chess is constituted by action in accordance with...rules. Chess has no existence apart from these rules....Constitutive rules constitute (and also regulate) forms of activity whose existence is logically dependent on the rules" (1969, p. 34). Constitutive rules, claims Searle, are tautological in nature. Rules provide us with definitions of "checkmate" or "touchdown," for example. An example of such a rule would be: "A touch-down is scored when a player has possession of the ball in the opponents' end zone while play is in progress." Or, more generally, "X counts as Y" or "X counts as Y in context C." Examples of rule-defined institutions include baseball, football, chess, marriage, promising, and money. "The institutions of marriage, money, and promising are like the institutions of baseball or chess in that they are systems of such constitutive rules or conventions" (1964, p. 112).

Like Rawls, Searle claims that without constitutive rules there is no institution and one's actions lack a sense.

The specification "They played football," cannot be given if there were no rules. It is possible that twenty-two men might go through the same physical movements as are gone through by two teams at a football game, but if there were no rules of football, that is, no antecedently existing game of football, there is no sense in which their behavior could be described as playing football. (1969, pp. 35-6).

Searle is careful to include in his conception of a rule-defined institution more than the rules defining the moves in the game. "I intend to include the rules that make clear the 'aim of the game'....For example I think it is a matter of rule of competitive games that each side is committed to trying to win" (1969, p. 34). Hence, the rules not only give meaning to one's actions in a game or institution, but they also define the motivations one is assumed to bring to the game: the motivation to want to win and to do it playing fairly, for example. For Searle constitutive rules define a wide range of activities.

Searle contrasts constitutive rules with what he calls regulative rules.

Regulative rules are rules which regulate antecedently existing forms of behavior. The rules of polite behavior regulate eating, but eating exists independently of these rules. Examples of regulative rules include: "When cutting food, hold the knife in the right hand," and "Officers must wear ties at dinner." Or, more generally, "Do X" or "If Y do X" (1969, p. 34). Regulative rules are used to regulate one's behavior within a practice or a non-ruled convention. The practice exists whether or not any regulative rules exist. "In general, social behavior could be given the same specifications even if there were no rules of etiquette. But constitutive rules, such as for games, provide the basis for specifications of behavior which could not be given in the absence of the rule" (1969, p. 36).

Finally, constitutive rules create facts which do not otherwise exist. These facts he calls "institutional facts," contrasting them with "brute facts." Brute facts are expressed by statements like 'Jones is six feet tall' and 'Smith has brown hair.' Institutional facts are expressed by statements like 'Smith made a promise' or 'Jones has five dollars' or 'Mays hit a homerun.'

The classic picture [distinguishing between descriptive statements and evaluative statements] fails to account for the difference between statements of brute fact and statements of institutional fact....Both statements 'Jones is six feet tall' and 'Smith made a promise', though different, are descriptive statements. They are different in that "statements containing words such as 'married,' 'promise,' 'home run,' and 'five dollars' state facts whose existence presupposes certain institutions: a man has five dollars, given the institution of money. Take away the institution and all he has is a rectangular bit of paper with green ink on it....Similarly, a man...makes a promise only within the institution of...promising. Without [it], all he does is utter words or make gestures. We might characterize such facts as institutional facts, and contrast them with noninstitutional, or brute, facts: that a man has a bit of paper with green ink on it is a brute fact, that he has five dollars is an institutional fact. (1964, p. 111)

The classic picture, claims Searle, fails to account for commitment, responsibility, and obligation. On the Institutional Approach, commitment, responsibility, and obligation are institutional facts which derive their meaning from constitutive rules. It is an institutional fact, for example, that promises create obligations; and institutional facts are defined by the constitutive rules of the institution.

Searle's conception of constitutive rules is similar to Rawls's conception and, therefore, suffers from similar problems. If rule-defined institutions are logically dependent upon constitutive rules, then these institutions cannot exist prior to the design and instantiation of their constitutive rules. But how could such institutions arise unless its members already understood what the rules were defining? Second, if institutions are governed by constitutive rules then it would seem to follow that a person could not participate in an institution unless he knew the rules. How is it, then, that people are apparently able to participate in an institution without being aware of its rules?

Searle uses an example from phonetics to show how it is possible to discover certain rules of phonetics even though we have been following them all along without being aware of their existence.

In my dialect, "linger" does not rhyme with "singer," nor "anger" with "hanger," though from the spelling it looks as though these pairs ought to rhyme....If you get a list of examples like this, you will see that there is a rule: Wherever the word is formed from the verb the /g/ is separately pronounced. Thus "sing" : "singer"; "hang" : "hanger"; "bring" : "bringer"; but "linger", "anger", "finger", "longer" do not come from any verbs "ling", "ang", "fing", and "long". Furthermore, I want to claim that this is a rule and not just a regularity, as can be seen both from the fact that we recognize departures as 'mispronunciations' and from the fact that the rule covers new cases, from its projective character....Not all English dialects have this rule, and I do not claim there are no exceptions--nonetheless, it is a good rule. It seems obvious to me that it is a rule, and that it is one which we follow without necessarily knowing (in the sense of being able to formulate) that we do. (1969, pp. 41-2)

Hence, in order to explain an aspect of human behavior we sometimes have to suppose that it was done in accordance with a rule, "even though the agent himself may not be able to state the rule and may not even be conscious of the fact that he is acting in accordance with the rule" (1969, p. 42). This would explain how someone could act in accordance with the rules of promise without being aware of them.

Searle just ignores the questions surrounding an institution's origins, and instead focuses on how someone like himself could extract the set of rules defining an institution.

If we get such a set of [necessary and sufficient] conditions [for the act of promising to have been successfully and non-defectively performed] we can extract from them a set of rules for the use of the illocutionary force indicating device. The method here is analogous to discovering the rules of chess by asking oneself what are the necessary and sufficient conditions under which one can be said to have correctly moved a knight or castled or checkmated a player, etc. We are in the position of someone who has learned to play chess without ever having the rules formulated and who wants such a formulation. We learned how to play the game of illocutionary acts, but in general it was done without an explicit formulation of the rules, and the first step in getting such a formulation is to set out the conditions for the performance of a particular illocutionary act. (1969, pp. 54-5)

According to Searle it simply isn't necessary to know anything about the origins of such rules. Careful observation of what it is we do when we play chess or promise--the set

of necessary and sufficient conditions--will allow us to extract the rules from the institution.

ii. Promise as Institution

Searle believes that promising is a clear example of a linguistic institution. He chooses promising because "as illocutionary acts go, it is fairly formal and well articulated; like a mountain terrain, it exhibits its geographical features starkly" (1964, p. 54). In promising one invokes the constitutive rules of the institution, whereby one commits oneself to a future act by using the speech act "I hereby promise..." in the appropriate conditions. In the same way that the rules of chess create certain institutional facts about how to move the knight or how to checkmate, the rules of promise create the institutional fact of obligation. "I take it that promising is by definition, an act of placing oneself under an obligation" (1964, p. 103). The definition of promising is a tautology stating that promises produce obligations. This tautology generates an obligation only if certain institutional facts--which are defined by constitutive rules--hold. As Searle says, "Tautologies prescribe behavior...only conditionally on some institutional fact" (1969, p. 191). Asking how promises produce obligations is like asking how a touchdown creates six points. The only way to answer this question is to point to the rules which create the six points.

Searle is strongly committed to the view that promising is a performative speech act.

Many philosophers still fail to realize the full force of saying that 'I hereby promise' is a performative expression. In uttering it one performs but does not describe the act of promising. Once promising is seen as a speech act of a kind different from describing, then it is easier to see that one of the features of the act is the undertaking of an obligation. But if one thinks the utterance of 'I promise' or 'I hereby promise' is a peculiar kind of description--for example, of one's mental state--then the relation between promising and obligation is going to seem very

mysterious. (1964, p. 108)

In promising, one *does* something.

Searle thinks that questions about the institution of promising ought to be kept separate from questions asked within the framework of the institution.

There are two radically different ways of taking the phrase "commit oneself to (accept) the institution of promising". In one way it means something like (a) "undertake to use the word "promise" in accordance with its literal meaning, which literal meaning is determined by the internal constitutive rules of the institution". A quite different way to take the phrase is to take it as meaning (b) "endorse the institution as a good or acceptable institution". Now, when I do assert literally that he made a promise I do indeed commit myself to the institution in the sense of (a)....But I do not commit myself in the sense of (b). (1969, 194-5; see also 1964, p. 108)⁴

Searle leaves the external question aside, choosing instead to answer the internal question of how individual promises obligate. He does this by referring to the rule-defined institution of promise.

Searle states explicitly that his conception of promising is a simple and idealized case. He defends this method of constructing an idealized model by saying that it is analogous "to the sort of theory construction that goes on in most sciences, e.g., the construction of economic models, or accounts of the solar system which treats planets as points. Without abstraction and idealization there is no systematization" (1969, p. 56). He directs his analysis toward the concept of promising. "This approach has the consequence that counter-examples can be produced of ordinary cases of the word 'promise' which do not fit the analysis....Their existence does not 'refute' the analysis, rather they require an explanation of why and how they depart from the paradigm cases of making promises" (1969, p. 55). Searle limits his discussion to what he calls "full-blown categorical promises."

We now come to (1) Searle's idealized conception of promising as expressed in his familiar derivation; (2) his listing of the necessary and sufficient conditions of successful promising; and (3) the constitutive rules he generates from these conditions. We are less interested in these conditions and rules *per se*, than with how these rules and conditions reflect upon Searle's conception of the institution of promising. The derivation, conditions, and rules are important for what they tell us--and do not tell us--about Searle's conception of the institution.

The derivation is as follows:

(1) Jones uttered the words "I hereby promise to pay you, Smith, five dollars."

(1a) Under certain conditions C anyone who utters the words (sentence) "I hereby promise to pay you, Smith, five dollars" promises to pay Smith five dollars.

(1b) Conditions C obtain.

(2) Jones promised to pay Smith five dollars.

(2a) All promises are acts of placing oneself under (undertaking) an obligation to do the things promised.

(3) Jones placed himself under (undertook) an obligation to pay Smith five dollars.

(3a) Other things are equal.

(3b) All those who place themselves under an obligation are, other things being equal, under an obligation.

(4) Jones is under an obligation to pay Smith five dollars.

(4a) Other things are equal.

(5) Jones ought to pay Smith five dollars (1964, p. 102).

Certain conditions (C) contain all of the necessary and sufficient conditions for the successful performance of the act of promising. "The conditions will include such things as that the speaker is in the presence of the hearer Smith, they are both conscious,

both speakers of English, speaking seriously. The speaker knows what he is doing, is not under the influence of drugs, not hypnotized or acting in a play, not telling a joke or reporting an event, and so forth" (1964, pp. 102-3). In *Speech Acts* Searle sets out these conditions in the following way:

Given that a speaker S utters a sentence T in the presence of a hearer H, then, in the literal utterance of T, S sincerely and non-defectively promises that *p* to H if and only if the following conditions 1-9 obtain: 1. Normal input and output conditions obtain; e.g.

- a. speaker and hearer both know how to speak the language
 - b. both are conscious of what they are doing
 - c. no physical impediments to communication
 - d. they are not acting in a play or telling jokes
2. S expresses the proposition that *p* in the utterance of T.
 3. In expressing that *p*, S predicates a future act A of S. (In a promise an act must be predicated of the speaker and it cannot be a past act.)
 4. H would prefer S's doing A to his not doing A, and S believes H would prefer his doing A to his not doing A. (Distinguishes promises from threats, warnings, invitations, etc.)
 5. It is not obvious to both S and H that S will do A in the normal course of events.
 6. S intends to do A.
 7. S intends that the utterance of T will place him under an obligation to do A.
 8. S intends (i-I) to produce in H the knowledge (K) that the utterance of T is to count as placing S under an obligation to do A. S intends to produce K by means of the recognition of i-I, and he intends i-I to be recognized in virtue of (by means of) H's knowledge of the meaning of T.
 9. The semantical rules of dialect spoken by S and H are such that T is correctly and sincerely uttered if and only if condition 1-8 obtain. (1969, pp. 57-61)

Searle claims that from an analysis of the necessary and sufficient conditions of the

successful performance of a promise one will be able to extract the underlying, constitutive rules of the institution. These rules are:

1. *Pr* is to be uttered only in the context of a sentence (or larger stretch of discourse) T, the utterance of which predicates some future act A of the speaker S.
2. *Pr* is to be uttered only if the hearer H would prefer S's doing A to his not doing A, and S believes H would prefer S's doing A to his not doing A.
3. *Pr* is to be uttered only if it is not obvious to both S and H that S will do A in the normal course of events.
4. *Pr* is to be uttered only if S intends to do A.
5. The utterance of *Pr* counts as the undertaking of an obligation to do A. (1969, p. 63)

Searle claims that the premises of the above derivation of an 'ought' from an 'is' consist of empirical assumptions, tautologies, and descriptions of word usage.

[Premise] 1a [Under certain conditions C anyone who utters the words (sentence) "I hereby promise to pay you, Smith, five dollars" promises to pay Smith five dollars] states a fact about the meaning of a descriptive word, "promise". Furthermore, anyone who uses that word in serious literal speech is committed to its logical consequences involving obligations. And there is nothing special in this respect about promises; similar rules are built into statements, warnings, advice, reports, perhaps even commands....What I am here arguing is that, in the case of certain institutional facts, the evaluation involving obligations, commitments and responsibilities are no longer left completely open because the statement of the institutional facts involves these notions. (1969, p. 190; see also 1964, p. 106)

The uttering of certain words in certain conditions just *is* promising. The statement 'One ought to keep one's promises' is a tautology which is derived from two tautologies: (1) "All promises are (create, are undertakings of, are acceptances of) obligations;" and (2) "One ought to keep (fulfill) one's obligations." The first tautology follows from the analysis of a performative speech act, of which promising is an example. The second tautology follows from the rules of the institution of promising,

one of which states that one ought to fulfill one's obligations. This rule is similar to the game rule that one ought to play fairly. "If a person promises he is committed to doing the thing promised, and this is purely in virtue of the meaning of 'promise'" (1969, pp. 190-1). The difference between a promise to pay Smith five dollars and the intention to pay him lies in the nature and degree of commitment or obligation undertaken in promising. This difference is created by the rules of the institution of promising.⁵

Searle injects a *ceteris paribus* (other things being equal) rider between premises (3) and (4), and premises (4) and (5). Between premises (3) and (4) the rider covers situations which would release a promiser from an obligation. Between premises (4) and (5) it covers cases where the obligation has been removed by the promisee or is overridden by a prior obligation. Searle takes the force of the expression 'other things being equal' to mean the following: "Unless we have some reason...for supposing the obligation is void...or the agent ought not to keep the promise...then the obligation holds and he ought to keep the promise" (p. 105). Searle admits that there is no established procedure for objectively deciding such cases in advance. In *Speech Acts*, however, he does away with the *ceteris paribus* rider altogether.

The defeasibility of promising has to do with the fact that considerations outside the act of promising bear on what obligations one has or what one ought to do. These considerations do not bear on the logical relations I am here trying to spell out [between the premises] and so are irrelevant to our present concern....To avoid irrelevancies...I leave out of the proof any explicit consideration of how extraneous factors release, discharge, or override the obligation undertaken when one makes a promise (1969, p. 180)

He does this, he says, as a way to sidestep a large body of criticism which focused on the *ceteris paribus* clause. But he also believes that the exclusion of defeasibility conditions to promising in no way seriously affects the logical analysis of the institution

of promising as an idealized case.

Regarding the list of necessary and sufficient conditions, Searle remarks that the list will no doubt be incomplete. This he claims is because the boundaries of the concept of promising are a bit loose. But despite this looseness, and the difficulty involved in deciding hard cases, Searle maintains that "one thing is clear...the conditions under which a man who utters 'I hereby promise' can correctly be said to have made a promise are straightforwardly empirical conditions" (1964, pp. 102-3). These empirical conditions are those listed above (pp. 34-5).

Finally, Searle believes that the analogy between the rules of promising and the rules of games holds up "remarkably well."

If we ask ourselves under what conditions a player could be said to move a knight correctly, we would find preparatory conditions such as that it must be his turn to move, as well as the essential condition stating the actual positions the knight can move to. There are even sincerity conditions for competitive games, such as that one does not cheat or attempt to 'throw' the game. (1969, p. 63)

To review, Searle believes that promising is characterized as a performative speech act taking place within a rule-governed institution. These rules define institutional facts, one of which is that a person who makes a promise under the right conditions creates an institutional obligation for himself. Unlike Rawls, Searle ignores questions about origins and about external questions generally. But he does provide an explanation of how language and promising could be rule-governed institutions without members of these institutions being consciously aware of the constitutive rules governing language and promise. In addition, Searle generates a list of necessary and sufficient conditions from which he abstracts the rules of promising. Searle, then, actually gives us a list of rules which he believes governs the institution of promising. Finally, Searle admits that his conception of promising is an idealized one.

iii. Discussion

A number of questions can be raised regarding Searle's conception of an institution, and his treatment of promising as an institution. Searle uses the example of a phonemic rule to demonstrate how it is that one can use a rule without knowing it consciously. We should first notice that the fact that such a phonemic rule can be formalized and shown to work with new cases is not in itself proof that this rule necessarily is constitutive of the institution of language. It could be a descriptive rule of how native speakers pronounce certain words of the language. If Searle wants to maintain that this rule is a discoverable, constitutive rule of language--as he in fact claims to have discovered--then we can inquire into this rule's initial origin. If it is a constitutive rule, rather than a rule created to describe or explain English pronunciation, then it must have come from somewhere; presumably designed by some initial language speakers. If it is such a rule, then there must be some procedure to demonstrate that the rule Searle has generated in fact corresponds to a particular constitutive rule of language. Not all rules are constitutive rules, though some rules may resemble constitutive rules. More argument is needed in order to show that a formalized phonemic rule is a constitutive rule and not a descriptive or regulatory rule. This criticism applies as well to the rules of promise he generates.

Second, there are important differences between phonemic rules and the rules of the game of baseball, for example. You can't play baseball without consciously knowing the rules because the rules define a version of the game. Nor can you be said to be playing baseball if you somehow managed to internalize the rules, but were unable to indicate--by formulating them--which rules you were following. But you can speak phonemically without knowing phonemic rules, and without being able to formulate

them. Further, as Searle himself admits, there are exceptions to phonemic rules. In a game like baseball, frequently occurring exceptions are generally well defined by the rules. If Searle is right about the function of constitutive rules, actions which are not defined by rules lack a sense. Hence, behavior described as an exception to the rules, unless it was itself defined by a rule, would be meaningless. But many aspects of grammar described as exceptions to phonemic rules are perfectly grammatical, even though no rule defines these exceptions. Though referred to as exceptions, phonemic exceptions are not created or defined by constitutive rules. Searle would no doubt diminish these differences, but if more than a few non-trivial differences exist between the rules of institutions and game rules, then we are justified in calling into question the parallels between the institution of language or promising and the game of baseball or chess.

A third problem arises in the comparison Searle makes between the person who extracts the rules of promising from a set of necessary and sufficient conditions and the person who has learned to play chess without ever having the rules formulated and who wants such a formulation. How does a person learn the game of chess without ever having formulated the rules? Such a person cannot play chess, or even observe a game of chess with the intention of extracting some of its rules, unless he already knows and can formulate some of its rules; e.g., the rule that chess is a competitive game. But if he already knows chess is a competitive game, then he already knows, and can formulate, one of the constitutive rules of chess. This implies that he cannot formulate game rules from his participation in or observation of a game of chess unless he knows beforehand some of its rules. Suppose further that the person who attempts to formulate his own rules comes up with rules somewhat different from the

constitutive rules of chess. Is he still playing chess? It would seem that if the rules of chess are constitutive then they define the game, and a person plays chess only when he plays by these rules and not some others, however close they resemble the constitutive rules of chess. Any rules which one comes up with on one's own, even if they work reasonably well, are unlikely to be identical to the constitutive rules of chess. In comparing social institutions to games Searle wants to have it both ways: he wants the rules of conventional behavior to define the behavior taking place within the convention, but he also wants conventional behavior to be able to occur without the practitioners knowing any explicit rules. It would seem that one must either know consciously the rules of an institution in order to participate in it, or that one's participation in a social institution does not require the conscious or unconscious possession of any constitutive rules.

Turning to Searle's treatment of promising as an institution, one can question his method of idealization. He compares his idealization of promising to the type of theory construction used in science and economics. But models in economics and science are abstracted from empirical data, and those who are involved in model construction are familiar with these data. Further, if these data change significantly so too will the model. What is the empirical data of promising, and is Searle familiar with them? Does he use these data to inform his idealized model of promising, or is his idealization of promising derived from an already abstract and idealized notion of promising? There appears to be a significant difference between what Searle claims to be doing and what other theoreticians are doing in other disciplines. In fact, Searle seems to be doing just the opposite: he is using his idealization of promise as the standard against which the data of promise are to be evaluated rather than using the

data to judge the validity of the idealization.

Another problem arises in Searle's depiction of defeasibility conditions as "extraneous factors." Though defeasibility conditions have to do with conditions occurring outside a promise, they nonetheless appear to be an essential part of the concept of promise. Defeasibility conditions in many ways give the institution of promise its peculiar shape. They are part of what makes promising so interesting and so complex an institution. If you exclude defeasibility conditions from a discussion of promise, then there is a sense in which you are no longer talking about promise. This problem arises again with Searle's list of necessary and sufficient conditions constituting a successful promise. Searle admits that the concept of promising is a bit loose and that defeasibility conditions may undermine or cause additions to the list of conditions. If the boundaries of the concept of promising are loose, what are the parties to a particular promise to do if exceptions arise which are not covered by the rules? Both Searle and Rawls make explicit mention of the rule-less exceptions to promises, noting their impreciseness, and their effects on the looseness of the institution of promising, but neither discuss why the exceptions are imprecise and not defined by rules. Nor is any concern expressed that this inability to be precise about exceptions seriously undermines their respective positions. If promising is an institution, then its various aspects must be defined sharply by rules. If the rules about exceptions are incomplete or imprecise, then these rules are not constitutive and there is good reason to fault the Institutional Approach with a contradiction. Refusing to discuss *ceteris paribus* conditions altogether, as Searle does, avoids the appearance of contradiction, but it does so at the cost of failing to talk about promise altogether.

III. CONCLUSION

Rawls and Searle provide similar accounts of an institution and both claim that promising is an example of an institution. For both, promising is a performative speech act which takes place within a rule-governed institution. Whatever the virtues of the Institutional Approach in theories of language or ethics, I have sketched a number of arguments which question the validity of this approach as it applies to promise. We turn now to Chapter Two to develop these arguments in greater detail, and to canvass the relevant critical literature generated in response to this approach to promise. The sheer size of this literature attests to the influence of the Institutional Approach. In addition to pointing out the weaknesses of this approach, some critics maintain that a theoretical account of promise need not rely on so cumbersome an approach as the institutional one. They argue that it is not necessary to posit constitutive rules in order to explain the origin of promise, or how promises create obligations, or how exceptions defeat promissory obligations, etc. If they are correct, and I believe that they are, then an important roadblock is removed in the construction of an alternative theoretical account of promise which does not rely on constitutive rules. If some social practices can arise, be maintained, be taught to others, and undergo change without the existence of constitutive rules, then a theoretical approach to these practices which does not rely on constitutive rules as an explanatory device is *prima facie* viable. The theory of practice presented in Chapters Four and Five is one such approach to promise.

ENDNOTES

1. Other examples of the Institutional Approach to promise can be found in John Austin's *How To Do Things With Words* (1962) (Cambridge MA: Harvard University Press, 1975); and H. L. A. Hart's *The Concept Of Law* (Oxford: Clarendon Press, 1961). David Hume's account of promise in Book III of *A Treatise Of Human Nature* (1740) (Oxford: Clarendon Press, 1978) is considered to be a forerunner to the Institutional Approach.
2. All citations of Rawls are taken from: (1) "Two Concepts of Rules" (1955) (In *Theories Of Ethics*, 144-170. Oxford: Oxford University Press, 1967). Referred to as **1955**. (2) "Justice as Fairness" (*The Philosophical Review* 67 (1958):164-194). Referred to as **1958**. (3) *A Theory Of Justice* (Cambridge MA: Harvard University Press, 1971). Referred to as **1971**.
3. All citations of Searle are from: (1) "How to Derive 'Ought' from 'Is'" (1964) (In *Theories Of Ethics*, 101-114. Oxford: Oxford University Press, 1967). Referred to as **1964**. (2) *Speech Acts: An Essay In The Philosophy Of Language* (Cambridge: Cambridge University Press, 1969). Referred to as **1969**.
4. Rawls makes a similar distinction in *A Theory of Justice*. He says there that the external question of accepting the institution of promising is decided in the original position. If the institution is accepted as embodying the principle of justice as fairness, then one is morally obliged to take part in the institution. The internal question of how individual promises obligate is answered by first referring to the institution of promising; and second, to the principle of fairness arrived at in the original position. He makes a similar point in "Two Concepts of Rules" where he argues that making exceptions to the rules of promise is not open to the promiser because these rules define the practice. Only exceptions defined by these rules are open to the promiser.
5. Searle is explicit in stating that his conception of obligation is a generic one.

I think, incidentally, that the obligation to keep a promise probably has no necessary connection with morality. It is often claimed that the obligation to keep a promise is a paradigm case of a moral obligation. But consider the following very common sort of example. I promise to come to your party. On the night in question, however, I just don't feel like going. Of course I *ought* to go, after all, I promised and I have no good excuse for not going. But I just don't go. Am I *immoral*? Remiss, no doubt. If it were somehow very important that I go, then it might be immoral of me to stay home. But then the immorality would derive from the importance of my going, and not simply from the obligation undertaken in promising. (p. 188)

CHAPTER TWO

CRITICAL EVALUATION OF THE INSTITUTIONAL APPROACH

The Institutional Approach to promise has many critics. Unfortunately, much of the critical literature focuses on issues which are only tangentially relevant to our purposes here, but which nevertheless speak to these purposes. As I have done in Chapter One, my focus will be on the criticisms dealing directly with the institutional framework as it applies to promise.

This chapter has three parts. Part One presents the literature which, in general, claims that the Institutional Approach to promise presupposes a commitment to the institution. This body of criticism takes the analogy between social institutions and games seriously and argues that one must either generate the obligation to participate in the game of promising by an appeal to rules outside the game, or one must accept the consequence that one's commitment to the rules of this game ceases the moment one decides to no longer play it. Along these lines I develop in greater detail two arguments sketched in Chapter One. I first argue that constitutive rules presuppose some understanding of the behavior they define, and therefore are not fully constitutive. Second, I argue that the notion of constitutive rules learned unconsciously is incoherent. I claim that it is false for Searle to assume that some forms of human behavior can be explained only by reference to the ability to follow rules. Part Two covers the relevant literature on rules. This literature criticizes both the idea that constitutive rules define games, and that the rules of promising are significantly like

game rules. Here I develop arguments showing how the rules of promise differ from game rules. Part Three presents the literature which argues that promising can take place outside of a rule-governed framework. The discussion here sets the foundation for the development of the Practice Approach to promising outlined later in Chapter Four.

I. THE PROMISING GAME

The phrase 'the promising game' was first used by R. M. Hare in an article by the same name. Hare's criticism--as well as those criticisms contained in this section--can be phrased in the form of a dilemma: either the promising game presupposes an obligation or commitment to the game itself and, hence, the obligation of a promise is not defined alone by its constitutive rules; or, like any other game, one can choose to play or quit promise at any time. Put another way, the promising game presupposes an obligation to play the game, and this obligation can only come from outside the game. Searle claims he is not interested in questions external to the institution, but in important ways the question of commitment to the institution is not an external question. Most critics urge that the way out of this dilemma is to accept the view that promising is, in important ways, not like a game. Mary Midgley carries the argument further by claiming that there is at most a family resemblance between games, and that nothing as simple as the notion of constitutive rules will capture them. Though much of the literature cited here speaks directly to Searle's version of the Institutional Approach, the arguments apply to Rawls's conception of an institution and to the Institutional Approach generally. We begin with Hare's "The Promising Game."¹

Hare denies that the premises of Searle's derivation contain only tautologies

and rules about word usage. He argues that what is being set up in the institution of promising is not simply a new way of speaking, as Searle implies, but a new way of acting. In the game of chess, for example, the rules defining how one moves a knight or how to checkmate presuppose the principles of competitiveness and fairness.

These principles are not created or defined by the rules, but instead, give the game a context in which to operate. Playing chess is not merely a matter of using the words 'knight' or 'checkmate,' but of playing (acting) fairly and with a desire to win. To play chess, then, requires one to act in certain ways and not merely to use words in certain ways. Similarly with promising.

It is a new synthetic moral principle, and not merely a new way of speaking, that is being introduced; this shows up in the fact that, if they [members of a society] adopt the principle [the moral principle that one has an obligation to do those things of which one has said "I (hereby) place upon myself an obligation to do them"], they will have acquired obligations to do things that they have not done before, not merely to speak in ways that they have not spoken before. (p. 120)

Performative utterances need contexts. In the case of promising the context is given by a synthetic moral principle about obligation.

This, says Hare, is true of games and institutions in general. Without laws of property we could not speak of 'mine' and 'thine,' but the rules of property are not tautologies. In a community that did not play the game of baseball or accept its rules in their present form, the word 'out' would lack a use, but this does not make the rules of baseball into tautologies or statements about word usage.

It may seem as if the 'brute fact' that a person has uttered a certain phonetic sequence entails the 'institutional fact' that he has promised, and that this in turn entails that he ought to do certain things. But this conclusion can be drawn only by one who accepts, in addition, the non-tautologous principle that one ought to keep one's promises. For unless one accepts this principle, one is not a subscribing member of the institution which it constitutes, and therefore cannot be compelled logically to accept the institutional facts which it generates in such a sense that they entail the conclusion, though of course one must admit their

truth, regarded purely as a piece of anthropology. (p. 126)

Words cannot have the meaning they do without a context. The rule "All promises are undertakings of obligations" presupposes a context where both the word 'obligation' and the concept "obligation" must be understood. Both are understood only if there exist either synthetic constitutive rules within which expressions like "I promise" have meaning, or evaluative premises. Searle insists, as he must, that both are absent from his derivation. According to Hare we either have to take 'promise,' 'obligate,' etc. in an anthropological sense--as meaning "what the English call 'promises,' 'obligations'"--in which case Searle's argument is invalid; or Searle's argument depends upon subscribing to the rules of the institution, in which case it requires an evaluative premise.²

Antony Flew proposes a similar line of argument against Searle.³ Like Hare, Flew contends that Searle's argument depends on a prior acceptance of (commitment to) "the encapsulated values which alone warrants us to draw the normative conclusions" (p. 30). Flew believes that the best place to insert a wedge between the normative and descriptive elements in Searle's argument is where it is maintained that the conditions under which a person who utters 'I hereby promise' can correctly be said to have made a promise are straightforwardly empirical conditions.

The weakness becomes glaring if we summon for comparison some obnoxious contentions of the same form. Terms such as *nigger* or *Jew-boy*, *apostate* or *infidel*, *colonialist* or *kulak* no doubt carry, at least when employed in certain circles, both normative and descriptive meanings; and, presumably, the descriptive element of the meaning can correctly be said to apply whenever the appropriate "straightforwardly empirical conditions" are satisfied. But in these parallel cases most of us, I imagine, would be careful to use one of the several linguistic devices for indicating that we do not commit ourselves to the norms involved, or that we positively repudiate them. Thus, to revert to Searle's example, one could, without any logical impropriety, say of the man who had in suitable circumstances uttered the words 'I hereby promise...' that he had done what is called (by those who accept the social institution of promising) promising. The oddity of this non-committal piece of pure description would

lie simply in the perversity of suggesting a policy of non-involvement in an institution which is surely essential to any tolerable human social life. (pp. 28-9)

Flew is suggesting that while we might imagine someone engaging in pure description, it is inconceivable that this description would be accepted by anyone who understood the nature of the institution of promising. Flew argues that it is not possible to draw a normative conclusion from a set of descriptive statements unless one is also a committed member of the community from where the descriptive statements originate. If he is correct, Searle cannot ignore external questions about the institution of promising. "The weakness of Searle's attempted derivation lies precisely in the refusal to allow that the acceptance of a social institution must come between any statement of the purely descriptive conditions for saying that a promise was made, and the drawing of the normative conclusion that something ought to be done" (p. 30). Flew suggest that in claiming that 'I Smith hereby promise to pay you Jones five dollars' entails that Smith has promised to pay Jones five dollars, Searle tacitly accepts the institution of promising. Hence, he answers at least one external question about the institution of promising; namely, that he accepts it or at least his derivation assumes it.⁴

David-Hillel Ruben focuses on Searle's use of the word 'undertake' in describing what one does in participating in the institution of promising.⁵ Searle says: "When I do assert literally that he made a promise, I do indeed commit myself to the institution in the sense that...I...undertake to use the word 'promise' in accordance with the literal meaning, which literal meaning is determined by the internal constitutive rules of the institution" (1969, pp. 194-5). Ruben argues that the notion of committing oneself to the institution of promising, or to undertake to abide by its rules, entails a personal responsibility for abiding by the rules. Searle thinks he avoids this difficulty by

developing a notion of tacit consent or implicit contract (1969, p. 189). In order to be committed to the institution of promising all one needs to do is to use the institution of promising to make a serious utterance.

Ruben argues that the institutional obligation produced by promising depends upon one's commitment or moral responsibility in choosing to participate in this social practice. If, for example, the institution of promising were to become corrupted and people everywhere used it to deceive and defraud, I might exercise my moral responsibility by choosing to engage in it no longer. It is not simply a matter of my not using a particular speech act to create a promissory obligation. For Ruben, my choice to engage no longer in the institution of promising is a moral choice. "It is the responsibility and not the constitutive rules which, as it were, is generating the obligation" (p. 608). If I choose to be responsible no longer for the institution of promising, or my participation in it, then no number of constitutive rules can make me so obliged.

Ruben faults Searle with making an internal/external error.

[Searle's] mistake has been to confuse the institutionalized duties and obligations a man might have in virtue of the the rules internal to the institution, with the 'external' statements of duty and obligation, only the latter of which are normative or reason-producing, and which do occur in the derivation once the notion of responsibility (or commitment) has been introduced. (p. 610)

In so arguing, Ruben blocks Searle's refusal to address what he calls external questions. Ruben claims that one's commitment to an institution is not signalled merely by the use of certain words or the following of certain rules, but is signalled by taking responsibility for one's participation in the institution. This responsibility is external to the institution.

Similarly, Michael Stocker argues that institutional duties do not ground, create,

or explain moral duties, though some moral duties presuppose institutions.⁶ Stocker gives an example of a man who has promised his wife that he will pitch a strike. Although it is true that he cannot keep his promise to her unless there are rules of baseball which constitute a strike, the obligation he has incurred is not attributable to the rules of baseball. "If his obligation is attributable to any rules, it is not *those* rules. At most they *merely enable* him to keep his promise, to discharge his obligation" (p. 607). Speaking generally, "moral duties are conceptually prior to, and explanatory of [institutional duties]; and the total obligatoriness of the former stems entirely from the latter" (pp. 609-10).

In analyzing the case of promising Stocker argues that the obligation to keep a promise is not, even in part, due to that institution; even if one freely enters into that institution. He attributes the failure to see this to not distinguishing "between entering an institution with institutional duties and entering *that* institution--i.e., between entering an institution and promising, agreeing, or committing oneself to do something" (p. 615). Using an example of a person playing the card game solitaire who decides to break one of the rules of the game, Stocker argues that "merely not to follow the rules of an institution that one knowingly and freely entered is *not* to violate a moral obligation, nor can so entering an institution create a moral obligation" (p. 616). Even if there is a rule of the institution of promising (or game of solitaire) that one is to have a moral obligation to it, this rule cannot be the source of the obligation. "Institutions play neither an enjoining nor a defining role vis-a-vis this moral obligation--the moral obligation which grounds that of promise keeping" (p. 623).⁷

Eddy Zemach takes Searle at his word when he identifies promising with games.⁸ Zemach believes that the result of this identification is that the obligation

produced is relative to a particular game. If Jones wants to play the promising game then he ought to keep his promises, but he has no obligation to participate in the promising game. The result is that while Jones has particular obligations within the game, he is not obligated to play and may quit at any time. Zemach admits that there may be a constitutive rule to the effect that quitting the game amounts to having lost it, but he maintains that there is nothing morally objectionable to losing a game.

Quitting a game would be morally objectionable only if one had an *obligation* to play this particular game well,...i.e., if...this particular game, the *promise* game, were one that one *ought* not to lose. Searle's analysis, however, can show nothing of the sort. It only claims that you ought to keep your promises while you play *promise*. (p. 63)

Joel Rudinow defends Searle's derivation against Zemach's criticism by arguing that promising is *like* a game, though not itself a game.⁹ Rudinow compares promising to marriage and says that one does not quit marriage by saying in his heart "I quit." "One wants to contrast the frivolousness of a game with the solemnity and moment of marriage" (p. 356).

Zemach denies that any one institution is more solemn or more momentous than another.¹⁰ "In the absence of trans-institutional rules there can be no institution that has more claim to one's loyalty than any other" (p. 347). Even if there is a constitutive rule stating that one cannot quit an institution, a person can still reject the whole institution and all of its rules. "If (and when) one rejects the institution, there is nothing that can bind one to its particular system of koshers and taboos; in particular, one cannot be under obligation to quit in the way *it* specifies, rather than simply by wishing to do so, i.e., by saying so in one's heart" (p. 347). Zemach's point is that the Institutional Approach to promising does not work because it either presupposes a non-institutional moral obligation, or sees obligation as institution specific. Without an

extra-institutional moral obligation to partake in the institution of promising, one can treat this institution and its rules as a game only, and choose to play it or not.

J. R. Cameron takes a different tact against the Institutional Approach.¹¹

Cameron argues that Searle's derivation depends for its success on an 'ought to' interpretation of institutional obligation, but fails because the premises entail only a 'has-to' notion of obligation. "If N is under a 'has-to' obligation to do Z, it follows tautologically that he has to do X, but it does not necessarily follow, even *prima-facie*, that he ought to do X. It clearly makes sense, for example, to ask whether a person's being obliged by law, or by the rules of cricket, to do X constitutes any ground at all for concluding that he ought to do X" (1971, p. 310). Cameron criticizes Searle for calling the requirements within an institution (e.g., to keep one's promise, to leave the field after being tagged out, etc.) 'obligations,' 'commitments,' or 'responsibilities' instead of simple requirements of the game. In Searle's institutional framework the baseball player who is tagged out has to leave the field, but he is not obliged to leave. A player who has castled once in a chess game may not (must not) castle again, but it is not the case that he should not castle again.

Cameron rejects the view that some institutional obligations have a built-in 'ought-to' force in addition to their 'has-to' force. As Searle would say, a person who denies that promising to do A is putting oneself under a requirement to do A would be judged not to have grasped what promising is. But, claims Cameron, a person could argue that this requirement does not have any moral force, and others might disagree with him, but they would at least understand him.

A type of institutional act, to exist at all, must have some well-defined and incontestable core or essence--a universally shared conception of its nature; other features may be read into it very commonly but not universally. And these latter [features] are more than extrinsic features of the act; but they are not

straightforwardly intrinsic features either, because people can intelligibly refuse to ascribe them to the act. (1971, p. 316)

The difference between 'has-to' and 'ought-to' is that in saying 'ought-to' one is saying more than that such a requirement is "inevitably binding and automatically complied with" (1971, p. 318). Cameron claims that even categorical moral imperatives must wait upon the will of each person to become binding upon that person. The convention of promising, being similar to other conventions, is concerned only with the act of promising itself and the requirement created in performing it. That one ought to keep his promises must be derived from considerations lying outside the convention.¹²

We turn now to arguments with a slightly larger range. While the authors discussed here rarely make specific mention of Rawls or Searle, their arguments are critical of the Institutional Approach in general. We begin with Peter Winch.

In "Nature and Convention" Peter Winch argues that certain aspects of morality are "not entirely based on convention but are presupposed by any possible convention" (p. 232).¹³ Winch demonstrates that there could not be a human community which was not also a moral community. Moral conceptions arise out of a "common life" and do not presuppose any particular forms of activity. The features of this common life include a shared language, and an understanding that human intelligence should be exercised by the members of the community. Winch argues that "the social conditions of language and rationality must also carry with them certain fundamental *moral* conceptions" (p. 241). One such moral conception is truth-telling. Individual members of a community may fail to tell the truth on occasions, but the existence and success of the community depends upon the norm of truth-telling. Hence, the norm

of truth-telling is not itself a social convention, but is presupposed by other conventions. Truth-telling, claims Winch, is a moral condition of language.

A second moral norm discussed by Winch is integrity. Integrity is important for the success of human institutions generally. To act in the context of a social institution is to commit oneself in some way for the future.

But the concept of integrity is inseparable from that of commitment. To lack integrity is to act with the appearance of fulfilling a certain role but without the intention of shouldering the responsibilities to which that role commits one. If that, *per absurdum*, were to become the rule, the whole concept of a social role would thereby collapse. (p. 251)

Winch claims that integrity is to social institutions what fair play is to games. What counts as fair play in any given game will depend on that game's rules, but grasping the concept of fair play would be demonstrated by one's ability to use this concept in connection with other games the rules of which one is unaware. "The sense of the notion of fair play has to do with its importance for the general idea of a game rather than with its particular manifestations in the rules of any particular game" (p. 252).

Winch is suggesting that the concept of fair play is acquired in a general way and not in one's playing of this game or that game. Further, the concept of fair play is independent of any specific game, and pre-exists games. It is difficult to grasp how a particular game could create fair play by using constitutive rules. It would seem, as Winch suggests, that fair play is a concept presupposed by all (or most) games. Each game specifies what is to count as fair play (in golf, not talking while your opponent swings; in poker, not using a marked deck; etc.), but no game can get started unless the concept of fair play already exists. The same would be true of integrity and commitment in regards to social institutions. There could not exist a constitutively-ruled institution of promising unless the members of the moral

community already had at least a basic understanding of the concepts of integrity and commitment. We might say, then, that keeping promises is a moral condition of our form of life and presupposes any institution which attempts to define promising.

Mary Midgley argues against the game approach to promising--and to morality in general--by analyzing the game concept in detail.¹⁴ She argues that games are more complex than either Rawls or Searle indicate, and that there are significant differences between board games and the metaphorical games of promising and marriage. She concludes that promising is basic to human life and that, without it, there are probably few games left. "Perhaps then, promising is not very like a game. It may be more like the institution of playing games in general, if by chance there is such a thing. In fact it is not *an* institution at all; it is a condition of having institutions" (p. 235).

Midgley suggests first that promising is very different from a game because games presuppose promising. She tries to imagine what a promiseless world would be like.

When nobody keeps promises any more, how will there be any anthropologists? Who is paying them? What do they use for money?...What ship did they travel on? What cultures are left for them to study? To make this possibility clear to us we would need a full description of how this life is or could be successfully lived in this way, and further argument would still be needed to show that such a life was possible outside the conditions of the particular case described. Anthropology will not get us out of our difficulties in this way. What it actually tells us is that promising is everywhere a kingpin of human culture, and that when the great day comes to lay it aside, anthropologists, just like the rest of us, are going to find their lives nasty, poor, solitary, brutish and short. (p. 235)

In the same way that we cannot imagine a society without promising, Midgley believes that we cannot imagine a society without games. She questions the assumption that games are closed systems and somewhat separate from life. People treat the games they play very seriously. She says that it is absurd to tell a chess master "Relax, it's only game." Even children play their games with a seriousness and intensity

that seems to transcend the particular games themselves. In fact, Midgley urges, games are not optional or arbitrary. They are a form of "ritualized conflict" which seems to be essential for our way of life.

On this view of games the *Rule Book* is misleading.

[The Rule Book] misleads those few unhappy people who expect to see the whole truth about anything written down in a book. Books take obvious points for granted. For instance, the book does not mention spectators, nor the reason for playing and the kind and degree of friendliness called for between players: nor do they mention the choice of teams and opponents, but every game makes quite complicated demands here. Nor does it mention how you give up playing, but that doesn't show there are no improper ways of doing it. (Anyone giving up chess in Russia or football in Glasgow would soon find out about that.) (p. 238)

The Rule Book tells us only a small part of the story and is not, as Rawls and Searle maintain, the complete list of rules defining the actions taking place within the game.

The Rule Book approach trivializes games because it does not reflect their complexity and their importance in our lives.

We turn finally to the work of Stanley Cavell.¹⁵ Cavell is critical of Rawls's presentation of the Institutional Approach to promise. Cavell argues that the following of any rules, be they game rules or the rules of promising, can occur only if one is already committed to them, and if one is already a member of the form of life which is presupposed by one's practices.

Each move changes the situation in which the following move is to be made. Not to know this is not merely to be without the knowledge of a particular practice (promising); it is also to be incapable of engaging in any practice at all; to be unready for responsible (competent) action. (Similarly for the legal institution of Contract. The rules, offices, defenses, actions, etc., "defining the institution," define it by *limiting, specifying*, etc., what counts as an enforceable contract. They do not, however, "define" the form of life generally; one could not understand the particular limitations if one did not already understand the nature of the general form of life; and the Law of Contract itself could only develop in a society in which the form of life already existed.) (p. 308)

Cavell claims that no one is ever likely to understand or be able to extract constitutive rules from an institution unless one brings to this task a form of life which is presupposed by this institution. In addition, it would not be possible for constitutive rules to define this form of life--as Rawls and Searle imply--since it is the form of life itself which determines language, relationships, the notion of a rule, and all of the other aspects necessary in creating and belonging to institutions. No other animal, no matter how intelligent or rational, who did not share in our form of life, would be able to learn or even comprehend our institutions, our language, our notion of a rule, or our practice of promising. If Cavell is correct, then it is our form of life which is basic to our institutions and not our institutions which are basic to or somehow definitive of our lives.

Cavell's second line of argument is that games and morality differ dramatically in how they utilize "defining" or "regulatory" rules (rules which tell us what we *in fact* or must (may, have to...) do in playing, and "advisory" rules or principles (rules which tell us what we ought (would do well, would be wisest) to do) (p. 308). Cavell makes two important points. First, both games and social practices employ both constitutive rules (have-to) and advisory principles (ought-to). Being a good baseball player requires more than following the constitutive rules of baseball. A good ballplayer must know when to steal or to bunt or to try to throw the runner out, and none of these activities can be defined by the rules. "...You answer such questions (Why did you bunt? Why did you walk Dizzy? Why didn't you try to steal second?) not, of course, by citing defining rules, but rather, if you are *justifying* your action and not excusing it, by citing something like a principle or strategy; and these do not *define* the game but only tell you how to play the game well" (p. 304). His second point is that there is a

critical difference between how rules and principles function in games and how they function in moral conduct.

Part of what gives games their special quality--what, one may say, allows them to be practiced and *played*--is that within them what we *must* do is (ideally) completely specified and radically marked off from considerations of what we ought to (or should not) do. But *this* choice between "must" and "ought" is not merely occasional in the moral life; it is essential to it. "Ought", unlike "must", implies that there is an alternative course you *may* take, may take responsibility for, but reasons are brought to urge you not to....However, unlike the case of games, what is and is not an alternative open to you is not *fixed*. Actions are not moves, and courses of actions are not plays. What you say you *must* (have to, are compelled to...) do, another will feel you *ought* to do *generally* speaking, other things equal, etc., but that *here* you ought (would be better) *not* to....What you say you *must* do is not "defined by the practice", for there is no practice until you make it one, make it yours. (pp. 308-9)

The moral life is considerably different from the playing of games in that your choices are not fixed by the rules, nor is what you must (or ought to) do defined by the practice. Here Cavell seems to be suggesting that practices are not defined by rules, but are rather defined, shaped, created by people's choices and actions.¹⁶

The authors reviewed above suggest that institutions and their rules are not wholly constitutive of either games or social institutions. In one way or another they argue that games and institutions presuppose commitments to them which cannot be defined by rules or, more generally, that games and institutions presuppose a form of life that make them both necessary and possible. No set of rules can create a form of life. Constitutive rules, then, constitute only partially.

I pause now from the literature review to develop two arguments which call into question presuppositions of other sorts. Rawls claims that social institutions are created by constitutive rules. He claims further that it is possible to imagine a hypothetical situation in which rational members of a community choose their social

institutions by applying the principle of fairness to the constitutive rules of these institutions. Searle claims that it is possible to generate the constitutive rules of any institution by first generating its necessary and sufficient conditions and then extracting the constitutive rules from these conditions. Searle says further that these constitutive rules will cover such aspects as commitment and fair play. I argue that the success of these arguments depends on presupposing conditions which make these institutions and their rules possible, conditions which both Rawls and Searle think rule-governed institutions create. I begin with Rawls.

Rawls admits that not all institutions are created by constitutive rules when he says that it is possible to conceive of some as arising *de novo*. Assuming he is correct about this, what does it mean to say that some institutions arise afresh or for the first time? What does the answer to this question tell us about the nature of institutions which are created out of constitutive rules? So as not to beg the question in any way, I use an example of a *de novo* practice which does not resemble either a game like baseball or a practice like promising. I use for my example *waving*.

Waving is an activity one often sees at American sporting events. Describing it is not easy, though upon observing one you see immediately why it is called waving. It can be described in the following way: place the seating section of any large sports arena onto an (x,y) coordinate system. The vertical seats are on the x-axis, and the horizontal seats are on the y-axis. Assume also that the (0,0) point occurs at the far edge of the seating section (where the section begins or ends). A wave occurs when, nearly simultaneously, and usually with the help of a cue of some kind, all those sitting along the x-axis at (0,1) stand and sit rapidly, followed immediately by all those sitting along the x-axis at (0,2) standing and sitting rapidly, and so on down the seating section

(or the y-axis). When done well, this motion creates the visual effect of a human wave flowing across the seating section.

How did this practice arise and why? It is unlikely that anything as cryptic as my description could have been written on flyers and distributed to the spectators who created this practice. No set of rules is likely to create waving *de novo*. What is more feasible is that a small group of people (perhaps a college cheering section) started waving spontaneously, or perhaps were encouraged by someone in their midst who got the idea of a human wave. But there is still the problem of communicating this idea to the thousands of people in the stands whose cooperation is necessary for the success of a wave. It is an interesting feature of waving that you cannot see the wave-effect you are helping to create. But how would you know in the middle of a seating section that some college students have started standing and sitting rapidly, hoping to create a human wave? How do the original wavers get the attention of thousands of fans watching the game and how do they motivate them to participate in this activity? How do the fans learn what to do if there are no rules to define waving or how to participate in one?

Waving is made possible not because there is a set of constitutive rules to define it, but because it is causally dependent upon certain shared features of its participants. That is, the existence of waves presupposes common features of those who wave. What are some of these features? To begin, the participants must be capable of participating in group activity. Second, they must possess observation skills, motor skills, and a rudimentary sense of rhythm (you will never get a wave going if too many people are not able to time correctly when they should stand and sit). Participants must also be able to recognize and share a common goal, and this requires a level of

cooperation and trust. Other features might include being impulsive, fun-loving, bored with the game on the field, and a casual fan (an enthusiast of the game being played is too involved in it to be distracted). Finally, in order for a wave to be successful, its creation must not go against the values or cultural norms of its participants. If it were the case, for example, that spectators at a bull fight were always careful not to distract the matador, and this sort of behavior was expected of them, then it would be unlikely that a wave would ever get started during a bull fight attended by natives of the culture.

Should waving become a fixture at sporting events, and hence an institution or practice, it would be possible to generate some rules which described it and instructed people how to engage in it. But these rules would not be constitutive rules in the sense implied by Rawls and Searle. These rules would not create a new form of behavior; they would simply describe what initially arose spontaneously and now occurs frequently. Likewise, it would be possible to generate some advisory rules which would tell us when we ought or ought not to wave (e.g., "It is bad taste to wave during the playing of the national anthem or while an injured opposing player is taken from the field"). But such rules do not define or create the condition of acting in good or bad taste.

If we accept that certain features of human life necessarily precede both *de novo* and constitutively-ruled institutions, we can begin to see how these institutions would and could arise. As Hume says, because of certain features of human nature (selfishness, confined generosity, creativity) and the natural conditions of scarcity, it is obvious that certain artificial institutions like property and promise will arise spontaneously and quickly, much like the practice of waving. How the details of

these practices are filled out will depend on local variations, but the practices themselves are going to arise in one form or another in almost all cultures who share a common form of life.

We begin to see also what it is (or is *not*) that those in the original position choose when they choose their institutions, either those defined by constitutive rules, or those *de novo* institutions which can be chosen *as if* they had constitutive rules. The social institutions chosen in Rawls's original position presuppose the more basic form of life which creates both the necessity and the possibility for such institutions. One's ability to cooperate with another in arriving at the principles of fairness in the original position does not seem dependent upon a constitutive rule the way my ability to strike you out does. The fact that members of a community are gathered together in the original position to debate and choose their common institutions presupposes some ability to cooperate. It would seem unlikely that they could discuss whether to accept the social institution of cooperation the way they might discuss whether a batter should get three or four strikes, and this is because the former discussion already presupposes a level of cooperation. They might perhaps create some constitutive rules which define what does and does not count as cooperation during their meetings in the original position, but these rules would not and could not define or create cooperation. Cooperation could not be defined by rules, since the creation, promulgation and acceptance of constitutive rules depend upon cooperation.

Constitutive rules might create games or moves in a game, which did not exist prior to the rules, but they could never create the context in which the purpose of the game could be understood. Likewise, what constitutes an institution is the form of life underlying it, and not the rules defining it. The structure of our form of life might

change, but we cannot re-arrange it in any conscious way. To paraphrase Hume, changing the structure of our form of life, or creating one anew, is as difficult as re-arranging the stars in the sky. Hence, rule-governed institutions chosen in the original position are no different than *de novo* institutions. Both share and presuppose basic features of our form of life. Those in the original position do not choose the constitutive rules which create their social institutions. On the contrary, many of these social institutions pre-exist the original position and make it possible for members of the original position to come together in the first place.

What's left for those in the original position to do is to debate and choose variations or formalized versions of these institutions, and to use constitutive rules to create these variations and versions. Hence, the institution of punishment would presuppose a form of life which included the concepts *punishment*, *justice* and *fairness*, but a particular community would decide the specific parameters of its institution of punishment. This would include the creation of rules or laws outlining the types of offenses which should be punished, how the conviction process should work, the nature and duration of the punishment, etc. But the success of these rules in regulating behavior and defining types of punishments presupposes the community's understanding of the concepts *punishment*, *justice* and *fairness*. Similarly with promising. The institution of promising would pre-exist, exist along side of, and exist long after, any rule-governed version of itself. Rules do have a function in shaping social institutions, but this function does not come at the beginning. Constitutive rules do define certain actions within social institutions, but they do not define the form of life presupposed by these institutions. Constitutive rules, then, have a limited function in social institutions.

We turn now to arguments against (1) Searle's method of extracting constitutive rules from necessary and sufficient conditions, and (2) Searle's claim that constitutive rules can be known unconsciously.

Searle claims that what we do in generating the rules of promising is what someone does who has learned to play the game of chess without ever having the rules formulated, and who now wants to formulate these rules: we extract the necessary and sufficient conditions, and then formulate the rules which follow from these conditions. I argue that such a chess player could not exist (or could not play chess), nor could the rules of chess ever be formulated in the way Searle describes unless certain features of the game existed prior to the rules.

For Searle game rules define not only the pieces of the game (*Knight, Rook*, etc.) and the moves of the game (*castling, checkmate*, etc.); but also the motivations one brings to the game (*competitiveness, fair-play*, etc.). We must now ask what it means to say that a person can play chess without ever having any of these rules formulated. By 'formulated' I take it that Searle means that this person is playing chess without ever having someone tell him, or without ever having told himself: "This is a Rook and it can only move in such-and-such a way," or "Checkmate occurs when a player is unable to move his King safely," or "Chess is a competitive game and one plays it by trying to checkmate one's opponent." Our chess player, then, would have to learn all of these things by observing the game of chess. He could not learn by playing, since all beginners are told the rules along the way and ask questions while playing, the answers to which are formulated in terms of the rules of the game.

Let us assume that our chess player is a very careful observer of the game: he listens to what the players say, and he watches how they move the pieces. But

because constitutive rules constitute so much of what is basic to the game, our observer must start at the beginning. He must discover that what he is watching is a *game* called *chess*, that this game is *played* with two people, and that both *players* want to *beat* the other by *checkmating* his *opponent's king*. He must also observe that while the players are competing with one another, they are also *cooperating* and playing *fairly*. He may also observe signs of *nervousness* such as sweating or hair pulling and signs of *confidence* such as a smile or exaggerated physical movements when moving a piece. He must be a very good observer indeed since he must be able to discern that cooperation, fair play and competition are necessarily part of the game, while hair pulling and smiling are not. He would have to learn all of these concepts even before he began to learn what the pieces are called, how they are to be moved, etc.

We are apt to ask how this observer could discern that chess was a competitive game unless he already possessed the concept *game* or *competition*. Would he be able to recognize that cooperation is necessary for two people to play a game, unless he already knew what cooperation was? Even if we assume that our observer figured out how the pieces were moved and how the game was played, would he be able to recognize instances of fair and unfair play unless he already understood what fair play was? What is our observer doing there in the first place? He is observing the game of chess with the hopes of discerning and formulating its rules. Whether he is an anthropologist or someone who wants to learn the game, his interest in formulating the rules reflects his interest in chess. Since he has an interest in the rules of chess, he must already know something about chess. In fact, he must already know a great deal about it. If our observer did not bring a number of presuppositions to his observation of the game of chess it is not clear that he would observe much of anything. He would

not be able to make sense out of what he sees. He might be able to give a brute description of what he was seeing, but such a description would tell him nothing interesting about the game, nor would it bring him any closer to discerning the rules of chess. If he is to have any chance of formulating the rules of chess through his observations, he must already know something about the form of life which underlies the game.

Suppose we cheat a bit and allow our observer to ask a question and he asks: "What is the purpose of chess?" We could tell him that the purpose of chess is to beat the other player, or to win, or to compete, or to checkmate the opponent's king, or to relax, etc. How are we to respond if our observer registers no understanding of the concepts *win*, *compete*, *beat*, etc.? Giving the observer any number of constitutive rules is unlikely to help him understand these concepts. The rules will be expressed as tautologous definitions, and unless he already understands the meaning of the subject terms and predicate terms he will be unable to understand the rules.

Fortunately, our observer is not likely to need an explanation of *game*, *cooperation*, *fair-play* or *competitiveness*. This is because he already has an understanding of these concepts. It is his understanding of these concepts that allows him to express an interest in formulating the rules of chess in the first place. These underlying concepts can be expressed as our common form of life which we bring to the specific games we play. Searle, then, is blocked from using constitutive rules to define such concepts as *fair-play* and *competitiveness*. These concepts must be presupposed in any game. They are concepts we bring to games, not concepts defined by games. If someone does not already possess them, it is unlikely that he will ever figure out what is going on, no matter how good his observation skills are.

Someone who does not share our basic concepts, our enabling practices, our forms of life, would either stare confusedly at a chess game or not see the game going on in front of him. There can be no chess player interested in formulating the rules of chess who does not already know in a formulatable way some of the rules which make chess, and his interest in the game, possible.

Searle underestimates the complexity of observation necessary to facilitate his conception of constitutive rules as rules extractable from the necessary and sufficient conditions of a game or institution. As the argument above demonstrates, when the complexity is re-introduced this method of generating constitutive rules is shown to be untenable.

Turning now to Searle's claim that constitutive rules must be known unconsciously if we are to explain adequately aspects of human behavior, I assert that, on his analogy with game rules, it is not possible to *know* rules unconsciously. Fortunately, it is not necessary to assume that a great deal of human behavior must be underlaid by constitutive rules known unconsciously to the agent.

In formulating a rule of phonetics (1969, pp. 41-2) Searle claims that he has formulated a constitutive rule and not a mere regularity. Further, Searle asserts that although this rule has some exceptions, it is nonetheless a good rule and one in which the speaker of a language necessarily follows when speaking phonemically. A speaker of the language is understood by other speakers of the language because he is unconsciously following a constitutive rule of pronunciation. Even though the person is unable to formulate this rather complex rule, it is because he knows the rule unconsciously that he is able to speak correctly and to convey meaning with his speech.

This rule is considered by Searle to be a constitutive rule and similar to the rules of baseball and promising. But we can point out an important difference: though Searle claims that one can speak phonemically without consciously knowing the rules of grammar, one cannot play a game without consciously knowing its rules or without being able to articulate them. You can't play baseball unless you know the rules, and you can't know the rules unless you can articulate them in some way. In learning to play a game you must ask questions, the answers of which form the rules of the game. It is these rules which you then are able to articulate, if only to yourself and imprecisely.

Suppose that you have an exchange-student visiting you for the summer who has never seen the game of baseball or anything resembling baseball (cricket, for example). As an experiment in applied philosophy you tell him to spend some time watching you and your friends play baseball. When he thinks he knows how to play he can join you. Now, even if he is able to figure out what is happening on the playing field in this way and decides to join you, he will still have to formulate what he is going to do on the field in the form of crude rules; e.g., "If I manage to hit the round object with my stick I will run toward the white bag to my right, rather than the other bags on the field." He will have formulated this rule after having seen that no one has ever run to any other bag after hitting the round thing. But he is not going to unconsciously internalize this feature of baseball; he is not going to just start doing it on his own. He generates for himself a rule, however crude, and is able to articulate it. Only later is he given the actual constitutive rules of the game. Whatever he knows about baseball he knows because he has observed games of baseball being played. He is able to play because he has formulated rules for himself, rules of which he is

consciously aware though they may be known only to him. It is only after someone becomes an expert at a game--because he knows the rules so well--that following the rules becomes unconscious. But it is not possible to play a game for the first or second time without knowing in a conscious way its rules.

Game purists might argue that your foreign friend is not actually playing baseball until he is told the rules of the game. The rules he generates on his own are more like brute descriptions of the activities on the field. He will not be playing baseball until he knows the rules which define 'batter,' 'base,' 'hit,' 'strike,' etc. If this is correct, then the example only shows the difficulty in accepting a view which claims that one can know unconsciously the rules of a game. Even someone who spent a lifetime observing the game of baseball--but who was unable to ask questions, or to refer to its rulebook, or to understand the form of life in which the game takes place--will experience difficulty in generating a list of rules which matches the actual list of constitutive rules. Even if his actions are perfectly imitative of those who play baseball--and this is unlikely--we can still claim that he is not playing baseball, and this is because he cannot articulate *why* he is doing what he is doing: why he hits the ball, why he runs to the bag, etc. You cannot be said to be playing a game unless you can articulate in some detail what it is you are doing; and you cannot know what you are doing unless you know in a conscious way, and can articulate, the rules of the game.

The fact that we can learn to speak phonemically without knowing consciously the rules of phonetics, but cannot learn to play baseball without knowing consciously its rules, is because, I submit, this aspect of language is not defined or constituted by rules. We learn to speak phonemically long before we can articulate phonemic rules. This can be seen in two ways. First, there are

exceptions to phonemic rules, instances which do not conform to the rules. This means that there will be occasions when speaking phonemically requires that one *not* follow the rules. There are seldom any additional rules to cover these special cases. In learning a new language one is usually made aware of the exceptions to the rules and told to memorize them. Game rules, however, do not work in this way. Exceptions never stand outside of the rules, but are always carefully defined by the rules.

Second, young children appear to learn the alphabet, how to read, and how to speak phonemically by repetition and imitation. They do not begin to learn formally phonemic rules until they are in elementary school. In school they learn the parts of speech and how they function; they diagram sentences and learn the rules of pronunciation. Some of this is pretty complicated business, and some do better than others in learning it all. But one thing is certain: even the dullards in English class can give you a tongue-lashing on the play ground, or create limericks, or curse a creative blue-streak. They can do this not because they unconsciously know the rules of grammar that others do not, but because they are especially creative, or live with adults who curse or who are verbally abusive. The most diligent teacher will sometimes fail to overcome, with the rules of grammar, a local accent or ungrammatical speech learned and reinforced at home. The patterns of pronunciation learned at home and in daily life often outlive and override the rules of pronunciation learned at school.

I would suspect that many young children experience a certain incongruousness between those torturous moments diagramming sentences at the board, and the times spent making funny sounds or rhymes, or making up jokes, or talking to one's parents. Language is a creative instrument in the mouths of children, and it seems incomprehensible that their ability to use language depends on their unconscious

knowledge of the rules of grammar which they only come to learn later and in a most incomplete way. Children learn language the way some people pick out tunes: with good ears. When we do correct their mistakes it is rarely by giving them the rule from which their speech deviated. Instead, we give them the correct pronunciation, or the correct noun-verb agreement, or a version of what they just said, without the slang, etc. They often repeat what we say and then go on with what they are saying. Sometimes the corrections hold and sometimes they do not. Children grow into adults without having learned a great many rules of grammar and pronunciation and having forgotten some they did learn, though they often manage to write grammatically and speak phonemically.

Phonemic rules, I submit, are most unlike the rules of games. The rules of a game create activity that did not exist until the rules created it. At most, phonemic rules pick out the phonetic from the unphonetic, the educated from the uneducated, the resident from the foreigner. These rules do not create or constitute pronunciation. They merely regulate, describe, and explain it. The crucial difference is that one cannot play a game without consciously knowing the rules, whereas one can speak phonemically without consciously knowing the rules; and this can be explained by postulating that the rules of formalized games are constitutive while phonemic rules are not.

How then do we learn proper pronunciation if there are no constitutive rules underlying it? I cannot address this question here, but it is plausible to drop Searle's assumption that we can explain some forms of human behavior only by appealing to the notion of constitutive rules known unconsciously. We can begin by observing that it is simply the case that we are able to learn and speak phonemically without having to

learn or know any constitutive rules. What needs explaining is how this is possible. This is not to deny that some conception of rules will be necessary to explain how we learn to speak phonemically, but it is not necessary to assume that these rules are constitutive rules. They may be behavioral rules, or psychological rules which govern the operation of the human brain. But such rules do not create meanings or pronunciations. People create words and pronunciations, and they formulate rules to describe what it is they are doing when they speak phonemically. These rules, I submit, are not constitutive in nature, but rather rule-like formulations. These rules do not create meanings or activities the way a rule of baseball creates a balk. Rules do not define the form of life which allows us to speak phonemically. Rather, it is the features of our form of life which enable us to speak phonemically, and to play games, and to participate in other social institutions which lack constitutive rules. We participate in such institutions when i waving for the first time, or when we go on a date, or make tea the way the British do, or--as I shall argue in Chapters Four and Five--when we make promises.

The arguments above and the literature reviewed in this section demonstrate that the Institutional Approach makes presuppositions which it cannot explain and raises external questions which it cannot answer. Constitutive rules constitute only partially, and the comparison of social institutions with games fails both because of important disanalogies, and because both Rawls and Searle underestimate the complexity of games and game rules. In one way Searle is right to want to ignore external questions and certain disanalogies between games and social institutions. Any attempt to address these issues will cause the collapse of the Institutional Approach, either because it will fail to address adequately these issues, or because the

Institutional Approach will be shown to be unnecessary in explaining complex social behavior. This result can be avoided, I submit, only by scrapping the assumption that the only way to understand how people create and participate in social practices is by reference to rule-constituted institutions.

II. CONSTITUTIVE RULES

We turn now to a body of literature which can be categorized roughly as arguing that constitutive rules, while they may be used to understand how some games function, are not clearly defined, are not clearly demarcated from other sorts of rules and, most importantly, will not work when applied to social institutions. As with Part One I advance an argument at the end of this section, here against the identification of the rule of promising with game rules.

J. E. McClellan and B. P. Komisar argue that the constitutive rules of geometry are quite different from the constitutive rules of the institution of promising.¹⁷ Searle claims that the questions "Ought one to keep one's promises?" and "Are triangles three-sided?" are similar because, given the constitutive rules of promising and geometry, the answer to both is a tautology. But McClellan and Komisar believe that there is a difference. They argue that while it is true that the question "Are triangles three sided?" can be answered univocally given the constitutive rules of geometry and nothing else, this is not the case with promising.

Given the rules constituting the institution of promising *and nothing else*, the question 'Ought one to keep one's promises?' cannot be answered univocally. One may say either 'Yes, unless...' or 'No, if...' or 'As a general rule, but...' where 'general rule' means one that does not necessarily apply to every instance. It is that feature that makes it philosophically puzzling just what kind of rules these are, as different from the rules of geometry or chess. (pp. 161-2)

With constitutive rules alone, claim McClellan and Komisar, the answers to questions about the institution of promising are clearly not tautologies. In some instances, an appeal to constitutive rules alone prevent us from answering these questions altogether.

In "Regulative Rules and Constitutive Rules" Christopher Cherry makes three negative claims against Searle's conception of constitutive rules: (1) Searle essentially gives two accounts of these rules; (2) constitutive rules are not significantly different from regulative rules; and (3) constitutive rules presuppose the facts which they purportedly create.¹⁸ According to Cherry, the first account of constitutive rules (A1) treats them "as alchemical devices for transmuting brute data into institutional facts" (p. 303). This is seen in Searle's formulation of the rule: "X counts as Y in Context C." On the first account (A1) constitutive rules create meaningful action where there was none prior to the rules. On the second account (A2) a constitutive rule seems to offer part of the definition of terms like "touchdown" or "checkmate:" "A touchdown is scored when a player has possession of the ball in the opponent's end zone while a play is in progress." Cherry argues that "since 'possession' [is an] institutional term, on (A2) the X and Y terms are *both* characterizations of institutional facts, whilst on (A1) the Y term, but not the X term, is a characterization of an institutional fact or facts" (p. 304). Cherry remarks that the imaginary observers who are able to observe only brute facts will not be helped by a rule defining a touchdown (an (A2) rule) since "the nature of their ignorance is such that they could no more understand the definiens than the definiendum. They would be as much in the dark with 'opponents' end zone' as with 'touchdown,' since both are equally institutional terms, and *ex hypothesi* the observers have no grasp of the institution" (p. 305). Cherry believes that it is a mistake to treat

(A1) and (A2) as addressing the same issue, namely: what constitutes what, and when. On (A1) constitutive rules set out the brute correlates of this or that institutional practice; on (A2) constitutive rules exhibit the form of this or that institutional practice (p. 307).

Cherry next discusses the distinction Searle draws between constitutive rules and regulative rules. He does not think that Searle's formula yields a distinction between regulating and constituting. He thinks it is perfectly plausible to say that "the rules of etiquette, for example, do not merely regulate etiquette, but, as it were, they create the very possibility of engaging in such behavior." This is because Searle's formulations of regulative and constitutive rules do not capture the important distinction between these two rules. Cherry analyzes the rules of etiquette and claims that they have the following characteristics. First, they may for "taxonomical convenience" be labelled "regulative," but they have features "which are not shared by what are normally called regulative rules" (p. 311). Second, the rules of etiquette *do* resemble regulative rules in the sense that they have to do with behavior which may be called "antecedently possible." "To put it crudely, the behavior with which the rules have to do is behavior the specification of which is already available prior to and hence independently of the creation of the rules" (p. 311). Third, the rules of etiquette resemble constitutive rules in certain respects. "They create new behavioral possibilities....They create by regulating what is available to be regulated, as one might exploit a source of minerals which was always exploitable but never before exploited" (p. 312). Cherry concludes that

certain activities are constituted by, or are definable in terms of regulative rules, and hence that the original contrast should be presented not as a straightforward one between rule-regulated and rule-constituted behavior, but as one between two species of rule-constituted activities, namely between those activities which

are constituted by rules whose function is to govern behavior the specification of which is already available for exploitation; and those which are constituted by rules *tout court*. (pp. 312-3)

Cherry turns finally to consider Searle's (A1) version of constitutive rules, rules which create behavior *tout court*. According to Cherry, Searle wants to maintain that constitutive rules create new behavior that did not exist prior to the rule or, if it did exist, could not be meaningfully described. According to Cherry, Searle's presentation of this point is ambiguous. Searle says that what the rules make possible are specifications or descriptions of behavior. But in other places he says that "what are created are *redescriptions* or *respecifications* of behavior....Understood in this way, constitutive rules introduce novel specifications or descriptions of behavior which *that* behavior could not previously and otherwise have received" (p. 313). Hence, even though Searle wants to argue that constitutive rules create new behavior he argues in places that these rules merely *redescribe* or *respecify* behavior. The reason for this line of argument, Cherry maintains, is that brute facts have to be accommodated, "and constitutive rules have the job of turning brute facts into institutional facts by contriving the replacement of brute fact descriptions with institutional fact descriptions" (p. 314). But it is a mistake to conclude that brute descriptions plus constitutive rules equal institutional descriptions, "and still more mistaken to conclude that constitutive rules are therefore redefinitions or recharacterizations" (p. 315).

In "Rules and Practices" Hubert Schwyzer argues that Searle is mistaken about the nature of game rules.¹⁹ Game rules do not and cannot define that nature of an activity. Schwyzer claims that Searle confuses the rules of an activity of a given kind with what Wittgenstein calls the "grammar" of an activity, which makes it an activity of that kind. The differences between chess and football, and chess and the saying of

Mass are significant. While it is appropriate to say such things as "Let's play chess," or "That was a wise (or a silly) move" during a game of chess, it would be inappropriate to say these sorts of things in the context of a religious ritual, or civil matrimony or a contract.

To make his point Schwyzer asks us to imagine a culture of Ruritania where chess is not a game but a ritual. There is one chess set for each community, and once a year chess is enacted by the priests for determining the will of the gods. If white mates black everyone and their crops will flourish; if black mates white there will be trouble. The idea of *playing* chess is inconceivable to them, and could only be taken as something a child in our culture would say when they suggest we play at Mass or marriage. There are no winners or losers in the chess rite; no player is pitied or admired. Chess is, in fact, not seen as a game that is played.

To ask in Ruritania which of the priests is winning, for example, means as little as the question: which of these two men (the priest and the server) is winning the Mass? It is to miss the point altogether....None of the things we say and do *vis-a-vis* chess--things which distinguish chess as the kind of thing it is, a competitive game--have, in Ruritania, any application to what the priests are doing when they move the pieces according to the rules of chess. (p. 459)

Even if some priests did see themselves in a form of competition with one another, their competition would be incidental to the activity. "The fact that they did so would not make it possible (except as a joke) to talk of winning Mass, or winning the game *of Mass*" (pp. 460-1).

The only thing in common between the game of chess and the Ruritanian ritual of chess is that, as practices or institutions, the moves on the board are equally defined in terms of constitutive rules. Hence, both a Ruritanian high priest and a participant in a chess tournament would answer a novice's question "Why did you move that piece (the

bishop) along the diagonal instead of in a straight line?" by answering "Because that is the rule." A second sort of answer to this question, namely "To put pressure on the Queen," would be an answer our competitor could make, but not our priest.

To make his point another way Schwyzer imagines someone telling us that he has invented a new practice and who proceeds to tell us the rules. But he also tells us that this practice is not a game or a competition, nor a rite or ceremony, nor is it in any sense "a way of doing something." Even if one learns the rules of this practice and follows them flawlessly, claims Schwyzer, one still will not know what one is engaging in. "For given our preface to the *activity* of X-ing, we have made it impossible that X-ing should be anything at all, other than a system of movements in accordance with rules"

(p. 465). Schwyzer concludes:

The rules of a practice do not tell us *what* the practice is of which they are the rules....What one cannot do, by setting up defining rules, is invent a wholly new practice with a wholly new "grammar," as if that "grammar" could be somehow imbedded in and created by the rules for engaging in the practice. Rules (constitutive rules) do not themselves specify how behavior in accordance with those rules is to be regarded; that is something that the very setting up of the rules must presuppose. (pp. 466-7)

If Schwyzer is correct we can now see the difficulty Searle's chess observer would have. If he were unfamiliar with chess's role in a particular culture, then he would not be able to comprehend what he saw. And if he were not part of the culture then what he would extract from his observations, if anything at all, would merely be the rules which govern what happens on the chessboard. But what happens at the board level is hardly the necessary and sufficient conditions of the activity itself, at least as Searle conceives of these conditions.

Schwyzzer's line of argument is also used by Stanley Cavell.²⁰ Cavell says that the analogy between the rules of promising and the rules of games is very inexact. In a

game what counts as a move is settled by the rules of play, and the rulebook will be used to settle whether a given action is to count as a move. In order for a game to succeed it is essential that the rules be settled and known in advance by all the players. These rules allow games to be played and allow umpires and referees to do their job. But, says Cavell, "that moral conduct cannot be practiced in *that* way, that you cannot become a moral champion in that way, and that no one can settle a moral conflict in the way umpires settle conflicts, is essential to the way of life we call morality" (p. 295). We do not, for example, refer to the rules of morality to determine if someone's apology is sincere, or is to *count* as an apology. We do not determine someone's moral worth simply by asking if he has followed all the rules. A moral champion may be someone who breaks a number of moral rules, as those who practice civil disobedience sometimes do when they upset the social fabric. The rule of promising may tell us that promises are obligatory, but how we interpret this rule, what we decide to do this one time, will determine the moral worth of our choices and actions. It is not simply a matter of following the rule or breaking the rule, but the justification behind our choices. And this justificatory process is not (cannot be) defined by any rules.²¹

I turn now to a discussion of the rule(s) of promising, specifically the rule which covers the exceptions to a promise. As mentioned in Chapter One, Rawls is unclear as to whether the practice of promising is governed by a single rule or by rules. I first put forth an argument showing that either conception is untenable. I then develop a series of arguments against the view held by both Searle and Rawls that exceptions to a promise can be covered by a rule, albeit an imprecise one. I argue first that there are

too many disanalogies between a game rule and an exceptions rule; second, an exceptions rule could not be a constitutive rule; and third, the nature of promissory exceptions is such that no rule could ever capture it.

Rawls speaks both of the rule of promising and of the rules of promising and so we should examine the plausibility of both views. Assume first that promising is an institution defined by rules. Two important aspects of institutional rules are that they are constitutive rules, and that they are public rules. Rawls claims that (1) the rules of promising are not codified the way game rules or institutional rules are codified; and (2) that one's conception of the nature and extent of these rules depends upon one's moral training.

First, it is difficult to see how institutional rules could be public rules if they were not codified in some way. What allows us to participate in games is that, in most cases, the rules are written down, or agreed to beforehand. What allows people to play a game is their shared conception of it. If there is a dispute, it can be resolved by referring to the rules. How does the institution of promising function if its rules, though apparently public, are not codified? If there is, in fact, some commonality between the rules individuals learn regarding the institution of promising then there will be a strong reason to suppose that this commonality depends upon some sort of codification, and dissemination of the code among the members of the community, perhaps along the lines of religious or legal laws. It would be unlikely that everyone learns the exact same rules in the privacy of their own homes, if what they are supposedly learning are the constitutive rules of promising. If we share common rules, then they must somehow be public, and this implies some degree of codification.

Second, if we grant that one's conception of the nature and extent of the

institutional rules of promising depends upon one's moral training, how then could these rules be constitutive? If constitutive rules define or create behavior then their wording will be very important, since a slightly different rule will produce different behavior. What would happen, for example, if the strike-out rule in baseball were defined roughly as a specifiable number and type of swings, but that the actual specification was left open for interpretation among individual members of the baseball-playing community? We could imagine the large numbers of varying interpretations (and rules) coming out of this open-endedness. One thing would be certain: the diversity of rules that would come out of this allowance for interpretation would cease to make the strike out rule a constitutive rule under any meaningful interpretation. One of the points of a constitutive rule is to create unambiguous behavior, closed off to interpretation. If there is to be interpretation, it too should be governed by a constitutive rule or rules.

We can see what would happen to one's conception of the rules of promising if one's upbringing were under the influence of an Aristotle, or a Kant, or a Bentham, or the Ten Commandments, or the teachings of Christ, or an anarchist, etc. It is not at all clear that the rules one receives will be similar in any sufficient detail on any two of these conceptions. What is true, however, is that among the many different conceptions of promising that exist, people of different religious, philosophical, and ideological persuasions still manage to make and keep promises to one another, though not always smoothly. What this indicates is that, in many respects, the moral life is not at all like playing the game of baseball. For one thing, it appears that baseball cannot be played without common, public rules, while promising can be "played" quite easily without such rules, or without any rules at all.

We can conclude from this that Rawls cannot have it both ways. If one learns the rules of promise in one's moral training, then the rules will neither be constitutive nor necessarily public. If the rules of promise are public rules, then they may be constitutive, but they must be codified in such a way that there will be strict uniformity in the moral training of members of a community.

We are no better off if we conceive of the institution of promising as being made up of a single rule. Rawls gives the following version of such a rule: "If one says the words 'I promise to do X' in the appropriate circumstances, one is to do X, unless certain excusing conditions obtain" (1971, p. 345). Such a rule, I maintain, is too sparse to function as a rule we could teach to someone engaged in moral training. Such a rule does not tell the person what is meant by 'promise,' 'excusing conditions,' 'appropriate circumstances,' or even 'rule.' Even if we did tell him what these concepts mean, we have still taught him little. We have told him that he should keep a promise unless circumstances arise such that he does not have to keep it. He would rightly ask us: "And what sorts of circumstances are these, and what rules am I to use?" Our answer ("Well, that all depends...") would indicate just how little we have taught him about promising by citing this rule, and just how little this rule tells anyone about the institution of promise. It would make a mockery of the claim that we could teach a newcomer about promising by teaching him a single rule. The rule tells us almost nothing except--if we are paying close attention--that social institutions are not governed by solitary rules. Rawls's conception of the rule of promising is more akin to a rule about how one should participate in the institution of promising. The rule "keep your promises" is similar to a rule in baseball like "always try your best," or "always run your hardest to first base", or "keep your eye on the ball," etc. These are not rules

which tell us how to play baseball, but how to play the game well. Likewise, Rawls's rule of promising tells us how to be a good promiser, but leaves it for the newcomer to figure out how he is supposed to do this. If this rule tells us how to excel in the institution of promise, then it is not a constitutive rule. But then, no single rule alone is likely to be constitutive of any game or institution.

We find further problems when we turn to the rule governing exceptions to a promise. Although Rawls claims in *A Theory of Justice* that both the circumstances giving rise to a promise and the excusing conditions must be defined, he nowhere tries to define the excusing conditions. Searle, on the other hand, inserts *ceteris paribus* clauses and claims that the boundaries of promising are necessarily loose. In *Speech Acts* Searle does away with the clauses altogether. Both Rawls and Searle, then, have claimed that there is a rule of promising (or a set of necessary and sufficient conditions) covering promissory exceptions, though neither attempts to generate such a rule or the conditions.

Were we to generate such a rule in the institution of promising we would see that it would be different from the rules governing exceptions in games and social institutions. It is a necessary feature of games that exceptions are covered by rules. So, for example, in baseball a pop fly in fair territory is a live ball and must be caught for an out unless there is a man on first base and the ball is hit in the vicinity of the infield between first and second base. If, at this time, the umpire invokes the "infield fly rule," the batter is automatically out whether the ball is caught or not, and the man on first base may advance at his own risk. Defeating conditions are listed in some legal documents as well. Purchase agreements have a clause listing the contingencies which, if they arise, render the contract null and void; the seller and buyer can each list

their own contingencies. But there is nothing even remotely like this in the case of promising. There are no rules governing the defeating conditions of promising other than the rule stating that such conditions exist. There is not even a rule to the effect that "Such conditions will be determined by promisor and promisee prior to the promise," or some such thing. There is simply the rule, if it is a rule at all, stating that there are defeating conditions to a promise, and that these conditions are complicated, or a bit loose, etc. Of course, if we say that it is part of the nature of the institution of promising not to have rules which cover all or even some of the defeating conditions to a promise, then we have pointed out how promising is very much *unlike* games or certain legal institutions.²²

In *Speech Acts* Searle avoids the problem of promissory exceptions by constructing an idealized model of promising in which he claims that the defeasibility conditions of promising are "considerations outside the act of promising" and "irrelevant to our present concern." A problem arises if we try to use Searle's idealized case to teach a newcomer about the institution of promising. What would he be able to learn about promising by referring to Searle's five constitutive rules of the institution of promising? He would learn that (1) promising (uttering the words "I promise...") predicates some future act which is preferred by the promisee; (2) a promise is uttered only if it is not obvious that the promiser will do what he has promised to do; (3) the promiser intends to do what he promised; and (4) understands that by promising he has undertaken an obligation. This is all vital information, but in learning these rules the newcomer surely is left in the dark about a very important aspect of promising: namely that there may arise conditions subsequent to the promise where the performance of a promise becomes impossible or unnecessary. These conditions may even create a

situation where he has an obligation *not* to perform his promise. This is important information if the newcomer is to have any hope of being successful at promising. Granted, he does not need to know this information in order to *make* a promise (and perhaps this is all Searle was trying to show), but he does need this information if he is to be a successful promiser.

What are we to say when the newcomer comes to us and complains that this institution of promising sure is tough going, or that someone else told him he was crazy to have kept *that* promise? We are likely to tell him that, of course, there will be times when a promise will be defeated by certain unspecifiable conditions, or when a conflicting obligation will override the obligation of a promise. "But why," he will ask us, "didn't you tell me this when you gave me the rules?" Here Searle's answer that the defeasibility conditions are irrelevant in the abstraction of the rules of promising will ring hollow. If we tell our confused newcomer that the defeasibility conditions of promising are too complicated to be covered by precise rules, he is likely to criticize our effort to use rules in the first place to teach him about an institution which, in obviously important ways, is not fully captured by such rules. In teaching someone about promising we cannot fail to mention defeating conditions. As a future-referring institution it is a necessary feature of promising that it make some reference to conditions in the future which will annul a promise, or stronger still, create an obligation on the promiser *not* to perform his stated promise.

If Searle insists on using an idealized case of promising devoid of any mention of excusing conditions, then we can insist that he is no longer talking about promising, either in its strict institutional form, or in the loose way that ordinary people refer to it. No list of necessary or sufficient conditions, or the rules which follow from these

conditions, will ever be complete if they exclude mention of excusing conditions. This is not to say that an idealized case is a logically impossible conception of promising. It says only that such an idealized picture of promise does not reflect what we do in our form of life when promising.²³

Another argument against the Institutional Approach is that a rule governing exceptions could not be a constitutive rule. This is because the existence of exceptions to a promise is a necessary feature of the practice of promising and presupposed by any constitutive rules. If we assume that the institution of promising is possible only if one presupposes certain features of our form of life not defined or created by rules, then the institution of promising as a system of rules was subsequent to a primitive or non-ruled practice of promising and not constitutive of it. If our form of life contains all of the features which makes promising a possible institution, then there is no reason to believe that the institution must wait upon rules. Given the right conditions, promising will spring up on its own. A necessary feature of our form of life and, therefore, of this primitive practice is that there will arise situations when a promise cannot and should not be carried out. One of the reasons people make promises to one another is because they have little idea of the future that lies ahead. It is because we do not know what will befall us as promisor or promisee that promises will sometimes be defeated by conditions outside of our control. This just is what it is to make a promise in our form of life. It does not seem feasible, then, that any exceptions rule functioning in the institution of promising could function as a constitutive rule. No constitutive rule could define this feature of promise, nor would it be necessary to do so. The fact that promising is an institution characterized by exceptions which defeat individual promises is a fact of our form of life, and this form of life precedes any

rules which state this fact. Hence, whatever rules regarding exceptions Rawls and Searle refer to are not constitutive rules.

As a final argument I wish to maintain that the inadequate treatment of rule governing exceptions is indicative of the failure of the institutional approach. The problem of exceptions (What counts as one? Who decides? What happens when there is a disagreement between promisor and promisee?) looms large over any theory of promise. To say, as Searle does, that the boundaries of the concept of promising are a bit loose, or as Rawls says, that this issue is complicated, is to ignore the very problem needing attention. A more damaging result of remarks of this sort is that they undermine a primary tenet of the Institutional Approach. They do so in the following way: if constitutive rules define institutional facts, then how is it possible that exceptions rules define defeating conditions in the institution in such an imprecise way? Either the rules define the exceptions of a promise, thereby making these conditions precise, or the rules do not define the exceptions. Since neither Rawls nor Searle give any precise rules, we can conclude tentatively that the rules of promise do not define exceptions. If the rules do not define exceptions to a promise this is either because they do not, *though they could*, as a matter of empirical fact, do so, or that they *cannot*, as a matter of empirical fact or logic, do so. If they could define exceptions it would be possible to generate a list of rules covering the necessary and sufficient conditions governing the exceptions to a promise. This list would have to be complete in order to block someone from getting out of a promise by appealing to an exception not covered by the list.

It is apparent that no finite list will be able to cover all of the possible, legitimate exceptions to a promise. There are two reasons for this. First, there are too many

permutations of these conditions to make such a list workable. Second, and more important, it is ultimately up to the promisee (assuming he is a rational agent) to decide to accept an exception as defeating a promise (though it is not ultimately up to the promisee alone to *reject* an exception as not defeating a promise). The promisee is under no compulsion to follow a list of rules governing the exceptions to a promise. If he feels that the promisor has a legitimate excuse, the promise is thereby defeated. Even if we stand on the sidelines shouting to him that he is mistaken, or that the promisor is lying, it is ultimately up to the promisee to decide to excuse the promisor. He need not give us, or himself, any reasons for doing what he does. Least of all must his behavior accord with a rule.

The Institutional Approach does not, and cannot, provide us with an adequate account of exceptions because it fails to take into consideration the relational aspect of promising. Promising usually occurs between two parties, and it is ultimately up to them to decide upon the defeating conditions of any particular promise. No rule is likely to cover these conditions or the relational aspects of promise because what exceptions are allowed and how they are arrived at are not decided in advance. What is to count as a legitimate exception will depend upon the conditions surrounding it, who is making it, the relationship between promisor and promisee, etc. The Institutional Approach fails to address adequately the problem of exceptions to a promise not because its rules are too imprecise, or too few, but because the problem of exceptions to a promise is not captured by anything so precise as rules, constitutive or otherwise. Promises generally occur between people, and human action and interaction is rarely captured informatively by rules.

III. PROMISING WITHOUT AN INSTITUTION

This final section canvasses the literature which demonstrates that promising can occur without the need for, or outside the framework of, a rule-constituted institution. While this literature is not critical of the Institutional Approach in any of its details, it can be seen as providing an alternative to this approach.

Stanley Cavell argues that there are any number of ways, other than promising, for committing oneself to a course of action:²⁴

the expression or declaration of an intention, the giving of an impression, not correcting someone's misapprehension, beginning a course of conduct on the basis of which someone else has taken action, and so on. Where does this idea come from, which has had currency at least from Hume to J. L. Austin, that promising is so *special* an act, that the words "I promise" are a sort of ritual of high solemnity? There is nothing sacred about the act of promising which is not sacred about expressing an intention, or any other way of committing oneself....If it is *important to be explicit* then you may engage in the "rituals" of saying "I really want to...", "I certainly intend, will try to...", or the ritual of saying "I promise". It is *this* importance which makes explicit promises important. But to take them more seriously than that, as the golden path to commitment, is to take our ordinary, non-explicit commitments too lightly. (p. 298)

The institution of promising, with its emphasis on the performative speech act "I promise" is only one way of committing oneself. To see it as the only way is to see all human relationships as contractual rather than personal. This view, Cavell believes, is mistaken. He believes that there are many ways to commit yourself, and one such way is to make formal promises. Though Cavell maintains the formal usage of 'promise' to signify a contractual commitment rather than a personal one, I suggest that we see "promise" as the more primitive concept of the two and use it to cover not only contractual methods of forming commitments and obligations, but also as covering personal methods as well. Cavell would say that there are many ways to commit oneself, of which promising is one. I would claim that there are many ways to

promise, all of which entail a commitment of one sort or another. That such a wide view of promising is possible is argued by Neil MacCormick and Oswald Hanfling.

In "Voluntary Obligations and Normative Powers" Neil MacCormick argues that "it is quite unnecessary in the explanation of promising and of the obligation to keep promises to invoke the concept of a power-conferring rule enshrined in a social practice as a necessary condition of the possibility of promising" (p. 61).²⁵ MacCormick cites two legal cases to illustrate that the law does not recognize only formalized intentions as incurring legal obligations. Both cases involve people who acted upon the encouragement, or apparently factual statements, of others, even though no legal contracts were formed. Both cases were resolved using the principle of 'equitable estoppel' which states that you may not, for example, go back on an arrangement to let someone occupy your land if you stood by and let this person spend money on it in his belief, encouraged by you, that you will let him stay there. This is a clear case where actions (or the lack of actions) speak louder than (and instead of) words. MacCormick is arguing that the same sort of situation can occur in the case of promising: one can promise, and incur a moral obligation, without having to use a formalized, well-defined linguistic utterance.

MacCormick gives a second example of a swimmer (Jones) who is swimming at the base of cliff with a fast rising tide, and a climber (MacDonald) who happens to be strolling along the top of the cliff with some rope. Jones is about to make a mad dash for the remaining beach when MacDonald lowers the rope to him. Jones decides not to run toward the beach and waits for the rope, thereby losing any chance of making it. According to MacCormick, we can infer from these facts that MacDonald intended for Jones to climb the rope, and that Jones has acted in a way that is

irrevocable. MacDonald, therefore, has an obligation to hang onto the rope until Jones has climbed to safety, even if he sees someone else in need of help. In this example, MacCormick claims that a promise has been made by MacDonald and accepted by Jones even though nothing like a rule-governed institution was necessary to make this promise possible. A promise is made whenever a speaker intends by his words or actions that the hearer take these words or actions as expressing intentions upon which the speaker expects the hearer to rely. An explicit performative like "I promise" could be used as a way of allaying doubts or uncertainties, but such a performative is not necessary to make a promise.²⁶

Oswald Hanfling argues more generally that the Institutional Approach to understanding promising is both unnecessary and false because, as he says, there is no *special* problem about the obligation of promises.²⁷ Hanfling claims that the expression "I promise" constitutes neither a necessary nor sufficient condition to a successful promise. It is not a sufficient condition because in order for a promise to occur the promisee must have an interest in whatever it is that is being promised. If he doesn't, then no expression will create a promissory obligation. The expression "I promise" is not a necessary condition either because one can make a promise without it. If I tell you that I will meet you for lunch tomorrow and I fail to show up, and I respond to your anger by reminding you that, after all, I did not explicitly promise to meet you for lunch, you are not likely to be persuaded. According to Hanfling, the inappropriateness of this defense is an indication that promising can, and does, often occur at the informal level. Promises, then, are not created necessarily by using a performative speech act.

On Hanfling's account, the obligations of promises stem not from the words that are used, but from the context in which they are used. Promising can go on without

the use of the word 'promise' because the "raw materials" of promising--"roughly, the possibility of arousing expectations by a statement of intention, and of justified complaint in case of non-fulfillment"--are present in our society (p. 19). Once this argument is made, it is easy to see why Hanfling rejects the institutional view of promising. If promising is rooted in our language and our way of life then such questions as "Is promising a good thing?" or "Ought we to have promising or do away with it?" would seem impossible to ask, though similar questions could be asked of particular games. A person could choose not to play a game, but it does not seem likely that he could choose not to participate in the practice of promising. He might choose not to keep his promises, but his actions would still be taking place within the practice. As Hanfling might say, it just isn't possible for creatures like us not to promise, and we will make, keep, and accept promises whether or not there is a formalized institution to facilitate us.²⁸

Unlike the first two sections of this chapter, I shall not formulate here arguments of my own for why promising can occur outside of a rule-governed framework. I develop these arguments in greater detail in Chapters Four and Five.

IV. CONCLUSION

It is not within the scope of this study to evaluate all of the arguments in the critical literature, or to try to generate or anticipate possible responses from Searle and Rawls. The sheer quantity of the critical literature is an indication of the influence of the Institutional Approach, as well as its problems, and the reluctance of philosophers to embrace it. Searle has sought to answer some of these arguments (those published

between 1964-69) in *Speech Acts*, but I suggested above that Searle's rebuttal succeeds only by excising an essential feature of the concept of promising, namely the *ceteris paribus* conditions. It should also not go unnoticed that Searle answers his critics in a mere ten pages. Giving this amount of space to such a large body of literature would seem to indicate either that the arguments against Searle are all seriously flawed and easily dispensed with, or that Searle is really not much interested in addressing the problems his approach creates when one applies it to promising. Rawls has not attempted to answer his critics in any systematic way, but we should treat the doubts he expresses in the two footnotes cited in Chapter One (pp. 19-20) as evidence of his unwillingness to treat promising as an unambiguous example of a rule-governed practice. I conclude, then, that the objections against the Institutional Approach, when taken together, represent a serious challenge to it.

The purpose of this chapter was to demonstrate that there are serious problems with the Institutional Approach, both internally and as applied to promise. There are alternatives to this approach, and we turn now to consider them.

ENDNOTES

1. All quotations from "The Promising Game." (In *Theories Of Ethics*, ed. Philippa Foot. Oxford: Oxford University Press, 1967.), 115-127.
2. For Searle's reply see "Reply to 'The Promising Game'." (In *Readings In Contemporary Ethical Theory*, ed. Kenneth Pahl and Marvin Schiller. Englewood Cliffs, NJ: Prentice-Hall, 1970.), 180-182. Briefly, Searle denies that he is giving, or needs to give, reasons for why we ought to keep our promises. Commitment for Searle is not an external commitment to the institution, but a commitment to the logical properties of a word. "When we assert 'He made a promise' we commit ourselves to the proposition that he undertook an obligation. In exactly the same way, when we use the word 'triangle' we commit ourselves to its logical properties" (1969, p. 194).
3. "On Not Deriving 'Ought' From 'Is'." *Analysis* 25 (1964-5):25-36.
4. See R. I. Sikora's "Facts, Promising and Obligation." (*Philosophy* 50 (1975):352-355) for a continuation of this line of argument.
5. "Searle on Institutional Obligation." *Monist* 56 (1972):600-611.
6. "Moral Duties, Institutions, and Natural Facts." *Monist* 54 (Oct 1970): 602-24.
7. For a similar argument see Michael Robins, "Promissory Obligation and Rawls's Contractarianism." (*Analysis* 36 (1975-76):190-98).
8. "Ought, Is, and a Game Called 'Promise'." *Philosophical Quarterly* 21 (January 1971):61-63.
9. "Quitting the Promising Game." *Philosophical Quarterly* 22 (October 1972):355-6.
10. "The Right to Quit." *Philosophical Quarterly* 23 (October 1973): 346-349.
11. "'Ought' and Institutional Obligation." *Philosophy* 46 (1971):309-323.
12. See also Michael Robins, "The Primacy of Promising." (*Mind* 85 (July 1976):321-340); and Jan Narveson, "Promising, Expecting and Utility." (*Canadian Journal of Philosophy* 1 (December 1971):207-233).
13. "Nature and Convention." *Proceedings Of The Aristotelian Society* 60 (1959-1960):231-252.
14. "The Game Game." *Philosophy* 49 (1974):231-253. For a similar approach see

Anthony Ralls, "The Game of Life." (*The Philosophical Quarterly* 16 (1966):23-24).

15. *The Claim Of Reason: Wittgenstein, Skepticism, Morality, And Tragedy*. Oxford: Oxford University Press, 1979.

16. For similar arguments regarding the moral commitment to the institution of promise see Konstantin Kolenda, "Searle's 'Institutional Facts'" (*Personalist* 53 (Spring 1972):188-192); David H. Jones, "Making and Keeping Promises" (*Ethics* 76 (July 1966):287-296); and Stanley Cavell, *The Claim Of Reason*, pp. 292-312.

17. *Philosophical Quarterly* (1973):301-315.

18. "On Deriving 'Ought' from 'Is'" *Analysis* 25 (1964-65):32-37. (Reprinted in *The Is-Ought Question: A Collection Of Papers On The Central Problem In Moral Philosophy*, ed. W. D. Hudson. New York: St. Martin's Press, 1969), 157-162.

19. *Philosophical Review* (October 1969):451-467.

20. *The Claim Of Reason*.

21. See also Burton Zweibach, *The Common Life: Ambiguity, Agreement, And The Structure Of Morals* (Philadelphia: Temple University Press, 1988), 3-21; and D. S. Schwyder "Moral Rules and Moral Maxims" (*Ethics* 67 (1956-57):269-285).

22. For a general critique of applying rules to morality in general and promising in particular see G. J. Warnock, *The Object Of Morality* (London: Methuen and Company, 1971); and Julius Kovesi, *Moral Notions* (London: Routledge and Kegan Paul, 1967), chaps. 2-3.

23. For arguments along similar lines see Thomas D. Perry, "A Refutation of Searle's Amended 'Is-Ought' Argument" (*Analysis* 34 (1973-74):133-39); and Donald R. Parker, "Hypothetical Promising and John R. Searle" (*The Southwestern Journal Of Philosophy* 3 (1972):21-34).

24. *The Claim of Reason*.

25. *Proceedings Of The Aristotelian Society* 46 (1972):59-78.

26. For a critique of MacCormick, see Pall S. Ardal, "Promises and Reliance" (*Dialogue* 15 (1976):54-61).

27. "Promises, Games and Institutions" *Proceedings Of The Aristotelian Society* 75 (1974-75):13-31.

28. Tim Scanlon makes a similar argument in an unpublished paper titled "Is Promising a Social Practice?"

CHAPTER THREE

SINGLE ASPECT APPROACHES TO PROMISE

The Institutional Approach to promise fails not only because of problems stemming from its account of constitutive rules, but also because it succeeds only by ignoring aspects of promise which appear essential in understanding it. This approach devotes little attention to the question of exceptions to a promise or how such exceptions are ascertained. Nor does it discuss in any detail the promisee's interest in the promise or how a promise is affected if his interest wanes. This approach claims that promising gets its force by being a performative speech-act, but ignores the problems caused by promises whose language is not precise, or overanxious "promisees" who mishear a speech act. Even if a successful speech-act does create an obligation for the promiser, this account does not address the problems caused by conflicts of obligation.

Each of these problems are addressed in various detail by the alternative approaches to promise evaluated below. I have identified these approaches as (1) Expectational, (2) Evidentiary, (3) Intuitionist, and (4) Intentional. Each approach explains promise in terms of a single important aspect. Hence, the Expectational Approach concentrates on how promises create and raise expectations in the promisee; the Evidentiary Approach on how a promise gives evidence to a pre-existing obligation which arises only when the promisor benefits from his obligation or the promisee relies on the obligation to his detriment; the Intuitionist Approach on the intuitive clarity of

promissory obligation; and the Intentional Approach on the promiser's willing of an obligation. Despite the limited success of each approach I argue that they fail individually because of problems specific to each of them, and as a group because of their inability to capture the multi-faceted details of promise. They fail not only because they focus on single aspects of promise, but because they see the question of how promises create obligations as the only one to be answered. Hence they underdescribe promise in two ways. Though some of these approaches appeal to the data of promise I argue that these data are generally limited, unverified, or inaccurate.

I take each approach in turn, evaluating the literature most representative of each of them. In addition to my own criticisms, I make reference to criticisms in the literature. I conclude that none of the approaches evaluated here provide a successful alternative to the Institutional Approach. The final, negative conclusion developed in this chapter is that no one contemporary approach succeeds in capturing promise in a theoretical framework. The difficult task of sketching an alternative approach which is successful will be the subject of Chapters Four and Five.

I. THE EXPECTATIONAL APPROACH

i. Sidgwick and Narveson

The explanation of promise in terms of the expectations that a promise raises in the promisee has a long history.¹ Henry Sidgwick and Jan Narveson are two contemporary proponents of this view.² Henry Sidgwick's discussion of promising is in Book III of his *Methods of Ethics*.³ The essential feature of promising (what Sidgwick calls the "Duty of Good Faith") is not the conformity to what I say, "but to expectations I

have intentionally raised in others" (p. 304). Sidgwick recognizes the difficulty of differentiating between promises and other sorts of situations where we raise another's expectations but are not thereby obligated. He says that *Common Sense* tells us that we are responsible for the expectation we have raised if the expectation was natural "and such as most men would form under the circumstances" (p. 304). The obligation of a promise is "perfectly constituted when it is understood by both parties in the same sense. And by the term 'promise' we include not words only, but all signs and even tacit understandings not expressly signified in any way, if such clearly form a part of the engagement" (p. 304).

Sidgwick recognizes that this approach to promise gives the power of annulment solely to the promisee (p. 305). If the promisee's expectations are not raised because he has no interest in the promise, or if circumstances occurring in the interim alter his expectation level, then the promise is no longer binding. Problems likewise arise if the promisee is dead or otherwise unavailable to release the promisor; or if the promise has raised expectations in the promisee that the promisor will commit immoral acts; or if the promise was obtained by force. Sidgwick says that *Common Sense* is doubtful on these points. But even in cases where there is no doubt, questions still remain.

Even if a promise has been made quite freely and fairly, circumstances may alter so much before the time comes to fulfill it, that the effects of keeping it may be quite other than those which were foreseen when it was made. In such a case probably all would agree that the promisee ought to release the promiser. But if he declines to do this, it seems difficult to decide how far the latter is bound. Some would say that he is in all cases: while others would consider that a considerable alteration of circumstances removed the obligation--perhaps adding that all engagements must be understood to be taken subject to the general understanding that they are only binding if material circumstances remain substantially the same. But such a principle very much impairs the theoretical definiteness of the duty. (pp. 306-7)

A promise may indeed raise a person's expectation, but if circumstances arise

after the promise was made which make the keeping of the promise difficult, immoral or impossible it is no longer clear how strong this obligation is, regardless of how high it has raised the promisee's expectations. Sidgwick imagines a situation in which a promisor cannot get in touch with the promisee to discuss the fact that, in the intervening time between when the promise was made and when it is to be performed, conditions have changed to such an extent as to call into question the obligatoriness of the promise. One solution would have the promisor do what he sincerely thought would have been the intention of the promisee. "But the obligation thus becomes very vague: since it is difficult to tell from a man's wishes under one set of circumstances what he would have desired under circumstances varying from these in a complex manner: and practically this view of obligation leads to a great divergence of opinion" (p. 307).

Sidgwick also addresses the question of what to do when a person unintentionally raises another's expectations. Sidgwick asks the reader to form the conception of an average person and to consider what expectations this person would form under the circumstances, "inferring this from the beliefs and expectations which men generally entertain under similar circumstances" (p. 309). We are to refer to the customary uses of language and the customary tacit understandings between people who stand in relationship to one another as promisor and promisee. If a person has deviated from this common standard without giving either notice or reason for his deviation then he should suffer any loss that may result from the misunderstanding. This criterion is generally applicable. "But if custom is ambiguous or shifting it cannot be applied; and the the just claims of the parties become a problem, the solution of which is very difficult, if not strictly indeterminate" (p. 309). Sidgwick admits that

promissory expectations can be created in a person without the use of specific words, though he admits that the use of informal language causes problems in that it may result in the unintentional raising of expectations. In short, Sidgwick assumes that the common understanding of what a promise entails, when it creates an obligation, and the conditions under which it is defeated are incomplete, variant and diffuse.

Jan Narveson is also a proponent of the Expectational Approach.⁴ According to Narveson we have a *prima facie* obligation to keep a promise because the promisee has an interest in the performance of it and we have led him to expect this performance. "Consequently, if I default, it is more serious than if I hadn't promised, because this expectation is then disappointed" (1967, pp. 192-3). Narveson asks the reader to consider how people actually behave about promising. If, for example, you make a promise to meet someone for dinner and this promise has the effect of raising the promisee's expectations quite high and he goes out of his way to be there, and you fail to show up, you'd better have a good excuse. On the other hand, if you and he get together often, and it is understood that either of you will occasionally not make it--or if the promisee does not much care whether you show up or not--then the reason you give for not showing up will not matter as much. "It all depends, and quite transparently depends, on the amount of trouble the promisee goes to, and the degree of his expectation created by the promise. These are plain facts with which anybody is familiar from daily life, as well as from novels, movies, and history books" (1967, p. 194).

Narveson reiterates this view in "Promising, Expecting, and Utility." Each promise comes with its own context and special circumstances, what Narveson calls the *weight* of a particular promise, "against which we are to weigh the onerousness to

us, or the reduction of benefit to the promisee, of doing the promised thing" (1971, p. 211). Sometimes a promise should not be kept because of a conflict of obligations in which another duty is stronger than the promise. When this occurs the promiser should not keep his promise. Of course, there are promises which are wrong to keep from the start (a promise to kill your neighbor's dog, for example), but these promises should be distinguished from those which, "owing to unforeseeable circumstances or contrary obligations arising, just cannot or should not be kept" (p. 212). Narveson gives the following generalization:

Promises are by no means regarded as sacred and unbreakable, but rather are thought of as having (1) a certain moral *weight*, varying from case to case but present whenever the promise is tolerably normal, which (2) may be exceeded by other factors, some natural, some moral, and some simply matters of self-interest. The question is, how do we measure the said *Weight*? (1971, p. 213)

Narveson considers the "logically" normal case of promising. Such a logically normal case implies that both promisee and promisor are acting voluntarily; both know the circumstances, and are acting rationally. Both believe, at the time of the promise, that what is promised is more desirable than any alternative. The situation may change between the time the promise was made and when it is to be carried out, but promising, as opposed to a mere contemplation without commitment, allows fewer avenues of escape from the obligation incurred. The difference, says Narveson, between mere contemplation and promising is that in a promise I lead you to expect that I will do the promised thing. "And in defaulting, I disappoint this expectation, a disappointment which is additional to the loss of the promised benefit, whatever it may have been" (p. 214). The *prima facie* obligation of a promise, then, is to be grounded upon the expectations raised in the promisee.

Narveson denies that this approach is circular. The promisee's expectation that I will do what I promised does not depend upon his thinking that I am under an obligation, but rather, stems from the simple fact that I told him that I would do it (whatever it is I promised to do).

To promise, or say that I will do something, in the context in which this is taken as having the force of a promise, is to say that I will make the point of doing it, that I am setting myself to doing it, and hence to "assure you" that I will do it. This being the sense of the words, you need no further reason for expecting performance: in the situation, this is exactly the reaction that is so to say, linguistically appropriate. (p. 215)

There is the further problem about what should count as reasonable expectations. Narveson refers to Prichard's example of someone who has his expectations raised by overhearing a conversation. For Narveson this is a clear case of not having promised, since the expectations were not intentionally raised. Narveson reiterates that it is important at the outset of a promise or a perceived promise to be clear that one has promised, or that one has heard a promise, and what conditions attach, etc. If I overhear a conversation in which my expectations are raised I should make certain that the speaker intends his remarks to be taken as sincere expressions of intention, and as expressions of intention to me.

For Narveson, then, promising is used in both formal and informal modes to intentionally express a speaker's future intentions and to allow the hearer to form expectations and to act "along the way" in accordance with these expectations. If either the speaker speaks unintentionally, or the hearer forms no expectations then no promise is made. As with all communication, there is always a chance for misunderstanding, and so it is crucial that the parties to a potential promise make their intentions and dispositions known. As with all promises, there may arise conditions in

keeping a promise which would be worse than the frustration of expectations, and for this reason the promise should not be kept.

ii. Discussion

This approach is not without its positive features. First, it takes seriously the problems caused by the circumstances and contingencies which intervene between when a promise is made (t_i) and when it is discharged (t_j). Promises help us to form reasonable expectations about the future, but it is unreasonable to assume that the expectations of promising are any different from other sorts of expectations in that they may be disappointed by circumstances out of the promiser's control. Second, this approach interprets promising as occurring at all levels of formality, from the most formal "I promise" to informal expressions of intention. In doing so it expands what is to count as a promise, and closes off to the promiser an illicit line of retreat which relies upon his not having used a specific form of words. As Narveson suggests, this view of promise better accounts for how promising is used by everyday people. Third, in focusing upon expectations it captures an important emotion attached to promising, an emotion which may in fact explain the feelings which are often attached to the obligation of a promise. If we remember a time when our expectations were raised by a promise only to have the promise broken, and try to analyze what it was we felt, I think most of us would say we felt hurt or angered or betrayed; that we had really looked forward to what was promised and had made some effort in preparing for it. Or we look out a window and see a man standing in the rain looking expectantly down the road at each car that goes by. He does this for an hour and then walks away. We imagine that he was waiting for someone whom he expected to meet. Whomever it

was he expected to see in one of those cars did not come. We feel bad for him, and our own stomachs twinge in the memory of a similar wet afternoon in our own lives. Or we remember a promise or two we have broken. What we feel in either case, I suggest, is not some abstract obligation tugging at us to keep our promises, or the charge of inconsistency in breaking a rule, but the pain caused by taking someone at their word, acting on these words, and being left in the rain, momentarily forgotten or lowered in someone's eyes. Perhaps there is more to this feeling than the disappointment of expectations, but raised expectations do increase the pain we feel when we are disappointed. To the extent that promises do raise expectations, to break our promises is *prima facie* to harm another.

There are, however, serious problems with this approach.⁵ I advance three arguments against it. The first argument concerns the problem of differentiating between raised expectations which create promissory obligations and those which do not. The second argument claims that this approach places too much emphasis on the promisee's raised expectations. The third argument claims that even if the value of some expectations are outweighed by exceptions, this approach provides no method to explain how this is done.

Prichard was quite right when he said that a promissory obligation is not generated each and every time a person's expectations are raised ("The Obligation to Keep a Promise" (1940). In *Moral Obligation*. Oxford: Oxford University Press, 1969, p. 170). How then does this approach distinguish between those expectations which do and those which do not create promissory obligations? We can see immediately that the answer to this question forces the expectation theorist into a dilemma. If he says, as Sidgwick and Narveson do above, that it is important to

establish at the outset that one is or is not speaking with the intention of creating an expectation in another, or that one does or does not expect the speaker to do as he said he would, then informal promising would appear to drop out of the picture. Clarity about one's intention to create expectations in another are best expressed in formal sorts of ways. But if a successful promise occurs only when the promisor expresses himself in a formal way, then it is no longer clear that raised expectations in the promisee create the obligation. If clarity of intent is achieved by using a formalized utterance then promising becomes dependent upon--at least in part--a speech act, and this is something this approach wants to deny.

It does not seem possible for this account to claim both that promises are created by raising expectations and that such promises can occur informally. The problem caused by trying to distinguish between raised expectations for which one is obligated from those which one is not obligated appears solvable only by doing away with the claim that promises can occur informally, or by adopting a speech-act account of promise. If the expectations theorist wants to maintain his position he will need to say more about how expectations differ, and why some create a promissory obligations and some do not. Despite Narveson's claim that there is nothing more to promising than the creation of expectations, closer examination reveals that perhaps a bit more needs to be said after all.

A second criticism of this approach is that it places too great an emphasis on the promisee in determining when a promise is made. It implies that a weakly expressed intention voiced to someone who forms inordinately high expectations creates, at least *prima facie*, a stronger obligation than would a serious, or solemn, promise expressed to a pessimist who rarely expected anything positive to come his way, or to someone who

has no interest in the promise. Does the strength and extent of a promise depend solely upon the degree of expectation formed by the promisee? If a person develops unwarrantedly high expectations do we have a greater obligation to do as we promised? Or suppose we have made a solemn promise to someone who is unable, incapable, or unwilling to form high expectations. Is our degree of obligation diminished? Perhaps these are examples which take us out of the mainstream of promising or rely on "abnormal" people who are either naive about the future or too depressed by it. But we should not ignore the fact that people form expectations in different ways. Even if promising does rely in part on raising expectations in the promisee we should question an approach which explains promising solely in terms of expectations and, in so doing, gives the decision of determining the existence and strength of a promise to the promisee alone.

Third, though admitting that exceptions may occur which outweigh the raised expectations of a promisee, neither Sidgwick nor Narveson indicate how conflicts between expectations and exceptions are to be resolved. Even if we allow that there exist many excusing conditions to a promise, we still need to know how to identify these conditions and, more important, how to evaluate them against the expectations that were raised when the promise was made. There is always the danger that the parties to a promise are unable to see the situation clearly enough to make the correct decision. But even if they do make a decision, what are we to say if their appraisals of the situation differ markedly; if, for example, the promisor believes his exception outweighs the promisee's raised expectations, but the promisee does not. How are such conflicts to be resolved? Whose appraisal should be used? The discussion of excusing conditions by Sidgwick and Narveson goes a long way in dispelling the notion

of promising as an uncomplicated affair, but the discussion ends rather abruptly and needs to be filled out in greater detail. Exceptions may outweigh expectations, but the "How?" and "When?" as well as a method for resolving conflicts need to be discussed.

Of course, even if these problems are resolved, it is not clear that an appeal to raised expectations alone can adequately explain promise. Sidgwick and Narveson both maintain that promising is a complex affair, and both chide other philosophers for not taking this complexity into account in discussing it. The Expectational Approach is an improvement over other approaches in terms of its ability to capture some of this complexity, but it is still limited by its focus on expectations alone.

The Expectational Approach gets a mixed review. On the positive side it sees promise as a complex practice. Second, promises do appear to raise expectations, and one's failing to meet raised expectations explains at least partially why it is wrong not to keep promises. Third, this approach recognizes that the situations which arise in everyday living sometimes interfere with promises, and sometimes outweigh the expectations they have raised. On the negative side this approach seems unable to explain, without denying one of its principle claims, how some raised expectations create promises and others do not. If a promise results only when the promisor deliberately raises the promisee's expectations, and if the deliberate raising of expectations occurs only--or most successfully--with formal communication, then a promise results--or is successful--only when formal communication is used. Hence, this approach succeeds only by denying its claim that informal expressions create promises. It also gives the promisee too much control in deciding when a promise has been made, and fails to provide a method for resolving disagreements which arise when exceptions and expectations conflict. Promising is, I believe, a relational

practice, one that requires the interaction and communication between the parties of a promise. Any approach which does not take this relational feature into account will not succeed in capturing promise.

Our understanding of promise is enhanced by the Expectational Approach, but we do not yet have a workable alternative to the Institutional Approach.

II. THE EVIDENTIARY APPROACH

i. P. S. Atiyah

P. S. Atiyah's contribution to the literature on promise is noteworthy for a number of reasons.⁶ First, he is generally negative about how philosophers have understood promise. Atiyah believes that part of the problem with traditional approaches to promising is that the vocabulary and techniques are less rich and flexible than those of the law. There is no moral language which can convey the notion of a promise which is binding but which does not carry any sanctions if it is breached. "Moreover, even if morality is created like law...it is created more slowly, less consciously, and perhaps less precisely. There is therefore a greater danger that morality will overshoot the mark in encouraging too great a degree of respect for the rule that promises should be kept" (1981, p. 137). Second, in keeping with his own advice, Atiyah makes great use of the history of promising using sources drawn primarily from the law (1979, pp. 142-160). Third, Atiyah argues that promises serve an evidentiary role rather than a substantive one. On this approach a promise does not produce an obligation, but is merely evidence of what one already has (or will have) an obligation to do. The obligation it is evidence of, like a contract, exists only when it produces either benefit for the person creating the obligation or detrimental reliance on

the part of the person accepting the obligation. If no benefit is received and/or if there is no detrimental reliance then, claims Atiyah, the moral grounds for enforcing the obligation become quite weak.

Atiyah divides the literature on promising into two categories: the internal point of view and the external point of view. He places his own position in the latter camp. Writers in the first group think that the object of moral inquiry is to assist those who seek guidance as to the "right thing to do." They tend to begin by asking such questions as: What ought I to do? Why should I keep my promises? "Those who take this position appear to think that the primary functions of rules about promising are, first, to instruct people how to make promises, and secondly, to give them guidance as to why and when they are obliged to observe promises" (1981, p. 124). Writers in the second group are more concerned with the question why people in general should observe moral rules, and why it is socially necessary that moral rules should exist and be respected. They begin by assuming the social context of promising. "The externalist's position is likely to be similar to the lawyer's who in the last analysis is concerned with behavior, but who is therefore concerned with intentions insofar as they bear on behavior" (1981, p. 124). He believes that it is not possible to give a coherent explanation of why promises should be morally binding unless one first posits a social context in which the obligations arise. "The assumption that promises do in general create binding obligations entails (if one rules out of account divine morality) a social group whose judgment determines the initial question of entitlement" (1981, p. 129).

The Evidentiary Approach relies on the parallels Atiyah sees between the legal context of promising and its moral context. He places promissory obligation within

the broader context of moral obligation and analyzes the relationship between promising and (1) the receipt of benefits and (2) the causing of harm or injury, insofar as each of these create obligations. He suggests that promise is reducible to a species of consent and that consent is a broader and more basic source of obligation. He traces this notion of promising as consent to *Leviathan*, where Hobbes argues "in effect that a promise is an expression of consent not to interfere with others in their enjoyment of their natural rights" (1981, p. 179). Atiyah also cites Hart's argument in "Are There Any Natural Rights?" as suggesting a similar idea. A promise for Hart is a surrender of the promiser's freedom in certain respects: "by thus surrendering his freedom he legitimates the conduct of the promisee in now having the right to demand something from the promisor" (1981, p. 179).

An important feature of the concept of consent is that it is a revocable concept. Revocability attaches to consent because, in general, consent has to do with binding oneself to a future act. And it is because of the double-tensed nature of consent that the consenter, in some cases, be allowed to revoke his initial consent. Atiyah points out that there are many cases where we allow revocation of a consent to act in the future, or prohibit such consents outright. A patient who consents to an operation is allowed to change his mind. A tenant protected under the British Rent Acts can surrender his tenancy for payment if agreed, but he cannot bind himself to the future even for payment. An accused person can plead guilty to a crime, but he cannot bind himself to plead guilty by any sort of agreement or contract (1981, p. 182). In determining when a consent is revocable Atiyah believes it is necessary to conduct a balancing exercise from the external point of view. It is not simply the consenter's intentions that determine the obligation he has incurred. Instead, it is necessary to

examine the rendering of benefits and acts of reliance as sources of obligation.

If, then, promising is a species of consent, and all consent is *prima facie* revocable, then promises are *prima facie* revocable. Now the puzzle about promising is to understand how this is possible, since a promise is usually understood as a way the promiser binds himself *not* to revoke his consent. Here Atiyah reminds us that a promise is by no means always binding in law, or morality.

We thus find that, whether a consent is or is not expressed in a form which amounts to a promise, its revocability is a matter to be settled by external factors: a decision by the social group (or the judges appointed by the group) is necessary before one can say whether the consent is irrevocable. The expressed willingness of the party to treat his consent as irrevocable is neither a necessary nor sufficient condition for the social group to hold the consent to be irrevocable. (1981, pp. 183-4)

A promise which may be considered irrevocable by a promisor or a promisee can be considered revocable by the social group; and for Atiyah the social group has the last word. A promise, then, is not always and everywhere a consenting not to revoke what was promised.

There are many ways of expressing consent, and one way is to make an admission. If I owe you ten dollars and I admit that I have this debt, then I admit that I have an obligation to you and that you have a claim on me. The crucial point of Atiyah's argument comes when he claims that the common justification for treating a promise as obligatory is that the promise is evidence of or an admission of some other obligation already owed by the promiser. "By making an explicit promise, the promisor concedes or admits the existence and extent of the pre-existing obligation" (1981, p. 184). For Atiyah this is the paradigm of an explicit promise. The sources of the obligation are generally (1) one person has done good or rendered some benefit to another, or (2) one person has done harm to another. Atiyah admits that these sources

of obligation can arise without any consent or express promise, but he claims that they very often coexist with express promises.

Wherever an express promise coexists with some other ground of obligation it is arguable that the primary function of the promise is--in legal language--evidentiary. The purpose of the promise, on this view, is to provide evidence about some of the issues involved in determining precisely what obligation arises from the *other* grounds of obligation. (1981, p. 184)

Atiyah offers examples to support his case, beginning first with examples where the source of obligation is neither benefit nor reliance. If one party (the defendant) is guilty of fault or negligence he is legally liable to pay compensation to the other person (the plaintiff). Often this liability is expressed in a promise to pay compensation but, as Atiyah points out, the promise overlaps or coincides with the prior duty to make compensation. The purpose of the promise in this case is to "dispose of matters of doubt and controversy arising from the uncertainty of the prior ground of obligation" (1981, p. 185). In cases of this nature Atiyah believes that it is mistaken to view the promise as creating a wholly new obligation where none existed before.

Of course, if we do treat a promise of this kind as (more or less conclusive) of the issues left doubtful without it, then there is a sense in which the promise *has* created the obligation....But the promise is not made in order to create an obligation; it is made in order to settle a dispute, which it does by precluding the promisor from (generally) reopening issues which he has admitted against himself. (1981, p. 187)

Atiyah argues similarly that a promise to tell the truth in a courtroom adds emphasis and ritual to an existing obligation, and makes it more difficult for the promiser to deny that he had the prior obligation. Such a promise is evidentiary in character.

The evidentiary nature of promising can also be seen in cases where no prior obligation exists. Assume that I offer to give you \$80,000, and you agree to give me your house. It would seem that our joint offers constituted a promise which bound us

to our word. Atiyah argues, instead, that such an agreement can be broken down into (1) the consent to the terms of the proposed exchange, and (2) the binding commitment to consummate the exchange. In terms of consenting to the terms of the proposed exchange, Atiyah believes that a promise is still nothing more than an expression of the party's willingness to exchange on the terms proposed.

In cases of this kind, therefore, there is no difficulty in treating the promises as still having an evidentiary character. Insofar as the agreement is constituted by an exchange of promises, the parties are merely saying, in effect: "If the proposed exchange takes place, I promise to [pay the agreed price] [tender a conveyance of the house]." The promises are not commitments to consummate the exchange, but admissions of the fairness of the terms proposed, and therefore of the obligation that each will come under, if and when the other's performance is accepted. (1981, p. 191)

In cases where a person relies on another's promise, it is the reliance itself and not the promise which creates the obligation. Atiyah claims that all promises have an assertion content. Whether or not a promisee is justified in relying on a promisor's assertion is a judgment made by the social group, but in rendering its decision the social group will pay close attention to how the intention or assertion was made. It is here that explicit promises serve as evidentiary or clarificatory.

To make an explicit promise is one way of helping to clear up the doubt which would otherwise arise. The promisor, by explicitly promising, is *admitting* that (insofar as it is for him to decide) he thinks the promisee will be justified in acting in reliance on him....The confusing thing is that the promisee appears to be invited to rely upon the promise itself. That is wrong. He is really being invited to rely upon the proposition inherent in the promise. (1981, pp. 192-3)

Because of the evidentiary nature of promising, Atiyah concludes that neither mutual executory promises nor gratuitous unilateral promises are binding. This is because neither of them generally create benefit or reliance. "To break a social engagement, for instance, is not usually considered a very heinous offence provided

that due warning is given so that no reliance will take place" (1981, pp. 202-3).

Likewise if I promise to pay you one hundred dollars for your cow, and you show up with the cow and I tell you that I have changed my mind, I have no obligation to pay you the money so long as I do not also try to take the cow. Atiyah's answer is that I only promised to give you the money upon receipt of the cow. I never promised to accept the cow. My promise does not oblige me to accept the cow, and so I have not broken my promise.

To promise to pay \$10 for something if and when it is delivered does not *entail* a promise to accept delivery of it. There is nothing illogical, or even irrational, in making a promise to pay for some goods or service, once they have been accepted, or received, but to decline to commit oneself in advance to accepting or receiving them. (1981, p. 206)

One cannot say that mutual promises are obligation-creating acts since the question we are trying to answer is why we should create a moral system which would recognize such obligation-creating acts. Atiyah argues that the usual reasons for making bare mutual promises obligatory--they are an important way of allocating risk; they create expectations; such a principle is necessary for the maintenance of our way of life; they are mutually beneficial--all fall to various counterarguments and fail to cover a wide range of cases (1981, pp. 208-212). "The right conclusion is not to continue the somewhat desperate search for more satisfactory reasons for upholding the binding nature of mutual executory promises. The right conclusion is to recognize that we are prone to think of mutual executory promises as having a more binding character than is in truth warranted by the reasons" (1981, p. 212).

Atiyah draws a similar conclusion about unilateral gratuitous promises. These sorts of promises have the weakest claim on the creation of obligation. This is because the promiser draws no benefit from them and, in general, such promises produce only

expectation in the promisee. But expectation without reliance is a weak source of obligation, and reliance upon a unilateral gratuitous promise is itself unlikely to create much of an obligation because the promiser has given you no reason why he should do what he has promised. "If the promise is given for *no* reason at all, nothing could be called a rational ground, then it would seem that we have finally reached the end of the road. How can such a promise create any sort of an obligation?" (1981, p. 214).

In short, the Evidentiary Approach states that promissory obligation is grounded in the promisor's benefit and the promisee's detrimental reliance. The function of a promise is to act as an admission of or as evidence of an already existing obligation. A promise is an admission by the promisor to the promisee that he already is under an obligation, or may come to be under an obligation. Such promises are obligatory only if they create benefit for the promisor and/or detrimental reliance on the part of the promisee. Promises which have neither benefit nor reliance attached to them--mutual executory and gratuitous unilateral promises--create little or no obligation on the part of the promisor.

ii. Discussion

Atiyah's Evidentiary Approach has broken new ground. Unlike other approaches it is informed with historical evidence of how promising has been understood. The Evidentiary Approach is also better able to explain why some raised expectations create obligations and others do not. In order to create an obligation an expectation must be a legitimate one and must be relied upon. Hence, even an expectation which is relied upon may not create an obligation if the promisee formed expectations which were illegitimate. Perhaps its greatest strength is its ability to

handle the revocable nature of promising. Not only does Atiyah claim that the concept of promising--as a species of consent--is a revocable concept, but he also tries to provide a mechanism for evaluating defeating conditions and resolving disagreements. For Atiyah promising takes place in a social context, and the disagreements and the uncertainties surrounding promises are to be resolved in a social context as well. He suggests that just as there are legislators and judges who make decisions about what the law is to be, who has broken this law, and to what extent; so too are there (or ought to be) moral legislators and judges who decide upon the details of the practice of promising as well as the moral bindingness of particular promises. He gives us no indication of how this would work in the moral sphere, but he believes such a process is necessary.

But for all of its attractiveness as a methodology for treating promise, the form and content of the Evidentiary Approach must be rejected. This rejection, I believe, stems primarily from the identification of promise with contract. Even if a contractual notion of promise explains how some of our promises create obligations, it does not appear to explain how all of our promises do so. Nor is it an effective argument to say that promises which do not fit the contractual mold create little or no obligation. If there are promises which do appear to create obligations but which do not fit the contractual mode of promising, then these types of promises need an explanation. As R. S. Downie argues, the jurisprudential view--as he calls it--is not radically in error, but rather "is based on a specialized range and cannot be generalised to cover all cases, especially those which lie within the sphere of ethics" (p. 263).⁷ Similarly, Stanley Cavell claims that the contractual view of promise sees all human relationships as contractual rather than personal.⁸ Cavell believes that promising is

more akin to commitment than to contract, and urges us to reject this picture of our moral form of life. It is not apparent that construing promise along strict contractual lines would give us either a theoretically correct picture of promise or one that would be better suited to our form of life. I would suggest that just as we should preserve the contractual and committal forms of relationship so too must we preserve the contractual and committal forms of promise. Atiyah has given us an excellent account of the contractual form, but errs in seeing it as the only form.

J. P. W. Cartwright offers the most detailed criticism of the Evidentiary Approach.⁹ Cartwright questions the legitimacy of using a legal conception of promise to explain a moral conception of promise. Through the use of numerous counterexamples, Cartwright demonstrates that the Evidentiary Approach has only limited success in providing a full account of promising. Regarding cases where promises evidence existing obligations Cartwright claims first that the evidentiary function of promising in tort need not "preclude its constituting the ground of a claim in contract" (p. 232). A promise may be a conclusive admission of an existing moral obligation but this would not seem to preclude its being, in addition, the source of a new one. On the other hand, a person may promise to pay the plaintiff \$X when the promise itself gives no grounds for regarding it as an admission of the existing obligation. He may make such a promise merely to settle the matter. Likewise with oaths. A person who swears to tell the truth, according to Atiyah, merely evidences an existing obligation. "But what is this obligation? It can scarcely be the legal obligation to tell the truth in court, for that does not seem to arise until the oath has been taken, as is suggested by the fact that a witness who lies in court is not guilty of perjury unless lawfully sworn as a witness" (p. 233). The oath therefore is more naturally

construed as creating this obligation rather than as admitting its prior existence.

Cartwright's view is that promises either increase the weight of previous obligations or create new obligations.

Against Atiyah's house selling example, Cartwright argues that a benefit can be created only by a promise. According to Atiyah, until B receives the house he is free to change his mind and may do so without being unjust. This is because the promise he made with A states that he has to pay A \$X only when A conveys the house to him. B has not promised to buy the house, but only to pay for the house once he has received it. Cartwright believes that by signing a contract and then not paying for the house B has been unjustly enriched by his promise to buy A's house, a promise to which A was bound.

But this undermines Atiyah's thesis that B's promissory obligation derives from the benefit received from A, for it turns out that the mere receipt of the benefit is insufficient to obligate B and that his obligation to A can only be explained by reference to the fact that the benefit was elicited by means of a promise to pay for it. It is not then the benefit that makes his promise binding, but rather the promise that makes his benefit at A's expense unjust. The attempt to explain the moral force of promises by reference to the benefit principle thus fails, because at the crucial point the moral force of the benefit principle can only be explained by reference to promises. (p. 238)

Cartwright argues further that Atiyah is mistaken to believe that the promises made by the seller and the buyer of a house create conditional obligations. He says that there are two ways that promissory obligations can be conditional. In the first case the condition constitutes part of the content of the promise and therefore the consequent obligation. If B promises to pay \$X if A conveys his house to B, then the promise supplies the content of B's obligation, namely to pay if A conveys. "This obligation attaches to B as soon as he promises....What is conditional on the conveyance is not this obligation, but the payment of the purchase price" (p. 239). The other way

one may promise conditionally is to say "If you convey your house to me, then I shall promise to pay you \$X." "What the condition qualifies in this case is not the content of the promise but rather the making of it, for it is only when the condition is satisfied that the promise will be made and the obligation incurred" (p. 239). Cartwright claims that it is apparent that the obligations incurred in Atiyah's house-buying example are of the first sort, and as such do exist prior to the satisfaction of the conditions.

Against Atiyah's claim that obligations are created by detrimental reliance Cartwright argues that promisees normally rely upon promises because they think they are binding, rather than in order to make them binding. "Similarly promisers suppose that they incur an obligation as soon as they promise and generally have little doubt that they are under such an obligation, since whether or not they are depends upon what they do" (p. 242). If the reliance principle is considered to be the sole ground of promissory obligation, then the reliance principle is too restrictive. If, on the other hand, one sees reliance as only one of many ways to produce promissory obligations, then the reliance principle is too inclusive. This is because promises are not the only means of inducing reliance in others. As Cartwright says, the distinctiveness of promising is thus lost.

I turn now to my own criticisms of the Evidentiary Approach. First, while Atiyah is to be commended for his use of legal examples in informing his account of promise, the use of legal examples is unnecessarily restrictive. The law is a formal mechanism for dealing with obligations of various sorts, but it is a mistake, I believe, to construe every example of a promise as founded upon a legalistic interpretation of obligation. Surely some promises are unlike anything found in the law. Atiyah uses judicial decisions in support of his account, but judges represent only a small portion of

the population. It would be a mistake to conclude that a decision by a judge or judges represents the view of the social group. Further, a judge is not deciding upon his own case, but upon a case brought to him. Indeed, it is imperative that he is neither promisor nor promisee in the case he is judging. Hence, what he decides is not necessarily what he would decide were he the promisor or the promisee. In addition, a judge is often constrained by legal precedent. A judicial decision, then, is hardly evidence representative of the social group or of how the common person would judge in individual cases. The law covers only certain types of obligations; others it leaves to various non-legal realms. If we use as evidence for the Evidentiary Approach only those cases lawyers take and judges hear, we are likely to get a very narrow interpretation of promise. The Evidentiary Approach represents a special case of promise, and is not one that can be used effectively across the range of promises. To capture this range, a promise theorist must consider the data drawn from the social sciences as well as the law.

A second drawback is that this approach relies exclusively upon what Atiyah calls the external viewpoint (pp. 121-122). The external viewpoint, he says, focuses on behavior, and intentions insofar as they bear on behavior. While an external account may be able to explain how some promises create obligations, such an account will not be exhaustive. This is because it does not consider the promiser's intentions. The external viewpoint asserts that only intentions which are expressed to the degree that they create benefit and/or reliance create obligations. It is hard to know what to say on the external viewpoint about a person who informally intends to make an appointment for lunch with a friend, and who thinks he has done so in such a way as to create a detrimental reliance in his friend, but who fails to do so. The person shows up

at noon for lunch, but the friend does not. It seems somewhat hollow to refer to the absence of a detrimental reliance in demonstrating to this person that no promise was made. The promise has clearly misfired, but this is hardly conclusive evidence that no promise was made. When external behavior does not correspond to a person's internal states, we should not always conclude that the internal states are mistaken. We may not want to rely upon intentions alone when deciding when a promise is made, but neither ought we to ignore intentions when they contradict the external evidence.

Similarly a situation could arise where a person causes another to rely in a detrimental way on an intention he never formed. In this instance the promisee sees an intention where there isn't any. Imagine a man who through various non-explicit verbal remarks, and non-verbal cues leads a woman to believe that he intends to spend a week with her in Cape Cod in an exclusive, intimate manner. She relies upon his verbal and non-verbal gestures and makes irrevocable plans. He benefits from his perceived expression of intention. They go to Cape Cod and on the second night this fellow tells his woman friend that he has met another woman with whom he would like to spend the night (perhaps he suggests a group arrangement). She angrily tells him that he has an obligation to treat their relationship, and this trip to the Cape, in an exclusive manner. She would never have agreed to the trip had he not made his intentions of exclusivity known in the bar that evening. She believes him to be so obligated because (1) she has detrimentally relied upon his intention; and (2) he has already benefited from it. For his part he tells her in all honesty that he never intended the trip to be exclusive, and would have told her so had she asked. He has benefited from her false assumption and she has detrimentally relied on a non-existent intention, but he never intended to treat their relationship or the trip in an exclusive

manner. No amount of argument is likely to persuade the man that he is obligated when he feels quite justified in claiming that he is not obligated. He might admit that he can see how she could see his actions as creating an obligation, and even feel badly about her reliance, without thereby admitting that he has an obligation. It is a hard case to decide, but what seems clear is that his perceptions of the situation ought to count for something.

Atiyah might respond that the law often requires us to be explicit and to use exact language when expressing intentions. The law will often hold us responsible for misspeaking or unintentionally leading another person on. But here again the law is not always helpful. There are many occasions where explicitness is undesirable or simply not possible. A great deal of human communication is non-verbal or implicit. To be explicit is often to be lacking in sensitivity or acting in bad taste. One of the reasons people are thought to promise when they do not and not thought to promise when they do is that human communication often takes place at the non-verbal level. It would be undesirable to force the explicitness of legal language onto the wide range of human communication and human relationships where it is unwelcome and unworkable.

Another response of the law when dealing with situations like the one above is for a judge to consider the evidence and to decide whether the defendant is liable for the damages incurred by the plaintiff. Despite Atiyah's suggestion that the sphere of morality could work in this way, it is not a course of action which would work well outside of the law. To begin with, there is nothing like a body of law upon which a moral judge could rely, nor is there any procedure in deciding moral cases. Second, legal judges are thought to possess some expertise regarding the law. However, it is

doubtful that such experts could be provided to decide moral cases. Third, having a third party rendering judgments--as opposed to advice or moral insight--would interfere in the relational character of promise. If a person mistakes my words for a promise, then we should work it out together. He expresses his anger, and I either defend my actions or apologize and try to compensate his loss. A great deal of our everyday lives take place at the interpersonal level. It would seem both unnecessary and undesirable to do away with this characteristic of our form of life in favor of the law where an impartial third party renders final judgments. Fourth, and most important, a moral judge could intrude upon the life of autonomous individuals by taking away their ability to make decisions, no matter how wrong they appear to be. A crucial characteristic of our form of life is the ability of individuals to make autonomous decisions and to live with these decisions. Third party judgments would effectively destroy this feature. This is not to say that we should not consult third parties who can help us see more clearly the details of the situation. But third parties should be like Aristotle's man of practical wisdom, and not like a judge in a court of law.

I turn finally to what Atiyah calls the social context of promising (p. 122). Atiyah wants to see the social context as somehow expressing the will of the people such that its judgments are the judgments desired by the social group as a whole. But when he looks at what these judgments are he looks at legal judgments. Obviously the social group expresses itself in ways other than legal judgments. Atiyah says also that obligations can just be created because "the social group is in charge of the rules of the group, and just does create the rules" (1981, p. 129). This remark is similar to how Rawls describes the original position and, for this reason, is prone to the same

criticisms. But we can argue further that whereas there are laws which govern certain aspects of the social group, such laws, and the legislators and judges who make them, do not and should not extend to all realms of our life. The social group is much richer than its legalistic aspects. If we take seriously the notion of a social group then we should make a greater attempt to understand it. Such an attempt would go far beyond what the law tells us. Contrary to what Atiyah asserts, I would argue that the Anglo-American social group tells us by their actions that unilateral gratuitous promises create obligations. If this is correct, then a theory of promise ought to be able to tell us why such promises are thought to be obligatory. Atiyah informs us that the law does not recognize such promises, but he is too hasty in concluding that such promises are therefore not obligatory. The social group speaks with many voices. A theory of promise ought to be able to capture this plurality or at least allow these voices to maintain their integrity. The Evidentiary Approach, I believe, does neither.

Like the Expectational Approach, the Evidentiary Approach gets a mixed review. Atiyah gives us a rich and detailed account of promise. He has made a serious attempt to interface theory and practice, and to develop a theory which is informed by the actions of historical and contemporary promisers. On the negative side Atiyah's efforts reflect what happens when a slice of the common life, the legalistic slice, is used exclusively to develop an account of promise. The practice of promise is, I believe, much richer than its legalistic version. Further, this approach replaces the relational aspects of promise with adversarial and judicial ones. It recognizes that promises are made between persons, but it prefers that conflict resolution be done by third parties. On the whole the Evidentiary Approach suffers from a lack of balance.

III. THE INTUITIONIST APPROACH

i. *Prichard and Ross*

Sidgwick claims that the fundamental assumption of intuitionism is that we have the power of seeing clearly what actions are right in themselves and reasonable.

Briefly, the view to be evaluated in this section holds that the proposition 'promises are obligatory' is to be understood either as an analytic proposition or as a synthetic a priori proposition. It holds further that one can see intuitively that promises are obligatory.

There is no need to demonstrate that, or how, promises produce obligations. One need only to examine the concept *promise* to see that promises create obligations and that one ought to keep one's promises. I concentrate on the writings of

H. A. Prichard and W. D. Ross.¹⁰

In "Does Moral Philosophy Rest on a Mistake?" Prichard shows that all historical attempts to trace moral obligation to a teleological ethical theory fail.¹¹ Prichard argues that obligation is a *sui generis* concept and is not reducible to or explainable in terms of any other concept. To consider whether or not we have an obligation does not require a utilitarian calculation, or an appeal to moral rules. One need only to ask oneself if an obligation exists to do such-and-such an action and the answer will be forthcoming.

In a number of places Prichard compares what one does in ethics to what one does in mathematics or to the theory of knowledge generally. Prichard believes the question "Is what we hitherto thought knowledge really knowledge?" an illegitimate one. We shall stop asking that question only when we realize the inevitable immediacy of knowledge. "And it is positive knowledge that knowledge is immediate and neither can be, nor needs be, improved or vindicated by the further knowledge that it was knowledge" (p. 14). Further, if we somehow come to genuinely doubt that $7 \times 4 =$

28, the only remedy is to do the sum again. "Or, to put the matter generally, if we do come to doubt whether it is true that A is B, as we once thought, the remedy lies not in any process of reflection but in such a reconsideration of the nature of A and B as leads to the knowledge that A is B" (pp. 15-16).

Likewise in ethics. We want to have it proved to us that all of our obligations are really our obligations. But, urges Prichard, it is a mistake to suppose that it is possible to prove what can only be apprehended directly by an act of moral thinking. "Nevertheless the demand, though illegitimate, is inevitable until we have carried the process of reflection far enough to realize the self-evidence of our obligations, i.e. the immediacy of our apprehension of them" (p. 16). Similarly, our doubts about whether we should pay our debts are allayed when, in essence, we do the moral "calculation" over again.

The only remedy lies in actually getting into a situation which occasions the obligation, or--if our imagination be strong enough--in imagining ourselves in that situation, and then letting our moral capacities of thinking do their work. Or, to put the matter generally, if we do doubt whether there is really an obligation to originate A in a situation B, the remedy lies not in any process of general thinking, but in getting face to face with a particular instance of the situation B, and then directly appreciating the obligation to originate A in that situation. (p. 17)

In "The Obligation to Keep a Promise" Prichard says that "an obligation seems a fact of the kind which it is impossible to create or bring into existence. The fact that I am bound to do some action seems no more one of these [a fact I create] than does the fact that the square of three is odd. At the end of "The Obligation to Keep a Promise" Prichard poses the following question: "How are we to explain the obligation of a promise, an obligation which seems very much of the type we create or change?" His "tentative" conclusion is that promissory obligation is not created in the various ways put forth by philosophers, and that the question remains open and unanswered. On his

view such a question is unanswerable or "illegitimate."

W. D. Ross shares with Prichard the view that intuition alone is needed to see that promises produce obligations, but unlike Prichard and other intuitionists before him, Ross recognizes that promissory obligations can conflict with obligations of other sorts.¹² Ross offers as a solution to this problem his notion of a *prima facie* duty. Ross suggests that '*prima facie* duty' be used to refer to

the characteristic (quite distinct from that of being a duty proper) which an act has, in virtue of being of a certain kind (e.g. the keeping of a promise), of being an act which would be a duty proper if it were not at the same time of another kind which is morally significant. Whether an act is a duty proper or actual duty depends on *all* the morally significant kinds it is an instance of. (p. 19)

He adds that a *prima facie* duty is not itself a duty, but something related in a special way to duty. Further, a *prima facie* duty is not simply a duty at first sight which may turn out to be illusory. "What I am speaking of is an objective fact involved in the nature of the situation, or more strictly in an element of its nature, though not, as duty proper does, arising from its *whole* nature" (p. 20).

Keeping promises is a *prima facie* duty for Ross. He believes that the "plain man" fulfills a promise because he thinks he ought to do so, and not because he thinks doing so will produce the best consequences overall. "He thinks in fact much more of the past than the future. What makes him think it right to act in a certain way is the fact that he has promised to do so--that and, usually, nothing more" (p. 17). Of course there will be cases when the duty to act benevolently will overcome the duty to meet a friend for a "trivial purpose." What we (most people) really think, he says, is "that normally promise-keeping, for example, should come before benevolence, but that when and only when the good to be produced by the act is very great and the promise comparatively trivial, the act of benevolence becomes our duty" (p. 19). Ross

reminds us that we have many types of relationships with many different people, and each of these relationships is the foundation of a *prima facie* duty.

When I am in a situation, as perhaps I always am, in which more than one of these *prima facie* duties is incumbent upon me, what I have to do is to study the situation as fully as I can until I form the considered opinion (it is never more) that in the circumstances one of them is more incumbent than any other; then I am bound to think that to do this *prima facie* duty is my duty *sans phrase* in the situation. (p. 19)

How do we know that the keeping of promises is a *prima facie* duty? Ross's answer is a clear example of the Intuitionist Approach.

I should make it plain at this stage that I am *assuming* the correctness of some of our main convictions as to *prima facie* duties, or, more strictly, am claiming that we *know* them to be true. To me it seems as self-evident as anything could be, that to make a promise, for instance, is to create a moral claim on us in someone else. Many readers will perhaps say that they do *not* know this to be true. If so, I certainly cannot prove it to them; I can only ask them to reflect again, in the hope that they will ultimately agree that they also know it to be true. The main moral convictions of the plain man seem to me to be, not opinions which it is for philosophy to prove or disprove, but knowledge from the start; and in my own case I seem to find little difficulty in distinguishing these essential convictions from other moral convictions which I also have, which are merely fallible opinions based on an imperfect study of the working for good or evil of certain institutions or types of action. (pp. 20-1, footnote)

Like Prichard before him, Ross is suggesting that we put aside our subtle analyses of promise and just look. If we do we will see that promises are obligatory. It is not important, or perhaps even possible to explain or understand promising. What is important is that one act in accordance with the duties incurred by promises and, when conflicts arise, to try to see clearly what path one must take.

Ross's view of promise is well illustrated in one of his examples. In the example a person has promised a friend to return a book he has borrowed, and decides to return the book by mail. Ross believes that his duty is to fulfill his promise, and he fulfills his promise when the book is securely in his friend's hands. If the book is lost by a railwayman or stolen by a dishonest postman he is required to send another copy of the

book. If the book comes to hand he has done his duty, even if it was carelessly dispatched. If it does not come to hand, he has not done his duty regardless of how carefully he has dispatched the book.

Prichard and Ross make a very strong case for doing away with the analysis of obligation in terms of other concepts. Whatever else promises are, and however they arise, they are obligatory. As Ross says, "What, exactly, a promise is, is not so easy to determine, but we are surely agreed that it constitutes a serious limitation to our freedom of action" (p. 35). All that is left to do--and what it is that Ross and Prichard do--is to expose the flaws in the arguments and theories which try to say more.¹³

ii. Discussion

There are some obvious strengths to this non-explanatory approach to promise. By relying on intuitions alone it avoids having to construct a theory of promise. It stops the analysis one step earlier than most other accounts, and blocks any and all attempts to go further by demonstrating that they are incoherent or conflict with one's intuitions. Another positive feature of this approach is that it recognizes the need to introduce a way of handling conflicts of obligation. Ross's account views the decision procedure as a careful rendering of the specific situation followed by an intuitively correct decision. As Ross says, what a person forms in this situation is never more than a considered opinion. Finally, there is something very powerful about an argument which asks us to imagine ourselves as the promiser in such-and-such a situation; or which asks us to see for ourselves that promises are obligatory. We nod in agreement that the proposition "promises are obligatory" is analytic, and as obvious as statements in non-mathematical languages get. We are also likely to agree with Ross when he says that we rarely appeal to rules or engage in complex calculations when deciding if we

have a duty to keep a promise. It is a good bet that our intuitions will mesh in this case because most of us have been raised to believe that promises are *prima facie* obligatory. And, as Ross or Prichard might say, we are raised to believe this because *in fact* promises do create obligations.

This approach, however, is not without problems and weaknesses. To begin with, it can be criticized for the seriousness and solemnness which it attaches to promise. This criticism has been made in a general way by P. S. Atiyah.¹⁴ He chides philosophers who write about promising for ignoring the empirical data found in law. He says that the confident manner in which assumptions are made about promising without any reference to empirical data "must be a constant source of wonder to anyone with any knowledge of the law of contract" (p. 410). Atiyah believes the empirical data indicate that the strength of the principle that promises must be kept is not nearly so great as assumed by many writers. Atiyah intends to cover by this criticism a wide range of approaches to promise, but I think it is especially relevant to the approach presented here.¹⁵

A second argument against this approach is that intuitions about promising are not always shared in common. Intuitionists have a strong case if they are correct about our shared intuitions regarding promising, but if there is a clash of intuitions it would seem necessary to explain it. It is this fact that our intuitions about the nature of promise do not form a single position which has inspired so many philosophers to work in this area.

There are at least two ways in which our intuitions can differ regarding promising. The first concerns the ordering of *prima facie* duties. As Ross maintains, some duties are clearly more important than others. Perhaps all of us share the

intuition that the duty to tell the truth is more important than the duty of gratitude and therefore higher on the list of duties. It is easy to agree that there are more important duties and less important duties and to order these duties at both extremes, but the task will quickly become more difficult when we try to fill in the middle. To take Ross's example, how do we order the duties of benevolence and the fidelity to promising? My intuitions tell me that, in general, the duty of benevolence is greater than the duty to keep promises. I would argue that many promises--though not all--are immediately defeated by the duty of the promiser to perform a good act, helping someone in need for example. This is not how Ross sees it. He tells us that normally promise-keeping should come before benevolence (p. 144). But our different intuitions about the ranking of these duties should seem perfectly legitimate. There is no reason to think that every person is in agreement regarding the ranking of moral duties. Ross recognizes neither the possible clash of intuitions nor the difficulty in resolving it. He tells us only that his intuition gives him this ranking and that the plain man shares this intuition. There is no recognition that two relatively rational and moral persons might disagree about how to rank these two duties. Ross does tell us that if a person does not see that promises are obligatory, there is nothing he could do to convince him, and he is probably right about this. But here the problem is different. Both Ross and I believe that keeping promises and acts of benevolence are duties; the disagreement comes in knowing how to rank them.

It would seem incumbent upon intuitionists either to refuse to rank our duties, or to provide a method by which such a ranking could be established and conflicts resolved. The Intuitionist Approach appears unable to do either without undermining its position. If it allows for the possibility of disagreement, and provides a

method for resolving such disagreements, then the knowledge of our duties is no longer intuitive. If it no longer considers the ranking of duties important, it will be unable to account for how conflicts of duty are resolved. The issue, I believe, is not really where such duties should go on a list, or how this list should be arrived at but rather how, each time we are faced with a conflict of duty, such an ordering is to be made. Ross wants to make the list out in advance, and he depends upon our shared intuitions to do so. I would argue that he cannot count on large numbers of people to share his intuitions and that, in any case, a ranking of duties cannot be made out in advance.

Intuitions may likewise clash at the level of individual promises. Even if all the members of a community share the intuition that promises are obligatory, then intuitions are likely to differ over what this obligation entails. One community member might understand promissory obligation to be very serious indeed. He might be taught that broken promises lead to ruin and despair. Another community member might have the intuition that the obligations of promises are, in general, pretty weak. He would no doubt consider the frequent breaking of promises by religious leaders, politicians, business people, lawyers, physicians, spouses, etc. a fact of modern life. He would believe that one cannot make it to the top unless one is prepared to consistently break promises; that truth telling, playing fairly, and promise keeping are for losers. How would Ross resolve this clash of intuitions?

It is not, I believe, a matter of indifference that people learn about promising and obligation in different ways. Our intuitions about promise are shaped by the community and time period in which we live.¹¹ Even Ross's England was not so homogeneous as to lead one to conclude that everyone who is English understands the duty of fidelity to promises in the same way. Ross is probably correct in saying that if I

do not share his intuitions about promising there is nothing that he can do to convince me. But the real problem occurs when conflicts arise over our various intuitions. The Intuitionist Approach gives us no way of resolving these conflicts of intuitions other than to point to the high road of their own intuitions and, supposedly, to the common man's as well.

A third problem with the Intuitionist Approach is its method for resolving conflicts of duty. I do not think we can hold the view that whenever there is a conflict of duty the promisor should consult his intuitions in deciding what to do. This method simply ignores the relational aspect of promising. A promisor's decision to keep or break a promise may adversely affect the promisee. It would seem appropriate that the promisee not be merely informed that the promisor has decided to break a promise, but to be part of the decision making process. Such consultations are not always possible, but the emphasis Ross gives to the promisor's intuitions for resolving conflicts of duty all but ignores the relationship set up between promisor and promisee, and what this relationship requires in the form of open and honest dialogue. It is, I believe, precisely at those times when a promisor decides to break a promise that he must be prepared to confront a promisee with very different intuitions about his conflicting duties. If we assume that neither promisor nor promisee has the inside edge on moral intuitions, then such a conflict can be resolved only by a dialogue between the two parties, and/or by consulting one or more third parties. Such a dialogue may come to no discernible conclusion, or it may force them to reshape their intuitions, but this is precisely what such dialogues are meant to do. We cannot rely too much on our moral intuitions alone. In fact, all real moral conflicts force us out of ourselves and to distrust our intuitions. The Intuitionist Approach, then, has us going

in the wrong direction when confronting a moral conflict. It has us retreating into ourselves when we should be making our views known to the person(s) most affected by these views; and it has us listening to ourselves when we should be listening to others.

Finally, this account makes little mention of how promises are defeated. Although the concept of *prima facie* duties allows for the possibility of conflicts of duty, it is otherwise uninformative about the exceptions to promises. There may be legitimate exceptions to a promise which are not also duties, though these exceptions might likewise interfere with one's duty to keep a promise. It is doubtful, for example, that I have a duty to hear Dexter Gordon play the saxophone when he unexpectedly comes to town, though my going to hear him might count as an exception to a promise. We might take Ross's remarks about how to resolve a conflict of duty as a method for considering exceptions to a promise which are not also duties, but I do not think he means his remarks to be taken as a method since to do so would jeopardize his claim that our duties are intuitively clear. Even if we take his account to be saying that there are indeed occasional legitimate exceptions to a promise, we still need to have some understanding of how we ought to proceed in particular cases. Our philosophical efforts should be spent demonstrating not only why the keeping of promises is obligatory, but also why and when some promises cease to be obligatory. Most of us would share the intuition that promising is an important part of--perhaps even a necessary condition for--the kind of life we are living. But surely we do not believe that in this form of life all promises ought to be kept unconditionally or only when they clash with other intuitions. If we do not believe this, then we need to say a great deal more about promising than simply that it is intuitively clear that promises

create obligations where none existed before. Promise theorists, intuitionists included, should concentrate their efforts on unpacking the shared and more complex intuition that some promises are not obligatory.

To conclude, this account greatly underdescribes promise. Close attention to the details of promise is not ruled out just because it is considered unnecessary or impossible to explain the *source* of promissory obligation. Even if we understand with intuitive clarity what promises entail we still need to know how promises are made, how they are broken, and in general how to navigate in this activity. The activity of promising is worthy of study not only because it accords with our intuitions, but because it is used and abused, misunderstood, difficult to apply, and full of possibilities and interpretations. Unfortunately, the Intuitionist Approach tells us almost nothing about these important details. It is an approach, I believe, that if actually utilized by a community of promisers would either greatly diminish the desire to continue with this highly useful activity, or be quickly rejected.

IV. THE INTENTIONAL APPROACH

i. Michael Robins

The Intentional Approach to promise has been out of philosophical fashion since Hume apparently showed it to be indefensible. This is a rather curious state of affairs considering Hume's cursory critique. Perhaps the reluctance of philosophers to explain promise in terms of intentions had to do with the lack of conceptual tools needed to say anything meaningful about what goes on in people's heads. What was needed to resurrect this approach was a theory of intentionality rich enough to handle the conceptual issues surrounding the willing of voluntary obligations. In his book,

Promising, Intending, And Moral Autonomy, Michael Robins uses action theory to develop a sophisticated intentional theory of promise.¹⁶

Robins argues that promissory obligation is unintelligible without presupposing a more primitive concept of commitment. He claims that the traditional approaches to promising succeed only by "smuggling in a yet unexplained, non-social sense of commitment which comes dangerously close to 'willing an obligation'" (1984, p. 1). Commitment, he argues, is embedded in the very possibility of intending. This commitment, however, is a normative concept of commitment and is to be distinguished from and defended against a causal theory of action. "This concept is normative because it is necessarily invoked in accounting for a man's being mistaken in his *action* in a way that cannot be traced simply to a mistaken *intention* (or belief)" (1984, p. 2). He argues further that at the level of *basic action* it is a principle that one honors one's non-mistaken intentions; a principle which rules out changing one's intentions or choosing not to abide by them.

Upon the foundation of basic action he builds his *architectonic* "whereby each ascending floor represents a different kind of intention or action which is governed, correspondingly, by a distinctive 'mandate' that was reconstituted out of the one governing the lower floor" (1984, p. 2). On the second floor are non-basic actions, on the third floor a special kind of intention associated with vows and other private decisions, and on the fourth floor promises, which Robins describes as distinctively social acts. A promise is a social act that not only creates an obligation, but also a right of another to whom the obligation is owed. Promises are conceived as "simply transferring to another the exclusionary mandate already created by a vow, the transfer being effected conditionally upon the promisee's continuing assent. When the transfer

is effected, the promisee holds the exclusionary mandate over the promiser" (1984, p. 14). As Robins admits, this architectonic resembles a state of nature theory, but it is very different from standard state of nature theories. For Robins, a state of nature is "the domain of non-social, uncoordinated, intentional actions up through vows. It is a state where mandates exist without either obligations or rights" (1984, p. 16). His view does not allow any social act to create a binding sense of obligation "unless the possibility of obligation is embedded in non-social intentional action" (1984, p. 16).

Intentional Basic Actions

Robins argues that when a person acts intentionally he exercises a causal power, but the causal power does not run from the intention to the bodily movements. Instead, the intention is non-causally related to a volition which later executes that intention. Intention and volition are related to commitment, which is a three-place operator ranging over an intending, a volition, and an agent.

The picture that emerges is that an agent *acts* through *two* vehicles: intending and volition. When he intends at time t_i to do A, he commits *himself* to do a further act of his at time t_j , an act of volition. At time t_j , he exercises a causal power over his bodily movements. So conceived, intending, though psychologically real, is epi-phenomenal with regard to the causal order explaining intentional action. Its role is a normative one, linked through the normative commitment operator to other acts which are causally efficacious. (1984, p. 20)

Robins posits a normative theory of commitment. It recognizes that intending, like commitment, is doubly temporally indexed. This means that both intention and commitment refer to the time at which we are intending or committing ourselves (t_i), and to the later time we are to honor our intentions and commitments (t_j). Robins considers an example of intending today to wake up early tomorrow. He suggest that the point of intending today to wake up early tomorrow is to settle for both

today and tomorrow that one *will* have a reason tomorrow to wake up early. If this is correct, then one *will* have a reason tomorrow whether or not one still intends tomorrow to rise early. There may be good reasons for why one should change one's mind tomorrow, but Robins asserts that one may not change one's mind tomorrow simply by disregarding or ignoring the reason that one *intends* today to then go into effect. "The upshot is that there is important asymmetry between forming intentions and changing them. One can form them arbitrarily (i.e., while being preferentially indifferent), but one may not change them at will. On my analysis one may not change them without showing that the intention is mistaken" (1984, p. 35).

Robins turns next to an account of volitions. For Robins a volition is distinguished from an intention in that a volition plays some executorial role with respect to what was intended, and is co-temporal with the movements it causes or controls. Robins relies both upon philosophic argument and scientific evidence to show that volitions are causally related to actions. Making reference to this scientific evidence, Robins claims that a volition is not any act of will but one that occurs under the guise of a "response image." A response image is a representation of sensory feedback which provides a mental conception of a certain act, and which defines this certain act. Unlike event causation, which assumes that the first event is a sufficient condition for the other, agent causation assumes that the agent always has the power to change his mind.

Non-Basic Action

Just as he argues that intentional basic action succeeds only if one posits a normative concept of commitment, Robins claims that this same normative concept applies to non-basic actions, "actions which occur...when we successfully intend our

basic action to achieve a significance beyond the bounds of our own body, to achieve that significance by embracing portions of the world as well" (1984, p. 60). Non-basic actions, he claims, are significantly different from basic actions and do not merely reduce to them. For one thing, intentional non-basic action depends as much upon us as it does upon the world. For intentional, non-basic action we need the cooperation of the world, and to perform or contribute as required. Relying upon Alvin Goldman's theory of level generation, and supplementing it with what he calls *adverbial requirements*, Robins shows how non-basic actions commit us to new mandates beyond those involved in basic action (1984, pp. 60-83). These mandates amount to further constraints on the way we are to move our bodies.

As we make the scope of our intentional actions reach outward from our body to embrace an ever-increasing portion of the world, we weave around ourselves a web of adverbial requirements. It is a web, though, of our own making, or rather intending. Its source lies in our intentions, its prescriptive force in requirement, and its bond in commitment. (1984, p. 83)

Vows

Robins uses vows to bridge the gap between intentions and promises. He suggests three reasons why vows can be seen as serving this function. First, vows intuitively create a stronger commitment than a mere intention. Second, vows need not be essentially social acts. The nature of a vow is that of self-imposed commitment. Third, vows need not be communicated in language, and in this way appear to be prior to language and convention. "Vows, then, provide the most intuitive link between solitary intention and social acts" (1984, p. 87).

He then derives deciding from intending, and vowing from deciding. A decision is an intention that was arrived at by some process of deliberation between

alternatives. Hence, a decision is a kind of intention, but not all intentions need be decisions. What makes a decision a "decision" is "the intention at t_i not to reconsider (or to place limits on reconsidering) it at t_j " (1984, p. 88). The distinctive marks of a decision is that (1) it is a second order intention and (2) it is an exclusionary intention which grows out of and is justified by deliberation. Robins suggests that a vow is an exclusionary intention that does not, like a decision, imply that it was necessarily a product of deliberation. A vow that is not a decision is the forming of an exclusionary intention without even having deliberated in the minimal sense. "All that need be before one's mind in an act of vowing is the *concept* of an alternative, for that, after all, is what one in the act of vowing intends to exclude" (1984, p. 93). Finally, it can be seen that vows are related to non-basic acts in that a commitment does not approach the strength of a vow until its scope has involved a non-basic act. "We do not, in other words, vow unless the action vowed is taken to be non-basic" (1984, p. 95).

Promises

Unlike vowing, promising is a social act but its commitment is traced to the personal or inner act of commitment which creates an exclusionary intention not to change one's first order intention. What makes promising an inherently social act is that, unlike vowing, the promisee is seen as playing a crucial role in the act of promising. Robins argues that a promise confers a special right on the promisee, a right which entails that the promisee is the beneficiary of the promise as well as that the promisee has the power to waive the promise. Robins explains how an exclusionary intention on the part of the promisor can commit him not only to the content of the promise but also to the promisee, and at the same time create a waivable right for the promisee to demand the promise from the promisor. He claims that "A [the promiser]

wants to communicate to B [the promisee] not merely his unilateral commitment to Φ , but somehow involve B in that very commitment's taking effect" (p. 100). The promisee's involvement in a promise reflects his acceptance of the commitment, and his acceptance is at least one condition upon which the commitment is in effect. Based on their [promiser and promisee] common knowledge that A can make vows, A might say to B, in promising, that "I, A, intend, exclusionarily at t_1 (that you, B, will hold the exclusionary requirement for me to Φ at t_2 , conditional upon your continuing assent)" (1984, p. 103). This formulation, Robins asserts, contains all of the elements to represent in logical form both the common origin and difference between vows and promises. In a word, promising is vowing plus (conditional) transferring (1984, p. 116).

As social acts promises differ from vows in another important way. Whereas there is only a requirement to honor one's vows and intentions, there is an obligation to keep one's promises.

The distinction is between private and social acts: requirements turn into obligations when they are *owed* to someone else....The cavalier attitude towards the obligation to keep a promise reflects significantly on a man's integrity in much the same way as does cheating at a trivial game. It is difficult not to think of this as a moral failing. This is explained in part, I think, by the fact that a promise *as such* creates a right on the part of someone else. To be remiss in recognizing that right reflects adversely on the promiser's lack of respect for others as persons. On this view how we regard promissory *relations* between persons reflects how we regard persons, period. (1984, pp. 108-9)

The distinction between a requirement and a moral obligation is not simply a verbal one. A failure to do what is required affects the individual who vows or intends, while a failure of moral obligation affects another person and fails to recognize his or her autonomy. A person who doesn't keep his vows or who cheats at solitaire is likely to be perceived as weak-willed rather than as morally deficient, or with amusement

rather than scorn. Robins believes that this is clearly not the case with persons who do not keep their moral obligations.

Robins claims finally that his account of promise has the advantage of showing the transition from vows to promises--from private acts to social ones--without presupposing any antecedent convention, practice, institution, or rule of promise. His naturalistic conception of promising accounts

for the way in which cooperation and all its moral baggage arises gradually and perhaps imperceptibly from the state of nature; it accounts for the natural development of social behavior out of solitary behavior. The alternative seems to be the implausible suggestion that any cooperative behavior whereby people have a right to rely on such cannot arise *de facto*, but must first be explained somewhat *de jure* by reference to a pre-existing (local) convention. But this invites the question: how did *that* convention get started? Sooner or later human institutions are going to have to reflect their evolutionary origins, and I suggest that, unlike these rival accounts, my view does this without a trace of infinite regresses. (pp. 123-4)

In addition Robins believes his account is able to handle insincere or unintentional promises, promises which Atiyah and others claim undermine an Intentional Approach to promise. Robins argues that Atiyah and others confuse the *concept* of an exclusionary intention with having that intention. Promises, to be sure, cannot be obligatory without the concept of an exclusionary intention being communicated or being present; but this does not also imply that the promiser *has* that intention. "Even though the promise can take effect without the speaker having the appropriate intention, it is still the concept of that intention that is so semantically represented and by means of which we come to understand what promising is in the first place" (1984, p. 146). Hence, insincere promises are quite compatible on this account.

Finally, this theory is evolutionary in that it shows how human beings have developed into social and moral beings. The ability to make promises stems from this evolutionary development of internal states. Finally, the ability to promise is a

necessary feature of our evolutionary and moral development. Without it, according to Robins, there could be no conventions, or games, or even language.

ii. Discussion

In the hands of Michael Robins the Intentional Approach has many strong points. In analyzing intention, volition and commitment he has incorporated into a theory of promise other branches of philosophy, as well as the tools of science. He has greatly informed our understanding of promising with the latest results from action theory and cognitive psychology. Second, Robins has once again made the Intentional Approach to promise a viable theoretical alternative. The re-emergence of a healthy and sophisticated intentional theory will enliven the dialogue among promise theorists, and will enrich future theories of promise. Third, Robins shows how promise arises out of a state of nature which is evolutionary in character. For Robins promising is not simply a matter of what we say, but a matter of what we do. To explain this feature of promising requires that we look at our social development from an evolutionary point of view. Robins recognizes that promising is a peculiarly human practice. In order to explain it we need to know what it is that allows humans to engage in it.

Despite the richness of this approach, it fails to provide an adequate account of promise. In her book review Holly Smith is critical of Robins' project.¹⁷ Smith questions Robins' argument regarding the normative force of intention. According to Robins, a present intention to do A creates (in the present) a belief that you have a present reason to do A now as well as a reason in the future to do A then. Smith argues that my *belief* that my intention creates a reason hardly shows that my intention *actually* creates a reason. As she says, I may simply be mistaken about the normative

power of forming intentions (p. 606). Smith argues more generally that much of Robins' argument is tersely put and in need of justification.

We cannot justify normative judgements by simply noting that people form intentions, and conclude they are subject to normative requirements. Rather, to ascertain whether anyone ever intends to perform to act, we must *first* establish whether that person ought to perform that act. All the justificatory work remains to be done. (p. 606)

Smith accuses Robins of a lack of clarity. At one place Robins claims that the obligation of a promise depends on the promisee assenting to the proposition that the promisee *ought* to do A (p. 102); at another place he implies that the promisee assents to the proposition that the promisor *do* A (p. 104). In private correspondence with Smith he states that "the promisee assents to the proposition that he controls the normative requirement that the promiser do A" (p. 607). Smith claims that Robins' vacillation among these claims makes it virtually impossible to ascertain what the real theory is supposed to be. She points out a more serious problem when she asks what it is for the promisee to assent to the proposition in question. If the promisor only promises if the promisee assents to the proposition that he (the promisor) do A--but if the promisee assents only if the promisor intends (or vows) to do A--then there is a real threat of circularity.

Turning to my own criticisms, the Intentional Approach suffers most from underdescription. Just as the Evidentiary Approach focuses primarily upon benefit and reliance, both of which are determined by behavior, the Intentional Approach focuses extensively on what goes on inside of the promiser, the ascertainment of which is not always determined by his behavior. A successful approach to promise requires a wide range of techniques and methodologies. If we focus too much on the behavioral features of promise, as does Atiyah, we are likely to ignore the promiser's intentions, and

this seems mistaken. But if we focus on the internal states of the promiser, we are likely to ignore the external, behavioral features of promise which can greatly influence the success or failure of communicating intentions; and this seems equally mistaken.

On another issue, Robins rightly points out that promise has an irreducible double indexical temporal reference; i.e., promises take place in the present (t_i) and the future (t_j) (1984, p. 20). Unfortunately Robins appears to recognize this feature without fully appreciating it. If promising has a double indexical temporal reference, then it is important to recognize how external conditions come between t_i and t_j , and how such conditions may change the conditions or even the possibility of the original promise. Because promising occurs both in the present and in the future, an adequate theory must say something about the conditions which defeat a promise. Robins points out that a promise takes away from the promisor the freedom to change his mind and hence rules out one type of defeating condition. On the other hand, the promisee is free to waive the promisor's obligation, and this is one type of defeating condition. But these remarks hardly begin to address the nature of defeasibility as it relates to promise. I have suggested that the test of a theory of promise is its ability to explain not only how promises create obligations, but to explain how such obligations are defeated as well. The Intentional Approach fails to explain the latter.

This approach does give the promisee some role in the undertaking of a promise, but the question is whether the promisee is given too much power, and whether this power interferes with the relational quality of promising. I believe it does. Why should a promisee have any stronger claim or certainty to a future which for all of us remains unclear and uncertain? Why should a promisee be given a right to a future that is any more certain than the future is generally? To take an example, you may

intend to get up early tomorrow and go for a bike ride while the sun rises. This intended future, as is all futures, is precarious: you may change your mind in the early hours of the morning; it may be raining furiously; or your child may awaken an hour earlier than he usually does. In each case you do not go for the bike ride because events have altered the future (present). In the first case you change your mind and so your intentions change. In the second case nature intrudes making the ride difficult or impossible to take. But your child's crying seems different. He always sleeps until seven, and your intention to take a bike ride is dependent upon your expectation that he will sleep until seven today. Why is he crying and ruining your ride? He appears to be breaking an implicit promise he has made to you. His crying upsets you more than your change of intention or the rain, and yet each cancels the ride. You may become more frustrated with this version of the alteration of the future, but in many ways it is identical with the first two. The future--and your actions in it--is altered in many ways: you alter them, events alter them, and other people alter them.

The same may be said of the expectations of promisees. Like the bike rider a promisee may change his mind and waive the promiser's obligation; weather or other natural events may interfere with the performance of the promise; or the promiser may decide to no longer honor the promise. Unlike your child, the promiser has consciously decided to break his promise, but from the promisee's perspective little else has changed. In each case the promisee's future has changed. In the first instance he has changed it; in the latter two instances it has been changed for him. We might say that this is often how life is, and wouldn't it be better if it were not this way. But it seems artificial to try to make the future more reliable by making it conform to the promisee's right to expect a certain future. A Rights Approach to promise fails

because it construes the obligation of a promise as conferring upon the promisee a right to a particular future, and such a right is clearly impossible to provide. Like the rest of us, the promisee must be prepared for a future that is not to his liking. He may blame the promisor for failing to keep his promise, and he may be correct in doing so, but he clearly has *no* right to a certain future. At most a promise allows him to expect a certain future. Promise does have a double indexical temporal reference, and between t_1 and t_2 innumerable circumstances can arise which make the promise impossible, immoral or even inconvenient to perform. If a right is the strongest moral claim one can possess it seems too strong to say that one has a right to a particular future by the mere fact that one is a promisee.

Another way in which this approach gives the promisee too much power is that it gives him the sole power to waive a promise. At most, I believe, he ought to share this power with the promisor. The so-called right to the future that a promisee gains by a promise is the promisor's future as well. To allow the promisee sole power in deciding to waive this right would seem to take away the promisor's autonomy in a way which is coercive. The promisee may, after all, be unreasonable. I would argue that the promisee has some power in choosing to waive or not to waive a promise, but not the sole power. A second problem with giving the promisee the sole power to waive a promise is that it ignores the obligation that a promisee incurs when he accepts a promise. Most accounts of promising focus on the obligation incurred by the promisor, but fail to discuss the degree to which--if at all--the promisee incurs an obligation by accepting a unilateral promise. It would be a poor excuse to tell a promisor that you did not show up for the dinner he promised you because you waived his promise. Even if the promisee announces this waiver ahead of time it is not clear that he is

always in the right. A successful account of promise would see the commitment incurred by a promise as extending to both promisor and promisee, even with unilateral promises. To do otherwise, it seems to me, leads to counterintuitive and immoral results.

To sum up, the Intentional Approach fails because it focuses exclusively on the will of the promisor and the right of the promisee without thereby explaining how the will becomes unbound, or how the will of the promisor and the right of the promisee interact. I have argued further that it ignores the behavioral and observational conditions of promise, and fails to see promising as a relational affair between two or more persons. A promise is not simply a bare expression of a will or a strict transference of a right. It is a relationship between promisor and promisee. The nature of this relationship--as well as the conditions of a specific promise--greatly affect how promissory obligations are created and defeated.

V. CONCLUSION

I have presented and evaluated four approaches to promise and have found all of them to be problematic in some way. As a general conclusion it can be stated that while each approach captures one or another aspect of promising, each fails to capture promise in its complex entirety. Each approach underdescribes promise by seeing it exclusively in terms of one feature or another, and by focusing almost entirely on how promises create obligations. Promises create obligations, but they also create situations when such obligations are defeated, and this feature must be explained as well. The defeasible quality of promise is not an additional problem to be solved. There are not two questions to answer here but only one: namely, how does the practice of promise

function in our form of life? If we pose the question in this way we can see that it is not enough to explain how promises create obligations. Each approach likewise makes claims which appear to conflict with one's perceptions of the data of promise.

Why is it that all of these approaches are lacking in this way? The short answer to this question is that promising is a complex moral practice, perhaps much more complex than most promise theorists believe. It also seems true that the present range of methodologies employed by promise theorists are too narrow to deal with this complexity. Each approach we examined focused on one particular aspect of promise, but are we to believe that promising is so easily captured by its intuitive clarity, or its similarities to contract, or its ability to raise expectations? Is there really nothing more to promise than a rule-governed institution which creates obligations the way touchdowns create six points? If we are to have any success in capturing the practice of promise we will need to expand the range of concepts we use.

In addition to the paucity of explanatory devices there seems to be very little interest in checking one's theory against the data of promise, or of incorporating fields of study outside of the traditional philosophical bounds. We are told in a general way by Searle and Rawls how institutions work, but there is no attempt or interest in showing that the Institutional Approach is corroborated in the anthropological or sociological studies. Both intentional and expectational theorists could begin to take advantage of the data of the psychological sciences, and yet none to date have done so. Intuitionist and evidentiary theorists claim to have empirical evidence to support their accounts, but the intuitionists tell us only that the common man agrees with him, and Atiyah concentrates only on the evidence provided by law. If we take seriously the notion that theories of promise should be informed by what promisors and promisees think and

do, then we ought to attempt to gather this evidence. We should expect both greater and finer detail from our theories of promise.

In the remaining chapters I offer a theoretical alternative that I believe succeeds in capturing promise. I call this alternative a theory of practice.

ENDNOTES

1. This approach is expressed in the writings of William Paley. See *The Works of William Paley*, Bk. II, chs. 1-3 (Edinburgh: Peter Brown and Thomas Nelson, 1827).
2. As I have done in the first two chapters, I generally ignore the affiliation these positions have to moral theories. Though Sidgwick and Narveson, for example are both considered act utilitarians, the Expectational Approach is not unique to utilitarians. Paley was no utilitarian, nor is A. I. Melden. Neither Atiyah nor Robins are defending a moral position *per se*. As in Chapters One and Two, my interest is in theories of promise.
3. *The Methods of Ethics* (Indianapolis: Hackett Publishing Company, 1981).
4. References in the text are to: (1) *Morality and Utility* (Baltimore, MD: The Johns Hopkins Press, 1967). Referred to as **1967**. (2) "Promising, Expecting, and Utility" (*Canadian Journal of Philosophy* 1 (December 1971):207-233). Referred to as **1971**.
5. For a critique of the utilitarian aspects of this approach see D. H. Hodgson's *Consequences of Utilitarianism* (Oxford: Oxford University Press, 1967). For responses to Hodgson see Narveson's "Promising, Expecting, and Utility"; Peter Singer, "Is Act-Utilitarianism Self-Defeating?" (*Philosophical Review* 81 (1972):94-104); and J. L. Mackie, "The Disutility of Act-Utilitarianism" (*The Philosophical Quarterly* 23 (October, 1973): 289-300).
6. All references are to: (1) *The Rise and Fall of Freedom of Contract* (Oxford: Clarendon Press, 1979). Referred to in the text as **1979**. (2) *Promises, Morals, and the Law* (Oxford: Clarendon Press, 1981.) Referred to in the text as **1981**.
7. "Three Accounts of Promising" (*The Philosophical Quarterly* 35 (July 1985):259-271).
8. *The Claim of Reason*, chs. 5, 9, 11.
9. "An Evidentiary Theory of Promises" (*Mind* 93 (1984):230-248).
10. Historical examples of this approach include: (1) Thomas Reid's *Essays on the Active Powers of the Mind* (Cambridge, MA: MIT Press, 1969); and Immanuel Kant's *Groundwork of the Metaphysic of Morals*, trans. H. J. Paton (New York: Harper and Row [Torchbooks], 1964).
11. All quotations from *Moral Obligation: Essays and Lectures* (Oxford: Oxford University Press, 1949).

12. *The Right and the Good* (1930). (Oxford: Clarendon Press, 1965).
13. For other examples of this approach see (1) Georg Henrik von Wright's "On Promises" (*Theoria* 28 (1962):277-297); (2) G. R. Grice's *The Grounds of Moral Judgment* (Cambridge: Cambridge University Press, 1967); and Joseph Raz's "Promises and Obligations" (In *Law, Morality and Society: Essays in Honour of H. L. A. Hart*, Oxford: Oxford University Press, 1977).
14. "Promises and the Law of Contract" (*Mind* 87 (July 1979):410-418).
15. For a similar treatment of 'ought', see Alasdair MacIntyre's "'Ought'" and "Some More About 'Ought'" (In *Against the Self-Images of the Age: Essays in Ideology and Philosophy*, London: Duckworth, 1971).
16. All references are to: (1) "The Primacy of Promising" (*Mind* 85 (July 1976):321-340). Referred to in the text as 1976. (2) *Promising, Intending, and Moral Autonomy* (Cambridge: Cambridge University Press, 1984). Referred to in the text as 1984.
17. (*Nous* 21 (December 1987):604-608).

CHAPTER FOUR

AN OUTLINE OF A THEORY OF PRACTICE

The Institutional Approach, as we recall, uses constitutive rules to create and define actions within institutions. There is no act of checkmate without the rules of chess, no touchdown without the rules of football, and no promissory obligation without the rules of promise. I argued that while such a view may be able to capture certain aspects of games and public institutions it cannot capture promise, or a number of other meaningful activities. Making tea in Britain (or as the British do), for example, appears to be recognizable activity in which one participates without there being any constitutive rules to govern it. So too with dating, bluffing, humor, booing or *waving* at ballgames, curtain calls, walking on busy streets, driving, standing in elevators, ordering in restaurants, and standing in lines. To capture these activities one must posit another sort of theoretical explanation, and I shall do so here.

In this chapter I outline a theory of practice relying, when appropriate, on examples drawn from the above list. In describing these practices, and in outlining a theory of practice, the focus will be on how practices begin, how they cohere, how they are taught, how they undergo change, their localization, as well as how evaluation and judgment take place within them.¹

I. OUTLINE OF THE THEORY

A theory of practice defines a practice as any human activity that is recognized and described (though description is not a necessary condition for recognizability) as a

specified conventional pattern of behavior undertaken by two or more persons in a homogeneous community. Practices are to be distinguished from habits. Habits are activities of isolated individuals; practices constitute the common actions of individuals within social groups. Similar habits of members of a community create a practice when they become identified as conventional forms of behavior (and when they fulfill the other conditions of a practice listed below). If at home I normally step out of the tub or shower stall before toweling off--thereby dripping water on the floor or mat--I am engaged in a habit. If however I, and others with whom I live, engage in this activity and it becomes identified as conventional behavior for this group, and is discussed at a floor meeting in the dorm where we live, then we are engaging in a practice (assuming that other conditions are met). In general, the creation of a practice requires that two or more people be engaged in conventional behavior. Of course once practices come into existence, lone individuals can engage in them; though practices, like games and institutions, have an essentially social character.

Practices are not defined by rules. Practice rules--or rule-like formulations occurring in practices--serve a descriptive function. Rule-like formulations help us to talk about practices, to describe practices to others, to assist someone in acquiring a practice role, or to excel in the practice. But acting in accordance with these rule-like formulations is neither a necessary nor sufficient condition for participating in a practice, nor are practice rules in any way constitutive. Practices lack constitutive rules. As such, they do not arise from the result of human design, or out of a hypothetical original position. Practices originate from and are maintained by human action. In discussing this feature of practices I rely upon the explanatory device of *spontaneous order* employed by Scottish Enlightenment philosophers, notably Adam

Smith and David Hume.² Both use spontaneous order to explain how practices and institutions begin without original agreements or constitutive rules, and how practices are maintained without governmental or central control. The theory of spontaneous order explains both how practices originate and how they undergo change without losing their recognizable features.

Roles, not rules, characterize practices. Practice roles are constitutive of practices, though they do not define them in the precise way that constitutive rules define actions within institutions. By 'constitute' I mean that practice roles circumscribe, characterize, give shape to, or help pick out a practice. Calling practice roles constitutive emphasizes their importance in understanding practices. A practice may have many practice roles whose acquisition are required to participate in it.

Acquisition of practice roles is achieved by: (1) active (and often unconscious) participation in these practice roles, (2) imitation, and (3) imagination. One result of this learning process is that one can become conversant with a practice role through unconscious learning. A second result is that the acquisition of a practice role is not always an exact copy of the role-model one is imitating. Each practitioner can give his or her own interpretations to practice roles. These various interpretations give a practice its characteristic shape. Because the acquisition of practice roles relies upon imagination, imitative role-playing and, in general, the active participation of a community at large, the relationships between practitioners becomes very important. One's success in acquiring a practice role will depend in part upon fellow practitioners in one's immediate circle who impart this practice to you. How important, for example, is the practice to them? How competent in this practice are those whom one models and imitates? More important, what is the relationship between novice

and role-model? If the relationship is a poor one the transfer of some practice roles may be incomplete. In general, relational factors are very important in the acquisition and maintenance of practices.

Because practices are characterized by the various interpretations of its practice roles, it follows that there are no definitive or standard practices. The practice roles of dating, for example, vary between generations, communities, and even between members of a homogeneous community. Because the practice roles differ, the practice itself will be seen as different. Practices change. They have histories. To describe a particular practice is to describe it as found in eighteenth century Scotland or nineteenth century Prussia, or among the bushman of Australia, or a Hasidic community. This is not to say that certain practices do not occur almost everywhere on the planet, or that some have existed for thousands of years. But a practice is influenced by conditions specific to its time and place. The behavior taking place within a practice is conventional, but this behavior is constrained and shaped by conditions specific to the community in which the practice takes place.

Despite the fact that there are no standard or definitive practices, and that practices are not defined by rules, evaluation and judgment are nevertheless possible in practices. Evaluation measures the competence of one's interpretations of practice roles. Evaluation is used primarily in the teaching of practice roles. Judgments, on the other hand, reflect more than competence within practice roles. Judgments reflect one's character as it is expressed in a practice role. For example, a practitioner can be evaluated as competent in the practice of bluffing while judged negatively because his actions within this practice indicate poor character. Evaluators and judges must be conversant with the practices in which they are operating, as well as the

details surrounding the practitioner(s) being evaluated or judged. Both use criteria abstracted from their own experience within the community of practices. Because of this both evaluator and judge must be willing to (1) consider excusing conditions, (2) to update their criteria, and (3) to engage in a dialogue with the practitioner being evaluated or judged. The quality of their evaluations and judgments will depend upon their ability to satisfy these three conditions.

Practices have many purposes, but in particular they facilitate a form of life and, in some cases, assist those within it to flourish. It is not a paradox to say that practices are necessary for the maintenance of a form of life and at the same time make this form of life possible. The relationship between practices and the form of life of its practitioners is essentially a cybernetic one. Together they form a system which maintains itself through the interchange of and reaction to information which each supplies to the other and to the system as a whole. In biological systems this is called symbiosis. We turn now to filling out the details of this outline.

II. THE THEORY DELINEATED

As described in this way, a great number of human activities are *not* practices. The games of chess and baseball are not practices; nor is buying a house or getting married. Whatever they might have been in the distant past these activities are now defined rather explicitly by constitutive rules and regulations. While it may indeed be impossible to play baseball or to get married without there being rules which give meaning to one's actions, people seem perfectly able to make tea the way the British do, go on dates the way Americans do, boo the way soccer fans do, and walk on busy streets the way New Yorkers do, without referring to constitutive rules. We can likewise speak with perfect intelligence of the proper way to make tea in Britain; acceptable and

unacceptable behavior on a date; predictable booing at the ballpark; and techniques for walking in New York. It is to such actions, and to many others as well, that a theory of practice is applied. We begin with an example.

Anthropologists or sociologists might describe dating as a cultural practice to find compatible mates, or to control the sexual urges of adolescents, or to reinforce monogamy in young adults. Dating might then be compared to arranged marriages or the practice of pre-pubescent promiscuity in some cultures. But those who study the practice of dating do not have available to them a handbook of dating, or the rulebook which defines this practice in late twentieth century America. They might initially make use of a book of etiquette, but quickly discard it once they realize that it is rarely used (except perhaps by certain social classes) and is usually out of date (teenagers rarely refer to such books, though their parents or grandparents might). Instead, social scientists often depend on informants who are knowledgeable in the practice.

This is also how young adults learn about dating. They read about dating in romance novels, and observe their older siblings on dates, but they do not have recourse to a book of rules to teach them what to do. (Of course, unlike anthropologists, their education is facilitated by going on dates.) Because there is no rule book to govern this practice, what characterizes dating is open to interpretation. Even though a teen's first date is often an abysmal affair and filled with uncertainties, both parties normally recognize that they are on a date. It is not as if they recognize this because they see themselves as satisfying the necessary and sufficient conditions of dating. Nor do they claim that because they did not hold hands or kiss one another good night their actions failed to constitute a date. A wide range of behavior characterizes dating, and yet despite this wide variation across history, across cultures, across age groups, and across

personal experience--and despite the absence of constitutive rules--few would deny that there is a practice called dating.

We can make similar remarks about making tea, telling jokes, bluffing in poker, or booing at baseball games. Each of these is a form of conventional behavior, even though none of them have a set of rules defining or creating this behavior. But then there is no need to rely on constitutive rules to explain practices such as these.

i. Spontaneous Order

One feature of constitutive rules is that they give meaning to otherwise meaningless actions. On the Institutional Approach it is not possible to score a touchdown or hit a homerun or make a promise unless there is a rule which defines a touchdown, a homerun, or a promise. As Rawls says, prior to the rules one's actions lack a sense. One function of constitutive rules, then, is to explain how institutions originated. I argued in Chapter Two that there were serious objections to this explanation. The main point of these objections is that constitutive rules presuppose a large number of dispositions and actions which it is not possible to define with rules. On a theory of practice both the dispositions and the background conditions necessary for a practice to originate can be explained without reference to constitutive rules. Nor is it necessary to appeal to constitutive rules once a practice is in place. Practices originate in human action, not by human design or constitutive rules. According to this view it is a form of life which originates a practice. When a form of life has a particular configuration a practice specific to that configuration will arise spontaneously. This practice will maintain itself so long as that form of life is in existence and is facilitated by it.

The phrase 'spontaneous order' was first used by F. A. Hayek in his book *The*

Constitution Of Liberty (Chicago: University of Chicago Press, 1960, 160-61). He uses the term to explain the phenomena of complex social arrangements without invoking deliberate calculation or design. In "The Results of Human Action but not of Human Design" Hayek argues that the long-standing distinction between the natural (wholly independent of human action) and the artificial (the product of human design) must have inserted between it a third category "comprising all those unintended patterns and regularities which we find to exist in human society and which it is the task of social theory to explain" (p. 97).³ He cites thinkers of the Scottish Enlightenment as building up a social theory "which made the undesigned results of individual action its central object, and in particular provided a comprehensive theory of the spontaneous order of the market" (p. 99). He credits them with engaging in what we now call social anthropology and suggests that we need to continue in this tradition if we are to make sense of the origins and developments of certain social institutions.

Ronald Hamowy details the use of spontaneous order by Scottish Enlightenment Philosophers in his monograph *The Scottish Enlightenment and the Theory of Spontaneous Order*.⁴ Hamowy describes the theory in the following way.

The theory, simply put, holds that the social arrangements under which we live are of such a high order of complexity that they invariably take their form not from deliberate calculation, but as the unintended consequence of countless individual actions, many of which may be the result of instinct and habit. The theory thus provides an explanation of the origin of complex social structures without the need to posit the existence of a directing intelligence. Rather, such structures come into being as a consequence of the aggregate of numerous discrete individual actions, none of which aims at the formation of coherent social institutions. Society is not the product of calculation but arises spontaneously, and its institutions are not the result of intentional design but of men's actions which have as their purpose an array of short-term private objectives. (p. 3)

Hamowy cites Hume as using spontaneous order to explain the growth of

technical knowledge, the origins of justice, the stability of property and its transference, promising, and the evolution of money and language. Hume claims that individual human beings, sharing the same natural passions and the same natural desires, act on their own and for their own purposes in ways that turn out to be mutually beneficial for all. In addition, Hume says that "mankind is an inventive species; and where an invention is obvious and absolutely necessary, it may as properly be said to be natural as anything that proceeds immediately from original principles, without the intervention of thought or reflexion" (*A Treatise of Human Nature*, p. 484). On Hume's view the social and political artifices can be seen as arising spontaneously.

Hamowy points out that Adam Smith uses spontaneous order to explain the general rules of morality. These rules are produced by

countless instances of moral evaluation made by large numbers of individuals over time....From these specific instances, rules of morality evolve and gradually come to be obeyed because, Smith added, men seek the approval of their fellow men or, in the case of rules relating to justice, because they also fear the punishment and the resentment of others that attend certain acts. (p. 14).

Hamowy likewise points to Smith's discussion of the four stages of mankind (Hunters, Shepherds, Agriculture, Commerce) as evidence that Smith saw the institution of property as changing according to social conditions.

I want to argue that a theory of spontaneous order is a viable alternative to constitutive rules in explaining how various social practices arise. It can be applied to the social practices of dating, or booing, or making tea. These practices originate and are maintained by people who share common interests and common dispositions. Like Smith's use of sympathy and Hume's use of confined generosity, we can speak of the dispositions of desire, competition, cooperation or propriety. Where Smith describes the four stages of history and Hume speaks of the common scarcity of

capacities and resources, we can speak of the influence of our social and historical setting. Without this common background there would be little chance that practices could arise. It is this common backdrop which I identify as the form of life necessary for any practice to originate and be maintained. The form of life is the complex backdrop against which practices originate and evolve. It is this backdrop which allows us to recognize certain actions as practices; which allows us to learn practices without learning rules; to teach practices without teaching rules; and to alter practices without altering rules. It is a form of life which makes the spontaneous order of practices both necessary and possible. Practices are necessary in overcoming the constraining conditions in which potential practitioners find themselves (scarcity, or limitations in general), and they are made possible because of the enabling conditions contained within these practitioners (creativity, ingenuity, etc.)

It is this common form of life which makes people expect that hometown fans will boo the opposing team. The practice of booing is made possible by a form of life which is shared generally by human beings, and specifically by spectators at sporting events. For example, spectators at sporting events who are excited by the actions on the field will want to express themselves (constraining condition), and they can do this by making noise (enabling condition). Given these conditions it is natural for large numbers of individuals to spontaneously cheer or boo, and to continue to engage in this activity in a recognized and ritualized way. Of course not all sports have identical practices of fan participation. Booing and cheering are constrained in golf, tennis and bowling. It is also interesting to note how the practice of booing has undergone change. Thirty years ago it would have been in bad taste to distract a member of a visiting basketball team while he attempted an important free throw. Distractions at

this critical time are now commonplace. It is difficult to be specific about the details of this transition, but the transition has occurred. Perhaps in fifty years it will be common practice to distract an athlete while he is putting for a tournament-winning birdie or serving for the match. Such change is a feature of practices.

Even with a form of life as a backdrop to practices it is still necessary to show how these practices are able to originate spontaneously. I offer three examples. In Chapter Three I described briefly the practice of waving at sporting events. The wave is a perfect example of a practice which appears to have arisen spontaneously. In order for this practice to have arisen spontaneously a number of conditions would need to be present. Those who participated in this practice for the first time would share some common features. They would recognize certain behavior and be able to imitate it by simply watching it. They would have a sense of rhythm (otherwise they would not be able to time when to stand and sit). They would enjoy sporting events. They would only be partially interested in the game they were attending (serious sports' fans do not usually wave); etc. We could go on listing these sorts of conditions, but it is clear that a wave is likely to happen only when certain constraining and enabling conditions are present. Take away enough of these conditions and the practice will disappear. But when these conditions do exist, groups of people will be able to wave even if they cannot name what is happening as a wave, and even if this is the very first time it occurs. Practices like the wave occur when people act in concert, and they are able to act in concert because they share a similar background and similar interests. Knowing this to be the case it is possible for a practice like waving to have had multiple origins. If large numbers of people with similar interests find themselves in similar conditions, a practice like waving can spring up spontaneously at a number of sporting

arenas.

Another example of common activity springing up spontaneously in different places is the practice of joke telling (or humor). Normally a joke will travel a slow and circuitous route from person to person, but there are times when particularly tasteless jokes will arise spontaneously immediately following a national tragedy. It seems unlikely that these jokes, almost always identical in form, could travel around the country in a matter of days. It is more likely that the originators of these jokes share a common background. An example of this phenomenon occurred when the space shuttle Challenger exploded. Within a twenty-four hour period I heard the same joke (that the last words of the Challenger's commanding officer were "No, I wanted a *Bud Light*") from two people who did not know one another and who lived three hundred miles apart. On a theory of spontaneous order this phenomenon would be explained by the conjunction of a national disaster with a national beer advertising campaign. To create spontaneously a nearly identical national joke of this kind requires a relatively small number of people around the United States who are good at thinking up jokes, who have seen the *Bud Light* beer commercials, and who are aware that the shuttle exploded.

The final example comes from Julius Kovesi's book *Moral Notions*.⁵ The practice he describes is a British one.

I expect the reader is familiar with those little machines which are used by bus conductors in some places for printing the tickets. Now suppose that a passenger asked for a fourpenny ticket and for some reason the conductor dialled five, thus producing the wrong ticket. He made another ticket but kept the fivepenny one as he had to account for all the tickets printed. Some time later someone else asked for a fivepenny ticket and was given the one printed earlier. So far so good, but the trouble arose when the inspector boarded the bus, for since the ticket had been printed some time before the passenger got on the bus it had by now expired, and the conductor had to be called on to explain. All this was rather a nuisance as it took up the conductor's time while other

passengers were getting on and off; besides, he felt that the inspector must have thought him careless and inefficient. When he came off duty he stayed to have a cup of tea at the canteen where he told the story to a group of other conductors who replied with similar stories. Some had to do their explaining during rush hour or to an inspector who was slow to understand. When I want to suggest that the conductors might eventually coin an expression to refer to these stories I do not of course want to say that they all suddenly decide one day: 'Well, let's call it making a misticket'. It might take several years of exchanging stories before some conductor coins this word, and perhaps even longer before it becomes general currency. Now if it is only the conductors who talk together over their cups of tea the word will become part only of their vocabulary, but if they share their discussion with the inspectors it will become part of their vocabulary as well. In the first case the word could only function as a 'nuisance-word', in the second, it could function as an 'excuse-word'. What I mean is that in the first case a conductor could not use the new word to the inspector when he wants a short-hand explanation to excuse a passenger and himself; he could only use it among the other conductors when he wants to say that this trouble has come up again. In the second case, however, he can tell the inspector: 'There is a misticket in the back', thus achieving what before the existence of this word needed a long explanation....Before the existence of this word the conductors had a point in telling the inspectors what had happened; they wanted to excuse themselves and the passenger. But the success of this excuse depended on how articulate the conductor was, how able he was to master the relevant details and leave out irrelevant ones that might only annoy the inspector....The existence of the new word changes all this. A conductor now does not need to rely on his own personal capacity to formulate and put his case well nor can the attitude of the inspector so freely influence the success of the excuse. The efficacy of the excuse is achieved by the conductors and admitted by the inspectors when the word is accepted in their common language. The rules for the proper use of the word are also rules in the way of life in which it plays a part. (pp. 46-8)

Kovesi is making a point about the word 'misticket' and the rules for its usage, but his remarks are nonetheless informative about how a practice like misticketing might arise. He says later that the use of this word, and the notion of making mistakes, are both a part of our form of life. Once we see what the conductors share in common--the constraining and enabling conditions--it is easy to understand how this practice arises spontaneously. In this regard, Kovesi points out the importance of naming a practice. It is not until the individual habits of the conductors become known, identified, and named 'misticketing' that misticketing takes on the qualities of a

practice. Misticketing becomes identified with a fairly specific activity. "The new word 'misticket'...does not refer to the experience of an individual conductor but to that of *any* conductor, and incorporates those features of the experiences that any of them may have" (p. 49). Just as practices have unique characteristics so they are uniquely named. As Kovesi suggests, naming practice has advantages over and above the practice itself.

These three examples suggest that practices can arise spontaneously without having been designed or defined by rules. Indeed, it would be difficult to explain how some of these practices could arise with constitutive rules. The origin of a practice depends upon the shared traits of the practitioners and their local conditions. Taken together, these traits and conditions constitute a form of life which makes specific practices both necessary and possible. The conventional behavior which is eventually identified as constituting a practice often originates in the similar but separate actions of individuals. These actions are recognized as having elements in common. These elements coalesce into those features which give a practice its identifying characteristics. Although the origination of practices is hardly spontaneous, practices do arise quickly. But this should not be surprising when we consider the common ground potential practitioners share. Once created, practices continue to evolve. Practices have backdrops and histories but they have futures as well, futures which are not predetermined. A theory of spontaneous order commits one not only to an explanation of how practices begin, but also to how they develop. In the same way that they originate in spontaneous human action, so too do practices undergo change.

ii. Practice Rules: Descriptive not Constitutive

If someone asks for the rules of bluffing in poker they will most likely be told instead the purpose of bluffing, or have it explained to them how one goes about bluffing. Even if this information is transmitted in rule-like formulations, the rules will be somewhat loose and will vary between card players. There might be certain hard and fast rules (e.g., "Never bluff with new players because they are likely to have strong hands"), but even these rules have exceptions. In general, practice rules serve as rules of thumb. They are descriptive of the practice and function by giving advice or strategy for excelling in it. But one can certainly engage in a practice without having to ask someone for its rules of thumb. One does not bluff by following rules. One bluffs by engaging in an activity, by actually bluffing. Practice rules are not definitive of a practice nor need they be consciously or unconsciously present in the practitioner. Instead, practice rules are rule-like formulations which serve a descriptive or strategic function.

That practice rules are not constitutive can be seen in the following example. Imagine that you have a friend Brad who is interested in dating--though he has never done it before--and asks your advice. He comes to you with questions because he perceives you to be an expert. Brad's request is not as straightforward as it seems. He is more than likely a shy fellow who is presently interested in a woman, but who is unsure how to ask her out on a date or how to begin and maintain a courtship. But Brad knows what dating is and why he wants to engage in the practice. He shares the background conditions of those who engage in the dating practice. These conditions are what make him want to learn how to date in the first place. Brad might begin by asking how you go about getting dates or how you maintain a romantic relationship.

What you tell him is certainly nothing rule-like. You tell him some stories in which you share your experience and he listens and asks questions. Instead of giving him rules you give him advice or you describe what you do when dating. You tell him that as general rules of thumb you avoid physical intimacy on a first date, and do not get too specific with your personal life. But you also tell him that you have broken these rules when it seemed appropriate. You tell him not to think of dating in terms of strict rules. Both you and Brad recognize that his request for advice stems from his desire to be successful at dating, and you know that this success stems in part from not thinking of the practice of dating in terms of rules.

That the practice of dating has no hard and fast (or constitutive) rules can be seen from the fact that Brad, or anyone else, can manage to go on a date without having to follow any of the rules you give him, or any rules at all. There is no list of necessary and sufficient conditions that Brad must satisfy if he and his date are to recognize their actions as constitutive of dating. Indeed, it might strike Brad's date as exceedingly odd if when she invited him to spend the night he refused, stating as his reason that he had been told of a rule that one is not sexually intimate on a first date. Because Brad wants to consider himself on a date he tells her that it is important to follow all of the rules. (Such a remark would not sound so odd coming from a newcomer to baseball who was trying to hit the ball and, in our efforts to be kind, we offered him four strikes and he responded by saying that in learning to play baseball he wanted to abide by the rules.) Nor must Brad follow your rules of thumb. As the date comes to an end he might follow the general strategy you suggested for setting up a next date, but he might just as easily dispense with your suggestions all together. What separates the novice from the expert is that the novice often begins his participation in a practice by appealing to

rule-like formulations as if they were constitutive rules. Unsure of himself, the novice avoids spontaneity and instead acts in strict accordance with rules that are not meant to be followed strictly. After a time the proficient practitioner no longer interprets practice rules so strictly. He sees that they are unnecessary for--and even an interference with--his success in the practice.

Suppose instead that you are with a foreign anthropologist who is studying the practice of dating. The anthropologist and you are at a large public function to observe people dating, and he has asked for your expertise in pointing out people who are on dates. While you can formulate some general rules for distinguishing a date from other sorts of relationships, the anthropologist will have to recognize that these rules are not constitutive of the practice of dating. These rule-like formulations merely provide guidelines for recognizing this practice, and for talking about it. To become a good participant-observer requires not that one master rules, but that one become an expert at recognizing behavior within cultural contexts. This is why it takes a long time to become an expert in observing practices. It takes an even longer time to become an expert in the practices themselves.

This formulation of practice rules applies to other practices as well. When the British make tea they always first warm the pot with some boiling water. They dump this water out and pour in fresh boiling water with the tea. One could say that for the British warming the pot is a rule for making tea, but this rule is not a constitutive rule. One could reply with complete confidence to one's British guests that, though you have neglected to warm the pot, you have made tea and not coffee. Your actions have a sense at some level. This rule-like formulation does not define actions which lacked a sense prior to the rule; nor must one know the rule either consciously or unconsciously in

order to participate in the practice. The rule-like formulation that one must warm the pot, I submit, gives the practitioner strategic advice to follow if he desires to excel at making tea the way the British do.

To conclude, practice rules are rule-like formulations which function either descriptively or strategically. These formulations do not define practices, nor are they essential in guiding action. Instead, they are used primarily to talk about practices or the actions taking place within them. In this regard we can refer to practice rules as having a meta-function. In their descriptive function they serve as a way to talk about practices. In their strategic function these rule-like formulations provide advice on how to perform well within practices.⁶

If practice rules do not function in the creation, maintenance and continuation of practices, it is necessary to explain these features of practices another way. Obviously practices are characterized in ways that identify them as the practices they are. If rules do not give practices their characteristic shape this feature must be explained some other way. In addition, the longevity of a practice depends upon the ability of practitioners to teach it to their children and to new members of the community. How do novices learn to participate in a practice if there exist no rules which could serve to teach it to them?

iii. Practice Roles

Practices are recognized and distinguished by their unique forms of conformative behavior, though this behavior is not defined by rules. I use the term 'role' to circumscribe those conformative behaviors which take place within a practice. A

practice contains a cluster of roles, and the sum of actions taking place in these roles gives a practice its characteristic shape. To be acting in a practice role is to be engaged in a practice; to be observed in a practice role is to be observed as acting in a practice. Practice roles then, and not rules, are what give practices their unique shape. These roles are characterized and constrained by the individual interpretations of practitioners. Individual interpretations give shape to practice roles and the practice roles give shape to practices. The range of these interpretations, and the extent to which practice roles--and the practices themselves--undergo change, are constrained by traditional or standard interpretations, and in other ways discussed below. The ongoing interaction and tension between traditional and modern interpretations is what allows practices to undergo the slow but constant change necessary to keep them viable. Without this change practices lose their importance or cease to exist altogether.⁷

In learning to make tea the British way, one begins by watching and listening to experts in this practice. In time one becomes proficient at this practice (here proficiency entails not only technical mastery but also social mastery as well: e.g., sharing the seriousness of tea drinking, drinking tea at certain times of day, etc.). But one's proficiency is tested not by the ability to cite rules or to act in accordance with them, but by one's ability to actually make and drink tea the way the British do. One becomes proficient at this practice when one's actions became synonymous (or nearly synonymous) with the actions of long-time practitioners, and this occurs when one has successfully acquired the proper roles. It is not always clear to the novice or to fellow practitioners when novices become proficient, but the transition does occur.

Likewise with bluffing.⁸ After mastering the rules of the game of poker one may

also want to learn how to bluff. Unlike the game itself there are no rules to ease one's entry into this practice. One can receive some rules of thumb, but the only way one can learn the bluffing practice is to be a role-player in it. To excel in a practice requires a certain proficiency in its roles, but proficiency is not required to begin participating in a practice. This can be seen in the fact that novice bluffers often bluff out of ignorance; e.g., when they mistakenly think they have a winning hand. If you are playing with longtime poker players and for money you will quickly realize the need to become good in this practice: good not only at bluffing other players, but good at recognizing their bluffs as well. If you are to become proficient at bluffing you learn from those around you, as well as from your own successes and blunders. The roles of this practice are characterized for you by those who are already familiar with them, and you take these people as your role-models, but the roles are eventually characterized by your own interpretations of them. In time you may develop a new approach to bluffing, one which you share with your friends. Because of individual interpretations, practice roles undergo constant adaptation and revision. Of course there is no certainty that role-playing in a practice, even with the help of role-models, will make one proficient in it. Perhaps you so much dislike being deceived that you choose not to participate in this practice. Or perhaps as hard as you try you are just a lousy bluffer and always give yourself away, or fail to read correctly the faces of your opponents. Engaging in a practice role is no guarantee that one will ever become a proficient practitioner. It takes more than an acquaintance with a form of life to become proficient at practices which take place within it. This is seen clearly in the practice of humor.

We have all had the experience of hearing a joke that we find hilariously funny, but then cannot get anyone to laugh when we tell it. There is an old meta-joke about

a prison where inmates, having attached numbers to jokes, simply shout out the numbers. When a new inmate tries this nobody laughs. He is told that some people can tell jokes and others can't. There is more to telling a joke than just reciting words. Besides knowing when to tell a joke, you also need to know how to tell it. Delivery is very important, but what does good delivery entail? If we look to our experts we will see that there is a wide range of successful deliveries, from Jack Benny to Robin Williams. Just as there are many ways not to be funny there are also many ways to be funny. Most successful comedians can point to role-models, people they thought were funny and whom they tried to imitate. From these role-models, aspiring comics learn the role(s) of comedian. But young comedians always shape these roles in individualized ways. Judging from the variations among comedians, these roles are individually created and shaped by each and every comedian. Because of this ever present variation, the practice of humor undergoes change. What is humorous in one generation ceases to be humorous in another. (This practice is also influenced by the social conditions of the period in which it operates).

I have argued that one becomes a practitioner by participating in a practice, and that this occurs when one acquires its roles. I suggested above that newcomers do not acquire practice roles by learning rules, since the rule-like formulations of practices are only broadly descriptive. Instead, newcomers learn a practice's roles by imitating role-models and by playing the roles themselves. This way of learning a role requires that the newcomer be able to imitate the behavior of others, and to imagine himself as playing the role he is trying to learn. Practice roles are acquired primarily through imitation and imagination.

The most obvious place to see this method of role acquisition in action is in young

children. Children learn the habits and practices of their elders primarily through imitation. What makes this imitation possible is a shared form of life. A one year old child is able to speak certain words because he has the organs and muscle control, and because he has heard the words so many times, and because he watches his parents' mouths as they speak the words. Nobody teaches him where to place his tongue or lips when he speaks; he just does it. Nobody teaches him to imitate words; he just imitates them. That he can imitate the sounds we associate with words, and that he wants so badly to imitate them, are features of his form of life. Human beings learn successfully through imitation because we are repetition sensitive; and we are repetition sensitive because we are imitative creatures.

Children acquire various habits in the bathroom or at the dinner table this way, often to the consternation of parents unaware of their own habits. A child learns to brush his teeth by first watching adults brush their teeth, and then imitating them, albeit roughly. By the time the child is old enough to take explicit verbal instructions regarding the motion of the brush, or the frequency of brushing, he already knows in a general way what brushing one's teeth entails. For example, he has internalized the physical movements of brushing, and he knows the times of day when teeth are brushed, etc. Learning habits this way is not specific to children. Adults learn new habits and new languages by listening to instructors, by watching their movements and, in general, by imitating them. Adults, like children, often learn best from careful observation and persistent imitation. They are told that the best way to learn a language is to live in the country where it is spoken because this is the best place to observe and imitate native speakers.

Practices are acquired in a similar way. Children learn the practices of their

religious denomination by first observing them and then imitating them. Children learn to date, to bluff at cards, to make tea or to be patriotic by imitating their elder role-models. Regardless of the practice, most people are adept at imitating a practice's roles. We can see this imitative behavior in young adults who first come to college. Wanting to fit in, freshman are slow to act and very observant. In this way they can learn what is in and what is not in, and quickly learn to engage in the "in" or acceptable behavior. It has become common practice at the university where I teach for students to call a two semester great books course all freshman are required to take 'GFI' (it is called 'MFI' in the second semester). The course number is LS 195, but it came to be called 'Great Ideas' and then presumably 'GI', and then 'GFI.' It is astonishing how quickly incoming freshman learn the term 'GFI' despite the fact that they traditionally have little contact with upperclassmen. What they do learn from these upperclassman is that this required course is a hassle, worthless, a waste of time, etc.. One of the "in" roles at this university requires students to denigrate the liberal arts and one way that they can do this is to refer to this course as 'GFI.' The role is more complex than that. It requires that one not do the reading, not participate in class, not like the course, and in general to be negative about courses outside of one's major. However, even the students who like this course call it 'GFI,' though they know it is not a term of endearment. They do it, some claim, because everyone else does. (Some of my colleagues have even started calling the course by this term.) There are probably even people who learn this term without knowing its origins or its meaning and who make up an explanation for it; e.g., "Great Fundamental Ideas." They may likewise imitate the behavior of role-models without wanting to or without being conscious of it. Imitative behavior is often unconscious behavior.⁹

There are no doubt many important features that are necessary for a person to be able to acquire practice roles via imitation of a role-model(s), but I shall focus on one: the imagination. I use the term 'imagination' to mean nothing more than the ability to see oneself in a role prior to one's actually being in it, or to act the part of the role with seriousness even in unreal or mock situations. Again, it is easiest to think of children who play all sorts of "let's pretend" games with the utmost seriousness and who, through such games, have a way of learning the practices reflected in such games in a safe and pressure-free environment. One of the first things that children who study the violin or piano using the Suzuki Method learn is how to bow after a performance. They are encouraged to play their instrument with the confidence of a concert musician, and to end each performance as if they had just ended a concert. These young music students are encouraged to see themselves as professional musicians, and to treat their performances seriously. It is their ability to imagine this, despite the quality of the performance, that allows them to begin to learn the roles of concert musician. The same is true for young children who play domestic or professional games ("House" or "Doctor"). By imagining themselves in these practice roles, they are better able to imitate them. It is also one way they unconsciously adopt the values of their community.

There are other examples. Young teenagers playing sports or music will pretend that they are their role-model as they step up to bat or to the microphone. Children wear the jersey numbers of their favorite ball player and have posters of their role-models on their bedroom walls. Being able to imagine themselves in the role better helps them to concentrate on it, and to excel in it. The imagination is at work when adult soldiers fight in mock battles, or when graduate students are given mock

interviews to prepare them for the job market. These situations are most effective when those involved treat them seriously, imagining themselves to be at war or at a real job interview. The power of the imagination is not lost on sport psychologists who now work at helping athletes to imagine an entire race or game in which they are victorious. Baseball players attest to their having visualized a brilliant catch just prior to, and identical to, a catch they actually made. Of course, no one is going to make a brilliant catch if they are out of shape or out of position. The imagination alone is not going to make one successful at anything. But it can help one to acquire a practice role more quickly and to help one excel in it. The imagination is a visual-aid, if you will, by which one sees oneself within a practice role, though one is not always conscious that one is acquiring a practice role. Children imagine themselves in all sorts of roles, though they do not usually recognize their playtime and games as a method of acquiring practice roles. The imagination is a valuable resource at any age for the purpose of learning a practice role. It greatly facilitates role-acquisition.¹⁰

Assuming that practice roles are acquired, at least in part, through the imitation of role-models, how do we know as novices that we have become proficient in a practice role; or, as proficient practitioners, that a novice has himself become a proficient practitioner? These are particularly difficult questions to answer regarding practices since there are no rules to which one can appeal, and because each practitioner interprets practice roles in his own way. Ultimately, his interpretation of a practice's roles characterizes the practice for him and for those who use him as a role-model. If practices are characterized by such variation how is proficiency recognized and how does evaluation and judgment take place?

I offer a partial answer to these questions. First, a person is said to be a proficient

practitioner when he no longer needs to look to a role-model, when he no longer sees himself as imitating someone else. The proficient practitioner believes he no longer needs role-models and is recognized by these role-models as no longer needing their assistance. Second, someone proficient in a practice role no longer imagines himself in this role. An initiate becomes proficient when he and a practice role merge in a seamless whole. His actions become synonymous with the role. The imagined becomes real and he no longer sees himself as in a role. The person who imagines himself to be a warrior becomes a warrior, in his mind and in the mind of others; the person who imagines himself as a professor becomes a professor, from his own perspective and the perspective of those who observe them. This is not simply a change which occurs when one finds oneself on the battle field or when one is given a title. Whether or not one is on a battle field, or has a title, a practice role becomes real when one no longer sees oneself in the role of a such-and-such, but simply as a such-and-such. Imitation and imagination help one to acquire a role, but there comes a time when the role is real and no longer imitated or imagined. Unlike the initiate who thinks about what he does before he does it, and who makes a conscious effort to assume a role, the proficient practitioner effortlessly and unconsciously acts the role. In the theater it is the difference between good acting and bad acting. This is what Pierre Bourdieu calls 'learned ignorance.'¹¹

Second, this internal state of proficiency is reflected in the practitioner's actions. To other practitioners he is no longer clumsy, nor does he ask questions, nor must he be given correctives. Proficiency occurs when the initiate "becomes one of us." When this occurs fellow practitioners are just as likely to ask him for advice or guidance as he is to ask them. He is now capable of becoming a role-model himself.

He is now a full member of the practice.

A third feature of proficiency is that the practitioner is held responsible for his actions in the practice. We generally forgive children for their awful table manners or for their rambunctiousness during solemn practices because they are too young to know how they should behave. When they do become old enough to understand what behavior is expected of them--and this is often difficult to know with any accuracy--we hold them responsible. The same is true with foreigners who have--from our point of view--equally horrible dining practices. We may tell them how we act at the dinner table, but we usually forgive them for not knowing any better. On the other hand, a person who is considered proficient at bluffing will not be allowed to excuse his marking of the cards by saying that he thought this was an acceptable form of bluffing. Nor will the joke teller be excused for telling ethnic jokes at a dinner when he knew the ethnic group in question was in attendance. Proficiency entails that one knows enough about the practice to be held responsible for one's actions within it.

It is difficult to say when proficiency in a practice role is acquired, especially when both the learning and teaching process is often unconscious. It is doubtful that English children receive daily lessons in making tea. Like all children there comes a time when they want to help around the kitchen and when they start to imitate mannerisms and ways of acting. In time most British children become experts at making and drinking tea. (Again, this includes the social aspects of this practice as well.) Practices are not activities where competence can be easily tested. Most children pass unnoticed from novice to expert. Most children become proficient in practice-roles without remembering when or how they became proficient in them.

We turn now to the problem caused by interpretations of practice roles. Despite

the fact that individual practitioners interpret practice roles for themselves and, in effect, characterize these roles and the practice itself--both for themselves and others--their interpretations are nevertheless constrained. Despite the many varied interpretations of a practice role, each practitioner sees himself as participating in an identifiable practice. It is as if the practice itself, by its very ability to be recognized, limits the range of interpretation of its roles. In addition, the very form of life which allows each practitioner to interpret practice roles also limits the range of these interpretations. Certain interpretations are just not open to practitioners, either because of their sheer inability to conceive of them or because of some other constraining conditions; e.g., social, economic, historical. Practitioners can be creative with their interpretations but the range of this creativity is sometimes dependent upon conditions over which they have no control. Interpretations of practice roles must sometimes wait upon specific social and historical conditions in order to be realized. There was very little chance, for example, of upper class teenagers in the Victorian period to sleep together on the first date. This is not to say that teenagers of this period did not have sex or did not want to have sex on first dates. But sex within the practice of courtship, at least in the upper classes, was simply not possible during this period. First dates were usually public affairs and well supervised. More important, if the question "Did you have intercourse on the first date?" was asked to a character in an Eliot or Trollope novel, the constraints of the courtship practice in this period would make the affirmative answer impossible. Intercourse on a first date would not be a possible role interpretation open to a person engaged in this practice in this period of time. In the late Twentieth Century sexual intimacy on a first date has at least become a possible interpretation of a dating role. Though a practice role may have a

wide range of interpretations, some interpretations cannot be created, or even imagined, prior to specific conditions.

The range of possible role interpretations is also limited by the fact that people who participate in practices want to become recognized as excelling in them. In many cases, then, the intention of a novice is to show other practitioners that he has become competent in a practice. This requires that his actions fall within a certain identifiable range. Whether one's learning of a practice role is conscious or not, it follows from the way one learns it that there will be an overlap of roles. The very process of imitation requires a copying of at least a significant core of the original. Without accurate copying a person would never be recognized as achieving proficiency. It is no coincidence that young children want very much to be recognized as having achieved proficiency in their role imitations. The very nature of learning a practice role requires that the learner reflect back to the teacher a correct copy or an acceptable interpretation of a practice role. Though all copies contain some variation, this method of learning limits it.

Finally, considering that most practices pre-exist their newest members, what counts as an acceptable or deviant interpretation will be measured against the baseline of the practice as it is presently conceived. One is free to interpret a practice role in any way one chooses, but one's interpretation will be evaluated against the background of already existing interpretations. The role one creates is constrained by the interpretations which precede it. If a novice insists upon an interpretation which is outside of the variations accepted by fellow practitioners within the community, he will be seen as a rebel within the practice and will either be tolerated or excluded from participation in the practice.

There is a fine line between variations and violations of practice roles. Having sex on a first date was a clear violation of the courtship practice among the upper classes in nineteenth century Europe; in America it is now considered a sometimes acceptable variation. Date rape is a clear violation of the dating practice and is unlikely ever to be recognized as an acceptable variation. The practice of waving at American sporting events is acceptable during certain parts of the game, but not during the playing of the national anthem or when a seriously injured player is being removed from the field. The use of tea bags is considered by some a violation of the British practice of making tea. There was a time in baseball when a player who hit a homerun would run quickly around the bases and take a seat in the dugout despite the crowd's demand for a curtain call. It was considered both dangerous and in bad taste to show-up the pitcher with displays of bravado. If you did show him up some pitchers would, as a matter of course, hit you with a pitch the next time you came to bat. Even Ted Williams, who hit a homerun his last time at bat--and who did not have to worry about the next pitch--did not take a curtain call. However, it is now commonplace for hitters to dance around the bases and take curtain calls after every homerun. They are now expected to step out of the dugout and wave to the cheering hometown fans.

Because practice roles do undergo constant change it is difficult to make specific, ironclad judgments about a person's behavior within a practice role. What behavior is expected in one generation of practitioners is unrecognized, intolerable behavior in another. How, then, is it possible for consistent and coherent evaluation and judgment of practitioners to take place?

iv. Evaluation and Judgment

A discussion of evaluation and judgment is important for a number of reasons. First, it needs to be demonstrated that both can occur within a practice despite the absence of constitutive rules. Because practice rules (or rule-like formulations) generally serve a descriptive or strategic function, they would have little use in guiding an evaluator or judge. In addition, evaluating or judging a practitioner is not as simple as comparing his actions to the rules of the practice. Second, if practices are of the nature described in this study, it seems difficult to understand how evaluation is possible at all. If practitioners jointly characterize a practice by their separate interpretations of its roles, then how can there be anything like an objective or definitive evaluation? If our actions within a practice role are being evaluated by those who interpret the role differently than we do, how should we take their remarks? More important, how do we even begin to pass on the practice to a new generation if our evaluation criteria are based on an outdated interpretation of its roles? The same can be said of judgment. How can I justifiably render a negative judgment on a person who violates my conception of good character if he honestly believes to be acting in accordance with a conception of good character? The very nature of practices seems to preclude evaluation and judgment.

Despite these difficulties it is clear that practices must have the components of evaluation and judgment. Evaluation and judgment make possible standards of excellence. They are part of the process of teaching practice roles to newcomers, and they help us to enforce certain standards of behavior within practices. Without such standards novices would not be able to identify proficient role-models, nor would they be able to set goals for themselves in the acquisition of practice roles. However

practices are conceived, there must be ways of evaluating competence in role acquisition and ways of judging the character of practitioners.

Evaluation and judgment are distinguished in the following way: evaluation has to do with one's competence within practice roles. A novice is evaluated by proficient practitioners in terms of how well he masters its roles. Evaluation is used in teaching the practice to others; it aids in correcting their mistakes and, generally, in allowing them to improve their performance in accordance with the criteria used by the evaluator. One might, for example, evaluate a person's manners on a date, or how a novice poker player bets in one particular hand or game, or a comedian's delivery of a joke. Evaluation serves the purpose of helping a practitioner improve his performance within practice roles. Judgment, on the other hand, considers already competent practitioners. Judgment is rendered not on individual performances, but on the practitioner himself over a course of time and in a number of separate performances. Whereas we evaluate a person's competence within a practice role, judgments are made about a practitioner's character. If you judge a person whom you are dating to be sincere and honest, your judgment extends beyond the dating practice. If you judge a bluffer to be shrewd, you consider him to be shrewd in other aspects of his life. Though judgments take place within practices, their outcome extends beyond them. We begin with a discussion of evaluation.

Those most capable of evaluating a practitioner's performance within a practice role are those experienced in the practice. Those competent to evaluate the role performance of a novice engaged in making tea the way the British do are generally proficient practitioners in this practice. Evaluators are familiar with a practice's finer points. They have lived in, or are very familiar with, British customs. They are

familiar with the techniques for making a pot of tea, the varieties of teas, and what tea to drink and when. In addition to this proficiency in the practice's roles, an evaluator has taken the time to abstract from his experience evaluation criteria that can then be used to teach and evaluate novices. These criteria are based on the evaluator's own characterization of the more important aspects of the practice's roles, and the best methods by which the novice can acquire them. Because these criteria are based on an evaluator's own interpretation of a practice's roles, such criteria are not without rivals. Other experts in the practice may have evaluation criteria which differ from his. Or, the practice might undergo change in such a way as to render his criteria outdated. In either case an evaluator must be willing to update his criteria. An evaluator can never blindly apply his criteria. He must be aware of the varieties and vagaries of the practice and be willing to change his criteria when they no longer appear to fit the practice as it is presently interpreted by its practitioners. In the same way that practitioners characterize practice roles by their interpretations of them, so too do they characterize evaluation criteria. Like the practice roles themselves, evaluation criteria will always vary across evaluators, localities, and time periods. Good evaluators will recognize variations of practice roles even if they do not agree with them.

In addition to his familiarity with the details of a practice, an evaluator is likewise familiar with the conditions surrounding the individual practitioner being evaluated. He evaluates a practitioner in terms of his actions within specific situations. What an evaluator says by way of constructive criticism may depend on the age of the practitioner, his level of competence, or the specific situation in which he finds himself. An evaluator's remarks will also depend upon other conditions. For

example, what are the motives behind the practitioner's actions? Is he acting to change one aspect of a practice with which he is in general agreement? Perhaps he is acting like so many of the people in his generation, and though his actions violate an accepted interpretation of a practice role, they might reflect a subtle shift in the practice. Or perhaps he has simply run out of loose tea, and the stores are all closed, and he comes upon some tea bags in the back of the cabinet, and bag tea is better than no tea. So long as there are no fast and easy rules to apply, an evaluator must be keenly aware of the details of the practice, the practitioner being evaluated, the specific situation in which the practitioner finds himself, and the reasons for why the practitioner acted as he did.

The requirements for evaluation not as difficult as they appear. Assuming that most practices are acquired over the course of many years, and usually through unconscious learning, most adults are at least competent practitioners and therefore *prima facie* capable of evaluating the actions of others in various practice roles. In addition, an evaluator may also be a role-model or someone who knows the novice well. Because of this, the evaluator may be in the perfect position to decide how a specific situation affects the practitioner's performance. Because of his relationship with the practitioner, an evaluator will know when to deliver critical remarks with kind encouragement or as a stern rebuke. He will be in the best position to decide if the initiate should be held responsible for his actions or forgiven. For any proficient practitioner, the acquisition of the role of evaluator is as natural as the practice roles themselves.

Three important results follow from this understanding of evaluation. First, evaluators need to engage in practical reasoning.¹² Evaluation requires more than a

comparison of the rules with a practitioner's performance within a role. The evaluator is required to take into account a large number of details and to weigh the importance of these details against his evaluation criteria. He must be able to discriminate between his interpretation of a practice role and the interpretation of the novice. In addition, neither the evaluator's method of analysis nor his conclusions must stray too far from the details of the practice, the practitioner, or from the practitioner's unique situation.

Second, because of the nature of practices and of the level of detail that must be considered in successful evaluation, the weighing of excusing conditions becomes an important part of the evaluative process. Because there are many correct ways to interpret a practice role, and because one's behavior within a practice role is often influenced by conditions external to the practice, excusing conditions will need to be considered.¹³ In the practice of making tea, such excuses may include: (1) lack of experience in the practice (the excuse for failing to warm the pot); (2) local conditions (hot water may be scarce); extraneous or invasive conditions (you forgot, and this was due to some pressing issue); rebellion (you think it's a waste of time to warm the pot, or a waste of energy); etc. Though limited, many types of excuses can be used to justify one's apparently incorrect or inappropriate behavior in a practice role. We do not, for example, consider pushing people to be acceptable behavior in the practice of walking on busy streets, but one should be forgiven if this is done accidentally, and perhaps complimented or rewarded if it is done to save someone from a mugger or an out-of-control taxi. An evaluator cannot jump to conclusions when evaluating competence within a practice role. He needs to know not only what the practitioner has done, but what the practitioner thinks he has done, and his reasons for acting in this

way. Not all excuses will be equally effective or appropriate, but this cannot be decided in advance of hearing them. The discussion and evaluation of excusing conditions are an inseparable part of the dialogue between practitioners. The practitioner being evaluated defends his actions within the practice role, and the evaluator gives his reasons for accepting or rejecting this defense. Dialogues of this type are an important feature of practices.

Third, as there are many interpretations of a practice role, so too will there exist many correct or acceptable evaluation criteria. The fundamental disagreement which will exist between various evaluation criteria is an inherent feature of practices. This disagreement forms part of the ongoing dialogue between practitioners, and is one of the factors which cause practices to change. A practitioner's evaluation criteria are subject to criticism from other competent practitioners. So long as there exists more than one interpretation of any practice role, there will also exist more than one evaluation criteria. We might be able to discriminate between two competing evaluations by comparing the experience of both practitioners as well as their ability to articulate their respective criteria. But if both experts appear to be equally competent within a practice's roles, and if they have equally acceptable evaluation criteria, their conflicting evaluations will have to be accepted. However, for the same reasons that interpretations of practice roles are constrained, evaluation criteria would not diverge too often or by too much.

In sum, evaluation is a process requiring experience in a practice; the ability to abstract criteria from one's experience; practical deliberation, the capacity and willingness to engage in a dialogue with a practitioner whose performance within a practice role conflicts with one's evaluation criteria; and a willingness to correct one's

criteria against the practice. These conditions are not as difficult to fulfill as it might sound. Any person who is competent in a practice role is *prima facie* competent to evaluate another's competence in it. We turn now to judgment.

Judgment extends beyond individual performances within practice roles. Judgments entail conclusions--in the sense that they are final--of a person's character based upon his performance within practice roles. One's behavior within a practice role is usually indicative of one's character. If, for example, a proficient practitioner of bluffing uses techniques which seem to us to be unfair (perhaps he tries to distract others, or tries to get them drunk), one may negatively judge his character within this role, but in most cases one's judgment will go beyond his performance in this particular role. One is unlikely to engage in other practices with someone who displays an undesirable character in the practice of bluffing. The same is true when we make positive judgments of someone's character on the basis of his behavior in a particular practice role: we are more likely to engage him in other practices. Judgments take longer to form than evaluations, but then they are also longer lasting and extend over a wide range of practices.

We can see this with the practice of dating. You might consider some of the actions of the person you are dating a bit forward, or out of context. You might indicate by your comments that you do not approve of them. But if you find these actions to be unacceptable and contrary to your values, and you see no indication that he is attempting to alter them, you may judge his character negatively and thereby end the relationship. Though you judge his character within the confines of the dating practice, your judgment applies to his character as it extends into the community of practices. In making a negative judgment, you pronounce an unwillingness to

separate his actions within a practice role from his character, to allow excuses, or to otherwise forgive him. You are certainly not likely to participate in other practices with him. You are not judging competence within practice roles, but the person's character who participates in them. Judgment differs from evaluation in this respect.

In order to make judgments of character one must: (1) be a member of the community of practices in which one is making judgments; (2) have a familiarity with the criteria employed in this community for making judgments of character; and (3) have an awareness of the details surrounding the practitioners being judged. Criterion (1) requires that a judge be a member of a community of practices, and proficient in the practices in which his judgments take place. One cannot judge a person's character based upon what he does in a practice role unless one knows what is required of him in these practice roles, and what is expected of him in the community. Likewise, one cannot make judgments of practitioners engaged simultaneously in multiple practices unless one is familiar with these practices. A community member who is familiar with the singing of national anthems at sporting events, but not waving, will be unable to make sound judgments about people who are engaged in both. A good judge is proficient in all or most of his community's practices, and he understands the interrelationships between them.

Criterion (2) asserts that one be familiar with a community's standards for judging character. It is not enough to be proficient in the practices and practice roles of a particular community. One must also be aware of the standards of judgment used by this community. In some communities casual sex before marriage results in banishment or death; in others it is accepted or perhaps even expected. The familiarity with standards of judgment requires a great degree of participation and

commitment within the community. One obvious way to acquire this commitment is to be raised in the community. Like practice roles, community standards of judgment are inculcated in childhood. It is a mark of one's membership in a community to be able to apply its standards of judgment, and to have those standards applied to you. People not competent to apply these standards (the very young, the mentally ill, those outside the community) cannot make judgments of character, nor will they themselves be judged in this way. One would not be considered qualified to make character judgments of practitioners in certain Scottish practices, for example, unless one also belonged to the Scottish community in which these practices take place. In the same way, a newcomer to that community will often not have his character judged until he is competent in applying the community's judgment criteria to himself and others. One's membership in a community makes one at least *prima facie* qualified to make judgments within it.

Criterion (3) requires that a judge take into consideration the details surrounding the practitioner's circumstances. For example, before one can judge negatively and accurately the character of those engaged in the practice of waving during the singing of the national anthem it is necessary to know some details. What did these people intend by their actions? Were they a large group of foreigners who were unaware that waving is considered inappropriate during the national anthem? Were they paid by the stadium owners (and provided with the appropriate red, white, and blue banners) to imitate a flag waving in the wind? How might we instead judge a group of baseball enthusiasts who waved during the national anthem in the hopes of bringing harsh judgment upon their actions, and waving in general, so as to rid the game of so much nonsense? The ability to judge a person's character is impaired if one is ignorant of the

practitioner's ignorance or intentions in so acting. A good judge of character considers such details.

A judge should also be aware of the practitioners's familiarity with the community standards used to judge his actions. A person cannot be blamed for admiring publically the beauty of another man's spouse if such behavior is expected in his community. A judge must take into consideration that new community members, though competent in practice roles, may be unaware of the community's standards regarding character. Someone who is competent in a practice role is usually aware of the community standards for character, though it is possible to be competent in a non-native practice, perhaps because it is nearly identical to a practice in one's own community, but be unaware of the standards of judgment used by this non-native community.

Like evaluation, judgment requires the use of practical reasoning. The judge must consider the specifics of the situation in which a practitioner is being judged, the interrelationships between practices and practice roles, and the excusing conditions offered by the practitioner. The reasons a practitioner gives for his actions may absolve him from a harsh judgment or may cause the judge to forgive him, and hence to rescind a negative judgment. Like an evaluator, a judge should be willing to engage in a dialogue with the practitioner when such a dialogue helps to resolve disagreements between them or when such a dialogue resolves uncertainties the judge may have. In such a dialogue practitioner and judge give their versions of the situation being considered, and each argues for the conclusion he draws from it. Admittedly, such a dialogue is not always possible, nor is it a necessary condition for making judgments. Such a dialogue, however, can improve the quality and accuracy of one's judgments.

The dialogue between practitioner and judge can inform the view of the judge and can cause him to revise his assessment of the situation. A good judge of character should consider a number of issues when making a judgment; the more he understands about the situation the better will be his judgment. The dialogue between practitioner and judge helps to facilitate this understanding.

Judges, like evaluators, must be prepared to update their criteria. Community standards undergo change, and judges must at least take these changes into account. Disagreements between generations about what counts as good character attest to this. There was a time in baseball when it was a sign of character for pitchers to hit batters who crowded the plate. However, the severity of injuries this practice has caused, and the various changes in the game, have modified somewhat how a pitcher's character is judged today. Baseball is a more civilized game now, and the standards of character assessment which attach to it are appropriately more civilized. Orel Herschiser is a pitcher who exudes this modern standard of character. This mild-mannered, devoutly Christian man--and extremely good pitcher--would never intentionally hit a batter. A good judge uses current criteria. If his criteria are not current, a competent judge is at least able to recognize this and to defend his criteria against the current ones.

All competent practitioners can and do serve as evaluators and judges. They do this when they evaluate or judge their own behavior, or the behavior of other practitioners within their community. Within the confines of local communities, however large or small, the young and newcomers to the community are initiated into its practices. In doing so both proficient practitioners and novices engage in evaluation and judgment. Some practitioners develop reputations as experts. They

are sought out by those interested in learning the finer points of a practice role; or who are faced with a dilemma of character or conflict of role interpretation; or who seek assistance in reaching an evaluative or judgmental conclusion regarding a fellow practitioner. These practitioners are often asked to make definitive evaluations of competence or judgments of character. They are sought out to help resolve the tough cases. Such experts rarely have formal titles or formal robes, nor do they operate from chambers. But they exist in every community and in every circle of friends. As experts they speak with authority. Such authority may compete with equally authoritative rivals, but initiates as well as competent practitioners nevertheless seek out this authority and feel a certain comfort when their actions are said to conform with what so-and-so expert would have done in this instance, or when their characters are judged positively by someone who knows.

The relationship between evaluator or judge, and the one whose competence is being evaluated or whose character is being judged, is part of the ongoing dialogue that advances practices forward. This dialogue is often marked by a tension between traditional interpretations of practice roles or community standards of character, and new ones. But this tension keeps practices vital. Because each new generation of practitioners interprets practice roles and community standards of character to fit the conditions in which their practices take place, evaluative and judgment criteria must necessarily be flexible. Onetime experts become historical artifacts or old-fashioned oddities; one-time revolutionaries become sought-out experts. It is the tension between those who pine for the old days and those who demand change. Practices could not function without this dynamic dialogue.

III. CONCLUSION

This completes the outline of a theory of practice. Many questions have been left unanswered and many details left out. The very nature of practices excludes the sort of precise responses we have grown accustomed to with institutional or game theories. Many of the details of a theory of practice must wait upon an understanding of the details of a particular practice and its context in time and place. Though only a small sampling of practices has been used, the list of practices is obviously rather large. Practices are part of our daily lives, from how we greet people in public, to the way we drive our cars in crowded cities, to how we raise our children. A theory of practice is an attempt to identify these activities, to distinguish them from other sorts of activities, and to attempt to explain how they function. It is a theory offered not to replace institutional or game theories, but to cover those areas of life not captured by these alternatives. A theory of practice takes its place alongside game and institutional theories, and broadens the range of human activity describable and explainable in theoretical terms. It is seen as an addition to, rather than a replacement of, these theoretical approaches.

We turn now to the important question of whether promise can be captured by a theory of practice.

ENDNOTES

1. Others who use the term *practice* include D. Z. Phillips and H. O. Mounce in *Moral Practices* (London: Routledge and Kegan Paul, 1969); Annette Baier in "Theory and Reflective Practices," "Doing Without Moral Theory," and "Civilizing Practices" collected in *Postures of the Mind: Essays on Mind and Morals* (Minneapolis: University of Minnesota Press, 1985); Alasdair MacIntyre's *After Virtue* (Notre Dame, IN: University of Notre Dame Press, 1981) and *Whose Justice?, Which Rationality?* (Notre Dame, IN: University of Notre Dame Press, 1987); and Pierre Bourdieu's *Outline of a Theory of Practice* (trans. Richard Nice, Cambridge: Cambridge University Press, 1977). Places in the treatment by Phillips and Mounce parallel an Institutional Approach. Baier uses the term 'practice' though she does not attempt to characterize her use of it. MacIntyre gives the most detail in his use of the term, though even he does not claim to be providing a theory of practice. The most complete discussion of a theory of practice is provided by the anthropologist Bourdieu. While the outline I have provided is sometimes in agreement and sometimes not in agreement with the points made by MacIntyre and Bourdieu, I do not intend my use of the term to be seen as embracing or rejecting their uses of the term.
2. The phrase 'spontaneous order' was first used by F. A. Hayek in his *The Constitution of Liberty* (Chicago: University of Chicago Press, 1960), 160-61.
3. In *Studies In Philosophy, Politics and Economics* (Chicago: University of Chicago Press, 1967) 96-105.
4. (Carbondale and Edwardsville: Southern Illinois University Press, 1987).
5. (London: Routledge and Kegan Paul, 1967).
6. For other conceptions of rules see Hayek's "Notes on the Evolution of Systems of Rules of Conduct" and "Rules, Perceptions and Intelligibility," in *Studies In Philosophy, Politics and Economics* (Chicago: University of Chicago Press, 1967); D. S. Schwayder's *The Stratification of Behavior: A System of Definitions Propounded and Defended* (London: Routledge and Kegan Paul, 1965); and David Lewis's *Convention: A Philosophical Study* (Cambridge MA: Harvard University Press, 1969). Lewis makes frequent reference to Schwayder's work. A discussion of these alternative conceptions would take us too far afield. Suffice to say that I do not think that these conceptions are any more coherent than constitutive rules, though for different reasons. For an interpretation of rules as recipes, see C. H. Whitley, "Rules of Language" (*Analysis* 34 (1973-73):33-39). Though Whitley is concerned with rules of meaning, what he says is not contrary to what I have argued regarding the rule-formulations of practices.

7. I cannot begin here to address the empirical questions of how practices undergo change in this way. There is obviously a range of behavior to encompass most practices such that one's behavior can be recognized as a variation of a practice role, rather than a violation of it, or as an action not recognized as characteristic of a practice role. It is perfectly possible that practices undergo change when violations become accepted as variations. It is unfortunate that philosophers are really no further along in understanding practices than were those of the Scottish Enlightenment who first suggested this approach.

8. I assume that bluffing is a practice used in many aspects of life. As an approximate characterization, bluffing is a form of acceptable deception. Those who engage in this practice include card players (and game players generally), and those engaged in buying and selling.

9. For a detailed discussion of these types of interactions see Erving Goffman's *Relations in Public: Microstudies of the Public Order* (New York: Basic Books, 1971). See also *The Social Construction of Reality*, Peter L. Berger and Thomas Luckmann (Garden City, NY: Anchor Books, 1967).

10. There is a detailed social science literature on role-acquisition, but I shall not refer to it here, as it will take us too far afield. For a philosophical discussion of roles, see Dorothy Emmet's *Rules, Roles and Relations* (New York: St. Martin's Press, 1966).

11. *A Theory of Practice*, p. 19.

12. By 'practical reasoning' I mean reasoning which (1) leads to action; (2) considers actions (either one's own or the actions of others); or (3) considers the circumstances surrounding action. I contrast practical reasoning with abstract or theoretical reasoning.

13. See Austin's "A Plea For Excuses" (*Proceedings of the Aristotelian Society* 57(1956-1957):1-30) for a general discussion of excusing conditions.

CHAPTER FIVE

PROMISE AS PRACTICE

I. PROMISE AS PRACTICE

Having outlined a theory of practice it is time to address the question of whether promise is describable as a practice, and whether the Practice Approach is superior to the alternatives canvassed in earlier chapters. I begin by showing how promise fits into a practice framework. I then argue that this approach avoids the many criticisms levelled on alternative approaches. In short, I claim that a Practice Approach of promise is not only possible, but preferable to these other alternatives.

i. Recognized Conventional Behavior

A practice was described as, among other things, recognized conventional behavior that takes place between two or more people. It is, I believe, uncontroversial to say that promising is a recognized, conventional human behavior engaged in by large numbers of people. Most people are aware of when they are promising to others and when others are promising to them. Promise is the practice used when we want to commit ourselves to a future act, and the practice on which we rely on to have our future actions coincide with another's. The most obvious cue that one is engaged in this practice is the speech act "I promise." When said in the proper contexts, this speech act commits the speaker to a future act. But any number of other speech-acts are equally successful. A promiser might likewise use no words at all, implying by his silence or a nod of the head or a wave of the hand that he is promising. A promisee can accept a promise in similar ways. A proficient practitioner interprets these words

or non-verbal signs as indicating that a promise has been made.

Thus, though promising is recognized as a practice, its identifiable cues are subject to interpretation. For some, the practice is recognized by what someone does not say, or by body language; for others promising occurs only in those situations where the speech-act "I promise" is used. There are long-term and short-term promises; solemn and lighthearted promises; unilateral and gratuitous promises; promises between individuals, and promises between groups. Some promises are formalized in written contracts while others occur without words. New words or gestures can become identified with promising, while old words and gestures lose their meaning. Like any practice, promise is a variable one.¹

ii. Spontaneous Order

A practice arises spontaneously when there occur together in a form of life: (1) certain constraining condition which a practice is capable of overcoming, and (2) certain enabling conditions or dispositions which make the practice possible. The constraining conditions are those which surround the practitioners and against which the practice is a response. The enabling conditions are those which allow the practitioners to respond in the way they do. Promise is a practice arising from a specific conjunction of constraining and enabling conditions. We begin with the constraining conditions.

As Hume makes clear, human beings find themselves in a harsh world. The necessities of life are scarce and are difficult to gather or utilize. Humans are limited by their size and strength. The constraints of our environment and our physical condition make human interaction necessary. Despite the abundance of nature, lone individuals find it difficult to reap its harvests, and must rely on one another for

assistance. In general human beings seek out companions and often come to delight in one another's company, though the need for this interaction is itself a kind of constraint on individual choices and actions.

A second constraining condition is our relative blindness of the future. Although humans are able to intend a future, and to imagine themselves in that future, we are less able to see this future with any clarity. We are the kind of creature we are because of our ability to form and act upon our intentions, but our inability always to act so is due at least in part to the fact that we are unable to know about such conditions in advance. This weakness also makes us an excuse-making animal. We must often account for why we have not acted as we had intended. It is not enough to have the future interrupted by conditions which we could not or did not foresee. We must also be able to take account of this interruption and present it in such a light so as to relieve ourselves of the responsibility for forming this intention and not acting on it.

Constraining conditions such as these make promising a potential practice. Without them there would be little need to make promises, and hence, little chance for the practice to arise. But these conditions alone will not cause this practice to spring into existence. Certain enabling conditions must also be present. First, humans have a concept of future time and are able to project themselves in it. We are able to have thoughts like "Tomorrow I shall rise early" and "Next week I shall visit my friend David." Forming intentions requires the ability to negate: to say to oneself that in choosing to visit a friend one is also negating any number of other choices that might just as easily be put in its place, but which are now no longer options.

Included in the ability to form intentions is the capacity for memory. Without a good memory we would not be able to remember the intentions we formed, and

probably would not be able to have any intentions at all. Because there is always a time gap between an intention and its execution, a person must be able to remember what he intended when the time comes for its execution. Memory is like gravity. It keeps us secure in life's patterns, and it keeps us moving forward. You look at the clock in your office and know that you intend to go to a luncheon in twenty minutes, but you only know this because you remember that you intended to go to a luncheon. The clock is the fulcrum of the present on which you swing between past and future, memory and intention.

Memory and a concept of the future allow one to form expectations as well. The ability to form expectations is important because it allows one to plan for the future, giving it a semblance of security and certainty. The future is precarious, but the forming of reasonable expectations is an attempt to make it less so. People expect the future to turn out the way they are led to believe it will. For example, you look forward to a picnic on Saturday and are especially happy when the weatherman predicts sunshine. On Saturday it rains and the picnic is cancelled. You are likely to be more upset about the turn of events because of your raised expectation of sunshine. Expectations have a tendency to intensify one's reactions: the greater one's expectations, the more intense is the response when they are not met. It is very difficult for us not to form expectations, so great is our need to make the uncertain future certain.²

Another enabling condition is creativity. Humans are capable of inventing an array of artifices which facilitate our interests. This is seen in the games that children and adults play, as well as in the development of social and political structures. As Hume says, we are a creative species and though what we create is artificial, the very

act of creation is natural. Faced with novel problems we find creative solutions.

Finally, human beings are able to express themselves to one another. This communication takes many forms, spoken and unspoken. With it we are able to express, among other things, our intentions and expectations to one another. Human communication in all of its forms makes this practice possible.

Even with this admittedly brief sketch of our constraining and enabling conditions, it is not difficult to see how promising could originate spontaneously as a practice.³ Indeed, it is far more difficult to imagine how, given these conditions, promising could not arise. Having both the need and the capacity to make promises, human beings naturally do so. If the practice did not exist it would arise anew with every individual who shares these conditions or others like them. The mere interaction of humans who share these conditions would cause the promising practice to originate spontaneously.

I offer three examples to show how the promising practice originates in the actions of human beings who share a form of life. Imagine a state of nature where promise is not yet a recognized practice. As a member of this state of nature you recognize another person as your neighbor (social, interdependent) and you recognize tomorrow at noon (concept of future). You communicate to your neighbor in some form of language (not necessarily verbal) that you intend at noon tomorrow to help him with a project (recognition of interdependence, cooperative spirit). He understands what you say and appears to form an expectation about it. Tomorrow at noon you arrive (memory), he smiles (memory); the both of you work. Even though neither of you know anything about the word 'promise' or the concept of promise you are participating in a practice you both recognize. If your educated brother-in-law arrives

from the city and tells you that what you and your neighbor are doing is called promising, and that you are not committed to help your neighbor since you have not explicitly promised to do so, or because you have received no consideration from him, you are likely to ignore his remarks. These details have no relevance to your relationship with your neighbor. It does not matter that what you are doing has a name and is interpreted somewhat differently in the city. As far as you are concerned you told your neighbor that you would help him and you did. You would tell your brother-in-law that out here in the country (state of nature) you don't need fancy words, and that a person's word (however he chooses to express it) is his bond. It does not matter that your neighbor did not offer to help you, though you fully expect his help in similar circumstances.

Both you and your neighbor likewise recognize that there are conditions which make your intention to help impossible to carry out. But it is not necessary to formalize these conditions. A blinding wind storm may make travel impossible; you may injure yourself in an accident; your wife may go into labor; you may oversleep or just plain change your mind. In each case, when you do not arrive at noon, your neighbor is not pleased and may be harmed by your absence. Even without a formalized practice you would recognize the need to tell him why you did not arrive to help and to offer him an apology or your services on another day. He would expect this kind of response from you. All of this is part of being neighborly.

On another occasion you are in need of money and you ask your brother-in-law to borrow some. Not as cooperative as your neighbor is, he makes you write words to the effect that you borrowed money from him and that you will pay him back with interest within the year, etc. He also makes you sign your name, and give him something of

value which he will keep as collateral in case you are unable to pay. While such a transaction might be governed by rules, it is quite possible for something like it to arise spontaneously. In desperate need you might offer something as collateral, though you do not use the word 'collateral.' Your brother-in-law might want you to sign a piece of paper, though he might not call it a contract. Exceptions also have a role to play here. Your death might cancel the "contract," or you may be granted an extension because of circumstances beyond your control, or your brother-in-law might cancel the contract as an expression of good will. In time such extremely local practices might become better known, and be utilized by other members of the community. Such practices might even become formalized in local customs or laws.

On a third occasion you have fallen in love with the doctor's daughter. In a moment of bliss you tell her that you will never love anyone else but her. Have you promised fidelity to her? Whatever the outcome, your expression of intention has altered your relationship. Your words allow both of you to form expectations about your separate futures (if she does not say something similar to you then you can be fairly certain that you will have no future with her). Here the expression of fidelity results not so much from necessity as from the desire for friendship or companionship. Such a promise springs from the heart in whatever language it can find. It is not necessary to have learned about the practice before making such a promise. One need only to have a form of life which allows one to feel love and to act on it. Even these promises have exceptions: people change; you were momentarily weakened by passion or drink; you were mistaken.

As these examples make clear, promising can be seen as arising spontaneously. Knowing what we do about the conditions in which humans find themselves, and the

capacities that we have to survive and to thrive under these conditions, the spontaneous creation of the practice of promise by the actions of individual human beings is more than a distinct possibility. It is an obvious and necessary outcome.

iii. Rules

In Chapter Two it was argued that the rules of promise could not be constitutive because constitutive rules presuppose a great deal of what they are purportedly defining. Nor could these rules likely succeed as educational rules. First, these rules are not public. Second, there are not enough of them to assist the newcomer in the practice. Third, it is not clear how you could use rules to teach someone to make promises. The rule "promises are obligatory" appears to assume that one already knows how to make promises. In Chapter Four it was claimed that practice rules--or rule-like formulations--serve a descriptive or strategic function.

It is accurate, I believe, to label some--if not all--of what Rawls and Searle call the institutional, constitutive rules of promise, the rule-like formulations of the practice. When one uses such a formulation to tell a practitioner that he ought to keep his promises one is not telling him anything definitive about the practice. Even if he accepts this formulation he is not likely to become automatically proficient in the practice. Second, though many promises are obligatory, many of them are not, and so a formulation of this kind gives at best a general description of the practice. When you tell someone that promises are obligatory you give him a description of the practice. In effect, you are saying: "In our practice of promising you are expected to keep your promises," or "If you want to succeed in this practice, keep your promises." If a person knows nothing about this practice then these remarks will not allow him to participate in it. If he is already familiar with the practice, then these remarks add nothing to his

understanding of it. Such rule-like formulations serve only a limited function, albeit an important one.

That these rule-like formulations are descriptive can be seen in another way. It was argued above that when someone asks about the practice of dating and how to engage in it he is given rules of thumb or rule-like formulations abstracted from a practitioner's experience. But these are not rules he must follow if he is to participate in the practice of dating. The same can be said of promising. If your friend Brad approaches you with a problem he has about keeping his promises and asks for your advice you will give him some general rules of thumb: "Make sure that the promisee and you both agree on the conditions of the promise;" "Don't make promises you don't think you can keep;" "Think carefully about your future plans before making a promise;" etc. It is clear, however, that Brad already knows how to make promises. What he wants to know is how he should act in a particular instance, or generally, how to be more successful in this practice. The rule-like formulations he receives are abstracted from your experience in this practice. But Brad could just as easily generate a set of formulations from his own experience, and they could be quite different: "It is better to break promises with friends than with colleagues;" "Keeping promises has instrumental value but not intrinsic value;" etc. Or, he could go to someone else for advice and receive entirely different formulations. As with other practices, these formulations are likely to vary among practitioners. Such variation is an indication that rule-like formulations are descriptive of this practice and not definitive of it.

A person could just as easily engage in the promising practice without having to follow or to know any of these formulations. In the state of nature example above, you promised to help your neighbor even though you knew nothing of any rules of

promise. If an anthropologist were to ask what you did in committing yourself to help your neighbor you are likely to reply by giving him a description. But this description comes after your actions, and hence any formulations are abstractions of your actions rather than rules which precede them. These formulations describe what you did, though they may describe equally well what others do when they engage in this practice. Rule-like formulations allow practitioners to describe a particular practice or to refer to it, or to better improve their performances in its roles, but they are of little use in helping one to participate in promise for the first time or to define it for others.

iv. Roles

As with other practices, one learns to engage in promising by learning its roles. Practitioners give their own interpretations to these roles and these interpretations jointly characterize the practice. The ability to acquire these roles requires the possession of the constraining and enabling conditions discussed above. Prospective practitioners do not learn to have intentions or to form expectations about the future, nor do they learn to have a need to make promises. For most healthy human beings these aspects of promising come with the biological and social package. But having the need to make promises and the ability to do so does not mean that one is born a practitioner. To acquire the roles of this practice requires a period of learning.

Children acquire the roles of this practice by imitating role-models. Even before children learn the word 'promise' they learn about promising. They learn first to be promisees. When you tell your toddler that it is time to brush his teeth he excitedly runs to the bathroom door. If you hesitate, or remember to do something else instead, he becomes very impatient. Likewise, if you say something about getting ready for bed, even if you are not addressing him directly, he runs to his bedroom. Again, if you

fail to recognize what it is you are supposed to be doing he yells, or leads you by the hand, or becomes frustrated and cries. I do not want to maintain that you are making promises to a toddler when you say these things but, from his point of view, your words express intentions which he understands and which cause him to form expectations that he wants met. If you do not carry out your intentions you appear to let him down and cause him harm in some way. I would suggest that a child's experience of a role-model's successes and failures in acting on expectation-creating intentions goes a long way in teaching him about the practice of promising. What he learns at this age may affect his behavior as a promiser when he is older, despite what his elders say to him about keeping promises. This early unconscious acquisition of promise roles should not be underestimated. When he is older the child learns how to go about making and keeping promises. He learns that certain words used in certain contexts create commitments to do as he said, though this lesson may take years to learn. Through trial and error he becomes aware of the many ways to promise, the reasons for keeping or breaking promises, and the difficulty of excelling in this practice. He learns that some promises are hard to keep because of conflicts that arise, while others are relatively easy to keep.

A child learns that promises create obligations in the same general way that he learns to avoid touching a hot stove or to refrain from climbing on the furniture. In each instance he learns from experience that certain behavior is expected, that certain behavior is rewarded, and that certain behavior is punished. The child who is punished for climbing on the furniture has a memory of this, and learns to expect similar responses from his parents for similar behavior. Based on this memory the child is able to imagine an outcome which awaits him for similar behavior. The child learns that

promises are obligatory in a similar way. When he is old enough to be held responsible for engaging in this practice he is told that the promisees expect him to keep his promises. Here the novice promiser has two types of experiences available to him. First, he has the memory of times when his own expectations were let down. From this memory he is able to imagine how promisees feel in general when their expectations are not met. In addition, he is told that the promisee and other members of the community expect him to keep his promises, and that he can expect punishments of varying degrees should he fail to keep them without good reason. The child remembers his experiences of past punishments when he misbehaved, and imagines similar outcomes should he not keep his promises without good reasons. When the child's memories of expectations and punishments, and his imagination of future expectations of future expectations and punishments, are coupled with the community's continuous reinforcement of the view that keeping promises is important, he is lead to the conclusion that, in general, promises are obligatory. The novice associates the obligation of a promise with these various experiences. Once proficient in the practice the child forgets the roots of promissory obligation and concludes only that promises are obligatory. Such forgetfulness--or learned ignorance--actually facilitates the acquisition of the roles of promise.

There are various ways to acquire the roles of this practice. Children learn these roles by unconsciously observing and imitating the behavior of their role-models. Children also learn by playing games which deal implicitly with the roles of promising. In the game of "hide and seek" there are implicit promises on the part of the person blinded to try to find those who are hiding, and on the part of those hiding to be capable of being found. There are similar implicit promises in a game like "truth or

dare" and many board games. Any game requiring cooperative behavior, and the expression of intentions and the raising of expectations, helps children to learn the roles of promising.

Another way to learn these roles is to imagine oneself in them. This occurs when a child attempts to engage in these roles at the adult level. He does this when he gets his older siblings or parents to make promises, and when he makes promises to them. At a certain age children can become infatuated with promising and seem to make every expression of intention into a formal promise, vaguely aware that this changes the situation in some way. Or they use promising as a way of emphasizing their sincere attempts to act a certain way: "Can I have the toy Mommy? I'll be a good boy; I promise." The imagination is also used in making solemn promises within games. In the same way that a four year old Suzuki Method violinist bows as if they are a concertmaster, so too do children make solemn promises within the games they play. They are playing, but the play is real. These make-believe games of promising help to prepare them for the real world of promising.

The novice has many role-models from which to choose, and will often need to reconcile the conflicts he finds between these models. Children will observe some of their role-models breaking their promises at the slightest whim, while other role-models will make great sacrifices to keep promises. How these conflicts are reconciled will depend upon a number of factors, but in time the novice will choose his own interpretation of the roles of promise. As with other practices, there is a range of acceptable role interpretations.

The roles of promise are complex. They require the novice to interpret subtle body cues, to interpret various forms of speech (irony, for example), and to handle

conflicts of interest and obligation. A novice must learn the many possible ways to make promises. He must learn that there are exceptions to promises and that some exceptions will nullify a promise while others will not. He must learn the varying degrees of seriousness attached to promising and how personal relationships affect the strength of promises. In acquiring these roles the novice is helped along by the shared experiences of other practitioners as well as with the stories he reads and television shows he watches. He also learns from his own successes and failures. These roles are not mastered in a short time. Becoming proficient in them is one of the ways to become a full-fledged member of a community.

A novice is considered proficient in a promise role when he no longer sees it as a role to be played at. Viewed externally, proficiency occurs when other members of the practice no longer detect any role-playing on the part of the novice. When this occurs, other practitioners treat the novice as a full-fledged member of the practice. They assume that when he makes a promise he knows what is expected of him. Proficiency occurs when a practitioner is held responsible for his actions, or when he is praised or blamed for his behavior within a practice role. The excuse of ignorance is no longer available to him.

The roles of this practice are open for each practitioner to interpret. Their interpretations characterize these roles--and the practice itself--for themselves and those around them. The interpretations of proficient practitioners are used in teaching novices this practice, though novices can eventually give these roles their own interpretations. Some interpretations represent variations while others represent violations. Both variations and violations represent arguments for change within a practice. Those who make such arguments with their choice of interpretations must

be prepared to defend them and to face the consequences that result when these sorts of arguments are played out in communities.

Despite this range of interpretations there is a common thread which connects them. This thread is perhaps nothing more than the pressure one generation puts on another to embrace the traditional roles of this practice. Such pressure rarely meets with total success. This is evident in the practice of promising. This practice has undergone change perhaps not fathomable by people living a century ago. The way promises are made, and the lack of seriousness which attaches to many of them in the present day reflect a variation in this practice. People still make promises, but how they make them and how well they keep them have changed. Such change is often cyclical and practitioners may again see a time when the practice recaptures some of its lost solemnity.

iv. Evaluation And Judgment

It was argued in Chapter Four that an evaluator must know the specifics of the practice in which his evaluations take place. In the practice of promise a competent evaluator would be aware of how promises are generally conveyed. Is it only through specific words or are there a variety of ways to promise? How are promises received? Must the promisee make a verbal recognition or acceptance of the promise, or can he simply nod or do nothing at all? Is there a distinction between bilateral and unilateral promises? What sorts of excusing conditions are allowed? These are just some of the questions an evaluator ought to be able to answer. Any proficient practitioner will be able to answer such questions. The evaluator's answers to these and other questions make up his evaluation criteria. Having had a number of experiences within this practice and having acquired a competence in it, the evaluator is able to abstract

rule-like formulations from his experience. He will use these formulations to evaluate other practitioners and, in so doing, help them acquire competence in the roles of promise. As with other practices there exist many acceptable evaluation criteria. Occasionally these criteria conflict. Because there is no absolute standard to which evaluators with conflicting criteria can refer, evaluators must be willing to engage in a dialogue. They must be capable of defending their criteria and be willing to update them if they are shown to be indefensible, or if they no longer fit the practice as conceived by the community at large.

In addition the evaluator is aware of the practitioner's competence in the practice and the specifics surrounding the situation in which the practitioner is being evaluated. Is the person being evaluated just learning how to promise, or is he proficient? Was he coerced into making a promise? Was the promise garbled in communication or misinterpreted by the promisee? Was the promise made in the heat of passion or over one too many drinks? What is the relationship between the parties to this promise? In resolving questions like these, an evaluator considers reasons, excuses, and defenses provided by the practitioner. Evaluations of competence are arrived at through the careful consideration of specifics such as these, and not through an appeal to abstract principles.

Evaluation of practice role competence is used not only to assist newcomers in acquiring the practice, but also by proficient practitioners serving as evaluators of each other, and by third parties who serve as arbiters between the parties of a promise who disagree over an interpretation of a practice role. In each of these cases evaluation serves both to teach and enforce a particular interpretation of a role. An evaluator reveals his interpretation of this role when he evaluates a practitioner. When an

evaluator, for example, tells a promiser that he should have been more explicit in his expression of a promissory intention he is giving an interpretation of the role of promiser. When an evaluator tells a promisee that he incurs some commitment when he accepts a unilateral promise he is encouraging him to consider a change in how he interprets the role of promisee. The different interpretations of roles and how these differences are expressed in evaluation criteria is an example of the dialogue which takes place within practices. It is through such dialogues that members of the practice share their interpretations of its roles. This dialogue is part of the mechanism for change.

A judgment, on the other hand, is an assertion about a practitioner's character. If a practitioner acting in the role of judge believes that a promiser blatantly disregards his promises, he may consider this behavior as negatively indicative of the promiser's character. Accurate judgment within the practice of promising requires many of the same skills needed for evaluation. A judge of practitioners is familiar with the practice of promising, as well as the conditions surrounding the practitioner in question. When possible he considers excuses and defenses brought forth by the practitioner and engages in a dialogue with those he judges. He is willing to defend his assessment of the situation.

Like an evaluator, a judge makes use of criteria against which he judges the practitioner's character. These criteria, however, are not as variable as evaluative criteria. Though there are many successful strategies for becoming competent in the roles of promise the judgment criteria are more uniformly accepted by the community in which the judgment takes place. This is not to say that there are no variations among judgment criteria, but only that there are fewer variations. A homogeneous

community will not have more than minor variations in its criteria for assessing character. Standards of judgment regarding character are one of the ways a community defines itself. These standards are possessed by most members of the community and so are available to those making judgments of fellow practitioners.

When a promiser is judged negatively against these standards of character, it is not merely his competence in a practice role which is lacking. It is not that he has trouble keeping promises because of conflicts of duty or because he is forgetful or because he uses language imprecisely. He has trouble keeping promises because he is a liar, or a cheat, or interested only in himself. His willful disregard of standards of character as they apply to the roles of promising is indicative of his weakness or lack of character. This lack of character is likely to be expressed in other practices as well. Because of the scope of judgments, a person acting in the capacity of a judge must be certain that a promiser is not failing in his roles because of reasons which do not reflect on his character. It is important, for example, that a judge be familiar with the other practices or institutions in which a practitioner engages. A volunteer fireman might have a hard time keeping his promises because the fire horn is always going off; a musician might always be canceling plans because of a last-minute job; a person with an elderly grandparent might break his promises whenever they conflict with his grandparent's needs or wishes. These people are engaged in many practice and institutional roles. A competent judge considers the interrelationships between the many roles of the person being judged. The essential question a judge must answer is not whether the practitioner knows how to engage in the roles of promising, but whether in keeping or not keeping promises a practitioner can be judged as having a good character. Judgments of character are best made over time. The ambiguities of

human behavior in its many contexts should give a judge pause before rendering a quick or unthinking decision. He should be sure that he is not misjudging or prejudging a person's character.

Although judgments have an air of finality to them, they too can be overturned. Judgments have the effect of disowning the judge from the practitioner, but people can change. A false promiser can change his ways, and a judge can come to forgive past transgressions. All judgments are open to revision and reconsideration. Judgments within practices often have an interpersonal quality which is lacking in judgments at the level of institutions or games.

Though evaluation and judgment can be analyzed as separate activities they usually occur simultaneously. As a promisee you tell a promiser that he should have made a greater effort in trying to reach you before breaking his promise (evaluation) as well as tell him that you think badly of him for it (judgment). Despite the list of requirements necessary to a competent judge or evaluator, any average practitioner of promise will be competent at both. Most evaluation and judgment is done on a daily basis by average practitioners. As with any activity, community members are not equally competent to evaluate or judge, and difficult questions may be reserved for those who have made a name for themselves as evaluators and judges. We all partake in these roles daily, but few of us become experts.

Evaluation and judgment are important for the vitality and longevity of the practice of promising. They allow practitioners to teach their children, and other newcomers, how to become proficient in the roles of promising, and how to develop good character. They provide a platform for the dialogue between practitioners. The conflict between those who view promises as solemn and those who interpret them

less seriously, for example, is played out at the level of evaluation and judgment. Their disagreements force both sides into a dialogue. The choices made by the majority of practitioners reflect the outcome of this ongoing dialogue. The practice of promising thrives because it is able to undergo such change without self-destructing in the process.

I have demonstrated that the aspects of a theory of practice can be applied to promise and that promise can be successfully captured by this approach. Indeed, in certain respects a theory of practice appears to be the only alternative capable of handling some of the issues inadequately addressed by other approaches to promise. I conclude, then, that conceiving of promising as a practice is possible. I argue below that such a conception of promising is also preferable to any of the alternatives evaluated in this study. I begin by showing how promising, when viewed as a practice, better accords with the data. I continue by outlining the similarities a Practice Approach of promising has with other accounts. I then indicate how it avoids the criticisms levelled against the alternative accounts considered in earlier chapters. I conclude with a brief discussion of the weaknesses of this approach to promise.

II. THE DATA OF PROMISING

One of the arguments against contemporary approaches to promise is that they do not accord with the data of promise. I suggest in this brief section that the Practice Approach to promise does accord with the data.

Unfortunately, there is no one place one can go to gather these data. Though philosophers often discuss promising they rarely appeal to its data; and while social scientists provide the data of practices and institutions, they rarely discuss promising. There does exist in the philosophical literature some references to the data of promise.

These data are unambiguous in demonstrating that the practice has undergone change and varies within homogeneous cultures. Atiyah charts much of the change in the contractual aspects of promise in his book *The Rise and Fall of Freedom of Contract* (Oxford: Clarendon Press, 1979). Nietzsche, in his *Genealogy of Morals* (In *Basic Writings of Nietzsche*, trans. and ed. Walter Kaufmann, New York: Modern Library, 1968) recounts some of the more gruesome history of promise (again, in its contractual guise) from Egypt, to Rome, to medieval Germany (Second Essay, Sections 1-7). Regarding the various interpretations of this practice's roles in a homogeneous community, it is interesting to note that both Sidgwick and Ross appeal to the data of promising. The apparent differences in their data would indicate that the data are in fact different, and this is just what a theory of practice predicts. These differences crop up in the recent literature as well. Narveson uses data that are different than data used by Grant (see bibliography).

The data of promising is also revealed in the writings of philosophers who provide treatments of promise without necessarily referring to its data. Assuming that a philosopher is a product of a culture and cannot entirely separate himself from it, we can note the differences between the treatments of promise provided by Cicero, Hobbes, Hume and Kant. Though they all share certain views about the practice, their individual treatments vary in detail. Cicero discusses promises that ought not to be kept (*On Duties*, Penguin Classics, Middlesex, England: Penguin Books, 1960) pp. 195-97. Hobbes discusses forgiveness (*De Cive*, ed. Sterling P. Lamprecht. New York: Appleton-Century-Crofts, 1949, Chapter 2) p. 38. Hume claims that a man who breaks a promise will never be trusted again (*A Treatise of Human Nature*) p. 522. Kant uses a promise as an example of an absolute duty (*Groundwork of the*

Metaphysic of Morals, trans. H. J. Paton, New York: Harper and Row, 1956)

pp. 89-90. These differences, I assert, are indicative of the differences between their respective cultures and the practice of promise as it existed in these cultures.

The consideration of excusing conditions, and the use of practical reasoning, are found in the works of Cicero, Aquinas, Hobbes, Adam Smith and Sidgwick. Early treatments of promise often used casuist methods for resolving conflicts and disagreements. The examples of promising used by philosophical casuists reflect the complexity of the practice of promise. This complexity, however, is seen most vividly in works of fiction. In George Eliot's *Mill on the Floss* (ed. Gordon S. Haight, Oxford: Oxford University Press, 1980) Maggie struggles with a promise of fidelity she made in her youth to a bright but deformed young man. She instead elopes with another young man only to return before they are married. Eliot captures the difficulties of a person caught in a community of practitioners whose interpretations of practice roles she cannot accept. Her rebellion and violation of accepted interpretations cause her to be ostracized from the community. Eliot's criticism of the philosophy of her day is relevant to our discussion here. She says

The great problem of the shifting relation between passion and duty is clear to no man who can apprehend it....The casuists have become a byword of reproach; but their perverted spirit of minute discrimination has the shadow of truth to which eyes and hearts are to often fatally sealed--the truth, that moral judgments must remain false and hollow, unless they are checked and enlightened by a perpetual reference to the special circumstances that mark the individual lot. (pp. 497-8)⁴

The importance of the social conditions of practices is appreciated by Alasdair MacIntyre. In his book *Whose Justice?, Which Rationality?* (Notre Dame, IN: University of Notre Dame Press, 1988) MacIntyre traces the practices of justice and practical rationality through four distinct social periods. Though MacIntyre does not

believe that promising is a practice on his use of the term⁵ his placement of practices within social contexts makes clear their variations. Pierre Bourdieu's *An Outline of a Theory of Practice* (trans. Rice, Cambridge: Cambridge University Press, 1986) makes a similar appeal to the social conditions of practices.

Finally, the most thorough discussion of the conditions of the practice of promise--what I call the constraining and enabling conditions--is found in Peter J. Wilson's *Man The Promising Primate: The Conditions of Human Evolution* (New Haven: Yale University Press, 1980). In the Epilogue I discuss briefly the importance of the data of the social sciences in filling out a theory of practice in general and the practice of promise in particular.

In lieu of these examples of the data, there are the data gathered in one's own experience. I am confident that various experiences of fellow practitioners constitutes a data base that does not contradict in any large way the claims made about the practice of promising. I conclude, then, that the Practice Approach to promise accords with the data of historians of promise, promise theorists, novelists, anthropologists and social scientists in general, and fellow practitioners.

III. PRECURSORS TO THE PRACTICE APPROACH

Aspects of the Practice Approach to promise are found in the approaches canvassed in earlier chapters, as well as in the writings of other promise theorists. The Institutional Approach attempts to explain the origins of promising, to provide a list of necessary and sufficient conditions, and to explain how promises create obligations. Although the answers to these and other questions provided by the Practice Approach are quite different, both approaches attempt to capture many features of promise. In this respect both approaches are superior to the Single Aspect Approaches canvassed in

Chapter Three.

The Practice Approach also incorporates features of the Expectational Approach. The ability to form expectations holds a central place in explaining the origins of the promising practice. If people could not form expectations the practice could not get started. Expectations also play a role in explaining how promises create obligations. Both approaches likewise assert that promising occurs at the formal and informal level, and that certain conditions may arise which defeat a promise.

Both the Practice and Evidentiary Approaches consider the historical aspects of promising. Atiyah's work challenges promise theorists to take seriously the empirical evidence of promising. The Practice Approach takes up this challenge. Both accounts maintain that there is a defeasible or revocable nature to promising, and both provide a mechanism for how defeating conditions are to be evaluated and how disagreements over these conditions are to be resolved. Both accounts maintain that such disagreements should be resolved in a social context. Atiyah suggests that just as there are legal legislators and judges, so too ought there to be moral legislators and judges who decide upon the details of the practice of promising as well as the moral bindingness of particular promises. Atiyah gives us no indication of how the conflicts over these details are to be resolved, though on the Practice Approach conflicts are resolved within the framework of evaluation and judgment.

There are similarities with the Intuitionist Approach as well. The Practice Approach recognizes the intuitive clarity of promissory obligation, a clearness which defies further explanation. Practitioners come to see and feel promises as obligatory long before they are able to articulate the reasons why or how promises create obligations. Having forgotten the origins of how one comes to see promises as

obligatory such articulation will fail to capture the reasons. It is doubtful that the intuitionists discussed in Chapter Three would agree with the explanation given for the intuitive clarity of promissory obligation, but both approaches nevertheless share a common view about this clarity. Both approaches similarly agree that conflicts of obligation arise and that there must be a way of handling these conflicts. Finally, both approaches consider the views of everyday practitioners.

There are some similarities between the Practice and Intentional Approaches. The Practice Approach considers the promiser's intentions to be an important aspect of understanding the practice. Second, Robins' willingness to use the results of the natural and psychological sciences is in the spirit of the Practice Approach. A theory of practice draws from all of the fields relevant to promising. Both accounts likewise use form of life arguments; both recognize that promising is a peculiarly human practice. Despite these similarities, we must keep in mind the reasons given in earlier chapters for rejecting these alternative approaches. I argue below that the numerous criticisms levelled against these approaches can be handled by the Practice Approach.

Aspects of the Practice Approach can also be found in some of the literature not covered in earlier chapters. In his article "On Promising" A. I. Melden criticizes promise theorists for analyzing the concept of promising in abstraction.⁶ He argues that theorists should resist the temptation to explain promising or to analyze it in a non-temporal fashion. "The lesson, I think, is to look for a different sort of explanation, specifically, an explanation of the way in which promise utterances play their role in the characteristic sorts of contexts in which they are employed" (p. 56). Citing Wittgenstein, Melden claims that we should examine the concept of promise as we would an engine: while it is doing work and not when it is idling.

We learn how to promise, says Melden, not by learning rules but by "learning how to think and do like moral agents do" (p. 63). We learn by training. "Knowing what a promise is, like knowing what a joke is, is not a matter of having information,...but knowing how to think and feel in the way this is done by promisers who speak in good faith and then go on to do as they promise to do" (pp. 65-6). We learn also that promises cannot always be kept. "We learn what it means to say 'I promise...' by learning that when it has been misapplied because of an honest mistake on the part of the promiser, rectification is in order" (p. 59). For Melden, people are able to promise because they share a common form of life.

In a later article Melden emphasizes the moral relationship set up between promisor and promisee and describes it as a moral relation "in all of its rich conceptual complexity" (p. 53).⁷ These moral relations take place within a moral community. He describes how children learn to promise. It is not, he says, by learning a formula or recipe.

Rather, the child comes to understand, first, that there are certain central or nuclear sorts of cases to which a rich array of concepts may be applied. Second, it comes to appreciate the fact that certain other cases deviate from these nuclear cases in one or another of a variety of respects. And, third, it learns how the various sorts of differences that exist between such deviant cases and those central or nuclear cases--to which the fully enriched array of concepts apply unproblematically, without truncation or diminished degree--are importantly relevant, and how it is that this array of concepts must receive, in varied ways, limited or qualified application when in various respects the cases under consideration diverge from central or nuclear cases. (p. 42)

The Practice Approach shares many of the features discussed by Melden. It recognizes that promising is a bi-temporal phenomenon and that it cannot be easily abstracted. It offers an analysis that considers the contexts and relationships of promisors and promisees, and gives an account of how children come to acquire

practice roles. The Practice Approach examines promising while it is doing work.

John Finnis' work on promising also parallels a Practice Approach.⁸ Finnis argues in his methodological remarks that philosophers should consider the whole range of data affecting their subject matter. "The undertaking [of a theory of natural law] cannot proceed securely without a knowledge of the whole range of human possibilities and opportunities, inclinations and capacities, a knowledge that requires the assistance of descriptive and analytical social science" (p. 18). Finnis takes as his data base the moral community, whereby 'community' he means "an ongoing state of affairs, a sharing of life or of action or of interest, an associating or coming together. Community in this sense is a matter of relationship and interaction" (p. 135).

Finnis refers to promising as a complex human practice that takes place in a community. He sees promising as an informal human practice and not simply as the law of contract. A person can have an obligation to keep a promise only in those communities that recognize this practice. Finnis also believes that there can be many forms of the promising practice in any given community, "some wider, some narrower, some more relaxed, others more stringent" (p. 300). Finnis likewise claims that all promises have defeating conditions, and that within the practice of promising there will exist a good amount of disagreement about the obligation of particular promises and of promissory obligation in general. "This feedback of various forms and requirements of practical reasonableness lends the extra-legal practice a flexibility without which it doubtless could not survive, but also an elusive variability or unreliability, of a sort that legal thought strives to exclude from legally regulated transactions" (p. 309). What Finnis says conforms to the basic outline of a theory of practice.

Neither Finnis nor Melden explicitly use a Practice Approach to promise, and neither provide the sort of detail this approach requires. In addition, Finnis and Melden each argues for a Rights Approach to promise. I argued briefly in Chapter Three against the viability of this approach to promise. I discuss in the Epilogue the ethical approach best fits a Practice Approach to promise. There are, then, grounds for rejecting these treatments of promise as alternatives to the Practice Approach.

In earlier chapters I identified philosophers who are viewed as precursors to the five approaches evaluated there. I believe that the Practice Approach has a precursor as well: David Hume.⁹ Hume recognizes promising as a uniquely human practice which arises spontaneously because of our human nature and our presence on a planet with limited resources. It is because we are a creative species that we are able to invent the artifice of promising. Promissory obligation for Hume is of two types: (1) the natural obligation to participate in the practice of promising (this obligation arises out of natural necessity); and (2) the artificial or feigned obligation to keep individual promises (this obligation arises when one imagines oneself to be under such an obligation, and is encouraged by other members of the community to treat this obligation as real). The most persuasive technique in getting a promiser to believe that this obligation is real is to threaten him with something real: never being trusted again. Like the Practice Approach, Hume's account of promise is generally descriptive of the practice. Hume has been identified by some scholars with the Institutional Approach to promising. While there are some surface similarities between Hume's account of promise and this approach, I believe this reading of Hume to be largely incorrect.¹⁰

I turn now to a discussion of the criticisms levelled against the various approaches

evaluated in earlier chapters. I demonstrate below how the Practice Approach is either immune to these criticisms or can answer them.

IV. EARLIER CRITICISMS CONSIDERED

i. The Institutional Approach

Much of the criticism of the Institutional Approach focused on its inability to explain with constitutive rules how members of institutions become participants in them. Put simply, this approach must either presuppose the form of life that makes promising possible (and hence, appeal to something other than constitutive rules), or try to define a form of life with rules. The Practice Approach avoids these problems because it takes a form of life as the basic condition for the existence of the practice. One need only observe the constraining and enabling conditions of our form of life to conclude that promising emerges as a practice. Just as constitutive rules cannot define our competitive spirit or our love of game playing, so too are they unable to define our ability to form intentions or expectations. We teach our children the rules of specific games, but we do not teach them to be game players or to love such games. In a similar way we teach our children about the different types of promises that exist and the conditions which defeat promises, but we do not teach them how to promise. They already know how to do that, at least at a primitive level. The Practice Approach, then, does not presuppose this form of life but takes it as basic to the existence of the practice.

The Practice Approach better explains how the practice of promising could arise *de novo*. The promising practice arises spontaneously when certain conditions are

present. It is not designed or defined in response to these conditions. The practice of promising is self-functioning and self-regulating. It originates, undergoes change, and is taught to new members by the collective actions of human beings sharing a form of life and living in homogeneous communities.

Promise as practice explains how someone can become a practitioner without knowing any rules. A prospective practitioner comes to a practice already possessing those conditions to create or acquire the practice. What he learns in a particular community is how this practice's roles are interpreted and how one goes about excelling in them. These roles are learned primarily through the imitation of role-models. By consciously and unconsciously observing and imitating role-model behavior, novice practitioners slowly acquire the roles of this practice. In this way they are practitioners long before they can articulate the aspects of practices or practice roles in words or rule-like formulations.

It might be argued that there is little difference between Searle's claim that constitutive rules are acquired through unconscious learning and the claim that practice roles are acquired through unconscious learning. But there are differences, and they are easy to see. First, humans are imitative creatures and we use imitation to learn many things. We learn facial expressions, and slang, and accents by watching and listening to those around us. Children are taught to swing a bat, throw a ball, to dance or swim by having adults initially move their bodies for them so that they can get the feel of these activities. Children likewise observe adults engaged in these actions and perhaps unconsciously observe their physical movements. It is, I believe, more natural for a child to imitate adult behavior than to learn unconsciously some rule which defines this behavior. Even adults learn through imitation. Learning a

promise role is just another bit of imitative behavior that observant humans master along with swinging a bat, riding a bike and learning how to lose.¹¹ Second, because of the range of practice role interpretations it is not essential that new practitioners learn these roles in a precise manner. In order for constitutive rules to function they must be learned exactly by those who learn them. This feature of constitutive rules makes the explanation of unconscious learning difficult to accept. Acquisition of practice roles through imitation and imagination need not be so exact, thus making the explanation of unconscious acquisition easier to accept.

The Institutional Approach is also unable to explain how the institution of promise could be governed by one or, at most, a few rules; how these rules could be public in spite of there being variations among them; and how such rules could delimit the exceptions to a promise.

The Practice Approach explains the relatively short list of rules provided by Rawls and Searle as rule-like formulations which describe the practice or provide strategic information. Second, Rawls maintains that institutional rules are public rules and hence are learned in common by participants in that institution. The public nature of these rules help institutions maintain their definitive shape. It was argued in Chapter Two that to be public rules the constitutive rules of promising must be learned identically by all of the members of the institution. Even Rawls admits that variations exist between the rules of its members, though he diminishes this problem for his approach. On the Practice Approach there are only rule-like formulations, and these formulations are largely unnecessary in the maintenance of the practice of promise. Practices are characterized by roles and roles are characterized by the interpretations of these roles by individual practitioners. But these interpretations are constrained in a

number of ways. Certain interpretations are not possible given certain social conditions. Second, practitioners normally want to succeed in acquiring practice roles, and this requires copying much of the details of these roles from their role-models. Third, practitioners belong to homogeneous communities where certain role interpretations are reinforced in a number of ways. Practitioners belong to the same organizations, reading the same books and newspapers, watching the same TV programs, etc. These common experiences help to maintain the consistency of role interpretations. Role models are not just family and friends, but also TV characters, public figures, ministers and newspaper columnists. Through all of these influences there are distilled certain common values and standard interpretations of practice roles. The end result is that the practice of promise is flexible enough to allow a range of acceptable interpretations while being able to maintain its recognizable form.

Constitutive rules are similarly unnecessary when dealing with exceptions to promises. On the Practice Approach exceptions are a necessary feature of the practice of promising in our form of life. Because humans are creatures with a limited vision of the future and because, as members of a community, we take on many roles, our promises are often interfered with. Situations occur which practitioners do not foresee, or which they foresee but do not intend. Promising is a practice whose function it is to reduce the uncertainty of the future, but because it is a double-tensed practice practitioners cannot escape this uncertainty. A practitioner recognizes that when he makes a promise he should do his best to keep it, but he also recognizes that situations will arise which will make keeping this promise either impossible or undesirable. No rule could define this feature of the practice, but no rule is necessary to define it.

On another point, it was argued that no list of constitutive rules is likely to define or list the exceptions to a promise because what counts as an exception to a promise depends upon the specifics of the situation and the relationship between promisor and promisee. What counts as an exception must wait upon the situation in which it occurs. Practitioners learn about the defeasible nature of this practice, and about the type of exceptions generally acceptable in it through their training. This training consists primarily in observing and imitating the behavior of their role-models. Within these roles practitioners experience the conflicts of interest and commitment that a promise can create, and the harm that a broken promise can cause. They learn what types of excuses are acceptable by listening to their role-models' excuses. Children learn--sometimes the hard way--that parents and adults generally have many different roles to play, and this causes them to frequently break their promises. If children have good role-models this experience will not make them cynical, but instead will teach them that conflicts of interest and duty do arise and that these conflicts make the keeping of promises a difficult endeavor. They are further educated when chastised or disciplined for failing to provide adequate justification for their broken promises. Overall, there is a great deal of trial and error in this training. At best one emerges from it with a sensibility, a kind of practical wisdom, about the defeasible nature of the promising practice.¹²

The Practice Approach also outlines a method for determining the value of excusing conditions. It recognizes that what is to count as an exception to a promise will depend upon the circumstances surrounding the practitioners in question. Second, this approach characterizes promising as a relational practice. What is to count as an exception, then, is often determined by the nature of the relationship

between promisor and promisee. If the relationship is a formal one fewer exceptions may be accepted. If the relationship is between close friends the range of exceptions may be much wider. In situations where there is disagreement practitioners should engage in a dialogue. The promisor tries to convince the promisee that he has a legitimate excuse for breaking (having broken) his promise while the promisee argues the contrary position. If there is no clear outcome such conflicts can be resolved by presenting the evidence to a third practitioner(s) who will offer his assessment. Because it is usually the promisee who is harmed by a broken promise--I say "usually" so as not to forget instances where a promisee breaks his implicit promise to the promisor--the final evaluation and/or judgment is left for him to make, so long as third party assessments are inconclusive. If, however, third party evaluations and/or judgments consistently side with the promisor, and the promisee refuses to change his views, the promisor is nevertheless excused. Such obstinacy by the promisee in the face of such consensus will make him appear unreasonable. His evaluations and/or judgments will be viewed as violations of standard community criteria. To remain obstinate in one's violations of community criteria is to place oneself outside the community of practitioners. Resolving such conflicts is a complex affair, but no more complex than the relationships between practitioners.

Two issues remain. The first concerns Searle's idealized case of promising; the second with how one commits oneself to the practice of promising if there is no rule stating that one must. It was argued in Chapter Two that Searle's idealized case ignores whatever empirical data might be used to inform it. Further, it was shown that such an idealized case would be utterly useless in teaching someone how to engage in the practice, and that the question of how practices are taught to newcomers

cannot be ignored. The Practice Approach obviously rejects an idealized conception of promise. The accuracy of this approach to promise depends upon the data collected from the community where the practice takes place. If the data change so too must a practice theorist's account of the practice. There can be no paradigm case of promising on the Practice Approach. The variations of this practice range across time periods and localities. In the same way that an unchanging, rigid practice of promise would not survive in a community of practices (at least in our form of life) Searle's idealized case does not survive the range of data refuting it. The Practice Approach also better explains how the practice of promise is transmitted to new generations.

Finally, the Institutional Approach was unable to explain how one becomes committed to the institution of promising. The rules of this institution tell its members what to do only after they decide to engage in it. On the Practice Approach promising is not an institution in which one chooses to play or not. On the contrary, promising is an enabling practice. It enables us to achieve certain goals and to gain certain goods which are important to the human condition. All normal persons--because they are persons--have a need to make promises and accept promises. Commitment to the practice is part of what it means to be human. It is difficult to imagine what life would be like without this practice. Such a life, I believe, would be devoid of all relationships. To the degree that such a life is impossible to live for a healthy person, so too is a life without the practice of promising impossible. The commitment to the practice, then, is a natural commitment. It is a commitment which comes with the territory or form of life. This is what Hume meant when he spoke of the natural obligation to promising: it is not possible (or natural) for humans not to feel obligated to

the practice of promising. This obligation is a natural feature of being human. It is possible that some present human cultures, past or future human cultures, or non-human rational beings do not require this practice. Present day Tongas, for example, are thought not to have the practice of promise.¹³

ii. The Expectational Approach

The Expectational Approach (1) fails to differentiate between raised expectations which do create promissory commitments from those which do not; and (2) does not provide a mechanism for conflict resolution regarding excusing conditions. The Practice Approach recognizes the forming of expectations as an enabling condition for the practice of promise, but it recognizes that this condition alone cannot serve as the only explanatory mechanism of the practice. As a relational practice, promising depends for its success not only on the ability of the promisee to form expectations, but of the promisor to form intentions and to successfully communicate them. In addition, the promisee must be capable of forming reasonable expectations. What counts as reasonable will depend upon community standards, but I would define 'reasonable expectations' as those which are tempered with the understanding that the future is uncertain and may not always turn out the way one has planned or has been told it would. On this definition, those who either expect everything to turn out as planned, or those who expect nothing to turn out as planned are unreasonable about their expectations. Forming reasonable expectations is one of the requirements for proficiency in this practice's roles.

The promisee must also communicate to the promisor, when possible, his level of expectation. This helps the promisor to decide whether or not he has made a promise to begin with, and how he should interpret the strength of his commitment to the

promisee. If the promisee makes it clear that he has reasonably low expectations about the promise, the promisor might resolve a conflict of interest or duty differently than if a promisee expressed reasonably high expectations. Reference to a promisee's low expectation level is not an uncommon excuse given by promisors who break their promises. But even when reasonable expectations are raised, the strength of the commitment they produce is not everywhere equal. The strength of the commitment is influenced by the combined interpretations of the practitioners. Expectations do play a role in promising, but the nature of this role is both more limited and more complex than the Expectational Approach recognizes. In addition, the Practice Approach places a greater responsibility on the promisee than simply forming expectations. He must be able to form reasonable expectations, and to engage in a dialogue with the promisor when they do not agree on the conditions of a promise, or its excusing conditions.

While the Expectational Approach does recognize the existence of excusing conditions, it does not indicate how one is to recognize such conditions, or how to resolve instances when practitioners do not agree. On the Practice Approach the promiser decides to keep or break a promise by assessing the following: (1) the shared understanding of the conditions of the promise; (2) the strength of its commitment; (3) the reasonable expectations of the promisee; (4) the strength of the excusing conditions; (5) the strength of the arguments he could put forth in defense of his excuse; and (6) the possible outcomes of keeping or breaking the promise; etc. In making his assessment the promiser considers both his role as promiser and the other roles which might be causing the conflict. The decision he makes is not always easily arrived at, nor does it simply consider the expectations of the promisee. If his decision conflicts

with the promisee's assessment of the situation, they engage in dialogue and/or appeal to third parties if necessary. The relational features of this method is what distinguishes it from similar methods described in other approaches, such as Ross's intuitionist account.

iii. The Evidentiary Approach

There were three problems with the Evidentiary Approach. First, it construed the whole of the practice of promising from its more narrow legalistic perspective. Second, while Atiyah makes use of empirical evidence to inform his theory, this evidence is limited almost entirely to the law. Third, in focusing on the external conditions of a promise (explicit wording, detrimental reliance, consideration) this approach generally ignores the intentions of the promiser. On the Evidentiary Approach a promise is created when certain conditions are met, whether or not the promiser intended to create these conditions. The Practice Approach casts a wide net. The practice of promise occurs in many guises. Among friends promises may not require specific words. Strangers, on the other hand, may demand the precise language of a written contract. Any practice can develop a formalistic version of itself, but it is a mistake to conclude that this version characterizes the practice. All contracts are promises, but not all promises are contracts. The Practice Approach recognizes both formal and informal promises.

The Practice Approach likewise does not limit its empirical findings to the opinions of judges and the laws of legislators. A practice account of promise considers all of the relevant evidence. It is premature for Atiyah to conclude that unilateral promises, because they are not recognized presently in the courts, create little or no obligation. What do sociological studies say about unilateral promises? What do

religious precepts hold about such promises? The data base of the practice of promise is much larger than the one considered by Atiyah.

Finally, this approach does not focus exclusively on the external features of a promise. It claims that a successful promise does not depend solely on whether the promisee detrimentally relies upon it or the promisor benefits from it. It denies that the promisee always has the correct position even if he does detrimentally rely on a promise. He might be unable to form reasonable expectations or be unable to read non-verbal communication. A promiser should not always be held to a promise he did not make, or intend to make, because the promisee misinterpreted his remarks or relied on them. On the Practice Approach, a successful promise is one in which the perceptions of its external conditions as perceived by the practitioners in question roughly correspond to their internal states. Such perceptions are rarely without ambiguity, and clarification and explicitness are not always possible or desirable. When these ambiguities do occur they are best resolved within the relational contexts of this practice. In such conflicts the determination of whether a promise has been made often depends upon the outcome of a dialogue between its parties.

iv. The Intuitionist Approach

The Intuitionist Approach was criticized for the following reasons: (1) it conceives of promising entirely as a solemn homogeneous practice; (2) excepting the notion of *prima facie* duties, it generally ignores the issues surrounding excusing conditions; (3) it fails to recognize that intuitions may differ regarding the ordering of duties, as well as what the duties of promisor or promisee entail; and (4) it provides an unworkable method for resolving conflicts of intuition. The Practice Approach recognizes that that practice of promise is not characterized apart from how it is

characterized by practitioners living in a particular community in a particular social setting and time period. The practice of promise may have been a solemn practice at one point in a community's history and it may become so again, but solemnity is not a necessary condition of the practice. The Practice Approach replaces a solemn and static concept of promise with a dynamic, historically situated practice. Second, this approach also recognizes defeating conditions as a necessary aspect of the practice and seeks to explain how conflicts over these conditions are resolved. Rather than focusing exclusively on how promises create obligations it considers the conditions which make this practice possible, how the practice is taught to new generations, how it undergoes change and variation while remaining an identifiable practice, how promissory obligations are created and defeated, etc. Unlike any of the four Single Aspect Approaches evaluated in Chapter Three, the Practice Approach attempts to be comprehensive in its treatment of promise.

Third, this alternative approach predicts that practitioner intuitions will differ within a homogeneous community. Although practitioners share common practices, how they learn and interpret practice roles will vary. A practitioner may acquire the intuition that the duty of one practice role outweighs the duty of another practice role. Another practitioner may acquire the opposite intuition or acquire no intuition at all. In one home promises may be treated solemnly; in another loosely. One practitioner learns that there are many ways to promise; another that there is only one way. While practitioners of a homogeneous community may agree that, in general, promises ought to be kept, they will disagree over the details of the practice. This approach explains why this variation exists, how it is dealt with, and how the practice of promise is maintained in spite of--indeed, because of--this variation.

Finally, the Practice Approach provides a detailed method for resolving clashes of intuitions. When promising is seen as a relational practice it is clear that an appeal to one's private intuitions as a method for ordering duties or considering excusing conditions will not succeed in resolving these sorts of disagreements between practitioners. The Practice Approach posits in its place a method for conflict resolution which is clearly relational in nature.

v. The Intentional Approach

Like the other three approaches evaluated in Chapter Three this approach fails because of its limited scope. Any theory of promise needs as part of its explanatory devices an account of intentions, but Robins is mistaken to conclude that an intentional theory is all that is needed to capture promise. Second, Robins does not consider sociological and anthropological data which might confirm or deny his account of intentions, or that might limit his conclusions to a particular culture or time period. Third, Robins is silent about the defeating conditions of a promise. His theory recognizes that promising has a double indexical temporal reference, but he says only that a promise takes away from the promiser the freedom to change his mind. The only defeating condition he considers is the promisee's freedom to waive the promisor's obligation. Fourth, the Intentional Approach gives disproportional weight to the promisee's wishes. On this approach it is the promisee's right to waive a promissory obligation at any time. The Intentional Approach gives the promisee too much power and freedom, and the promisor not enough.

On the Practice Approach intentions are just one slice of a complex form of life that makes the practice of promising both possible and necessary. Second, this approach recognizes that the promising practice is shaped by its historical and social

contexts. As part of this practice, the ability to form intentions would likewise be shaped by these contexts. An account of intentions on this approach would rely on the same types of empirical data used to inform the overall account of the practice. Reliance on these data might reveal that some cultures do not promise at all, or have a weaker concept of obligation, because they have not yet developed the capacity to form intentions, or because this capacity is underdeveloped.

Third, because promising is a double-tensed practice it must contain defeating conditions. The former condition entails the latter. Finally, the Practice Approach construes promising as a relational practice. In some cases the promisee has an implicit obligation to allow the conditions of the promise to be met. Some people make promises as signs of love or friendship, and would be hurt if the promisee had no interest in seeing the promise carried out. Just as the promisee forms expectations, so too does the promisor. Even the mere acceptance of a unilateral promise by the promisee may entail some sort of commitment on his part to allow the promisor to carry out his promise. Relational features are also present in determining the exceptions to a promise. Both promisor and promisee are expected to explain themselves when a promise misfires. Relational commitments are part of the practice of promising.

V. CRITICISMS OF THE PRACTICE APPROACH

The Practice Approach is not without problems of its own, and I shall highlight some of them here. First, the general claims about how practices begin, operate, undergo change, and maintain their shape need to be tested against the data and the counterarguments of critics. It is possible that the explanations given in Chapter Four fail to describe what actually happens in the formation of practices. These explanations must still be tested against the arguments of critics and the data still

outstanding. The approach is still largely unconfirmed.

Second, although the theory provides a general or comprehensive framework for practices, the conclusions it draws about specific practices are constrained by the social and historical conditions in which these practices occur. Practice theorists must be accurate not only in their initial theoretical descriptions of a local practice of promising, but they must be prepared to update their findings. This outcome will no doubt be resisted by those who seek theories which make general or universal claims about promising.

Third, implicit in the Practice Approach to promise is a moral relativism that some may find disturbing. A full treatment of this issue would take us too far afield. Suffice it to say here that if a change in terminology is to be preferred, the Practice Approach is more accurately called pluralistic. It recognizes that there are many practices and many variations of the same practice. These variations assist practitioners in achieving the goods specific to their form of life. Relativism claims that there is no paradigm practice. Pluralism claims that there are many successful forms of the same practice. Second, if relativism or pluralism reflects our present historical setting then so be it. As a descriptive theory, the Practice Approach can only report and organize the data it collects.

A fourth drawback is the sheer quantity of data to be collected and explained. A practice theorist must be conversant with the data and methodologies of a number of disciplines, including the social sciences, biology, the neurosciences, and the relevant disciplines within philosophy. The Practice Approach recognizes that an explanation of any social practice is a much larger and more detailed project than thought previously by most promise theorists. Much of the data concerning this practice are

still outstanding. Hence, the results of this approach, while more accurate, may be longer in coming.

Finally, the Practice Approach is a descriptive theory. It tells us how promising operates as a practice, but it tells us nothing about its normative aspects. It has been a primary assumption of this study that a proper treatment of promise requires that we first see it as a social practice. Only then can we consider its identifying features as a moral practice. I discuss briefly in the Epilogue what moral theoretical approach best fits with the Practice Approach to promising. Though such a division of labor may at first be thought to be a drawback to this approach, I believe that the accurate description of a social practice like promise requires full-time work by practice theorists.

I will not attempt here to defend the Practice Approach against these criticisms. Some of these criticisms are stylistic (critical of the style of philosophizing in this approach) while others depend on data still outstanding. Neither can be defended against in the limited space provided here.

VI. CONCLUSION

I have tried to make good my claim that the Practice Approach is superior in its treatment of promise to any of the five alternatives evaluated in Chapters Two and Three. The thrust of my criticism in those earlier chapters was that the alternatives failed because they underdescribed promise, lacked coherency, and did not conform to the data. In positing a theory of practice I have sought to provide an approach to promise that is conceptually rich and which can do justice to the details of the practice. The value of the Practice Approach is that it can be used to explain a great number of human activities that were otherwise unexplainable as institutions or

games. More specifically, I have argued that promising is one of those activities.

Whatever its faults this approach does not underdescribe promise.

A theory of practice is beholden to the data of promise. Unlike Searle or Atiyah, who appear to construct a theoretical model of promising and then reject data which does not fit the model, the theory of practice constructs its model from the data. If the data change the model changes. On the Practice Approach, the conceptual description of promising is only as good as its ability to describe, explain, and predict the actual data gathered from a homogeneous community in which the practice takes place. Promising is not what any theorist says it is. A practice theorist's job is not to define a promise or the practice itself, but to describe it.

Despite its possible drawbacks, I believe that the practice theoretic approach to promise is superior in explanatory power and descriptive adequacy to any of the approaches here considered. It is ironic that many theorists have used the importance of the practice of promising in everyday life as an argument for its obligatoriness without also appreciating how the various social aspects of this practice undermine their views about promise. If we understand promise as a social practice then we must consider it in all of its social complexity. A theory of practice is an attempt to see promising as an inherently social phenomenon. Subsuming promise under a theory of practice is a large undertaking, one which I have only outlined here. I have argued throughout this study simply that such an undertaking is worthwhile and extremely valuable if we are concerned with the accuracy of our treatment of promise.

ENDNOTES

1. I am casting the net widely in talking about the variations of the practice of promising. I am claiming that there are many types of promises (besides those that are attended with solemn obligation) and many ways of promising (besides the speech-act "I promise"). What argument there is for this position will be seen below, but the argument itself takes place within a practice framework. That is, the decision to cast the net of promising in this way is based on an intuition about how people conceive of the practice. But this intuition is also a testable hypothesis: namely, that the practitioners of the practice of promising, or at least some number of them, interpret the practice in these ways.
2. I am only suggesting that the ability to form expectations makes promising possible. Expectations almost certainly have a role to play in creating in the promiser the sense of obligation he feels in making a promise, though it is not the primary role that act-utilitarians suggest. In some cases the promisor does do wrong by creating expectations in the promisee and then failing to act in such a way that these expectations are fulfilled. But there is more to the story than that.
3. I have left a great deal out of this discussion. In order for promising to be possible one would need a concept of self; and be able to recognize in others the relationship of friend, enemy, etc; and have a shared, objective time reference to which one could refer, etc. The list of conditions necessary of the practice of promise is no doubt longer than the one I have given. My intention however was to discuss only those conditions which seem most relevant to the practice.
4. For other novels which have promising as one of their themes, see George Meredith's *The Egoist* (New York: Norton, 1979); Graham Greene's *The Power and the Glory* (New York: Penguin, 1977); and Iris Murdoch's *The Book and the Brotherhood* (New York: Viking, 1988).
5. In conversation regarding this question MacIntyre claimed that he would not consider promising a practice. His reasons for this appear to be the following: first, promising is not an activity which is necessary for the achievement of any specific internal good. He gave the example of the Tongas, who presumably do not make promises. The Tongas are quite able to achieve various internal goods without the need to promise. Second, promising is not an activity in the way fishing is, for example. While one can say that one has gone fishing for the day, one is not likely to say that one has spent the day promising. The practice of fishing allows one to cultivate certain internal goods, while promising does not.
6. *Mind* 65 (1956):49-66.
7. "The Obligation of Promises" (In *Rights and Persons*, University of California Press,

1980) 32-55.

8. *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980).

9. *A Treatise of Human Nature* (Book III, Section V). See also my "The Humean Promise: Whence Comes its Obligation?" (*Hume Studies* 12 (November 1986):160-174).

10. I make this argument in a paper titled "Have We Kept Hume's Promise?"

11. It might be argued that swinging a bat is a physical activity and in this way is different from learning a practice role. I maintain that learning a promise role, like swinging a bat, requires the ability to discern as well as to execute various physical motions. Promising, like any other human interaction, includes a variety of non-verbal cues. Knowing how to wink or to speak ironically (and being able to know what winking and speaking ironically means) is no less important to the promiser than knowing what specific words are used to make a promise. There are many such cues in everyday interaction, and knowing what they mean and how to perform them are very important in communication, of which promising is a part. And we learn such cues, and what they mean, by watching and imitating.

12. This process probably occurs in developmental stages. I leave the details of these stages for later work.

13. See Fred and Shulamit Korn's "Where People Don't Practice" (*Ethics* 93 (April 1983):445-450).

EPILOGUE

This study has urged a broader view of promise than has been taken by numerous contemporary approaches. If promise is seen as a complex social practice, then theoretical approaches must likewise be conceptually rich and reflect the social nature of this practice. This requires a willingness on the part of philosophers to go beyond the confines of contemporary philosophical theorizing. It demands that philosophical theories concerned with social practices be informed by the empirical findings of those who study these practices and by the experiences of practitioners. In the few pages remaining I outline the central points of this study which contribute to the literature on promise, and discuss two projects which follow from this study.

Briefly, this study offers a taxonomy of approaches to promise, and evaluates these approaches as theories of promise. The results of this evaluation question the validity of using promise as a central case in various philosophical theories, and the validity of the methodologies used by promise theorists. More positively, this study encourages a broadening of the methodological tools used by philosophers. Though I provide only an outline of a theory of practice, it is the most theoretical accounting of the practice concept presently in the literature. The two projects which follow from this study are first, the filling out of the outline with the data, and second, the matching of the Practice Approach to promise with a moral theory. I am unabashedly speculative and use broadstrokes in sketching these projects for future thinking.

In the attempt to provide a systematic treatment of the literature, a taxonomy was used to characterize the various approaches to promise. Taxonomies are useful in

organizing large, unwieldy subject areas and the literature on promise qualifies as one of these subject matters. While this taxonomy may not organize all existing approaches to promise, it does capture a great deal of the literature, and it does so without referring to theories of ethics or language. It is a taxonomy of theories of promise.

Second, this study provides a systematic treatment and evaluation of the central contemporary approaches. To my knowledge this has only been done by P. S. Atiyah in his *Promises, Morals, and Law*. Atiyah's taxonomy is somewhat different than the one provided here, and it also evaluates alternative approaches within their larger theoretical frameworks. He evaluates rule and act utilitarian theories, deontic theories, and speech-act theories. His insights are valuable, but they have more to do with the theories of ethics and language than with theories of promise. This study evaluates theories of promise and, in addition, includes an evaluation of Atiyah and Robins, two of the most recent contributions to the literature.

Implicit in my criticisms of these approaches is the claim that philosophers who use promise as a central case in their various theoretical pursuits, but who fail to accurately describe promise in these pursuits, may likewise fail in their larger pursuits. In their approaches to promise Searle and Rawls underdescribe promise and ignore or fail to account for the data. If their theories fail to capture promise it is *prima facie* plausible that their larger theories fail as well. The same may be said of other philosophers discussed in Chapter Three. It is no small point if the central case of a philosophical theory is inaccurately described. The results of Chapters Two and Three encourage re-evaluation of the use and accuracy of promise as a central case in philosophical theorizing.

Regardless of the outcome, this study is highly critical of the methodologies used

in contemporary approaches to promise. Their range is narrow, the analysis is linguistic or conceptual, and they focus on individuals, either as speakers of a language or as foci of actions and duties. These methodologies are ill-suited for the treatment of promise. A theoretical accounting of promise requires a wide range, an analysis of what people do and not only what they say or think, and a focus on social, interconnected individuals; i.e., members of families, communities, and cultures. There is a price to pay for these shifts, but they are necessary if we are concerned with providing an accurate and powerful theory of promise.

Such shifts in methodologies requires a broadening of the tools of philosophy. Recognizing the limits of narrow theoretical explanations, and of linguistic and conceptual analysis, promise theorists should be inspired by this study to explore the confines of other disciplines and to borrow concepts and data not available to philosophers working alone. If, as philosophers, we are to take our theories of institutions and practices seriously--and if they are to be taken seriously by other disciplines--we must not be shy about our forays into these disciplines. I interpret the recent turn to applied philosophy in the widest possible way to mean that we apply the tools of philosophy to the world around us, and that philosophical theories be applicable to the data they purport to explain. The Practice Approach requires us to look at a larger picture than do other theories of promise. We should not deny ourselves the views other disciplines provide.

Finally, interest in elucidating a theory of practice has been growing among philosophers. The practice concept has long been a part of the literature, though its exact meaning has never been very clear. The concept is often used, but it is not well distinguished from the concepts "institution" or "game." No philosopher, with the

exception of MacIntyre, has attempted to give it a full theoretical treatment. I have attempted only an outline here, but it is important that work in practice theory continue. There are many philosophical topics of interest to which a theory of practice could be put to use.

Many details have been left out regarding the theory of practice. There were numerous reasons for this. A theory of practice, by its very nature, remains silent on some details and must wait for other details to be played out. A theory of practice, for example, recognizes that promising is a localized affair and therefore cannot speak definitively or generally about how promises are made or about what conditions will be accepted as defeating a promise. Secondly, the form of life concept is richly textured. Probing this richness is just beginning, and there is no reason to think that the various disciplines whose work is relevant to understanding a form of life will have a complete picture any time soon. In this respect we must remain largely silent because there is so little to say. Finally, what little there is to say is spread across a great many disciplines and is difficult to retrieve.

Using the empirical data that are available I shall fill out the theory of practice. It is not uncommon for philosophers to turn to various empirical disciplines for help in illuminating their theories. Philosophers of the Scottish Enlightenment made frequent use of their own observations of human nature in developing their theories. Contemporary thinkers have again taken up interest in the empirical sciences. Abe Edel, Annette Baier, John Finnis, Peter Winch, Leonard Doob, Iris Murdoch, Michael Robins, Carol Gilligan, Michael Ruse, Richard Alexander, Alasdair MacIntyre, among others, have focused on the interrelationships between philosophical theory and the empirical sciences; or have urged that philosophical theories take seriously the data of

these sciences; or have used these data to construct and validate specific theories.

It is within this contemporary tradition that I see the first project. Claiming that promising is a historical concept, I shall look for historical treatments of promising like those found in Atiyah's work, or MacIntyre's discussion of the concept *ought*. Arguing that the practice of promising varies among cultures, I shall look for validation in the anthropological and sociological literature. Because promising depends for its success on the ability to form intentions and expectations, I shall examine the philosophical and psychological data regarding these internal states. I argued that the practice of promising is learned primarily in childhood by imitation and imagination. Research in child development will help to confirm or deny this claim. Finally, it would be difficult to continue discussing forms of life without referring to the natural science of biology.

I have said very little about promising as a moral practice, or about what moral theory is best able to handle a Practice Approach to promise. I argued at the outset that a successful, alternative theory of promise could be provided only by seeing promise as a distinct practice and as separate from moral, linguistic, or legal theories which use promising as a central case. I concluded that the best way to proceed was to separate promise from its use in other types of theorizing and to generate a theory whose sole function was to explain it. The second project will be taken up with a search for a moral theory that is compatible with a theory of practice. My hunch is that a virtue ethics is most compatible with a Practice Approach to promise.¹

The literature of virtue ethics is presently in a period of great growth, but the authors I have in mind are, among others, Aristotle, Thomas Aquinas, David Hume, G. E. M. Anscombe, Phillipa Foot, Alasdair MacIntyre, James Wallace, Iris Murdoch,

Bernard Williams, Annette Baier, Peter Geach, and Edmund Pincoffs. Virtue theorists recognize the complexity of the moral life and accept that their theories will be imprecise. Aristotle said it best: "It is the mark of an educated man to look for precision in each class of things just so far as the nature of the subject admits" (NE, 1094b24-25). Theories of virtue also take seriously the form of life in which the virtues take place. Aristotle's ethical treatises depend on his essentialist biology. Hume sees the artificial virtues as resulting from specific aspects of the human condition. MacIntyre speaks of internal goods specific to humans that the virtues help to achieve. Wallace looks to biology in his discussion of the virtues.

Virtue theorists are open to the social and biological sciences. Aristotle and Hume relied on their observations of the natural world; and MacIntyre, Wallace, Murdoch, and Baier, encourage the use of the human sciences and welcome their results.

Virtue theories are also contextual and relational. They recognize human beings as living in groups, and as engaged in activities that cause specific problems at specific times among specific persons. The moral life is what goes on between persons who share beliefs, goals, and aspirations, but who sometimes differ on how precisely to achieve them. The moral life is one of cooperation and conflict, not between separate individuals, but between persons within relationships, within groups, and within communities. Each social being has a history, a narrative.

MacIntyre's views of the social narrative parallel closely the outlines of a theory of practice. MacIntyre also recognizes that communities are made of people who take on roles in various institutions and practices. It is within these roles and practices that the practice of the virtues takes place, and where historical variations, clashes of

conceptions of internal good, and resolutions of particular conflicts are played out.

But it is also within these practices that internal goods are realized, and these goods lead to happiness.

Aristotle's account of practical reasoning addresses how moral choices are made and uncertainties resolved. Aristotle recognizes the need to consult other members of the community. It is not always enough to consult our intuitions, individual preferences, or even an idealized or hypothetical person. Aristotle wants us to consult flesh and blood members of the community who have experienced and resolved moral conflicts of their own.

Aristotle, Baier, MacIntyre and Murdoch provide accounts of how the virtues are taught. They speak of education, imitation, and story-telling; of children learning from adults; of role-models; and of common people learning to be good decent folk without having to know any rules or abstract philosophy.

On an ethics of virtue promising is seen as a practice which is necessary for the achievement of happiness in our form of life, and which allows us to cultivate certain virtues that help us to achieve this happiness. To use MacIntyre's terminology, promising is a practice which helps us to attain certain internal goods.² While the keeping of promises is not in itself a virtue, much of what goes into keeping a promise can be characterized as virtues. The intellectual virtue of practical reasoning is developed in this practice, as is the virtue of good communication skills (assuming this to be an intellectual virtue). Traditional moral virtues used in this practice include: justice, integrity, conscientiousness, truthfulness, friendliness, gentleness, righteous indignation, benevolence, forgiveness, and perhaps even courage. Some of these virtues will be more prevalent in promising than others, but the practice clearly is

important in developing them.

If we fail to acquire at least some of these virtues we will have trouble succeeding in the practice. If we fail in this practice--or fail more times than we succeed--then we will be unable to achieve certain goods which are necessary for a good life as a human being. On the other hand, our success in this practice reflects our success in acquiring the virtues, and bodes well for our success in life among fellow practitioners. The practice of promise, and the virtues it develops, is essential to the good of social human beings living in communities.

At the conclusion of these projects comes a merging of practice theory and moral theory. In our everyday practices there is no division or separation between the two. They are separable in thought though not in practice. But such an initial separation in our theoretical pursuits, as Aristotle shows, leads simultaneously to greater clarity and to greater complexity in our understanding of the human condition. We have seen the complexity emerge from this study. The clarity will perhaps have to wait upon the successful completion of these future projects.

ENDNOTES

1. John McDermott has shown how the works of James, Dewey, and other pragmatists can be viewed together as constituting a pragmatic moral theory. Based on McDermott's remarks, a pragmatic moral theory may indeed be compatible with a practice account of promising. See McDermott's "Pragmatic Sensibility: The Morality of Experience" (In *New Directions in Ethics: The Challenge of Applied Ethics*, Eds. Joseph P. DeMarco and Richard M. Fox, New York: Routledge and Kegan Paul, 1986).
2. As cited in Chapter Five (footnote 5) MacIntyre does not believe that promise is a practice on his use of the term.

BIBLIOGRAPHY

- Alexander, Richard D. *The Biology of Moral Systems*. New York: Aldine de Gruyter, 1987.
- Anscombe, G.E.M. "Authority in Morals." In *Ethics, Religion and Politics*, 43-50. Minneapolis: University of Minnesota Press, 1981.
- , "Intention." *Proceedings of the Aristotelian Society* 57(1956-57):321-32.
- , "Modern Moral Philosophy" (1958). In *The Definition of Morality*, ed. by G. Wallace and A.D.M. Walker, 211-234. London: Methuen and Co., 1970.
- , "On Promising and its Justice, and Whether it Need be Respected in *Foro Interno*." In *Ethics, Religion and Politics*, 10-21. Minneapolis: University of Minnesota Press, 1981.
- , "Rules, Rights, and Promises." In *Midwest Studies in Philosophy*, 318-323. Minneapolis: University of Minnesota Press, 1980.
- Ardal, Pall S. "Promises and Reliance." *Dialogue* 15(1976):54-61.
- Atiyah, P.S. "Promises and the Law of Contract." *Mind* 87(July 1979):410-418.
- , *Promises, Morals, and Law*. Oxford: Clarendon Press, 1981.
- , *The Rise and Fall of Freedom of Contract*. Oxford: Clarendon Press, 1979.
- Austin, J.L. "A Plea for Excuses." *Proceedings of the Aristotelian Society* 57(1956-1957):1-30.
- , *How to Do Things with Words* (1962). Cambridge: Harvard University Press, 1975.
- , "Other Minds." *Proceedings of the Aristotelian Society*, Supplementary Volume 20(1946).
- Baier, Annette. "Civilizing Practices." In *Postures of the Mind*, 246-262. Minneapolis: University of Minnesota Press, 1985.
- , "Doing without Moral Theory?" In *Postures of the Mind*, 228-245. Minneapolis: University of Minnesota Press, 1985.

----- "Promises, Promises, Promises." In *Postures of the Mind*, 174-206.
Minneapolis: University of Minnesota Press, 1985.

----- "Theory and Reflective Practices." In *Postures of the Mind*,
207-227. Minneapolis: University of Minnesota Press, 1985.

Barker, Donald R. "Hypothetical Promising and John R. Searle." *The
Southwestern Journal of Philosophy* 3(1972):21-34.

Berlin, Isaiah. "Equality." *Proceedings of the Aristotelian Society*
56(1955-1956):301-326.

Black, Max. "Austin on Performatives." *Philosophy* 38(1963):217-226.

Boer, Steven E. "Speech Acts and Constitutive Rules." *The Journal of
Philosophy* 71(1974):169-174.

Bourdieu, Pierre. *Outline of a Theory of Practice*, trans. by Richard Nice.
Cambridge: Cambridge University Press, 1977.

Brandt, Richard B. *A Theory of the Good and the Right*. Oxford: Clarendon
Press, 1979.

Cameron, J.R. "'Ought' and Institutional Obligation." *Philosophy*
45(1971):309-323.

----- "Sentence-Meaning and Speech Acts." *The Philosophical Quarterly*
20(April 1970):97-117.

----- "The Nature of Institutional Obligation." *Philosophical Quarterly*
(1972):318-332.

Cartwright, J.P.W. "An Evidentiary Theory of Promises." *Mind*
(1984):230-248.

Cavell, Stanley. *The Claim of Reason*. Oxford: Oxford University Press,
1979.

Cherry, Christopher. "Regulative Rules and Constitutive Rules." *Philosophical
Quarterly* (1973):301-315.

----- "Two Views of Moral Practices." *Analysis* 33(March 1973):118-123.

Clark, Stephen R.L. "Abstract Morality, Concrete Cases." In *Moral Philosophy
and Contemporary Problems*, ed. by J.D.G. Evans, 35-53. Cambridge:
Cambridge University Press, 1987.

Copper, Neil. "Two Concepts of Morality." *Philosophy* 41(1966):19-33.

- Diggs, B.J. "Rules and Utilitarianism." In *Readings in Contemporary Ethical Theory*, ed. by Kenneth Pabel and Marvin Schiller, 260-282.
- Downie, R.S. "Three Accounts of Promising." *The Philosophical Quarterly* 35(July 1985):259-271.
- Duncan-Jones, Austin. "Performance and Promise." *The Philosophical Quarterly* 14(April 1964):97-117.
- Dyche, Roy. "Is Promise-Keeping a Moral Matter?" *Philosophical Studies* 24(1973):128-132.
- Edel, May, and Edel, Abraham. *Anthropology and Ethics*. Springfield, Illinois, 1959.
- , "Ethical Theory and Moral Practice: On the Terms of Their Relation." In *New Directions in Ethics*, ed. by Joseph P. DeMarco and Richard M. Fox, 317-335. London: Routledge and Kegan Paul, 1986.
- Emmet, Dorothy. *Rules, Roles and Relations*. New York: St. Martin's Press, 1966.
- Farnsworth, Allan E. "The Past of Promise: An Historical Introduction to Contract." *Columbia Law Review* 69(1969):576-607.
- Finnis, John. *Natural Law and Natural Rights*. Oxford: Clarendon Press, 1980.
- Flew, Antony. "On Not Deriving 'Ought' From 'Is'." *Analysis* 25(1964-1965):25-26.
- Foot, Philippa. "Moral Beliefs" (1958). In *Virtues and Vices and Other Essays in Moral Philosophy*, 110-131. Berkeley: University of California Press, 1978.
- , "Morality as a System of Hypothetical Imperatives" (1972). In *Virtues and Vices and Other Essays in Moral Philosophy*, 157-173. Berkeley: University of California Press, 1978.
- , "Virtues and Vices." In *Virtues and Vices and Other Essays in Moral Philosophy*, 1-18. Berkeley: University of California Press, 1978.
- Fried, Charles. *Contract as Promise*. Cambridge: Harvard University Press, 1981.
- Goffman, Erving. *Relations in Public: Microstudies in the Public Order*. New York: Basic Books, 1971.

Grant, C.K. "Promises." *Mind* 58(July 1949):359-366.

Grice, Geoffrey R. *The Grounds of Judgement*. Cambridge: Cambridge University Press, 1967.

Hamowy, Ronald. *The Scottish Enlightenment and the Theory of Spontaneous Order*. Carbondale, IL: Southern Illinois University Press (for The Journal of the History of Philosophy), 1987.

Hampshire, Stuart. "Morality and Convention." In *Utilitarianism and Beyond*, ed. by Amartya Sen and Bernard Williams, 145-157. Cambridge: Cambridge University Press, 1982.

Hanfling, Oswald. "Promises, Games and Institutions." *Proceedings of the Aristotelian Society* 75(1974-75):13-31.

Hare, R.M. "Meaning and Speech Acts." *Philosophical Review* 79(1970):3-24.

-----, "The Promising Game." In *Theories of Ethics*, ed. Philippa Foot, 115-127. Oxford: Oxford University Press, 1979.

Hart, H. L. A. "Are There Any Natural Rights?" *Philosophical Review* 64(1955):175-191.

-----, "Definition and Theory in Jurisprudence." *The Law Quarterly Review* 70(1952):37-60.

-----, "Legal and Moral Obligation." In *Essays in Moral Philosophy*, ed. A. I. Melden, 82-107. Seattle: University of Washington Press, 1958.

-----, *The Concept of Law*. Oxford: Clarendon Press, 1961.

Hayek, F.A. "Notes on the Evolution of Systems of Rules of Conduct." In *Studies in Philosophy, Politics and Economics*, 66-81. Chicago: University of Chicago Press, 1967.

-----, "Rules, Perception and Intelligibility." In *Studies in Philosophy, Politics and Economics*, 43-65. Chicago: University of Chicago Press, 1967.

-----, "The Legal and Political Philosophy of David Hume." In *Studies in Philosophy, Politics and Economics*, 106-121. Chicago: University of Chicago Press, 1967.

-----, "The Results of Human Action but not of Human Design." In *Studies in Philosophy, Politics and Economics*, 96-105. Chicago: University of Chicago Press, 1967.

- Hepburn, R.W. "Vision and Choice in Morality." In *Christian Ethics and Contemporary Philosophy*, ed. by Ian T. Ramsey, 181-218. New York: Macmillan, 1966.
- Hobbes Thomas. *De Cive* (1642). ed. Sterling P. Lamprecht. New York: Appelton-Centuty-Crofts, 1949.
- Hobbes, Thomas. *Leviathan* (1651). New York: Collier Books, 1962.
- Hodgson, D.H. *Consequences of Utilitarianism*. Oxford: Clarendon Press, 1967.
- Holborow, L.C. "Promising, Prescribing and Playing-Along." *Philosophy* 44(April 1969):149-152.
- Hume, David. *A Treatise of Human Nature* (1739). Oxford: Clarendon Press, 1983.
- Jack, Henry. "On the Analysis of Promises." *The Journal of Philosophy* 55(July 1958):597-604.
- Jones, David H. "Making and Keeping Promises." *Ethics* 76(July 1966):287-296.
- Kading, Daniel. "How Promising Obligates." *Philosophical Studies* 22(June 1971):57-60.
- Kolenda, Konstantin. "Searle's 'Institutional Facts'." *The Personalist* 53(Spring 1972):188-192.
- Korn, Fred and Shulamit R. Decktor Korn. "Where People Don't Promise." *Ethics* 93(April 1983):445-450.
- Kovesi, Julius. *Moral Notions*. London: Routledge and Kegan Paul, 1967.
- Landesman, Charles. "Promises and Practices." *Mind* 75(1966):239-243.
- Lewis, David K. *Convention: A Philosophical Study*. Cambridge: Harvard University Press, 1969.
- Locke, Don. "The Object of Morality, and the Obligation to Keep a Promise." *Canadian Journal of Philosophy* 2(September 1972):135-143.
- Lyons, David. *Forms and Limits of Utilitarianism*. Oxford: Oxford University Press, 1965.
- Mabbott, J.D. "Moral Rules." In *Readings in Contemporary Ethical Theory*, ed. by Kenneth Pahl and Marvin Schiller, 206-224. Englewood Cliffs, NJ:

Prentice-Hall, 1970.

MacCormick, Neil and Joseph Raz. "Voluntary Obligations and Normative Powers." *Proceedings of the Aristotelian Society* 46(1972):59-102.

MacIntyre, Alasdair. *After Virtue*. Notre Dame: University of Notre Dame Press, 1981.

-----, "'Ought'." In *Against the Self-Images of the Age*, 136-156. London: Duckworth, 1983.

-----, "Some More About 'Ought'." In *Against the Self-Images of the Age*, 157-172. London: Duckworth, 1983.

-----, *Whose Justice? Which Rationality?* Notre Dame: University of Notre Dame Press, 1988.

Mackie, J.L. "The Disutility of Act-Utilitarianism." *The Philosophical Quarterly* 23(October 1973):289-300.

Mayo, Bernard. "The Moral Agent." In *The Human Agent* (Royal Institute of Philosophy Lectures, 1(1966-1967):47-63)). New York: St. Martin's Press, 1968.

McClellan, J.E. and B.P. Komisar. "On Deriving 'Ought' from 'Is'." In *The Is-Ought Question*, ed. by W.D. Hudson, 157-162. New York: Macmillan, 1969.

McDermott, John J. "Pragmatic Sensibility: The Morality of Experience." In *New Directions in Ethics*, ed. by Joseph P. DeMarco and Richard M. Fox, 113-134. London: Routledge and Kegan Paul, 1986.

McNeilly, F.S. "Promises De-Moralized." *Philosophical Review* 81(1972):63-81.

Melden, A.I. "On Promising." *Mind* 65(1956):49-66.

-----, *Rights and Right Conduct*. Oxford: Basil Blackwell, 1970.

-----, *Rights of Persons*. Berkeley: University of California Press, 1980.

Midgley, Mary. "The Game Game." *Philosophy* 49(July 1974):231-253.

Montague, Roger. "'Ought' From 'Is'." *Australasian Journal of Philosophy* 43(August 1965):144-167.

-----, "'Is' to 'Ought'." *Analysis* 26(1965-1966):104-110.

Mounce, H.O. "Mr. Cherry on Moral Practices." *Analysis* 34(1973-1974):29-30.

Narveson, Jan. *Morality and Utility*. Baltimore: Johns Hopkins Press, 1967.

-----, "Promising, Expecting, and Utility." *Canadian Journal of Philosophy* 1(December 1971):207-233.

O'Neill, Onora. "Abstraction, Idealization and Ideology in Ethics." In *Moral Philosophy and Contemporary Problems*, ed. by J.D.G. Evans. Cambridge: Cambridge University Press, 1987.

Perry, Thomas D. "A Refutation of Searle's Amended 'Is-Ought' Argument." *Analysis* 34(1973-1974):133-139.

Phillips, D.Z. and H.O. Mounce. *Moral Practices*. London: Routledge and Kegan Paul, 1969.

Phillips, D.Z. and H.O. Mounce. "On Morality's Having a Point." In *The Is-Ought Question*, ed. by W.D. Hudson, 228-239. New York: Macmillan, 1969.

Pincoffs, Edmund L. *Quandaries and Virtues: Against Reductivism in Ethics*. Lawrence, KS: University of Kansas Press, 1986.

Prichard, H.A. "Does Moral Philosophy Rest on a Mistake?" (1912). In *Moral Obligation and Duty and Interest*, 1-17. London: Oxford University Press, 1949.

-----, "The Obligation to Keep a Promise" (1940). In *Moral Obligation and Duty and Interest*, 169-179. London: Oxford University Press, 1949.

Prior, Arthur N. *Logic and the Basis of Ethics*. Oxford: Clarendon Press, 1949.

Ralls, Anthony. "The Game of Life." *Philosophy* 44(April 1969):22-34.

Ransdell, Joseph. "Constitutive Rules and Speech-Act Analysis." *The Journal of Philosophy* 68(July 1971):385-400.

Rawls, John. "Justice as Fairness." *Philosophical Review* 67 (1958): 164-194.

-----, *A Theory of Justice*. Cambridge: Harvard University Press, 1971.

-----, "Two Concepts of Rules" (1955). In *Theories of Ethics*, ed. Philippa Foot, 144-170. Oxford: Oxford University Press, 1979.

Raz, J. "Promises and Obligations." In *Law, Morality and Society: Essays in Honor of H.L.A. Hart*, ed. by P.M.S Hacker and J. Raz, 210-228. Oxford, 1977.

Robins, Michael H. *Promising, Intending, and Moral Autonomy*. Cambridge: Cambridge University Press, 1984.

-----, "Promissory Obligations and Rawls's Contractarianism." *Analysis* 36(1975-1976):190-198.

-----, "The Primacy of Promising." *Mind* 85(July 1976):321-340.

Ross, W.D. *The Right and the Good*. Oxford: Clarendon Press, 1930.

Ruben, David-Hillel. "Searle on Institutional Obligation." *The Monist* 56(1972):600-611.

-----, "Tacit Promising." *Ethics* 83(October 1972):71-79.

Rudinow, Joel. "Quitting the Promising Game." *Philosophical Quarterly* 22(October 1972):355-356.

Sartorius, Rolf E. *Individual Conduct and Social Norms*. Encino, CA: Dickenson Publishing, 1975.

Schelling, Thomas C. *The Strategy of Conflict*. Cambridge: Harvard University Press, 1963.

Schwyzler, Hubert. "Rules and Practices." *The Philosophical Review* (October 1969):451-467.

Searle, John R. "How to Derive 'Ought' from 'Is'" (1964) In *Theories of Ethics*, ed. by Philippa Foot, 101-114. Oxford: Oxford University Press, 1979.

-----, "Reply to 'The Promising Game'." In *Readings in Contemporary Ethical Theory*, ed. by Kenneth Pahl and Marvin Schiller, 180-182. Englewood Cliffs, NJ: Prentice-Hall, 1970.

-----, *Speech Acts*. London: Cambridge University Press, 1969.

Shwayder, D.S. "Moral Rules and Moral Maxims." *Ethics* 67(1956-1957):269-285.

-----, *The Stratification of Behavior*. London: Routledge and Kegan Paul, 1965.

Sidgwick, Henry. *The Methods of Ethics* (1874). Indianapolis: Hackett Publishing, 1981.

- Sikora, R.I. "Facts, Promising and Obligation." *Philosophy* 50(1975):352-355.
- Singer, Marcus G. "Moral Rules and Principles." In *Essays in Moral Philosophy*, ed. by A.I. Melden, 160-195. Seattle: University of Washington Press, 1958.
- Singer, Peter. "Is Act-Utilitarianism Self-Defeating?" *Philosophical Review* 81(1972):94-104.
- Smart, J.J.C. "Extreme and Restricted Utilitarianism." In *Readings in Contemporary Ethical Theory*, ed. by Kenneth Pahel and Marvin Schiller, 249-260. Englewood Cliffs, NJ: Prentice-Hall, 1970.
- Smith, Adam. *The Theory of Moral Sentiments*, ed. by D.D. Raphael and A.L. Macfie. Oxford: Clarendon Press, 1979.
- Smith, Holly M. "Robins on Promising." *Nous* 21(December 1987):604-608.
- Stocker, Michael. "Moral Duties, Institutions, Natural Facts." *The Monist* (October 1970):602-624.
- Strawson, P.F. "Social Morality and Individual Ideal." In *The Definition of Morality*, ed. by G. Wallace and A.D.M. Walker, 98-118. London: Methuen and Co., 1970.
- Thomson, James and Judith Thomson. "How Not to Derive 'Ought' From 'Is'." *Philosophical Review* 73(1964):512-516.
- Tolhurst, William E. "On Hare's 'Promising Game'." *Philosophical Studies* 30(1976):277-279.
- Tuck, Richard. *Natural Rights Theories: Their Origin and Development*. Cambridge: Cambridge University Press, 1979.
- von Wright, Georg H. "On Promises." *Theoria* 28(1962):277-297.
- Wallace, James D. *Moral Relevance and Moral Conflict*. Ithaca, NY: Cornell University Press, 1988.
- . *Virtues and Vices*. Ithaca, NY: Cornell University Press, 1978.
- Warnock, G.J. *The Object of Morality*. London: Methuen and Co., 1971.
- Whiteley, C.H. "Rules of Language." *Analysis* 34(1973-1974):33-39.
- Wilson, Peter J. *Man, The Promising Primate: The Conditions of Human Evolution*. New Haven: Yale University Press, 1983.

Winch, Peter. "Nature and Convention." *Proceedings of the Aristotelian Society* 75(1974-1975):231-252.

-----, *The Idea of a Social Science*. London: Routledge and Kegan Paul, 1967.

Yeghiayan, Eddie. "Promises, A Bibliography." *Philosophical Research Archives* 7 (1981): 1055-1092.

Zemach, Eddy M. "Ought, Is, and a Game Called 'Promise'." *Philosophical Quarterly* 21(January 1971):61-63.

-----, "The Right to Quit." *Philosophical Quarterly* 23(October 1973):346-349.

Zwiebach, Burton. *The Common Life*. Philadelphia: Temple University Press, 1988.