

# Promises, Practices, and Reciprocity

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Recently, conventionalism about promise-keeping has been charged with making promising too impersonal. By “conventionalism about promise-keeping,” I mean the view that the moral demands involved in promising are dependent on the existence of a social practice of promise-keeping.<sup>1</sup> If the wrong of breaking promises is practice-dependent, then this wrong can only be explained as the impersonal wrong of violating the rules of a practice. Yet, when a promisee breaks a promise, the promisor wrongs the promisee in a much more personal way than this. Even if conventionalism can explain why breaking a promise *is wrong*, it does not explain the way in which a promisor *wrongs* a promisee.

This problem for conventionalism has been raised by two kinds of criticism. First, Margaret Gilbert has argued that conventionalism cannot adequately explain the *standing* that a promisee has to demand that a promise be kept.<sup>2</sup> Likewise, Stephen Darwall has argued that conventionalists do not explain the second-personal authority of the promisee over the promise.<sup>3</sup> To capture both criticisms, I will say that conventionalism about promising does not explain the *claim* that a promisee has on the promisor. The violation of such a claim is often what makes a broken promise such a striking moral wrong. Second, Seana Shiffrin has argued that conventionalism fails to recognize the central importance that promising has in our

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<sup>1</sup> While a tradition that comes through David Lewis uses the term “convention” only in instances when a pattern of behavior is explained by coordination between rational parties, I do not mean to use the phrase in this exclusive sense. See David Lewis, *Convention* (Harvard University Press; Cambridge, MA. 1969); Cristina Bicchieri, *The Grammar of Society* (Cambridge University Press; Cambridge, UK. 2006); Brian Skyrms, *Signals: Evolution, Learning, and Information* (Oxford University Press; Oxford, UK. 2010). Instead, I refer to a broader range of social practices when I use “convention” in “conventionalism.”

<sup>2</sup> Gilbert, Margaret. "Scanlon on Promissory Obligation: The Problem of Promisees' Rights." *The Journal of philosophy* (2004): 83-109; “Three Dogmas about Promising” *Promises and Agreements* (2011) 80-107, esp. 83.

<sup>3</sup> Darwall, Stephen. "Demystifying promises." *Promises and Agreements* (2011): 255-276.

relationships.<sup>4</sup> The conventionalist tradition takes the paradigm case of promise-keeping to be a promise between strangers. Yet, promises are both more frequent in intimate relationships and necessary for building these relationships. Accordingly, we misrepresent promising as a moral phenomenon when we fail to recognize how personal promising really is.

In this article, I will defend conventionalism about promising from these criticisms. While there is a utilitarian tradition that supports conventionalism, that is not the tradition within which I situate my view. According to the utilitarian theory, our reasons to follow the rules of a practice are explained by the purported fact that the practice promotes happiness. Alternatively, I argue that our reasons to follow the rules of a practice are explained by our participation in a scheme of cooperation. We cooperate with others in following the rules of a practice and thereby better achieve our moral and non-moral ends. Practice-dependent obligations and practice-dependent rights are explained by what we owe to fellow cooperators rather than by the efficacy of our action in promoting moral ends.

This account, which I call *cooperative conventionalism*, should draw our attention to the reciprocal relationships we stand in as cooperators in a practice. Rather than being impersonal moral demands, the obligations and rights associated with cooperative practices are grounded by how we should treat and be treated by those with whom we have this reciprocal relationship. When a promisor breaks a promise, the promisor treats the promisee as if he did not have a valid claim that the promise be kept. The promisor thereby treats the promisee as if he were undeserving of equal treatment--where equal treatment is specified by the rules of the practice. Expressing this attitude can impact the relationship between promisor and promisee, and that impact will be more meaningful when the relationship between them is more meaningful.

In this essay, I want to explain cooperative conventionalism and show the ways in which it can address the criticisms that Gilbert, Darwall and Shiffrin make. The argument will

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<sup>4</sup> Shiffrin, Seana Valentine. "Promising, Intimate Relationships, and Conventionalism." *Philosophical Review* 117.4 (2008): 481-524.

proceed in six sections. In the first, I introduce the dominant Rawlsian understanding of conventionalism. This dominant view understands our reason to follow the rules of a practice as explained by the Principle of Fair Play (PFP). While the specific form of this principle is disputed, the basic idea is that individuals should follow the rules of those practices that they benefit from. The problem with using the PFP to explain promising is that it makes practice-dependent obligations too impersonal. It explains why I do wrong when I break a promise, but it does not explain why I wrong the promisee.

In §2, I offer an alternative interpretation of conventionalism. Rawls originally offered the Principle of Fair Play as a development of H.L.A. Hart's views and my alternative interpretation develops Hart's view in a different way. According to this alternative, we should not immediately appeal to the PFP to ground practice-dependent obligations. Instead, we should look towards the entire reciprocal relationship between those who participate in a cooperative practice. In participating, we occupy two roles. We are both a beneficiary of and contributor to the practice. As beneficiary, we owe a contribution to the practice. As contributor, we also have a claim to the benefits of the practice. While the PFP articulates the obligation associated with our role as a beneficiary, it does not articulate the claims we have as a contributor. To capture this feature of cooperation, I offer the *Principle of Legitimate Expectations* (PLE). According to this principle, we have a claim to the benefits of a practice, and those benefits are specified by the rules of the practice. Together, the PFP and PLE articulate the moral demands implicit in our cooperative practices. The dominant Rawlsian view goes wrong in focusing only on our role as beneficiary in a practice and not as contributor.

At the end of §2, I use my alternative interpretation of conventionalism to ground the promisee's claim on the promisor, thereby addressing a concern that motivates Gilbert and Darwall. This explanation of promisee claims, however, faces three important objections. In §3,

I respond to the objection that my alternative interpretation does not explain how the promisee has a *unique* claim on the promisor. In §4, I respond to a traditional objection to the Principle of Fair Play that might be extended against the Principle of Legitimate Expectations. In §5, I respond to Shiffrin's criticism that conventionalism does not adequately recognize how central promise-keeping is to our intimate relationships. Finally, in §6, I make a final contrast between the cooperative conventionalism that I develop here and more consequentialist versions of conventionalism. Instead of grounding conventionalism in the moral efficacy of a practice, our practice-dependent rights and obligations are grounded by reciprocity between cooperators.

### 1. The Dominant View

There are two typically recognized versions of conventionalism. One is associated with the utilitarian tradition, and the other is associated with a Rawlsian tradition. While the two traditions are quite distinct, there is one important similarity between them. Both recognize a social practice as consisting of a system of social rules, and use a practice-independent moral principle to explain why a person would be obligated to follow those rules.<sup>5</sup> This approach distinguishes both traditions from a kind of relativism that identifies moral demands as fully internal to our practices. The utilitarian tradition appeals to a universally valid utilitarian

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<sup>5</sup> This kind of account requires that we have some understanding of a social practice before we determine whether or not we should follow the rules of that practice. This raises a challenge because rules have a prescriptive form (i.e. that "X should be done"). Yet, how can we understand this prescriptive form if our understanding of the rules is prior to any moral judgements that the rules should be followed? I suggest that we should understand social rules as "ostensibly binding." We have a capacity to represent rules without committing ourselves to the judgement that the rules should be followed. For example, someone could explain the practice of line-waiting as including the rule "one should wait in the line after the person who started waiting before you." Understanding line-waiting in this way does not require that they judge that persons really should wait in line. They might instead think line-waiting is a problematic form of herd-mentality. This understanding of social rules allows for a response to Margaret Gilbert's view that the conventionalist cannot make sense of a practice of promise-keeping without positing a "prior promise" because the prescriptive form of the rules is merely ostensive and need not be grounded by a prior commitment (see Gilbert, "Scanlon on Promissory Obligation," 86).

principle to ground practice-dependent obligations whereas the Rawlsian tradition appeals to the Principle of Fair Play (PFP). Both the utilitarian principle and the PFP are understood as valid moral principles independent of any social practice. The relativist, by contrast, recognizes no moral principle that is independent of our social practices.

Although different theorists articulate the PFP in different ways, the basic idea behind the principle is consistent. In receiving benefits from a cooperative practice, I owe a contribution to support that practice. According to Rawls's version, one is only obligated to contribute when one has "accepted" the benefits of the practice. While it is not immediately clear what is involved in "accepting" the benefits, this condition is strict enough to block the PFP from grounding our obligation to obey the law. Since we do not have an opportunity to accept the benefits of a legal system, the PFP does not ground an obligation to follow the law.<sup>6</sup> Nonetheless, Rawls believes this principle can ground our obligation to keep promises. According to Rawls, a promisor accepts the benefits of promise-keeping by making a promise.<sup>7</sup> Thus, the promisor owes a contributions to that practice and the contribution owed is specified by the rules of the practice. Since the rules require a promisor to keep her promise, the PFP requires the promisor to keep her promise.

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<sup>6</sup> Alternative formulations of the PFP have been offered in order to ground legal obligation in the way. For George Klosko, the PFP obligates us regardless of any acceptance but only when the benefits derived from the practice are one that necessary for a satisfactory life (See Klosko, George. *The Principle of Fairness and Political Obligation*. Rowman & Littlefield, 2004). Richard Arneson argues that the PFP only applies is a small number of cases when persons could not pay the costs of a cooperative practice is any way other than through moral obligation (Arneson, Richard J. "The principle of fairness and free-rider problems." *Ethics* (1982): 616-633.)

<sup>7</sup> John Rawls, *Theory of Justice* [Revised Edition], (Harvard University Press, 1999) 304.

Since Rawls originally articulated this view, there have been a number of objections and responses.<sup>8</sup> In this paper, I am concerned with one objection that seems particularly problematic. This objection is most familiar from arguments by Gilbert and Darwall against T.M. Scanlon, but it is also raised against the conventionalist view.<sup>9</sup> Scanlon's account explains promissory obligation as an instance of a broader obligation to do that which we have assured others we would do. He argues that persons could not reasonably reject a principle, Principle F, that requires us to do that which we assured others we would do.<sup>10</sup> Under his view, a promise is a conventional mechanism by which to efficiently assure others, but its conventionalist aspects do not explain the moral force behind a promise. Yet, Gilbert and Darwall argue that Scanlon's view is inadequate to explain promise-keeping as we know it. For Gilbert, the account does not adequately explain the promisee's standing to demand that a promisor keep a promise. For Darwall, Scanlon's account does not adequately explain the second-personal authority of the promisee, which involves the promisor recognizing the promisee as the valid source of a claim. Both these criticisms draw our attention to the promisee's *claim* on the promisor, and they show that Scanlon's account does not explain this claim. His account only explains the wrong of breaking a promise as the wrong of violating a Principle of Fidelity. Accordingly, Scanlon only explains promissory obligations and fails to explain promisee claims.

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<sup>8</sup> Most famously, Scanlon argues that there seems to be a practice-independent obligation similar enough to promissory obligation that we need not appeal to social-practice based account ("Promises and Practices" *Philosophy and Public Affairs*, Vol. 9, No. 3; 199-226). I do not believe this argument ultimately succeeds against the conventionalist view, but my concern in this paper is not to say why.

<sup>9</sup> Other authors that mention the problem include, Tognazzini, "The Hybrid Nature of Promissory Obligation," *Philosophy & Public Affairs* 35.3 (2007), 203-204; Hooker, Brad. "Promises and Rule Consequentialism" *Promises and Agreements: Philosophical Essays*. ed. Hanoch Sheinman. Oxford University Press; Oxford, UK. (2011), 238-239; Shockley, Kenneth. "On that Peculiar Practice of Promising" *Philosophical Studies* (2008) 140:385-399, 389; Wallace and Kolodny, "Promises and Practices Revisited," *Philosophy & Public Affairs* 31.2 (2003), 125-126.

<sup>10</sup> Scanlon, "Promises and Practices," 208-209.

While Gilbert and Darwall are less concerned with making this criticism, their argument also applies to the Rawlsian view of promise-keeping. Just as Scanlon's Principle F only explains a promisor's obligation, the Principle of Fair Play only explains a promisor's obligation. The PFP explains why one should follow the rules of a practice that one has accepted the benefits of, but this does not explain why the promisee has any claim on the promisor to keep the promise. It only explains why a promisor should keep a promise. While promissory obligation is explained, the whole phenomenon of promise-keeping is not.

To see the distinctiveness of the promisee's claim, compare two instances of promise-keeping. In the first, I promise you that I will bring you to the store tomorrow. In the second, I promise your sister that I will bring you to the store tomorrow. In both cases, I have an obligation to do the same action. Yet, if I do not bring you to the store, then I wrong different people in the two cases. I wrong you in the first case but I wrong your sister in the second. The PFP treats the two cases identically. In both instances, I should bring you to the store in order to avoid free-riding on the practice. Yet, we intuitively recognize a difference between who has a claim on me. On first glance, neither Scanlon or Rawls have the tools needed to explain the claim that you or your sister have on me as promisor.

One might respond on behalf of Rawls or Scanlon and argue that Gilbert and Darwall suffer from a converse problem. While Rawls and Scanlon explain obligations without explaining claims, Gilbert and Darwall explain claims without explaining obligations. However, Gilbert and Darwall can respond by pointing out the promisee claims are specifically claims on the promisor to keep her promise. Accordingly, we can explain promissory obligation as correlative to the promisee's claim. Promissory obligation is then understood as the moral demand to meet the promisee's claim. Unfortunately, the converse response is not available to Scanlon and Rawls because it does not seem obvious that all obligations have correlative

claimants. Without additional explanation, it is not clear how either Rawls or Scanlon can explain the unique normative relationship between the promisor and promisee.

## 2. Cooperative Conventionalism

I recognize that the Rawlsian account--as described above, at least--does not adequately explain promisee claims. Yet, this is not a problem for all versions of conventionalism about promise-keeping. In this section, I want to offer an alternative account that draws from H.L.A. Hart's remarks on practice-dependent rights.<sup>11</sup> This alternative view will explain both practice-dependent obligations and practice-dependent claims as grounded by the relationship between cooperators.

In "Are There any Natural Rights?" H.L.A. Hart argues that "having a right" entails that one has "a moral justification for limiting the freedom of another person and for determining how he should act."<sup>12</sup> He surveys a number of ways in which one might acquire such a right and includes "mutuality of restrictions" as one source of such rights. He explains this idea as:

"A third very important source of special rights and obligations which we recognize in many spheres of life is what may be termed mutuality of restrictions, and I think political obligation is intelligible only if we see what precisely this is and how it differs from the other right-creating transactions (consent, promising) to which philosophers have assimilated it. In its bare schematic outline it is this: *when a number of persons conduct any joint enterprise according to rules and thus restrict their liberty, those who have submitted to these restrictions when required have a right to a similar submission from those who have benefited by their submission.*"<sup>13</sup>

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<sup>11</sup> Ultimately, I believe this account is consistent with--if not actually part of--Rawls's full view, but that is a contentious point. Instead, I want to focus on the virtues of the alternative account.

<sup>12</sup> Hart, H.L.A. "Are There Any Natural Rights?." *The Philosophical Review* (1955), 183.

<sup>13</sup> Hart, "Are There any Natural Rights?" 185.

When Rawls later argues for an account of political obligation, he cites Hart as offering an account similar to his own.<sup>14</sup> In that paper, Rawls first uses the term “Principle of Fair Play.” So, the PFP has been linked to both Rawls and Hart.

It is a mistake, however, to understand Hart’s “mutuality of restriction” as merely the first articulation of the Principle of Fair Play. As is obvious from both this passage and its context, Hart is primarily concerned with showing how persons acquire *rights* while most recognize the Principle of Fair Play merely as a source of *obligations*.<sup>15</sup> Second, Hart identifies the moral demand behind the mutuality of restriction as the *relationship* between cooperators. He concludes the section on mutuality of restriction by writing,

The social-contract theorists rightly fastened on the fact that the obligation to obey the law is not merely a special case of benevolence (direct or indirect), but something which arises between members of a particular political society *out of their mutual relationship*...these are just the points which all special rights have in common, viz., that they arise out of *special relationships* between human beings and not out of the character of the action to be done or its effects.<sup>16</sup>

This passage emphasizes the way in which it is our relationship as cooperators that gives rise to certain rights rather than some independent moral quality of our acts. For Hart, the core idea of mutuality of restrictions is that each cooperator restricts her liberty in accordance with the rules of a practice and thereby acquires a right that others likewise do so.

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<sup>14</sup> In the same year that *Theory of Justice* was published, Rawls published “Justice as Reciprocity,” where he articulates a much more Hartian view the PFP that also grounds rights. See Rawls, John. *Collected Papers* (Harvard University Press, 1999), 209.

<sup>15</sup> When Rawls developed Hart’s principles, he was concerned with a first-personal question, “why should I follow the law?” An answer to this question will appeal a moral principle about obligations because it is about what a persons should do. I do not think we should understand Rawls as intending to specify a principle that only grounded obligations. Instead, we should read him as focused on explaining obligations rather than as trying to explain all the moral demands involved in a practice.

<sup>16</sup> Hart, “Are There any Natural Rights?” 186, my emphasis. Hart himself does not explain promise-keeping in terms of mutuality of restriction in this essay, though he seems to suggests such a view in *Concept of Law*, 44.

The key to a more defensible conventionalism about promise-keeping is to start from the reciprocal relationship between cooperators. In Hart's example, the relationship is between those who cooperate through legal and political practices, but there is nothing about his explanation that limits the relevant relationship to these practices. Any cooperative practice, in virtue of being a cooperative practice, consists of participants who are both beneficiaries and contributors. It is because participants act in ways specified by the practice that participants gain from the practice. Yet, it is not because I, as a participant, follow the rules of the practice that I gain from the practice.<sup>17</sup> Instead, it is because others follow the rules of the practice that I gain. Likewise, it is in part because I follow the rules of the practice that others gain.

For example, we can understand line-waiting as a cooperative practice. The practice consists in persons following certain rules about the order of who gets service when multiple people wait for service. The practice, as a whole, is quite beneficial. It provides a reliable, understandable, and fair mechanism through which persons can get service without conflict.<sup>18</sup> I personally benefit from the practice because I get service without conflicts and I contribute to the practice by waiting in line. I do not gain because I follow the rules of line-waiting. Instead, I gain because others follow the rules.<sup>19</sup> Likewise, others gain because I follow the rules.

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<sup>17</sup> This differentiates cooperative practices from coordinating conventions. In coordinating conventions, each person does better because they act according to the rules. Games of pure coordination differ in this way from prisoner dilemmas and public good games. In a footnote to her article, Seana Shiffrin wonders why promise-keeping but not language, would be moralized if both are conventional (See "Promises, Intimate Relationships, and Conventionalism," 482, n4). In response, I claim that language can be understood as closer to a coordination convention than a cooperative practice in most cases.

<sup>18</sup> Though, various mechanisms have been recently introduced that degrade this fairness. When persons can pay to go to the front of the line at airports and theme parks, the practice's fairness becomes questionable. (See "Want to Save Civilization? Get in Line" *The New York Times*, May 31st, 2013 < [http://www.nytimes.com/2013/06/02/magazine/want-to-save-civilization-get-in-line.html?\\_r=0](http://www.nytimes.com/2013/06/02/magazine/want-to-save-civilization-get-in-line.html?_r=0) >

<sup>19</sup> Of course, if line-waiting were coercively backed, then it might be in my interest to wait in line.

Since participants are both contributors and beneficiaries, there is a kind of reciprocity that holds between cooperators. In a sense, we each exchange our contribution to the practice for the benefits of the practice. The terms of our contribution are determined by the rules of the practice, and the specific benefits we received are also determined by these rules. I contribute by following the rules and benefit by others following the rules. Everyone who participates is similarly situated.

Now, this kind of reasoning might be familiar to those who support the Principle of Fair Play. After all, the PFP is a kind of anti-free riding principle and the wrong of free-riding seems like a violation of the conditions of reciprocity involved in a cooperative practice. Yet, the reciprocity of a cooperative practice is not fully represented by the moral demand behind the PFP. Instead, the PFP only specifies the obligations we incur *as beneficiaries* of the practice. It ignores our role *as contributors*. In our capacity as beneficiary, we incur an obligation to support the practice. In our capacity as contributor, we gain a *claim* to the benefits of the practice. The passive receipt of benefits might incur obligations of gratitude, but that is not the kind of obligation involved in cooperative practices. We are active contributors to the practice, and have claims on its benefits.

To better articulate the claim that cooperators have as contributors, I offer the “Principle of Legitimate Expectations” (PLE). According to this principle, those who contribute to a cooperative practice have a claim to the practice’s benefits. In the same way that PFP articulates the moral demand associated with our role as beneficiary, the PLE articulates the moral demand associated with our role as contributor. Together, the PFP and PLE articulate the moral demands that arise from participation in a social practice. It is because this account articulates the moral demands involved in both our roles as cooperators that I call this version of conventionalism “cooperative conventionalism.”

I identify the principle that describes our claims as the Principle of “Legitimate Expectations” because the benefits that cooperators have a claim to are those that the cooperator is licensed to expect by the rules of a practice.<sup>20</sup> These expectations are “legitimate” only in the sense that rules grant a license to expect that persons will act in a certain way. It does not matter whether we have other reasons to suppose that a person will or will not act in a certain way so long as the social rules would require them to. I might know that a person always tries to cut in line, and thereby be unjustified in believing that he will wait in line today. However, I still have a legitimate expectation that he will wait in line because the rules license me to expect this. According to the rules of the practice alone, I can expect him to wait in line. It is what the rules of the practice license me to expect that specifies the benefits a cooperator has a valid claim to.

Now, I want to use cooperative conventionalism to explain promissory obligations and promisee rights. I hold that those who contribute to the practice of promise-keeping have a valid claim to the benefits of the practice--as articulated by the PLE. The benefits that contributors have a claim to are the benefits specified by the rules of the practice. In the case of promise-keeping, one of these benefits is that promisees can rely on promisors to keep their promise. This is a benefit of the practice because the rules require that promisors keep their promises. Accordingly, promisees have a claim that promisors keep their promise.

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<sup>20</sup> This articulation also draws our attention to the way in which this alternative view is consistent with Rawls’s broader views. In *Theory of Justice*, Rawls writes,

“In a well-ordered society individuals acquire claims to a share of the social product by doing certain things encouraged by the existing arrangements. The legitimate expectations that arise *are the other side*, so to speak, of the Principle of Fair Play and the natural duty of justice. For in the way that one has a duty to uphold just arrangements, and an obligation to do one’s part when one has accepted a position in them, so a person who has complied with the scheme and done his share *has a right to be treated accordingly by others*...what we can say is that, in the traditional phrase, a just scheme gives each person his due: that is, it allots to each what he is entitled to as defined by the scheme itself.” (273)

Suppose that I promise you that I will move to Seattle if you also move to Seattle.<sup>21</sup> If you follow the rules of promise-keeping, then you have a claim to the benefits of the practice. One major benefit is that you can rely on me to move to Seattle if you do. This is a significant benefit if your decision to move is contingent on my decision. If I do not move to Seattle when you have, I do not follow the rules of promise-keeping. Since you have a claim to the benefits of the practice--as specified by the rules--you have a claim on me to move to Seattle.

Gilbert and Darwall both object to Scanlon's account of promising because it cannot adequately explain the claim that a promisee has on the promisor. Scanlon's Principle F explains why a promisor should keep her promise, but it does not explain the promisee's standing to demand or second-personal authority. If we appeal to the Principle of Legitimate Expectations, however, we can explain the promisee's claim. In contributing to the practice of promise-keeping, the promisee has a claim to the benefits of the practice. The benefits he has a claim to are those specified by the rules of the practice. Since one such benefit is relying on the promisor to keep the promise, the promisee has a claim on the promisor to keep the promise. It is in virtue of the promisee's participation in a cooperative practice that the promisee has standing to make demands on the promisor.

### **3. First Objection: Uniqueness**

There is one major objection to this view that deserves closer attention. So far, I have claimed that a promisee has a claim on the promisor because of the promisee's contribution to the practice of promise-keeping. Yet, it is not only the promisor who contributes to the practice. Everyone who keeps promises contributes to the practice of promise-keeping. So, does it follow that everyone who keeps promises has a claim on the promisor to keep her promise? If so, the account does not seem adequate. We do not merely recognize that the promisee has a claim on

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<sup>21</sup> This case is drawn from Shiffrin's core example in "Promising, Intimate Relationships and Conventionalism," 502-510

the promisor, we recognize that the promisee has a *unique* claim on the promisor. The promisee seems wronged by a broken promise in some unique way, but this account treats the promisee merely as any other contributor. Each contributor seems to have a claim on the promisor to keep her promise.

While this objection is particularly salient in the case of promise-keeping, it also applies to other practices to which the PFP and PLE are meant to apply. If I cut you in line, I wrong you in a way different from how I wrong all the persons who have contributed to a practice of line-waiting. If I steal your property, I violate your claims in a way different from the way I violate the claims of persons who contribute to property. The story I have presented explains claims and obligations as arising from participation in a cooperative scheme, so the position of all participants seems symmetrical. If I cut you in line or steal your property, I violate your claim that I follow the rules of line-waiting or property but I also violate the claims of all others that I follow the rules. How can conventionalism explain this unique violation of one's claims?

In order to address this objection, it is important to differentiate two ways in which someone can benefit from a practice. For ease of reference, we can separate "general benefits" from "specific benefits." In the case of line-waiting, a general benefit is having the practice available as a way of organizing persons. A specific benefit is when you can get your coffee in the morning in an reliable, fair and conflict-free way. In the case of property, a general benefit is having a system whereby there are clear claims over the use of external objects. A specific benefit would be having secure use over a particular item of property--whether one's phone or a piece of land. Overall, a *general benefit* is secured by persons generally following the rules of the practice whereas a *specific benefit* is secured by a particular instance of rule-following.

It is possible that some practices only have general benefits without specific benefits. For example, if there is a practice whereby persons minimize their water usage in order to avoid problems caused by a drought, then the general benefit is avoiding these problems. In this case,

there might not be any specific benefit secured by a particular instance of reducing water. It is less common--perhaps impossible--that there is a practice with specific benefits but without general benefits. This is because having the practice available (by which to secure specific benefits) is itself a general benefit.

Now, according to the PLE, it is because we contribute to a practice that we acquire a claim to the benefits of that practice. The benefits we have a claim to are those secured by persons following the rules. Yet, the benefits that we have a claim to are both general and specific. In the case of line-waiting, I have a claim that persons generally follow the rules of line-waiting and I have a claim that specific persons follow the rules of line-waiting so that I can get service fairly and without conflict in particular instances. I have a claim that persons generally follow the rules of a property system so that external objects are secured, but I also have a claim that persons respect my particular claims to property.

With promise-keeping, contributors also have claims to both general and specific benefits. A general benefit is having promise-keeping available as a way to assure and be assured. A specific benefit is in relying on a person to do that which they have promised. Since the PLE gives contributors a claim to benefits of a practice, contributors have (a) claims on persons to follow the rules of promise-keeping in order to secure this general benefit, and (b) claims on persons to follow the rules in this instance so as to secure this specific benefit. Generally, if a A promises B to do X, the rules of the practice grant B the unique benefit of relying on A to do X. Third parties also have a claim on A, but the content of any third party claim is always the same; to “follow the rules of promise-keeping.” B has the unique claim on A (not only to “follow the rules” but) to “do X.”

The basic idea can be better demonstrated through a case. Suppose that Adolphus promises Lionel to bring him to the store tomorrow. If Lionel contributes to promise-keeping, he has claims to both the general and specific benefits of promise-keeping. This means that Lionel

has (1) a claim on Adolphus to “follow the rules of promise-keeping” because Lionel has a claim to general benefits and (2) a claim on Adolphus to “bring him to the store tomorrow” because Lionel has a claim to the specific benefits. Now, consider a third person, Harshiti, who contributes to promise-keeping but does not know either Lionel or Adolphus. As a contributor, Harshati also has a claim to the general and specific benefits of promise-keeping. So, she also has a claim on Adolphus to “follow the rules of promise-keeping” because that contributes to the general benefits that she has a claim to. Yet, Harshati does *not* have a claim on Adolphus to “bring Lionel to the store tomorrow.” Lionel differs from Harshati in having the claim on Adolphus not only to follow the rules but to bring Lionel to the store.

Yet, why doesn't Harshati have a claim on Adolphus to bring Lionel to the store? Recall that an individual only has a claim to those benefits that are specified by the practice's rules. By the rules of the practice, only the promisee can rely on the promisor to keep a promise because *the promisee can release the promisor from the promise*. On the basis of the rules alone, third parties cannot rely on promisors to keep their promises. So, on the basis of the rules alone Harshati cannot expect Adolphus to (or not to ) bring Lionel to the store. After all, Lionel might release Adolphus from the promise. So, Harshati does not have any claim the benefits from relying on Adolphus. Even if Harshati has reason to believe that Adolphus will keep his promise, she is not licensed *by the rules* to expect that Adolphus will keep his promise. By the rules of the practice, only Lionel has a claim to the particular benefit of relying on Adolphus to bring Lionel to the store. This is the way in which Lionel has a unique claim on Adolphus.<sup>22</sup>

One might still object that the account gives Harshati a claim on Adolphus when it should not. For some, only the promisee should have any claim on Adolphus. However, I think that

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<sup>22</sup> One might object that both Lionel and Harshati have a claim that Adolphus to “bring Lionel to the store unless Lionel releases Adolphus from his promise,” hence their claims do not really differ in the way I suppose. Yet, this objection merely references the claim that both Harshati and Lionel have on Adolphus to “follow the rules.” The only difference is that it specifies what those rules are. Lionel still has the unique claim on Adolphus to bring him to the store.

Harshati--and all third-parties--really do have some claim on promisors. Admittedly, it is rarely the case that a person's choice to keep a promise actually imperils the general benefits we get from the practice. Most of the time, we think about *the* benefit of promise-keeping as the ability to rely on what the promisor has promised.<sup>23</sup> The fact that we are primarily concerned with the specific benefits (and rarely concerned with the general benefits) can make promise-keeping seem like the opposite of the practice of minimizing water usage that was discussed above. In that case, we were only concerned with the general benefits while we are only concerned with the specific benefits of promise-keeping. Nonetheless, we should not deny that there is a general benefit of promise-keeping. Having this practice available makes it much easier to work with both our intimates and strangers. If individuals' choices to keep or break their promises were to seriously imperil the practice of promise-keeping as a whole, then our claims on persons to the general benefits would be more of a concern for us. As it stands now, our claims to the general benefits of the practice are met even when a particular individual does not keep his or her particular promise. The practice is secure enough that we are not worried by such actions. This, however, does not change the fact that contributors have a claim to the general benefits of promise-keeping. We just do not worry about that claim being met.

At this stage, conventionalism about promise-keeping has addressed the original Gilbert/Darwall challenge and explained the unique claim of the promisee on the promisor. In virtue of our contribution to a cooperative practice, we have a claim to the benefits of that practice. The primary benefit of the practice is that promisees can rely on promisors to do that which they promised. So, promisees have a claim on promisors to keep their promise. When a promisor breaks her promise, they violate the promisees claim and uniquely wrong the promisee.

The same story can apply to other practice-dependent claims as well. If you're waiting for coffee in the morning and I cut you in line, I violate unique claims that you have. You have a claim

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<sup>23</sup> I think what makes Scanlon's account so compelling is that he focuses on the specific benefits on the practice, assurance

to the benefit of getting coffee before those who arrived in line after you, and I violate that claim. If I steal your phone, I violate a unique claim that you have to the use of that phone. In these cases, I do not merely do wrong by violating practice-dependent obligations. I also wrong particular individuals by violating their practice-dependent claims.

#### 4. Second Objection: Over-generating Claims

In developing a version of conventionalism that draws from H.L.A. Hart, I invite objections that were raised against Hart's own view. The most significant of these problems is an objection introduced by Robert Nozick in *Anarchy, State, and Utopia*. There, Nozick argues that the Principle of Fair Play cannot be a valid moral principle because it would obligate us to contribute to cooperative schemes when we should not be obligated. If these arguments succeed against the Principle of Fair Play, then they seem likely to succeed against the Principle of Legitimate Expectations as well. So, I need to address Nozick's traditional objections against the Principle of Fair Play.

To prove his point, Nozick introduces the example of a cooperative scheme involving a public address system in your neighborhood.<sup>24</sup> According to this scheme, you and 364 of your neighbors each spend one day a year operating the PA system and can "play records over it, give news bulletins, tell amusing stories, and so on."<sup>25</sup> The scheme was set up by some of your neighbors and you never agreed to help but you do benefit from the scheme. You enjoy the PA system and you even think that the benefits of the scheme outweigh the cost of giving one day a year. Even if these conditions are met, however, do we think that you have a moral obligation to contribute to this system? When your turn comes, do you do wrong if you do not operate the PA

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<sup>24</sup> *Anarchy, State, and Utopia* (Basic Books, 1974), 93-95. Like others, Nozick identifies the relevant principle as the "Principle of Fairness" and is also interested in the idea that this principle can justify forcing someone to do what they are obligated to do. I agree with Nozick that it cannot. A separate justification is needed for one to coercively force persons to do that which they are morally obligated to do.

<sup>25</sup> *Anarchy, State, and Utopia*, 93.

system? Nozick thinks not. Since the PFP would obligate us when we should not be obligated, there seems to be a problem for the PFP.<sup>26</sup>

This same example can be used against the Principle of Legitimate Expectations. Suppose you do contribute to the PA system, does this give you a claim on your neighbors to contribute? These neighbors never agreed to contribute, so can we really suppose that you have a valid claim on them? At best, it seems questionable that we would have this claim, which challenges the validity of the Principle of Legitimate Expectations.

Now, there have been two dominant ways in which theorists have replied to Nozick's arguments. First, when Rawls introduced the Principle of Fair Play, he includes a condition that an individual is obligated to a cooperative scheme only when that individual has *accepted* the benefits of the practice.<sup>27</sup> Accordingly, you are not obligated to the PA system merely by receiving its benefits but must accept the benefits of that scheme. This limits when you can be obligated and, as John Simmons emphasizes, the PFP is a much more plausible principle with this condition.<sup>28</sup> Second, when George Klosko introduces the Principle of Fair Play, he adds a condition that one is only obligated if one receives a particular kind of benefit. One is only obligated to contribute when the benefits received are "presumptively beneficial," which means that it must be likely that all participants will gain from the scheme.<sup>29</sup> It is not likely that all our neighbors would gain by the PA system, so we cannot rightly say that the PFP obligates us to the system.

Insofar as either of these approaches succeeds in defending the PFP, they can also succeed in defending the PLE. Whichever conditions limits the applicability of the PFP can also be

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<sup>26</sup> Even if we are not sure whether we are obligated, we can recognize that the answer is not so clear cut as the PFP supposes it is.

<sup>27</sup> Rawls, John. "Legal Obligation and the Duty of Fair Play," *Collected Papers*, 122-123

<sup>28</sup> Simmons, A. John. *Moral Principles and Political Obligation*. (Princeton University Press, 1979). 101-142.

<sup>29</sup> Klosko, *The Principle of Fairness and Political Obligation*.

understood as limiting the applicability of the PLE. First, we can say that I only have a claim to the benefits that would be secured by the actions of persons who have accepted the benefits of a practice. According to this view, we understand “participants” in the social practice as those who have accepted its benefits. Since the PLE only entitles us to those benefits specified by participants following the rules, we only have a claim to benefits secured by the actions of persons who have accepted the benefits.<sup>30</sup> Second, we can suppose that persons only have a claim to the benefits of a practice when those benefits are presumptively beneficial to all participants. In this way, we can extend either Rawls’s or Klosko’s defense of the PFP to a defense of the PLE.

A critic might question whether either Rawls’s or Klosko’s conditions can apply to the specific cooperative practice of promise-keeping. I see no problem here. First, as Rawls argues in *Theory of Justice*, we can understand a person who makes a promise as accepting the benefits of the practice; they purposively take advantage of promise-keeping as a reliable assurance mechanism. Accordingly, a promisee has a valid claim to the benefits of the practice secured by the promisor’s keeping her promise. Second, the practice of promise-keeping is presumptively beneficial. I will further discuss the benefits of the practice in the next section, but it seems clear that everyone gains by having the opportunity to assure one other at least. Moreover, the flexibility of the practice allows for different person with different aims to all gain from the practice.

While I think that Rawls’s and Klosko’s conditions can defend the PLE, I am not convinced that they are necessary. I cannot give a complete defense of the idea here, but I think there is a third way of defending both the PFP and PLE from Nozick’s challenge. Rawls and Klosko both recognize a “justice condition” that limits the application of the PFP to cooperative

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<sup>30</sup> In his discussion on the Principle of Fair Play, Simmons understands the notion of acceptance in this way. He recognizes a difficult question of who are participants, or “insiders,” to the practice and sees this settled by the acceptance condition (*Moral Principle and Political Obligation*, 122-123). I do not think that this is the only way to settle the question, but those who agree with Rawls’s condition can appeal to it.

schemes that are “sufficiently” or “tolerably” just.<sup>31</sup> This condition accords with our intuitions because it does not seem like we should be obligated to follow the rules of grossly unjust practices. The third way to defend the PFP from Nozick’s claim is to expand this justice condition; we are only obligated to contribute to a cooperative scheme when that scheme is “morally justified.” Our practice-dependent obligations and claims are limited to those practices that are morally justified and not only those that are sufficiently just.<sup>32</sup>

When faced with Nozick’s challenge to the PFP, the natural temptation is to articulate a version of the PFP that can serve as the sole basis for determining whether we are obligated to a cooperative practice. Instead, my suggestion is that the best version of the PFP passes the buck. According to this suggestion, the PFP includes a condition that the cooperative practice must be morally justified. Whether we are obligated to any cooperative practice then depends on how we resolve whether that practice is morally justified. For example, whether we are obligated to contribute to the neighborhood PA system depends on whether that PA system is morally justified. On surface reflection, there is a good case against it. After all, such a system would infringe on the liberty of participants without sufficient justification. A similar but voluntary practice could achieve the benefits without this cost to autonomy.

While a more complete argument would be needed to fully support this approach, I only mean to offer it as a feasible defense of the PFP. I suspect that this approach has not been otherwise defended mainly because it passes the buck. Instead of articulating a version of the PFP that works as a determinate standard for our obligations, it requires another account about which practices are morally justified. Tough work is passed from articulating a sufficient version of the

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<sup>31</sup> Rawls, *Theory of Justice* [rev.], 96; Klosko, *The Principle of Fairness and Political Obligation*, 39. By contrast, John Simmons urges that we reject this condition (*Moral Principles and Political Obligations*, 114)

<sup>32</sup> I am not convinced that the worry about whether it is a “just” practice is any different than whether it is a “moral” practice, but this depends on controversial views about justice that I do not want to defend here. In his discussion, Simmons questions why the “justice condition” is not extended in the way I suggest here (*Moral Principles and Political Obligation*, 110).

PPF to articulating a standard for when a practice is morally justified. Yet, the buck is not passed in such a way that renders the PFP unnecessary. After all, our obligation is not to support a morally justified practice but to do our fair share in a cooperative practice *so long as that practice is morally justified*. Moreover, the “morally justified” condition does not merely avoid tough work but points us towards a real issue. Even when Rawls and Klosko only recognize a justice condition, they owe some articulation of when a practice is sufficiently or tolerably just. Even when the participants in a practice all consent to a practice and receive an optimally fair share of the benefits and burdens, the practice might still be morally problematic if it harms non-participants. In supposing that a practice must be morally justified, this third suggestion draws attention to questions of how a practice affects outsiders, distributes benefits and burdens, how it contributes to moral and immoral ends, and how these issues interact.<sup>33</sup>

If the “morally justified” condition adequately defend the PFP from Nozick’s arguments, then it can also defend the PLE. We merely need to recognize that our contributions to a cooperative practice only generate claims when that practice is morally justified. There will be plenty of cases in which participants in a practice might think they have valid claims but actually do not. When slavery was legal in the south, Slaveowners might have thought they had claims on

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<sup>33</sup> A fully general account of practice-dependent obligations needs to accomplish two goals. First, the account needs to be able to explain why people *are not* obligated to practices like the PA system. Second, the account needs to be able to explain why persons *are* obligated to other practices that the account should be applied to--such as line-waiting and property. The Rawlsian view does not adequately cover line-waiting and property anymore than it covers political obligation because we do not accept the benefits of line-waiting and property. If we want the PFP to cover all these cases, then it needs to yield different judgements about line-waiting and the PA system. Determining whether a practice is morally justified seems like a way to do this. The problem with the PA system is that it needlessly interferes with our ability to plan our own life. However, there needs to be some norm that organizes our claims for service, and line-waiting seems an egalitarian and reliable way to do this. Likewise, a social practice of property could not achieve its benefits if it were voluntary. We would never know whether our property were secure if persons were only obligated to follow property rules if they chose to participate in a property scheme. According to such reasoning, it seems possible that line-waiting and property are morally justified in a way that the PA system would not be, thus allowing a more generalizable PFP.

people to return slaves who had escaped, but they did not have any such claim. Their contribution to the practice of slavery does not give them any valid claims because the institution of slavery is not morally justified.

Much more needs to be said in order to determine which version of the PFP and PLE are best, and my present argument does not need to settle that question here. My point is only that any of the common defenses of the PFP can also succeed in defending the PLE. While I prefer a defense that expands the justice condition, cooperative conventionalism is consistent with those who side with Rawls, Klosko, or the “morally justified” condition.

### 5. Third Objection: Contingency

In “Promising, Intimate Relationships, and Conventionalism,” Seana Shiffrin argues against conventionalism about promise-keeping in a way that is importantly different from either Gilbert, Darwall, or Scanlon. Her arguments direct us towards another way in which conventionalism seems too impersonal. As she points out, conventionalists about promising are committed to the view that promises are only *contingently* binding. It is only because we have a social practice of promise-keeping that promisees have a claims over promisors. Yet, when you look at how important promise-keeping is within our intimate relationships, it seems odd to suppose that promising could be contingent. She writes,

“our capacity to conduct our relationships in a minimally morally decent way depends on our having the power to promise (as well as related, derivative powers of commitment). Therefore, given our noncontingent capacity and its dependence on the power to promise, we must have the power to promise.”<sup>34</sup>

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<sup>34</sup> Shiffrin, “Promises, Intimate Relationships, and Conventionalism,” 499

In this way, her argument is a “reductio of the distinctive element of conventionalism,” which she identifies as the contingency of a practice of promise-keeping.

Alongside her argument, Shiffrin offers a diagnosis of what led to this mistake. For most conventionalists, the paradigm case of promising is between strangers. The practice is valuable because it allows us to rely on the behavior of people we do not otherwise trust. For example, Wallace and Kolodny follow Hume in using an example of cooperation between strangers as their paradigm case:

“Consider the example at the crux of David Hume’s discussion of promising, in which farmer A wishes to persuade farmer B to help with A’s harvest today in return for A’s helping with B’s harvest tomorrow, but is unable to do so, because B is aware that A will have no reason to help him tomorrow, after having already reaped whatever benefits are coming to him from their agreement. What makes promising especially valuable, as Hume observed, is that it allows A to assure B that A will do his part even when he has no independent reason to do so.”<sup>35</sup>

In this example, there is no reference to a prior relationship between the two farmers. The example does not involve any prior trust or reliance between the two. Conceived in this way, it is possible to imagine a life without promising. We would be less efficient because we would be unable to trust strangers in the ways that we can, but this possibility is imaginable.

Alternatively, Shiffrin focuses on the way that promise-keeping functions between intimates. Her central claim is that promising is *necessary* for meaningful relationships. In focusing on promises between strangers, conventionalists have missed this crucial feature. She argues that the power to promise allows for persons to restore a kind of equality and reliance in their relationships. Without this, such relationships would be fraught with imbalance and doubt. In her core example, A wants to move to a city if B also moves to that city, though B has less desire to move to the city than A.<sup>36</sup> Without the power to promise, A would be in doubt and anxiety

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<sup>35</sup> Wallace and Kolodny, “Promises and Practices Revisited,” 121.

<sup>36</sup> Shiffrin, “Promises, Intimate Relationships, and Conventionalism,” 504.

about whether B would move even if B had expressed the intention to move. This kind of imbalance could be severely detrimental to their relationship. Even if A takes actions to make the move more advantageous to B, such actions might only serve to further the imbalance between them. If B can promise A to move to the city, then A has a kind of security that B will join. Their relationship maintains its balance and stability through the power to promise. Since such relationships are crucially important for decent lives, and the power to promise is necessary for these relationships, Shiffrin concludes that the power to promise is necessary for morally decent lives.

While I am not wholly confident in her conclusion, I fully grant that the power to promise is necessary for the sake of this argument. Instead, my response to Shiffrin's argument is to show why this conclusion does not really represent a problem for the conventionalist. Even if the power to promise is necessary for intimate relationships, Shiffrin's argument does not adequately disprove the conventionalist view.

My response to Shiffrin's argument was already well articulated by Hume. In discussing his own version of conventionalism about promising and property, he writes,

“To avoid giving offense, I must here observe, that when I deny justice to be a natural virtue, I make use of the word, *natural*, only as opposed to *artificial*. In another sense of the word; as no principle of the human mind is more natural than a sense of virtue; so no virtue is more natural than justice. Mankind is an inventive species; and where an invention is obvious and absolutely necessary, it may as properly be said to be natural as any thing that proceeds immediately from original principles, without the intervention of thought or reflection. Though the rules of justice be *artificial*, they are not *arbitrary*.<sup>37</sup>

It is because of the challenges we face--being the kinds of creature we are in the kind of world we inhabit--that a practice of property is as beneficial as it is. Because it is beneficial for us, it is quite natural for us to establish a practice of property. In this way, it is both artificial and natural

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<sup>37</sup> Hume, *Treatise of Human Nature*, Book III, Part II, Section 1, final paragraph.

because it is natural that we would create such an artifice. Likewise, because of the creatures that we are, a practice of promise-keeping is necessary for meaningful relationships. Shiffrin's argument shows us why. Since we are social creatures for whom intimate relations are so important, it should be no surprise that we would establish promise-keeping. If Shiffrin is right, and promise-keeping is necessary for us to maintain the relationships we care so much about, then we should not be surprised that persons so typically live with a practice of promise-keeping. Her argument is not a "reductio of the distinctive element of conventionalism," but instead shows why it is so natural of us to create the practice of promising.

Now, Shiffrin anticipated a response that is very similar to mine. In the final section of her paper, Shiffrin supposes that a conventionalist could respond, "I agree with Shiffrin that promise-keeping is necessary for meaningful relationships, but that is merely an explanation for why we *should* establish a practice of promise-keeping. The benefits of such a practice show why we have a duty to set up and maintain such a practice." In such a response, the conventionalist recognizes how promise-keeping furthers our central aims in having meaningful relationships and greater freedoms. Instead of showing that promising must be morally fundamental, however, the conventionalist merely supposes that we should establish promise-keeping.

It is important to note that Shiffrin's imagined conventionalist response is not the same as the Humean response that I echo. Shiffrin imagines that the conventionalist recognizes a *duty* to establish promise-keeping whereas the Humean point recognizes that it is *natural* for persons to establish such a practice. Given the kinds of creatures we are, we should expect promise-keeping to emerge in any society--especially if Shiffrin is correct that it is necessary for meaningful relationships. In my response, I recognize that it would surely be both beneficent and prudent to establish this practice, but that does not make it a *duty* to do so.

With this difference noted, I know what to turn our attention to Shiffrin's response to her imagined conventionalist. In the final section of the paper, she writes,

“I suspect this view reflects an inadequate appreciation of how fundamental the power to promise and its relata are, but I am disinclined to press these points further. Once we have arrived at this juncture, though my position differs from the conventionalist response...little of significance remains at stake between conventionalists and nonconventionalists about promising.”<sup>38</sup>

We cannot expect Shiffrin to deal fully with all possible objections in one paper, but this response seems fully inadequate on its own. First, it seems that the conventionalist really does appreciate how fundamental the power to promise is. If the conventionalist recognizes a duty to establish the practice, he appreciates the importance of the practice. Likewise, if we recognize that promising is necessary for meaningful relationships such that it makes sense for persons to establish it, we also appreciate her point. Personally, I can say that I did come to better appreciate the importance of promise-keeping in reading Shiffrin’s paper, but I only see that as helping the conventionalist through Hume’s point. Yet, as Shiffrin does not focus on this point, and neither will I. Instead, I want to move onto a second point.

Second, I do not see how the conventionalist response leaves “little of significance” between conventionalists and non-conventionalists. Perhaps what Shiffrin has in mind here is specifically related to her imagined conventionalist response that there is a duty to establish promise-keeping. If that is the case, then the revised conventionalist response does not have the same problem. Moreover, there remains two important contrasts between the conventionalist and non-conventionalist account. First and foremost, the non-conventionalist still needs to give an account of *why* we should keep promises. Shiffrin’s own argument for the power to promise relies on “a rather modest version of ought-implies-can or another source of moral optimism.”<sup>39</sup> This is perfectly acceptable but, in not giving a positive account, the view obscures how different conventionalist and non-conventionalist accounts would be. Cooperative conventionalism

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<sup>38</sup> Shiffrin, “Promises, Intimate Relationships, and Conventionalism,” 521-522.

<sup>39</sup> Shiffrin, “Promises, Intimate Relationships, and Conventionalism,” 499.

explains promissory obligations and promisee claims as grounded by the reciprocity between cooperators in a practice. The non-conventionalist justification for promise-keeping will be quite different from this. Second, the conventionalist account has an advantage of generality that the non-conventionalist does not. In theory, the same normative structure that grounds promisee rights can ground property rights, claims to wait in line, and other practice-dependent moral demands. The non-conventionalist justification for promising does not obviously have this same generality. For these two reasons, I think that there remains much of significance between the conventionalist and non-conventionalist account of promise-keeping.

Overall, While I am quite supportive of Shiffrin's argument for the fundamental importance of the power to promise, this argument does not either (a) show a failure of conventionalism about promise-keeping or (b) reduce conventionalism to non-conventionalism. While I agree that theorists have neglected the role of promising in intimate relationships, I disagree that these features reveal any problem for conventionalism.

## **6. Consequentialist and Non-Consequentialist Conventionalism**

According to cooperative conventionalism, the ultimate ground of promissory obligation and promisee claims is a kind of reciprocity. Specifically, it is a form of reciprocity involved in participation in a cooperative practice. In such a practice, each participant takes on the roles of both contributor and beneficiary. In virtue of receiving benefits, they owe contribution. In virtue of contributing, they have a claim to benefits. Both owed contribution and claimed benefits are specified by the rules of the cooperative practice itself. The Principle of Fair Play articulates the moral demand associated with benefiting from the practice while the Principle of Legitimate Expectations articulates the moral demand associated with contributing to the practice.

Of course, there is much more that needs to be said about how such a conception of reciprocity is justified within a particular moral theory. The PFP and PLE are themselves practice-independent moral principles, so they need to be justified by a moral theory rather than a social

context. Yet, are these principles best justified by a contractualist theory? A Kantian theory? An intuitionist view? In this essay, I do not want to make a choice between these options. Instead, I have tried to describe the account in ways that are broadly intuitive and plausibly consistent with a range of moral theories. The Rawlsian, Kantian and intuitionist could accept the cooperative conventionalism that I defend here.

However, I should note that a conventionalism based on reciprocity is quite distinct from a conventionalism based on moral efficacy. Those who support a consequentialist version of conventionalism ultimately explain our reason to follow the rules of a practice by appeal to good moral effects. According to such a view, our reason to follow the rules is ultimately impersonal; it is to promote good. Now, I recognize that the good being promoted is only good because it helps persons, but our reason to follow the rules is not something we owe to persons. By contrast, the reciprocity view that I defend explains our practice-dependent rights and obligations as owed to persons. It is because we stand in a reciprocal relationship with others that we have these obligations and rights. As Hart says,

“the obligation to obey the rules is something distinct from whatever other moral reasons there may be for obedience in terms of good consequences (e.g., the prevention of suffering); the obligation is due to the cooperating members of the society as such and not because they are human beings on whom it would be wrong to inflict suffering.”<sup>40</sup>

Instead of promoting good, our practice-dependent obligations and rights treats persons appropriately

I began this essay by pointing out the ways in which conventionalism suffers from a kind of personality problem. It seemed unable to explain the way in which a promisor personally wrongs a promisee, and it didn't seem to fully appreciate the role that promise-keeping has in personal relationships. We are now in a position to explain why conventionalism has seemed to

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<sup>40</sup> Hart, “Are There Any Natural Rights?” 185..

have this personality problem. It is undoubted that much of the conventionalist tradition has been built by consequentialist thinkers. The picture developed by Hume has a consequentialist flavor and contemporary utilitarians continue to defend this view. In “Two Concepts of Rules,” Rawls even used a utilitarian model to defend his own conventionalism.<sup>41</sup> Yet, in both Hart and Rawls, we ultimately see a distinctively non-consequentialist conventionalism. In “Are There any Natural Rights,” Hart both introduces the mutuality of restrictions and argued for the Kantian conclusion that all persons have a fundamental right to freedom.<sup>42</sup> In *Theory of Justice*, Rawls argues for principles that are consistent with our conception of persons as free and equal.

It is my central contention that this variety of non-consequentialist conventionalism can overcome many of the problems associated with a more traditional conventionalism. By grounding conventionalism on the reciprocal relationship between cooperators, we can make sense not only of practice-dependent obligations, but practice-dependent claims. We can explain why violating the rules of a practice does not only count as doing wrong, it also counts as wronging specific persons. In violating the rules of a justified practice, we fail to treat persons as they deserve. We violate the terms of our reciprocal engagement with a practice.

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<sup>41</sup> Rawls, *Collected Papers*, 21.

<sup>42</sup> Hart, “Are There Any Natural Rights?” 190-191.