# Anscombe on Promises

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**Signed Declaration**

I, Luka Watanabe Chilvers, confirm that the work presented in this thesis is my own. Where information has been derived from other sources, I confirm that this has been indicated in the thesis.

**Abstract**

This thesis is intended primarily to give an interpretation of Anscombe's account of promising. In particular, it is an attempt to understand what it means to call Anscombe a *conventionalist* about promising. It argues that we should conceive of Anscombe's conventionalism as responsive to a series of circularities which arise in the attempt to explain promises; the appeal to a practice, provides us with the means to *accept* those circularities as unproblematic, and indeed to account for them. Positively, Anscombe offers an account of the internal logic of the practice of promising, and ties the obligation to keep a promise to "necessities" in other domains, in particular those proper to *rules* and *rights*. Having given an account of the inner workings of the practice of promising, she emphasises that our duty to "go along" with the practice is explained in terms of the necessity of said practice for social life. This necessity, which Anscombe invokes in justifying the practice, is carefully distinguished from the sort of necessity at play in promissory obligation. I finally consider a series of concerns which have been raised against views, notably Rawls' which, like Anscombe's, endorse a logical distinction between the reasons for keeping a promise, and the reasons relevant to justifying a certain practice. I attempt to show that, while Anscombe herself does not provide much material to respond to these difficulties, a response can be made which is not only consistent with her stated views, but is in fact enabled by the way in which she characterises the necessity of the practice of promising.

**Impact Statement**

This thesis offers a distinctive reading of Anscombe's writings on promises, writings which are themselves somewhat neglected in the literature on Anscombe's ethics as a whole. Within the philosophical literature on promises, Anscombe's view is often cited (generally as one among a host of "conventionalists"), but is not often discussed in any detail. If my interpretation is successful, even in part, it should go to show just how distinctive Anscombe's view is, and thereby help to broaden the current impression of possible positions one may occupy in philosophising about promises.

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# 0: Introduction

## 0.1 Conventionalism(s) about promising

In Book III of *A Treatise of Human Nature*, Hume begins his discussion of "the obligation of promises" with the following remark:

> 'That the rule of morality, which enjoins the performance of promises, is not *natural*, will sufficiently appear from these two propositions, which I proceed to prove, *vis. that a promise would not be intelligible, before human conventions had established it;* and *that even if it were intelligible, it would not be attended with any moral obligation*.' (Hume 1978, p.516)

It has become fairly standard in philosophical discussion of promises to begin with something like the problems Hume sees with the intelligibility of promises, and to end with accepting or rejecting something like the solution he offers. This is explicitly Anscombe's approach, and she endorses both Hume's problems ('I believe that Hume did hit upon a problem of intelligibility' (*RRP* 97)) and his solution ('I shall point to a solution of it, which fully justifies Hume in his own solution' (*RRP* 100)). Her endorsement is not, on either count, straightforward: Hume's discovery of "natural unintelligibility" has 'wider application than he gave it' (*RRP* 97), and '[t]he rightness of Hume's conclusions is independent both of his psychology and of his theory of the foundation of morals in a peculiar "sentiment"' (*RRP* 99)[1]. These caveats notwithstanding, we can call Hume's sort of solution "conventionalism about promises", or the "practice view of promises", and say that Anscombe endorses some version of this view. She holds, with Hume, that promises are unintelligible without appeal to some social practice or convention, and that understanding that convention is also necessary to understand promissory obligation.

Although much of this thesis will focus on working out the details of Anscombe's conventionalism, it is useful at the outset to distinguish her approach from one in which conventions or practices play a quite different theoretical role. Roughly speaking Anscombe's conventionalism does not imply that the reason for keeping a promise mentions the practice or convention, whereas other conventionalist views (including Hume's) imply just that. That leaves such "conventionalist" or "practice" views about promising open to the following class of objections: that they give the wrong sort of reason for keeping a promise. That is because they give a reason like the following: that the breaking a promise would somehow damage the practice and set back the good it does; or amount to free-riding on that practice; or cause one to suffer sanctions from its other participants; or cause damage to your reputation amongst with those participants. We can call all these *practice-mentioning* reasons – they implicitly or explicitly invoke the existence of a practice in which the agent is a participant (when they do so implicitly, this just means that spelling out the reason in full would require appealing to the existence of the practice).

Why think that practice-mentioning reasons are the wrong sorts of reasons? Objections vary, depending on exactly which sort of practice-mentioning reason is given, but some general trends can be identified. First, it may seem that practice-mentioning reasons need not hold in cases where we nevertheless wish to say that there is an obligation to keep a promise. Second,

[1] Going further, Anscombe claims that properly carried through, Hume's insight 'will show just what is wrong with empiricism' (*RRP* 97-8)

it may seem that practice-mentioning reasons to keep a promise do not amount to moral obligation, but that promises *do* incur such obligations.

But Anscombe's conventionalism about promises does not appeal primarily to practice-mentioning reasons to explain promissory obligation. On Anscombe's view, the reason for you to keep a promise made to X needs no more articulation than this: that you made a promise to X. Anscombe is a conventionalist insofar as she thinks that the articulation of *that* reason requires a background practice of promising – it is a practice-enabled, rather than practice-mentioning, reason. This undercuts the problems mentioned with practice-mentioning reasons[2]: there may be a reason to keep a promise in the absence of any practice-mentioning reasons, just because a promise was made. Anscombe further thinks that the practice, and the good it serves, also explains why a reason enabled by that practice amounts to moral obligation[3]. And the reason enabled by the practice is a directed one – you are obliged to the promisee to keep the promise you made to them.

Anscombe's view, then, appears to evade some of the problems that other conventionalist views run into. There is, however, a further question whether this is mere evasion, whether the problems have been displaced rather than solved.

1. To begin with, why should it be that the existence of a practice "enables" promising to ϕ's being a reason for ϕ-ing? And if the reason to keep a promise is *just* that you made one, how does Anscombe's view account for cases in which a promise does not give rise to an obligation to keep it?
2. How can the good of a practice account for the fact that a promise gives rise to moral obligation? That question is especially pressing given that practice-*mentioning* reasons have been excluded as a general explanation for the connection. And if we do have *a* "practice of promising", mightn't there be a better one we should adopt instead?

It is the aim of the first couple of chapters to address the first point above. The second point is addressed in the third chapter. We can view all the above questions as transformations of the objections noted against conventionalist accounts which relied centrally on practice-mentioning reasons. They will turn out to be questions which apply to the formal character of Anscombe's conventionalism – about the internal workings of the relevant convention or practice (chapters 1 and 2), and about the way in which we understand the conventions around promising fitting into the rest of social life (chapter 3). Nevertheless, as I argue in chapter 3, this division of labour between describing practice-external and practice-internal considerations is somewhat artificial, especially in the case of promises.

[2] Some of this thesis will involve further comparison to conventionalist views which are not Anscombe's (see 2.3.1, and most of chapter 3), but in each case, these will be views which *prima facie* concur with Anscombe that the characteristic reason to keep a promise is not a practice-mentioning reason. For a more detailed comparison of Anscombe's view to forms of conventionalism which *are* based on practice-mentioning reasons, see Nieswandt (2017).

[3] Given Anscombe's stance in 'Modern Moral Philosophy', putting her view in terms of "moral obligation" is perhaps problematic; but she is happy to talk of the keeping of a promise as a good action, or a just one, and the breaking of a promise as a wrong against the promisee.

## 0.2 Chapter Overview

Chapter 1 provides some of the structural underpinnings of my interpretation of Anscombe's account of promising, employing her description of the grammar of "institutional verbs", a class of verbs which require a convention, social practice or institution as a background. Anscombe here provides the means to explain how it can be that an institution or practice enables certain reasons or justifications, without entering into the articulation of those reasons. This chapter also briefly situates this discussion in Anscombe's broader pursuit in moral philosophy, of the explanation of human action.

Chapter 2 starts with an exposition of Anscombe's view of promises, explaining what sort of difficulty it is responsive to, and what sort of response it is. As noted above, this difficulty is a version of Hume's problem of the natural unintelligibility of promises. In particular, Anscombe is concerned to show how attempts to reductively define promises go awry. She identifies three apparently problematic circularities in attempts to explain promises, which she takes to fully vindicate Hume's solution - that promises, and promissory obligation, are dependent on human convention. This is a solution for Anscombe not in the sense that it shows that a reductive non-circular definition is available, but in the sense that it shows that such circularity is not problematic. That is so because other forms of explanation are available, and are made available by the appeal to human practice. Apart from clarifying the concept of a promise, this chapter will also show that the explanatory circles Anscombe identifies are a necessary concomitant of said concept. The chapter concludes by filling in important details in Anscombe's positive view.

Chapter 3 introduces Anscombe's thoughts on the necessity of the practice of promising in human social life. It is our need for such a practice, she thinks, which vindicates the thought that one can't "opt out" of it, but must "go along" with it. But the importance of the practice cannot come into one's reasons for keeping a promise; there is, *prima facie*, a strict separation between the grounds for keeping a promise, and the grounds for endorsing a practice. So a question arises how to relate these two levels, how to the understand the significance of the justification of a practice (for Anscombe, importantly, the *necessity* of a practice) for the goings-on in the practice itself. I address worries raised by Michael Thompson and Stanley Cavell which might be assumed to apply to Anscombe's view, in part because of the use she makes of an analogy of promising to *games*. The analogy, so Thompson and Cavell argue, can be overextended so as to distort our relation to promises – firstly because it makes the "justification" of the practice seem too *external* a matter, and relatedly that it obscures the its ethical character. This chapter acknowledges this danger, and clarifies differences in our relation to games on one hand, and to promising on the other. It argues that the necessity of such a practice as promising is not to be understood as a merely external fact, but has implications for the way in which participants in that practice operate with the concepts proper to it. Anscombe does not provide very much material for discussing the issues raised here. Nevertheless, this chapter concludes, she could adopt just the stance just described, without *collapsing* the grounds for endorsing a practice into the grounds for keeping a promise, and this is option is open to her precisely in virtue of how she *does* explicitly characterise the justification of promising.

# 1 Anscombe's moral philosophy and brute facts

## 1.1 Anscombe's moral philosophy

In the introduction to a collection of Anscombe's papers on ethics, religion and politics, she offers the following reflection on her approach to moral philosophy:

> 'In general, my interest in moral philosophy has been more in particular moral questions than in what is now called 'meta-ethics' ... So far as general questions of moral theory have interested me, I have thought them closely tied up with problems of action-description and unsettlable without help from philosophy of mind. Some of these papers represent a struggle to treat all deliberate action as a matter of acting on a calculation how to obtain one's ends. I have now become rather doubtful about this. Of course, it is always possible to force practical reasons into this mould, constructing descriptions of ends like "not infringing the regulations about traffic lights", "observing the moral law", "being polite", "playing a game according to its rules", and so on. But it now seems to me that there is a contrast between such constructed descriptions of ends, and the means-ends calculations which really do - at least implicitly - take their starting point from some objective which one has.' (Anscombe 1981b, p.viii)

If one wanted to give an account of Anscombe's struggle to treat all deliberate action as a matter of acting on a calculation how to obtain one's ends, *Intention* would likely be the place to start. In particular, it would make sense to start with those sections of *Intention* illustrating the "A-D order", a series of action-descriptions such that 'there is one action with four descriptions, each dependent on wider circumstances, and each related to the next as description of means to end' (*Intention* 46) – e.g. "He moves his hand up and down, to operate the pump, to replenish the water supply, to poison the inhabitants". The explanation of the action, at all levels, can be understood as the articulation of this means-ends structure. Anscombe's question "Why?", addressed to the agent, reveals this unifying thread in what they are doing, and in their knowledge of what they are doing; "Why are you moving your hand...?" - "To operate the pump" – "Why are you operating the pump?" etc.

Here I am more interested in what Anscombe identifies as a source of doubts about that struggle. That is, the existence of practical reasons which do not comfortably fit into the means-ends mould – those deriving from traffic regulations, from the moral law, from politeness, and from the rules of a game. With the exception of the moral law, Anscombe's examples are reasons deriving from the norms of some convention or institution. Following Anscombe's commitment to treating general moral questions only in light of considerations from the philosophy of mind and action, we should ask how acts in accordance with such norms, which take place against the background of some convention or institution, are to be understood. So we should look at 'On Brute Facts', where Anscombe gives a brief account of what might be called "institutional verbs", such as *owing* and *supplying*, as in "the grocer supplied me with potatoes, so I owe him some sum of money". The relevant points about action-description will extend to moves in games, such as *castling*, also to *greeting*, and, what will be most significant later, to *promising*. The common attribute of all of these verbs is that their use, to describe some situation or another, is possible only in the context of some background convention or institution[4].

[4] Convention, practice, institution– these terms will be used fairly indifferently in this chapter unless special attention is brought to them. That is in part because Anscombe often moves indifferently between them, and because at least in the initial exposition of her views, the emphasis is on situating certain

## 1.2 The logic of institutional verbs

Why do I owe the grocer money? Because he supplied me with potatoes. Of course, he supplied those potatoes in the context of our institutions, in which he can rightfully expect payment for such an action (given, of course, that I ordered those potatoes in the first place); our interaction will count partially as a *monetary transaction* only in that context – "x owes y money" is unintelligible without it. But, Anscombe says, it is not true to say that my owing the grocer consists in this (complex) fact: *that he supplied me with potatoes in the context of our institutions*. Instead, we should re-bracket as follows: in the context of our institutions, my owing the grocer consists in this (simple) fact: *that he supplied me with potatoes*. What is the significance of this re-bracketing? The description of the relevant institution(s) falls outside of the description of my owing the grocer:

> 'the statement that I owe the grocer does not contain a description of our institutions, any more than the statement that I gave someone a shilling contains a description of the institution of money and of the currency of this country.' (*BF* 22)

The institution is a *precondition* of the following: my owing the grocer's consisting in his supplying me with potatoes. About *Intention*'s A-D order, Anscombe says that 'more circumstances are required for A to be B than for A just to be A. And far more circumstances for A to be D, than for A to be B' (*Intention* 46). Those circumstances are preconditions of the identity of A with B through D, but are not mentioned in the action-descriptions. Likewise, the "institution behind" a description containing an institutional verb is a precondition of a particular relation holding between that description and another (*BF* 24); Anscombe calls that relation "Brute relative to" – so that the grocer's supplying me potatoes is brute relative to my owing the grocer money. As Anscombe notes, the grocer's *supplying* me potatoes is itself something which makes sense only given a background institution (of exchanging goods, and more basically, of giving something to somebody, I suppose), without which the grocer's putting potatoes on my doorstep, could not count as his supplying me with those potatoes. That former fact, of *putting*, is therefore brute relative to the *supplying*, just as the *supplying* is brute relative to the *owing*.

Are these relations really the same? It may be alright to say that the putting *was* the supplying but surely not that the supplying *was* the owing – easier to assert identity in the first case than the second. This is true, but the important general point is that (in ordinary circumstances) we may justify our assertion that this is a case of owing on the basis of nothing more than the supplying and so too that this is a case of supplying on the basis of nothing more than the putting. The difference between these cases is nevertheless interesting, and can be partially brought out by considering that the supplying/putting pair are not just joined by relative bruteness, but are also joined in an A-D order – the grocer would rightly respond to the question

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actions against *some* social background without which they, and the sentences used to describe them, are unintelligible. It will obviously be more correct to talk of an institution in some cases, and conventions or practices in some others. And it will often make a difference to make such distinctions. Here, I talk of "institutional verbs" because Anscombe gives "the institution behind A", where A is a description containing a verb of the relevant sort, as a catch-all for the social context that that description presupposes (*BF* 24), probably because her primary example is a monetary transaction, for which the necessary social context involves a paradigmatic example of an institution. As indicated, we will later find that "to promise" is in this context an institutional verb, even though I do not think it is right to call promising, without any qualification, an *institution* (see 3.3.1).

"Why are you putting potatoes there?" with "Because I'm supplying so-and-so", where the putting and supplying are one and the same action. We might say that the institution behind "supplying" enables his intending to supply by putting, just like it enables his putting to ordinarily amount to supplying.

Contrariwise, the owing/supplying pair could not fit in *Intention*'s A-D order even if we take the grocer's perspective in both and talk of his *supplying* and his *being owed*. For owing or being owed are not actions, which is surely part of what makes us reticent to assert the identity of owing (or being owed) and supplying. Nor is "Because I am owed/will be owed payment" any other sort of natural reply to the "Why are you supplying?" question, even if "In order to be paid" is. Nevertheless, without reason to think otherwise, we will take it that the grocer is supplying potatoes in order to be paid by his customer *what he is owed for them* (rather than being paid for anything else) – so that the *owing/being owed* here also makes sense of a relevant intention that the grocer has in acting.

Returning to the grocer, what if he is supplying me with potatoes only as part of an amateur film production? Then I don't owe him anything, whether I and the grocer are participants in the relevant institutions or not. And what if the grocer, having placed the potatoes on my doorstep, arranges that someone else immediately takes those potatoes from my doorstep, or takes them himself? Then he doesn't supply me with them. Both are exceptional circumstances, about which Anscombe claims:

> 'There can be no such thing as an exhaustive description of all the circumstances which theoretically could impair the description of an action of leaving a quarter of potatoes in my house as "supplying me with a quarter of potatoes". If there were such an exhaustive description, one could say that "supplying me with a quarter of potatoes" means leaving them at my house, together with the absence of any of those circumstances.' (*BF* 23)

Perhaps one *does* wish to say that, to provide an analysis or definition of "supplying…" in such a manner. And, one might continue, Anscombe provides no argument for the claim that "there can be no such thing as an exhaustive description…" *except* that it would entail the possibility of such an analysis[5]. I think Anscombe could reply as follows: we should not be permitted to assume that there *is* "such a thing as an exhaustive description…", and it is that assumption which constitutes a likely stumbling block to an understanding of character of institutional verbs such as "supplying". What that assumption might distract us from is how such verbs are used[6]; for example, that we do not in fact employ any such exhaustive description in deciding when some circumstances *do* impair the description of an action of leaving a quarter of potatoes in my house as "supplying me with a quarter of potatoes". Cases are dealt with as they arise. Which is not to say that no general indication of "ordinary circumstances" can be given,

[5] Anscombe also says that 'it is not theoretically possible to make provision in advance for the exception of extraordinary cases; for one can theoretically always suppose a further special context for each special context, which puts it in a new light.' (*BF* 23), but the second clause here is more of an illustration than a demonstration of the first.

[6] There is a useful comparison to be made to Wittgenstein's discussion of games in the *Philosophical Investigations* – there too the point is to dislodge a distracting assumption about the possibility of an "exhaustive description" (in that case of what will and will not count as a "game") – see (Teichmann 2008, p.93) for more on the comparison.

but it can only be given "roughly", 'by giving examples of exceptional circumstances' (*BF* 24). And once these familiar facts about how we go about with the concept "supply" are in view, it is difficult to know what to make of hypothesis that there nevertheless *is* a set of necessary and sufficient conditions for the application of "supply", which we do not (consciously) employ – what would make such conditions "conditions for the application of a concept", in that case? Much more could be said here – but the least that we can conclude is that "On Brute Facts" provides an account of part of the logic of our use of institutional verbs, which should suffice for the purposes of this chapter. We do not need to know what, if anything, to make of the claim that the relevant concepts *really*, if discreetly, have a different logic.

But if we do say that there is no exhaustive list of exceptional circumstances, how can we be sure, in any particular case in which certain facts obtain which ordinarily amount to supplying, that *no* exceptional circumstances are present? We cannot, but that poses no obstacle to describing what the grocer does as supplying potatoes, and being fully entitled to say so *just* on the basis that he put potatoes on a doorstep, so long as there is no reason to suspect that anything is amiss (e.g. there is no film crew present).

> 'Every description presupposes a context of normal procedure, but that context is not even implicitly described by the description. Exceptional circumstances could always make a difference, but they do not come into consideration without reason' (*BF* 24)

Here are two important points: first, no substantial specification of "ordinary circumstances" comes into a description containing an institutional verb, any more than a specification of the institution does. Second, the description of an "institutional fact" is default justified by appeal to facts which are brute relative to it, while not logically entailed by those facts – the sufficiency of that justification requires special reason to call into question.

To summarise; wherever we have a description of an institutional fact, there will be some set of facts (or rather a range of possible sets of facts) which will, in ordinary circumstances, amount to that institutional fact, in the context of the relevant institutions. But descriptions of "ordinary circumstances", or of the relevant institutions, do not enter into either the description of the institutional fact, or of the description of the facts which are brute relative to it. The next sections will be a characterisation of Anscombe's conventionalism about promising, a part of which will involve arguing that "to promise" fits the profile of an institutional verb, as we have described it, so it will be helpful to keep this profile in mind.

# 2 Making Promises Intelligible

## 2.1 Problems with promises: three circles

There are various places in which Anscombe offers an account of promises, so this section and the following one will offer something of a synthesis of those accounts, assuming continuity mostly on the basis that operating on that assumption does appear to deliver a consistent view. Invariably she starts with problems one might encounter when thinking about promises, which arise in the pursuit of an explanation for them. Those problems start, quite generally, with the question "What is a promise?", a search for a sort of definition. That question leads into others: "What is it to make a promise?", "What is it to think you are making a promise?", "What is the obligation that arises from making one?", "How does that obligation come about?". Quite natural ways to go about answering such questions run in circles, with informative explanation apparently out of reach. Section 2.1 presents those circles, and the problems which might be thought to arise from them.

In section 2.2 we will see Anscombe's solution, which leaves the circles intact – for the natural ways to go about answering the aforementioned questions are, by her lights, perfectly appropriate in the right context. But one sees *why* they are appropriate only by considering the practice or institution of promising and interpreting individual promises against the background of a linguistic conventions of that practice or institution. Anscombe's view entails that "to promise" belongs among the institutional verbs considered in 'On Brute Facts', and she is to that extent a conventionalist about promising. We have seen that for such verbs, definition, construed as the articulation of necessary and sufficient conditions, is out of reach, and so Anscombe does not attempt to *define* promises with reference to an independently describable practice or convention (such an attempt might also be called "conventionalism about promises"). But definition, Anscombe reminds us, is 'not the only mode of explanation' (*SAS* 138). Instead, she wishes to emphasise description of the language-game in which promises are made, with a focus on the relation of promises to the use of modals in such sentences as "You can't do that, you promised not to". This is the background "institution" against which promises are intelligible.

Section 2.3 brings in Anscombe's discussion of rules and rights – two concepts she discusses in analogy with promises. It aims to thereby address questions left over from the exposition given in 2.2 and 2.1, and to emphasise some particularly important points; it explains why Anscombe does not (and cannot, by her lights) define promising by reference to an independently describable (type of) practice or set of rules, and how to interpret Anscombe's distinction between practice-enabled reasons as given on particular occasions, and more general *types* of such reasons, which go toward characterising the practice they are a part of. That discussion raises a question about a type-token distinction for practices themselves, and the relevance of that distinction for the case of promising.

2.1.1 The understanding circle

Anscombe begins 'On Promising and its Justice', her earliest treatment of the issues which will occupy us for the remainder of this chapter, with a problem about action-description, not obviously related to those we have been considering in 1.1, at least initially. It concerns actions which an agent could not be said to perform unless they thought that they were performing them. Anscombe's initial examples are marrying, making a gift, swearing an oath (*PJ* 10). Where "p" is some action description of the form "A is M-ing", containing one of those verbs (e.g. A *marries* B), then '"A thinks that p" is an indispensable verifier of "p"' (*PJ* 11).[7] The general question here is: 'What bearing can what the agent thinks have on the description of the action?' (*PJ* 10). At least, what bearing can such thought have on the description of an action which is, at the same time, an "external", physical event? Marrying, making a gift, swearing an oath – these are "exterior" events, in at least the sense that one cannot settle the question whether they happen *just* by appeal to the thoughts of anyone[8].

Anscombe recognises that there are a few things which might present as difficulties in this vicinity (see *PJ* 10-12), but her concern is with the following 'logical difficulty', which arises specifically in the context of trying to give an *explanation* of one of the action-types we have been considering:

> 'If thinking you are getting married is essential to getting married, then mention of thinking you are getting married belongs in an explanation of what getting married is; but then won't an explanation of what getting married is be required if we are to give the content of thought that one is getting married? Hence it will be impossible to explain what getting married is and impossible to say what is the thought of the man who thinks he is getting married; and so generally for all cases of this type.' (*PJ* 10)

We wanted to explain what it is to get married and found that thinking one was getting married is an essential component. But to specify what that thought was a thought *of* required the very explanation we were trying to give. It can seem as if we have no place we could start in such an explanation, either in the thought or the action. How, then, can anyone come to understand what it is to marry someone? That understanding has been made out to be impossible. And if it is, then it is also impossible to marry, given that one must know what marrying is in order to think that what you are doing on a given occasion is marrying. Anscombe puts the generalised difficulty in this way:

> We have the following situation about a type of concept. Let 'M' be a concept of such a type. Then (1) M-ings are events 'in the world', 'exterior' events: by this I mean that they are not just events in someone's soul. (2) When an M-ing takes place, someone, say A, M's. (3) If an M-ing takes place, in that A M's, it is an essential constituent of the M-ing that A thinks (believes) he is M-ing. Our problem was: what then is M-ing? For the explanation of it brings it in again as an unexplained term.

[7] Note that marrying, and some cases of gifting and swearing an oath, are instances in which "*B* thinks that p" is also an indispensable verifier of "p" (Anscombe points this out in the case of the making of a contract)

[8] 'When an event, or action, is exterior, then there is always something that happens, whose happening is not disproved by any evidence as to the thoughts of the people involved.' (*PJ* 17)

This is the *understanding circle*: one's understanding of performing an action of a certain sort and what it is to undertake an action of that sort are not independently explicable. Promising is an action of that sort. It is important to note that this circle, along with the following two, if they pose a difficulty, pose it for the possibility of *explaining* promises (and other concepts of the same sort). But it is also important to reiterate what was said about the marrying case, that scepticism about *explaining* actions of the relevant sort is just as good as scepticism about *performing* actions of that sort. So long as we hold that people need promises (and the rest) explained to them in order to learn what they are, and that knowing what they are is a necessary condition of thinking that one is performing them, then if promises are inexplicable, they are unperformable.

To anticipate a little, Anscombe thinks that the issue with this argument for promise-scepticism is that it supposes that the explanation of the thought of promising (or more generally, the thought of M-ing) must include an account of promising (M-ing) 'as something contained in the thought' (*PJ* 17). But this will not quite do, for we have only supposed that an account of promising is a *precondition* for the thought of promising (not necessarily contained in it), and that in the following way; the thought of promising requires having learned what promising is, and *that* requires an account of promising[9]. But we can see a similar supposition here, that *learning* what it is to promise requires grasping something like an *account* of promising. And that Anscombe will also want to deny. For there are different ways of explaining and learning which do not rely on the possibility of giving an account of the sort we have been seeking.

### 2.1.2 The meaning circle

'On Promising and its Justice' is Anscombe's only discussion of the *understanding circle*. But for this circle and the next we can also draw on a later essay, namely 'Rules, Rights and Promises'. These two circles Anscombe credits to Hume, though the relation of her formulation to Hume's will not be discussed here (see introduction). The upshot for both, however, is that one cannot

[9] Perhaps this only shows that Anscombe's setting up of the problem is slightly different to mine; but in that case it employs what strikes me as a slightly stronger and less plausible premise. At one point, she compares the *understanding circle* to this: 'a bottle is only a certain sort of bottle if it has a picture of itself on it', where 'this seems to imply an infinite series of pictures'. So, she says, 'A's thought that he is M-ing [seems] to involve an infinite series of thoughts'. She notes that 'that need not trouble us, if we say that to think something is also to think that you think it' (*PJ* 12), but does not deny the application of the analogy in the first stage, which suggests that the model she adopts of A's thought that he is M-ing, for the purposes of running the argument for the impossibility of explaining M-ing, is something like A's having a picture of A's M-ing. Then *that* picture would need to contain another instance of A's thought that A is M-ing, so that one would have to think that one thinks that one is M-ing, and so on. And perhaps we can understand this model of the A's thought as supposing that such a thought includes an account of M-ing as something *contained* in the thought. But the promise-sceptic need not adopt that model, whether or not an infinite series of thoughts is acceptable in this context. The trouble, as she says, is in specifying the *content* of the thought (*PJ* 12). But that trouble remains even if one does not think that the thought of M-ing contains an account of M-ing – the trouble hinges, at least proximally, not on an overly narrow conception of what counts as a thought of M-ing, but on an overly narrow conception of what counts as an *explanation* of M-ing. Anscombe's solution will not admit of either conception, and her discussion in "On Promising and its Justice" has enough to say against both, but the importance in emphasising one over the other partially rests in showing the alignment of the problem generated by the *understanding circle* with those generated by the other circles.

make sense of promises without appealing to their place in a social convention, and that concomitantly promises 'have no force antecedent to human convention' (*RRP* 97). The *meaning circle* starts with the premise that a promise '*by its significance* purports to *make it the case* that there is a new obligation', that is, an obligation to make true a future-tense description given in making the promise. It continues by asking what sort of obligation that could be, what sort of necessity there is supposed to be for making that description true. The circle is completed with the observation that the only appropriate answer to that question is "the obligation to keep a promise", or, alternatively, "the necessity of making the description come true, or being guilty of breaking a promise" (*RRP* 99).

Let's start with the first premise, which can usefully be arrived at via a preliminary description of promises:

> '[Promises] are or contain descriptions of possible future states of affairs. They are made true by performance. But they are not mere predictions, not even merely the sort of prediction which is an expression of intention' (*RRP* 99)

In speaking of expressions of intention as a 'sort of prediction', Anscombe employs an unusually broad interpretation of "prediction" which can be found in *Intention*: someone makes a prediction when he 'says something with one inflection of the verb in his sentence; later that same thing, only with a changed inflection of the verb, can be called true (or false) in face of what has happened later.' (*Intention* 2). *Intention* explicitly goes on to characterise expressions of intention as a species of prediction in this sense, but in the above passage, Anscombe further suggests here that one takes promises to be a species of expressions of intention[10]. Part of what distinguishes them is obviously the obligation generally incurred by making them, and the way in which that obligation is brought about.

As stated in the previous subsection, one who makes a promise understands that they are doing so. And that sort of understanding is not like realising that you are insulting someone by saying something, not knowledge of a side-effect of what you are saying, but the form of practical knowledge involved in intentional action. You do not *discover* that, having made an expression of intention, you have made a promise (even if you may discover that your mere expression of intention was *taken* that way). When you promise, you mean to promise. Put another way: when promising, one description of your action under which it is intentional is "promising". And you cannot intend to promise without intending to incur an obligation to fulfil that promise (to make true the specified description of some future states of affairs). Moreover, you intend to produce that obligation *by* giving the promise.

[10] This is, in one sense, a narrow conception of promising, in that *what is promised* is limited to actions of the promiser. It is not uncommon to hear promises for future states of affairs which are not plausibly in the promiser's power to bring about, or promises that some event has already happened, or simply that some fact obtains. Of course, it is not natural to think of any of *these* cases as species of expressions of intention, even broadly construed.

This does not quite get us to Anscombe's premise that a promise (or rather the person making it) purports to make it the case that there is a new obligation *by the significance* of the promise. And it is that italicised portion we have not reached. Consider one of Anscombe's comparisons:

> '..."Let there hereby be a constraint on me . . . " or "There is hereby a constraint . . . " might be an utterance that was required in order to set off a paralysing device.' (*RRP* 98)

If those utterances did trigger such a device then they would be expressions of an intention to be constrained by the very expression of that intention – the self-referential character of the expression is given by the "hereby". But the relation between the utterance and the constraint is nevertheless *not* the same as the relation between a promise and the obligation incurred by it. For in the former case we must posit an intermediary mechanism that brings about the constraint as a result of the utterance. That means we can ask *how* the utterance brought about the constraint (the answer in this case: "by triggering a paralysing device"). If we know that someone promised to do something, and that they were obliged to do it because they promised to, the question "How did that promise bring about the obligation?" is to a certain extent out of place. "By being a promise" is perhaps the most appropriate reply, but it does not really provide a "way in which" the promise brings about the obligation so much as a reminder that a promise *was* made, and that no further explanation is required for the obligation[11]. And that reply relies on the following: that if you understand what it means to make a promise, you understand that *in making it*, you have incurred an obligation.

There is, Anscombe observes, a special use of "hereby" implicit in the making of promises (*RRP* 99). The use is not unique to promises, but a more general mark of the illocutionary in speech acts; I might "hereby" name a child, give someone a warning, tell someone something, or swear an oath. It signifies that what is accomplished by the speech-act, if anything, is not some further effect of it, but something accomplished *in* the speech-act, in virtue of what is *said* in it. Naturally, that use is implicit because it need not be pronounced verbally, as with the rest of a promise – a nod of the head might suffice. But, whichever sign is used to express a promise, there is, at least implicitly, some description of a future state of affairs, the bringing about of which will count as the fulfilment of the promise, and an at least implicit "hereby" signifying that it is in the making of the sign and by its significance that the obligation to fulfil the promise is incurred. Anscombe says 'this "hereby" is something attached to that in [promises] which goes beyond being predictions and expressions of intention' (*RRP* 99).

There are now two questions, as Anscombe is keen to emphasise: how a sign could so much as purport to "go beyond" predictions and expressions of intention in that way (or how a speaker could purport to, in making it), and given that there *is* such a sign, whether it really does what it purports to. The second question initiates the *obligation circle* discussed in 2.1.3 below, but the first initiates the *meaning circle*. An obligation is purportedly brought about by a promise, but what does that mean? That I have to bring it about that some future state of affairs comes to be.

[11] How could that be helpful to someone who, at the outset, knows very well that a promise was made and only wants to know how an *obligation* arose from it? The answer, which will be justified in 2.2, is that someone sincerely asking that, when there is no question of excusing or justifying circumstances, does not seem to understand what a promise is, or does not *really* understand that one was made. Note also that we not only *do* remind people that they have promised when we know they have not forgotten, but in addition occasionally offer the apparently uninformative reminder that "a promise is a promise".

Or what? I will have done wrong. Further, I will have wronged the person to whom I made the promise. That is one useful clarification – a promise is directed toward someone, and the duty incurred is likewise directed. But it goes with being obliged to do something that you will have done wrong in not doing it, and that you will have wronged someone if your obligation was a duty to them. These are remarks on the logic of obligation in general, and don't say anything specific about *promissory* obligation. We can make another such remark: when you are obliged not to do something, you are rightly told you "'can't' do something you plainly can, as comes out in the fact that you sometimes do.' (*RRP* 101). I might say "I can't leave home, I promised to take care of the dog", or "I can't leave home, I've paralysed myself". In the latter case "I can't…" if correct, implies that I will in fact not. This is not so in the former, for I may break my promise. This is what gives the question "Or what?" any sense – we are asking just what wrong *is* done in breaking a promise? Here we may answer: "I will lose the trust of so-and-so, incur penalties, lose the ability to be relied upon, or to rely on others" and so on. But perhaps none of that is true, and none of it is thought to be by anyone involved. Still it seems I might have made a promise, which I *must* keep, on pain, it seems, of nothing. Nothing, that is, except breaking a promise.

Just as promising *by itself* incurs an obligation, breaking a promise *by itself* counts as wronging the person to whom you made the promise; in neither case is the normative change brought about as a result of some separately describable thing the promise, or the breaking of it, brings about. "How did you breaking your promise wrong him?" can be rightly answered "by being the breaking of a promise made to him", and though there may be additional ways in which it amounted to a wrong, or additional ways of describing the wrong done, there needn't be. But we obviously haven't *explained* promissory obligation at all with these remarks. Anscombe recognises that we might be too close to the concept to see the problem, so introduces comparisons to invented concepts:

> "I blip". It's not the *prediction* by itself that it's an offence not to make come true, it's the 'blipping' of it, or its being a blip. And what is the meaning of its being a blip? That it's an offence not to make the attached description come true. But *what* offence? The offence of going contrary to a blip. It seems clear that we just haven't explained what blipping is at all. (*RRP* 100)

This indicates the circularity in the foregoing remarks about promises, about the particular way in which its generation of an obligation distinguishes it from a prediction (or expression of intention). We wanted to understand what promises were, and found that they could be distinguished as a species of prediction. How so? By their generation of an obligation, and the manner in which they generated that obligation. And how does a promise purport to generate an obligation? By being a promise. Approaching the issue from another side, what is the *nature* of that obligation – what's the wrong of breaking a promise? Just that it is breaking a promise. But it seems we have no more explained what a promise is than what a "blip" is.

The reply could come: it is only right to say that we have no more explained promising than blipping because they are, as described, one and the same. Blipping, that is, has been described so as to be promising by another name. One thing to note is that the name, or rather, the use of that name as opposed to another, does make a difference – mere *invention* of a sign for promising will not do.

> ‘Certainly I cannot, just as I please, restrict my possibilities of good action by, say, inventing a sign "Bump!" and saying that the import of this is that when I attach it to a statement concerning my future actions it restricts my possibilities of acting well…’ (*PJ* 15)

That is, one’s own stipulation will not suffice to make something a sign for promising. This is not to say that there is a set repertoire of such signs, but only that a promise is made to someone who must understand that a promise is being made to them. So one would have to allow that “Bump!” was mutually understood to signify that a promise was being made, for it to count as a sign for promising, on a particular occasion. That said, it is true that Anscombe imagines that “blip” *is in fact* a sign for promising – she imagines not just a new sign, but its having the status of a sign for promising – and so the point here is not to ask how a candidate explanation for promising can explain promising *as opposed to* blipping, but only to use the unfamiliar sign to show the difficulty into which the explanation of such a sign runs.

### 2.1.3 The obligation circle

The *meaning circle* raises problems for the intelligibility of a sign which purports to do what a promise purports to do. And yet if there is such a sign, Anscombe thinks, there would remain a question whether it really did do what it purports to, namely the creation of an obligation. That there is a separate question here is not at all obvious. Think back to the paralyzing device, set off by a certain utterance. The chain of events in *that* case was naturally intelligible – a certain mechanism connected the utterance with the device – that mechanism provided the answer to the question “How did the constraint get brought about?”. And just because there is this intervening mechanism, it makes sense to ask about someone who uttered “Let there hereby be a constraint on me…”, “And was a constraint really brought about?”, for as Anscombe says ‘The natural phenomenon might not have occurred, the mechanism might not have worked.’ (*RRP* 99).

Is Anscombe asking us to imagine a question targeting the same sort of possibility in the case of promises? At one point she seems to say so, when discussing the “hereby” at play in the case of the paralyzing device:

> ‘Now someone will say "But *that's not what 'hereby' means* in, say, a contract!" No doubt he'd be right. But let us just notice that, if "hereby" did mean that, "I hereby lay myself under an obligation . . . " (which would be an expression saying that an obligation was created) would necessarily always leave the question to be answered: "And *did* he? Did the obligation *get* created?"’ (*RRP* 98)

Here we get the following construal of the *obligation circle*; if the “hereby” implicit in promising meant just what it means in the case of the paralyzing device, then the question remains *whether* the obligation the promiser purports to bring about does get brought about. The circle presumably comes into view when one sees that the only way to answer that question affirmatively is to appeal to the fact that the promise *was* made. It should come into view quite easily given what we have said about the *meaning circle*, since we found there that the way in which a promise purported to bring about an obligation is *by its own significance*. But then aren’t we making just the same point here? Because what we have said amounts to denying the premise that the “hereby” implicit in promises *is* just that at play in “let there hereby be a constraint on me…”, said in order to trigger a paralyzing device. And since it amounts to that, we seem to have lost the conditional construal of the *obligation circle* entirely, having denied its antecedent. Moreover, we have lost the sense that this is a different issue than that which initiates the *meaning circle*, although another side to that issue has been revealed; just as the

question *how* a promise generates an obligation cannot seem to target the sort of intermediate process which the equivalent question can in the case of the paralyzing device, so the question *whether* a promise does generate an obligation cannot seem to be answered by appeal to such an intermediate process, and its possible success or failure. If a promise fails to obligate, it does not fail in *that* way.

But promises *do* sometimes fail to create an obligation, which should make it quite obvious that the question whether an obligation was created, when a promise is made, has *some* application. One has no obligation to do something wicked, as Anscombe says (*RRP* 98), and promising to do it does not change that. Given that one can ask "And did an obligation get created?" about a promise made, then one can also ask "Why did it?" when it did, and "Why did it not?" when it did not. For the latter, we have already found that "Because it was a promise to do something wicked" is an appropriate answer. "Something more important came up" is too, sometimes, and Anscombe even says 'there are many cases of undertakings from the obligation of which a mere small degree of inconvenience exempts us' (*PJ* 15).

> 'Sir W. D. Ross, when Pickard-Cambridge made some such point, replied that on receiving a promise people would want to know whether it was a Pickard-Cambridge sort of promise or the real sort! But I should say that people who are not maniacs know well enough, and that solemn commitments are comparative rarities, though they tend to be prominent when they occur.' (*PJ 15)*

It is important to account for this great flexibility in the solemnity of promises, and in how we therefore treat the obligation created by them. This not least because day-to-day moral conflict which arises around promises never concerns the question whether *any* promises should be kept at all, and if so what grounds there are for thinking so, but questions which are responsive to specific circumstances: firstly whether a promise was (really) made on a certain occasion, secondly how seriously one should take a particular commitment, and thirdly whether the promisor and promisee were on the same page in that regard. In cases of 'solemn commitment', it is not just that a greater degree of inconvenience is required to release one from the obligation, but that *nothing* we would count as a mere inconvenience could release one, no matter the degree. A promissory obligation is not just an especially weighty reason to perform an action, but often means some other sorts of considerations cannot be entered into the balance at all. And we needn't take it that in the cases where we may be excused by inconvenience, that *just any* countervailing reason to not do what we promised will do. Some sorts of reasons might be excluded in every case (e.g. "I just didn't want to"). But we have, as yet, no general way of telling what will count as a more or less solemn commitment, what will count as a sufficient justification or excuse in a given case, or even what will be the right *sort* of justification or excuse.

A natural way to find a general answer to the question "When a promise made does not carry an obligation to fulfil it, why does it not?" is to ask why or how a promise *does* create an obligation when it does. But one upshot of the *meaning circle* was that a promise creates an obligation by being what it is. The problem that arose in the meaning circle was that this answer seemed entirely uninformative, when what we wanted to know at the outset was exactly what a promise is. Here the issue is different – the answer appears to rule out cases in which a promise *doesn't* create an obligation. And yet sometimes, it doesn't. Moreover, if it can't explain the failures, it's unclear why it should be said to explain the successes. The point of the *obligation circle* is this;

even if we could make sense of a sign which was supposed to create an obligation by its significance, if we could understand that obligation, we still appear to lack the resources to explain when a promise, which is such a sign, does and does not bring about an obligation.

It helps to look at another of Anscombe's comparisons:

> '…the question would still arise [for a sign whose meaning was that an obligation is being created] whether the obligation had actually got created, and could not be proved to have the answer "Yes" by reporting that the words had been uttered. (Just as, if a door opens when I say to it: "I hereby open you," that doesn't mean that my saying those words itself, in suitable circumstances, is enough to prove that the door is open.)' (*RRP* 98-9)

Why, given that doors sometimes open when we say "I hereby open you", would we not take that utterance *itself*, in suitable circumstances, to prove that the door had opened? That is, why do we not accept for the opening of doors what we *are* happy to accept for promises? It is not among our abilities as linguistic animals to (literally) open doors merely by the significance of what we say. And it seems to be among our abilities to create promissory obligations for ourselves in that way. Why the difference? In promising, someone effects a normative change, and there are other normative changes we can effect by our speech (or some sort of sign, anyway), as when someone with authority gives an order to another. When a door opens, that is not by itself a normative change. But that marks a difference; it does not explain its significance. And it's not as if we can effect just any normative change we like by say-so. We can't even incur any obligation we like, as we have seen, just by promising. But again, when we ask, in this context, what makes a promise so special that one creates an obligation by making it, the only answer we have thus far is that it *is* a promise.

## 2.2 Anscombe's response to the problems

Section 1.1 gives a fairly detailed exposition of three problems with explaining promises, all of which Anscombe takes to support a conventionalist approach. To recount, those problems are:

i. The *understanding circle*: Explaining what it is to promise requires explaining the understanding the agent has *that* they are promising, but an account of what the agent understands just is an account of promising.
ii. The *meaning circle*: Explaining what a promise means requires explaining the character of the obligation which a promise purports to create, but it purports to create just the obligation to keep a promise.
iii. The *obligation circle*: Explaining what promises are requires explaining why a promise creates an obligation, when it does, but a promise creates an obligation by being a promise.

This is Anscombe's initial pitch for the "natural unintelligibility" of promises, in Hume's terms. But it might seem like a pitch for the unintelligibility of promises full stop, since it's not as if any of the formulations above explicitly exclude conventionalist theories of promising. So how is conventionalism supposed to help? Let's return to Anscombe's "Bump!" example. This was a merely invented sign, one which had not been adopted by anyone as a sign for promising – it could not, therefore, fulfil that function.

> ‘Returning to the suggested form "Bump! I will do so-and-so", let us ask how this could be learnt as an utterance having something of the same force as "I promise to do so-and-so". It will be characteristic that the learner is induced to say "Bump! I will . . . " and is then told "Now you've got to do it" and is then *made* to do the thing or reproached if he does not, and that the theme of the reproach is not merely that he did not do it after it was required of him, but that he failed to do it after saying "Bump! I will" … What I have sketched here is what Wittgenstein usefully and intelligibly called a "language-game", and we may say that it is a fact of nature that human beings very readily take to it.’ (*PJ* 16)

Conventionalist about promising or not, one may well admit that certain conventional signs, signs generally used when promising, have to be established so that they are broadly used and understood by those attempting to make promises to one another. But Anscombe is not just giving an account of how such signs are established by describing this language game. Instead, what she hopes to build from it is a more general account of the logic of promises. It is in the context of a language-game such as this that promising is supposed to be intelligible.

### 2.2.1 The understanding circle and institutional verbs

First, recall that the *understanding circle* presented a challenge for how we ever learn to promise, and consequently the possibility of promising full stop. For learning to promise seemed to require grasping an *account* of promising, which in turn required an account of the understanding one has of making a promise, which again seemed to require an account of promising. In the language game Anscombe sketches, we have a process of training, which does not involve the giving of some general account of promising to the learner. Rather, they eventually cotton on to the game that is played, in playing it. Or perhaps they don’t – there are no absolute guarantees here – but it is at least a fact of nature that humans tend to cotton on, via such methods of training. If we accept that we have described *a* way of learning how to promise here, then the direct challenge to the possibility of promising can be avoided. Still, the difficulty in explanation remains – we cannot explain the thought that one is promising in terms of an independent account of what promising is, since part of what it is to promise is to think or understand that one is promising. What this indicates is just that promising and the understanding an agent has in promising require a common account; one is not explained in terms of the other, since they are only intelligible taken together.

In 1.1, we saw the “institution behind” supplying made it so that such-and-such actions (e.g. of putting potatoes on a doorstep) ordinarily amounted to supplying. But not only that; the institution enabled an agent who was a participant in it to *intend* to supply in performing the relevant actions. Likewise, we may say that promising, by making certain signs, and the intention to promise in making those signs, has a common account in the convention or practice of promising. And the intention to promise captures the relevant notion of thinking that one is promising (that was necessary for making a promise). We can see how such an account might go by exploring the language game metaphor:

> ‘…let us note that our first problem has been solved with the description of the "language-game". For it is clear that what you do is not a move in a game unless the game is being played and you are one of the players, acting as such in making the move. That involves that you are acquainted with the game and have an appropriate background, and also appropriate expectations and

> calculations in connection with, e.g., moving this piece from point A to point B. To have these is to think you are playing the game.' (*PJ* 17)

Certain thoughts, along with certain actions, are made possible by participation in a game. It provides the interpretative background against which we attribute certain moves, and also the intention to make such moves, to players of the game. How does such attribution take place in the case of thoughts? When an opponent in chess pushes a piece from one square to another, we can say, just on that basis, that he has made a move. Of course, there is no logical entailment, but, as Anscombe has put it, the pushing of the piece is brute relative to the making of the move – absent reason to think otherwise, the pushing is sufficient to make the move. Which facts are brute relative to the player's intention to make that move, or their understanding that they are playing a game of chess in the first place? For the former, the same fact as is brute relative to the making of the move – that is, the pushing of the piece. For the latter, that fact, along with many others (e.g. they sat down at the board, they took turns to move pieces) – and, as a background condition, that they were taught how to play. Certain thoughts, along with certain actions, are intelligible against the background of the game because both go along with what we call competence in the game – and that is a sort of practical knowledge, knowing how to play.

For the case of promising, then, we can say that the *understanding circle* obtains because the understanding that someone has who knows how to promise, and their ability to promise, are not separately describable, and they are not separately describable because to describe either informatively is to give a description of the self-same practice, and the consequently the status of participants in it. That includes their standing status qua participant in that practice (e.g. chess-player, promisor/promisee), as well as the status of their actions and thoughts given the movements they make, or the things they say.

### 2.2.2 The meaning circle and Anscombean modals

The *meaning circle* presents a challenge about the character of a promissory obligation. Once we have established that a promise purports to bring it about that it is necessary to bring about some future state of affairs, there remained a question about that necessity. As with any obligation, the relevant sort of necessity did not imply actuality, since a promise can be broken. But the wrong of breaking a promise was, if nothing else, the breaking of a promise. And the obligation to keep a promise is, if nothing else, the obligation to keep a promise. And the problem raised by the *meaning circle* was precisely that we could find nothing more informative to say about the general character of promissory obligation. To show how conventionalism about promises helped with the *understanding circle* only required us to invoke general features of institutional verbs. That is unsurprising, for the *understanding circle* mentions nothing about what a promise is thought to *do*. But to show how Anscombe's conventionalism is supposed to help with the *meaning circle*, we need go into a little more detail about the language-game with promises. In particular, we have to attend to the use of modals in this game (*RRP* 100).

Anscombe terms the relevant sorts of modals "stopping" or "forcing" modals (as commonly expressed in sentences beginning 'you can't…' and 'you must…'). They are so called because

sentences containing such modals are, in the language game of which they form a part, *instruments* for stopping or forcing:

> 'Think of the game played with very small children where several players pile their hands on top of one another. Then, if one of them doesn't pull his hand out from the bottom, you say "You have to put your hand on top"; if he pulls it out too soon you say "No, you can't pull it out yet, so-and-so has to pull his out first". "You have to" and "you can't" are at first words used by one who is making you do something (or preventing you), and they quickly become themselves instruments of getting and preventing action.' (*RRP* 101)

We saw exactly this process, whereby a sentence containing the stopping/forcing modal is at first accompanied by another method of stopping/forcing, and then becomes the means by which that is achieved, illustrated in the "Bump!" game from "On Promising and its Justice" (though the term "stopping/forcing modal" is not used there). But once the game is up and running, the appropriateness of the "you can't…" or "you must…" does not depend on the possibility of an "or else" in the particular case. It only depends on participation in the game. And that dependence should not be expressed as an "or else" here, as in "You must move your king in this position, or else you will not be playing chess". That is because participation in the game is a precondition of the truth (or falsity) of the modal sentence, and does not generally enter into the *meaning* of that sentence, explicitly or otherwise. And if someone playing chess were to fail to move their king when they had to, they would not, ordinarily, be counted as having ceased to play chess. Instead, they would simply be breaking the rules, a possibility which must be preserved in describing this situation if there is to be anything called "the rules of a game". This is not to deny that someone breaking enough rules might not sometimes cause justified doubt about whether they are really playing the game (and thus too whether they should be described as "breaking the rules"). But that doubt is not *always* justified when rules are stated and enforced – the question *whether* someone is playing a particular game is often out of place. Therefore, we should put the relation between game and modal sentence in this way: it is in part due to the fact that these two are playing chess that one can say to the other, truly or falsely, "You have to move your king in this position". This is essentially the same as the point made in *On Brute Facts* with regards to owing, that 'the statement that I owe the grocer does not contain a description of our institutions…' And in that context, it is clearly appropriate to replace "owe the grocer" with "have to give the grocer money", making the forcing modal at play in that case explicit.

Considering Anscombe's discussion of institutional verbs, along with further considerations about stopping/forcing modals, helps us see why our direct attempts at explanations of the character of promissory obligation seem to run in an unilluminating circle. For such verbs exploit an interpretative structure provided by a broader scheme of behaviour, the institution or practice in which they are at home. Part of what is provided by that interpretative structure are basic explanatory relations, such as that between a promise and the obligation it creates. Sentences of the form "you have to…because you promised" are a basic unit of the practice:

> 'A stopping modal is very often accompanied by what sounds like a reason…It appears to be a reason. And it *is* a 'reason' in the sense of a *logos*, a thought. But if we ask what the thought is, and for what it is a reason, we'll find that we can't explain them separately. We can't explain the "You can't" on its own' (*RRP* 101)

The point here is that the sense of the modal in "you have to…" and the sense of "you promised" in what Anscombe calls the *logos*, are interdependent, precisely because it is just *this* connection which is given with the practice. An explanation of that connection is not to be found by asking what it is about promises that makes it so one has to do what one promises. Instead, it is to be found by examining the place of the *connection* between promising, and having to do as you promised, in the practices in which that connection is made. The logos of a particular stopping/forcing modal offers a label for the practice in which the relevant necessity operates; it points outward, so to speak, to its surroundings, and it is a description of those in which we should expect the particular character of promissory obligation to come out, rather than a description of the order of events which follows from the making of a particular promise.

We can connect the preceding point about stopping modals and their logoi to the connection between thought and action in the context of a practice or convention: Anscombe, we saw in the subsection above, takes it that participation in a game comes along not only with the possibility of characterising a certain action as "moving a piece", but also with the possibility of characterising a participant as having 'appropriate expectations and calculations in connection with, e.g., moving this piece from point A to point B'. Now to able to promise is to recognise the connection between promising and having to do something as a kind of basic unit. Equally, it is to recognise that connection as operative in an agent's practical deliberation, one's own or others'; "He did it because he promised her he would" is a rationalisation made possible by the practice. Note that in "He did it because he promised her he would", the logos has been 'detached', as Anscombe puts it, from the forcing modal, and presented as a reason proper, for an action which *is* separately describable from said reason (*RRP* 101, *SAS* 142).

Nevertheless, the entanglement of modal and logos shows itself in the fact that one's making a promise is a perfectly sufficient and direct justification for doing as one promised. The question "Why do it just because you promised?" is out of place, in ordinary circumstances, since there is no further explanation necessary or possible beyond the fact that the promise was made. It is otherwise in special circumstances. We could imagine that question being appropriate when the promised act was a wicked one, for instance, where we recognise no obligation to keep the promise. Even then, we may nevertheless recognise the wicked act performed as being done *just* because the promisor promised, where that *just* indicates that the explanatory connection between promising and action is undergirded by the basic unit of modal and logos proper to the practice. What is being questioned is precisely whether this default *direct* explanation is appropriate, given the special circumstances of the case. We could imagine someone denying that they did it *just* because they promised, but instead because their promising made it the case that some other considerations bore on their decision to do as they promised. Those explanatory intermediaries show us that this reason for acting is not that derived directly from the *meaning* of the promise, that is, from the form of explanation which forms a basic part of the practice.

### 2.2.3 The obligation circle and participation in a practice

Much of the heavy lifting in Anscombe's account has been done once the *meaning circle* and *understanding circle* have been accounted for. The *obligation circle* presented the following

questions: first, do promissory obligations get brought about, and how could we settle that question, and *how* do they get brought about, when they do? The second question is pressing because promises do not always oblige us, and we can imagine all sorts of reasons why they might not. But those reasons did not point us to a general characterisation of how promises *do* create obligations when they do. Instead, we were left with the apparently unhelpful "promises create obligations, when they do, by being promises".

The answer here is simply to accept the surface grammar of promising, and note that it is just what we would expect from an institutional verb. Just as being supplied with potatoes is brute relative to owing the supplier, so an obligation to make true a description of some future state of affairs is brute relative to making a promise; that means we can conclude, in ordinary circumstances, *just* on the basis that a promise was made, that an obligation has been incurred. This does not, however, mean that a promise *always* incurs an obligation. But special reason is required to throw that connection into doubt. Which is precisely what we find, in the case of promising. Explaining the case in which a promissory obligation *is* incurred makes reference, in the first instance, just to the promise (to the fact that a promise was made). Explaining the case in which a promissory obligation is not incurred makes reference instead to features of the specific case. Such features are not given in advance as an exhaustive list of exceptions.

There *is*, in a sense, a question whether promissory obligations get created at all. The simplest way to approach that question, given Anscombe's framework, is to ask whether the relevant practice exists, whether it has participants. If one plays a game of chess, one accepts the force of the necessity expressed in the relevant stopping/forcing modals. That is what it means to play a game in accordance with the rules – and in this case, playing the game is not something separately describable from following the rules. People playing chess really *can't* move their king into check, and people do play chess. So, on this approach, since people do make promises, they do incur obligations by doing so.

The "mere" fact of our participation in the practice of promising is not just important for the above question, but for understanding Anscombe's philosophical approach, and in particular, for understanding why she thinks that her description of the practice provides all the explanation one needs. For the solution to the problem posed by the *understanding circle* was that understanding what it is to promise comes with induction into the practice (and not with being given anything like a definition of promising, for instance). And while it is not explanation of *that* sort which is offered by giving a (philosophical) description of the practice, such a description *is* precisely what is appropriate for those who are already *participants* of said practice, and thus already understand promises. That is, if such participants are given cause to be deeply puzzled about promises, to the extent that they worry about the *possibility* of promissory obligation, then it is precisely a *reminder* of the character of the practice they engage in, and the way in which they might come to engage in it, that is required to clear up that puzzlement. In a slogan, Anscombe's philosophy about promising is a philosophy for promisors.

## 2.3 The structure of Anscombe's practices

Sections 2.1 and 2.2 have traced the line of thought which led Anscombe to her view of promises, providing expansion and interpretation where appropriate. Before moving onto the next set of issues, it will be helpful to summarise that line of thought. The problems encountered in trying to explain promises arose from the circularity of the candidate explanations. When searching for a *definition* of promises, we found nothing informative. That was because a promise, the understanding a promisor has in making such a promise, the character of a promissory obligation, and the way in which that obligation comes about were not separately describable[12]. In the first instance, Anscombe's response to this is to accept the circularity, and claim that the philosopher attempting to look to various features of a promise in order to work up a definition is looking for the wrong sort of explanation, and in the wrong place. One should treat "promise" as an institutional verb, and look to the practice of promising. A description of that practice provides all the explanation one needs. The *meaning circle* is accounted for by considering the character of the modals used to express the necessity proper to promissory obligation – "you have to…because you promised" pairs the modal with a logos which is not separately describable. This modal/logos pair forms a basic unit in the practice. Given that people *do* engage in that practice, this modal/logos pair also explains how an obligation may be incurred *just* by promising, and the fact that the practice allows for an immediate explanatory relation between promise and obligation which is nevertheless defeasible eases worries about the cases in which promises do not incur an obligation.

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[12] I take the terminology "separately describable" from Anscombe, and have employed it at various points so far, since I take it to have a fairly intuitive meaning. But since it features prominently here in my summary of Anscombe's position, it is worth noting what she says about it. The closest she comes to using it in connection with promises is the following; 'what is produced [by a promise] is not an independently describable effect, as it were magically brought about by signs. It does not exist at all except for the signs.' (*SAS* 138). In *Intention,* the phrase "separately describable sensations" is used to distinguish knowledge about oneself that one arrives at by observation from that one has without observation:

> 'Where we can speak of separately describable sensations, having which is in some sense our criterion for saying something, then we can speak of observing that thing; but that is not generally so when we know the position of our limbs.' (*Intention* 13)

The phrase is explained further in "On Sensations of Position":

> 'When I say: "the sensation (e.g. of giving a reflex kick) is not separable" mean that the internal description of the 'sensation' - the description of the sensation-content - is the very same as the description of the fact known' (*OSP* 71-74)

The form of this thought should be especially familiar from the *understanding* circle, where we found that the description of the thought-content, of one who knows he is promising, is the very same as the fact known, under just that description. Indeed, Anscombe rules out any alternative in "On Promising and its Justice" than I did in my discussion of it:

> 'It might seem that where "p" is a statement such as "A is getting married", "A is making a contract", etc., then we are wrongly inclined to say that the truth of "A thinks that p" is an essential component of the truth of "p" in any paradoxical sense; the true explanation of "p" must be "q" and "A thinks that q", where "q" states the other conditions for the truth of "p", which can hold whether or no A thinks they hold… This explanation, however, will not do… a set of circumstances may hold, adequate for it to be true that a marriage is taking place, apart from this one point - that one of the parties does not think that what they are doing is getting married - and both parties may know that set of circumstances, which would otherwise be adequate' (*PJ* 10-11)

One thing to note here that "not separately describable", both as it applies to sensations, and as I have imported it in this discussion, indicates a conceptual connection that does *not* in turn entail necessary co-occurrence. A promise may be made without incurring a promissory obligation, just as 'it can happen that one wrongly thinks one's leg is stretched out, or one has given a reflex kick or the like. Then one would say "it felt just as if I . . ." or "I had the sensation of . . ."' (OSP 73)

The purpose of this section is to give a fuller sense of the structure of the relevant practices as Anscombe conceives them. Anscombe develops her practice-architecture first in relation to promises, but extends it to the case of rules and rights. Although neither of the latter are the direct object of discussion here, it is impossible to fully characterise Anscombe's view about the *sort* of practice in which promises are made without also mentioning them. On one hand this is understandable; we have throughout compared the requirement to keep one's promises to the rules of a game, and so it should be obvious that some concept of a rule will help to characterise the practice, and it is also clear that the concept of a right has purchase in the case of promises, at least insofar as the promisee can be said to have a right to release the promisor from the obligation, and a right to complain if the promise is broken. On the other hand, though, and just for those reasons, it is perhaps surprising that these two phenomena should seem to appear in Anscombe's account on the same order as the phenomenon of promising. If one can explain promises by describing a practice, it is natural to explain the practice by appealing to the rules which govern it. It is natural, too, to explain the breaking a promise in terms of the infringement of a right of the promisee, and Anscombe does this explicitly at one point[13]. Perhaps one could construe *that* in turn as a specific sort of rule. If rules and rights are explanatory prior to the practice of promising, why does Anscombe not say this, and instead treat rules, rights and promises equally as concepts for which her conventionalist account is appropriate? It is because she does *not* treat them as explanatorily prior, in any absolute sense (i.e. she would not deny that promises *may*, in certain circumstances, be explained via appeal to rules and/or rights). 2.3.1 will attempt to explain why.

2.3.2 will address the relation between rules, rights and promises by introducing a formal distinction Anscombe makes between a special logos, and a general logos-type. The former is just a logos as it appears in the guise of a particular reason, accompanying a stopping modal. The latter is an abstraction, which picks out various such special logoi as being of the same type.

### 2.3.1 Rules and reductive conventionalism

Talk of stopping and forcing modals may have seemed to some a roundabout way of stating the conventionalist picture. For the initial analogies pursued compared a game with the practice of promising, and the prescriptions of certain rules in that game to the prescription that one must keep a promise. A game can be defined by a set of rules – why not just say the same about the practice of promising? Then we could appeal to said rules in explaining promises, via the practice that those rules define. One reason for sticking to the terminology "stopping/forcing modal" is that it keeps in view the fact that expressions with such modals form a necessary part of the practice as a whole – such expressions are not just *about* the practice. It is easier to imagine a set of rules "defining a practice" from the outside, so to speak, such that their expression within the game is merely accidental. This point will be picked up in chapter 3. Still, couldn't we replace each stopping/forcing modal with "the rules of this game require that you…"? In a sense, perhaps, but it is also true that one may signal that one is stating a rule, in

[13] She does so in illustrating the *meaning circle*: 'A wrong is the infringement of a right. How does telling someone one will do something give him a right against one? Well, it does if it's a *promise*!' (*RRP* 100)

certain contexts, by saying “you must…”. For Anscombe, the frequent interchangeability of such forms of expression only indicates that the same account need be given to the necessity of a rule (the necessity of following them) as for the necessity of keeping a promise.

> Consider the learner in chess or some other game. Of course: "You have to move your king, he's in check" is equivalent to "The rules of the game require that, in this position, you move your king." But a learner may not yet have this idea: the rules of the game require . . . Accepting it when told "You have to move your king, he's in check", is part of learning that very concept: 'the rules of the game require'. Requiring is putting some sort of necessity on you, and what can that be? All these things hang together at some early stage: learning a game, learning the very idea of such a game, acquiring the concept of 'you have to' which appears in the others' speech, grasping the idea of a rule. Nor is there a distinct meaning for "being a rule of the game" (unless the general idea has been learned from other games) which can be used to explain the "you have to" that comes into that learning. (*RRP* 102)

When assessing Anscombe’s account of promises, or for that matter anything else which she explains in terms of “stopping/forcing modals, it is important to keep in mind that it is not a reductive account, in which either rules, practices/conventions, or actions falling under those practices/rules are given an independent characterisation, in terms of which the other two categories are explained. Instead, the range of the type of account Anscombe proposes for promises is much broader, encompassing all three. For games, the relation between ‘learning a game, learning the very idea of a game, acquiring the concept of 'you have to' which appears in the others' speech, and grasping the idea of a rule’ is once again such that all three are not separately describable. For promises, the act of promising, the practice in which it is embedded, the sense of the “you have to…” in “you have to…you promised”, *and* in “you have to keep your promises” are not separately describable (where that last is a kind of “rule” of promising).

It will be helpful here to have an example of the sort of account Anscombe’s non-reductive approach excludes: Jed Lewinsohn, in his essay ‘The natural unintelligibility of normative powers’ takes in many respects a similar approach to the topic of promises as Anscombe does. He begins with Hume’s thesis about the natural unintelligibility of promises, and while his version of that thesis is formulated in a different manner than Anscombe’s, it nevertheless flows from the features she targets as especially problematic – that is, the necessity that one who promises intends to promise, and the explanation of the obligation brought about by the promise (if it is brought about) amounting to a direct appeal to the fact that the promise was made[14]. And his solution is to endorse Hume’s conclusion, to the effect that promises are acts intelligible only against the background of some convention or practice. But the form of his conventionalism differs sharply from Anscombe’s:

[14] A quick overview of how Lewinsohn does formulate Hume’s “natural unintelligibility” claim: he initially describes promising as a species of “normative power”, a notion which he partially defines in terms of the direct, non-causal explanatory relation between the exercise of said power, and the normative change it brings about (e.g. between making a promise and incurring an obligation) (Lewinsohn p.8). He then argues that the ‘only viable alternatives’ to a conventionalist description of exercises of normative powers ‘are descriptions that cannot be satisfied by rational, suitably informed agents…’, and this largely on the basis that a rational, suitably informed agent could not *intend* to perform an action falling under such non-conventionalist descriptions. What he means by a conventionalist description of promises is the focus of the main text.

> First, the conventionalist about promising provides an account of a particular class of social rules (i.e., social norms)– namely, social rules of promising. Such an account purports to specify the conditions in virtue of which a social rule qualifies as a promissory norm. Second, a promissory act is characterized in terms of those social rules: on this view, to make a promise just is to perform an act that satisfies the conditions of a social rule of promising. Of course, for this reductive approach to succeed, the account of a social rule of promising cannot itself make reference to (or otherwise presuppose) the notion of a promise. (Lewinsohn 2024 p.8-9)

I choose Lewinsohn for comparison because he is especially clear in stating that he takes this 'two-step Conventionalist approach' (Lewinsohn 2024 p.9), and because he follows through with the second step,[15] with the following characterisation: the social rules of a promising convention confer on a participant the power to incur a duty to fulfil some condition which may be individually tailored to the particular instance of the promising act, where that act is addressed to the person to whom the obligation is owed (Lewinsohn 2024 p.30). The characterisation of a promising convention is given in greater detail, but its particular content will not be at issue. The point is just that here we *do* have a properly reductive approach; Lewinsohn takes the notion of a 'social rule' for granted in his discussion of promises (ibid.), presumably because he takes it that an independent account of such rules can be given elsewhere, whereas Anscombe doesn't, because she doesn't. Her reason is parallel to that stated in the case of chess. The concepts of a social rule, and of promising, are in some sense interdependent.

But is that right, either in the case of the game of chess or of promising? Anscombe says a learner of the game of chess might not have grasped the sense of "the rules of the game require…". An unlikely scenario, perhaps, but possible. Nevertheless, someone might object that this tells us nothing about the *logical* priority, or lack thereof, of "the rules of the game require…" over "you have to move your king…". The latter may be used as a tool in teaching the former, as a kind of example, but its sense is surely to be explained in terms of the former. But teaching "the rules of the game require…" by means of example *is* just a way of explaining it[16]. Probably an essential way, since it is difficult to imagine someone grasping the concept otherwise. Certainly, one may also explain to someone who *has* grasped "the rules of the game require…" what is meant by "you have to move your king…", by appeal to the former, perhaps to distinguish the necessity of moving the king from "you have to develop your pieces", which is not required by the rules, but only a general principle for playing well. But there is no obvious way to appeal to "order of explanation" here to get a grasp on this logical priority. Instead, someone who wanted to argue for some such priority might appeal to the fact that chess needn't exist for there to be such a thing as the rules of a game, whereas the reverse does not hold. This is surely right. Still, if *no* games were played, then there would be no such thing as the rules governing them either. Perhaps it is tempting to think otherwise, since we can invent games which will never be played by specifying a set of rules (e.g. "the game achieved by taking

[15] Which, as Lewinsohn points out, other conventionalists who purport to take a similar approach do not (Lewinsohn 2024, p.9)

[16] Compare Wittgenstein (1971), in *Investigations* 208: 'But if a person has not yet got the concepts, I shall teach him to use the words by means of examples and by practice.—And when I do this I do not communicate less to him than I know myself.' To directly argue against the notion that when teaching by means of examples and by practice, one *must* be communicating less than one knows would take us too far afield. But that notion is surely related to the inclination to say that "you have to move your king…" *must* be explained in terms of "the rules of the game require…"

the rules of chess and allowing the knight to move twice in a turn"). But the ability to count as having invented a game by specifying a set of rules requires that games are sometimes played (in accordance with certain rules). That practice, or rather set of practices, is the context in which it makes sense to say "the rules of the game require…", or to talk of the rules of a game in the first place.

We can say similar things about the relation of social rules to promising; being brought into an understanding of promises hangs together with being brought into the concept of a "social rule", to adopt Lewinsohn's term. The connection is especially strong here, though. The game of chess itself is inessential to the concept of the rule of a game; we can take it or leave it, even if we cannot take or leave every game. What about the notion of a "social rule" and that of a promise? Here the interdependence seems to get some purchase more directly – for what sorts of social rules are possible without the possibility of people offering commitments to each other which they must keep? Recall how broad the initial characterisation of promises is, which we have currently been working with; in promising, someone gives a sign, the meaning of which is that they must make true some description of a future state of affairs. We might think that such an act is often taken in the *establishment* of some social rule, or that the possibility of such an act is the precondition for the existence of such rules. The notion of a "social contract" as basis for social institutions can sometimes be read in this way. Thus Katharina Nieswandt, in 'Anscombe on the Sources of Normativity', says that the necessity proper to the rules of a game cannot be grounded in 'a kind of contract', whereby players of the game agree to follow its rules, for this account 'already presupposes the concept of a promise which is among those that Anscombe set out to investigate…' (Nieswandt 2017, p.149)[17]. Even if one does not take it to be a problem that the concept of a promise is presupposed in giving a contractualist account of *games*, it is much more plausible that presupposing that concept in giving a contractualist account of the practice of *promising* is problematic.

Stanley Cavell, in *The Claim of Reason*, entertains the idea 'that promising is not *an* institution, but the precondition of any institutions among persons at all', that this way of committing

[17] Nieswandt ends up making the same point about Anscombe's account that is made in this subsection, that 'Anscombe does not understand the relation between a game and a rule-based duty as a grounding-relation' (Nieswandt 2017, p.150). But she assimilates attempts to understand the relation in that way to 'attempt[s] to break Hume's circle' (ibid.), "Hume's circle" consisting, more or less, of the *meaning* and *obligation circles* as I have described them. This assimilation does not seem quite right to me. Nieswandt begins by introducing Anscombe's conventionalist account, and asks 'How, then, does a game generate a necessity for its players?'. Two candidate answers are dismissed, one the contractualist, and one a sort of "expectation" account. She rightly responds that neither are appropriate to describe the necessity proper to the game, since it is 'the *game itself* that requires her to move the king, not the other player's expectations', nor a prior contract (this is not to say you cannot sign a contract which requires you to play the game). These answers *do* indeed attempt to break Hume's circle, but for that reason do not try to understand the relation between game and rule-based duty by grounding one in the other, since they would not accept the notion that it is the *game itself*, or any of its rules, that does the requiring. One can *accept* that "the *game itself* requires…", and still attempt to give a reductive account of what a game is in terms of its rules. The importance of making this distinction is that what Anscombe says about the interdependence of rule and game is *not* directly implied by her foregoing account of the necessity proper to a practice. There is, in other words, space for an account which describes the inner workings of practices, so to speak, just as Anscombe does, but goes on to *explain* those practices reductively. Lewinsohn might very well occupy that space.

oneself makes possible '[t]he very existence of human society, and the coherence of one's conduct' (Cavell 1979, p. 298). He does not affirm this idea:

> '…there are any number of ways, other than promising, for committing yourself to a course of action: 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…There is nothing sacred about the act of promising which is not sacred about expressing an intention, or any other way of committing oneself' (ibid.)

Nevertheless, he does affirm (and it is difficult to deny) that committing oneself to a course of action in some way or another does make possible human society, and institutions. Nothing will count as an institution, or as a "social rule", if nothing counts as committing oneself to a course of action. A promise is a paradigmatic way to do just that, even if not the only way. Its being a paradigmatic way to make commitments and form social relations, in this context, roughly means it holds more sway over those concepts than does chess over the concept of a game. And that in turn roughly means that our understanding of what it is to promise, and what it is to make commitments etc. covary to a greater extent than our understanding of what chess is, and what a game is. Chess probably is, in a different sense, a "paradigmatic" game (or board game, anyway) – it is a very clear case, which everyone who knows what a board game is should agree counts as one, is widely known, is long established, and so on. Promising has a significance, a sway, over the notions of commitment, and of social life that *no* individual game has over the concept of a game – this point will be argued and explained in more detail in the next chapter (3.3.3, 3.3.4). The "sway" that promising exerts over our concept of commitment is not *just* because there are so many more games than there are ways of making commitments, although that is no accident – it is much easier to introduce variants on games than it is to introduce variant ways of making commitments. This point will also come up in the next chapter. For now, the important thing to emphasise is the logical similarity between the cases, in spite of their substantial differences. That is, in neither case is there some Archimedean point to be sought in the concept of a rule, that could serve to characterise the relevant activities without itself being characterizable only with reference to *some* such activities.

### 2.3.2 Special logoi, and general logos-types

Anscombe makes a distinction between the *special* logos of a stopping/forcing modal, and a *general* logos-type, which indicates the kind of modal in question.

> 'I shall say that there are various logos-types, and that the name of the general logos-type is an abstraction from many particular cases; a label which tells you the formal character of the stopping modal. For example, one logos-type is *a right*, and another, very general one, is: *a rule*. Thus if you say "You can't move your king, he'd be in check", "he'd be in check" gives the special logos falling under the general logos type: *a rule of a game*.' (*RRP* 102)

Properly speaking, when a logos is given as a "reason" for some stopping/forcing modal statement, that is a *special* logos, since 'a general type is always exemplified in a special logos of that type' (*SAS* 143). But this does not mean that such general types are absent in the talk or thought of someone engaging in a particular practice, and employing the modals proper to it. To say "you can't move that, it's against the rules (of chess)" is to have brought the forcing modal under the concept of a rule. That indicates a recognition of the similarity of the modal to others, and while the force of the modal depends on the addressee's playing chess, and being in danger of violating a particular rule of that game, it would be strange for someone to play chess without

*some* recognition of that similarity. Anscombe says that this similarity is in the 'formal character' of a stopping modal. What does that mean?

Of the triad of rules, rights and promises, Anscombe's most explicitly gives this formal character in the case of rights. To begin with, the general form of the *logos* in a rights-practice includes a 'special mention of persons' (*SAS* 139), together with a possession-locution: "It's N's (to)...". So the general form of the stopping modal is "you can't...it's N's...". There is the corresponding "permissive" modal for N, that "N *can*...it's N's". As Anscombe puts it, '[t]he stopping cannots addressed to everyone else surround and protect his [N's] 'can'' (*SAS* 141).

> 'N does not 'have to' do it. No one uses such a formula or even tries to get him to do it. But he is among those who 'can': that is, there are no 'stopping cannots' for him here either way. But if you set out to do it, the utterance "you can't, it's for N to do" is followed up with, say, affronted behaviour on N's part, or on his behalf; or fear of the same if you *do* do it. And you may 'have to' make it up to N for having done what was his, not yours, to do. The connection with him is given, not only as a reason for the 'stopping cannot' about your doing it, but also and especially about stopping him from doing it. And it is something that one might very much want to do, either naturally or because it is invested with desirability and dignity by these practices.' (*SAS* 140)

Another modal gets a mention here in "you have to make it up to N for having done what was his, not yours, to do". This is often the appropriate reaction to a wrong done, which Anscombe defines simply as 'an infringement of a right' (*RRP* 100, *SAS* 138). In any case, the appropriate description to give here is not just of the relevant modal sentences, but of their place in the practices of the specified type, amongst the various other actions and utterances which characterise it. The 'formal character' of a practice is thus at least made up of formal features of the relevant modal/logos pairs, together with their place in the structure of the activity as a whole.

It appears that very little in general can be said about the formal character of a rule. We noted in the subsection above that it was possible, at least in the context of a game, to substitute "rule-talk" for stopping/forcing modals. Rules are often explicitly stated in terms of such modals. But what more can be said? It seems that the notion of a rule is so thin, at least as it has been used in the current context, that we are *only* really discussing stopping/forcing modals in other terms. A rule exists, we might say, just where we can go right or wrong, where we sometimes *do* what we in some sense *can't do*. That is how Anscombe thinks of stopping/forcing modals, and there is some indication it is how she thinks of rules, too:

> 'I shall be arguing that *no* naturalistic account of a rule, as of a promise, will work: it will follow that words and their relation to their meanings aren't 'naturally intelligible' either. For the use of words involves following rules; hence an account of language must make reference to rules. (Not merely to regularities.)' (*RRP* 97)

If the use of words *always* involves rules, and this can be stated without much explanation, it seems that here we are taking rules in a very thin sense, a sense which just registers that we can go right or wrong in the use of words. So when Anscombe calls "a rule" a *very* general logos-type (*RRP* 102), perhaps it is right to think of it as the *most* general logos-type, for what modal/logos pair would not count as the statement of a rule in this sense? In that case, of course, the logos-type "a right" will fall under the broader type, as will 'a rule of a game'. The spheres of these

logos-types, then, are not mutually exclusive. And they had better not be if, as noted at the outset of this section, a promissory obligation is supposed to incur a right on the part of the promisee.

Anscombe never (as far as I know) calls “a promise” or “promising” a general logos-type, but it is reasonable to assume that it counts. We might take “you have to…you promised” (where the ellipses are to be replaced by a description of some future state of affairs) to be the generic form of the modal/logos pair, but given what we have said about the relation of a promise to a right, it is perhaps better to include the “special mention of persons” here too, and write “you have to…you promised N you would”.

There are two further issues which might occur to someone concerned to understand Anscombe’s conventionalist account of promising. First, is there just one convention or practice to speak of here, “the practice of promising”? Second, and relatedly, is the notion of “practice” employed here too thin to characterise promising much at all? Taking the second first, the worry arises most clearly when we observe the thinness of the concept of “rule”, as Anscombe employs it. Cavell, in discussing Rawls’ conventionalist account of promising (which will come up again in chapter 3), says the following:

> ‘He cannot mean merely what Wittgenstein means by referring to "obeying a rule" or "making a report" as "institutions" or practices (Investigations, §199, §202)…Wittgenstein's use of the concept of a rule is not always clear, but what he means, roughly, is that there are ways of doing all of these things, that not just anything you do will be competently performing them, that, in a word, they have a grammar, and in that sense are conventional, and in that sense social. He does not…mean that they are conventional or social in the way institutions which characterize particular societies are conventional.’ (Cavell 1979, p.294) [18]

It seems as if Anscombe might indeed mean to call “obeying a rule” a practice in that sense. Does that mean she wishes to call promising a practice in the same sense? Not necessarily. As in the case of the logos-type “rules of a game”, there is not, in any substantial sense, a practice of obeying rules. But this does not mean that the fact there is a general logos-type “a promise”, precludes there from being, in any substantial sense, a practice of promising, in which a *special* logos may be “you promised her you would”. The distinction between special logos and general logos type does not always track the difference between particular practice and type of practice. But this pushes us to consider whether there is *a* practice to consider, or many falling under a general type, when talking about promises. It might seem obvious that there are many, for the simple reason that variations on promising practices are possible, just as variations on a game are possible. I will argue in 3.3.1 that it is not so obvious as it might seem, and that the appeal to the possibility of variations is especially fraught. For now, it suffices to say that Anscombe need not give any principle of individuation for practices in order for her argument to go through, and in that respect, the appeal to promise as general logos-type, belonging to a practice which has a certain structure, with modals having certain logical features, is helpfully neutral with respect to how many practices are supposed to be implicated.

[18] Cavell, on this basis, explicitly denies that promising is a practice in Rawls’ sense. I assume that it nevertheless *is*, by Cavell’s lights, a practice in Wittgenstein’s sense.

## 3 Promising and the justification of a practice

The question of the good of a practice or of the justification of convention is unavoidable for conventionalists about promising. We have seen in the previous chapter how Anscombe understands the dependence of promises, and their obligation, on the existence of a kind of linguistic practice. In particular, we saw how the description of such a practice helped us make sense of the connection between making a promise, and the obligation to do something or another. But none of the foregoing has established that it is right to participate in a practice in which such a connection obtains, nor that it is right to go along with the practice even if you are a participant.

One of the most prominent views which have been called "conventionalism about promises" is that expounded by Rawls, in "Two Concepts of Rules" and *A Theory of Justice*. It is the former, earlier, work which provides the basic structure and direction for the latter, and since that basic structure is most relevant to the current discussion, I will focus on the version of the view presented there, and responses to it[19]. At the heart of Rawls' paper is 'the distinction between justifying a practice and justifying a particular action falling under it' (Rawls 1955 p.3). That distinction is the primary topic of this chapter.

The most significant omission in the last chapter's summary of Anscombe's view is her approach to the justification of a practice. It is this which provides, as she sees it, the *justice* of promising in "On Promising and its Justice", and the *authority* of the state in "On the Source of the Authority of the State". Her position is easy enough to summarise – Anscombe is mainly concerned (and understandably so) to justify those practices which we participate in whether we like it or not, or which we *should* participate in, like it or not. So her justifications appeal to the *necessity* of the practice for the achievement or maintenance of some good or necessary state of society. She thinks, for instance, that promising is an essential way of 'getting one another to do things without the application of physical force', and that this in turn is 'a necessity for human life' (*PJ* 18). This chapter will begin by briefly presenting Anscombe's and Rawls' approach to the justification of a practice (3.1).

Like Rawls, Anscombe holds to a separation between this necessity of promising for human life, which constitutes her justification of the practice, and the necessity proper to a stopping or forcing modal as it occurs *within* the practice – both in this sense hold to a "two level" view, as Michael Thompson defines it (3.2.1). Two-level views have obvious advantages – for one thing, it is extremely implausible in most circumstances to imagine that someone who keeps a promise does so in *view* of the necessity of the practice in which they are participating. Rather, as we have maintained in chapter 2, Anscombe's conventionalism holds to the view that the reason to

[19] Another reason for this focus is that the relevant formal aspects of the "Two Concepts" view, that is, the separation between the justification of practice and action specified by practice which characteristic of a "two-level view" are arguably lost in *A Theory of Justice*; see Thompson (2008, p.173-4) and Nieswandt (2017, p.159-60).
But see also Nieswandt (2016) claiming that even "Two Concepts" fails to carry through the separation, insofar as it presents said distinction in defence of rule-utilitarianism (p.322). But her claim is based on a general characterisation of rule-consequentialism, rather than the particular account Rawls gives.

keep a promise is generally (simply) that you made one, whereas the reasons which go towards justifying the practice of promising are quite different. But the separation throws up its own difficulties, and it will be part of the business of this chapter to address those.

Part of the reason for discussing Rawls' conventionalism in this chapter is that some interesting challenges have been raised against it, which on their face appear to apply just as much to Anscombe's view (3.2.2). These come from Michael Thompson and Stanley Cavell, whose critiques, in one sense at least, pull in opposite directions. For Cavell, Rawls cannot justify his characterisation of promising as a practice or institution, at least on his understanding of these categories. For Thompson, Rawls should limit his concept of a practice in order to *include* promising in that category, but to exclude much else which he does count as a practice. Nevertheless, while they differ in this and many other ways, these critiques do concur in locating the issue with Rawls' approach in the same place – his conception of a practice – and observe the very same symptom of that purported issue – that he does not sufficiently distinguish the case of promising from the case of games. It is natural to ask, given the similarities in structure between Anscombe's view and Rawls', and given that the game analogy is at least as important for her as it is for Rawls, whether she fails in the way that Thompson and Cavell take Rawls to have failed.

For both, a host of problems arise from this failure; I will roughly split those problems into two categories, though there will be significant overlap between them, and consider how Anscombe might respond to them. First are those related to the problem of individuation of practices raised at the end of the last chapter; in the first place, what exactly is being justified by what Rawls or Anscombe says – a particular practice, or a particular type of practice? In any case, can we imagine "practices of promising" which are clearly *not* justified? (3.3.1, 3.3.2) Second are those directed at the place of promising in moral life; how are we to make sense of the keeping of a promise as a *just* act, for instance, given that the necessity to keep any individual promise appears to be cordoned off from considerations of the good of the practice as a whole? The purported justification of a practice might appear too external a matter, totally detached from the way in which people participate in it, on Rawls or Anscombe's view. But surely it *is* necessary, if one is to understand what it is to promise at all, that one takes the whole business of promising seriously, that one's participation in it does not, in various ways, resemble one's participation in a game of chess (3.3.3, 3.3.4).

## 3.1 Anscombe and Rawls on the justification of a practice

### 3.1.1 Anscombe

In 2.2.3, it was claimed that the condition for being subject to promissory obligation when one makes a promise was participation in the practice. But one may be technically *subject* to all sorts of rules, regulations, responsibilities, offices, and so on, without feeling their force, without thinking that, in the end, you should follow this or that convention[20]. And this is especially true when one cannot easily extricate oneself from the practice, convention, or

[20] See Teichmann (2002) on the conflation of 'having force' and 'applying' in a similar context (p.604)

institution to which those norms belong. One may set oneself in opposition to the unjust laws of a government, for instance, by not obeying them – this constitutes a mode of protest which is not possible *without* one's being subject to the relevant laws, a participant in the relevant society. So it is not a given that being a participant in some practice, and therefore being subject to its norms, settles the question whether in the end one ought to act as the practice prescribes.

Consider again the language-game with "Bump!". We saw that the necessity to do what you "bumped" to do was expressed in a forcing modal, connected with a logos, the connection between which was seen in the description of the practice. About this practice, Anscombe says that 'the 'necessity' expressed in it does not differ from this one: "I say 'ping' and you have to say 'pong"' (*PJ* 18):

> 'But if told "you have to say 'pong' when I say 'ping'", there is clearly no answer to "Why do I have to?" and so also initially with the language-game: "you have to do it if you say 'Bump! I'll do it"'. But if the procedure has the role of an instrument in people's attainment of so many of the goods of common life, the necessity that people should both actually adopt the procedure, i.e. often give undertakings; and also go along with the procedure, i.e. tend to accept the necessity expressed in that reaction and also treat this as a *rule* this necessity is a necessity of a quite different sort: it is the necessity that Aristotle spoke of, by which something is called necessary if without it good cannot be attained. And hence it comes about that by the voluntary giving of a sign I can restrict my possibilities of acting *well* and hence it can lead to my deserving, as well as receiving, reproach. This whole complex is, I believe, one of several roots of the idea of *justice*.' (*PJ* 18-9)

The statement is highly compressed, and contains much we will return to. But the basic outline is not difficult to grasp: first, the necessity expressed *in* any practice (i.e. in stopping modals) is all of a piece, formally speaking. But the necessity of going along with some practice is of a different sort, in that it depends on some (distinct) good which may not be attained without engagement in that practice. Promising is a practice which it is necessary to participate in, in *that* sense, so when giving a promise, one restricts one's possibilities of acting *well* (in accordance with the good). There are three sorts of necessity here. The first is familiar from the forcing modal/logos pairs, in which the reason given for why you "have to" do something and the necessity expressed in the modal are not separately describable. Then there is "Aristotelian" necessity,[21] where 'the necessary is that without which good cannot be or come to be' (*PJ* 15). Finally, there is the "cannot" in that sentence, which is the negation 'of the possibility that is correlative with absolute or "simple" necessity; for this it does hold that "necessarily p" implies "p".' (*PJ* 15)

Why do we need promises, in the Aristotelian sense? Because 'getting one another to do things without the application of physical force is a necessity for human life, and that far beyond what could be secured by those other means.' (*PJ* 15). That, in any case, is Anscombe's answer. In 2.3.1 we saw Cavell's claim that promising is among the species of commitment to a course of action that makes human society and institutions possible. Anscombe seems to concur; 'It is scarcely possible to live in a society without encountering it and even actually being involved in it' (*PJ* 18). One could instead emphasise, as does Seana Shiffrin (2008), the necessity of

[21] As Foot later called it: Philippa Foot, Natural Goodness (Oxford: Oxford University Press, 2003), p. 15.

promises for intimate relationships.[22] Exactly why promises are necessary, if they are, exactly which good they are indispensable in serving, if any, will not be worked out in detail; though it appears to me that Anscombe's (rather Humean) necessity claim could well be enriched by what Cavell and Shiffrin (among others) have said about the importance of promising in human life, but I will not discuss those prospects here. What will be important, though, is *that* it is a claim to *necessity*, rather than some other sort of justification.

### 3.1.2 Rawls

The "logical basis" of Rawls' distinction between the justification of a practice and the justification of a rule falling under that practice is his understanding of "practice-rules" (one of the two concepts). On such an understanding, rules *define* a practice (Rawls 1955, p.24). One can roughly understand what Rawls means by reading his definition of "practice", given at the outset of the essay:

> 'I use the word "practice" throughout as a sort of technical term meaning any form of activity specified by a system of rules which defines offices, roles, moves, penalties, defences, and so on, and which gives the activity its structure. As examples one may think of games and rituals, trials and parliaments.' (Rawls, 1955, p.3, fn.1)

Rawls' examples are telling, as we shall later see; the role of a 'system of rules' in defining practices is modelled on the case of games, and the rest, which causes problematic results when applied to the case of promising. When we come to discuss Thompson and Cavell's response to Rawls' view in this paper, it is *this* aspect of Rawls' conventionalism, and its manifestation in an overextended analogy to games, which will come under most scrutiny. I will argue that on this point, Anscombe's conventionalism should depart from Rawls'.

Nevertheless, there are obvious commonalities. Practices, for Rawls, are 'logically prior' to individual actions specified by them in the following sense:

> '…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

[22] Shiffrin's argument in this paper is has an interesting relation to the present topic, since she seems to argue *against* a conventionalist theory of promises precisely on the basis of something like the Aristotelian necessity of our ability to make them:

> 'On this theory, promises are inventions that we could have failed to invent and still gotten by morally, although perhaps less well and less efficiently. But is it really plausible to imagine a morally acceptable world—or even simply morally acceptable, complex, and close relationships—without the power to promise? (Shiffrin 2008, p.498-9)

But Anscombe would deny that we can "get by" without a whole host of conventions and practices, promising not least among them. Shiffrin appears to have a different, narrower conception of what will count as a convention, which includes the notion that conventions are dispensable inventions (she says at one point that this notion is an 'implicit conventionalist assumption (ibid. p.502)). To be sure, there is a degree of *contingency* to practices, in that they depend on people to keep them alive, for one, and undergo changes according to the social environment. And *some* practices are invented (like games, for instance) at a certain point in history, though it is unclear that this *has* to be how such practices come about. In any case, none of that contingency hinders a correct description of a practice as necessary in the "Aristotelian" sense. Promising, if we do take it to be "conventional", must have come about at some point in history (or some points), just as language must. But that too does not show that either are dispensable.

> of actions specified by practices it is logically impossible to perform them outside the stage-setting provided by those practices…' (Rawls 1955, p.25)

This "stage-setting" is something which we have noted as a feature of practices and institutions since chapter 1; they provide an interpretative background against which certain actions can be given a new description (as e.g. "supplying", "promising", "castling"), so long as those actions are taken by participants in the practice. Moreover, Rawls says, 'it doesn't make sense for a person to raise the question whether or not a rule of a practice correctly applies to his case where the action he contemplates is a form of action defined by a practice' (Rawls 1955, p.26), which is some version of the thought that the modal/logos pair "you have to…you promised" comes along with the concept of a promise when one learns the practice. Crucially for Rawls, this entails the following claim about the justification of an action falling under a practice, which sets up the distinction between act specified by a practice and practice:

> 'To explain or to defend one's own action, as a particular action, one fits it into the practice which defines it. If this is not accepted it's a sign that a different question is being raised as to whether one is justified in accepting the practice, or in tolerating it.' (Rawls 1955, p.27)

The distinction, then, is marked by a different sort of question, with a different sort of answer. The justification of the *practice* can be made, Rawls thinks, on general utilitarian grounds.[23] The justification of an individual action falling under it, however, cannot, because it has to take a specific shape; that of 'referring the questioner to the practice', as he puts it (Rawls 1955, p.27). Presumably "I had to do it because I promised her I would" is an instance of such an answer; in Anscombean terms, we can say that the answer does not give a reason which is separately describable from the nature of the "had to", but instead gives the logos or "theme" of that necessity. It is the mention of this logos which, for Rawls, refers the questioner to the practice.

## 3.2 Two-level views

### 3.2.1 Thompson on two-level practices

Michael Thompson, in the third section of *Life and Action* (titled "Practical Generality"), calls views of the sort Rawls expounds "two-level" theories of practical normativity. It is worth introducing some of his terminology, since it is exactly the similarity between Anscombe's and Rawls' views, *qua* "two-level theories", which accounts for the fact that the objections we will consider against Rawls might be seen to apply just as well to Anscombe.

On Thompson's interpretation, two-level views involve a few central categories; there is a *mediating element,* which for our purposes will be a practice or convention. The mediating element will bear some *relation of expression* to particular actions, such that certain actions *express* or *instantiate* the practice (Thompson 2008, p.168). Further, there will be some *standard of appraisal* for the mediating element, and some *transfer* or *transparency principle* which relates some normative quality of the mediating element to some normative quality of the action (ibid. p.167). To take a concrete case, in Rawls' "Two Concepts" view of promises the practice of promising is the mediating element, which is instantiated or expressed in the making

[23] Compare Anscombe: 'the utility of the kind of procedure I imagined [i.e. the language game with promises] comes in at the point where the question of desert and of the restriction on the possibility of acting well arises' (*PJ* 17)

and keeping of promises. The relevant transfer principle for Rawls is, simply: 'a good practice makes the actions falling under it good' (ibid. p.167). Likewise, we find in *On Promising and its Justice* Anscombe's claim that the fact that the practice of promising is necessary in human life makes it so that making a promise restricts your possibilities of acting *well*, so that you *deserve* reproach for breaking that promise.

Thompson is interested in how such views as Rawls' and Anscombe's are responsive to what he calls "tight corner" situations. In the case of promise, tight corners arise when the obligation to keep a promise are at odds with what would otherwise be the good or rational thing to do in a given situation:

> '…the goods and evils to be pursued and avoided in the tight-corner context are such as would make the faithful person's conduct either morally blameworthy or imprudent if it were performed by a similarly situated person, but one who had not made a promise.' (Thompson 2008, p.153)

The tight corner invites appeals to the "practical generality" which comes along with a practice, because there is nothing in the order of events including and following on from the individual action made in accordance with the promissory obligation, either in the agent's perception or in reality, which outweigh the benefits of breaking the promise. This includes anything that mentions the relevant practice – the fact, if true, that breaking a particular promise will somehow damage the practice of promising is the wrong sort of reason, and concomitantly "this act will set back the practice of promising, so I won't do it" is the wrong sort of reasoning (Thompson 2008, p.157) – it appeals to the practice as one circumstance among others of a particular action – which is just to say that practice-mentioning reasons such as these are included in 'the goods and evils to be pursued and avoided in the tight-corner context'.

Rather, an appeal is made to a general mediating element (e.g. a practice of promising, a disposition to fidelity), in view of which the obligation is made intelligible. This kind of move should be familiar from the description of Anscombe's view in chapter 2. Tight corner cases were acknowledged in 2.1.2, where their possibility helped to show that the necessity of "you have to…you promised" did not require the possibility of an "or else", and that a promise does not create an obligation by bringing about something else in virtue of which that obligation can be explained.

For Thompson and Anscombe alike, it is the appeal to practice which makes intelligible what Thompson calls an *act of fidelity*, defined as follows:

> 'An agent X's doing A for another agent Y is an act of fidelity where we can affirm, in a certain familiar sense, that *X did A for Y because she promised Y she would*—that is, 'precisely because' or 'just because' she promised this. We distinguish such acts of promise-keeping from those in which, as we say, an 'ulterior motive' is at work.' (Thompson 2008, p.151)

"X did A for Y because she promised Y she would" is clearly the action-explanation correlated to what was identified as the general form of the forcing modal for promising "You have to…you promised N you would" (2.3.2). So we can say that, by Thompson's lights, it is *acts of fidelity in tight corners* which he takes to be the primary explanandum of accounts of promises – it is this which, he believes, Rawls cannot in the end account for.

Thompson's critique, which we will discuss in greater detail in the following sections, hinges on his characterisation of the *transfer principle*, that 'a good practice makes the actions falling under it good'. Something which does not get explicit mention in *Life and Action* is whether the transfer principle admits of exception. In Thompson's 'Some Remarks on the Role of Generality in Practice', the precursor text to part 3 of *Life and Action*, it is explicit that the principle 'may of course be subject to exceptions, qualifications and *ceteris paribus* clauses of various sorts, and still maintain its status as a transfer principle' (Thompson 1992, p.93). In *Life and Action,* there is no such proviso.[24] I will assume that exceptions *are* admitted, but will later mention a construal of Thompson's critique which relies on the assumption that they are not. The transfer principle is supposed to explain the rightness of an act of fidelity in tight corners; in keeping a promise, one expresses a good practice, and the act is thereby made good, which would otherwise not be (by the definition of a tight corner). The transfer principle is supposed to explain the rightness of an act of fidelity in tight corners; in keeping a promise, one expresses a good practice, and the act is thereby made good, which would otherwise not be (by the definition of a tight corner). But we cannot, by Thompson's lights, allow that agents performing such acts employ the transfer principle as a principle of action, something that enters into their practical deliberation. That is, in performing an act of fidelity, an agent does not reason "This act would be an instance of promise-keeping, which expresses a good practice, so I will do it". This is once again a practice-mentioning reason, one in which the agent only acts '*by reference to* the practice she faces', while 'the practice itself in no sense governs her operation' (Thompson 2008, p.174)[25].

In this sense, the transfer principle is "formal" rather than substantive; in "Some Remarks", Thompson compares the "formal" character of the transfer principle to such principles as "it is wrong to intend to do what it will be wrong to do", as opposed to "substantial" moral principles 'such as that it is wrong or foolish to lie, cheat and steal' (Thompson 1992, p.104-5). He notes that a similar distinction is sometimes made in criminal law, between 'general principles' (which

[24] The closest it comes to such a proviso is the following:

> 'The proposition that expresses this transparency should also involve a certain explanatory direction…if an occupant of a mediating category has the appropriate normative or evaluative property, then an individual action that bears the expression relation to it thereby also acquires that property (or another suitably associated property). Various qualifications might be admitted into such a thought without affecting its standing as a transfer principle or an affirmation of transparency.' (Thompson 2008, p.168)

But just *which* qualifications is unclear (Thompson does not go on to give examples), so it is not clear that any such qualifications would allow for exceptional cases. And, while this is not conclusive, the phrasing in this paragraph makes it sound as if such qualifications as are admitted here attach to the *explanatory* relation expressed in the transfer/transparency principle, rather than the principle simpliciter.

[25] The kind of view Thompson wants to exclude here includes a popular conception of rule-utilitarianism, on which an agent is thought to deliberate about which rules would best govern her (and perhaps everyone else's) conduct, and perform such actions as are thereby prescribed, on the understanding that it is best on the whole to deliberate in this way (rather than act by act). That is, she 'will act by reference to the rules, and the principle of her action will be expressed in the rule utilitarian transfer principle or something internally related to that thought' (Thompson 2008, p.172-3). Likewise, Thompson targets Rawls' employment of Hart's 'Principle of Fairness' in *A Theory of Justice*; the principle, like the two principles of justice (which supplies Rawls' *standard of appraisal* for practices), is 'put directly to the parties in the original position'. For this reason, Thompson thinks, the later Rawls' 'ideally respectable agent is plainly to be depicted as *responding to* the practice and its merits as an external element of the situation in which she is operating' (ibid. p.174). This he takes to be 'evidence of decline' from the early Rawls' "Two Concepts" view.

advise about e.g. “attempts”, “conspiracy”, “incitement”) and ‘particular offences’ (e.g. larceny and murder) (ibid.). Thompson then cites Anscombe in “Two Kinds of Error in Action” in defence of the distinction, in which Anscombe points out that while determining your guilt for breaking a rule or law requires consideration about whether you did so *voluntarily*, ‘a rule as you consider it in deciding to obey or disobey it does not run: do not *voluntarily* do such-and-such, for you cannot consider whether to do such-and-such voluntarily or not’.

> ‘The voluntariness is presupposed in his *considering whether* to do so. Thus it does not come into his considerations of what to do, but it does come into a later judgement - his own or another's - of what was done.’ (TKEA p.7-8).

Likewise, the fact of an action’s expressing some practice does not come into an agent’s considerations of what to do – for the practice is presupposed in his considering an action falling under the relevant description. Being able to *consider* whether to castle, or give a check requires that one is participating in a game of chess – one’s deliberations already “express the practice”; likewise the actions you are deliberating about. The same, Thompson thinks, holds for promises, and the Rawls of “Two Concepts” recognised this: nevertheless, it may come into a later judgement of what was done that, in keeping a promise, one was acting in accordance with a practice, which may in turn be evaluated by this or that standard of appraisal.

### 3.2.2 Nieswandt on Anscombe’s two levels

For any two-level view, a question arises about how to relate the two levels; this is why Thompson targets the “transfer principle” expressed by such views; still, Thompson does not mention Anscombe in this context.[26] The most extended treatment of this part of Anscombe’s ethics to date is due to Katharina Nieswandt, who dedicates considerable attention to the question of how the practice-internal necessities expressed in stopping modals relate to the Aristotelian necessity of a practice. One reason for introducing Nieswandt’s discussion is that she apparently rejects the notion that Anscombe’s view fits Thompson’s description of a “two-level” view, on the basis that it does not involve anything like a transfer principle. In fact, I think that what Nieswandt says only emphasises the similarities between Anscombe’s view and Rawls’ view (at least as Thompson understands it), in a way that will make it seem all the more susceptible to the criticisms of Rawls which we will later consider.

Nieswandt rules out any view which ultimately justifies a practice-internal duty via the justification of the practice – such views ‘collapse the justification of individual duties into the justification of the practice’ (Nieswandt 2017, p.156). Here, Rawls, Thompson and Anscombe alike should endorse Nieswandt’s rejection. Her positive proposal is that:

‘…the existence of certain duties—viz. those imposed by rules, rights and promises—requires the good purpose of the practice as a background. That, however, does not entail that a justification of these duties must (or even may) mention the practice. My suggestion is to regard the necessity of the practice as a *precondition* of any practice-internal duty.’ (Nieswandt 2017, p.157)

[26] This is notable in part due to how abundant explicit references to Anscombe are in the first two parts of *Life and Action*, and indeed, how avowedly Anscombean Thompson’s whole project in this work is (Thompson 2008, p.7).

The language here might remind you of *On Brute Facts,* and indeed this is Nieswandt's inspiration – the *necessity* of a practice here plays the role of background condition for certain duties, which the practice itself (or the "institution") plays with respect to certain facts. Now just what is the necessity of the practice-internal *duties*, if it is not merely conventional? She says that it is a necessity to 'respect a conventional necessity' (Nieswandt 2017, p.158) – this is presumably a way of interpreting Anscombe's talk of "going along with" a procedure, of treating conventional stopping/forcing modals "as a rule". Elsewhere, pursuing the analogy to *On Brute Facts*, she says that just as a currency and the practice of trade forms the necessary background for a grocer's (conventional) *right* to a certain sum, 'it is necessary for the practice of trade to be justified, in order for there to be a *moral obligation* to respect the grocer's right', and that 'we can only be obliged to respect X's right R (or: *R is also a 'moral' and not just a mere positive right*) if the practice P within which R is assigned is justified, even though no justification of R may invoke P' (Nieswandt 2016, p.323, emphases mine). So the necessity is that of moral obligation, which is perhaps unsurprising; the main point is that it figures as a *further* necessity to do what it is conventionally necessary to do, given that that the convention is justified.

What emerges from Nieswandt's discussion appears to be something like a transfer principle, and moreover, a resolutely *formal* transfer principle; in excluding the justification of the practice from the justification of an action specified by it, she ensures that the fact that a necessary practice gives rise to moral obligation cannot properly figure into the deliberation of a participant of that practice, in their considering whether or not to perform some action which the practice requires of them (e.g. keeping a promise). The good of the practice nevertheless forms the necessary *background* for the good of the action.

It is surprising, then, to find Nieswandt rejecting, on Anscombe's behalf, "Thompson's transfer principle" (Nieswandt 2017, p.156-7). There are three points she makes in defence of this rejection: But two, as far as I can tell, are relevant only to the positive view Thompson ends up presenting[27], and not to the question whether Anscombe can endorse *any* two-level view of the sort Thompson describes. The third is that 'the practice and the practice-internal action must have different standards of goodness' (ibid. p.157), and this is supposed to '[rule] out the very idea of a normative transfer principle' (ibid.).[28] But to begin with, Thompson does not affirm that the two standards must be the *same* for any given transfer principle (though the terminology used – "transfer", "transparency" – might incline one to believe so). He certainly takes this as

[27] They are: First, that Anscombe would not endorse the thesis that practices and life-forms species of the same genus, in the relevant respects (Nieswandt 2017, p.157). Second, that Anscombe would likewise reject Thompson's identification of practical disposition with practice (ibid.p.156-7). Indeed, I did not mention Thompson's identification of disposition with practice, nor his thesis that practices and life-forms fall under a common genus in the previous section, because both points seem to me irrelevant to the characterisation of a two-level view as such. Nor do these features of Thompson's view arise in his own text before a detailed exposition of the nature of a transfer principle is given. Nevertheless, we can interpret Nieswandt as rejecting (on Anscombe's behalf) Thompson's view as a whole here, using the "transfer principle" as a kind of label for that view.

[28] I think Nieswandt conflates this point with another, that Anscombe 'must deny that the standard for evaluating the practice of promising helps us in evaluating individual actions within that practice', on pain of rejecting Hume's circle (Nieswandt 2017, p.157). This once again seems like a rejection of justifications of practice-internal actions which involve the justification of the practice, which must be beside the point, since Thompson explicitly endorses a version of the transfer principle which rules out such justifications.

the test case (e.g. "a good practice makes actions it expresses good"), but admits that '[i]n a more complex case, we might need to refer to a suitably related pair of properties'.[29] Ultimately, the way in which Nieswandt develops Anscombe's view makes it conform to just the sort of view that Thompson takes as his target.

On Nieswandt's interpretation of Anscombe, 'the good only forms the background of the right' – 'the goodness of a practice is a *precondition* for an individual agent's duty to comply with a conventional duty assigned within that practice.' (Nieswandt, p.160-1). Comments such as these invite a worry which can be gestured at (pending further specification) by saying that it makes out the justification or goodness of the practice of promising to be too *external* a matter, and this in two ways. Firstly, it might imply that one could adequately describe something we would rightly call "a practice of promising" in the way in which one could describe a game, and *then*, independently, assess its place in human life to see whether it is an Aristotelian necessity, so that one could thereby "upgrade" its practice-internal conventional necessities to the title of moral obligation. Secondly, if the good of a practice is mere *background*, and the explanation of an individual's keeping a promise must appeal directly to that individual's acceptance of conventional necessity, it might seem as if knowledge of the necessity of the practice, the good it serves, is entirely incidental for participants in it. So long as they *do* keep their promises, it is entirely irrelevant whether they see the good in it, or perceive the second order necessity to *respect* the conventional necessity. That is, it might seem accidental that anyone treats the keeping of promises as anything more than an inconsequential game. Whereas we surely want to say that someone who treats promising as a game really has not understood what it is to make a promise at all.

As Nieswandt notes, Anscombe says relatively little about the relation between her "two levels"; much is left up to interpretation. In particular, it does not seem to me obvious that Anscombe's view as written has obvious resources to address the issues I discuss below. Still, I do take my positive suggestions for avoiding said issues to be consistent with her stated view, if not inevitable developments of it.

## 3.3 Justification and Justice

### 3.3.1 Promises; variations on a theme?

At the end of the last chapter (2.3.2), a question was raised whether Anscombe meant, in discussing promises, to describe a particular practice, or a type of practice, of which there are various instances. There, I mentioned that it might be thought obvious that the latter had to be considered, on the grounds that variations on the practice were possible. To extend the analogy to games, there are many variations of poker, which may each be individuated by specifying differences in rules – they are nevertheless, in virtue of certain similarities, games *of poker*. Why

[29] And even more explicitly in "Some Aspects":

> '…the form of good or normative quality supposed to befall the mediating element need not be the same as that supposed thereby to befall the corresponding individual action…the principle presupposed in Rawls is…formulable as: If a practice P benefits society, and an action A instantiates P, then A [is] morally good.' (Thompson 1996, p.94)

not say the same in the case of promising? As we will see, Thompson and Cavell both urge the thought that things are more complicated, that the possibility of constructing variations is fraught with problems in the case of promising, while it is relatively straightforward in the case of games. In their own ways, both charge Rawls with obscuring this difference.

For Rawls, rules *define* a practice, and it is important to understand just what is implied by this. First, consider what Rawls says in making out his central distinction between practice and action. An action 'specified by a practice' is initially characterised as one which, like castling in chess or balking in baseball, falls under a certain description only in virtue of someone's participation in a practice. But, as Cavell points out, in Rawls further usage of the phrase, "an action specified by a practice" is ambiguous, between the sense he initially gives it, and a sense which specifically indicates what is sometimes called a *forced* move, in a game – a case in which no alternative action is consistent with the rules (Cavell, 1979 p.304). Only in *this* case is it appropriate to make Rawls' claim that a sincere query about why the specified action was performed must come from ignorance of the game, so that the appropriate response is *merely* to "refer the questioner to the practice" – if the questioner only knew the rules, they would know there was nothing else to do. But in the majority of games, it is a minority of moves which are "forced", in this sense; much more commonly, the question "why did you do that?", in the context of a game, is answered with reference to some strategic or tactical consideration which does not definitively prescribe actions as rules sometimes do. As Cavell points out, strategic principles are not exactly *external* to the game itself, for 'a certain mastery of a game [hence an understanding of strategic principles] is required in order to be said to play the game at all', so long as we are not talking about games of chance (ibid.). Nevertheless, such principles do not "specify" actions as defining rules do (e.g. "castling is when the king is moved two spaces…"), but rather take such specifications for granted. One aspect of Cavell's criticism is precisely that Rawls ignores this distinction between defining rules and principles of play. The image of game-playing (and so eventually of practice-participation in general) which this encourages is one in which one's course of action is, so far as a given game is concerned, *fully prescribed* by the rules of play. But while Rawls does not fully commit to so radical a view, this image arguably influences the commitments he does make. In particular, it shapes his approach to exceptions, which he understands merely as 'a qualification or a further specification of the rule' (ibid. p.27). In this sense there are no *true* exceptions for practice rules as Rawls understands them[30]. As we will later argue, this understanding of exceptions, while perhaps not quite accurate in the case of games, is not so damaging to one's understanding. Applied to promising, it invites a serious distortion.

Thompson notes this feature of Rawls' account, and that it extends to *A Theory of Justice*. Here, Rawls takes the rule that one must keep one's promises to be *definitive* of promising-practices, but understands the conditions under which we may say that a promise is (really) made, along with the conditions under which the breaking of a promise may be excused or justified, to be

[30] It is understandable that Rawls makes this claim, in the course of distinguishing this "practice" conception of rules from the "summary" conception (i.e. "rules of thumb"). For it is a distinctive feature of the latter that it admits of exception. Nevertheless, one can maintain Rawls' distinction between "Two Concepts of Rules" here without altogether denying the possibility of exceptions to practice rules: we need only insist that the *status* of exceptions is quite different under such a conception.

*written into* that very rule.[31] Naturally, this leaves room for various specifications of the rule(s), resulting in 'many variations of promising just as there are [many variations] of the law of contract'. Thompson proffers a claim in stark opposition:

> '…there can be no reason for supposing that the so-called constitutive rule of our *own* practice needs any more elaborate formulation than is contained in the proposition "promises must be kept," *pacta sunt servanda*. *No closer description of the practice could be supplied by introducing qualifications, for it would mark no distinction among practices*. The thought that there is something loose and inaccurate in the formula is thus an illusion, unless it is combined with the view that the practice is pointless and realizes no good or that it has something like the position of a game.' (Thompson 2008, p.189, emphasis mine)

Here is what I take to be the most direct argument to the conclusion that Thompson offers, which proceeds via a rejection of Rawls' conception of "practice", as it is employed in "the practice of promising":

1. A "Two Concepts" practice can be specified by providing some arbitrary set of rules for the performance of action.
2. Therefore, we can specify various "deviant" practices of promising in which people systematically do or do not hold to promises in situations in which we would find that ridiculous or morally objectionable.
3. But the "Two concepts" division between justification of practice and justification of action specified by it entails, implausibly, that *no* acts of fidelity in a tight corner are morally justified (given that such practices would not satisfy the appropriate standard of appraisal).
4. The description which purports to be one of a "deviant" practice of promising holding in a population is better reanalysed as one in which the practice of promising, *as we understand it*, holds, along with some widespread error in the relevant community which accounts for the deviance.

The "deviant practices" under consideration are scenarios Thompson extracts from brief comments made in *A Theory of Justice*, but, as has already been adduced, there is enough evidence from "Two Concepts" to say that it would be possible, given the conception of practices employed in that paper, to construct similar variations. In the first deviant practice, most people hold each other to any promise, without exception, and in the second, people are generally held to "promises" made in their sleep. In neither of these cases, it is safe to assume, is the relevant standard of appraisal met– the practices are not, on the whole, good ones (Rawls explicitly argues for that conclusion for the *A Theory of Justice* standard, and it is unlikely that either practice would satisfy the utilitarian standard of "Two Concepts" either). Given a two-level theory of practices, then, *no* promises made by participants in the relevant practices in tight corners are properly binding. That is because, in the tight corner, it is *only* the good of the practice, as transferred to the action that expresses it, which counts in favour of performing said action – but the practices in question are no good (Thompson 2008, p.185).

The result is supposed to be a troubling one – many "normal" instances of promise-keeping in tight corners are apparently thought to have *nothing* recommending them, in the imagined

[31] 'The way in which the rule of promising specifies the appropriate circumstances and excusing conditions determines whether the practice it represents is just' (Rawls 2005, p.303)

societies. Whereas we might be inclined to regard those "normal" instances of promise-keeping as just that – and thus as laudable as any such instance in our own society. What Thompson takes this to suggest is that we are implicitly operating with a narrowly "practical-philosophical" concept of a practice, one which could not be identified by value-neutral sociological inquiry, and at the very least excludes such enterprises as games (Thompson 2008, p.191). Why not, he asks 'understand this relation, the *belonging together* that joins any two instances of ordinary promise-keeping, to be the relation falling under the same practice?' That is, why not say this even when describing a practice of a society whose overall commerce with promises is, admittedly, radically different from our own?

To see what he means, Thompson has us imagine that we encounter Rawls' two "deviant" communities in the role of an anthropologist, and consider how we might best describe the customs of each. What he hopes to demonstrate with this thought experiment is that considering such a scenario, it is more natural to ascribe to the communities in question the very same "promising-practice" as ours (or rather one which has the same "inner constitution") and account for the difference *without* appealing to a variant practice with differing constitutive rules. His case for favouring one description over another is bolstered by two analogies. The first is to our treatment of those in our own community who differ in the relevant ways with respect to their treatment of promises.

> 'We have, after all, no difficulty supposing that an individual member of our society might be inclined to perform its sleep-promises when informed of these. And we are actually familiar with the legalism that sometimes leads a child to stick to the formula of its promise when circumstances have made this unreasonable, and to criticize people for not keeping promises even when they can marshal decisive justifications. It is easy to imagine an adult who thinks and acts in one of these ways, and even brings up his children in accordance with these ideas. If we find such a person among us, the verdict will be that he does not grasp the practice, that he has a false opinion about it, that he is in error and leads his children into error. We will say all of this even if there are quite a few such people. But if we imagine, as we have, a whole community of persons thinking and acting in such a way, then we are apt to suspect a transition from quantity to quality and to cave in before the thought that, after all, this is their practice, that promising is something different for them and involves different excusing conditions. But what reason can be given for dropping our resolve?... If we do hold fast, then we will say that the inner constitution of the practice itself is in all three cases the same. It is just that it is associated, in the deviant communities, with a widespread error or a superstitious religious conviction or something on the order of a fad—a disturbance, at all events, and mere dross—propagated perhaps through mutual scandal."

The second analogy is to the status of "natural kind" terms in linguistic communities. Thompson considers another two communities, one in which the word "gold" is used to refer exclusively to gold, and another in which it is used to refer equally to gold and to what we would call "fool's gold". The term is supposed to function as a natural kind term in both communities as in ours; Thompson tries to secure this condition, beyond mere stipulation, by supposing 'that their word "gold" is unlike our "yellow" or "valuable" in that it is fitted to be given in answer to a certain sense of the question "What is this stuff?"' (Thompson 2008, p.186):

> 'It was a favorite suspicion of a certain line of thought that it is mere prostration before the facts to insist that it belongs to the (linguistic) practice of this second community to apply the word "gold" equally to gold and to the other stuff. A more likely story is that the practice of employing the word "gold" should receive the same description in *either* community: it is just that in the

> second community there is widespread error about the fake gold, a frequent mistake with no bearing on the internal description of the practice itself. (Thompson 2008, p.185-6)

The notion of a linguistic practice at play here, Thompson acknowledges 'must be quite different from the 'practical' conception of a practice [he is] hoping to understand' (Thompson 2008, p.185). But he asks about the "practical" case of the deviant promisors, '[w]hat reason can be given for rejecting a parallel with the example of words for gold?' (ibid. p.186). That is, perhaps, a difficult question to answer without some general account of natural kind terms, which I will not pretend to offer here. But one disanalogy which is quite easy to see is in the nature of the error attributed to the "deviant" communities in the two sorts of case; in one a mistake has been made about a certain substance, and its identity with a different substance. In the other, a mistake has been made about a practice, and moreover, *one's own* practice. At least, that is what is suggested by the thought that we may levy essentially the same criticism at the community which generally hold others to sleep-promises, as we would to those within our own community who held such promises to be valid; that criticism, recall, is that such people "do not grasp the practice", that they have a "false opinion" about it. But people's understanding of a practice they participate in enters into the description of what that practice is (this is the equivalent of the thesis that an agent's understanding of promising and what it is for them to make a promise are not separately describable, posed at the level of the community)[32]. And so, it is more difficult to attribute an error about a community's practice to that community as a whole than it is to attribute an error concerning the kind-identity of one bit of material with another. That is not to say it is *impossible* to attribute the former sort of error, but only to support the suspicion that there may be a 'transition from quantity to quality', in some cases[33]. Nevertheless, more would have to be said to make a decisive objection; the broader point I want to make here is that, while Thompson is quite right to press Rawls to consider the implications of his view, and in particular to consider how it is in fact possible to describe other human communities with purportedly "deviant" promising-practices, he does not press quite far enough. Just as Rawls briefly fields the possibility of variant promising-practices without much considering how one would have to understand a society in order to understand his purported variant practices, so Thompson's proposal that we simply project our own practice of promising

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[32] See also this comment on Rawls' "Two Concepts" account: 'The general reception of the rule enters into the constitution of the phenomena to which it pertains' (Thompson 2008, p.177)

[33] Thompson addresses a related, but to my mind weaker, objection:

> 'It might be objected that such a position would contradict an opinion held universally, if implicitly, in either alien community: namely, that the self-same practice is exhibited in all of these cases; or, equivalently, that a single sort of account of action by reference to the agent's past word is found in the uncontroversial and the deviant cases alike. It's all the same to *them*. But the principle of charity implicit in this objection has little force against the account I am suggesting, for wide spread error will remain even on the opposed account. There will still be the universally held false opinion that 'fidelity', thus construed broadly, is morally good (the corresponding opinion will come out true on my account) and the consequent false belief about each deviant act of fidelity, that *it* is morally good.' (Thompson 2008, p.188)

But the worry I sketch in the main text is not based on an unrestricted "principle of charity", but rather on a formal relation Thompson would admit holds between the understanding a community has of their practice and the character of the practice itself. Widespread error concerning the *good* of a practice, it seems, does not raise the same concern. Consider a practice for exacting revenge, which is prevalent in a given society. Let's say we find the practice morally repugnant, on the whole, while that society does not. We attribute widespread moral error without too much *conceptual* difficulty, it seems. But to attribute widespread error in that society about *what counts as revenge* in their practice is, it seems, more conceptually difficult, even if we often observe someone doing something under the auspices of "exacting revenge" which we would not ourselves recognise as an act of revenge (that is, we do not see the "revenge" in it).

onto this imagined society, with the addition of some unspecified widespread error, leaves matters altogether unclear.

Nevertheless, I do think that Thompson shows a serious difficulty in Rawls' conception of practices. For the most part games *can* be individuated by their rule set, and variations on a game can be unproblematically specified by slight alterations in the rules[34]. Rawls wants to say that the very same will hold for promising, as well as large-scale institutions such as punishment. This is exploited in Rawls' comparison of "telishment" and "punishment" in 'Two Concepts of Rules' (Rawls 1951, p.11-2). Cavell points out that in speaking of the institution of punishment, one may be referring to a '*specific* institution…in terms of which one society is distinguished from another society', or it may be imagined as something 'on a par with institutions like kinship systems, law and religion, institutions which distinguish societies from hives or galaxies, general dimensions in terms of which any community of human beings will be described' (Cavell 1979, p.299-300)[35]. The significance of this distinction is that while some sufficiently broad social institutions may be thought of as a kind of universal for human societies, it is still perfectly intelligible to speak of particular instances of that institution, and to consider how they may be justified. Such institutions can also, as in the case of games, be individuated on the basis of certain rules, even if less cleanly. And once again, this comes along with the relatively unproblematic possibility of specifying variations on an institution of a certain sort. Indeed, in the case of institutions, it comes along with the important possibility of *reform*, of the change of rules[36]. But it is less clear just what it would mean to 'urge a reform of the practice of promising' (Cavell 1979, p.295). Once again, Rawls' understanding of how practices are individuated requires that the call for such a reform is at least intelligible. Indeed, the way in which he imagines the *justification* of the practice of promising turns on it. As he will later state in *A Theory of Justice*, '[t]he way in which the rule of promising specifies the appropriate circumstances and excusing conditions determines whether the practice it represents is just' (Rawls 2005, p. 303). The problem is whether it is at all right to think that any rule could determine the appropriate circumstances for making a promise, or the conditions under which breaking a promise is excused.

[34] This is so notwithstanding Cavell's point about strategic principles. Of course, one has not necessarily *understood* a game just by knowing its rules – but for the purposes of picking it out amongst other games, the ruleset does usually suffice, as Cavell himself states (Cavell 1979, p.307).

[35] Cavell's immediate interest in making this distinction, which need not concern us, is that he thinks 'Utilitarianism cannot, and is not meant to, justify the general institution of punishment as such; whereas…that is what…Deontologists to have undertaken to do', so that while Utilitarianism *can* offer a Rawlsian defence for one *particular* institution of punishment over another, this does not represent a reconciliation of the two traditionally opposed ethical positions.

[36] This essay has, especially following on from the discussion of *On Brute Facts* in chapter 1, often used the terms "institution" in place of practice (see footnote 1). For the most part, the conclusions of the previous chapters are untouched this replacement. In the current context, it is important to make the distinction; there is nothing wrong with the phrase "institution of promising" as such, but there are ways in which it may mislead. Regardless, I place more emphasis on the comparison of promises to *games*, as opposed to institutions, in these sections.

3.3.2 Describing other practices

Part of Thompson's and Cavell's critique, as I understand it, hinges on the importance of attending to difficulties which arise in describing an imagined situation as one in which such and such a custom holds. One gets the sense that Rawls takes for granted the logical possibility of a society in which promises made in one's sleep are respected, and further takes for granted the appropriateness of understanding that as an adequate description of a variant "practice of promising". But not just any general description of regularities in human behaviour may rightly be called a "practice", and not just any scheme of behaviour in which people make what we would tend to recognise as promises may be called a "practice of promising". Indeed, in Thompson we find the suggestion that in any imagined society in which there are promises, it is right to say that the "inner constitution" of that practice is just the same as ours. I think there is something to that, although Thompson puts it a little too strongly. The fact that he expresses his solution to the problems with Rawls' approach as a dramatic limitation on the concept of practice hinders, I think, the insight which would have otherwise been quite clear from his descriptions of Rawls' "deviant" societies. That is that it is only in giving substantial descriptions of such variant practices, especially when they apparently differ so much from our own, that we discover what, in the end, we are able to say about them – which terms are appropriate for their description.

This emphasis on the importance of detailed description is found throughout the work of Wittgenstein, and finds especially clear articulation, for present purposes, in a comment he makes about games:

> 'Consider this question: "Can a match *start* with one of the players winning (or losing) and the game going on from there?" Why shouldn't a procedure that looks like a game start with what usually happens when a game is won or lost? For instance, one of the participants is paid money, congratulated on his success, and so on. However, we won't call this "winning the game" and perhaps we won't call the whole thing a "game". If we were to meet such a practice, it would be 'incomprehensible' to us and we should probably not say: "these people win and lose at the *start* of the game".
>
> "*Can* that happen?!" - Certainly. Just describe it in detail and you will then see that the procedure you describe can perfectly well be imagined, although you will clearly not apply such and such expressions to it.' (Wittgenstein 1976, p.414-5)

This injunction – "describe it in detail and you will then see…" – applies quite clearly to the way in which Thompson makes his case, via a more detailed description of scenarios which Rawls only briefly mentions. Rawls presupposes (according to Thompson) that one could intelligibly apply the expression "practice in which people keep promises made in their sleep" to it (or alternatively, that there *is* a properly specifiable scenario to which that expression corresponds). Thompson claims that it is an overdeveloped analogy to games that inclines Rawls to think that it is possible to specify a practice we would call "promising" by tweaking the "rule of promising" so as to change the circumstances under which one could be said to have made a promise (e.g. including sleep "promises"), or by altering the excusing conditions for breaking a promise (e.g. excluding them altogether) – this is indeed the way in which one might construct variants on a sort of game. This encourages Thompson to endorse the thesis that the properly "practical-philosophical" concept of practice should exclude games altogether. It is significant, then, that Wittgenstein makes the case that such limitations on the description of

practices hold for games too – albeit that the possibilities of variation here are much broader and "cheaper", in the sense that greater variation appears to be possible, and that variants are fairly easy to specify by providing as little detail as a set of rules[37].

How, then, *should* we describe the situations which Rawls would purportedly describe as ones in which a community's "practice of promising" includes the recognition of sleep promises, or excludes all justifications or excuses? Thompson, recall, says we should say that each community has just the same practice of promising as our own, and claim that in both cases, there is a 'widespread error or a superstitious religious conviction or something on the order of a fad'. Exactly what that error is supposed to be, he does not say. And indeed, what widespread error *could* cause a community of people to imagine that it was appropriate to respect sleep-promises? Or indeed, to think that *nothing* could appropriately excuse the breaking of any promise? The answers to either will have to go into great detail, if they are to make these situations out to be real possibilities; but in either case, I think, we would have to imagine that the nature of human agency was or was understood very differently in such communities. It is worth very briefly discussing both possibilities which Rawls presents, and considering how we might go about making them intelligible.

In *On Certainty*, Wittgenstein imagines that a tribe who acknowledge, when asked, that they cannot climb or fly to the moon, but maintain nevertheless that people sometimes go there in dreams (Wittgenstein 1969, p.107). If we were to protest that no such thing were possible, and that it required a huge amount of machinery and preparation to go to the moon, citing the physics involved in making such a journey, these considerations would pass them by. Anscombe writes in *The Question of Linguistic Idealism* that this tribe 'might have the same *physics* as we do. What has physics to do with transport to the moon in dreams?' (*QLI* 128). Of course, physics has *everything* to do with how *we* think about the possibilities of getting to the moon. But that is just what it makes it so difficult to ground our opposition to the tribe's claim about dream-transport – 'what count as reasons for us, do not count for [them]' and 'they mean something different by 'getting' to the moon from what [we] would mean.' (*QLI* 127). Something on the order of this difference in the conception of human agency *might* go towards contextualising the community-wide thought that sleep-promises ought to be respected (or ought to be thought of as "promises" at all). If we think we *can* understand such a community in this way, then it becomes much less plausible to think about this strange belief about sleep-promises as an entirely external disturbance in some unerring "practice of promising", as Thompson would have it. Rather, it is an extension of some more primitive difference in their conception of human agency, and as such just one distinctive part of a more thoroughgoing transformation of what we understand as a *practice* in the first place. It is not clear to me that any external disturbance "on the order of a fad" could substitute for such an explanation. Compare the following characterisation of an imagined society: they believe more or less as we do, except that they have just one additional belief, which is widespread, that it is possible to travel to the moon in one's dreams. Such a belief, I think, *could not* be a mere "add-on"; the statement that such a society "believes more or less as we do" requires serious explanation, if it

[37] This is so *provided that* there are already plenty of games, with differing rule-sets, which are actually played, and probably also an established practice of the creation of games by the specification of a rule-set which itself relies on the this previous variety in game-playing.

makes sense at all in conjunction with the second clause. In neither case (the description just given, or Thompson's account of the sleep-promising society) is it appropriate, without further explanation, to say that the relevant difference here can be located in a simple error.

We can find a similar moral by examining the case in which justifications and excuses are never accepted, which, on its face, might appear less bizarre. For Anscombe and Thompson, such defences are *not* "part of the practice", not set out in its "rules", such as they are. For Anscombe, they must form a part of that general capacity which we have to determine when circumstances are sufficiently "special" to block the reason which would usually be derived from a given institutional verb, our ability to exercise judgement in making exceptions. How could it be that such a general capacity was never thought to be properly exercised in the case of promises? One option is that such a general capacity was *never* thought to be properly exercised – that the community exhibited a thoroughgoing rigidity with respect to defences for presumptively bad behaviour. But the more one considers this situation, the less obvious it becomes how the picture is supposed to be filled out. Are we really to understand this community as one in which responsible human action occurs when what people do, having made a promise, is (or is supposed to be) determined by the absolutely mechanical application of some rule? How do these people understand the concept of a *mistake* in action, or of *unforeseen consequences* of one's action? Cavell calls justifications and excuses "elaboratives"- they are, as he sees it, essential parts of moral discourse, because they help to 'determine the positions we are assuming or are able or willing to assume responsibility for'. Moral discourse, in turn, is essential because 'our responsibilities, the extensions of our cares and commitments, and the implications of our conduct, are not obvious' (Cavell 1979, p.312). This is just part of the human predicament; we would have to, in Wittgenstein's terms 'imagine certain very general facts of nature to be different from what we are used to' (Wittgenstein 1971, p.230) in order to make sense of the relevant concepts in Rawls' description.

Another way to go, however, is to imagine that the practice of promising does not have the importance it does for us, that promises do not in general figure into serious moral discourse; perhaps the concept of a promise has become obsolete, and occupies in such societies something like the position that the notion of "fealty" (as it was understood under feudalism) does for us, or, which is the case I will discuss here, the practice has become something like a game, standing to our practice of promising as the game "Simon Says" does to practices of authoritative command.

In "Simon Says", a leader instructs everyone else playing the game to perform certain actions, which everyone has to do, if and only if the instruction begins "Simon says…". The interest in the game comes partially from the leader's ability to *trip up* the followers, getting them to obey commands not preceded by "Simon says…", or to refrain from obeying commands which are. Such trickery is, of course, antithetical to any serious office of command. We *could* imagine a rule attaching to such an office that a certain form of words was required to issue an authoritative order. The point of this would be, for instance, to ensure that it was clear that someone was issuing an order in their capacity as the holder of the relevant office (rather than just asking for a favour). It will be important that the person in command takes relevant

measures to ensure that their command is heard and understood – it would be an abuse of the office to utter a command under one's breath, for instance, and attempt to hold anyone accountable for its completion, whether they heard it or not. If it were regularly held in a given society that this was in fact perfectly acceptable behaviour, we would have significant difficulty understanding that society, just as we did the society which credited promises made in one's sleep. We could also imagine that one had a rule in a game "Simon Says" that the leader needs to speak loud enough for the followers to hear. But there is no comparative difficulty in imagining the game *without* that rule, in which speaking inaudibly was in fact recommended as good strategy; followers might, in this case, be expected to rely on reading the leader's lips, or simply guessing. Perhaps it would not make for as fun a game, but it is an obviously possible one. If practices of command were confined to such games as "Simon Says", then, there would it seems be no difficulty in accepting Rawls' method of specifying the shape that the practice takes by giving a set of rules for play.

Returning to promises, we can compare the "rule" that children sometimes introduce into the practice of promising, that if one crosses one's fingers behind one's back in making it, one cannot be held to its completion. This is completely intelligible in a "game of promising", and indeed, this sort of gameplay can be observed among children (strategies arise for keeping a promiser's hands in clear view, for instance). It is also true that children *may* attempt to apply the rule in a case in which the making of a promise is to be taken seriously. We would correct them in such a case, and doing so would form part of a broader context in which the child comes to learn that promising is not "just a game". Compare this to Anscombe's claim that there is *initially* no answer to the question "Why do I have to?" in connection with the "Bump!" language-game – learning such a game may form part of a child's induction into social life, part of which will involve understanding the variety of ways in which one may relate to the sort of practical necessity which comes in the shape of a promise.

Contra Thompson, it *does* matter that we are imagining individuals, usually *children*, making this mistake, rather than an entire society. For as Cavell points out in a related case, the child's mistake, thinking that they could avoid promissory obligation by a crossing of the fingers, is not a merely local misunderstanding of some particular "practice of promising" (it is not a case of "getting the rules wrong"), but:

> '…brings out the fact that the child is still not sufficiently a master of social intercourse to qualify him as a responsible and autonomous member of society. Learning what counts as an elaborative is a large part of what such mastery will require: in the absence of a mastery of elaboratives, we may question, with respect to *any* conventional action (e.g., warning, thanking, giving, commending . . .) whether the child knows what it *is*, what counts as doing it. And no one of these actions carries with it any particular set of defenses or excuses.' (Rawls 1979, p.310-1)

One cannot attribute this general failure to master social intercourse to a whole society, and maintain that one is describing a *society* in any substantial sense. And once again, we could not attribute failure at this level of generality to a child who, in playing a "promising game", took the rule about crossing one's fingers to be "in" when it was not.

All this brings us to a helpful dilemma, for the purposes of summarising the results of this subsection. Earlier, we saw Thompson consider the view that the bare rule "promising must be kept" was a "loose and inaccurate" way to individuate a practice. He claimed that this looseness was an illusion – there is really nothing further to say that would distinguish one "promising practice" from another. *Unless*, that is, 'the practice is pointless and realizes no good or that it has something like the position of a game'. Then, indeed, one can make as many distinctions as one likes by the proliferation of variants on the rule or rules. And we have arrived at a similar conclusion: if a practice is a mere game, if it occupies that place in the lives of a given society, it can indeed be adequately individuated by stating a set of rules, and how we understand said game will hinge very little on how the people of that society conduct themselves otherwise. But if it 'is part and parcel of-an enormous amount of human activity and hence of human good' (*PJ* 18), if '[i]t is scarcely possible to live in a society without encountering it and even actually being involved in it' (*PJ* 18), then how we understand that practice hinges to a much larger extent on how we understand the rest of their lives, and that in turn puts limits on how we *can* imagine variation in such practices – just saying that rules specifying certain excuses, justifications or conditions for making a promise are in or out won't cut it. Of course, this latter case is just the one in which the practice is *necessary* in the sense that Anscombe appeals to in justifying the practice.

What this shows is that a certain model of the justification of a practice, at least for the cases Anscombe is most concerned with, is not appropriate. This is one in which the description of a practice can be adequately given without taking into account its place in the society which supports it. A justification is offered as further fact about the practice, which does not touch its description. The assumption here is something like the notion that the *intelligibility* of a certain practice existing in a society is fully divorced from its *justification*. I do not mean to say that one should collapse the distinction,[38] but only that they have to be understood together. Once again, the model which maintains the strict separation between intelligibility and justification is more appropriate for games; someone may describe a game fully before entering into much, if anything, about reasons you might want to play it, or about the kind of importance it has amongst those who play it.

### 3.3.3 The necessity of a practice

How then, should Anscombe understand her justification of practices? She affirms that promising 'has the role of an instrument in people's attainment of so many of the goods of common life' that it is to be considered a necessity, but how is that to be established? Nieswandt characterises this "Aristotelian" necessity as 'a metaphysical necessity: In all possible worlds in which the good in question is attained/the evil avoided in an adequate way, such-and-such is the case.' (Nieswandt 2017, p.152). Applied to practices, the method of justification which is suggested by this definition, though perhaps not required by it, is the

[38] I think Thompson comes close to doing this in characterising his practical-philosophical concept of practice, when he claims that 'any action the practice cannot make good does not express the practice', while maintaining that 'such acts of promise-keeping as are good are only made to be good by the practice' (Thompson p.188). An easy result to get from this, though I suspect it is too quick, is that no bad action expresses a Thompsonian practice – so that it only makes sense to talk about a "practice" in this sense, if it had a certain kind of ethical justification.

following: one considers a certain practice, and identifies *that practice* in various possible worlds, to see whether the relevant social goods are attained or evils avoided in each of them. I think Anscombe's conception of the necessity of a practice, and of its justification, cannot look anything like this. How exactly one is to identify a practice as the same, or different, in some possible world, is not at all clear – indeed, it has been the focus of the previous subsection to show just how difficult such identification is. And the procedure for justification imagined is of the sort that we excluded in the previous paragraph; it attempts to provide an *external* justification in that it relies on the possibility of taking an outside view of the practices in question, and giving some neutral description of them which may be imported to another "possible worlds", and assessed in each of them.

There may be an inclination to think that the necessity of a practice for the achievement of some good is simply *equivalent* to its holding in all possible worlds in which that good is achieved (possibly with some proviso that this is not a coincidence). But this is at least misleading, if not false.[39] Consider an analogy, which builds on Anscombe's talk of promising as an "instrument" in people's attainment of goods. To say that I need this hammer for my carpentry, that I can't do my job without it, is not to say that no other hammer would do, or even that no other hammer would be better at the job – and so obviously not to say that in every possible world in which I am able to do my work, that I have just *this* hammer. But this use of "need" seems a perfectly appropriate employment of what Anscombe calls "Aristotelian" necessity. In this usage, it is something like an acknowledgement of the vital role that this hammer, the one that I actually use, does play in my craft. I suggest that we should think about Anscombe's talk of the necessity of the practice of promising in this vein, at least in the first instance – as a justification offered from the perspective of those who in fact have a practical familiarity with what they are justifying. That is to say, when it comes to promising, *we* who participate in the practice, acknowledge that *we* need it (as in 2.2.3, it seem to me that in this respect Anscombe should endorse a "philosophy of promising for promisors").

Of course, the necessity of promising differs in many ways from the necessity of a tool. The latter *is*, in the end, replaceable, with respect to the activity it is necessary for. Promising, *qua* practice, is *itself* a form of activity, and, as we have noted, it is not so easy to envisage "replacements" for the practice as it stands. But this should only deepen our sense that Anscombe's "necessity" should be understood as an acknowledgement of an important reality – it is *so* important that it significantly shapes the way in which we imagine alternatives, not just to "this practice", but to human life more generally. If we are to call this acknowledgement a sort of justification, as I have, it is certainly not the sort of justification that operates when one surveys one's options, and favours one among them. It is this, I think, that makes Cavell sceptical about the very possibility of '[justifying] promising on Utilitarian grounds', with the utilitarian presumably undertaking to perform the *latter*, comparative sort of justification.

[39] Compare some of Anscombe's examples of "Aristotelian necessity", which do not exactly have the metaphysical flavour Nieswandt invokes: "Is your journey really necessary?" (*PJ* 15), "You can't move that, the shelf will fall down" (*RRP* 101).

3.3.4 The autonomy of a practice

The start of 3.3 set us thinking about individuating practices. That was easy enough, in the case of games; they usually have an articulable set of rules, sometimes written down, which can be taken to define them (against each other). That means one can easily *invent* or *teach* new games by specifying a set of rules, even if a proper understanding of how to play might be out of reach without practice. Along with clear conceptual limits, games tend to have clear temporal ones too. Instances of playing a particular game tend to have definitive start and end points; one may say to another "let's play…". There are often articulable rules for when play begins and ends, too. All of this makes it easier to count discrete episodes of activity as participation in this or that game. Finally, and perhaps most importantly, participants in a game are offered a great degree of "insulation" from reasons which are "external" to the game – their agency is for the most part organised around the aims and rules internal to that game – they are "insulated", so to speak, from external considerations. This insulation is not perfect; one might reason "It's getting late, I'm tired, I'll play so as to make it quick", but it does set pretty definite limits to what can be done while one is participating; if one instead thinks "I can't stay up long enough to play this out", and simply goes to bed, then one abandons the game. There may be a rule the states that abandoning is equivalent to forfeiting, but the game and its rules can have nothing more to say about one's activity thereafter. Games can also be paused or put on hold if some "external" factor intervenes (the weather, for instance).

The above features are mutually reinforcing; one can be, to a large degree, insulated from external considerations in playing a game in part because of the possibility of abandoning, pausing, and so on. *Without* such possibilities, those external considerations would have to be met with "in play" (which is not to say that they *never* do). And one can pause or abandon a game in part because it has fairly well defined episodes of play. A limited set of articulable rules, in turn, generally aids in the identification of those episodes. I'll group this mutually reinforcing cluster of features under a label, the "autonomy" of a practice. To sum up, those features are:

i. *Insulation*: The degree to which what one must do *qua* participant in the practice is sharply cordoned-off from what one must do *simpliciter*.
ii. *Discreteness*: The ease with which the practice is individuated (from other, similar practices).
iii. *Permeability*: The ease with which one may clearly step out of the "jurisdiction" of the practice.

The relative autonomy of games, in this sense, is one of the reasons they are such favourite examples of philosophers hoping to establish that one should be a conventionalist about this or that – they are neat, easily specifiable domains in which a certain form of agency is to a large degree separated off from the rest of what we do.[40] But it is along just these lines that the

[40] Compare C. Thi Ngyuyen's claim in *Games: Agency as Art* that "agency", or perhaps "forms of agency" constitute the *medium* of games *qua* art-form:

> 'Games, then, are a unique social technology. They are a method for inscribing forms of agency into artifactual vessels: for recording them, preserving them, and passing them around. And we possess a special ability: we can be fluid with our agency; we can submerge ourselves in alternate agencies designed by another. In other words, we can use games to communicate forms of agency' (Nguyen 2020, p.1)

analogy between games and promising may be overextended. Promising is not *permeable*. It is not something one may simply abandon – nor does one's participation in it generally have a distinct start date (there is no initiation ceremony, for example). It is not a very *discrete* practice, as we can gather from 3.3.1. And it is not very *insulated*, for "external" considerations come in all the time, most obviously when one is taken to be excused for breaking a promise in light of exigent circumstances. Indeed, in 2.1.3, we saw Anscombe claim that this may amount to a 'small degree of inconvenience', and raised the obvious point that how seriously we take a promise is highly dependent on circumstances. A significant point which has been repeated in this chapter is that nothing which is "written into" the practice will fully account for that variation. Cavell, we have seen, focuses on the role of elaboratives in this context, which, he thinks, must be present in our discourse with promises, if promises are to form a part of our moral discourse at all. They constitute the way in which we keep the practice accountable to the broader circumstances of our lives, and are our means of shaping its limits and significance *in situ*, so to speak – in the course of our participation in it. But that requires more explanation.

Consider two conflicts – in which one person does something, and another opposes that action with an Anscombean stopping modal: "You can't do that!". In one conflict, the logos-type is that of the rule of a game (e.g. "You can't take another card, you already have 5!"), in the other, that of a promise (e.g. "you can't leave, you promised to look after the dog!"). Consider how these two conflicts would be resolved. Assuming you are not knowingly cheating, if you do something I think is excluded by the rules of a game, then the obvious way to resolve the issue is to appeal to some independent source of those rules, or, if no such source exists, to simply decide between us how we are to continue – and this choice will often be as arbitrary as they get. So that even in the case in which there was no rule set out in advance for the game-situation which arose, this fact is nevertheless *accidental*; there is no obstacle here to just stipulating a rule that will cover situations such as those. And it makes sense to say; those two had different ideas about *which game* they were playing, or which *variant*, even if only implicitly. The resolution in this sense involved choosing the game they wanted to play.

Assuming you are not merely taking advantage of someone, and really had no intention of fulfilling your promise to begin with, then it is likely you think that on this occasion you have some excuse – perhaps something more important has come up – and perhaps that you didn't assume your interlocuter would take it so seriously anyway. Now there is a misunderstanding in this as in the other case, but it is of a different sort; it is not that the two think they are playing different "promising games", and it is certainly not appropriate to appeal to appeal to some third-party authority to adjudicate the matter. Nor would it necessarily be appropriate to stipulate in advance some new rules for further exchanges, whereas that is obviously what the confusion over the game calls for. Moreover, one can call a halt to a game to clear up such confusion, and to a certain extent must, for such a discussion would not count as part of one's participation in any game, but instead a meta-discussion about how to play. But we do not "pause" our commitments to one another in order to clear up disagreements – those

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If this sort of account of games is right, it is no surprise that they have the autonomy I have been describing. Games offer 'shaped, precise, compressed, crystallized experiences of alternate agencies', Nguyen says (ibid. p.91) – part of the *point* of them is to delimit clear bounds for forms of agency, separated off from the mess of everyday life.

commitments are rather shaped in the course of the discussion, and partially constitute the position from which we argue.

In a game, Cavell says, what we *must* do, as per the rules, is ideally made as clear as possible from the outset; 'if the moves and rules can be taken for granted, then we can give ourselves over totally to doing what will win, and win applause.' (Cavell, 1979, p.308), that is, we can focus exclusively on what we *ought* to do, strategically speaking. But whereas, within games, 'what we must do is (ideally) completely specified and radically marked off from considerations of what we ought to (or should not) do' (ibid.), in the case of promising, and moral life more generally, the ambiguity between "must" and "ought", and the choices to be made between them, is essential:

> "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 do better) *not* to...What you say you *must* do is not "defined by the practice", for there is no such practice until you make it one, make it *yours*." (Cavell, 1979, p.309)

That last comment should of course not be taken to mean that there is no social antecedent to one's own determination of a practice. Rather, it is one way in which Cavell makes a significant ethical point raised by practices – the extent to which one's appeal to a practice-enabled necessity may be an evasion of one's responsibility for action. The role of elaboratives is precisely, for Cavell, that they enable us to stake out a position on our action when it 'comes to grief', a position which cannot be established on the basis of "the rules of a practice". The essential availability of elaboratives is, for Cavell, what marks promising off from games, as an activity which is proper to our moral life.

Looking back to the comparison between an office of command and the role of "leader" in a game of "Simon Says" (3.3.2), I think we can put the point like this: it is not just that certain rules are possible in "Simon Says" which would not be appropriate for any serious office of command (e.g. those requiring one "obey" even when all sorts of trickery is at play in the command), but that it is not appropriate to so much as *make* definitive rules to cover whichever difficult circumstances arise in such an office, where it always is in "Simon Says". Still less in the case of promising (where there is no "office" as such) is it right to specify, whenever a new circumstance comes up, a *rule* to cover that case. By contrast, this *is* good practice in playing a game, and indeed in legal practice, which why Cavell makes these points in opposing conceptions of promises which make them 'more like legal contracts than they are', and a conception of human society 'in which all human relationships are pictured as contractual *rather than* personal, within which one's commitments, liabilities, responsibilities are from the outset limited'(Cavell 1979, p.299).

3.3.5 Taking promising seriously

I'll conclude by considering exactly what Anscombe thinks follows from the necessity of a practice:

> 'And hence it comes about that by the voluntary giving of a sign I can restrict my possibilities of acting *well* and hence it can lead to my deserving, as well as receiving, reproach. This whole complex is, I believe, one of several roots of the idea of *justice*' (*PJ* 18)

There is a question here, about what entitles us to talk of acting *well* and *ill*, *justly* and *unjustly*, in discussing promises, whereas we are generally not so entitled in talking of games. In some sense, of course, it is meant to be the *necessity* of the practice that entitles us. And one can easily imagine the following exchange: "why do I have to stay home?" "You promised to stay and look after the dog" "But why do I have to do that?" "Because one must keep one's promises" "But why should I accept that?" "Because we have to make and keep promises – it's an essential part of our lives". These are separate questions, posed at separate "levels", if you like, and it is the second and third question for which, in contrast, 'there is clearly no answer' (*PJ* 18) when it comes to "I say "ping" and you have to say "pong""[41]. From this we can infer something like the form of justification Nieswandt offered – we are entitled to speak of acting well and badly, justly and unjustly, because there is a (non-conventional) necessity to respect a conventional necessity. I noted then that a question arose whether participants in a practice need be aware of this second-order necessity in order to be said to grasp the practice.

On a first pass, it seems unrealistic to think that everyone who makes and keeps promises knows, if indeed it is true, that the practice of promising has the kind of necessity Anscombe attributes to it. But this is surely an advantage of conventionalist views which separate "two levels" of justification, as both Rawls' and Anscombe's seem to. For while participants must grasp, at the first level, the necessity of stopping/forcing modals, it does not seem necessary for their being participants in the practice that they also grasp, at the second level, the Aristotelian necessity which attaches to the practice as a whole. As Nieswandt says, the good of the practice is in the background, and may very well go unnoticed, so far as the participants in the practice are concerned. None of this impedes our describing the keeping of a promise as just, and its breach unjust.

On a second pass, though, won't the Aristotelian in us protest that justice is a *virtue*, and as Anscombe herself puts it, 'to be an act of the virtue of justice an act has to be *chosen* precisely *qua* just' (*GBHA* 201)? Doesn't the way in which Nieswandt puts things, or indeed the way in which Anscombe puts things, cut against this understanding? Suppose someone were to "go along" with promising in just the way they "went along" with an impromptu game of football. Do we want to call their action *just* in the former case, and not in the latter? Don't we want to say instead that they have entirely *misunderstood* what it is to make a promise? And if that is so, haven't we given up the separation of two levels? Not exactly. If we encounter someone who treats promising "as a game", we will usually discover this in ways *other* than by quizzing them

[41] It is worth saying that the "ping"-"pong" game is made out to be especially pointless, its rule especially arbitrary. For the most part, we *can* give a good account of the reasons why we play the games we do, and offer justifications for certain rules of these games. Only, these reasons and justifications do not rise to the level of demonstrating the *necessity* of one's participation in the game.

on the purposes of the practice, and the goods, if any, which are promoted by it. For one thing, they will, in various ways, treat the practice as more autonomous than it is – perhaps they try to suspend it on a particular occasion, or try to introduce some "rule" which is clearly inappropriate (recall the child who crosses their fingers behind their back). The shift away from such behaviour, and toward behaviour which manifests an understanding of the relative lack of autonomy, and the concomitant depth, of the practice of promising is something children naturally take to just as much as the practice itself. One fairly plausible progression which Anscombe's exposition suggests is that from a situation in which children learn promising "as a game", and come to understand its subtle entanglements with social life as a whole, as they mature.

Still, does any of this get us closer to the Aristotelian formula which requires that a just action be chosen *qua* just? If that means "chosen under the description "a just act"", then no. But if we instead ask if the preceding considerations have made it more plausible that an action falling under the description "keeping a promise" is rightly thought to manifest the virtue of justice, I think we have indeed got closer. And we have done so without needing to attribute any reflective knowledge, on the part of all participants, of certain facts about the practice in which they participate (this is not to say that it is clearly possible that *nobody* in a society has any such reflective knowledge). An action falling under the description "keeping a promise", after all, entails that it is intentional under that description, so that the person performing the act is competent with the concept of a promise. And if promising really does have the significance in our lives Anscombe claims it does, then what it means to be competent with that concept is shaped by its deep entrenchment in our ways of life. When the child, in making a promise he should take seriously, thinks he is excused for breaking it because he has crossed his fingers behind his back, he demonstrates his lack of competence in respect of the concept of a promise. It shows the depth of the practice of promising, its relative lack of autonomy, that, to Cavell's point, the child at the same time indicates that he 'is still not sufficiently a master of social intercourse to qualify him as a responsible and autonomous member of society'.

Finally, I want to examine Anscombe's fairly cryptic remark that 'this whole complex is, I believe, one of several roots of the idea of *justice*'. To begin with, just what is 'this whole complex'? Most plausibly, it is the whole account leading up to the conclusion that 'by the voluntary giving of a sign I can restrict my possibilities of acting *well*' – that is, the necessity proper to promises as expressed by stopping modals, which one has to go along with given the role of the practice in the attainment of the goods of common life. Justice, in other words, is a concept which finds application precisely when we *do* reflect on the good of a practice, the cause we have for respecting the rules it sets down. It has application in many other domains too, to many other practices and indeed to human interactions which it is not right to call a "practice". As a general virtue-term, one of its functions is to bring together these domains, in which one's behaviour reflects upon oneself in such a way as to reveal something like respect for one's fellows. In this sense, its function is similar to that of the notion of fair-play, sportsmanship, and cheating in the case of games. One way to pose the question about the difference between games and promising which has concerned us in the last few subsections, is: Why think of breaking a promise in terms of *injustice*, rather than cheating? One answer would appeal to the autonomy of games in comparison to promises, and the concomitant significance of our attitude towards promising for our attitude toward human society, and so on. And this might be interpreted as the

application of some prior notion of justice, founded in something like the idea of respect for human beings, to the case of promises. But Anscombe instead says that the whole complex she has described in the case of promises is one of the *roots* of the idea of justice. Adding one more to the complex of interdependent concepts Anscombe's account of promises has amassed, then, we should say that the idea of justice, and that of promising, are not separately describable.

**Reference abbreviations for Anscombe's works**

*TKEA*: 'Two Kinds of Error in Action' in (Anscombe 1981c)

*PJ*: 'On Promising and its Justice, and Whether it Need be Respected *in foro interno*', in (Anscombe 1981c)

*BF*: 'On Brute Facts' in (Anscombe 1981c)

*RRP*: 'Rules, Rights and Promises', in (Anscombe 1981c)

*SAS*: 'On the Source of the Authority of the State' in (Anscombe 1981c)

*QLI*: 'The Question of Linguistic Idealism' in (Anscombe 1981a)

*OSP*: 'On Sensations of Position' in (Anscombe 1981b)

*Intention*: (Anscombe 2000)

*GBHA*: 'Good and Bad Human Action' in (Anscombe 2005)

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