

2019

## Normative Powers (revised)

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### Recommended Citation

Joseph Raz, *Normative Powers (revised)*, KING'S COLLEGE LONDON LAW SCHOOL RESEARCH PAPER No. 26-2019; OXFORD LEGAL STUDIES RESEARCH PAPER No. 36/2019; COLUMBIA PUBLIC LAW RESEARCH PAPER No. 14-629 (2019).

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# Normative Powers (revised)

J. Raz<sup>1</sup>

## 1: Normative Powers: Wide and Narrow.

Powers are abilities or capacities to bring about a change or to prevent a change from taking place. It seems plausible to define normative power as a power to change or to prevent a change in a normative condition. Two quick clarifications: First, a normative power is exercised by a single act (as is typical of promising) or a relatively short series of actions (e.g. legislation<sup>2</sup>) and, second, its impact, the change it effects, is not causal (as when one person becomes fond of another through extended acquaintance) but normative (as when undertaking a vow or reciprocal vows generates rights and duties).<sup>3</sup>

The definition yields a concept so wide-ranging that it has little if any use. For example, according to it, killing and promising are both examples of exercising a normative power. I

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<sup>1</sup> Earlier versions were discussed at the Jurisprudence Discussion Group in Oxford, and at the Colloquium for Legal, Political and Moral philosophy at NYU. I am grateful for many suggestive and helpful questions and comments among others from Sam Scheffler, Liam Murphy, Jeremy Waldron, Tom Nagel, Frances Kamm, Crescente Molina, Sebastian Lewis, Timothy Endicott, David Owens, Scott Hershovitz, Hrafn Asgeirsson, Kenneth Ehrenberg, Nicos Stavropoulos, and Pavlos Eleftheriadis.

<sup>2</sup> Among many other matters requiring further clarification, one problem is whether the exercise of the normative power effects normative change on its own, or whether it does so only in combination with other factors, that is only if other conditions are met. An example would be a case in which an act creates an obligation but only if another person exercises a power of his in an appropriate way. I tend to favour a wide definition including combinations of an exercise of power with other conditions. But I will not explore the limits of such possibilities.

<sup>3</sup> Some people seem to take 'normative power' to mean power (to change or prevent change) that is authorized by some normative condition (by a rule or another power etc.). In that usage normative powers include also permissions to perform an action. For example, if I am permitted to move the chair then I have a normative power to move the chair. Needless to say, a permission (to move a chair, etc.) does not imply that I have the power (i.e. that I am able) to move the chair. And, I may have the power to move the chair even though I am not permitted to do so. This suggests to me that this sense of normative power is liable to breed confusion. However, the important point is not to confuse it with normative powers discussed in this paper.

In recent times the realization that power, roughly meaning influence, is sometimes caused by or sustained by common views and social conventions that are open to criticism (e.g. that people who speak with lower voices and an authoritative manner may silence others from expressing their views) encouraged some writers to elide the difference between normative and causal power. Important as the exploration of the ethical implications of such social practices is, it should not lead one to confuse these two kinds of power.

suspect that often thought and discourse about normative powers, whether or not they use the expression 'a normative power', refer to and use a narrower and more useful concept. Many years ago, I suggested something like the following definition: *a person's act is an exercise of a normative power if it brings about or prevents a normative change because it is, all things considered, desirable that that person should be able to bring the change about or prevent it by performing that act. Those who can exercise a normative power have a normative power to do so.*<sup>4</sup> I will call this the narrow concept of normative powers, and generally, when discussing normative powers, I have in mind those that fall under the narrow concept.

A prominent feature of the definition is that it identifies normative powers by the considerations that establish their justification, taking their justification to be sufficient for their existence. This paper develops and modifies the definition of normative powers, casts some doubts on whether the wider powers are normative powers at all, and proceeds to locate normative powers in a general conception of normative justification.

## 2. Chained Narrow Normative Powers.

The narrower concept I have provided does not apply without modification to normative powers within social normative systems, like the law, the constitution and rules of the University, et cetera. There are normative powers in such systems, and arguably their use is essential for the emergence and continued existence of such systems. But while, as I will claim, the concept of normative powers is the same when applied to powers existing within

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<sup>4</sup> I refer to the desirability of the power-holder having that power. In many contexts we would use a different term, often stating something stronger than 'mere' desirability: the power-holder may have a right to have the power, or s/he may deserve it, or it may be to the great advantage of humanity or of some part of it that s/he should have it. In some, but not all, such cases these considerations establish that the normative power exists: they establish the existence of the power if the right, duty et cetera establish the all-things-considered desirability of the power-holder having that power. So, the definition uses the broader concept, in order to capture all the cases that can sensibly be included among normative powers.

This definition, like many philosophical definitions, is meant to capture, in an illuminating way, the nature of the phenomena defined. As such, it deviates from the ways the concept 'Normative power' is sometimes understood, a deviation that is justified on the ground that those other uses commonly mistake the nature of the phenomena they are intended to catch.

social normative systems or independently of them, its definition requires modification to apply to powers within such systems.

Let me call the narrow normative powers that meet the definition just given basic NP. We know that basic NP are powers to change some normative conditions. But which ones? Can any normative condition be changed by the use of some normative powers? Is it at least possible that this is so?

There is no need here to explore what are normative conditions. They are conditions or situations of having a right or a duty or obligation, or indeed a power or a status, or a liability, et cetera. What is clear, when exploring the nature both of normative conditions and of other aspects of these concepts, is that we are likely to encounter many borderline and undetermined cases. *To mention one extreme example: does the act of giving birth change a normative condition? If so is it the exercise of normative power? Another extreme example is that of a custom: given that customs are created and sustained by human acts and omissions are they the exercise of a normative power? Clearly not when it is the custom of a large country, but what of a family custom?* The reason borderline cases and indeterminate cases are likely to proliferate is that to the extent that people's attention is drawn to normative powers it is drawn by an interest in some paradigmatic cases. We start from them, trying to understand a more general concept that is not in fact widely used. Hence it is unlikely to be completely formed.

However, some questions force themselves on us. One is whether there can be (valid) normative powers that enable their possessor to affect the normative powers that he or others have, namely to remove some of their powers, diminish their scope, or to add to them or enlarge their scope?

The obvious answer: 'it depends on whether there is an all-things-considered value in people having such powers.' Whether or not this test is satisfied may, of course, vary from case to case. The general question remaining is whether there is a case for thinking that the test for the existence of normative powers will never authorise the existence of a power to grant or modify powers. The answer must be negative. For example, by every valid promise, as well as undertaking an obligation, the promisor invests the promisee with a power to waive the undertaken obligation. So, if one can never have a power to create other powers

then promises are never valid, and never bind the promisor. In fact, powers to create powers are common, and useful. My power to manage my property includes a power to endow some trusted person with power to manage all or some of it on my behalf. Etc.

I will call a power that is created by the exercise of another power a chained power. And an originating power that is not itself a chained power will be called a basic power. Basic powers are valid only if they meet the test with which this paper started: only if there is an undefeated value in the person whose power it is supposed to be having the ability to change at will the normative conditions that that power enables him to change. Call this the basic test.

Are chained powers valid only if they meet the basic test? At first blush we may think that they are not, for they are simply created by the holder of the originating power, who could create them at will. Except that that need not be the case. Assuming that the originating power is a basic power, it is valid only to the extent that it meets the basic test, which can impose limits on the use of the power. So, to revert to the routine example, a promise to commit genocide is not binding. Could it be that the basic test also, necessarily, requires that any chained power generated by the originating power would itself meet the basic test to be valid? That seems unlikely. What is true is that the basic test will impose some restrictions on the scope of valid chained powers. They too will not be able to impose an obligation to perpetrate genocide and so on. But I doubt that the basic test itself can apply to all valid chained powers. We recall that the point of basic normative powers is to extend the options of the power-holder to the extent of allowing him to make mistakes. Regarding certain matters, the basic test implies, it is more valuable to enable the power-holder to act by his own judgement, than to make sure (if this were even possible) that his decisions are always sound. The inevitable result, given human nature and the conditions of our life, is that the holders of originating powers will make mistakes, including mistakes in deciding when and to whom to give chained powers. Requiring too much perfection in their exercise of their powers will fail to achieve its aim, and will generate a host of undesirable consequences, such as increasing surveillance and interference in the life of power-holders to excessive and self-defeating degrees.

The conclusion is that the test for the existence or validity of a normative power sometimes yields the existence of powers to make and remake powers, and when it does, the validity of

the chained powers so created<sup>5</sup> depends not on there being an undefeated reason for their holder to have them, but on a modified test that relies on the basic originating power being valid by the basic test, and on the chained powers being authorised by it.<sup>6</sup>

Chained powers are created by the use of other powers whose existence depends on their value. Chained powers are, therefore, social powers, the products of human actions and the actions of social institutions, which derive their own powers, ultimately, from the value of their existence. The validity of chained powers depends on value considerations indirectly, through the value of the powers whose exercise created the chained powers.

Normative conditions can change in ways other than by the use of normative powers. For example, social customs change them. Interestingly, normative conditions that come about through custom or through the use of normative powers share an important feature. They may be normatively binding, valid, and yet it might have been better had they not come about, and/or better that they be repealed. So, some specific social conditions may give rise to a valid, binding, duty whose existence or continuation is undesirable. I will call such conditions normative social conditions, and I shall call other normative conditions basic. Note that basic does not mean unchanging. The fact that normative social conditions can be deficient, in the ways indicated, implies that chained NP do not conform in all details to the account of normative powers that I gave at the outset. This is because such powers are given to agents to use as they see fit, and they may use them unwisely, granting powers when none should be given, et cetera. Therefore, chained powers exist not because it is desirable that their power-holder should have them, but because the normative system in which they are generated, or the agents creating them, take them to be desirable.

Chained powers are as normatively valid and can be as important as other powers. They should not be confused with claimed but normatively invalid powers, for example those

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<sup>5</sup> Though one should be careful not to assume that the chained powers are terminated when the powers that created them come to an end.

<sup>6</sup> Chained normative powers can be parts of complex structures of normative conditions. They may be constituent elements of status, or of rights, etc. The complexity of such structures makes it difficult to determine the value (and therefore the validity) of an existing or proposed single normative power. We modify the way we do so: we ask, given all the other existing elements in the structure to which this power belongs or will belong, will it be better if modified or avoided altogether?

claimed to be created by an illegitimate government, or by an individual who did not have the NP to create them.

### 3. Are There Wide Normative Powers?

This paper focuses for the most part on narrow normative powers (chained or otherwise). What is the main difference between them and wide powers? Many and perhaps all NP in the wide sense, which are not narrow powers as well, can be called directing powers. They are powers one is (normatively) required to use or to refrain from using in specific ways (ways that determine their content). You have the power to kill but you are directed not to use it.<sup>7</sup> You have the power to make your tax returns by the appointed date and you are directed to do so. Directing powers are derivative powers in that what matters normatively in the first place is the outcome of their use: that people should not be killed, that taxes be paid. The purpose of the power is to secure the value of people using their powers as directed. Like everything else, these powers may be used for other useful, or undesirable purposes. Just as a book can be used as a door stop, so the directed powers can be used, say to promote reconciliation and trust among wrong-doer and wronged, or, on the contrary, to extract revenge, etc. In such cases, the direct purpose of the power, achieved when it is used as directed, is the occasion to serve other goals. However, there is no other, direct, value in having the power. Assuming that all killings are wrong, if people simply could not kill and therefore would not have the power to kill, which is a normative power, nothing would be lost (though its use to achieve indirect goals may make its loss regrettable or welcome, depending on the situation). But if people would not have the power to make promises or to get married, or to make laws for their communities, much would be lost beyond the value accruing from their use of these powers. The further loss is of the value of having these powers in expanding the range of free choices that people have. Because the value of the narrow normative powers is, in part, in the ability to use them, in the ability to choose to use them or to choose not to use them, and not only in the consequences of

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<sup>7</sup> Just to remind ourselves: while killing is just a physical act or activity, ending the life of a living being, it is also the exercise of a normative power in that it changes one's normative standing, making one liable to being treated in certain ways by the authorities and others.

those choices. Perhaps this difference justifies taking the narrow concept of normative power as the core case; while other normative powers are only derivatively normative.

Narrow powers belong to such a great variety of kinds that it may be impossible to provide a comprehensive tabulation of their characteristics. I tended to think that they may be placed on a scale from content-determined to content-undetermined.<sup>8</sup> The powers to make promises or to legislate are examples of the first: those who hold such powers have considerable freedom to determine the content of the change their use of the powers brings about. I can promise to bring flowers to my mother and I can promise to look after a friend's child until his maturity, and so on and so forth. Naturalisation, on the other hand, is the power to acquire a fixed set of rights and duties, or to bestow it on the person naturalising. The newly naturalised cannot change its content. S/he can only accept (or not) the status of a naturalised person with all that it implies. Many powers can be placed on this scale of more or less content-determined. But others do not fit the scale, sometimes because of the great complexity of the implications of their use.

#### 4. An Objection.

The definition of normative powers is open to many attempted objections. For example, some writers believe that the application of a concept should be value-neutral. Obviously, the correctness of the application of unchained narrow normative power to any instance depends on whether it is desirable that the agent should be able to effect that normative change at will, thus depending on the normative consideration. However, the value-neutrality requirement is misconceived and can be ignored here without argument. The arguments against it are available elsewhere.

I will focus on one important objection to the definition of basic normative powers: how can the existence or occurrence of a normative condition, like having a right or duty or a status, depend on the desirability of someone having the power to bring it about at will? It may be desirable that this car we see out of the window be yours if I say so. But it is not made yours by my say so. At the very least it has to be admitted that the desirability of the existence of a normative condition does not guarantee its existence or bring it about. What distinguishes

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<sup>8</sup> The terms were suggested to me by Sebastian Lewis.



cases in which the desirability is, as it were, self-fulfilling, from others? The definition I gave suggests an answer: it may be desirable that I should be able to make John's car yours, but there are also reasons against my having that power. It is not all-things-considered desirable that I should be able to give it. That may be a good answer, but doubts linger and require further examination.<sup>9</sup> The difficulty is that what is presented as an objection is no more than a doubt or a question, and not at all an objection. No fault in the argument is suggested, and therefore none can be refuted. Being a question, it suggests no mistake that can be discussed. It has to be approached in a more roundabout way.

One popular way of arguing for one's view is to show that all alternatives to it are false. I have little trust in that way of arguing. But I will mention a few alternatives to my approach that have found considerable support, primarily to indicate points of difference that require further argument.

Buck-passers are likely to object that my definition gets things the wrong way around. Extreme buck-passers remind one of semantic phenomenologists who insist that the meaning of every term can be stated in an expression referring to sense data only. Non-reductionist buck-passers look for more complex ways of getting round taking value as grounding anything. I mention the fact only to concede that the defence of the definition I proposed involves some fundamental issues that cannot be here discussed.

An assortment of objections relies on the role of conventions in establishing normative powers, claiming that the account presented in this paper is mistaken, because it ignores the role of conventions. Some such claims, whether true or false, are consistent with the definition of normative powers given here. One may point out that the use of normative powers typically affects people other than the power-holder, and that it would be odd to think that they can meaningfully be exercised when those affected by them are unaware that they are so affected, or that anyone may think that they are. Can Jane promise Rose to do her shopping next week unless Rose too understands what promises are and that they bind (or at least that that is a common view)? Such thoughts may encourage the view that

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<sup>9</sup> One question not addressed here is whether the existence of an unchained narrow power requires that the case for its existence defeats all competing reasons, or, whether it is enough that it is not defeated by them.

normative powers exist only when there is, in the relevant population, a common understanding that they do. True or false, variants of this view are consistent with the definition here offered, being claims about some of the conditions that have to exist for the definition to apply.

‘Institutional conventionalism’ may be a suitable name to a more radical conventionalist view. Noticing that the origins of discussions of normative powers are in legal contexts the institutional conventionalist maintains that normative powers exist only in institutionalised settings like the law, the constitutions and rules of corporations, NGOs etc. We need to distinguish two questions: 1) Do normative powers exist in a certain domain? 2) Assuming that they do, is there a case for talking of normative powers when talking of that domain? The institutional character of a domain makes it helpful to talk of normative powers within it. For example, the accountability of institutions invites one to be careful and explicit in describing their activities. Contrariwise, the informal character of the domain often makes it better to avoid applying a formal and explicit analysis to its normative phenomena. Doing so may introduce a formalistic aspect to the understanding of relationships that should be kept fluid, and informal. For example, some people think that when one requests something of another one gives that other a reason to accede to the request. If this is so, then requesting is an exercise of a normative power. It may, however, be advisable not to discuss requests in these terms, except in the most abstract academic contexts.

I see no reason to accept institutional conventionalism. A more radical and difficult challenge is posed by what might be called ‘pure conventionalism’. It understands conventions to be patterns of conduct (“most people wash their cars on Sundays”) and takes such patterns to be reasons for action. So, the fact that when saying that they will do something most people do it, is a reason for any person to do what he said he will. Why? I know of no answer. Nor, it seems, can there be one, given that the pure conventionalist denies that there can be a normative explanation of normative facts. It is too far reaching a challenge to be discussed here.

Some writers may object to my definition in some of its applications only. Some think that consent, even when it is the use of a normative power, is a special phenomenon, manifesting the normative power of agents’ will. People can impose duties on themselves by consenting to having them, directly or indirectly, explicitly or implicitly, that is by

accepting them, embracing them, by their will. Desirability, they think, is neither here nor there. It is, however, known to all that in the practice of our societies, consent is taken to have normative significance almost always only when expressed in an act of consent. On the one hand, acts of consent that are taken to bind do not always express the will of the consenting agent. On the other hand, some consents that express the will of the agents are not taken to be binding. It is open of course to will-theorists to be reformers who denounce many of our common practices. But, those who believe that there is good sense in some of the common conditions under which consent is given normative force, face the difficult, I suspect the impossible, task of distinguishing between cases in which consent is normatively binding and those in which it is not, without appealing to the value of treating some cases as binding and others as not binding. Furthermore, will-based accounts even if successful in some cases, do not show that other accounts fail either in the same or in different cases. So, the success of my account has to be judged on its own merits.

Not all exercises of normative powers are examples of consent. Public authorities have, where appropriate conditions are met, the power to deprive some people of some of their rights and award those rights to others. But, supposing I am such an authority, it would be wrong to say that by decreeing that Charles's car shall belong from now on to Susan I am simply consenting to this change of ownership. I am using a different kind of power. It is also implausible to think that such change of ownership can be normatively justified by being the will of a stranger.

The need to distinguish between cases in which consent changes the normative situation and those in which it does not, by appeal to considerations other than the will, supports the attempt to provide a unified explanation of the normativity of all normative powers. One attempt to do so is presented by a communication account of normative powers. To be sure, some writers regard cases in which consent is binding only if communicated as a mere subordinate condition to the will-based account of normative powers, designed to protect third parties. Of course, that the communication requirement may protect third parties, does not save the will-based account, which is still unable to explain why only some consents bind. Protecting the will of third parties does not explain why consent to slavery, say, is not binding. In denying it validity the consenter is protected from himself. So, the question remains whether the normativity of normative powers can be accounted for by

these powers being used by acts of communication? True, common practice includes normative powers whose exercise does not involve communication. But as so many normative powers do involve communication, perhaps those that do not are either a mistake or a special case enjoying separate justification. The problem facing a communication account is not that it doesn't match actual practice, but that it is not clear why anyone communicating an intention to assume a duty or to confer a right on someone else should be taken to have changed a normative situation. To explain that, we are likely to revert to a will-based account: my communicating to you that my car is from now on yours transfers ownership in the car because it expresses my will to do so. And we are back with the deficiencies of the will-based theory.

It should be clear that I am not contesting that many, perhaps all, exercises of normative powers are binding only if they express the will of the power-holder or only if they involve communicating the change they are meant to effect. My claim is merely that if they do, that is because it is desirable that normative powers be subject to such conditions. Indeed, in writing about promises, I endorsed the claim that promises are made by communicating an intention to undertake this specific obligation by the very communication.

Yet, it would be a mistake to think that the exercise of normative powers always involves communication. Of the various considerations that require that the exercise of power will involve communication perhaps the following two are the most common and important. First, when the powers used are partly content-undetermined, the content of the duties, rights or the other conditions created using the power is determined (at least in part) by the power-holder when using the power. Among other things, the content of the communication determines what normative change has been created. Second, making a normative change by communicating it enables people to learn of it, thereby helping them to protect their interests, and often also helping a power-holder to protect his interests. Paradigm examples are content-undetermined powers, e.g., promises, contracts, general legislation, judicial decisions, in all of which both factors are present, and some content-determined powers, e.g., gifts, other unconditional transfers of title, getting naturalised, getting married, and other changes effected at will, but where the agent can only choose to accept or reject the new condition and has no power to modify its content. In these cases only the second condition is present.

However, there are many ordinary uses of normative powers to which neither consideration applies. These include many cases of consent, for example, consenting to and thus agreeing to conform to the, clearly and visibly stated, rules of a restaurant or a theatre, et cetera, upon entering them. In cases of this type, when the consent is expressed by an open public act that is not an act of communication, neither factor applies, and the use of a normative power may properly not involve any communication.<sup>10</sup>

## 5. The Ultimate Self.

The picture of the possibilities and limits of human agency that underlies the views explained in this paper (and much else that I and others have written) takes being guided by values as the mark of self-mastery and control of one's life. Humans can act for no reason, following urges and incomprehensible passions, anxieties or frights, but central to their sense of who they are, and what their lives are about, is their ability to act for reasons, and direct their lives to the realisation of goals that there are reasons to pursue. Admittedly most of the time when people have various options, those reasons do not direct them which specific option to pursue. Most of the time people have good reasons to exclude some choices but also adequate reasons to choose among a number of rational (i.e. acceptable by reason) options, and their actual choices are guided by preferences for kinds of content that are admitted as rational but not required by reason. These choices contribute importantly to the development of individual tastes and life styles, all backed but not required by reason. So far this picture, while radically incomplete, may appear to be reasonable. The doubts with which I will finish this paper arise for those, and they include me, who think that the values that provide more or less all the practical reasons that should guide our lives are themselves the product of the nature and activities of human beings. The theoretical background can be stated simply: what has value are either beings of certain kinds, those whose life and character can have value, or other things, experiences, activities or whatever, that can be good for beings whose life or character can be valuable. If human beings are such beings then what is good for them can be valuable, and that will be determined by its

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<sup>10</sup> This example, like many of my examples, is informally stated, relying on the reader being able to supply the required context in which they apply. It is not, for example, my intention to claim that one who enters a restaurant carrying a poster saying I do not consent to the house rules of this restaurant, is consenting to them, nor that one who is forced to enter with a gun to his head is consenting to the house rules.

possible role in their life. Hence, the nature of humans and of the cultures that shape the character and opportunities of their life is a major factor in determining what is of value (and so is the nature and cultures of other beings whose life is of value).

Let us assume for the sake of the argument that many values depend on human nature, activities, attitudes and practices, so that they would not exist without them. We will assume that when our actions can be guided by values, namely when values indicate which of the options open to us we should choose and pursue, we should do so. We should do so even if at the time we do not feel like doing so, even if at the time we feel that we would rather do something else. But given those assumptions why are we unable to create reasons for ourselves at will when there are no other reasons applying to the options available or when the reasons supporting none of the options defeat the reasons supporting each and all the other options?

The puzzle begins to clear when we reflect on the explanation of the dependence of some values on human nature and human cultures – they are among the factors that determine what makes human life rewarding and worthwhile, and what makes human activities enjoyable and worth doing: the beauty of a poem makes it worth reading, the value of being an eye surgeon makes it worth being one. These are but examples, helpful in pointing to the relations of actions, reasons and values: values identify what is worthwhile for beings whose existence is or can be valuable. That is why values depend on the nature and practices of such beings. Values constitute reasons for those who can be guided by them, enabling them to choose what is worthwhile.

The examples may be suggestive, but they do not replace a systematic account: the existence of which beings is of value, and what follows from that fact (why does it not follow that it is better to have more rather than fewer of them?); why and when is the good of such beings a good for other beings? How to reckon with the different time dimensions of various goods – those that make one's life as a whole better and those that make a short period, or even a very short one, good or wonderful etc. to have? And there are many others. But assuming that these questions can be answered, the sketch my examples provide holds good, and they enable one to resolve the puzzle that led to them. It is obvious why value depends, among other things, on human nature and culture, as they are among the determinants of what makes life and action worthwhile, and therefore obvious why

values provide reasons for those who can follow them, for that is how they can enrich and improve their lives and actions.

When at any given moment reason underdetermines which of several options available to an agent is best, this is because none of those options would make the action better, more worthwhile, either in itself or in its contribution to the value of life generally. Given that nothing makes any of those options superior, the agent cannot make one of them superior just by declaring that it is. When – as with promising – agents can make some options good, that is because of the value those options have, and are known to have, before they are chosen. When agents choose them, they do not make them good *ex nihilo*, they merely realise the value of the options, a value that gave those agents reason to choose them.<sup>11</sup>

But, one might ask, could it not be that a person would just act arbitrarily, namely choose arbitrarily what to do? And that there would be nothing wrong, no fault or shortcoming in doing so? Yes, we should answer, subject to interpreting ‘arbitrary’ in an appropriate way, that is possible. Just as the reason for an action may not be in the value of the consequences of the action but in the value of the action itself, so the reason for an action may be in neither the action nor its consequences but in the manner in which the agent comes to be resolved to do it. Therefore, it could be in the fact that an arbitrary process leads to its performance. When it is so, there is at least some value in acting and choosing arbitrarily. Of course, in some circumstances it may be impossible to deliberately act arbitrarily, for it may be impossible to devise such an arbitrary decision procedure or to follow it. It is not the case that if some choice is of value then any agent, or any agent for whom it is of value, has a reason to choose it. To have a reason it must be possible for the agent to choose the option for that reason, and that is not always possible.

In other words, the impossibility of people creating reasons when there is no value that enables them to do so is not a natural limitation on their powers or motivations. It is a

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<sup>11</sup> This is consistent with the possibility that the value of the option is conditional on its being chosen. The crucial point is that being chosen confers value only under some conditions, which are themselves independent of any choice. It is also consistent with the truism that every action may change the reasons one has before performing it. It may cause offense, requiring recompense, it may yield, intentionally or otherwise, a gain or a loss, to the agent or to others, which affects the balance of reasons now confronting him and other people.

necessary limitation, which is the result of the nature of value and of reasons: whenever a person can create a reason for himself, as in the case of promising, there is an explanation of why that is so, an explanation that consists in pointing to the possible value of his doing so.

However, none of this denies the possibility of people acting for no reason, yielding to caprice, surrendering to panic, or phobia, etc. On many occasions such actions will be irrational, but not always, hence not necessarily. The most common cases of acting for no reason are probably the innumerable cases in which people mistakenly believe that there is a reason for their actions or that they are acting for such a reason, and the cases in which people try but fail to do what they intended to do. Common to the numerous instances of such actions is that they are not fully controlled by the agents, frequently being actions they take against their will, or against their better judgement. Nonetheless the actions may turn out to be good, their desirable aspects may be more significant than the undesirable ones. That does not, however, make them actions that create reasons for their own performance where there was none before. Far from manifesting the self in its purest or deepest form, they manifest failure of self-control, or some peripheral cases of agency.

## **5. Normative Powers in The Larger Picture.**

Earlier in the paper normative powers were defined by reference to the value of possessing them, which includes the value of the use likely to be made of them, but crucially also the value of having the choice whether to use them and how, including the expected value of refraining from using them on various occasions. That definition did not commit to any view of the nature of value generally, or to the character of the values establishing the existence of normative powers. The definition of normative powers does not stand or fall with the success of the view of value that I sketched in the previous section. However, if that view is correct it can apply to normative powers, and shows how their definition is but a special application of that general account of values.

However, as was briefly indicated earlier, some normative powers, namely chained and non-basic powers, belong with a class of normative conditions that can be both normatively binding and yet normatively defective to the degree that it would have been better had they not existed. For example, wills, gifts, marriages, agreements, patent rights, laws,



administrative regulations, as well as customary rules whose existence is not owed to the use of normative powers, could all be valid and binding yet so defective that it would have been better if they had not been created, and sometimes, it would be better to terminate them.

The very possibility of things that are binding because it is good that they should be and yet are bad and should not be binding appears paradoxical. In that, it is unlike the apparently similar cases of things that are both good and bad in that some of their features are good and others bad (as in tasty but poisonous). There is no appearance of paradox in such cases. Nor is it like cases of things changing their value over time: they were good but are not so any more, because of changes that deprive them of their value (as when a new tower blocking the view from a flat reduces the value of the flat).

A natural suggestion is that this dual aspect of chained normative powers and of other normative phenomena like customs has to do with the fact that they are exercised by acts intended to exercise them. That is, however, a mistake. The definition of normative powers does not require them to be exercised with the intention to exercise a normative power, though often this is how they are exercised. The mental state required for their use is determined by the value that establishes their existence. Often it does not require such an intention. That is obvious in the case of the activities and practices that establish customary rules, as well as in the evolution of the common law through judicial decisions that often are not intended to develop the common law. The same is true of some other normative powers. Yet there the suggestion may be close to the truth. Normative powers are almost always exercised by acts that are related to intention to perform some actions, even if they end up being accidental, or if they are motivated by false beliefs in reasons that do not exist, etc. Given that in all these cases they are a successful exercise of power because they meet the value condition that applies to them, that condition recognises the value of possessing power even when its exercise involves mistakes, misjudgements etc. That is why chained powers, and related normative phenomena like customs, have that apparently paradoxical dual aspect.

## 6. How Sharp Can Our Distinctions Be?

One way to object to the sketch offered above is by an example meant to illustrate the creation of precedent as one way of changing reasons that is not backed by value or by a change in value. Think of two good friends, Ben and Jerry. As happens to most of us, Ben repeatedly finds himself in situations dominated by incommensurable options. Even though he has no more reason to choose one of them rather than the other, he tends to choose the same option every time. He does not know why, and he may even not be aware of the fact that he has the habit of choosing the same option whenever this situation recurs. Jerry, a caring and observant friend, does notice the habit, and takes this disposition of Ben's as a reason to make sure that the option he tends to choose is available to him in similar circumstances. After some time, Ben becomes aware of Jerry's actions and their reason. Now he takes himself to have a reason to choose the option he chose unawares in the past, and it becomes a little ritual between them, another way to mark their mutual affection. Ben's habit had, initially, no normative significance either to him or to Jerry. After a while it acquired a normative significance to Jerry. He realised that it is a way of pleasing Ben, in a small way in itself of little significance. But once Ben became aware of Jerry's motivation it became a common ritual providing reasons for both of them to keep it in existence, each of them feeling disappointment and some hurt when the other forgets to play his role, or refrains from doing so because he is upset for some reason.

Here, what started as a non-normative disposition was transformed into a practice enabling both Ben and Jerry to signal something about the state of their feelings or of their relationship, by conforming or not conforming with it. At that stage the practice may be said, perhaps at a stretch, to endow each of them with a directing normative power. The lesson I learn from this story is that the boundary between normative power and mere habit is often obscure to the degree of not existing in particular instances, a fact that does not cast doubt on the distinction between a mere habit and a normative practice. More importantly, the Ben and Jerry story illustrates one way in which the normative arises out of non-normative facts about humans and their relations, thus helping to explain how values can depend on human nature, dispositions and cultures.