

Directed Duty, Practical Intimacy, and Legal Wronging¹
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What is it for a duty or obligation to be *directed*? Thinking about paradigmatic cases such as the obligations generated by promises will take us only so far. We will also need to consider shared agency, where some have discerned a similar phenomenon.

I will take for granted that a duty to ϕ relates the agent to a type of action that is in some sense right or morally required. So far, this is just to speak of the duty in “monadic” terms. It just says something about the agent who is subject to the duty. Talk of directedness introduces a further relatum: some particular individual (or individuals) to whom the duty is directed, or to whom the obligation is owed. Consider a standard example of a directed duty – the obligation to keep one’s promise (though the honoring of contracts and agreements might also serve as examples). Suppose I promise to look in on an elderly couple. Visiting them is not something I’m otherwise obliged to do (assume that I’m not closely related to them, and that they have friends and relations who regularly see them). Of course, I might already have some reason to visit them; it might be a good thing to do. But the promise makes the visit morally required. In this case, moreover, the obligation corresponds to a right on the part of the promisee to performance.² Promissory obligation is often regarded as a paradigmatic instance of directed or ‘bipolar’ duty.³ If I promise the couple, the obligation is said to be *owed* or *directed to* them. Suppose, however, that this is a promise made to their *son*. Then my obligation is to visit the couple, but it is an obligation that is owed to the son, and it is the son who has the corresponding right. What is entailed by the promissory obligation being owed or directed to the son in this way? What is it for obligations in general to be directed?

Why should we care about the directedness of duties? The specific aspects of directedness in duties should become clearer as we proceed, and this should help us see why they are of interest to us. But more generally the idea of directedness suggests a distinctive way in which morality relates individuals to one another. Morality regulates our interactions with one another insofar as some actions and ways of treating one another are prohibited, others required, yet others permitted or recommended, etc. But talk of directedness suggests that somehow the duties or obligations themselves, and not merely the conduct that is their subject matter, afford a way of

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² Hohfeld 1919. For discussion, see Sreenivasan 2010, 465-6. The example comes from Hart 1955.

³ The terminology of bipolar as opposed to monadic duties is prominent in recent discussion due to Thompson 2004, though he credits Weinrib 1995.

relating us to one another. The idea is to get a better understanding of what this form of relating to one another amounts to.

This paper starts by surveying several approaches for understanding directed obligations or duties, as well as the challenges they face. It turns out that something similar to the directedness of duties is a feature of shared agency. This then suggests an account of directedness in terms of shared agency – specifically, in terms of the so-called practical intimacy that holds between individuals when they act together. The final section addresses a challenge to the shared agency approach posed by legal wrongdoing in tort law.

Normative Relationship

Progress toward an understanding of directed duties starts with the observation that at least some cases involve a special relationship between the relevant parties. For example, the act of promising (perhaps along with its uptake) links individuals normatively, relating them as promisor and promisee. Something similar happens in agreements or contracts and, as Wallace emphasizes, in friendship:

It is built into the idea of friendship that friends have normative reasons to help each other out, so that the fact that my friend is in a bad way itself counts in favor of my doing what I can to relieve the friend's distress...Reasons of this kind, however, are not merely free-standing normative considerations...only a person who stands in a friendship relationship to you has the special claim to consideration and vulnerability to injury that is partly constitutive of friendship.⁴

When parties are related in such a way as to generate directed duties, each will have a “special claim” on or against the other; the claim is a consideration that, from the agent’s perspective, would be problematic to set aside or ignore. It could be that I would do more good, for example, helping with canvassing to get out the vote than keeping the promise to look in on the elderly couple. But the relationship established with the promise structures my reasons in such a way as to have what appears to be a deontic upshot: the prospect of greater good from canvassing cannot overwhelm the requirement to fulfill the promise.⁵ Similarly, there does seem to be a difference between the duties one has to a friend in need on the one hand and a stranger in similarly dire straits on the other.

⁴ Wallace (2013, 155). Wallace notes that “the most salient and familiar examples of directed duties arise from transactions and other forms of causal interaction between the parties that they link” (2019, 16). Regarding promises: “The promise creates a special relationship between the promisor and the promisee, making it the case that the new obligation that obtains is directed specifically to the promisee” (2019, 7). However, in this more recent work Wallace has ambitions to extend this “relational normativity” in such a way as to govern our interactions with *any* individual. Thus, a pairwise normative relation holds between any two individuals, and this is quite beyond the scope of any antecedent substantive relationship. See below.

⁵ Wallace (2013, 157) characterizes the normative force of the special claim in terms of Razian exclusionary reasons.

Raz points out that “it would seem that duties we owe others arise in three (overlapping) ways: they may be the result of commitments or undertakings, the product of relationships, or debts of gratitude. They presuppose some kind of a personal relationship” (Raz 2011, 210).

A relationship underlying directed duty is also very much a part of the picture we get from Thompson. Adapting what he says to the case of promising, when you make a promise, you and the promisee...

...have fallen into a peculiar nexus which limits your pursuit of objectives of any kind, even the beautiful objective of charity and the love of justice. The consideration operates pairwise and the rest of the world is, at least to a certain extent, closed out.⁶

Stroud’s discussion of directed duty draws on Ross and is oriented around understanding the nature of wronging another. She, too, emphasizes the importance of a substantive relationship between relevant parties:

...some of the clearest cases of one person wronging another arise and are only possible *within certain interpersonal relationships*. I use the word “interpersonal” advisedly, for (just to state the obvious) the relationships susceptible of making dyadic wronging possible are not limited to what are usually called *personal* relationships. After all, two people can stand in the promisor-promisee relation—which, following Ross, we have taken to be a central case of the phenomenon we are after—without being in what would usually be called a “personal relationship.” When, however, *R* and *S* do stand in an interpersonal relationship of an appropriate kind—a “morally significant relation,” as Ross would term it—and *S*’s moral offence is given colour precisely *by* that interpersonal relation, this suffices to “get *R* into the picture” in the way relational wronging requires. (Stroud, 26-27)

Later she adds, “*already standing in a certain type of interpersonal relation* suffices to give dyadic moral concepts application” (Stroud, 30)

If directed duties have a special normative force, one that is in play in our practical and moral thought with respect to some individuals but not others, then perhaps there’s something about the special relationships with particular individuals that accounts for the directedness of duties toward them.

The thought that there is a special relationship that underwrites the directed duty points to why we cannot simply understand such duties in terms of the idea of a correlative right. For example, the idea that I have a duty to someone not to assault them is understood in terms of their right not to be so treated. This picture ignores the *specialness* of the relationship that holds between the parties involved in directed duty, for presumably this individual right pertains to not be assaulted by anyone. Now, we might instead think that there is a special form of right that the individual *holds specifically against the bearer* of the directed duty. But then we answer the question of what the

⁶ Thompson (2004, 337). The particular example Thompson describes is not one of promising, but it would be fair to say that he intends this characterization to apply to all instances of directed duty.

nature of a directed duty is by invoking a special notion of what is in effect a corresponding “directed” right. And this would not seem to amount to much in the way of progress.

I think that it is important to recognize that there is some sort of underlying substantive relationship to directedness in duty. But there are a couple reasons to think that this idea does not by itself yield an understanding of directed duties. First of all, connecting directed duties with particular special relationships does not yet tell us what exactly it is about these relationships that account for directed duties.⁷ We’ll want to know what it is about the relationship between promisor and promisee, or that between friends, that accounts for the directedness of any duties that might be involved. Furthermore, it may not be possible to specify adequately the relationships in question independently of directed duties; the directedness of the normativity is inextricably linked to what it is to be in that sort of relationship. Arguably, it’s *with the duty* that one is related to the other. So, the concern is that we are not making progress toward understanding this directedness by invoking the relevant relationships; an understanding of those relationships presupposes the very directedness under investigation.⁸

In light of this, I want to consider several proposals for elaborating on the relationship that underwrites the directedness of the obligation. There is something of interest in each, but none is satisfactory. I will then turn to a proposal that I think is more promising.

Relational wronging⁹

The directedness of a duty is often explicated in terms of the distinction between *acting wrongly* and *wronging someone* – where there is someone in particular that you are wronging (Thompson 2004; Kamm 2007, 230). Perhaps I have a duty to engage in occasional charity work. Though it might be in the interest of others that I fulfill such a duty, I don’t wrong anyone in particular when I fail to live up to it. But I have acted wrongly if this obligation goes unfulfilled.¹⁰ We might speak generally of the obligation to keep one’s promises in this way; when one fails to live up to this obligation, one is acting wrongly. But failing to live up to a promise is, in addition, a wronging of someone in particular – namely, the individual promised. In neglecting to visit the elderly couple, I wrong the son whom I promised, not his parents (assume that my visit was to be a surprise, so they weren’t counting on me to come by).

⁷ A worry raised by Tamar Schapiro in her talk at a conference on The Direction of Moral Duties, Simon Fraser University, 2016.

⁸ A further worry with invoking a substantive relationship underlying directed duty is the possibility that one might be subject to duties toward those with whom one is not so related. Arguably this is a sort of worry raised by Thompson (2004). I will consider an instance of this worry in the final section of this paper.

⁹ I get this expression from the title of Sarah Stroud’s “Relational Wrongs,” presented at The Direction of Moral Duties, Simon Fraser University, 2016.

¹⁰ Another example: I’ve made mistakes and have fallen in with some crowd that seemed nice but now are bent on morally very problematic endeavor. The only way to extricate myself is to trick or otherwise manipulate them. I act wrongly in tricking them – it was my fault that I fell in with them and got myself into a situation where I had to resort to these sorts of unscrupulous tactics. But given that they are bent on involving me in their endeavors, I don’t wrong *them* in doing what I have to do to get myself out of this jam. See Thompson (2004, 339-40) for a related case.

So, can the possibility of relational wrongdoing – the idea of wronging someone rather than merely acting wrongly – provide an understanding the relationship underlying directed duty? Instances of relational wrongdoing no doubt can give us some sense or handle on the relationship. But these cases do not offer a theory or explanation of directed duty and the relationship underlying it. If anything, the proposal gets wrong what counts as explanans and what the explanandum. It's the theoretical notion of directed duty and the underlying relationship that supposedly allows us to better appreciate the nature of the various instances of relational wrongdoing and how they all fall under a single category. We can suppose that the parents would stand to benefit most from my promised visit – certainly more so than the son. I've acted wrongly in not keeping the promise. And it is unfortunate that, as a result, the parents languish unvisited. However, it's the mildly annoyed *son* that I wrong, and not the sad parents. Far from accounting for the special relationship underlying directed duty, the pattern of wrongdoing seems to call for some explanation. If the directedness of the duty to the son explains the pattern of wrongdoing, then the latter won't account for the former.

Another concern with seeing relational wrongdoing as theoretical explanans is that it seems possible to wrong someone without any relationship holding between the parties, and thus without any directed duties. After all, assaulting a random stranger with whom one has no substantive relationship is not just to act wrongly. It is a *wronging of someone*, the victim. Wronging someone doesn't require some preexisting substantive relationship. So the possibility of wronging someone is not, at least by itself, sufficient as a characterization of the relationship underlying directed duty.¹¹

Accountability

Another proposal about what directedness in these relationships amounts to develops the idea mentioned above of one party having a special claim on the other. The promisor's duty to the promisee to live up to the promise corresponds to the promisee's claim on the promisor to perform the promised ϕ -ing.¹² The promisor is *accountable* to the promisee to perform as promised.

Accountability for fulfilling a promise entails responsibility for it. The conditions for responsibility mostly concern the agent (the promisor in this case) and the sort of control she has over the relevant action; someone is not legitimately criticized for failing to ϕ if, for example, they were under duress or coerced. But the notion of accountability, as it is often used, involves not only the responsible agent, but a further party – one that has a standing to complain, to protest, and to demand explanation, apology and conformity. The party may, in addition, modify her relationship with the responsible agent (Scanlon 2008); the agent's failure to meet the obligation would justify taking steps in response, e.g. disinviting the individual to a social gathering (May 2015, citing Darwall 2006 and Feinberg 1970). Thus, the legitimacy of criticism that's grounded

¹¹ A point emphasized by Seana Shiffrin in conversation. A different response to the possibility of wronging strangers suggests that substantive relationships are not necessary for directed duties. I'll consider this in the final section of the paper. In arguing that wronging X needn't be correlated with a violation of X's rights, Cornell 2015 implies that wronging is not enough to capture directedness in duty.

¹² An important recent discussion is Wallace 2019.

on accountability depends not only on what the agent did, their obligations, and the conditions under which they acted. It also depends on the standing of the further party that judges and acts in light of what the agent does. Someone who lacks the authority or standing might, when lodging a complaint, be greeted with something like: *it's not your business* (Gilbert 2006, 133; Roth 2004, 384, especially n.14). But it's very much the business of the promisee whether the promisor follows through. The promisee has the requisite standing and cannot be rebuffed. It's in this sense, the thought goes, that the promissory obligation is *owed to* or *directed to* the promisee. Unlike some uninvolved third party, the promisee is in a special position to object if the participant does not do his part.

But the worry with this appeal to standing and accountability as an account of the directedness of obligation is that it threatens to make directed obligation so diffuse and unfocused as to no longer to be interestingly distinguished from ordinary undirected monadic obligation. Why is this? In failing to keep a promise, one fails to live up to a moral obligation. When it comes to morality, in principle, *everyone* is in a position – has standing – to object and to respond in light of the infraction (e.g. Darwall 2013, 35-6). Admittedly, the promisee is likely to be more motivated to object, assuming that she was interested enough about what was promised to want to be assured about it. And there are, of course, many reasons for third parties to leave it to the promisee to object about a broken promise; one may not want to come off as overly meddling. And one has one's own life to lead. Nevertheless, because it is a *moral* principle that is being violated, anyone sufficiently aware of the situation (and presumably having a general standing in the moral community) has, in principle, grounds for criticism for the failure in promise-keeping; this is no doubt related to the idea that a violation of moral norms could be grounds for third-party intervention, and punishment (if one is a retributivist). So, if we understand directed duty in terms of standing to complain or criticize, then it no longer seems to be directed specifically to the promisee (Roth 2004, 364).

This concern about the accountability approach to directedness can also be raised in the context of Strawson's influential approach to accountability and responsibility. Although Strawson himself doesn't explicitly address obligations, Darwall (2006; see also Kutz 2004) understands Strawson's treatment of accountability as key to understanding their directedness and relationality. Strawson emphasizes, in the core case, "the non-detached attitudes and reactions of people directly involved in transactions with each another, of the attitudes and reactions of offended parties and beneficiaries; of such things as gratitude, resentment, forgiveness, love and hurt feelings" (Strawson 1962, 4). If we were to apply Strawson's picture to our case, the promisor is accountable to the promisee in that failure to do as one has promised amounts to an expression of ill will (or a problematic indifference) toward the promisee. One would thus be liable to being the object of resentment or some other appropriate direct reactive attitude. Thus, Strawson's picture of participant reactive attitudes offers one way to understand accountability, and thus one sense in which the obligation to do one's part is directed toward other participants.

One obstacle to the deployment of the Strawsonian machinery of accountability for understanding directedness of obligation comes from further elements of the Strawsonian picture. As is well known, Strawson extends his story beyond these cases of participant reactive attitudes to handle blame and holding accountable in more impersonal cases that don't involve substantive relationships. In the impersonal cases, one is not oneself a target of the ill will expressed by another individual **B**; instead, one adopts a reactive attitude of say indignation against **B**, on

behalf of some distinct individual C who has been targeted by B. Thus, as a subject of the reactive attitude of indignation, someone not involved in the promissory interchange might nevertheless have some standing to criticize or otherwise express their indignation regarding the failure to keep a promise.

If the Strawsonian connection between reactive attitudes and accountability holds not only for the participant attitudes but extends as well to the impersonal, then this threatens to render all forms of accountability “second personal” in Darwall’s terminology. That is, both participant reactive attitudes and impersonal reactive attitudes would be conceptually related to the interpersonal and to notions of address. (A point acknowledged by Darwall 2013, 36.) If we’re trying to give an account of directedness in terms of accountability understood as address (as Darwall seems interested in doing), then it would be problematic if we cannot distinguish between address in cases where we have individual participatory reactive attitudes on the one hand, and the impersonal cases on the other. After all, it’s precisely this sort of asymmetry that offered us our first inkling of the notion of directedness. Accountability would not capture the specialness of the relationship underlying directed duty.

Darwall introduces a distinction to address this worry. Given that promissory obligation is a form of moral obligation, the promisor is accountable to everyone to follow through on the promise. Correspondingly, everyone possesses what Darwall (2013, 32-4) calls the *representative authority* to address the promisor to make a criticism and urge the promisor to respect his obligation. But no one but the promisee possesses, in addition, an *individual authority* with respect to the promisor (2013, 27-32). It’s in terms of this individual authority that Darwall hopes to capture the directedness of the promisor’s duty.

But the introduction of the distinction between individual as opposed to representative authority seems *ad hoc*: you cannot simply posit a special kind of authority to address in order to capture directedness (May 2015). On what grounds are we to single out individual authority? Note, after all, that the content of the individual and representative authority is the same: to address the promisor concerning fulfillment of the obligation. If it’s not the content of the authority that singles out the individual authority, then we might be tempted to say that the individual authority is that possessed by the promisee or, more generally, the obligee to whom the duty is directed. But this is viciously circular: we were trying to account for the directedness in terms of accountability, and we needed a special form of accountability to do this. We cannot then identify the special form of accountability in terms of the very notion of directedness that we were seeking to explicate.

Given Darwall’s invocation of Strawson, one way to try to address this circularity might be to account for the directedness of the obligation by noting that the grounds for complaint in the case of the promisee lie in a different form of sentiment than in the third-party complaint. The promisee’s complaint is connected to the *resentment* she feels when the promise is not fulfilled. Whereas, a third party’s standing to complain is connected with the *indignation* he might feel on behalf of the promisee. But, as May points out (2015, 528), the distinction between resentment and indignation arguably presupposes the concept of directedness, and so won’t serve to explicate it.

I think that the most promising response for Darwall to take at this point is to argue that resentment is more basic or fundamental than indignation. Such an asymmetry does seem to be in Strawson, who suggests that our handle on indignation stems from empathetic or vicarious appreciation of the state of another who is in a position to feel resentment. That is, we appreciate indignation to the extent that we are able to put ourselves in the shoes of another and appreciate the resentment they would appropriately experience in such a situation. Furthermore, it is one's own relationships and the participant reactive attitudes that go with them – and not the more impartial vicarious attitudes – that for Strawson are inescapable and which render incoherent the challenge determinism is supposed to pose for our responsibility practices.

The conceptual priority of participant reactive attitudes such as resentment over the impartial or reactive attitudes such as indignation, then, might offer Darwall a way to justify singling out the individual (as opposed to representative) authority, which is what he needs to capture the exclusivity we find in directed duty. At this point, however, we might wonder whether it is accountability per se that is relevant for capturing the directedness of obligation. Mightn't it be something else about personal involvement that underwrites the directedness of the obligation? And even if accountability is important, what is it about the accountability at the participant level that is so special?

Normative Power

We haven't yet properly accounted for the relation underlying directed obligation. Both relational wronging and accountability are not sufficiently restrictive to capture the exclusivity we need for directed duty. A proposal that fares better in this regard appeals to the notion of a normative power. On this view, the directedness of a duty is a matter of the power exercised over the duty by the individual to whom it is directed. The promisee, for example, can release the promisor from the obligation. No other individual, not even those who might have more of an interest in the obligation being fulfilled, has this power. If my promise to look in on the couple is made to their son, then it's the son that has the power of releasing me from the obligation. It's in this sense that the promissory obligation is directed or owed to the promisee.¹³

A challenge for the normative powers view stems from the concern that sometimes a duty is directed to an individual that has no normative power (May 2015, 525). A promise to someone on their deathbed – to complete some project of theirs, or to look after their child – would involve a directed obligation, but the promisee would not be around to exercise any normative power. But perhaps a broader understanding of normative power as something not limited to the power of release, but extending to the acceptance and thus initiation of a promissory obligation, would address this worry. More troublesome, however, is the duty to care for one's young children. The duty is directed to the child even before the child is in a position to accept

¹³ Sreenivasen 2010 places this sort of view under the heading of a will theory, with Hart (1982) as a major proponent. Other relationships, such as friendship, will involve similar normative powers. (Maybe a friend has more leeway to forgive than a stranger.)

the relation, and before they are mature enough to release the parent from it. So here we seem to have directed duty without any normative power.¹⁴

Another concern is that of antecedence – similar to the concern raised about relational wronging as an account of the relationship underlying directed duty. The worry is that the normative power is explained in terms of directedness of obligation and not the other way around. In presenting this worry, May seems to be concerned that we have to have the directed obligation to ground the normative power: the promisee has the normative power of release precisely because the promisor’s duty is directed to her.

If we do not or cannot appeal to directed duty to explain normative power, what alternative is there? What would explain, for example, why it is that this power holds with respect one individual and not another? It would hardly be an explanation to say that there are bare normative powers; for then it would be quite unclear why it is that one has it with respect to some but not with respect to others. Of course, we might say in that case that the power holds with respect to everyone, but then we lose the exclusivity of the directed duty.

More generally, if there is a normative power, we’ll want to know what underlies it. If it’s directed duty, then the normative power view presupposes what we’re trying to account for. If it’s something else, we’ll need to know what it is.¹⁵

We’ve looked at wronging, normative power, and accountability; all are problematic in that they do not offer a positive, non-question-begging characterization of the normative relationship underlying directed duty. The emerging suspicion is that there isn’t really anything to the idea of directed duty or an obligation owed to someone in particular. If we can’t find a working model for directed duty, then we might become skeptical about duties being directed.

Shared agency

It would help at this point to turn to some recent work on shared agency. Joint or collective action exhibits a directedness or relationality in normativity similar to the duties that have been our concern here. When agents act together, they are bound to each other in a way that individual agents of a mere aggregate are not. One of the ways in which they are bound is by the distinctive obligations or commitments to do one’s part in the joint activity.¹⁶ Individuals walking together, for example, are committed keeping pace with one another. Whereas, commuters – strangers to one another – are not so committed when streaming toward a station exit. The

¹⁴ Another fascinating case is the duty of gratitude. This would seem to be a directed duty one has to one’s benefactor. And yet, as Herman 2012 points out, it seems not to be a duty with respect to which the benefactor has a normative power, e.g. of release.

¹⁵ Another concern often raised for normative power theories involves the idea inalienable rights. A’s right to freedom is inalienable; A doesn’t have the right to enslave himself. So he has no power to release B from the obligation not to enslave A. So B’s directed duty to A not to enslave A cannot be understood in terms of A’s normative power over B’s duty (Sreenivasen 2010, 483; MacCormick 1977, 195-99). But it seems to me that the relevant duties that correspond to inalienable rights are monadic. So it’s not clear that inalienability amounts to counterexample to the normative power view of directed duty.

¹⁶ Gilbert has argued this in many places; see e.g. her 2016. See also Roth 2004.

commitment of participants is mutual not merely in the sense that a (defeasible) commitment to do one's part in the joint activity is had by *each* participating agent. There is the further thought that one's fellow participants figure not merely in the content of one's commitment, but somehow in the willing or the committing itself. My commitment to do my part in our joint activity is more properly speaking a commitment-to-you to do my part in our activity. One aim of the literature on shared agency is to show that it exhibits these "contralateral" commitments or obligations, and to explicate what this amounts to. If this commitment doesn't presuppose morality,¹⁷ and yet possesses a structure that is very suggestive of directedness, then it seems that a theory of shared agency might be recruited to give a non-circular account of the directedness of moral duties.

At the core of my understanding of shared agency, and these contralateral commitments in particular, is the thought that the relevant intentions of fellow participants play a particularly intimate role in one's practical reasoning (Roth 2003, 2004). The role of the intentions of fellow participants is more akin to that played by one's own intentions than that played by the intentions of third-party nonparticipants. My decisions and intentions can settle practical matters for me; if I decide (and thereby intend) to ϕ , then when it comes time to act, I simply act on the intention and ϕ . Having decided ahead of time, I don't have to consider *whether* to ϕ in this situation (unless, of course, I gain some relevant new information). Indeed, we can't make sense of deciding and settling matters ahead of time if at the time of action I always have to decide on whether to act on the prior decision. The prior *decision* and *intention* to ϕ can hardly merit these labels if they don't settle the matter of whether one will ϕ . And the matter would not be settled if the prior intention is held hostage to a decision and intention made anew at the time of action. What we need to say, then, is that when I make a decision and form an intention, I subsequently act *directly* on that prior intention when the time is right. Further, this prior intention imposes constraints on what other plans I make, so as to ensure that I will be in a position to perform the action I intended (Harman 1986, Bratman 1987). This intention-based commitment – embodied in immediate relevance of one's prior intention and the possibility in the normal course of events to act directly on it – is what distinguishes genuine diachronic agency from a sequence of discrete exercises of synchronic agency.

Now, just as it is possible – indeed, required if we are to make sense of deciding things ahead of time – that one be able in this sense to act directly on one's prior intention, so might it be possible to act directly on the intentions of others. And just as my own intentions constrain my practical reasoning, so might the intentions of fellow participants in joint action serve as fixed points for my practical reasoning. The immediate relevance in practical reasoning of another's intentions – and the possibility in the normal course of events to act directly on the other's intention – is what distinguishes genuinely shared agency of individuals from a set of discrete, individual exercises of agency by individuals.

Suppose that this is correct and that it's in this *practically intimate* sense that fellow participants and their relevant intentions figure in how one goes about doing one's part in genuinely shared agency. The commitment to do one's part in joint activity would be founded on just such an

¹⁷ Bratman (1999, 2014) has argued that *moral* obligations, though often associated with shared intention and joint action, are not necessary for them. Gilbert (2009) has argued that the mutual obligations that she takes to be essential to shared intention and action are not moral in nature.

intention. This is how I suggest we understand contralateral commitment in shared agency. It is an intention-based commitment to do one's part in joint activity. And it is a "contralateral" commitment-*to-fellow-participants* insofar as it is subject to being set and constrained in this immediate fashion by their intentions and commitments.

I will not attempt to defend this practical intimacy picture of contralateral commitments and shared agency here.¹⁸ What is important for my purposes now is that these contralateral commitments seem to be closely related to directed duties; so much so that it suggests a shared agency model for directed duty. Very roughly, we might understand the directedness of duties in terms of shared agency, or at least in terms of elements of a theory of shared agency. More specifically, we can see how the practical intimacy model of contralateral commitments helps us understand aspects of the relationship between relevant parties of directed duty that inspired the earlier characterizations of duty in terms of wrongdoing, accountability and normative power.

To illustrate, let's take the case of promising. I suggest that the acceptance of a promise involves the promisee willing what the promisor has promised to do (Roth 2016). When the promisor follows through, he is acting *directly* on the intention/will of the promisee. More specifically, the acceptance of a promise to ϕ involves the promisee willing the promisor's ϕ -ing and communicating that intention to the promisor. The promisee's agency figures in what the promisor does in a particularly intimate fashion. Part of the point of promising is to grant the promisee some element of agency over what the promisor does.¹⁹

This picture accounts for the elements of truth underlying the previously discussed models that invoked accountability, normative power, and relational wrongs. Thus, when the promisor's action is intimately related to promisee's intention, then it's not surprising that the promisor would be accountable to the promisee, and in a way that is distinctive and does not hold between promisor and some third party. The promisor, for example, owes some sort of explanation to the promisee of how it is that they went about acting to fulfill the promise. This is an aspect of accountability that doesn't hold between promisor and some third party – even if the latter is in a position to criticize the promisor for failing to live up to the obligation. And given that to act to fulfill a promise is (among other things) acting on the promisee's intention, it's not surprising that it is up to the promisee to change her mind if she has reason to, and thus to exercise the normative power to release the promisor from the obligation. The normative power is based not on the duty being directed to the promisee (which would lead to the circularity/antecedence problem), but on the fact that the promisor is acting on the promisee's intention. The promisee's normative power is a manifestation of the promisee's agency as exercised in the creation of the promissory obligation as well as its fulfillment. Finally, there is a special way in which the promisor can wrong the promisee: when one doesn't live up to a promise, one is letting down the promisee. Just as one lets oneself down when one fails to live up to one's own intention, so one lets down the promisee when one fails to fulfill a promise to them. This distinctive form of letting down involves a frustration in the exercise of one's will. It is not something to which some third party is susceptible, who at best might suffer a frustration in their expectations. It is in this sense

¹⁸ See Roth 2003, 2004, 2014.

¹⁹ For somewhat related views, see Shiffrin 2008 and Owens 2013, who see promising as granting to the promisee some control over the normative status of the action. They don't go so far as to think that promising should be understood in terms of *agency* that's shared.

that in failing to live up to the promise, one wrongs the promisee but not some third party who happens to be interested in the promise being fulfilled.

I am not suggesting that when the promisor acts to fulfill a promissory obligation, that the promisor and promisee are literally acting together in a way that is typical of the examples in the literature on joint action, such as walking together or painting a house together. But some element of the practical intimacy that we find in shared agency and joint action is present in promising. Specifically, if my understanding of promising is correct, the promisor acts *directly* on the promisee's intention for the promisor. The suggestion, then, is that the special relationship underlying the directedness of promissory obligation is to be understood in terms of this practical intimacy that we find in shared agency.

I have been discussing how shared agency and practical intimacy figure in an account of the directed duty of the promisor to the promisee. I have not offered a general theory of just how practical intimacy figures in different varieties of directed duty. I think that how the directed obligation is related to joint activity (or something close enough to it) will depend on the specifics of the sort of moral obligation in question. As might be gleaned from the brief account given above, how practical intimacy figures in promising depends on the details of an account of promising, such as the nature of what it is to accept a promise. Presumably the practical intimacy in promising will differ from how it is manifest in a legal institution of contract, and there will also be important differences of detail from the practical intimacy associated with the directed duties in friendship. Directed duties in each of these cases will require its own treatment; but all will, I think, exhibit practical intimacy in one way or another.

Tort law and shared agency

A worry for the shared agency view stems from some of the duties that are the concern of private law. One might want at the outset to set aside legal duties and rest content with a theory of directedness for moral obligations. However, foundational theorizing about private law was influential in the development of recent interest in directed duties.²⁰ So it would be embarrassing if a theory of directed duty cannot shed any light on the legal duties that sparked recent theorizing about directedness.²¹

In private law a particular individual can make claims against specific other individuals; for example, in contract law one might seek remedy against some other party for a breach of contract. Contrast public law, e.g. criminal law, which concerns whether an individual has broken a law of the state. Although criminal law can regulate behavior between individuals, the normativity in question does not lie between individuals so to speak. Whatever interpersonal relations might be in place is incidental to one's legal duties; the relations are relevant merely as

²⁰ See the references for Weinrib, Hohfeld, and Thompson. This is a point made by Stroud (ms).

²¹ In any case, the challenge raised by the law of torts is similar to those posed by what Wallace refers to as the secondary obligations in our accountability practices - regarding forgiveness, apology, and moral repair (Wallace 2019, 89-95). Ignoring the legal case therefore will not eliminate this sort of concern to be raised. I will address these more specific moral issues on another occasion, but the approach I will take will be similar to what will be described below.

the occasion for whether the duties are met or violated; they are not constitutive of those obligations. As Thompson says,

The verdict of the jury ‘Guilty!’ expresses a property of one agent; it is not a relation of agents. If another agent comes into the matter – if there is, as we say, a ‘victim’ – it is, so to speak, as raw material in respect of which one might do wrong. The position occupied by other agents in the associated legal facts might equally have been occupied by rare birds and old buildings. (Thompson 2004, 344)

Perhaps Thompson is being too quick here. One might consider the possibility that criminal law is also the domain of directed duty, insofar as the duty is directed or owed to the state. That this is a possibility is suggested by the thought that the state might enter into relationships with an individual in a way that individuals might relate to one another; e.g. the state might have such a relation with a contractor to build roads or supply military equipment. But whether or not the state sometimes takes on a role similar to that of a private party, it is not at all clear that the role of the state with respect to individuals in the case of criminal law is analogous to the role of one individual with respect to another in private law. For instance, in private law, the individual might have discretion as to whether to make a claim against another regarding some tort or breach of contract. The state does not, it seems, have a similar discretion in criminal law. The state might have limited resources and lack adequate evidence, and so there may be an element of triage in how it prosecutes alleged crimes. But it cannot, simply as a matter of pure discretion, fail to proceed in a criminal prosecution. That would be a miscarriage of justice.

Focus, then, on private law as the domain for directed duties in the legal realm. Does the shared agency view hold promise as an account for the directedness of these duties? Some directed legal duties of private law – such as those that we find in the law of contracts – are good candidates for explication in terms of shared agency. Contracts make use of legal apparatus to secure something like an exchange of promises. It doesn’t take a great leap of the imagination to think of the parties to a contract as engaging in a form of joint agency. The directed legal duties would then seem amenable to theorizing in terms of some analog of practical intimacy. I will not attempt to explore the many questions of detail surrounding this issue, but it seems that no obvious worry is raised with a shared agency approach for directed duty in the case of contracts.

However, a part of private law that does appear to pose a challenge for the shared agency model is the law of torts. Tortious interaction needn’t involve a pre-existing, substantive, duty-generating relationship of the sort discussed at the outset of this paper. More to the point, tort needn’t have anything to do with notions of joint action or shared agency in terms of which I am suggesting we characterize that substantive relationship. Nevertheless, the assault of a random stranger, the injury suffered by a passerby due to one’s negligence – these torts suggest the violation of an underlying directed duty. The defendant is *liable to* the victim. Compensation is owed; justice demands that the defendant “make the victim whole”. The challenge to the shared agency model, then, is that torts can occur completely outside the context of joint agency and without any practical intimacy. And yet, there appears to be a violation of a directed duty between the individuals.

The seriousness of this challenge depends on whether and how directed duty is manifested in tort cases. On some ‘functionalist’ or ‘economic’ interpretations, tort law is assimilated to a form of

public law (Landes & Posner 1987). If my conduct subjects me to claims of compensation by others, this might deter me from engaging in that conduct. On this view, tort law works as punishment and deterrence; its function is to discourage behavior incompatible with the ends of the larger community or state. The rationale for tort law would be similar to whatever justification there might be for laws that criminalize certain forms of behavior. Understood this way, tort law doesn't pose any challenge for the shared agency view simply because there would not be any directed duties between individuals here. The normative force in tort law would just be grounded in instrumental or social policy considerations; tort law is simply public policy or criminal law "in disguise."²²

It would, however, be problematic to invoke such a controversial interpretation of tort law to defend the shared agency approach to directed duties. It's not clear why, if the purpose is deterrence, that the plaintiff receives whatever sum the defendant is liable for (Stone, 238). Wouldn't a fine paid to the state serve the purpose of deterrence just as well? The liability of the defendant to the plaintiff goes unexplained on this functionalist picture. If it is suggested that directing funds to the plaintiff is a matter of a social policy to insure against the risks that come with living in society, it would seem that there could be many other more efficient insurance strategies.

Furthermore, the functionalist reading seems not to capture the backward-looking nature of tort law (Stone, 239). Indeed, this reading of tort law runs roughshod over the self-presentation of tort law as a domain of private rights, where one individual is in a special position to make a claim against another on the grounds that they were wronged by that party, and that as a matter of justice some sort of compensation is called for. This functionalist or economic reading doesn't offer an understanding of what this self-presentation amounts to (Zipursky, 626).

Is there a way to step away from the functionalist reading to do justice to tort law's concern with compensation, and nevertheless avoid presupposing directed duties? One thought is to try to understand compensation central to tort law in monadic terms: an individual responsible for any injury of type X is subject to yielding up some appropriate amount. And an individual who suffers X is entitled to be awarded some appropriate amount. The duty itself, however, is not owed or directed between the parties on this view. If compensation can be understood in this way, then there need be no substantive normative relationship between individuals. The suffering of the plaintiff at the hands of the defendant is merely the occasion of the defendant's obligation to make a payout (and, incidentally, the occasion of the plaintiff to receive a payout). The payout can simply be regarded by the defendant as the cost of conducting business as he did. So long as the costs are met, one's legal bookkeeping is in order; one needn't engage with the victim in any substantive way. And from the point of view of the victim, the awarded payout is the sort of support one would expect in a civilized society if one suffers some mishap – like what might happen in a natural disaster or maybe some unforeseeable bear attack – except that in this case it that happens to result from the actions of another.

The monadic rendering of compensation focuses on each of the parties separately, and not in relation to one another. It considers whether a just scheme for the distribution of resources across a population should take into account the misfortune that has befallen some particular

²² For discussion, see Stone 1996, Zipursky 2002, and Ripstein 2002.

individual – whether they should simply be left in their wretched state, or whether something should be done to help them. And the answer, the monadic rendering suggests, is that justice demands something to be done on their behalf. Regarding the defendant, the view suggests that limited resources should not be distributed in a way that fails to impose some cost on those who have harmed others.

But once it is put this way, the proposed monadic reading of compensation seems problematic. One way of putting the concern is that the proposal seems to miss the idea of there being something like a balance *between* the parties, one that was disrupted and needs restoring. Suppose, for example, that you suffer at the hands of another, but then for some completely unrelated reason, you receive a windfall equivalent to the typical compensation for the sort one has suffered. We might feel glad for you, but it doesn't seem as if the injustice of the tort has been corrected. We might even add to the case that the tortfeasor subsequently has a stroke of pure bad luck. Then we might talk about justice. But this would be poetic not genuine justice.²³ If this is right, the implication is that we *cannot* see issues in tort law in the global terms of *distributive* justice, where balance is understood in terms of the appropriate distribution of some benefit (whatever exactly it is that is balanced) across some population. The concern of torts has, instead, a narrow focus just on the parties involved. As Thompson (2004, 337 quoted above) says, there is a pairwise nexus between the parties and the rest of the world and other individuals with it are closed out.

It seems, then, that the compensation we find in tort is a realization of some other notion of justice – corrective justice.²⁴ At the heart of this picture of tort law (and private law more generally) is a norm of equality. The tort presupposes some notion of equality irrespective of the relative wealth or well-being of one party with respect to the other, and irrespective of the relative merits of character. Despite any such differences, the parties are (supposedly) equal or balanced before the torts are committed, and what matters is restoring this balance afterwards. In committing the tort the tortfeasor realizes a gain equal to sufferer's loss. Justice in the corrective sense requires repairing a past loss.

There are different understandings of how exactly to understand the abstract equality or balance invoked in tort law. But the picture most relevant (and challenging) for our purposes understands the equality in terms reciprocal directed duties between the parties. For example, Ripstein (2002, 660) says that the basis for liability in tort law is that there is supposed to be a “sense in which plaintiff's complaint is that her injury properly belongs to defendant because defendant has breached a duty *that he owed to her*” (emphasis added).

Now, if the balance that is the concern of tort law is simply understood in the abstract terms of these reciprocal directed duties, or the relational normative principles that underlie them,²⁵ then one may wonder about the adequacy of the shared agency model of directedness. For, again, the challenge is that a tort can be committed between individuals who are strangers to one another.

²³ Unless one were to supply the relevant metaphysical or religious background necessary to turn the matter into one of divine or perhaps karmic justice.

²⁴ Stone 1996, 246, discussing Aristotle *Nicomachean Ethics* Book V.

²⁵ Ripstein 2002, 660-1. The underlying principle is a conception of freedom that is relational, where one is free insofar as one is not subject to the choice of another. See Ripstein 2009, 15.

The abstract equality posited to make sense of the nature of tort involves a directedness of duties independent of any joint action or practical intimacy. Let me close, then, with several remarks to address this challenge to the shared agency model of directedness.

First, it should be noted that the proposed view about torts represents a significant departure from the pre-theoretic picture given at the outset – of directedness involving a special relationship, paradigms of which are promising and friendship. Since it's possible for a tort to be committed with respect to any random stranger, there is between *any two individuals* a balance that can be disrupted. The current proposal thus implies that one is subject to a pairwise relation of directed duty with respect to *every individual*.²⁶ Our initial characterization of directedness of duties invoked substantive relationships in friendship and promising. It is a big leap from such paradigms to a pairwise relation that holds between *any* pair of individuals.

It's quite possible that *some* abstract pairwise relationship of moral significance could hold between any two individuals. But it's implausible to think that this is what caught our attention at the outset in cases such as promising. We could very well think that the posited pairwise relationship is important – but it would be important for something other than the phenomenon that is my concern in this paper.

The depiction of one as subject to a virtually unlimited multiplicity of directed duties misses what it's like to be the subject of directed duties – that *particular* others, or only certain individuals with whom one has engaged with, figure in what one is obligated to do, and in a way that third parties do not. One has a distinctive kind of duty-generating relationship for some that one doesn't have for everyone. Part of the significance of directed duties is that their value has something to do with the relations being limited or special.²⁷ One is not *friends with everyone*; one cannot make *promises to everyone*. No doubt it's possible for any two individuals to be involved in a tort. But maybe this is a reason to think that directed duty is not necessary for a tort to be committed. If no antecedent substantive duty generating relationship is required for A to wrong or commit a tort against B, then it could very well be that the only notion of duty required to make sense of torts and wrongings is simply the non-relational monadic duty not to commit such acts.²⁸

²⁶ Weinrib 1995, Ripstein 2009. Also Wallace 2019 extends this picture to directed duties in general, not just the legal analogues.

²⁷ Wallace (2013, 157) does invoke the value of such relationships.

²⁸ So it could be that theorists like Weinrib, Ripstein, and more recently, Wallace, are concerned with something that might at first pass be assimilated with the directed duties I'm concerned with here, but which in the end, is perhaps better disentangled from it. Wallace (2019), for example, argues that a normative relation must hold pairwise between any individuals that (very roughly) can affect one another. He takes this to be required for an understanding of moral obligation that does justice to the idea of equal standing fundamental to a modern cosmopolitan conception of morality. Now, it's quite possible that the notion of directedness that Wallace is working with is compatible with the more restrictive notion of directedness that is my focus here. Indeed, if Wallace is right, then the notion of monadic obligation that I am taking for granted here will turn out to be directed or bipolar in Wallace's sense. I will not attempt to address his argument for this claim. But even if he is right about this, I would want to insist on the further, more restricted sense of directedness, which I contend should be understood along the lines of the shared agency view. On the other hand, Wallace also appreciates the restrictiveness of directed duty as it is manifested in the paradigm cases, such as promising. And part of his project is to offer an account of the duties in such cases. According to Wallace (2019, Ch. 5), a normative relation – a moral nexus – holds between any pair of individuals where one can have an impact on the personal interests of the other). Wallace recognizes that the relevant understanding of personal interests needs to be spelled out, and he takes important steps toward

What, apart from the idea of tort, might lead us to go beyond the paradigmatic cases that involve substantive personal relationships, and lead us to posit directed duties with *everyone*? One thought stems from the idea of consent. Consent removes a barrier to forms of interaction that are otherwise prohibited. And it seems possible, for any given individual, that you could give them consent to interact with you in ways they would otherwise not be able to. The possibility of consent shows, on this suggestion, not only that there has to be a *prior* duty that forbids some forms of interaction, but that this duty specifically relates the parties involved. Consent presupposes a relational normativity and cannot establish it (Ripstein 2009, Chapter 5.) In response, I would allow that in some cases it seems that consent might release someone from a directed duty. The ability of a promisee to release a promisor would be an instance. But it's not clear that consent always involves a release from a prior *directed* duty. There are other cases involving release from monadic duty. Some forms of behavior might be prohibited as a matter of *monadic* obligation. When it comes to interaction with others, one is required to conduct oneself in a certain way *unless* some consent or arrangement is made with particular individuals; only with those individuals might one have some (limited) ability to act otherwise. So the mere possibility that someone might grant you consent is not enough to establish that you have a preexisting directed duty toward them.²⁹

So far, the picture of directedness in tort law assumes that the directed duties hold pairwise with everyone. And I've suggested that this represents a problematic departure from the idea that a substantive relationship underlies any form of directed duty. But suppose now it is suggested that the tortious interaction – the assault or harming due to negligence – *initiates* a substantive moral relationship. This would avoid some of the worries of having to invoke a non-substantive relationship for directed duties. And it would account for how one has a duty, for example, to compensate the victim, or to apologize, etc.

But the idea that the tort establishes a relationship brings problems of its own. It is an unappealing picture compared for example to that of individuals voluntarily coming together to form relationships that establish the duties between them.³⁰ Although a certain amount of teasing and harassment is a strategy some adopt to establish a substantive relationship with another, it seems in general to be psychologically unhealthy and morally unsavory to instigate relationships in this manner.

A further concern with the tort establishing the relationship is that sometimes third parties benefit from a wrong committed against an individual. We might think that such beneficiaries have some obligation to compensate the victim, even if they were not party to the wronging in any

characterizing them as they appear, for example, in the special relationship that holds between promisor and promisee. Now, if we are to capture the pattern of directedness in the case of promising, then these relations should *not* hold between the promisor and some third party whose personal interests would benefit from fulfillment of the promissory obligation. I am not as confident as Wallace is that this pattern of directedness can be captured without invoking the resources of the shared agency view, but a fuller discussion will have to wait for a separate occasion.

²⁹ It's possible that some sort of second personal address might always be required as part of the speech act wherein one grants consent. But this observation does not, I think, entail that the duty in question is directed and not monadic. For a contrasting view, see Darwall 2011.

³⁰ Seana Shiffrin made this clear to me in conversation.

way.³¹ If this is the case, it's not clear how the picture of the wrongdoing directly generating a relationship would extend to explain why the third party has any sort of directed duty of compensation to the victim.

Another concern is that if the relationship and the directed duty is established by the tort, then the duty itself does not account for why one should not commit the tort in the first place. A tort might establish a relationship (and the directed duties with it) that works to account for backward looking moral responsibility and accounting. But it wouldn't underwrite the fundamental forward-looking role of duties in guiding action and proscribing those torts. What, then, would play the forward-looking role? If we are setting aside preexisting directed duties, then presumably what would do the work would be a non-directed, monadic duty that would proscribe the behavior.

But now we have at hand an alternative to the idea that the tort itself generates a relationship underlying directed duty. For, if we're invoking a monadic duty for this proscriptive role, why not also appeal to a monadic duty that we might specify as: be available to whomever one has harmed so as to be able to come to an understanding, make amends, and reconcile with them?³² This proposal corresponds to the idea that the tortfeasor would be in contempt not of the plaintiff/victim but *of the court* if they doesn't show up to court when the plaintiff brings their case against them. This suggests that one has a public, non-directed, legal duty to enter into a court or state-sponsored procedure that would then relate one with another private party.³³

This approach avoids the picture of something like assault or tort as a way of *securing* a substantive relationship between perpetrator and victim. It is, rather, up to the victim whether to enter into a relationship that reconciles the parties. In effect, the court facilitates a joint endeavor toward reconciliation. And it is only now, in the context of the relationship established by the victim that the defendant has a directed obligation to the victim to compensate the latter for the harm.³⁴ What's fundamental to the directed obligation is the joint endeavor of reconciliation; compensation should be understood in this context, as an element that contributes toward the reconciliation.³⁵

If tort law is understood in terms of a joint project of reconciliation facilitated by the court, then the tort case becomes more amenable to the shared agency approach to directed duty. The court sets up a forum within which plaintiff and defendant are engaged with one another. It might be adversarial, but like a boxing match or other competitive game, it is within a context of

³¹ The Beneficiary Pays Principle is invoked for example in Page 2003, Wenar 2006, Kukathis 2012, and Baatz 2013.

³² Compare with having babies: you cannot have this personal, directed, relationship with the child until after they come into existence. So we have some monadic duties governing what we can do, and presumably those monadic duties will require subsequently having some special directed relationship. Likewise, there might be cases where you have to seek a relationship with those you have harmed in order to atone, reconcile, compensate, etc.

³³ Stone (1996, 236) remarks that all law is public in this sense.

³⁴ This notion of compensation would therefore not be a matter of monadic duty. It would be a duty whose directedness is a manifestation of the joint activity of reconciliation.

³⁵ Something like this approach is an element of Barbara Herman's important discussion of the duty of gratitude. See Herman 2012.

shared agency where you must reach some reconciliation (which might be facilitated by some compensation).

I think that we should think of the jointness or directedness as something that comes with the shared agency involved in the civil law proceedings. Torts can occur outside the substantive relationships underlying directed duty. But the torts and wrongs can be understood in terms of monadic duties and the harming of others. Further, monadic duties can require one to be receptive to joint acts of reconciliation. And it is in terms of these joint acts that we can understand the directedness of duties for compensation. The directed duties would be to do one's part in a collective act of reconciliation.

Conclusion

Directedness of duties involves a substantive relationship between the parties involved. The characterizations of this relationship in terms of wrongdoing, accountability, and normative power are inadequate. But they are helpful in pointing to a similarity between directed duties and the contralateral commitments between participants in joint action. The mutual or contralateral commitments are understood in terms of the immediate practical significance of relevant states of fellow participants. The shared agency account suggests that such a practical intimacy lies at the heart of the directed duties. This was illustrated in the paradigmatic case of the directed duty between promisor and promisee. The directed duties in tort law might appear to lie beyond the ambit of the shared agency account. However, I've suggested that the directed duties associated with tort cases can be understood in terms of the collective projects of reconciliation undertaken after a tort is committed.

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