

§3 *The social acts*

Out of the infinite sphere of possible kinds of experiences let us select out a certain kind: the experiences which not only belong to a self but in which the self *shows itself as active* (*tätig*). We turn our attention to a thing, or we make a resolution: these are experiences which are not only opposed to the ones in which something like a sound or a pain imposes itself on us, but also to the ones where we cannot speak of a real passivity of the self, as when we are happy or sad, enthusiastic or indignant, or when we have some wish or resolution. We want to call the experiences in question *spontaneous acts*; this spontaneity refers to the inner acting (*das innere Tun*) of the subject. It would be quite a mistake to want to find the distinguishing mark of these experiences in their *intentionality*. The regret which rises up in me, or the hatred which asserts itself in me, are also intentional in that both refer to some object. Spontaneous acts have in *addition* to their intentionality also their spontaneity, which lies in this, that in them the self shows itself to be the phenomenal originator of the act. Spontaneity also has to be definitely distinguished from *activity* in its many possible meanings. Thus I can call indignation active since it issues from me and forms a contrast to the sadness which comes over me, perhaps suddenly. Or I call the having of a resolution active in that I am the one who has the resolution. But we distinguish the *having* of a resolution, whether actually or inactually, from the *making* of the resolution, we distinguish what exists in us as a state (*zuständlich*) from the punctual experience, which precedes or at least can precede it; and only here in the making of a resolution do we have an example of what we mean: a doing (*Tun*) of the self and thereby a spontaneous act. We right away think of all kinds of examples of such acts: deciding, preferring, forgiving, praising, blaming, asserting, questioning, commanding, etc. In looking more closely at these cases we right away notice an essential difference, and this is the difference which is important for us here.

The act of deciding is an internal act. It can be performed without being announced (*verlautbart*) or needing to be announced. Of course the decision can express itself in facial expressions and gestures; I can express it, communicate it to others if I want. But this is not necessary for the act as such. It can unfold entirely within, it can rest in itself and not receive an expression in any sense. One sees right away that it is otherwise with certain other spontaneous acts. Commanding or requesting, for instance, clearly cannot be performed entirely within.

Let us look more closely at one of these remarkable acts. Commanding is undoubtedly a spontaneous act in that it presents itself as the doing

of a subject. But in distinction to other spontaneous acts such as turning one's attention or making a resolution it presupposes in addition to the performing subject a second subject to whom the act of the first subject is related in a very definite way.

There are experiences in which the performing subject and the subject to whom the act is related can be identical, there is a self-esteem, a self-hatred, a self-love, etc. But for other experiences it is essential that the subject to whom they are directed be another person; we will call them other-directed (*fremdpersonal*) experiences. I can for instance not envy myself, cannot forgive myself. It is clear that the act of commanding is to be characterized as other-directed.¹⁷ But this does not exhaust its distinctive character. We immediately notice that it differs in a crucial point from such other-directed acts as forgiving. It is not only related to another subject, it also *addresses* the other (*wendet sich an es*).

The act of turning forgivingly to another, like the making of a resolution, can unfold entirely within and can lack any announcement to others. Commanding by contrast announces itself in the act of turning to the other, it *penetrates the other* (*dringt in den anderen ein*), and has by its very nature a tendency *to be heard* (*vernommen*) by the other. We never give a command if we know for sure that the subject to whom we turn with the command is incapable of becoming aware of it. The command is according to its essence *in need of being heard* (*vernehmungsbedürftig*).¹⁸ It can of course happen that commands are given without being heard. Then they fail to fulfil their purpose. They are like thrown spears which fall to the ground without hitting their target.

We designate the spontaneous acts which are in need of being heard, *social acts*. We have already seen in the example of forgiving that not all other-directed acts are in need of being heard. We will later see that not all acts in need of being heard are other-directed. Our concept of social acts centers only on the need of being heard.

We have to be careful not to distort this state of affairs (*Sachlage*) by dragging in ideas to which we are accustomed. A command is neither a purely external action nor is it a purely inner experience, nor is it the announcing to others of such an experience. This last possibility seems to be the most plausible. But it is easy to see that commanding does not involve an experience which could be expressed but also not expressed, and also that there is nothing about commanding which could rightly be taken as the pure announcing of an internal experience. Commanding is rather an experience all its own, a doing of the subject which according to its nature has in addition to its *spontaneity*, its *intentionality*, and its *other-directedness*, also the *need of being heard*. What has been shown for commanding also holds for requesting, warning, questioning, informing,

answering and for still many other acts. They are all social acts, which, by the one who performs them and *in the performance itself*, are as it were cast towards another person in order to fasten themselves in his soul.

The function of the social acts whereby they make themselves known could not fulfil itself among us men if the acts were not in some way expressed externally. The social acts, like any acts of other persons, can only be grasped through some physical medium; they need an external side if they are to be heard. Experiences which need not turn without, can unfold without being in any way externally expressed. But the social acts have an inner and an outer side, as it were a soul and a body. The body of social acts can widely vary while the soul remains the same. A command can be expressed in mien, gestures, words. One should not confuse the utterance (*Äusserung*) of social acts with the involuntary way in which all kinds of inner experiences such as shame, anger, or love can be externally reflected. This utterance is rather completely subject to our voluntariness and can be chosen with the greatest deliberation and circumspection, according to the ability of the addressee to understand it. On the other hand, it should not be confused with statements about experiences which are now taking place or have just taken place. If I say, "I am afraid," or "I do not want to do that," this is an utterance about experiences which would have occurred without any such utterance. But a social act, as it is performed between human beings, is not divided into an independent act and a statement about it which might or might not be made; it rather forms an inner unity of voluntary act and voluntary utterance. For the inner experience here is not possible without the utterance. And the utterance for its part is not some optional thing which is added from without, but is in the service of the social act, and is necessary if the act is to address the other. Of course there can be statements about social acts which are accidental to them: "I have just given a command." But these statements refer to the whole social act *including* its outer side, which should therefore in no case be confused with a statement about itself.

There is an important point which should not be overlooked in these considerations. The turning to another subject and the need of being heard is absolutely essential for every social act. That the act be expressed externally is only required where the subjects among whom the social acts are performed can grasp the psychic experiences of others only on some physical basis. If we imagine a community of beings who can directly and immediately perceive each other's experiences, we will have to recognize that in such a community social acts could perfectly well be performed which have only a soul and no body. We men in fact do not take the trouble to express our social acts as soon as we assume that the

being to whom we direct them can directly grasp them. Let us think of silent prayer, which turns to God and tends to address itself to Him, and which therefore has to be considered as a purely interior social act.

We now turn to a closer analysis of particular social acts. And first, the act of informing. I can be *convinced* of some states of affairs and can keep this conviction to myself. I can also express this conviction in an *assertion*. Here too we still have no informing. I can verbally express the assertion for myself, without having any partner to whom it is addressed. But this addressing is intrinsic to *informing*. It belongs to its essence to address another and to announce to him its content. If it is directed to a human being, it has to be externally expressed in order to enable the addressee to become aware of its content. With this becoming aware the goal of the informing is reached. The circuit which is opened with the sending out of the social act is here closed.

With other social acts things are somewhat more complicated. We begin by selecting out requesting and commanding for closer inspection. They are fairly closely related acts, a fact which is reflected in the considerable similarity of their external expression. The same words can be the expression of a command or of a request: the difference manifests itself only in the way of speaking, in the emphasis, sharpness and in other factors which are difficult to capture precisely. Commanding and requesting have a content, just as much as informing does. But whereas with informing it is *only* the content which is supposed to be presented to the addressee and not the act of informing as such, with commanding and requesting it is these acts as such which are supposed to be grasped. And even with this becoming aware, the circuit is only tentatively closed. We have here social acts which, by contrast to informing, aim by their nature at corresponding, or better, at responding activities, whether these activities really come to pass or not. Every command and every request aim at an action on the part of the addressee which is prescribed by the act. Only the performance of this action definitively closes the circuit opened by these social acts.

Questioning too is a social act; it calls for some doing by way of response, but not an external action but rather another social act, the "response" in the strict sense. We have in responding a social act which does not call for any doing but rather *presupposes* some such — and always in the form of a social act. So we distinguish simple social acts, social acts which presuppose other social acts, and finally social acts which aim at social acts or other activities as following upon them.

We have distinguished the social acts as sharply as possible from all those experiences which do not necessarily express themselves to others. We now have to take note of the remarkable fact that all social acts

presuppose such internal experiences. As a matter of apriori necessity every social act presupposes as its foundation some internally complete experience whose intentional object coincides with the intentional object of the social act or is at least somehow related to it. *Informing* presupposes being convinced about what I inform someone of. *Asking a question* essentially excludes such a conviction and requires instead uncertainty regarding that about which I ask. In the case of *requesting*, what is presupposed is the *wish* that what I request come to be; more exactly, that what I request be realized by the one to whom the request is directed. *Commanding* presupposes as its foundation not only the wish but the *will* that the one who is commanded carry out my command; etc.¹⁹

One will perhaps contest these relationships. One will point for instance to conventional questions, which are perfectly compatible with knowing about the content of the question, or to hypocritical requests, which are made contrary to one's real wish; etc. We do not doubt that there are all these things. But one should notice that we do not have here genuine, fully experienced acts of questioning and requesting. There is a certain definite modification of social acts; besides their full performance there is a pseudo-performance, a pale, bloodless performing — the shadow, as it were, next to the bodily thing.²⁰ One should not think that in such cases there is only the speaking of the words which usually accompany the performance of the acts. There is more than that at stake. The acts are performed, but it is a *pseudo-performance* (*Schein-vollzug*); the performing subject tries to present it as genuine. Social acts which occur with this modification do not presuppose the inner experiences just discussed; in fact, the very nature of a pseudo-act excludes them. A genuine conviction cannot underlie a pseudo-act of informing, genuine uncertainty cannot underlie a pseudo-question, a genuine wish and a genuine will cannot underlie a pseudo-request and a pseudo-command. Only in the first of these cases does one speak of a lie. By extending this concept (lying) one can designate the whole group of these cases as the sphere of social dishonesty or hypocrisy, inasmuch as the person falsely presents himself in them as "really" commanding, requesting, etc.

There are quite a few other kinds of modifications which the social acts present. We distinguish first of all between a social act being conditional (*bedingt*) and being unconditional. There is a simple commanding and requesting, and there is a commanding and requesting "in the event that." Of course not all social acts are subject to this modification; an act of informing "in the event that" is not in the same sense possible. This becomes understandable only when we consider that an efficacy proceeds from certain of the social acts. If a command is given or a request is made, something is thereby changed in the world. A certain action now

stands there as commanded or requested, and under certain conditions which by their nature can be clearly identified, as when the addressee of a command has performed the social act of submitting to the person who gives the command, there arise obligations of a definite kind. Since informing does not have any such efficacy, it is not susceptible of being conditioned. But with the conditional commands and requests, the efficacy is made dependent on a future event.

Conditional social acts are indeed performed, but in their performance their efficacy is tied to something which may occur later. One should of course not confuse this conditional performing with the announcing of a possible later performing. In our cases there can be no question of any such later performance. With the occurring of the event the efficacy of the act is — without any further contribution of the bearer of the conditional act — just what it would be if an unconditional act were now performed. And from the moment it is clear that the event will not occur, it is as if no act at all had ever been performed.

It is essentially required that the event on which the efficacy of the act is made to depend, can *possibly* occur, but it is impossible that it *must* occur.²¹ Only in the first case does conditionalness make sense. In the second case all that would be possible would be an unconditional social act with a reference to time in its content: I command you (unconditionally) to do this or that at the moment when an event occurs. Here we have no modification of the act but only one of its content. Besides being *time-bound* (*befristet*) the content can also be *conditional*. We distinguish as sharply as possible between the conditionality of the content and the conditionality of the act. *The unconditional command with conditional content* immediately makes binding the realization of a certain action when a possible future event occurs. It immediately produces — under certain presuppositions — the obligation to do or to omit something when an event occurs; the occurring of the event simply makes the obligation actual. By contrast, *the conditional command with unconditional content* makes an action binding only when the event occurs, and only at this moment does it produce an obligation prescribing an immediate doing or omitting.

Furthermore, with regard to the unconditional acts with conditional content we can distinguish between future conditions which put an end to an obligation, and those which let the obligation come into being. The command to do something until a certain event occurs, immediately produces an obligation, which then dissolves when the event occurs. But with conditional commands the distinction between these two kinds of conditions obviously makes no sense.

All of these distinctions *are grounded purely in the essences of the acts and have*

nothing at all to do with empirical observations. They are of the greatest importance for the sphere of social relationships.

Social acts can be performed by a number of persons, and can be addressed to a number of persons. This second peculiarity is found only among social acts, whereas the first is found also in the sphere of merely external actions and merely internal experiences. I can direct a command to two or more persons "together." A single social act then has several addressees. The effects of such an act are necessarily different from the case where there are just as many social acts as addressees. Whereas in this case there are as many obligations as there are addressees — even if the social acts have the same content — there is only *one* obligation in the case of a social act with several addressees, and this obligation is shared by them. I command A and B together to get something for me. Then there arises only one obligation, the content of which is getting the thing, and which bind A and B together.

More difficult and more interesting is the case where several persons together perform one social act. Each of the persons performs the act, for instance, commands, and each expresses the performing. But each performs the act "together with the other." We have here a very distinctive kind of "togetherness." It should not be reduced to identity of content or of addressee, and even less to the deliberate simultaneous performance of the act; in these cases we would always have several distinct acts. We have rather to do here with the case where each of the persons performs the act "in union" with the others, where each knows of the participation of the others, lets the others participate, and participates himself: we have *one single* act which is performed by two or more persons together, one act with several subjects. The effects of the act are modified accordingly. Let us again assume that the addressee (or addressees) have submitted to the commands of the commanding persons. Then the commands produce corresponding claims and obligations. To the command of *one* person there corresponds *one* claim. To the commands of several persons there correspond several claims. To the *one* command given by *several* persons together there corresponds one *single claim* in which these persons share together. So we see how the idea of social acts performed together by several persons and directed to several persons together, gives rise to the idea of claims and obligations which have several persons as subjects or partners.

With external actions, too, it is possible to speak of several performing subjects of one and the same action. There is a way of acting "in union." The criminal law's concept of "complicity," as it seems to us, has to base itself on this, and such collective actions are also important for

public law, administrative law, and international law. But we cannot elaborate on this here.

As a fourth modification in our sphere we point to the difference between those social acts which are performed by their subject (*Eigenakte*), and those which are performed by a proxy (*vertretende Akte*). There is such a thing as commanding, informing, requesting "in the name of another." Once again a very curious state of affairs presents itself to us, and we should by no means explain it away; we want first of all to try to characterize it briefly. A command in the name of another is one's own command and yet not really one's own command. More exactly: the proxy performs the act quite personally, but in such a way that the act is presented as ultimately proceeding from another person. Absolutely different from this is the case where someone commands "in the interest" of another, or in carrying out his assignment. Here the command proceeds from the one who performs the act; nothing is changed by the fact that he performs the act with the knowledge of the other, or in his interest, or in carrying out his assignments. Even a command given on the basis of another command is one's own command. Only the command "for" the other, or, more expressively, "in the name of" the other, takes its ultimate origin in this person.

We shall later speak extensively about acts performed by proxy in the sphere of right. Here we will just add that the character of the act naturally determines the character of the effect. A command which A in the name of B gives to C, obliges C not to A but to B, and gives B and not A the claim. This efficacy depends, of course, on a *double* presupposition: the command as such must be able to bind C, and A must be able to be the proxy for B. We shall speak later about this second presupposition. As to the first, let us just remark that the act of submitting, which here too can make the command binding, must in this case be performed not towards the proxy who commands, but towards the one whom the proxy represents.

Let us return to our starting point, the act of promising. It does not take a long explanation to show why we find promising to be an other-directed social act. It inaugurates a train of events, like commanding and unlike informing. It too aims at an action, though of course not at one of the recipient of the act, but at one of the promisor himself. This action need not be a social act, as in the case of questioning.

Like all social acts, promising presupposes an inner experience which has the content of the promise as its intentional object. As with commanding, this inner experience is that of intending that something occur, not of course through the addressee but through the promisor himself.

Every promising to do this or that, presupposes that one's will is directed to this action.

We now see clearly how thoroughly mistaken and untenable is the usual conception of promising as an expressing of intention or of will. An expression of will runs like this: I intend. If it is directed to someone, then it is an informing, which is indeed a social act but no act of promising. And of course it does not become a promise by being directed to the one who will profit from the intended action. Promising is neither intending nor the expression of intending; it is rather an independent spontaneous act which in turning without, expresses itself. The making audible of the promise could be called a declaration of the promise. It is only indirectly a declaration of intention, in that an act of intending necessarily underlies the spontaneous act of promising. If one calls promising a "declaration of intention," then one has to call the act of questioning a declaration of doubt, and the act of requesting a declaration of wish. The misleading character of these designations is clear. It is not — as one had thought — through impotent declarations of intention that relations of right are constituted but rather through the strictly apriori efficacy of the social acts.

Only by failing to go beyond the external side of promising and to study this act more closely was it possible to confuse it with the informative expression of a resolution of will. The same words, "I want to do this for you," can after all function both as the expression of a promise and as the informative expression of an intention. We find in other cases, too, that different social acts can make use of the same way of expressing themselves, especially when the surrounding circumstances leave no doubt in the mind of the addressee as to the nature of the expressed social act. One will generally be certain as to whether there is an act of promising or of informing behind the words. And even if misunderstandings are possible, as disputes and law-suits show, this of course in no way abolishes but rather confirms anew the fundamental difference between declaring an intention and promising.

We are now in a position to clear up the difficulties which one found in the "bond" resulting from promises. It is of course incomprehensible that the informative expression of a resolution of will should produce an obligation. But we have found in promising an act *all its own*, and we claim that it lies in the essence of this act to bring forth claims and obligations.

As a social act, promising admits of all the modifications which we discussed above. There are promises which are directed to several persons together, or performed by several together. From these acts proceed claims which several persons share together, and obligations which bind several together. Further, there is a conditional promising, which we will

have to distinguish sharply from unconditional promising with conditional content. From the former, claim and obligation come into being only on the fulfillment of the condition, for only then does the promise unfold its proper efficacy.²² From the latter, claim and obligation come into being immediately. The promisee here can immediately claim from the promisor that he (the promisor) do something when the condition is fulfilled, but in the first case it is only after the fulfillment of the condition that the promisee can claim from the promisor that he (the promisor) do something immediately. In the second it is possible to waive the claim before the condition is fulfilled, but in the first case there is at the outset nothing which could be waived.²³ Only a conditional waiving would be possible here: a waiving conditional on the claim coming into being (as a result of the fulfillment of the condition). In the second case waiving is immediately efficacious and the fulfillment of the condition has no significance. In the first case the fulfillment of the condition brings into being the claim and thereby fulfills the condition of the waiving. This makes the waiving efficacious and immediately dissolves the claim. The coming into being of the claim is in this case the immediate cause of its death. A mechanism of social interaction which is subject to strict apriori laws shows itself here; we have to do with immediately evident laws of essence and with nothing less than with the "positings" or "inventions" of some positive law.

In addition to one's own promising (*Eigenversprechen*), there is a promising in the name of another, a representative promising (*vertretendes Versprechen*). A person performs an act of promising, but he is not the one who promises; he rather lets another promise, or more exactly, he promises for another. When someone promises "instead" of another in the sense of promising in his interest or in carrying out his assignments, there is no promising by proxy, and the obligation arises in the one who promises. We have also to exclude the case where someone promises on the basis of a promise. A can promise B to promise C to hand over a thing to C. Then B has the claim that A promise C, and through the fulfillment of this claim there arises in A an obligation toward C to hand the thing over to him. Or B promises A to provide him with some thing, and gets C to promise to provide the thing for him (for B). Then there are in the person of B at the same time both a claim against C for providing the thing, and an obligation towards A to provide him with the thing. In neither of these cases is there any question of B making a promise to C in the name of A. But only that would be representation and would at the same time involve the characteristic effect of representation. By promising in representation there arises a claim of C, just as in promising for oneself; but this claim is against A and not B; and at the same time there

arises correlatively an obligation in the person of A. This efficacy is naturally subject to definite conditions. We shall devote a whole section to discussing them. It is not just the content of these statements, which is so familiar to the jurist, but their strict apriori form which commands the great interest of the philosopher.

Promising through a representative is different from promising for oneself in that it does not presuppose any intention to do the thing promised. At the most it is possible that the represented party has this intention or at least would have it if he knew the circumstances as the representative does. With the representative himself the only intention which is needed is the intention that the represented party acquire from his promising an obligation with the same content. Even this restriction is missing in the case of the last modification of promising which we will consider: pseudo-promising (*Scheinversprechen*).

Like all the social acts promising is susceptible of that shadowy and inauthentic mode of being behind which there is no sincere intention of doing the thing promised. The pseudo-promise also turns to another person, as does the authentic promise; and it is intrinsic to it to express itself just like the authentic promise does. Whoever makes a pseudo-promise, pretends to be promising authentically.²⁴ One can wonder whether claim and obligation proceed from this pseudo-promise just as from an authentic one.²⁵ Without being able to decide this question with certainty, we now proceed to make clear how claim and obligation proceed from authentic promising.

§4 *The act of promising as the origin of claim and obligation*

If we put ourselves in the position of the promisor, we see that a genuine promise can be performed and expressed, yet without reaching the subject to whom it is directed. As long as this does not happen, there can be no question of claim and obligation. It is also not enough that the promisee perceive the external signs, for instance hear the words, without understanding them. He must grasp through them that which is expressed in them, he must take cognizance of the act of promising itself, he must, as we would put it somewhat more exactly, consciously take in the promising (*des Verprechens innewerden*). Now the addressee can respond differently to that which he takes in. He can inwardly reject it, he can also inwardly accept it. The inner rejection can express itself in an act of declining (*Zurückweisen*), the inner accepting in an act of acceptance. If the promise is simply heard (*vernommen*) there arises a claim in the one who hears and an obligation in the promisor. The act of acceptance can at most

serve to confirm; it makes a contribution to the efficacy of the promise only when the promise is made "in the event of" an acceptance. On the other hand, an act of declining prevents both claim and obligation from coming into being.

The question is put — especially by those who are accustomed to think in terms of our positive law — whether merely becoming aware of the promise is not insufficient, whether an acceptance is not in every case needed for its efficacy. By way of response, we must above all bring out the unclarity and ambiguity of the concept of acceptance. We can take note of five different meanings. Acceptance can first of all be taken as the positive response to a proposition, to an "offer" of some kind or other. In this very formal sense the most various kinds of social acts can function as acceptances, for instance a promise just as well as its being accepted. If A responds with "yes" to the request of B to promise him something, we have in this "yes" just as much an acceptance in the formal sense, as when A responds to the promise of B with "good." But materialiter the "yes" contains a *promise* and the "good" the *acceptance* of a promise in a quite new sense. This material acceptance refers only to promises. With regard to it we still have various things to distinguish. There is first of all acceptance as a purely inner experience, an inner "saying yes," an inner assent to the promise which is heard. From this we distinguish acceptance in the sense of the *expression* of the acceptance, as it can occur in actions but also in words. Something new is added when the expression of acceptance takes on an informing function, when it is directed to a person. Finally, as the fifth and most important concept we point to acceptance as a social act in its own right which is not reducible to an informing.

One encounters exceptional difficulties if one tries to carry out this last distinction. In other cases it is much easier to distinguish the social act from an informative statement about the inner experience which it necessarily presupposes, for the social act is fundamentally different from this experience; only as a result of the absence of any phenomenological analysis was it possible to confuse promising with an informative expression of intention. But in the present case there is a fundamental likeness between the inner experience and the social act. There is a purely inward "accepting," and corresponding to this there is naturally the informative expression of this experience. To the "I will" there corresponds an "I accept." Here it is much more difficult to decide whether to recognize a distinct social act of accepting which, though it can hide itself behind the same words which are used in an expression of the inner experience, is nevertheless different from this expression. And yet we cannot avoid making this distinction. The *expression* of acceptance [*that is, the statement about the acceptance*] can be directed to anyone, it is an act of

informing which can be made towards everyone. The social act of accepting a promise, by contrast, has a strictly prescribed reference point, it can only be directed to the person or persons by whom the promise has been made. Further: the informative expression of the experience of accepting can be repeated ever so many times and towards ever so many persons. The social act of accepting can meaningfully be performed only once. Its effect is completely achieved with a single performance — assuming that the other party takes it in consciously. A repetition would have no further effect and would therefore have no point. Thirdly, the informative expression can refer to a present, past, or future experience of accepting. It can therefore be made in the present, past, or future tense. The social act of accepting, by contrast, admits only of the present tense. To the “I have inwardly assented” and “I shall inwardly assent,” there is on the other side only the “I hereby accept.” One should not overlook the distinctive function of the “hereby.” It refers to an event which is happening along with the performance of the act, that is, to the “accepting,” which here as it were designates itself. By contrast, there is no least sense in saying, “I hereby experience an inner assent.” Here it is precisely not the case that the experience is performed in and with the expression. The distinction on which we are insisting seems to us, therefore, to be thoroughly established.

It is now clear how ambiguous is the question whether a promise needs to be accepted in order to be efficacious. In raising this question one is mainly thinking about the principle of the positive law that onesided acts of intention usually do not produce claim and obligation, and that some “meeting of the minds” (*Willenseinigung*) is usually required, that is, to put it in our language, an agreement which is constituted through mutual social acts.²⁶ From this point of view these acts are considered as “offer” and “acceptance.” Here we have acceptance in our first and formal sense. We must now exclude this point of view. We have deliberately narrowed our problem. We are only asking whether *promising* needs a (material) acceptance in order to be efficacious.

But even the concept of material acceptance is, as we have seen, ambiguous enough. One can first of all think of the experience of inwardly assenting. It is not understandable why such an experience should have influence on the emerging of claim and obligation. Social relations of right, as we shall increasingly see, are constituted through social acts. The joy or sadness of an individual, his satisfaction or regret, his inner assent or negation, have no influence on these relations. But if this is so, then it should neither make any difference whether the inner experience is expressed or not, nor even whether this expression functions as an act of informing to someone or not. Only the fifth concept of

acceptance, therefore, can come into question here: acceptance as a social act of its own.

One could try to argue for the necessity of such an act of accepting by considering other social acts which are closely related to promising. We are in a position, within our sphere of right, to consider even acts which do not come into question for the civil law.²⁷ One could point out that a request needs to be accepted if there is to be an obligation to do the thing requested, and that a command, too, grounds an obligation only if accepted — assuming that the addressee has neither made an act of submission to the commanding person nor stands in a relation of subordination to him. And one could draw the analogous conclusion that with promising too such an accepting should be necessary. But we should not play around with the word acceptance. The accepting of a request and of a command amounts materialiter to a “declaring oneself ready,” a vowing or a promising to accede to the request or the command. The accepting of a promise, however, cannot itself be a vowing or a promising. For then we would fall into a fallacious *regressus in infinitum*, inasmuch as this new promise would also need acceptance, etc. This also shows clearly how thoroughly different [*from promising*] the supposed analogates [*requesting and commanding*] are. With them it is a question of imposing an obligation on the addressee of the social act, and this of course really does need some acceptance. But in the case of promising the performer of the act assumes the obligation himself; on the side of the addressee there arise only claims, and we do not see why any social act on his part should be necessary. And so we are entitled to say: claim and obligation are grounded in promising as such. The presupposition for the coming into being of each is that the addressee consciously take the promise in. There seems to be no need for an acceptance in any sense.

We put forward the apriori law that the claim can only arise in the person of the addressee. It is apriori impossible that a person to whom the promise is not directed should acquire a claim from it. Of course the positive law deals with contracts with third-party beneficiaries and thereby with promises from which not only the addressee but a third person in addition to him or even to the exclusion of him gets the claim to the promised action. But it would be a very superficial and thoughtless objection if one were to question the validity of self-evident essential relations on the basis of such positive enactments. We shall later have to examine carefully the relation of both. For now let us just remark that it is surely no accident that contracts with third-party beneficiaries were in some legal codes established so late, if at all.

With the apprehending of the promise there arise — strictly simultaneously — claim and obligation. The parties who have the claim and the

obligation over against each other stand in the relationship which we already characterized earlier. We want to call the whole bond which unfolds on the basis of promising an obligatory relationship.

We already saw earlier that the obligatory relationship does not rest in itself, as does for instance the relation of owning. Like the act of promising itself, it tends towards the realization of its content by the promisor. It is destined to be dissolved. To every claim and to every obligation there "belongs" the realization of their content, not in the sense that the realizing action necessarily exists as soon as they exist, as claim and obligation exist as soon as the heard act of promising exists, but rather in something like the sense in which admiration "belongs" to a beautiful work of art, or indignation to a bad action. If the realizing action does not occur at the time at which it should, the obligatory relationship undergoes a change: the claim is "violated." It is further conceivable that the fulfillment of the claim becomes impossible, whether because the promisor is unable to carry out the promised action, or because — as with obligations which ultimately aim at realizing some end result — something has come up which makes it impossible to achieve the result through any action. One cannot say that claim and obligation thereby dissolve.²⁸ But there does arise a curious antimony between the tendency of the obligatory relationship to be fulfilled, and the factual impossibility of fulfillment. The obligatory relationship thereby takes on a distinct kind of meaninglessness. Claim and obligation have become incurably sick.

The normal thing is for claim and obligation and thereby the whole obligatory relationship to dissolve by the carrying out of the content of the promise — which does not have to be phenomenally characterized as a fulfilling action (*Erfüllungshandlung*). There is in addition also a second way of dissolving, by *waiving*. As it is grounded a priori in the nature of the claim to end by being fulfilled, so also by the waiving of the promisee. This waiving is a social act whose addressee is the promisor. Here for the first time we encounter a social act which lacks the moment of other-directedness. Waiving refers merely to that which is waived, in this case to the claim; it is not directed to a person. But it has to be revealed to a person — in this case the promisor — in order to be effective; the need of being heard is intrinsic to it. As soon as it is apprehended, claim and obligation dissolve. We have to reckon with objections at this point. Can every claim really be waived, that is, can a person to whom some service has been assured, arbitrarily decline to receive the service? One might think of cases in which someone at first wanted to decline a promise and then accepted it only after being repeatedly requested to do so. May he later on waive and thus withdraw himself from receiving the service of

the other? Precisely this case shows clearly the confusion which is being committed here. One is assuming that there is an obligation to accept that which has been promised. But it is self-evident that an obligation, though it can spring from a promise, can never spring from the simple acceptance of a promise or even less from merely consciously taking it in. But we have seen that with requesting and commanding a promise can very well lie hidden behind the obscure expression, "acceptance." This is the kind of case which one is thinking of here. If a promise is accepted in response to urgent requests, a distinct promise to accept the service lies in the acceptance, which is at the same time a response to the request. It is false to say that the claim can then not be waived, for the ability to waive is grounded immutably in the essence of a claim. But even if the claim is waived there still very much remains, on the basis of the second promise, an obligation in the holder of the original claim. For obligation excludes by its very essence and meaning that an act of waiving could be directed to it. Many things may be difficult to make out in these acts as they are performed in real life, certain experiences may be vague and blurred in themselves, passing over indistinguishably into each other. But the acts themselves are distinguished as sharply as may be; in their pure ideas are grounded certain and immutable laws.

The very meaning of obligations makes it impossible for them to be waived, but they do admit of a way of being eliminated. The question arises as to the nature of this elimination (*Aufhebung*) and of the conditions under which it is effective. There is a revoking (*Widerruf*) of a promise. If it is validly revoked, then claim and obligation are thereby eliminated. Revoking is a social act, but one which, like waiving, lacks the moment of other-directedness. Its intentional correlate is the promise, its addressee is the promisee. Revoking and waiving are different from each other in all the essential points. Whereas the ability to waive lies in the essence of the claim, the ability to revoke in no way lies in the essence of promising. As such the promise is irrevocable, just as irrevocable as for instance the revoking itself and the waiving are. Of course it is at any time possible to perform acts of revoking, just as acts of waiving. But whereas the latter need nothing else to be efficacious, the former are in themselves inefficacious. If we consider this matter from the point of view of the revoking and the waiving person, we can say: both acts can be performed at any time. But only the holder of a claim who waives can eliminate the obligatory relationship by his act, the holder of the obligation who revokes cannot simply do this without fulfilling any other conditions. To the natural capacity or power (*Können*) which is present in both cases there corresponds only in the one case an efficacious power over the social

relation of right, or, as we would put it more briefly, a legal capacity or power (*rechtliches Können*).²⁹

No less certain than all this is the fact that revoking can be effective under certain circumstances, that therefore a legal power can be present on the side of the revoking person. The question is, what provides him with this power? This too can be determined apriori; a reference to any positive code is thoroughly superfluous and would in no way contribute towards the solving of our problem. It is clear from the outset that only the holder of the claim can provide the revoking party with a legal power, for what is at stake is the elimination of his claim. It is further clear that the social acts which we have hitherto considered do not suffice here. It is for example excluded apriori that the holder of the claim could produce the legal power by a *promise*. He could promise to waive his claim in the event of a retraction. Then the revoking would result in a claim to the waiving, but not in the direct dissolving of the (original) claim. Quite different acts are at stake here. The legal power or the right to revoke has to be "granted to," "conferred on" the promisor. And this granting of right or of legal power — an other-directed social act which we will get better acquainted with later on — is directed by the promisee to the promisor. As soon as the promisor consciously takes it in, he acquires the legal power to revoke. Whether the empowered person performs the act or not, is his business. In any case the basis is created for an effective revoking, that is, one which dissolves the obligatory relationship. We shall later have the occasion to put this discussion in a larger context.

It was already mentioned that philosophers and jurists have for a long time seen a problem in the "binding of the promise." It is not so very difficult to dispose of the numerous constructions in which they have often gotten lost. There are three types of theories which we want to discuss here, for they have special importance. We are mainly concerned with filling out and clarifying the investigations which we have carried out.

The nominalistic theory of David Hume

We find in Hume two theses which are opposed as sharply as possible to the ones which we have put forward. He thinks that promising makes no sense before human convention has given it sense. And: even if promising did make sense apart from all convention, it would not involve any moral duty. Hume seizes with great acuity on the point on which everything depends. "If promises be natural and intelligible, there must be some act of the mind attending these words, *I promise*; and on this act of the mind must the obligation depend."³⁰ But which act is that supposed to be? It cannot be