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The Nature of the Promissory Speech Act

1) The Importance of Conceptual Questions about Promises

1.1

If there is one thing that philosophers working on promises agree on, it is that a promise is a performative speech act, that is, a way of doing certain things with words.¹ While there is almost universal agreement that promising is a performative, the question of what exactly it is we do when we give promises is more strongly contested amongst those working on the issue. In this first chapter, I will pursue this question about the nature of the promissory speech act.

Moral philosophers, or philosophers of normativity more broadly, whose philosophical engagement with promising is principally mediated by their interest in problems surrounding promissory normativity, might ask themselves about the point of engaging in a separate discussion about what kind of speech act promising really is, instead of directly delving into matters relating to promissory normativity. While one need not deny that the conceptual question is an interesting one, it might be contended that it is best left to those whose interests are squarely in the philosophy of language, and who are thus primarily driven by a desire to find out what promises can teach us

¹ Cf. paradigmatically Wittgenstein 1958, §546; Austin 1962. The idea that promises are a performative in this sense predates Wittgenstein and Austin by a lot. For example, it is expressed by the late scholastic Lessius in his 1628 work *De iustitia et iure, ceterisque virtutibus cardinalibus libri quatuor*: “The reason is that, as promise and gift are certain practice-related signs, they themselves bring about what they signify.” (*lib.2 cap. 18, dub. 5*) [Ratio est, quia promissio et donatio sunt signa quaedam practica, efficientia idipsum quod significant.] My translation, latin original as quoted in Gordley 1993, p. 79.

about the structure and function of language, and different forms of language games.

As I hope to show in the following, it is indeed worth tackling the question of what kind of speech act promising is first, even if our main interest is in promissory normativity, and not in philosophy of language. For one thing, a once popular misinterpretation of a very plausible view of the nature of the promissory speech act can lead one to conclude that the right answer to the question of what kind of speech act promising is can by itself solve the question of promissory normativity. I will show that the assumptions undergirding this interpretation do not, however, stand up to close scrutiny. Even though conceptual truths about the promissory speech acts thus cannot by themselves get us to substantive normative conclusions, the results of the discussion in this chapter will nonetheless play a crucial role in my own argument for non-reductivism in chapter 2. For another thing, the discussion of the accounts of the nature of the promissory speech act that is to follow will bring to light conceptual resources that will guide much of the discussion of promissory obligation that is to follow in the later chapters. Of particular importance in this regard is the distinction between two different types of obligation one may attach to promises (internal and substantive), as well as the classification of promising as a normative-power-like speech act with genuine normative intent.

This is the plan for this chapter. I begin by laying out what appears to me the most plausible candidate for a theory of the nature of the promissory speech act, the Obligation View, on which promises are essentially connected to the undertaking of an obligation.² I lay out a strong version of the Obligation View, brought to prominence by philosophers of language such as Austin and Searle, and show that it is implausible. The reasons for its implausibility lie in problems pertaining to the aforementioned strong implications about the normativity of promises that characterise this view. I then turn to critically evaluate the two main alternatives to the Obligation View, the Intention View, on which promises essentially serve to communicate intentions, and the Joint Commitment View, on which promises are instances of jointly formed plans. I argue that even though both of these theories pick up on important features of our promissory practice, they nonetheless face insurmountable problems as theories of the

² As I understand it, OBLIGATION is a normative concept. If I am under an obligation to ϕ , I have reason to ϕ . It is furthermore a pro tanto notion: it can be that, all things considered, I ought to act contrary to my obligation, if another particularly weighty consideration disfavours the action I am obligated to perform. I offer a more in-depth discussion in the next Chapter.

nature of the promissory speech act. I thus finally return to the Obligation View, and lay out a more modest version of it, one that has gained considerable currency with philosophers working on promissory normativity. On this view, making a promise is essentially a matter of expressing one's intention to obligate oneself through that very act. I provide a defence of this view, arguing that it is ultimately superior to all of its competitors.

1.2

Before I begin, let me make a larger preliminary point that will serve to delineate the inquiry not only in this chapter, but throughout the whole of this work. In what follows, I will be concerned with promises in their most paradigmatic form. The paradigmatic type of promise that I have in mind is one where one single human person, the promisor, promises to another single human person, the promisee, to perform a certain action at a (specified or unspecified) point in the future, using linguistic formulae explicitly labelling the act as a promise, such as "I promise" or "And that's a promise".³ Of course, not all promises take this paradigmatic form. Furthermore, there is a large family of related speech acts that bear great similarity to promises, yet differ in important respects from them, such as agreements, vows, pacts, contracts etc. I take it to be good philosophical practice for an inquiry into some domain to first attempt to come to an understanding of the most familiar, paradigmatic element from this domain, and then work from that understanding to achieve greater insights in the more specific cases.⁴ This is the strategy many moral philosophers pursue with regards to promises, and also the one I shall commit myself to in the remainder of this work. My focus on paradigmatic promises will mean that a number of interesting questions and intricacies surrounding promises and promissory normativity will not feature heavily in what follows. It is worth mentioning a few of the central ones right away.

First, I will not in great detail discuss the question of exactly which linguistic markers are necessary for picking out a given speech act as a promise. It is clear that in everyday life, we not only make promises by employing the explicit formulae "I promise" and

³ A stylistic note: in this work I will be using feminine pronouns by default ("The conventionalist will object that she is not committed to that claim"). There is an important exception to this, however: to facilitate easy reference by pronouns in many contexts, I will by default always refer to promisors as male, and promisees as female. The hope is that this device will allow for improved readability throughout the text.

⁴ For a similar approach applied to a different field in philosophy, see Fricker 2016.

“And that’s a promise”. Saying things like “I swear to you that I will do it”, “Trust me that I will do it” and possibly also just “I will do it”, when offered with the right emphasis and in the right conversational context, may be enough to offer a promise.⁵ One might worry that if there is no specific strictly necessary linguistic marker clearly singling out promises, the question of which speech acts constitute promissory commitments will be hopelessly unanswerable. This, however, is an excessively dire view of the situation. Other areas of language that are even much less strictly regulated than promises do not pose similar problems. For example, we don’t need any specific markers to determine whether a speaker is speaking sincerely or ironically. Even though the difference between irony and sincere speech is clearly of great importance, it does not seem to be a problem that it is hard to specify any generally applicable, cookie-cutter method for distinguishing between the two.⁶

Secondly, I will not be saying much about any member of the set of phenomena that bear similarity to paradigmatic promises, but differ in one or more important respects. These include promises to oneself, promises by public personae to larger groups (such a politician’s election promise), cases of what Páll Árdal calls Salesman’s Promises (such as “I promise that you will get ten years of service out of this washing machine”), and finally abstract promises by authorities such as “I promise to pay the bearer on demand the sum of ten pounds”.⁷ All of these raise interesting questions of their own, which, however, need not be answered in their entirety to arrive at a satisfactory account of paradigmatic promises.

Finally, I will be concerned with promises as a moral phenomenon, and not with the further question of whether a promise creates any legal obligations. The parties to a promise need not have any intention to enter into explicitly legal relations when the promise is made, nor need any legal relation be created. Neither the question of the legal relevance of promises, nor the question of how some of the more legally charged close cousins of promises (such as contracts and pacts) are normatively relevant, seem to me to require answering in order to come to a satisfactory account of the core paradigm phenomenon of promises. In fact, the moral relevance of promising has for a long time been of great interest to legal scholars as a potential ground of the

⁵ See for example Árdal 1968, p. 225, Gilbert 2011, p. 81, Pratt 2014, p. 384-5.

⁶ On this, see Owens 2012, p. 205. Owens attributes the point about irony to Davidson 1984, p. 270

⁷ On self-promises, see Hill 1991, Migotti 2003, Habib 2009, Rosati 2011, Fruh 2014 and Dannenberg 2015, on Salesman’s Promises, see Árdal 1968.

normativity of contracts⁸. If this strategy is along the right lines, setting aside these more legally charged close cousins of promises, such as contracts and pacts, and instead focusing exclusively on the moral phenomenon of “everyday” promises can nonetheless serve as an important first step in coming to a full understanding of the former.

With these preliminary points out of the way, let us now turn to the accounts of the nature of promising.

2) The Obligation View (First Pass)

2.1

The most common, and probably the most natural way to describe what we do by giving promises is as performing an act of obligating ourselves. In the majority of cases, promises are offered by promisors to promisees to provide assurance that they will do a certain thing, and that assurance is generally understood to be provided by the promisor’s undertaking an obligation to the promisee. This idea is widely shared, as the following three examples show.

Here is Searle:

The essential feature of a promise is that it is the undertaking of an obligation to perform a certain act. (Searle 1969, p. 60)

In a similar vein, Jay Wallace states:

Promising is a device for obligating oneself. (Wallace 2005, p. 53)

Finally, here is David Lewis expressing a very similar idea:

The whole point of promising – or threatening, as strategists know – is to bind oneself to do something. (Lewis 1969, p. 188)

Besides these three, there are scores of further writers expressing the idea that what it is to make a promise is irrevocably connected with the idea of undertaking an

⁸ Both Aquinas’ and the Natural Lawyers’ (amongst them perhaps most clearly: Grotius’ and Pufendorf’s) interest in promising as a moral phenomenon was at least partially informed by interest in the law of contract. For some of the most pertinent modern treatises of promises by legal scholars, see Atiyah 1981, Fried 1982, Gordley 1993 and Kimel 2003.

obligation.⁹ It is important to note that the claim that promises are essentially connected to obligation, at least in the generality characteristic of Wallace's and Lewis' takes, is open to at least two distinct interpretations. On a weak view, promises can be understood to essentially involve an attempt to obligate oneself. On the stronger version, promises essentially involve not only the attempt to obligate oneself, but the actual successful undertaking of an obligation. Unlike the other two authors quoted above, John Searle makes it clear that it is this stronger interpretation of the view which he endorses. We can formally capture the suggested proposal as follows:

(The Strong Obligation View) To promise S to φ is to voluntarily undertake an obligation to S that one will φ .¹⁰

It should be noted that this is a suggestion that has radical consequences. The truth of the Strong Obligation View entails that it is a matter of *analytical* truth whether or not a promisor is under an obligation to keep her promise. Given that whether or not a promise has been made appears to be a descriptive matter, this also means that it is possible to formulate an argument proceeding from exclusively descriptive premises to a substantial normative conclusion, violating the is/ought dichotomy that, at least since being explicitly formulated by Hume, has been a cornerstone of ethical thinking for many. This is a consequence that was welcomed by a number of philosophers of language, and appears to indeed have contributed to their interest in normatively flavoured performatives such as promises. In *How to Do Things With Words*, Austin suggests that a proper classification and understanding of the different kinds of speech acts is "quite enough to play Old Harry with [...] the value/fact fetish"¹¹, though he does not explain how this is to be done in detail. In his famous paper "How to Derive an Ought from an Is", John Searle sets out to do Austin the favour of performing this deed for him. He purports to provide an argument that proceeds from a description of a case of promise-giving to a conclusion couched in terms of "ought", and the truth of

⁹ To offer just a few further names: H.A. Prichard (1932/2002, p. 257), Von Wright (1962, p. 288), H.L.A. Hart (1958), G.E.M. Anscombe (1978), Joseph Raz (1972, 1977), John Finnis (1980), Harry Beran (1987, p. 6), Gary Watson (2004, 2009), David Owens (2006, p. 51), and Michael Pratt (2014).

¹⁰ Note that this, just as the other characterisations of the views to follow, is to be read as a statement about what promising essentially involves, not as a statement about identity. There are clearly ways to undertake obligations to people that one will φ that do not constitute promises. The same applies, *mutatis mutandis*, to the other views. What is more, I will in the following reserve usage of the locution "To X is to Y" to conceptual truths about X and Y, such as expressed in the Strong Obligation View, for reasons of clarity and conciseness.

¹¹ Austin 1962, p. 150.

the Strong Obligation View is clearly a crucial presupposition of his argument.

Here is Searle's argument:

- (1) Jones uttered the words "I hereby promise to pay you, Smith, five dollars."
- (2) Jones promised to pay Smith five dollars.
- (3) Jones placed himself under (undertook) an obligation to pay Smith five dollars.
- (4) Jones is under an obligation to pay Smith five dollars.
- (5) Jones ought to pay Smith five dollars. (Searle 1964, p. 44)

Though this argument is widely received, few have reported being convinced by it.¹² The central point I wish to examine, as many other commentators before, is the inference from (2), via (3), to (4). This inference not only constitutes the heart of Searle's derivation, but also can teach us the most about the nature of promises and their normative relevance.

Why should we believe this to be a valid inference? As noted, the implicit presupposition here clearly is the Strong Obligation View, as plainly endorsed in the same article by Searle (as quoted above). Searle makes this explicit at a later point in the paper, when he declares himself content to add the following premise for the purpose of "formal neatness":

- (2a) All promises are acts of placing oneself under (undertaking) an obligation to do the thing promised. (Searle 1964, p. 46)

Searle takes this statement to be a tautology.¹³ Let us turn to evaluating this claim of analyticity, on which his argument centrally rests. As we shall see, there is good reason to think that all plausible attempts to support this claim drawing on only features of language fail. I will highlight three different features of the promissory speech act that one may believe fit to directly support the claim. We will see that upon closer

¹² For some pertinent criticism of the argument, see McClellan and Komisar 1964, Flew 1964, Thomson and Thomson 1964, Hare 1964, Cherry 1973 and Hanfling 1975.

¹³ Ibid.

examination, none of them actually lend credibility to the Strong Obligation View, and with it, to Searle's derivation. Seeing why will reveal important insights about promising, some of which will, as we will see later, nonetheless have some bearing on questions of promissory normativity, albeit in a fashion substantially different from the one envisioned by Searle.

2.2

A first suggestion on how to support the Strong Obligation View draws on the nature of promising as a performative speech act with a certain extra-linguistic aim, namely the undertaking of an obligation. Keeping in mind that promising has this aim, is this not enough to show that a successful exercise of this speech act actually has been performed to know that the intended effect has been brought about?

It is not. We can make this clear by dwelling on other performative speech acts. Take the act of cursing another person, in the sense of trying to call misfortune upon them. Here is an example, taken from Verdi's *Rigoletto*. In the opera, the count Monterone curses Rigoletto for making fun of his lack of control over his daughter, who had earlier been seduced by the lecherous Duke. By uttering the words "My curse upon you!", Monterone calls misfortune upon Rigoletto and those held dear to him in response to the perceived slight. Now, most people will, for very good reason, strongly doubt that the effects aimed at by a curse could ever be brought about by such a speech act. For this to be true, it appears, either there has to be some higher power receptive to these speech acts and willing to intervene in the physical world to bring about the downfall of the accursed, or some sort of direct magical causation from the very speech act to the intended result. Both seem equally implausible.¹⁴ Nonetheless, doubtful as we may be about the availability of these means for successfully bringing about the results of the curse, we can nonetheless without oddity assert that Monterone has indeed cursed Rigoletto. Just because we do not believe the curse to have the sort of direct effect on the well-being of Rigoletto that it aims at, we are not required to backtrack to a statement along the lines of "Monterone has *tried* to curse Rigoletto". That does not mean that curses cannot misfire or fail. For example, the situation would be fundamentally different if Monterone had instead exclaimed "I curse my daughter to be happy and never to fall for such a vain buffoon again". In this case, the speech act of

¹⁴ Note that in Verdi's opera, the misfortune dreaded by Rigoletto of course actually *does* strike, as he is forced to witness his beloved daughter's death at the very end of the story.

cursing *does* misfire, since one of its core felicity conditions (that the curse be aimed at bringing about negative results) is not met.¹⁵ Monterone, though he represents himself as doing so, cannot properly be understood as cursing someone.

The act of cursing, understood as a performative speech act aimed at calling misfortune upon a certain person or group of people, thus can be shown to have reasonably well-defined felicity conditions without these including the actual bringing about of the intended result. We can, accordingly, sensibly say that some person has successfully issued a curse, even if we are perfectly aware that the state of affairs that the speech act aims at cannot be brought about by the speech act.

This brief illustration shows clearly that from the mere conjunction of a) a performative speech act being aimed at a certain goal and b) that speech act having been performed successfully, is not sufficient for the goal of that speech act successfully coming about. Of course, it is not the case that there are no speech acts that are such that they are only successful when they have effects. Prime examples of such success-implying speech acts can be found among the lists of what have, since Austin first coined the term, been called perlocutionary acts, that is speech acts that are only successful if they create a certain effect in the hearer. Examples of such perlocutionary acts include persuading, deceiving, irritating, distracting, embarrassing, and boring.¹⁶ My aim in drawing on the example of the curse was just to show that clearly not all performatives are success-implying in the way of perlocutionary acts, and that more therefore needs to be done to show that promises are amongst them.

2.3

Perhaps what makes the difference is the fact that promising, on the Obligation View, not only aims to have some effect, but rather specifically aims to have a normative effect. It has, as we might say, *normative intent*. Why should this make a difference to the question whether it is success-implying or not? Searle seems to believe the reason for this lies in the fact that promising, as a speech act, is in a way both rule-governed and (in a relevant sense) rule-governing:

How can my stating a fact about a man, such as the fact that he made a promise, commit me to a view about what he ought to do? One can begin to answer this question by saying that for me to state such an

¹⁵ On misfiring and felicity conditions, see Austin 1962.

¹⁶ See Austin 1962, pp. 101-2 and Alston 1964, p. 35

institutional fact is already to invoke the constitutive rules of the institution. It is those rules that give the word "promise" its meaning. But those rules are such that to commit myself to the view that Jones made a promise involves committing myself to what he ought to do (other things being equal). (Searle 1964, pp. 57-8)

Searle here picks up on an important distinction between two types of rules that may govern institution or practices, famously brought to attention by John Rawls in his "Two Concepts of Rules"¹⁷. To stick to Searle's terminology, *regulative rules*, like the rule that one should place the knife to the right of the plate, regulate activities whose existence is independent of these rules, while *constitutive rules*, like the rules governing a checkmate, constitute (while also regulating) forms of activity whose existence is logically dependent on the rules.¹⁸ Without recourse to these rules, the respective activities cannot even be sensibly described.

Searle's line of thought here seems to be the following: It is a rule of the practice of promising that promises have to be kept. This is a consequence of promises having essentially normative intent. However, this is not a mere regulative rule, that one could in principle do away with or alter. Instead, this rule is constitutive of the institution. We cannot understand the practice of promising that lends meaning to the word "promise" without thereby accepting this rule. We are thus committed to applying this rule simply by our competent use of the word "promise". Let us grant Searle this assumption that it is a constitutive rule of the promissory practice that a promise gives rise to an obligation.

The problem for Searle's argument is the following: The fact that a certain speech act is normative by virtue of the constitutive rules governing its use is also not enough to show that it is normatively efficacious in just the way that Searle's argument requires. As a number of people, most prominently Richard Hare, have pointed out, the kind of normative force that attaches to the mere existence of constitutive rules defining a speech act with normative intent, is at the very best a weak one.¹⁹

Again, an example is the best way to bring out this point. In many games popular with children, certain players are able to affect what other players have to do through

¹⁷ Rawls 1955

¹⁸ Cf. Searle 1964, p. 55

¹⁹ Hare 1964. For similar criticism, see also Hanfling 1975, esp. p. 22, Zemach 1971 and Mackie 1977, p. 66-73.

the use of certain speech acts, like “You’re it!”, “No backsies!”, or “Freeze!”. To take one concrete example, in the game “Duck, Duck, Goose”, the players sit in a circle, facing inward, while one single player, who is “it”, walks around the group, tapping each player in turn, calling out “Duck!” at each tap. When the player finally calls out “Goose!”, the recipient of the call has to get up and try to tag the “it”-player, whereas the latter attempts to run around the circle and sit in the spot by now vacated by the “goose”. The point of the speech act of calling out “Goose!” is to *require* the other player to get up and initiate the chasing sequence. Imagine that a player, when called upon with “Goose!”, instead of getting up, remains seated, refusing to get up and chase after the “it”-player. This player has failed to react appropriately to the requiring force of the speech act. Similarly, the “it”-player cannot sensibly use the word “Goose” in the context of the game without thereby changing the situation of requirements and liberties the players have. “Goose, but don’t get up or try and tag me!” is an off-the-mark statement, since it goes against the norms that are constitutive of proper usage of the term “Goose!” in the first place.

However, the fact that they have this normative force internal to the set of rules governing their respective games surely is not enough to show that “Goose!”, “You’re it!” or “Freeze!” create the kind of obligation at issue in Searle’s derivation. That is, they do not create an obligation in the sense that allows us, given certain important *ceteris paribus* conditions, to make inferences about what an agent *ought to do*. Just imagine a person on a commuter train shouting “You’re it!” or “Freeze!” to a fellow passenger. Even if the recipient recognizes the intent of the speech act, this seems to give her absolutely no reason to comply. “Excuse me, but I am definitely not playing at the moment” appears like a perfectly proper response on her part.

Let us thus take stock of this important point. We have to distinguish two separate kinds of obligation:

A given speech act creates an *internal obligation* for S to φ iff uttering it causes her to be obligated to φ by the rules constitutive of the language game in which the speech act is embedded.

A given speech act creates a *substantive obligation* for S to φ iff uttering it causes her to be obligated to φ in the sense that matters for the question what she ought to do all things considered (no matter whether she partakes in the language game or not).

The fact that it is constitutive for a given speech act to have (obligation-creating) normative intent is sufficient for that speech act creating *internal* obligations. However, the force of these internal obligations is premised on the recipient being currently engaged in the game, or having a reason to engage in the game.²⁰ If it's my child's birthday and I know that his having a good day fundamentally depends on playing a fun round of "Duck, Duck, Goose", then I perhaps have a substantive reason to get up and chase after him if he calls "Goose!", even if at that moment I do not feel like playing. What is clear, however, is that additional normative facts have to obtain for an internal obligation to thus give rise to a substantive one.²¹

All of this clearly shows that Searle's project of drawing on internal obligation in order to support a derivation from a descriptive claim to a substantive ought cannot succeed. In Searle's defence, it should be noted that in his later book *Speech Acts*, in which he rehearses the derivation, he qualifies the aim of his argument somewhat, suggesting that in the whole of the argument, he was always only concerned with obligation, and even "ought" in an internal sense:

Let us remind ourselves at the outset that 'ought' is a humble English auxiliary, 'is' an English copula; and the question whether 'ought' can be derived from 'is' is as humble as the words themselves" [...] [W]e must avoid, at least initially, lapsing into talk about ethics or morals. We are concerned with 'ought' not 'morally ought'. If one accepts such a distinction, one could say that I am concerned with a thesis in the philosophy of language, not a thesis in moral philosophy. (Searle 1969, p. 176)

It is worth noting, however, that, even granting this was his intention all along, Searle is at the very least guilty of posing his point misleadingly. When the question "Can an ought be derived from an is?" is normally posed, the intent is squarely on the side of substantive normativity, not the internal set of rules of some single limited,

²⁰ This observation was a welcome one to Hare, since it gels well with his broader anti-realist agenda. Promising, like other institutions such as marriage and property, appear to him as one of a variety of games or institutions which people could chose to either adopt or not. Hare suggests that we are under an illusion if we think of some particular institution as somehow more fundamental than others in a way that accords it a special normative significance.

²¹ Note that the objection is still valid even if we embrace a radical view of morality on with the all moral rules are just the practice-internal rules of the "morality language game". Even on this view, we are concerned with two *different* games with different scope, and showing there to be practice-internal obligation relative to the promissory practice does not by itself give us any practice-internal obligation relative to the moral practice, at least not without any further argument to the effect that the former is, or should be, a proper part of the latter.

conventionally regulated practice. There is no reason why, for example, Hume should not allow for such an internal normative force (as indeed he did, as we shall see in the discussion of his account in Chapter 4).

Given the importance of the distinction between practice-internal and substantive obligation, I suggest, for the sake of clarity, that we reserve usage of “ought” to the substantive sense in what follows. Adopting this rule, we can conclude that the fact that promising is a speech-act with normative intent by virtue of the constitutive rules governing its use does nothing to show that the descriptive fact that a promise has been made can by itself be used to imply some ought-claim or other.

2.4

At this point, the defender of the Strong Obligation View might protest as follows: But promising is different from these more strictly game-related activities precisely in that it does not only aim at creating an internal normative change. Whereas it makes perfect sense to reply to a call of “Tag me! You’re it!” by replying with “I’m not playing, I don’t have to do anything”, it is not only morally outrageous, but also a strange use of language to utter a sentence along the lines of “I know that last week I promised you to do it, but I am not playing the promising game anymore now”. The very point of promises is to create obligations in a robust normative sense – obligations that constrain our thinking in much the same way as familiar moral obligations do (most likely because they *are* moral obligations)²². I think this objection is actually on point. Promises do have this external aim of changing the normative situation not only with regard to what is required given the constitutive rule of the promissory language-game, but in the substantive sense outlined above.²³

We can, using a label with venerable history, call the speech acts who have this feature *normative-power-like*.

Normative-Power-Likeness - A given speech act is normative-power-like iff it is a performative speech act with the goal of changing the normative situation (understood substantively).

²² I will return to this question in Chapter 2.

²³ See also Melden 1956, p. 60; Hanfling 1975, p. 22-23.

Besides promises, a number of other speech acts are normative-power-like. Ordering, requesting, consenting, giving (in the sense of transferring property) are amongst them, while game-based performatives like calling “you’re it” are not. In some cases, it might not be entirely clear whether the speech act in question is normative-power-like, or just aims at making game-internal changes. Take the act of “calling shotgun” on a ride. I refer here to the practice of deciding seating arrangements in passenger vehicles by calling out the word “shotgun”. According to custom, the person to first call “shotgun” gains the right to the (more highly prized) front seat next to the driver, while everyone else has to file in the back.²⁴ Though this practice is becoming increasingly more widespread, it is clearly not universally adopted, and even those who make regular use of it are likely not ready to employ it in situations where the co-riders are not close friends who share a history of engaging in the game-like practice of calling shotgun. Nonetheless, the practice is a response (whether a good one is debatable) to a real practical problem of resource allocation. It is at least conceivable that calling shotgun could, over time, morph from a game-based speech act with internal normative intent to a normative-power-like speech act, as it gains more currency across society.²⁵

Unfortunately for the defender of the Strong Obligation View, even the fact that promising is a normative-power-like in the sense just laid out will not help their case. For a third and final time, let me illustrate my point with an example. The act of challenging a person to a duel is a speech act aimed at creating an obligation in the challenged party to respond appropriately to the challenge – usually by engaging in sword- or gunplay according to a set of conventionally regulated rules. Of course, this is a custom that has gone largely out of use. Nonetheless, the constitutive rules of the language-game, its felicity conditions and the purpose it serves, are still intelligible to us. Barring that, they were at the very least intelligible during those periods of history where they found wide use. Now I think it is hard to deny that as a speech act, challenging to a duel clearly bears the structural hallmarks of a normative power. The aim of the challenge is to create a situation in which the other person is bound to respond to it *no matter what*. “Sorry, but I’m currently not taking part in duels” is not a proper response with respect to the intent of the challenge. The kind of obligation the challenge aims

²⁴ The usage of the word “shotgun” in this context has its historical origins in stagecoach travel in the United States. On many if not most stagecoaches, there would be an armed guard “riding shotgun” next to driver, ready to use his shotgun to fend off bandits or raiders.

²⁵ One test of whether it has reached this stage is whether “I’m not taking part in this kind of thing, let’s figure it out in some other way” is a proper response to an act of calling shotgun or not.

to create is one that would be flouted by such a response (unlike the obligation of “you’re it”, which is avoided, not flouted, by a truthful clarification that one is not playing).

However, the fact that duel-challenges are normative-power-like clearly does not go to show that the person in question actually has any obligation to respond to the challenge. If I slap you across the face with a glove and then offer you a sword, you might perfectly well understand me as trying to obligate you to fence with me, yet by acknowledging my intent, you by no means acknowledge that you are under any kind of obligation to oblige me. When pressed, you might (if you are the kind of person ready to engage in these sorts of philosopho-linguistic subtleties) acknowledge that *by the rules of the duelling convention*, you are now under an obligation to duel me, but you would be foolish to assume that this has any kind of impact on the question of how you ought to respond to my action. Similarly, I would argue that we now rightly judge that at least in many instances (those where factors extrinsic to the putative direct effect of the normative-power-like speech act did not tilt the normative balance otherwise), responding to a challenge by engaging in an actual duel was something that many historical recipients of duel-challenges had no real reason to do – contrary to their false impression. We see now that their willingness to accept challenges to duels as genuinely normative was likely founded on a mistaken conception of the value of a certain kind of honour, one which we today reject for good reason.

The problem for the Strong Obligation View is the following: If one wants to support the view by pointing out that promising is normative-power-like, then one is forced to admit that duel-challenges are normative in just the same way as promises, since they share the structural features constitutive of Normative-Power-Likeness. This surely is not a cost that one should accept. Finally, note that if for some reason, any reader should find themselves not as fundamentally averse to accepting duel-challenge as normative as I do, it should be noted that the question of whether a given speech act is normative-power-like is a purely structural one, and is therefore completely independent of content. There are thus no limits to which kind of horrific acts could be actually made obligatory by certain speech acts, if a successful use of a normative-power-like speech act according to its constitutive rules necessarily gave rise to substantive normative changes. We therefore have every reason to resist the views that normative-power-like speech acts necessarily succeed in producing more than the aforementioned internal effects they share with the more modest speech acts with

exclusively internal normative intent, even though they are ostensibly aimed at more. The question of which, if any, normative-power-like speech acts constitute genuine normative powers is a substantive question of moral philosophy, and needs to be settled by means of arguments proceeding from substantive normative premises. My aim in later chapters will be to show that we have good reason to believe that promising is a genuine normative power, while many other normative-power-like speech acts such as challenges to duels, are not. To do so, I will have to resort to more than structural features of the promissory speech-act, however.

2.5

Let me sum up the results of this section. There are three features of promising as a speech act that may suggest the Strong Obligation View, though none of them hold up on closer inspection.

First, promising is a performative. This by itself, however does not show it is success-implicating in the way it would need to be to support the Strong Obligation View, as the existence of non-success-implicating performatives such as cursing show. Second, promising is a performative with normative intent. This by itself, however does also not support the Strong Obligation View, since there are many performatives with normative intent that is wholly internal, like calling “you’re it” in the context of a child’s game. Third and finally, promising is normative-power-like, that is, it is an act with external normative intent. As the example of the not normatively efficacious normative-power-like speech act of challenging to a duel has shown, the mere fact that a speech act has external normative intent does not suffice to show that a felicitous use of that speech act is necessarily successful at creating the aimed-at substantive normative changes (as opposed to internal ones that may necessarily be successfully achieved).

The result of this discussion is thus that no feature that promising has *qua* speech act seems able to support the claim that, just in virtue of the meaning of “I promise”, it is true that each promise creates an obligation. Thus, the Strong Obligation View appears unsubstantiated, and Searle’s argument (perhaps unsurprisingly) fails. This does not mean that the Obligation View is untenable altogether, however. As mentioned above, there is a more modest way to capture the central idea of the view. Instead of conceptualising promises as essentially obligation-creating-acts, this weaker version of the Obligation View holds that promises are essentially *attempts* to create obligations. As I will show later, this weaker view accounts for the intuitive appeal of the Strong

Obligation View, without running into the problems just laid out.

Before doing so, however, I will present the two main rival accounts of the nature of promises, the Intention View and the Joint Commitment View. Both of these views can in some sense be understood as reactions to issues raised in the discussion of the Strong Obligation View. I will show that they are both subject to serious problems, which will in turn serve to strengthen the case for the (revised) Obligation View.

3) The Intention View

3.1

One paradigmatic reason for which we make promises is to give others assurance that we will act in a certain way when our behaviour is otherwise in doubt. A mother might promise her son that she will be at the opening night of his school play, even if that would mean she would have to move or miss her yearly skiing holiday with her friends for the first time ever. A friend with a reputation for being late might promise to be on time for a dinner party, having sensed the importance that a punctual start of the event has for the host. In both of these cases, the promisee, who was at first unsure of what behaviour to expect from the promisor, is given a new reason to believe the promisor will act in a certain way.

Promises are thus often aimed at a specific action in a way as to take away doubt about its performance and in doing so portray the performance of that action as in some sense “settled”. This might suggest the following view of the nature of the promissory speech act:

(The Intention View) To promise S to φ is to communicate to S a (firm) intention to φ .

The Intention View is an attempt to capture the important truth regarding the assurance-giving nature of promises without leaning on the notion of obligation. There are multiple reasons for which one might seek to avoid such a commitment. For one thing, worries about overly direct connection between promises and obligations, such as the ones just outlined in the discussion of the Strong Obligation View, might motivate one to find an account of the nature of promises that altogether dispenses with the notion of obligation in one’s account of the promissory speech act. More frequently,

however, this move will be motivated by a commitment to a certain substantive view about promissory normativity. Most of the defenders of the Intention View endorse what I call the Expectation Account, a theory according to which the wrong of breaking promises is ultimately to be explained by the frustrating of expectations it involves. In order for such an account to avoid begging the question, one needs to posit some content of the promissory speech-act that is fit to increase expectations of performance, yet is not itself premised on the undertaking of an obligation.²⁶ Whatever their motivations, versions of the Intention View are defended by a considerable number of authors in the literature.²⁷

Besides the core component the intention to φ itself, specific versions of the Intention View may include a number of further elements in the content of the communicative act. For example, one may hold that besides the intention to φ , the promisor also expresses taking herself to have the ability to φ , to be disposed to φ for certain reasons (likely pertaining to the promisee and her interests), or judging it to be very likely that she will actually successfully φ . Depending on which of these further conditions are included, a more demanding or more relaxed version of the Intention View can be arrived at.

There is good reason to include at least some of these conditions. A “pure version” of the Intention View, on which a promise essentially involves *only* an expression of an intention, would be implausible for multiple reasons. For one thing, it would have to find a kind of self-contradiction in speech acts which we would intuitively consider wholly felicitous, such as “I firmly intend to go to the concert, but I’m not promising you I’ll be there”.²⁸ Secondly, a “pure” Intention View would be unable to distinguish between promises and threats. “I promise I will bash your head in if you get any closer” may feature the locution “I promise” and express a firm intention, but it clearly is a speech act that is very different from those which we normally call promises.²⁹

²⁶ This circularity problem for the Expectation Account will concern us later, see Chapter 4, Section 5.4. For classic statements of this problem, see Warnock 1971 p. 100 and Kolodny/Wallace 2003.

²⁷ For example: Price 1758/1948, Árdal 1968, Narveson 1971, MacCormick 1972, Hanfling 1975, Robins 1984, Stoljar 1988, Scanlon 1998, Mason 2005 and Pink 2009. Some of these, notably Scanlon, also require further conditions to be met for a speech act to classify as a promise (see Section 6 below). However, I believe it is fair to say that the expression of an intention is central to the promissory speech act for all the authors mentioned here.

²⁸ Cf. Raz 1977, p. 216.

²⁹ On the relation between promises and threats, see Árdal 1968 and 1978, Peetz 1977, and Anwander 2008, p. 61-66.

For the purposes of discussion, however, we need only focus on the core element of the Intention View to both understand why one could find such a view *prima facie* appealing, as well as why it eventually fails. I shall argue that in the end, the Intention View is not an attractive view of the nature of the promissory speech act for two principal reasons: *first*, it cannot give a satisfactory account of the felicity conditions of promises, and *second*, it cannot make sense of the existence of an important concomitant speech act to the giving of promises, namely the promisee's power of releasing the promisor. I will lay out these two problems in turn.

3.2

First, felicity conditions. In order to test whether or not the Intention View is a good account of what it is to make a promise, we should ask ourselves the question what kind of conditions have to be met for the promissory speech act to be successful in the sense of being a proper use of the locution.³⁰ Any plausible theory of the nature of the promissory speech act should be able to account for these conditions. To get an idea of the kind of conditions at issue, consider an example from William Alston's *Philosophy of Language*. What does it take for an utterance of "Open the door!" to count as the successful performance of the act of requesting someone to open a door? Alston holds that four conditions have to be met: 1. There is a particular door that is singled out by something in the context. 2. That door is not already open. 3. It is possible for H (the hearer) to open the door. 4. S (the speaker) has some interest in getting H to open the door.³¹ Instead of dwelling on the question whether these really constitute a complete list of the felicity conditions of this particular speech act, let us just, as an illustration, consider a case in which one of these conditions fails to be met. Suppose S asks H to open the front door, in response to which S sincerely replies "But the front door is already open." If S were to reply to this with something along the lines of "What's that got to do with it? Open the door!", his speech act seems no longer intelligible as a genuine request. S may be making a joke or gauging H's reactions to absurd utterances, but he is not (successfully) asking H to open a door.³² Alston proposes the following helpful test to determine whether something is a genuine felicity condition for a given speech act.³³

³⁰ Cf. Austin 1962, Alston 1964 and Searle 1969.

³¹ Alston 1964, p. 40. See also Jones 1966, p. 289-91

³² Cf. Alston 1964, p. 41

³³ David Owens practically embraces this very same method when discussing the nature of the

"Ask yourself what conditions are such that if S were to admit overtly that one of these conditions did not hold, it would be impossible for him, at that time, to perform the act. (This is a logical, not a psychological, impossibility. That is, given this admission, one would not say that he was performing the act.)" (Alston 1964, p. 43)

Let us apply this test to the Intention View. Is the communicating of an intention to φ really necessary for giving a promise to φ ? Is giving a promise without representing oneself as having the intention to perform the promised act really as far off the mark as requesting somebody to unbolt a door that is already wide open? At first sight, it might seem so. In many contexts, adding the explicit proviso of not intending to keep to a promise does in fact seem to undermine the speech act itself. "I promise I will come to the cinema tomorrow, but I don't intend to" is admittedly a strange sentence in most contexts. However, this may not have to do with the nature of promising as a speech act, but rather with the specific aim that is pursued by the promise in the circumstances under consideration, i.e. the aim of giving the hearer assurance that the speaker will perform an act that is easily within their power. Giving such a "Moorean" promise to provide assurance may thus be self-defeating in just the same way that it would be self-defeating to invite a vegetarian to eat from a buffet while at the same time qualifying that invitation to only apply to the meat section. Just as the self-defeat of this specific invitation does not imply that all invitations necessarily have to be unrestricted, the self-defeat of promises in contexts such as the cinema case does not by itself imply the truth of the Intention View.

More importantly, as David Owens has argued, there are cases in which promises do seem to be sensibly offered (and binding) in situations in which all parties are clear on the fact that the promisor does, at the moment of promise-giving, not intend to perform the promised act.³⁴ Owens raises two pertinent cases: first, specific cases of promising against the evidence, and second, cases of promises aimed at pursuing certain non-assurance-related goals.

To introduce the first sort of case, let me start by making an observation that is, by

promissory speech-act. He calls the kind of incoherence of uttering a performative speech act while explicitly stating that a necessary condition does not hold one of *Moorean absurdity*, since it echoes Moore's famous treatment of statements like "p, but I do not believe that p". (Owens 2012, p. 191, Moore 1993: 210).

³⁴ The arguments were first put forward in Owens 2008, and then later rehearsed in slightly modified fashion in Owens 2012.

itself, neither here nor there with regards to the Intention View. In many cases where we make promises, the question of whether we are going to keep them is, when viewed from the outside, at the very least an open one. A person repeatedly failing her driving test may promise her exasperated parents to pass the next one, even though her past history of failure suggests it is a futile endeavour. A professor who knows he has a strong habit of failing to meet deadlines may nonetheless promise to write a review by a certain date, with a view to help overcome his habit of procrastination through the normative pressure he creates for himself.³⁵ These cases of *promising against the evidence* need not be cases of deceitful promises, and appear just as binding as most other promises.³⁶ Should the professor not write the review, we can blame him for not doing so, and not only for making the promise.³⁷

Now, crucially for our purposes, sometimes promises against the evidence may even be made in situations in which we currently do not intend to perform the promised act at all. This may be for one of two reasons. Either we may be suffering from a dire bout of *acrasia*, and are looking to make a promise in order to try and rectify this, or our history of past failures to perform prevents us from even deciding to perform, and we aim to cause a change to the situation by a transformation of the normative background. To take Owens' example, imagine a situation where I have judged that I ought to stop smoking in the interest of my children, who are constantly exposed to the fumes, but cannot bring myself to give up the habit. I simply cannot get my actions and thoughts to proceed from the assumption that I will no longer smoke in the future.³⁸ As long as I am a person that is genuinely motivated by normative considerations, a promise to my family can help me change my motivational situation and actually get to a point at which

³⁵ This example is modelled on the by now classic case of Professor Procrastinate. See Jackson and Pargetter 1986.

³⁶ Promises against the evidence are to be clearly distinguished from promises to do the impossible, which are in fact infelicitous and not binding. If the law sets a limit to the number of attempts that may be made at completing the driving test, and our failing student has exhausted these, a promise to obtain the license will seem not only out of place but furthermore will not create an obligation to perform. All of the views presented in this chapter seem to be able to account for this, since plausibly, I cannot properly intend to do the impossible, nor can I be obligated to do it, nor can I form a joint commitment with somebody else to do it. On promises to do the impossible, see for example Searle 1969, p. 60, Atiyah 1981, p. 155 ff. and DeMarco and Fox 1992, p. 49 f.

³⁷ For an excellent treatment of promising against the evidence, see Marusic 2013.

³⁸ Owens 2012, p. 197. One slight problem with this example is the fact that it involves a habit that usually leads to physical addiction. The case is strongest if we imagine the smoker in this case to not be physically addicted, just subject to a strong habitual force. Imagine he smokes marihuana instead of tobacco, for example. Thanks to Francesca Bunkenborg for pointing out this problem.

I intend to stop later on.

In these situations, the kind of motivational change I am intending to achieve is premised on my promise creating an obligation for me to actually achieve my goal, not merely a promise to try to do so. I am not just promising to *attempt to give up smoking*, I am promising to *actually give it up*, even though I am currently not in a position to intend to do so. Another reason I may not merely want to promise to try is that I recognize that it is not factors external to me that are stopping me from giving up smoking, and I am convinced that there is something wrong with promising to try to φ when it is up to myself whether to φ or not.³⁹ The defender of the Intention View is therefore not helped by the presence of second-order intentions, such as the intention to later form the intention to stop smoking, which I might very well have at the time of my promise. These second-order intentions only seem able to account for a promise to try, and thus simply do not match up to the content of the promise.

We thus have a situation in which it seems perfectly appropriate and not deceptive to make a promise to φ , even though no intention to φ is currently held by the speaker. What is more, this can even be made explicit in the promissory utterance. “I know that right now, I cannot get myself to decide to give up smoking at some point in the future, but I promise you that one day I will actually stop” may be an unusual promise, but it does not share the absurdity of our earlier example of failure in the lights of Alston’s test, i.e. “I request you unbolt the front door, even though I know it is already open”.

3.3

With this, let me turn to the second case of successful promises that do not necessarily communicate an intention to keep them. These are promises the point of which is not to give the promisee assurance that some act will actually be performed, but rather promises employed to put an end to difficult and time-consuming debates regarding certain decisions. Again, this is a purpose for which promises are commonly employed. Sometimes when the precise nature of the normative situation regarding some decision is a matter of seemingly unresolvable dispute between two parties, settling the normative situation by promissory fiat can be a way to resolve things that provides satisfaction to

³⁹ For an argument against the propriety of promising to try, see Marusic 2017. Note that Marusic actually defends a version of the Intention View. However, it seems to me that parts of his arguments actually, when employed in the right fashion, can serve to undermine this very view.

both.⁴⁰ Think of the many discussions about the distribution of onerous tasks that are concluded by one party committing to perform it. Frequently, this is accompanied by an open pronouncement by the promising party that they are doing everyone a massive favour by undertaking an obligation to perform the burdensome act, because really it would have been someone else's place to do so. Of course, in most cases, these kind of *settling promises* do communicate an intention to keep the promise. In some situations, however, if the promisor's and promisee's interests align in just the right way, a settling promise can make sense even if both parties are aware of the promisor's utter lack of an intention to perform the promised act. Here is the vignette with which David Owens illustrates this possibility:

You and I are neighbours. Your unwashed wreck sits on the driveway beside my shiny new model. Each weekend I tell you that you ought to wash your car and each weekend you fail to do so. I am sick of your maintaining that you have no obligation to wash your car and you are sick of my telling you what to do. I set out to extract from you a promise that you will wash your car next week, a promise that I would prefer you did not keep since that would definitely put you in the wrong. You wish to terminate our conversation with your dignity intact. You say 'OK, I promise to wash the car since that is what you want but you'll be lucky if I do it.' I walk away pleased that you will so clearly be in the wrong, you walk away pleased at your own defiance. Perhaps you are in the wrong here even before you break your promise—to intend to wrong me may itself be a way of wronging me— but if so, the wrong you do me involves not insincerity but a rather blatant contempt. (Owens 2012, p. 201-202)

Owens does not go into much greater detail than this to lay out the parties' exact motivation. To make the case as strong as possible, we should imagine the motivations along the following lines. Call the party with the unwashed wreck Slob and the one with the shiny new model David. Slob doesn't care much for what David actually thinks, nor does he mind if he ends up wronging him. He does, however, have strong opinions about the moral requirements of car owners and the vice of vanity. He believes that cars ought to be judged by their fitness as a means of transportation, not some misplaced, dainty sense of aesthetics, and that a nice coat of mud around the lower half of a vehicle is rather to be prized as proof of its ability to handle rough terrain. He is sick and tired of being constantly challenged in these views by David, yet is too proud

⁴⁰ Cf. also Dougherty 2016.

to cease ground to his neighbour in these matters.

David, on the other hand, does not particularly care for the underlying reasons for which Slob is required to wash his car. Given that getting Slob to remove his eyesore seems by now to be a hopeless endeavour, all David wants is some clear-cut, well-defined ground for his moral outrage that will stand up not only to his scrutiny, but also to that of his friends and other neighbours. In a manner not untypical of bellicose neighbours, his aim is to be able to state with no uncertainty what a villain his neighbour is, and what great misfortune has befallen him to be stricken with the fate of living next to such a person.

In this admittedly very specific situation, the two parties have reason to be happy that the availability of promising affords them an out that allows both of them to satisfy their respective desires. Though there is of course some perversity to this promise, based as it is on the less-than-perfect motivational states of the parties to it, this perversity does not seem to derive from any misuse of language. In fact, as Owens points out, the whole story can be made sense of *only* if both parties represent the promisor as making a fully-fledged, valid promise, even in the light of his obvious unwillingness to perform.⁴¹ Otherwise, David would not get the satisfaction of Slob being so clearly in the wrong.

To be fair, both types of cases that cause the Intention View to fail Alston's test are fairly rare. Nonetheless, since the Intention View makes a claim about the essential features of the promissory speech act, existence of any counterexamples such as these is a severe problem for the view. What is more, since what is put into question is that having the intention to φ is necessary for a promise to φ to be constituted, adding further conditions to the Intention View along the lines explored further above does not stand to provide a way out of these problems. At the very least, the following thus seems true: if there is a competing view that does not fail the test in any situation (as I will argue there is, in the revised Obligation View), the Intention View's failure represents a reason to abandon it in favour of that competitor.

⁴¹ Owens 2012, p. 202

3.4

I now move to the second problem the Intention View faces, namely that it cannot properly account for the promisee's power of release. The power of release forms an important part of our promissory practice. Failure to account for its importance, let alone its very existence, surely would be a serious drawback to any view of the nature of the promissory speech act. The inability to account properly for the power of release is sometimes invoked as a problem for certain theories of the normativity of promising.⁴² However, its importance for the question about the nature of the promissory speech act, and in particular, to the Intention View's claim to being a good answer to that question, has (to my knowledge) not yet been sufficiently appreciated.

Let me begin by noting that we of course rarely use the formal expression "I hereby release you from the promise" to discharge a promisor from her promissory obligation. Instead, we are more likely to say things like "I know you promised to do that thing for me, but I don't need you to do it anymore", or "If you want to drop by Ümit's party instead of going to the cinema with me as you promised, that's okay". Importantly, we take the ability to release the promisor to reside only with the promisee. "I hereby release you from the promise to your sister" or "I know you promised your sister to go with her, but it's okay if you don't", clearly do not make sense as cases of promissory release.⁴³ Furthermore, we take assignment of this power to the promisee to be necessarily concomitant with promises. Whenever a promisor has successfully made a promise to some promisee, that promisee is, by that very fact, put in a position to release the promisor from her promise.⁴⁴

The Intention View does not have a clear way to account for the fact that this concomitant power exists. Why should a speech act, the point of which is to communicate an intention to perform a certain act, be intrinsically connected to another speech act, the apparent point of which is to release somebody from an obligation? There seems to be nothing specific to the nature of *intentions* that appears fit to explain the existence of a power of release. With respect to this, it seems that from the very start the Intention View is in a much worse position than its competitors, the Obligation

⁴² [REF]

⁴³ An interesting question, which however lies beyond the scope of the discussion at this point, is whether the power of release can be transferred from the promisee to others, e.g. on the promisee's deathbed.

⁴⁴ There may however be cases where the promisee lacks the opportunity to exercise her power of release. I discuss some examples later in Chapter 8, Section [REF].

View and the Joint Commitment View, whose central notions seem a much more natural fit for explaining a power of release.

At this point, defenders of the Intention View might try to retreat to the following position: True, the very notion of a promise as an act aimed at communicating an intention does not by itself support the idea that there should be a power of release vested in the promisee. But neither need it do so. After all, the Intention View does not deny that promises create obligations, just that their very point is to create them. As such, we can easily explain the power of release – it is just the ordinary power of consent – a power that accrues to anyone who has a right against another, just in virtue of their status of rights-holder.⁴⁵ The promisor is obligated towards the promisee to keep his promise, and stands to wrong her if he doesn't. As such, the promisee is in a position to consent to the action, making it the case that it no longer represents a wronging. To utter the words "I release you from your promise" then just would be to use different words to express "I consent to you not keeping your promise".

In the end, this suggestion cannot save the Intention View, however, because it brushes over important differences between release and consent. Let me just mention one key respect in which the two differ: Consent can be revoked, whereas promissory release cannot.⁴⁶ Here is an example: On Saturday, I consent to the local croquet team's using my garden for Wednesday's practice.⁴⁷ On Tuesday, however, fear for the safety of my carefully kept petunias overcomes me and I change my mind, revoking the permission. Of course, the croquet team now has grounds for complaints against me. I have left them hanging and not given them much time to find alternative locations. Nonetheless, if in their justified outrage they choose to defy me and train on my grass anyway, they clearly wrong me. They can no longer make reference to my act of consent on Saturday in their defence, since this consent was (or so I take the most natural description of the case to be) successfully revoked on Tuesday.

With regards to promissory release, the case is starkly different. Imagine a different version of the case, in which I promise to prepare my garden for use by the croquet

⁴⁵ That is, everyone who holds a right that is not intrinsically inalienable. Plausibly, there are some actions that cannot in principle be consented to. On a common view, I cannot sell myself into slavery, for example. See for example Sreenivasan 2010, p. 483, Owens 2014, p. 84.

⁴⁶ Another difference is that consent can be given pre-emptively, while a promisor cannot be released before a promise has successfully been made.

⁴⁷ Here, I make no promise that they will be able to use it, maybe because I will not be around myself to ensure that the grounds are accessible to them and/or suitable for their equipment.

team on Wednesday. On Monday, they believe to have found a better location, and call me to release me from my promise of setting up my garden. By Tuesday, however, they have changed their mind and want to revoke their release, again seeking to create a situation where I am obligated to prepare my garden for them. It seems clear to me that this attempt to revoke release necessarily fails. Once a promisor has been released from the promise, it is simply not within the remit of the promisee to revoke this decision. Of course, the promisee can try to get the promisor to re-enter into a promissory bond by making a *new* promissory commitment. Furthermore, given what the reasons for both release and attempting to revoke release were, the reason the promisor has to make this second promise might even be weightier than the one for the original promise. Nonetheless, it seems clear that he or she needs to make a new promise in order to again be obligated. This difference between consent and release speaks against understanding the latter as just a simple case of the former.

Finally, let me briefly address one further way to the defender of the Intention View could attempt account for the power of release.⁴⁸ As I have mentioned, the Intention View is often coupled with the Expectation Account of promissory normativity, according to which promissory obligation fundamentally depends on the fact that a promisee forms an expectation that the promisor should act as promised.⁴⁹ Now, a theorist endorsing a combination of the Intention View and Expectation Account could suggest that to release a promisor from their promise is not to consent to their acting contrary to their promise, but rather communicating that the expectation that gives rise to the promissory bond is no longer present. In this way, she could provide an explanation of the disappearance of the obligation upon release that is consistent with her views on what promises are and how they bind, and not subject to revocability in the same way as consent.

Though this is a suggestion worth considering, there are nonetheless two important reasons to reject it. First of all, it makes the prospects of the Intention View hostage to those of the Expectation Account. Since, as I will later argue, this view has its own serious shortcomings, one may wish to avoid premising one's view of the nature of promises on its truth.⁵⁰ To anticipate the most important problem, there simply appear to be many cases where promises are intuitively binding, yet no expectation is created

⁴⁸ Thanks to Berit Braun for bringing up this possibility in discussion.

⁴⁹ For the details of the view, see Chapter 4, Section [REF].

⁵⁰ See Chapter 4, Section [REF].

in the promisee. Secondly, and perhaps more importantly, it simply is not true that every act of promissory release is accompanied by the relinquishing of an expectation that the promisor acts as promised. Imagine that a daughter promises both her parents individually to be present at some tedious family affair. It is common knowledge between all family members that these two separate promises exist and that the daughter takes both of them seriously. In such a situation, the mother may well release the daughter without thereby expressing any change in the way she expects her daughter to act. The mother can even explicitly point out, that, given that the promise to the father is still binding, she is certain that the daughter will nonetheless show up. Even so, the mother still appears able to release her daughter from her promise, thus relinquishing her claim on her daughter's showing up, making it the case that she no longer stands to be wronged by a no-show. The possibility of this case shows very clearly that promissory release is simply not identical to a communication of an abandonment of an expectation, as this second suggestion would have to suggest it is.

3.5

To sum up, the Intention View thus suffers from two important shortcomings, both of which seem to me sufficient to reject the view as a comprehensive account of the nature of the promissory speech act. What may yet be possible, however, is that elements from the Intention View could feature as one part amongst many in a more complex view. I will discuss the possibility of such complex views later, in section 6, as soon as the details of the two main competitors of the Intention View are on the table.

4) The Joint Commitment View

4.1

As we have just seen, one of the crucial shortcomings of the Intention View is that it gives an insufficient weight to the role of the promisee. Promises, as is often correctly remarked, are essentially directed, creating a connection between promisor and promisee.⁵¹ As such, they are also valued by us as a device of establishing and reinforcing close relationships. Humans promise each other things not only to safeguard intimate relationships that already exist, but also to deepen or even first establish such bonds.

⁵¹ On this point, see for example Anwander 2008, (esp. Ch.2.1), Darwall 2011, Gilbert 2004, 2011, 2018, Kolodny and Wallace 2003, Scanlon 1998.

Many good friendships are built on the basis of interlocking promises, for example promises to stay in touch, to keep certain secrets, to freely share any personal troubles, etc. Similarly, the joining of an exclusive group such as a club often involves the exchange of promises between the new member and the group.

A number of philosophers, Margaret Gilbert being certainly the most prominent amongst them, have picked up on this feature of promising as providing for an essentially bilateral connection, and have placed it at centre-stage of their accounts of both the nature of the promissory speech act and promissory normativity.⁵² Here is Gilbert expressing the central idea of the view:

I propose that, quite generally, and somewhat roughly: for two or more people to enter an agreement is for them jointly to commit themselves, by an appropriate, explicit process, to endorse as a body a certain decision with respect to what is to be done by one or more of the parties. (Gilbert 2011, p. 98)

To put it in the simpler terms along the lines of which the other proposals above were couched, what we have then, is

(*The Joint Commitment View*) For A to promise to B to φ is for A and B to jointly commit themselves to A's φ ing.

The notion of joint commitment is one that Gilbert has written about extensively.⁵³ She takes it to be a fundamental everyday concept that finds expression in a number of familiar expressions of intentional psychological states in the first person plural: “We intend to go for a walk along the canal”, “We believe that democracy is the best political form” etc.⁵⁴ For Gilbert, a joint commitment is a kind of commitment of the will that is created by two or more people and commits these very same people to do a certain thing. It is not a composite of two or more personal commitments, but an essentially multilateral endeavour. This also means that a joint commitment does not commit the individual parties to personally do the thing the collective commits itself to, but rather to do the thing (in Gilbert’s words) *as a body*.⁵⁵ A joint commitment to believe that p as a body, for instance, does not require that each personally believes that p. Instead, “the

⁵² See Gilbert 2004, 2011, 2018. Anwander 2008, De Kenessey 2018, Jonker ms.

⁵³ See for example Gilbert 2006: ch.7, 2013.

⁵⁴ See Gilbert 2013, *passim*.

⁵⁵ Gilbert 2006, p. 137

aim of this joint commitment is to create a certain situation on the collective as opposed to the individual level: a situation that as far as possible approximates a single case of belief.”⁵⁶

Nonetheless, the existence of a joint commitment has far-reaching normative consequences for the individuals that are party to it. By virtue of the existence of the commitment alone, the parties have rights against each other to actions that conform to the commitment. This also means that they have the standing to demand such actions of each other and to rebuke each other for failing to do what is required.⁵⁷ If you and I have together formed a joint commitment to go for a walk along the canal together, you owe it to me to show up, not to wander off after five minutes, and perform all the other actions necessary to bring our project of strolling together to fruition.

I have of course only given the briefest of sketches of joint commitment in Gilbert’s sense. A wide range of interesting and difficult questions still remain, and a number of Gilbert’s conceptual and normative assumptions are certainly open to challenges. However, the gloss just given should be enough to understand how the notion could be applied in an account of the nature of the promissory speech act. What is more, it is also enough to see why it ultimately fails, meaning we can happily refrain from delving into any deeper criticism of the notion of joint commitment itself, and instead focus squarely on its application to the promissory case.

Even though the Joint Commitment View has its basis in an important insight into promissory bonds (their essential directedness), and has the prospect of gelling well with a potentially attractive account of the normativity of promising based on the normative relevance of joint intentions, I believe it quite simply overstates its case. Yes, promises connect promisor and promisee in important ways, but these ways do not necessarily constitute the kind of meshing of attitudes that is constitutive of a joint commitment in Gilbert’s sense. Granted, in many cases, we do make joint commitments by making one (or two interlocking) promise(s). “I’ll see you at the cinema tomorrow at 8, and that’s a promise!” is an altogether familiar and sensible way for joint deliberation about what to do as a group to come to a close. However, not every promise has this feature, as I shall show in what follows.

⁵⁶ Gilbert 2011, p. 93

⁵⁷ Gilbert 2006, p. 147

4.2

A first type of promise that resists characterisation as a joint commitment is the extremely common promise accepted out of politeness. In many cases, a promisee will not actually be interested in performance of the promise by the promisor, but still go on to accept the promise, in order to not show up a promisor who has badly misjudged her interest. Imagine that Juan promises Pablo to make him a special hand-knitted hat as a birthday present.⁵⁸ Pablo, knowing Juan's knitting skills, may have no interest at all in receiving the hat, and in fact may prefer not to receive it as a present, since this would mean he would have to wear it at least once or be considered impolite. At the same time, he may know that Juan would be badly insulted by his rejecting the promise, and may thus choose to put Juan's interests above his own and accept the promise. Though this case surely is not particularly exotic, it already presents a problem for the Joint Commitment View. In such a situation, Pablo may not take himself to be in any way committed, or party to a commitment, to receive a hat. In fact, he may search for subtle ways to undermine the explicit goal of the commitment. He may start looking for other people who are actually fond of hand-knitted woolly hats and get them to approach Juan with requests for some, in the hope that Juan will be overwhelmed with demand and ask for release from his promise to Pablo. Of course, he will not want to communicate this to Juan, but this is merely for the contingent reason that the promise was made with the aim of sparing Juan's feelings.

In fact, there are cases in which promisors can be aware that the promisee takes this attitude, and can even make this awareness explicit in their offering of the promise, showing that the Joint Commitment View, too, fails Alston's test. Consider Scanlon's by now famous example of the Profligate Pal (raised by Scanlon in a different context):

Your friend has been borrowing money from you, and from others, for years, always promising solemnly to pay it back but never doing so. Finally, you refuse to lend him any more money, and others do so as well. This precipitates a crisis of shame. Your friend is humiliated by the realization that others have lost all respect for him, and he struggles to retain the last vestiges of respect for himself. He is also in great need of money. Finally, he comes to you on his knees, full of self-reproach and sincere assurances that he has turned over a new leaf. You do not believe this for a minute, but out of pity you are willing simply to give him the

⁵⁸ There are many unhappy promisees forced into situations of having to accept unwanted gifts like this by cruel philosophers. For a similar example involving a sewing machine, see Scanlon 1998, p. 311, and for one involving hand-made candles, see Anwander 2008, p. 62

money he needs. You realize, however, that it would be cruel to reject his promises as worthless and offer him charity instead. So you treat his offer seriously, and give him the money after receiving his promise to repay the loan on a certain date, although you have no expectation of ever seeing your money again (Scanlon 1998, p. 312)

Note that it is perfectly possible that the Pal is aware of the promisee's absolute lack of faith in him upon accepting the promise. He knows that the promisee will not base her actions and beliefs upon the presupposition of repayment, nor be party to a joint commitment to this end, simply for the reason that the promisee considers it a matter of high impossibility that the Pal comes through on his promise. And the Pal can make this explicit in giving the promise. "I know you will never proceed on the assumption that I will pay you back, since nothing I can do now will convince you that I could be capable of doing so. Nonetheless, I promise to you that I finally have changed for good, and I *will* pay you back the money!". This utterance seems like as good a promise as any, and shows none of the internal tension characteristic of speech acts which explicitly deny the obtaining of constitutive features of these very speech acts.

The Joint Commitment View thus fails Alston's test by overestimating the role the promisee takes in promissory exchanges. Unlike suggested by the view, promisees can often take an altogether passive, if not even actively undermining position with regards to the promised action, without thereby leaving or undercutting their role as promisee. And both parties can make their awareness of this explicit in the giving and accepting of the promise. This is not what we would expect if to make a promise was for promisor and promisee to enter into a fully-fledged joint commitment.

4.3

On the other hand, there is also a way in which the Joint Commitment View *underestimates* the position of the promisee. In viewing the promise as a commitment entered into by both parties, it implies a situation of mutual bonds and mutual powers. Intuitively, however, there is a radical imbalance between what is owed by the promisor and what is owed by the promisee with respect to the achievement of the aim set out in any given promise. Here is an example: You have promised me to help me move house in a month's time, and I have accepted your promise. According to the Joint Commitment View, what we have now done is formed a joint plan to lug some furniture around together at a specific time in the future (or, more precisely: a commitment to *you*

doing your part in lugging some furniture around). A week after making the promise, I call you to let you know that I changed my plans, have contracted a professional moving company, and wish to now release you from the promise. Do I disrespect the promise that you have made to me by doing so? It seems to me quite clearly that I do not. Certainly, I may be worthy of some reproach for leading you along for a week, though it is not clear that even this is so, given that the reasons for my change of plans may not have been foreseeable at the time of the promise, and I may have anyway given you as much advance warning as possible. What is more, the fact that I have unilaterally made the decision, presenting you with the *fait accompli* of the contracted moving agency before even releasing you, seems to be something that is entirely within my remit. I may regret the fact that you were looking forward to the experience of helping me move, and perhaps should, as your friend, even factor this into my decision, but this does not change the fact that the decision whether or not to release you from your promise and change my plans is ultimately mine and mine alone to make. On the Joint Commitment View, such unilateral cancellation of promise should not be possible without violating it, qua violating the joint commitment that is constitutive of it.

Contrast this with a case where it is instead *you* that calls me a week after the promise is made, in order to let me know that you wish to rescind your promise to be present at my move and instead wish to spend the afternoon with your family in your hometown. Here, you clearly are in the wrong and do violate the promise you have made. The imbalance of powers and obligations we here observe cannot be accounted for by the Joint Commitment View.

Gilbert is aware that the possibility of unilateral rescission may be a problem for her view. She attempts to respond to it by means of an example, the basis of which is a prior promise of “I will phone you tonight”, made by Jeremy and accepted by Julia with an “okay”.

[I]n [this] example, given Jeremy's promise to Julia, if she takes her phone off the hook that night he may well rebuke her as follows: “I said I'd call you tonight—what were you doing taking the phone off the hook?” This suggests that he understands that she was obligated to him not to make his calling her that night impossible. (Gilbert 2011, p. 99)

However, showing that promisees are sometimes obligated to not make a promisor's discharging of an obligation impossible is clearly not enough to defend Gilbert's view here. The existence of a joint agreement is not necessary for there to be an obligation

for Julia not to unplug her phone without warning him. She has knowingly and willingly raised in him the expectation that they will have a phone conversation, and has failed to either give prior warning to Jeremy or provide him a good reason for doing so.⁵⁹ However, as the case of Profligate Pal above has shown, the fact that she did so is a contingent feature of this case, and not a necessary feature of accepting promises. More importantly, the example featuring the move has shown that there are cases in which, intuitively, no wronging committed by the promisee is discernible, or if so, only a wronging of vastly inferior proportions to the wronging the promisor would commit if she proceeded in equivalent fashion.

Towards the end of the discussion, Gilbert seems to make a substantive concession in light of these problems:

One who continues to insist that the promisee has the power of unilateral rescission or something very like it is not precluded from accepting a version of the joint decision account of promising. Thus he may feel able to accept something like the following account: a promise is a joint decision that one party, “the promisor,” is to do something—a joint decision entered into by an appropriate explicit process—with which is associated the understanding that it stands at the pleasure of the other party—“the promisee”. (Gilbert 2011, p. 100)

How to understand this quote depends crucially on how one interprets the suggestion that the content of the commitment is that “[the promisor] is to do something”. If one grants that this is a slight slip on Gilbert’s part, and the content of the commitment is actually the promisor *doing something*, then it is not really clear how this solves the problems outlined above. As we have seen, the promisee need not take himself to be party to a commitment that the promisor does anything in any substantive sense. If, on the other hand, we take Gilbert by her word and construe the intent of the envisaged commitment as *normative*, as the promisor being “to do something” in the sense of being obligated to the promisee to do that thing, then this seems to me to ultimately just be an abandoning of the Joint Commitment View of a specific version of the Obligation View – a version of the Obligation View in which acceptance by the promisee is a necessary condition for the validity of the promise. For it to solve the problems laid out above, the philosophical work of accounting for the felicity conditions and the role of

⁵⁹ The obligation arising from expectations knowingly and deliberately raised will take centre stage again later in the discussion of the Expectation Account in section 4.[REF]

the promisee would then have to be done by the *content* of the joint commitment, not general features of joint commitments. This, however, is ultimately conceding victory to the Obligation View. On that note, it is worth returning to this latter view now.

5) The Obligation View Revisited

5.1

We have seen that both the Intention View and the Joint Commitment View are subject to serious problems. It is therefore worth returning to the Obligation View we originally set out from. The problem of the Strong Obligation View, as we saw, was that it took the idea of promising being essentially connected to the undertaking of obligation too far – it required too much of a speech act in order to count as a promise. A better way to capture the central idea of the Obligation View is not to define it as an *actual* undertaking of an obligation, but rather as an *attempt of doing so*. This is in fact the view that many of the defenders of the Obligation View quoted above have taken.⁶⁰ As just one particularly clear-cut example, take John Finnis:

[W]hat is a promise or undertaking? Centrally, then, a promise is constituted if and only if (i) A communicates to B *his intention* to undertake, by that very act of communication (in conjunction with B's acceptance of it), an obligation to perform a certain action (or to see to it that certain actions are performed), and (ii) B accepts this undertaking in the interests of himself, or of some third party C. (Finnis 1980, pp. 298– 299, my emphasis)

This suggests the following refined version of the Obligation View:

(The Obligation View) To promise S to φ is to communicate to S an intention to hereby undertake an obligation to S that one will φ .

In what remains, I will defend the claim that the Obligation View, understood along these lines, is indeed the correct account of the nature of the promissory speech act. For one thing, I have so far in effect been making a negative case for the Obligation

⁶⁰ Amongst the philosophers listed above in Footnote [REF], an endorsement of the Obligation View rather than the Strong Obligation View is made most explicit by Owens, Raz, Finnis, Watson, Pratt and Wallace.

View. As far as the Strong Obligation View, the Intention View, and the Joint Commitment View are all subject to important defects, and the Obligation View is the only remaining candidate with at least some initial plausibility, we have been given significant grounds for endorsing the view already. I nonetheless want to go back to a point raised briefly in the beginning, in order to underscore the considerable plausibility the Obligation View enjoys in its own right.

We have, in the course of the discussion, touched on a number of the varied pragmatic purposes for which promises are ordinarily given – settling otherwise unresolvable normative conflicts by fiat, creating closer bonds between individuals through the establishment of a set of mutually interlocking rights and duties, or concluding an episode of joint planning. The most important among this set of purposes commonly pursued by promising is arguably *giving assurance*. A promise gives the recipient a reason to believe the speaker will act as he promised, allowing her to organise her behaviour around this assumption. As both Gary Watson and Michael Pratt point out, whenever we offer someone a promise with the aim of assuring that person we will φ , what we are doing is most naturally understood as attempting to provide them with a *new* reason to believe that we will φ , a reason to believe that we will φ *because we have promised*. We are not merely communicating that we have independent reasons to φ , with a view to thereby putting the promisee into a better epistemic position to assess our normative and motivational situation independent from the promise. We are instead intending to make a difference to the situation *through the promise*.⁶¹

As far as a promise is a speech act that is aimed at *itself* serving all of these varied purposes, most clearly the purpose of giving assurance, the undertaking of an obligation through the very speech act seems by far the best fit for what it is that can make the required difference.⁶² Before moving on, let me highlight one more important role that promises can take, and which further underscores the excellent fit of the Obligation View. I am thinking here of what we can call the *empowering function* of promises. As Seana Shiffrin has laid out in very convincing fashion, we can see how promises play this important role most clearly in promissory exchanges between parents and

⁶¹ Watson 2004, p. 62, Pratt 2014, p. 385-86.

⁶² Note that though this line of thought most directly lends support to the Obligation View, it is also something the Joint Commitment View could in principle take on board. After all, on this view, promises are likewise essentially acts that by themselves make a normative difference that is fit to play the role required to pursue the typical pragmatic aims pursued by promise-givers.

children.⁶³ Exchanges of promises between parents and children can be observed from an early age.⁶⁴ Those who regularly interact with children can attest to the great importance that promises have for children, both in their interactions with each other and with their parents. It is not a stretch to say that for most children, learning their way around the giving and keeping of promises, partially exaggerated and stilted their engagement with the practice may yet be, plays a very important role in their moral development.

Shiffrin correctly stresses the fact that the strong desire many children have to receive promises from their parents is not merely explicable in terms of insecurity whether their wants and needs are being fully appreciated and taken stock of. Even children of the most loving and caring of parents will regularly seek promises from them.⁶⁵ To understand the great value that receiving promises has for children in particular, we have to move beyond mere assurance and instead take into focus the way promises are able to (within limits) suspend the encompassing power imbalance that exists between parents and children. Both what happens to a child, and what a child is required or entitled to do, is to a large degree up to her parents. Of course, a good parent will seek to make decisions for the good of the child, and take into account the child's desires and aims. A parent may be worthy of moral reproach for not gauging and then taking into account their child's desires and aims when it comes to making important life decisions. In the end, though, it is the parent who gets to make the final decision for their child, not the child herself. Though there is of course good reason to not let young children make important decisions by themselves, this position of powerlessness can be a source of frustration for children from an early age.

Promises are prized by children because a promise can reverse this power imbalance with respect to a limited domain. By taking up the role of the promisee, the child is given a valuable form of moral authority over their parents with regards to a specific decision. Having undertaken the promissory bond, it is no longer up to the parent whether or not to perform the promised act. As Shiffrin puts it, "[O]nce [a promise is] given, the state of vulnerability and subordination of the child with respect to that issue is, at some official level, suspended."⁶⁶ Of course, the power the child-promisee receives

⁶³ The following points closely follow Shiffrin's argument in Shiffrin 2008, p. 509-10.

⁶⁴ Shiffrin 2008, p. 497 points to a helpful overview of the literature on children's cognition of promises that can be found in Lyon 2000, p. 1058–63

⁶⁵ Shiffrin 2008, p. 509

⁶⁶ Ibid., p. 509-10.

is not a power to bring about results. A promise to go to the playground does not represent a guarantee that one will end up there. Parents can, and all too often do, break promises that they give to their children. Nonetheless, the promise puts the child in a position of *having a claim* to the decision that her position in the parent-child relationship would otherwise not afford her. She can lodge a justified complaint against the parents for not doing the thing that they had promised to do. In this sense, the child, in her role as promisee, gets to wield a kind of power and authority that is not only valuable to her, but also important in preparing her for the more extensive powers and responsibilities that await her with adulthood.

This empowering force of promises also finds its reflection in the arts. In the critically acclaimed 2016 first season of the Netflix Series “Stranger Things”, the psychically gifted girl Eleven, about 12 years old, escapes from a research facility, where she has been held captive in isolation for many years. Her social development is severely stunted, and she at first finds it hard to form connections with the boys who take her in and hide her from her pursuers. Though she understands English, and is able to make herself understood though fragmented sentences, she has never heard the word “promise” before. Her being patiently taught the concept of promise by Mike, the boy whose basement she hides in, represents a turning point in her character development. We not only witness Eleven learning to place trust in the boys because of the promises made to her, but, perhaps more importantly, we also see her feel and express a thoroughly moralised kind of indignation when a promise is not kept. This exemplifies her progress in the story, eclipsing the role of frightened, passive victim she had in the lab, and instead becoming an autonomous agent who stands up for herself and those dear to her. In many ways, Eleven’s experience represents a condensed version of the kind of process laid out before. Through her engagement with the boys’ promises, Eleven first experiences a kind of moral autonomy and moral authority over others, which is crucial to her development and integration in the (social and moral) community.

This type of empowerment just sketched is thus a further important feature of our promissory practice. Of course, this feature is not only limited to exchanges involving children, but can also play important roles in adult relationships that are characterised by similar power imbalances. Insofar as this kind of empowerment is partially what the promissory speech-act is for, and this empowerment is achieved by the establishment of the kind of directed normative relation constitutive of an obligation, we have further strengthened the case for the Obligation View of the nature of the promissory speech

act. As we have seen, all of the paradigmatic aims of promises are clearly well-served by an undertaking of an obligation, perhaps most clearly the aim of empowerment. This, I believe, is what makes understanding promises along the Obligation View, i.e. as communications of intention to undertake obligations, so naturally appealing. Of course, this is not a conclusive argument against views such as the Intention View, according to which it is not essential to promises that they are able to serve these important purposes. After all, these views of course are not contrary to the idea that promises can still give rise to obligations, and with that, play an empowering role. Still, on these views, the fact that promises can play this role is no more than a by-product of their independent normative significance. Given the importance of these functions to our understanding of promises, the Obligation View's ability to account for them as directly arising from essential features of promises is an important advantage for the view.

5.2

To round off the discussion, let me return to the two sets of problems that both the Intention View and the Joint Commitment View faced, in order to show that the Obligation View has an easier time dealing with them. These were, on the one hand, fidelity to the felicity conditions of promises, and on the other hand, ability to account for the distinctive role that the promisee has in the promissory practice.

As regards the felicity conditions for promising, the Obligation View does indeed appear to be the best match. For whatever else needs to be the case for a promise to be given felicitously, the communication of an intention to undertake an obligation seems to be necessarily involved. "I promise to φ but I don't intend to be obligated to φ " clearly misfires as a promise. Note that one does not need to actually *have* the intention to undertake an obligation to be communicating that intention. Just as I can communicate an intention to φ without having that intention, I can communicate an intention to obligate myself to φ without having that intention. Of course, such a communication would be deceptive, and therefore, probably morally wrong. Furthermore, the Obligation View is not committed to the idea that even in cases where the promisor has the aforementioned intention, his ultimate aim in giving the promise would have to be the aim of undertaking the obligation. It is perfectly conceivable that a promisor sincerely communicates an intention to undertake an obligation, yet regrets having to do so. Recall Owens' example featuring the neighbours from Section 3.3 above. Slob

may regret having to undertake an obligation to wash his car, but he may nonetheless decide to communicate an intention to do so, given that this is the only way of getting David off his back.

This observation can help defuse one line of criticism that Thomas Pink has directed at the Obligation View. Pink lays out the example of a doctor promising a patient to be present at an operation in order to assuage her mounting fears about the procedure.⁶⁷ As Pink suggests, in seeking this assurance, neither the patient nor the doctor need to be explicitly motivated by thoughts of obligation. Pink claims that “in making my promise my intention will be to offer the patient precisely what she wants — not an obligation on my part to be present, but my actual presence, with prior assurance that I will in fact deliver on the offer.” (ibid.)

In response, it should first be noted that on a very natural and widely shared understanding, it is precisely my being obligated as a result of my promise that provides assurance to my patient that I will perform the promised act. In absence of this, we are, at the very least, owed an alternative explanation of precisely how the act of promising is to generate the desired assurance. Pink suggests that the doctor may be motivated to be present simply by the thought that he has *given his word*.⁶⁸ If this is not supposed to be a simple restatement of the fact that one has promised (which it very much appears to be), then this motivation is at least in need of further unpacking. Whether it is possible to do so without collapsing this fact into the fact that one has promised, or revealing some sort of normatively flavoured motivation after all, seems at least highly doubtful. Perhaps, however, a plausible alternative story can be offered here. Perhaps I know that my patient is an eccentric statistician and will simply be assured by my having given a promise in conjunction with some statistical evidence – he knows that doctors who utter the words “I promise” are simply statistically more likely to actually show up at the operation, and therefore feels safer once the doctor has uttered them.⁶⁹

Even granting that the kind of situation envisaged by Pink is possible, however, the fact that the reason for my giving this specific promise is neither here nor there with regards to undertaking an obligation does not show that I do not communicate an intention to undertake an obligation by giving a promise. As I have just laid out, the

⁶⁷ Pink 2009, p. 392.

⁶⁸ Ibid. p. 393

⁶⁹ Let us set aside the question of whether it is rational of the patient to be assured by such statistical evidence.

Obligation View is not an account of what the promisor's ultimate aims are when giving promises. Instead, it just holds that a certain thing, the intention to undertake an obligation, is necessarily communicated with every promise.

As noted above, the most direct way to challenge this claim is by providing a case of a promise in which that the intention thought to be essential by the view is explicitly denied in the course of the offering of a felicitous, valid promise. In other words, what is needed to challenge the Obligation View is a situation in which it fails Alston's test. Pink's doctor case does not appear to do this. Nothing in his description of the situation between doctor and patient seems to me to substantially reduce the queerness that would be inherent in an utterance of "I promise to be there but I don't intend to be obligated to be there" by the doctor.

A more serious challenge (avoiding the problems of Pink's example) is perhaps posed by the possibility of the nihilist or skeptic about promissory obligation. Imagine that a person is convinced by philosophical arguments of either a wide-reaching moral nihilism, or instead a more limited nihilism about promissory obligation. But even here the Obligation View seems to me to come out unscathed. Of course, nothing prevents the nihilist from still performing the moves of the promising game. He may utter the words "I promise", and he may even "keep his promise", in the sense of performing the promised act. Nonetheless, there is something deceptive about a promise offered by such a person, even if they firmly intend to perform the promised act, and wish to communicate this to the promisee via their promise. If I find out as the promisee that even though the action was performed, the nihilist promisor at no point considered me to have any claim on his performing the action, I may rightfully feel cheated and disrespected in spite of the performance.

We can make this point clear by again applying Alston's Test. "I promise to do that thing for you, but you know what I think about promises –there's no special reason at all to keep them" appears to me not to be a felicitous speech act. Perhaps the promisor and promisee can by mutual agreement become engaged in some kind of mock-promissory practice, where they each go through the motions of promising, fully believing that all of them are completely normatively inert. This kind of imitation of a promissory practice is of course at least conceptually possible, even among a community that completely embraces nihilism. These people, however, would not be engaging in real promising. Even though nihilists of course also have an interest in forming well-based opinions about the future behaviour of others, I cannot see why

they would have any reason to continuously engage in a practice bearing resemblance to our actual promissory practice. In view of the perceived impossibility of ever affecting any normative change through the moves constitutive of our promissory practice, sticking to a system of making these moves loses its point.

5.3

Finally, and very briefly, I will return to the role of the promisee. With respect to this, the Obligation View seems to me to again deliver the right verdict. An obligation is an essentially bilateral matter, connecting two parties to each other through an interlocking system of claims on the part of the obligated party and rights on the part of the party which the obligation is directed at.⁷⁰ In understanding promises as invitations to establish these sort of relations, the Obligation View neatly captures the important bilateral aspect to promising. At the same time, it does not do so at the cost of according an implausibly strong role to the promisee. The promisee is the recipient of the promisor's invitation to obligate herself, allowing for a naturally more passive role. Once the promissory bond is established, however, the promisee finds herself in a position of more active empowerment, since she is now holding a claim against the promisor. The promisor is, in a limited, though nonetheless important sense, beholden to her. The promisee's is a position of power, and this is a position we might sometimes not want to take – not least because having a power also means having a responsibility to not exercise it badly (by failing to release a promisor when the situation changes, for example). As Seana Shiffrin puts it “Promisees have a clear interest in being able to avoid the sometimes charged relation of moral debtor to the promisor”.⁷¹ Given this, it is not surprising that the promisee is vested with a power to reject the promise or release the promisor.

The essentially directed notion of an obligation with all that it entails thus is an excellent fit for explaining the distribution of roles between promisor and promisee, both with regards to the establishment of the promissory bond and its concomitant powers.

⁷⁰ I will have more to say about the concept of obligation in the next chapter, in Section 2.[REF].

⁷¹ Shiffrin 2008, p. 491

6) Combining the Views

Before concluding this chapter, it is worth making one last brief detour to discuss a possibility that one may think I have woefully neglected so far: combining features of some of the accounts of the nature of the promissory speech act provided to form a more complex type of view. In laying out the Obligation View, the Intention View, and the Joint Commitment View, I have focused on accounts that put their focus squarely on one singular central feature of the promissory speech act. I believe that as a matter of initial methodology, this is not a mistake. Not only are these views generally put forward in the clear-cut way I have presented them, but a discussion of them in this form also helps bring out their core features and problems. Having examined the three views in their “pure version”, however, we may ask ourselves whether a view that combines some of the three’s features will not ultimately turn out to be the best candidate.

It quickly becomes clear that the Joint Commitment View is not particularly suited to incorporation into a hybrid account. Not only does it form a tight theoretical package (further incorporating a view of the normativity of promising), it also rests on strong presuppositions that are not readily shared by any of the other views. However, we may be tempted to consider a combination of the Obligation and Intention Views. There are two possible ways to go about such a combination. Either, we can go in for a disjunctive combination, leading to what we may call a Hybrid View, or, we can go in for a conjunctive combination, leading to what we may call a Dual View of the nature of the promissory speech act.

Let us start with the Hybrid View:

(The Hybrid View) To promise S to φ is to communicate to S an intention to hereby undertake an obligation to S that one will φ *or* an intention that one will φ .

This view has the advantage of allowing us to take on board all of the cases that proved problematic for the Intention View, as well as provide a solid answer to potential extensional challenges for the Obligation View (although the latter do not appear to be particularly troubling, as I have argued in the last section). Altogether, however, the Hybrid View does not appear to me to be a convincing view of the nature of the promissory speech act, which is perhaps why we do not find anybody endorsing such a

view in the literature. Most importantly, it appears not to do justice to the fact that promises appear to us as a largely unified phenomenon. On this view, both promises that communicate an intention to φ , but no intention to undertake an obligation to φ , and promises that communicate an intention to undertake an obligation to φ , but no intention to φ are possible. However, these two types of communicative acts appear so unlike each other that it is unclear what theoretical gains are to be made by attaching the same label to them. Furthermore, the Hybrid View does little to help with the problem of accounting for the power of release that has plagued the Intention View. On the Hybrid View, just as on the Intention View, there will be cases of promises communicating an intention to φ , but no intention to undertake an obligation to φ . As far as these cases are instances of genuine promises, we should expect the promisee to be vested with a power to release the promisor from them. However, given that in the cases all that was expressed was an intention to perform the act, we are again missing an explanation of the possibility of promissory release that is inherent in the nature of the promise itself. For these reasons, the Hybrid View does not appear to me to be a theoretical option worth considering further.

Things are different with regard to the Dual View. This type of view is not only defended in the literature, it also has some important *prima facie* appeal.

(The Dual View) To promise S to φ is to both communicate to S an intention to hereby undertake an obligation to S that one will φ and an intention that one will φ .

Something along the lines of the Dual View is the view held by one of the philosophers whose work on promises has been most influential in the last decades, Tim Scanlon. Although Scanlon's focus is more squarely on the intentions of the promisee, which he takes to be indispensable for promises, his view of the issues is more nuanced, and he shows awareness of the importance of obligation to the concept of promising:

In either of these utterances ['I promise to be there at ten o'clock', or 'I will be there at ten o'clock. Trust me'], I do several things. I claim to have a certain intention. I make this claim with the clear aim of getting you to believe that I have this intention, and I do this in circumstances in which it is clear that if you do believe it then the truth of this belief will matter to you [...]. Finally, I indicate to you that I believe and take seriously the fact that, once I have declared this intention under the circumstances, and have reason to believe that you are convinced by it, it would be wrong of me not to show up (in the absence of some good

justification for failing to appear). (Scanlon 1998, pp. 306-07, see also Scanlon 1990, p. 201)

We can arrive at strong and weak versions of the Dual View, depending on how we construe the relation between the two communicative contents it holds are essential for the promissory speech act. On a weak version, communicating the intention to undertake an obligation to φ and communicating the intention to φ are simply two separate conditions for a speech act to count as a promise. On a stronger version, a speech act constitutes a promise only if the speaker seeks to undertake an obligation *through* the communication of the intention. This appears to be the line taken by Scanlon. The stronger version of the Dual View presupposes a specific kind of account of the normativity of promises, according to which the communication of an intention, and its foreseeable effects, are what underpins promissory obligation. As noted above, this Expectation Account of promissory normativity is the one endorsed by Scanlon. In Chapter 4, Section 5.4 I shall later argue, following a number of others, that the idea behind the strong Dual View is subject to a fatal flaw of circularity.⁷² By assuming that the point of promises is to create obligations by the raising of expectations, the view presupposes what it is supposed to show, insofar as the promisee is supposed to expect performance because a promise, i.e. an obligation-incurring act, has been made. However, we can set this issue aside for now, since the viability of the Dual View in general does not depend on the success of its stronger version.

How does the Dual View fare in light of the arguments presented above? I will try to keep things short: the first two arguments I have above lodged against the Intention View equally hit the Dual View, while the third does not. Since the Dual View holds that the communication of an intention to perform the promised act is necessary for a promise, both kinds of cases of promising without intention laid out above in 3.2 and 3.3 represent counterexamples against the view. On the other hand, the Dual View will do a lot better than the straight Intention View to account for the power of release (see 3.4) – since it takes the intention to undertake an obligation to also be essential for promises, it allows for a straightforward account of the concomitant power of release.

Whether or not one finds the Dual View attractive thus depends crucially on one's take on the cases of supposed promising without the intention to perform. In fact, one may argue that in the end, forcing a decision between the Dual View and the Obligation

⁷² See also footnote 26 above.

View may be no more than splitting hairs. Essentially, it boils down to the question of whether or not we are willing to attach the linguistic marker “promise” to the kind of speech act performed in the example cases from 3.2 and 3.3. A defender of the Dual View could reasonably deny promise-hood to these, while still holding that they are nonetheless cases of normative-power-like speech acts that share crucial features with promises. These “almost promises”, one might say, can still be of interest to someone working in promissory normativity, just as a good understanding of the normative relevance of promises can be crucial to our understanding of the normative relevance of these speech acts. Though it comes naturally to me to describe the envisioned cases as real promises (in particular the promise to give up smoking), I would not be fundamentally at odds with someone taking such a view. What the preceding discussion bears out, and what will be crucial for our discussion of promissory normativity that we will embark on subsequently, is the following: whatever kind of speech act promising is, it essentially involves the communication of an intention to undertake an obligation.

5.5

I thus think that in some shape or form, the Obligation View is the most attractive view of the nature of the promissory speech act, or at least an indispensable part of it. This view not only does not fall prey to the same problems as its main competitors, the (pure) Intention View and the Joint Commitment View, it is furthermore corroborated by an independently plausible rationale about the way promises are employed. Whether or not one believes promises to *also* involve the communication of an intention to perform the promised act or not, the communication of a willingness to undertake an obligation to perform the promised act is an essential feature of the promissory speech act.

To conclude the discussion of this chapter, let me note that the whole story about the nature of the promissory speech act may not yet be told with the acceptance of the Obligation View. Once we accept this view, there might be a further question as to what exactly is the point of a speech act with the specific features characteristic of promises. I have above outlined a number of different purposes that promises may serve. It may be that the specific type of normative relation incurred by promises, and the specific way that this relation is brought about (and managed thereafter by the concomitant powers), is best explained by one paradigmatic purpose, one value that is served by the existence of the normative-power-like speech act of promising. I think this is the case,

and will defend a view that it is *engendering relationships of trust* towards the end of this work, in Chapter 9.

For now, the less specific truth is enough: Promises essentially are, or at least involve, communications of intentions to undertake obligations. Though this does not by itself tell us anything about the normativity of promising, as the discussion of the Strong Obligation View has shown, this result can nonetheless play an important role in discussions of the normativity of promising. In the next chapter, I will show that, when combined with some powerful intuitions about when promises bind, it can be employed in an argument in support of one view of promissory normativity in particular: promissory non-reductivism.

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