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On the Fine Structure of Promising

1 Introduction

The human practice of promising has fascinated or disturbed a wide range of philosophers. For Hume (1739, III.ii), promising was one of the crucial test cases for his theory of artificial virtues; Nietzsche (1886) went so far as to characterise man as the animal capable of promising. Explaining the moral force of promises has been and remained an important and difficult problem for moral philosophy, as can be seen by the vast literature on the subject.¹ The practice of promising has also been of central importance for discussions about the nature of rules (Rawls 1955) and in the development of speech act theory (Searle 1969).

Promising is thus an important topic of philosophy, but it differs from many other important topics in terms of its phenomenological accessibility. For many philosophically central notions such as knowledge, truth, and the morally good, any approach to these topics will first have to address the difficult questions of how to discern instances, and even whether there are any. Understanding promising is easier in this respect, since we surely know a promise when we see one. Promising is a common, everyday phenomenon, not some abstract notion or theoretical concept. Thus, the main philosophical questions about promising are, firstly, questions concerning the detailed phenomenology of that practice and, secondly, the question of how it works. What is the nature, and what are the internal workings, of a practice through which we can freely bind ourselves?

The aim of this paper is to show how a broadly action-theoretic view on the practice of promising, combined with an analytically oriented interest in its structural aspects, can help discern the fine structure of promising

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¹ Some recent relevant papers include Anscombe (1969), Raz (1977), Scanlon (1990), and Kolodny & Wallace (2003).

and thus, elucidate how promises have their moral force and bindingness. In our approach, we combine the tradition of detailed phenomenological description of promising, as exemplified by Reinach (1913) and Melden (1977), with attempts at discerning structural features of that practice, both from a less formal (Thomson 1990; Thompson 2004) and a more formal (Belnap et al. 2001) point of view. Our main focus will be the role of the promisee in the creation of a binding promise: We will propose to view promising in a theoretical framework that shows a promise to be what we will call a *social deontic action* in which both the promisor and the promisee play an active role.

The paper is structured as follows: In Section 2, we give a phenomenological overview of the practice of promising that highlights those points that will be important for our later discussion. In Section 3, we spell out the presuppositions of the theoretical framework we will employ. These presuppositions pertain to action theory and to a theory of normative relations, or directed rights and duties. In Section 4, we use that theoretical framework to describe the concept of a deontic action, i.e., an action through which normative relations are altered directly. In Section 5, we discuss the action-theoretic fine structure of promising. Our discussion will enable us finally to identify promising as a social deontic action, thus making good our main point: In promising, both promisor and promisee play an active role.

2 Promising: A Phenomenological Overview

As we pointed out in the introduction, to view promising as a philosophical problem is not to ask what it *might be*, but to ask what it *is*: we can take our practice of promising as given, and the task will be to explain and to deepen (and, perhaps, also to correct in some aspects) our common understanding of that practice. Our methodological starting point is therefore broadly descriptive. In this respect, studying the philosophy of promising is like studying the philosophy of demonstratives rather than asking philosophical questions about truth: We are after a concrete phenomenon that we are familiar with outside any philosophical discussions—even though the phenomenon turns out to be one that is philosophically especially interesting. From this broadly descriptive starting point, it is clear that any “error theory” of promising is ruled out methodologically. As we have a philosophy-independent handle on the phenomenon in question, no good philosophical analysis can afford to claim that there is, after all, no such thing, or that most of what we hold to be true about it, is in fact false. There may be elusive philosophical concepts, but promising is certainly not one of them.

Our first task is therefore to give a rich and interesting description of

the phenomenon of promising—a phenomenology of promising, if you wish, but not necessarily one in the spirit of Husserl.² We will address five questions related to promising, moving from external to internal aspects: (1) When are promises made? (2) How are they made? (3) What is promised? (4) What happens in a promise? And finally: (5) What is the moral relevance of a promise?

2.1 When Are Promises Made?

Promising is an everyday phenomenon, but certainly not every situation is one in which it would be appropriate to make a promise. To begin with, at least two people have to communicate in order to create a promise. Normally, promisor and promisee know each other to some extent. With reference to Luhmann's (1979) conception of trust, one can make the point that accepting a promise presupposes (and not just creates) a certain amount of trust of the promisee in the promisor, which trust may be based on personal knowledge, special social roles, or specific aspects of the situation. Thus, strangers normally will not offer or accept promises, but this may happen on board a train (e.g., to watch somebody's luggage).

A promise can be offered by the promisor, but it is also quite common for the promisee to ask for a promise. In some situations, promises are also exchanged, i.e., each of the parties involved is both promisor and promisee. Promising can be a way of, or a substitute for, helping somebody: If actual help is currently impossible, promising to help is often the next best thing to do. Promising and helping are deeply connected in another way too: in promising, the promisor in some way makes available to the promisee something altogether unattainable without his aid, viz., one of his own future actions.

2.2 How Are Promises Made?

There are paradigm cases of promising, i.e., uses of the explicit phrase "I, A, hereby promise to you, B, to do X." But unlike oaths and other formally regimented practices, promising is not bound to the use of a specific phrase. Nor is it bound to language use: Given appropriate circumstances,

² Interestingly, one of the best phenomenological descriptions of promising available to this date is the one given by Reinach (1913), who was a member of Husserl's phenomenological movement in the Göttingen days (cf. Mulligan [1987] for an overview of Reinach's work). This should however not necessarily bias us towards a phenomenological methodology of *Wesensschau*—it may be enough to concede that Reinach was a gifted, analytically minded philosopher.

one might promise by nodding, or just by looking the promisee in the eye in a specific way. Communication is clearly a prerequisite for promising, but there appear to be few constraints as to the actual form.

This observation already shows that the unity of the concept of promising cannot lie in *how* it is done, but must lie in *what* is done, what is brought about.

2.3 What Is the Content of Promises?

Promises typically pertain to some future action (or omission) by the promisor that (a) the promisor is actually able to carry through and (b) that the promisee wants the promisor to do, or such that it would be good for the promisee if the promisor did it. A crucial question is how much of this belongs to our concept of a promise, and how much of it can be explained (by well-known Gricean maneuvers) pragmatically. It appears to be methodologically safest not to demand too much at this point. Of course there are cases in which it is debatable on grounds of content whether a promise has been made, but there seem to be clear cases of promises that do not fulfil (a) or (b). Thus, as to (a), the promisor may be mistaken about his ability to fulfil the promise, or he may, after the promise has been made, become incapable of fulfilling it. In these cases we would not say that no promise has been made (even though the promisor may be excused). Demand (b) needs to be disambiguated—a promisee may not know what is good for her, or may be in error about this. Furthermore, people can accept a promise tactically and not care about content. Raz (1977, 213) gives the example of “a man who solicits a promise, hoping and believing that it will be broken, in order to prove to a certain lady how unreliable the promisor is.” Here we would say that a promise has been made, quite irrespective of its content.

Thus, while there are pragmatic constraints, it seems that our concept of promising is quite flexible with respect to content.

2.4 What Happens in a Promise?

Through a successful promise, the promisee acquires a claim against the promisor. Thus, a new normative relation between promisor and promisee is created that will normally not have existed before.³ The promisor’s

³ A difficult question at this point is whether one can successfully promise what one owes the promisee anyway, and if in such a case a *new* normative relation is created. Phenomenologically, that appears to be the case. E.g., A can take B’s book, thus

behaviour is normatively constrained through the promise: Some of his actions will count as in accord with the promise, others will count as a violation (and most of his actions, to be sure, will be neutral with respect to this distinction).

In Hohfeldian terminology (Hohfeld 1919), the promisee acquires a claim-right against the promisor, which corresponds to a duty of the promisor's towards the promisee.

After the promise, the newly created relation shows an asymmetry typical of normative relations in general: The promisor is no longer free to withdraw from the promise, while the promisee is free to waive his right (not execute it) or even relinquish it (make it disappear). The promisor is bound by his word, and the promisee alone is free to release him.

2.5 What Is the Moral Relevance of a Promise?

Calling the relation between promisor and promisee created through a promise “normative” is an underspecification: We assume that the normativity involved is of the specifically moral kind. It certainly isn't primarily the normativity of positive law, since most promises have no legal consequences, and if they do, that is something over and above the morally relevant promise itself.⁴

In assessing the moral import of promises one can distinguish two separate issues. The one pertains to the moment at which the promise is made: One ought not to make lying promises. It is quite difficult to say what a lying promise is exactly. Most characterisations assume that A makes a lying promise if she promises to do X while at that moment she does not intend to do X. This is however phenomenologically inadequate: One may promise something without intending to do it at that time, knowing that, because one promised, one will later on form the corresponding intention. That does not seem morally objectionable. A more adequate characterisation of lying promises may perhaps be given in terms of the attitude of the promisor towards the normative relation created through the promise: A lying promise may be characterised as one in which the relation is created with the intention of not honouring it.

Apart from the question of lying promises, the other moral aspect of

creating an obligation towards B to give it back (because it is B's), and A can still promise to give it back on top of that. If A does not give it back, he appears to have violated *two* normative claims of B's, both with the same content, but perhaps of different stringency.

⁴ Thus, e.g., Oakey & Lynch (2000), in their study of the effects of promises in business transactions, distinguish between legally unenforceable promises and legally enforceable promises through which a contract is created.

promises is that they ought to be fulfilled; one should keep one's word. This demand is independent from the first one: Even false promises are promises,⁵ and as such, they should be kept.

Keeping one's promise means to bring about what was promised, thereby honouring the moral relation created through the promise. As with other moral relations, there are circumstances in which one ought not to fulfil a certain promise one has made; e.g., when obligations conflict, and sometimes also for merely prudential reasons. But unless such special circumstances obtain, promises ought to be kept.

3 Theoretical Presuppositions

Promising has been shown to be a phenomenologically rich human practice. Which theoretical framework will be adequate to capture its relevant aspects? In this section we will spell out our theoretical presuppositions with respect to action theory (Section 3.1) and the theory of normative relations (Section 3.2).

3.1 Action-Theoretic Presuppositions

To promise is to act. So much can be taken for granted. However, it is not easy to spell out what type of action is involved in promising.

Promising has been an important example for speech act theory (Searle 1969), and has been compared to other performative speech acts, like naming a ship. Performatives are verbs in the first person singular present tense that can be combined with "hereby." It is difficult to explain how performatives work. Thus, "I hereby name this ship *Immeressen*," like "I hereby promise to give you five dollars," both look as if they describe an action, but strangely, the action apparently described is the one actually performed by uttering those very sentences.

Classifying promising as a performative speech act is a step in the right direction, since it amounts to abandoning the idea that promising is a report of some mysterious inward happening. But it cannot be the end of the matter. Firstly, calling something a performative is not yet an explanation of how it works, but rather a restatement of the problem. And secondly, the analogy with other performatives is somewhat misleading, since

⁵ Note that "false" here functions attributively, as in "false proposition," not as an alienans modifier as in "false friend." In this respect, promising is quite similar to asserting. Thomson (1990) suggests to describe both serious assertions and promises as forms of *word-giving*. Belnap et al. (2001) give a formal analysis of the distinction involved, which analysis is further developed in Müller (2006).

most explicit performatives only work within a fixed institution. Promising, however, does not seem to require subscription to any “institution of promising” (cf. Scanlon 1990).

To get a better grip on promising as an action, it is helpful to ask who acts, and what those involved do. For the latter question, one can take a lead from Kenny (1970) and distinguish the *immediate result* of an action from the action’s *consequences*. The result of an action is that which defines the criterion of success of that action, i.e., that without which what was done was a mere try. Result and action thus stand in an internal relation. In contradistinction, the relation between an action and its consequences is external (e.g., causal or via “counts as”): it is possible to imagine that the action had been performed successfully and yet not had the consequences that in fact ensued.

Employing this distinction, we will later on classify promising as a deontic action, i.e., an action whose result (rather than consequence) is the alteration of a normative relation.

3.2 A Theory of Normative Relations

We have already stated that promising creates new moral relations. Moral relations are a class of normative relations in the sense of Thompson (2004), who gives a useful, general theory of normativity.

According to Thompson, one needs to distinguish relational, or bipolar, normativity from non-relational, or monadic, normativity. In the law, the former is typical of private law: A has a claim against B, C has a contract with D, etc. These are all legal relations; Hohfeld’s (1919) overview of this type of normativity has been quite influential. On the other hand, criminal law is not so much about legal relations between persons as about legally relevant actions of a single person (even if most of them involve another person); most of deontic logic deals with this type of normativity. Thus positive law shows both monadic and bipolar (non-relational and relational) normativity. The same holds true, so Thompson, of morality. There are moral relations (A has a moral claim against B; C wrongs D), and there are non-relational moral facts (A has a duty to do X; B has done wrong). Thompson forcefully argues that there are fewer formal interrelations between these two types of normativity than one might think: there are no strict laws connecting monadic and bipolar normativity (*pace* Makinson [1986]). Thompson also points out that the formal structure of relational vs. non-relational normativity can be found in many normative spheres. Apart from morality and positive law, there are, e.g., etiquette and the rules of various games, all creating their own sphere of relational and non-relational normativity. Many of our intuitions about promising can be sharpened if one takes care to distinguish between relational and

non-relational normativity. Thus, the question of whether promises ought to be kept turns out to be underspecified. Read in a relational way, it amounts to asking whether a promise creates a moral relation between the promisor and the promisee. The answer is surely yes: As we argued above, to promise *is* to create a (new) moral relation. If the question is read in a non-relational way, however, it amounts to asking whether, given that A promises B to do X, it is the morally right thing for A to do X. It is clear that there are cases where this is not so. E.g., A may have promised B something that is morally wrong. Then, despite the moral relation to B, A should normally not do it. Similarly, circumstances may simply be such that it turns out to be the right thing for A not to honour a moral relation to B. E.g., if A has promised B to come for tea, and on the way sees a child drowning in a pond, A should certainly save the child (even if the child has no claim against A to be saved!)—and B should excuse A for breaking his promise. (Melden [1977, Chap. II] spells this out in careful detail.)

4 Deontic Actions

We have already hinted at the idea that we wish to classify promising as a deontic action, i.e. as one whose *result* (rather than mere consequence) it is that a normative relation is altered (more specifically: a new moral relation comes to be).

Many of our actions (and even some things that just happen to us) have normative *consequences*. Hurt somebody, and it becomes your duty towards that person to make good. Accept the role of chairperson, and it becomes your duty to keep the schedule. Turn 18 and you acquire the right to vote. The class of actions or happenings with normative consequences does not deserve a special name, for it is ill delineated: almost any action (or mere event) can have normative consequences if the circumstances are right.

On the other hand, actions that have normative changes as their *result* appear to be special. Let us call them *deontic* actions. The first question is whether there are any. Phenomenologically, there are at least three plausible candidates: (1) Waiving a claim, (2) consenting and authorising, and (3) promising.

(1) There are various ways in which a claim that one has may disappear before it is fulfilled. E.g., one may act in such a way that one forfeits the claim. In that case, the disappearance of the claim will be a mere (unwanted) consequence of one's action. (Attack somebody, and you forfeit your claim against that person that she honour your bodily integrity—that is what is behind self-defense.) Waiving a claim is unlike forfeiting it: if one waives a claim that one has against someone, one *wants* it to disappear

(usually for the benefit of the other party), and unless the claim really disappears, one hasn't successfully waived it.

(2) Consenting and authorising are similar: There are actions whose consequences are the same, but in consenting and authorising, the normative change is the result, not just the consequence: unless there is a normative change, the action was not successful.

(3) Our most prominent example is of course promising. Does promising qualify? First, clearly there is a normative change through a promise: The promisee acquires a new claim against the promisor. Could it be that this change is a mere consequence of the promise? On inspection, that turns out not to be the case: One cannot be said to have promised unless the claim has been created. If A says "I promise" and no claim ensues, A just *tried* to promise, but did not succeed.

Thus, promising appears to be a paradigm example of deontic actions. The remaining worry is how there could possibly *be* any deontic actions: what could the internal structure of such an action look like? That worry has been spelled out, e.g., by Hume in his theory of artificial virtues (Hume, 1739, III.ii.5): According to Hume, promising must amount to willing an obligation, but the concept of willing an obligation appears to be hopelessly circular. We will now look at the fine structure of promising to dispel Hume's worry and to give a fuller picture of promising that is phenomenologically adequate and theoretically illuminating.

5 On the Fine Structure of Promising as a *Social* Deontic Action

We said above that to promise was to act, and we have identified the kind of action involved as a deontic action. Above we also asked who was involved in this action. We can now address that question. The main issue is which role is played by the promisee. Is the promisee a mere bystander, or is she actively involved in creating the promise? If she is involved, her involvement will be that of actively accepting the promise. Thus, our question can be posed as the question of whether promises need to be accepted. If yes, promising is an action that involves two persons actively; if not, it is an action performed by the promisor only.

Phenomenologically, it is clear that the promisee plays some role in the creation of a promise, even though that role may be rather weak. Minimally, the promisee must understand what the promisor does, and it is also clear that the promisee has some sort of negative control: she can inhibit the promise by explicitly rejecting it.⁶

⁶ This fact is the grain of truth behind the content condition on promises discussed in Section 2.3 above: If the promisee does not want what is promised, she can block the promise. However, as we saw, there are cases in which promisees accept promises whose content they do not want.

Most accounts of promising deny any active role of the promisee. The speech act account of Searle's mentions the addressee of a promise in specifying content restrictions, "normal input and output conditions," and Griecian intentions (Searle 1969, 57-61), but does not discuss acceptance. Hume (1739) does not mention acceptance at all either. And even Reinach (1913, 170-172), who discusses the question of acceptance explicitly, comes to the conclusion that an act of acceptance of a promise does not appear to be necessary. Can this be right?

We may distinguish two models for accounting for the role of the promisee and for her negative control over the promise:

Model 1: Once the promisor has uttered the words "I promise ..." (in the right conditions—however these conditions are to be spelled out), the promise is created. The promisee is *later on* free to revoke the promise.

Model 2: The promisee plays an active role in the creation of a promise: She needs to accept in order for the promise to become effective. The promisor alone cannot create the claim against himself.

Model 1 is the orthodox view of the matter (see above). However, we will argue that model 2 is the correct account. Our argument will consider the temporal fine structure of a promise that is not accepted. Thus, let the facts be as follows:

At t_1 , A says "I promise to pick you up at the station tonight"; at t_2 (somewhat later), B says "No thanks." There is agreement that after t_2 , A is under no obligation towards B to pick her up at the station. Now t_2 must be properly later than t_1 : B first needs to understand what A is after before she can react. The crucial question is what goes on between t_1 and t_2 . Note that the duration of that period can play no fundamental role for the argument.

On model 1, between t_1 and t_2 , A is already under an obligation towards B, whereas on model 2, that is not so. Now if A really is under an obligation, there must be situations in which that obligation can have an effect—otherwise it should be dismissed as a mere fiction. (The obligation that would come into effect if B accepted the promise at t_2 certainly would have an effect and would not be a fiction.) What kind of effect could that purported obligation have between t_1 and t_2 ?

For one thing, on model 1, B would be in a position to demand fulfilment of the promise even before t_2 . However, demanding fulfilment may be viewed as incorporating acceptance, so that it will be hard to find cases in which B has clearly not (yet) accepted a promise and still demands fulfilment. This is all the more so since usually, the time between t_1 and t_2 will be short, while the time from t_1 until the fulfilment of the promise is an issue, is usually much longer.

There are cases in which the situation is clearer. The crucial cases to look at are those in which at t_2 , B tries to revoke the promise, but fails to do so. Since revoking the promise is an (empirical) action, it can fail for

all sorts of reasons—B may lose her voice, A may have run away, etc. On model 2, these cases of failure to accept are cases in which no promise is made successfully, and no moral relation is created. On model 1, however, in these cases of failure, the obligation is created at t_1 and will persist after t_2 . That appears to be highly implausible: it would amount to assuming that B's failure at t_2 made no difference at all, as if B hadn't even tried.

Still, there may be problems with model 2's demand of explicit acceptance. Phenomenologically, explicit acceptance is rare, and Reinach makes a point that may bear some weight too: Since the promise only makes the promisor's life more complicated in putting him under a new obligation, it is not implausible to suppose that he can do that without anybody else's aid (cf. Reinach 1913, 172).

As to Reinach's point, we will dismiss it because no clear argument is given.⁷ It remains to deal with the observation that explicit acceptance is rare. We believe that two points can be made. First, many⁸ promises are asked for, not offered. "Do you promise?" is a question often heard. If the promisee asks for a promise, we may assume that acceptance is automatic. It makes no sense pragmatically to ask for something and then not accept it (barring special cases in which one tries to mislead one's party). Further considerations of pragmatic aspects of promises can help to explain the absence of explicit acceptance statements for promises offered freely, too. The promisee is always free to revoke the promise, and what is promised is, in most cases, something that is good for the promisee. Thus, not disagreeing may carry the (Gricean) implicature of agreement, i.e., acceptance. This is however only an implicature, not an entailment, since Grice's cancellation test shows that one may still disagree explicitly.

Considerations of the pragmatics of promising can thus help to explain why promises need to be accepted, even though explicit acceptance is rare. Similar pragmatic considerations can help explain the apparent content restrictions discussed in Section 2.3.

Promising thus turns out to be a *social deontic action*: It takes two to make a promise and thereby create a new moral relation between promisor and promisee. Promising is therefore a different type of deontic action than waiving or relinquishing a right, which one can surely do by oneself.

A more detailed picture of the offer / acceptance dynamics of promising can be given if one employs Hohfeld's (1919) distinctions between

⁷ Even though Reinach claims that acceptance is not needed, he appears not to be too sure about this. This is clear from the hesitant language that he employs in his discussion of acceptance, which is rather unusual for the rest of his work, which is written in a straightforwardly affirmative style.

⁸ If not: most. Empirical data on promising are astonishingly hard to come by.

claims and powers.⁹ Claims are normative relations; powers are capacities to create (or revoke, or change) such relations. What does A do in offering a promise? Following Belnap, the important question to ask is: How is the world different, how has the world changed through what A has done? While A has not given B a claim against her, it is plausible to assume that A has given B a (new) power to create such a claim. In accepting the promise, B then employs that power and thus really creates the respective claim. This B can do by herself, since she has that power all by herself.

This account shows promising to be a two-stage affair, making the active role of both parties clearer than the offer / acceptance picture: At stage 1, A actively empowers B to enact a claim against him. At stage 2, B actively employs that power to create the respective claim. If B does not do it, no claim is created. Pragmatic considerations can again be cited to the effect that B's employment of her power may be quasi-automatic in situations in which she asked for that power (i.e., asked for the promise), or in which she only benefits from exerting it and can undo the result (i.e., her claim) at her leisure.

Viewed in this way, promising is but one aspect of the rich dynamics of normative powers, (monadic) facts and (bipolar) relations. The overall structure of these dynamics has yet to be explored (Müller 2007). This paper has shown that such an exploration will be worth while, since it will allow us to broaden our view on normativity and the important role it plays in our lives.

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⁹ In the literature on promising, that point has been observed by Thomson (1990) and Belnap et al. (2001, Chap. 5).

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