

5

Promissory Obligation

Against a Unified Account

HALLIE LIBERTO

What sort of moral obligation is promissory obligation? Philosophers have produced a variety of accounts of the normative relationship between a promise-maker and a promisee. So far, all contemporary theorists have pursued unified theories—accounts that attempt to explain all instances of promissory obligation. Each author motivates the need for a new theory of promissory obligation by first supplying counterexamples to existing theories: cases in which promissory obligation arises but cannot be accounted for by a particular theory. I am going to begin this paper in a similar fashion—presenting cases that pose problems for particular theories. However, instead of following up this critique by presenting my own unified account of promissory obligation, I argue against the unification endeavor. I provide an argument for the view that there is no single type of moral obligation that arises from successful promises.

The question of this paper “What sort of moral obligation is promissory obligation?” is distinct from many other questions about promises. For instance, it is distinct from the question: What social circumstances, if any, are needed to give rise to legitimate promises? It is distinct from the question: What sort of human interests do practices of promise-making promote? Further still, it is distinct from the question: What conditions (e.g., felicity conditions) are required for a promise to succeed and not misfire? Though these are all important questions, and some of their answers might bear on the question of this paper, these questions will not be answered here.

I shall assume very little about promises for the purposes of this project. A promise is a speech act made by an individual, the promisor. The utterance does not just communicate some content from the

Promissory Obligation: Against a Unified Account 103

speaker to the listener. It does something more.¹ A christening is a speech act, as it *attaches* a name to a particular baby or sea-faring vessel. A marriage is a speech act; when an officiant declares two people married, she *makes* them married with those words. A promise is another one of the many ways in which we can do things with words. The thing that a promise *does* is generate a new moral obligation on the part of the promisor. So, for the sake of this paper, I will assume that a promise is only successful if it generates a new moral obligation. After all, promises are speech acts, speech acts *do* something; generating new moral obligations is what promises do.

Some theories of promising characterize this obligation as free-floating—an obligation that, if flouted, generates a wrong done to no one in particular. Utilitarian theories of promising operate in this way. On certain other accounts that ground promissory obligation in the value of a social practice, the wrong of promise-breaking might be done to all others who participate in the social practice. For instance, one of the ways that John Rawls characterizes the wrong of promise-breaking is by calling it a form of free-riding.² A promise-breaker enjoys the benefits of living in a society in which people make and keep promises, count on each other's word, etc. However, the promise-breaker does not pay in to the system from which he benefits, in the same way a turnstile jumper pays nothing for his subway ride, but benefits from all of the other passengers' payments. More recent theories of promising characterize promissory obligation as a *directed* duty. That is, the duty is owed to a particular person or persons, the promisee(s), and if the promise is broken, the promisee is the person wronged.³ The success of the promise might well require mutual understanding on the part of the promisor and the promisee—an understanding that an obligation has been

¹ This characterization started with J. L. Austin (1975 [1955]: 19). Austin's verdict that promises are performatives has been widely accepted.

² Rawls (1971: 344–50). See also Rawls (1999: 60, 63).

³ One way of categorizing the views that I am handling in this paper is to point to those views that are compatible with Stephen Darwall's second-personal perspective—a view wherein there is a special relationship of accountability between the promisor and the promisee. All of the models that I describe (could) involve this accountability (Darwall 2006, 2011). For other theorists who advance the directed duty account of promissory obligation whom I do not address in this work, see Ross (1930: 22); Warnock (1971: 30); MacCormick (1972), and Atiyah (1981: 71–4, 86).

incurred, and that understanding might come from their acquaintance with the social practice. However, the directed duty accounts do not ground the obligation in the practice. In this paper I will focus on the directed duty accounts of promissory obligation. However, as you will find at the end of the paper, I do not hold the two types of accounts to be incompatible.

As a final matter of scope, I will limit my discussion to relatively contemporary theories of promissory obligation—the major players on the field today. Though the accounts of promising debuted by Thomas Hobbes and David Hume are fascinating and get an awful lot correct, their best parts are adopted and expanded by the contemporary theorists.

1. COUNTEREXAMPLES TO THE COMPREHENSIVENESS OF CONTEMPORARY THEORIES

The prominent, contemporary theories are the following: the Expectation model;⁴ the Reliance model; the Authority model; and the Trust model.⁵ Instead of devoting a portion of this paper singularly to the exposition of these theories, I will explain and address each in turn, as a means of relaying the popular counterexamples to the accounts. I will present and critique the objections already conjured by Nic Southwood, Daniel Friedrich, Elinor Mason, and David Owens, as well as present my own counterexamples. Together these objections demonstrate that these accounts are not fully comprehensive theories of promissory obligation.

Tim Scanlon grounds promissory obligation in expectation. The expectation is generated by the promisor in the mind of the promisee. The promisee must prefer what is promised, and believe that the promisor intends to perform what is promised. A broken promise frustrates the expectations generated by the promisor in the mind of the promisee, and it is this frustration of generated expectation, and the harm that it causes, that renders promise-breaking wrongful. Scanlon

⁴ I refrain from using the more popular title “Assurance” to refer to this view because I worry that Thomson’s reliance view could also be characterized as a type of view that grounds promissory obligation in assurance, and I would like to keep the two views distinct.

⁵ For the Trust model see Friedrich and Southwood (2011). For the Reliance model see Thomson (1990). For the Authority model see Owens (2006, 2012). For the Expectation model, see Scanlon (1998).

Promissory Obligation: Against a Unified Account 105

proposes Principle F to describe the conditions under which a promise is successfully made and a promissory obligation generated.

Principle F: If (1) X voluntarily and intentionally leads Y to expect that X will f (unless Y consents to X's not doing so); (2) X knows that Y wants to be assured of this; (3) X acts with the aim of providing this assurance, and has good reason to believe that he or she has done so; (4) Y knows that X has the beliefs and intentions just described; (5) X intends for Y to know this, and knows that Y does know it; and (6) Y knows that X has this knowledge and intent; then, in the absence of special justification, X must f unless Y consents to f's not being done.⁶

Nic Southwood and Daniel Friedrich tell the story of a man, Albert, whose wife, Bertha, has cheated on him many times. She tells him that she will be faithful if only he gives her one more chance. Albert does not expect that she will be faithful this time, and tells her so. Nonetheless, he agrees to give her one more chance. Friedrich and Southwood correctly say that Bertha's invitation to Albert to trust her this one last time generates promissory obligation in her not to cheat on him again.⁷ Yet, on Scanlon's view, this commitment cannot count as a promise.

David Owens is concerned that Scanlon's Expectation model will call certain utterances promises that are not true promises. Consider his case, *Bus to Protest*, which I'll briefly describe here: Imagine that your friend wants to know whether you require a seat on a bus that he is taking to a protest at the end of the week. You tell your friend that you assign a very high probability to deciding to go along on the trip, though you cannot be sure. You tell your friend to decide whether to save a seat for you on the basis of that information. In this case, Owens says that you have generated an expectation on the part of the promisee, but you have not promised to go to the protest on the bus. You have merely rendered a prediction that you will go.⁸ Owens uses this case to demonstrate the difference between giving someone information in the form of a prediction, and giving that same person normative authority over one in the form of a promise, which generates a new obligation. In the bus-riding case, Owens contends that you do not wrong your friend in deciding not

⁶ Scanlon (1998: 304).

⁷ Friedrich and Southwood (2011: 283–4).

⁸ Owens (2006: 54–6).

to ride the bus to the protest, even though you predicted that you would go on the trip.

One might object that the degree of prediction afforded by each utterance could explain the difference in the obligations. However, Owens points out that, on occasion, predictions provide better grounding for expectation than do promises. Imagine that in the bus case, just described, you qualify your promise by first saying, “Now, I know that I have a bad track record with promises, but, I promise . . .” It seems that, in this case, a confident prediction gives your promisee better information about your future actions.

Scanlon’s account of promising has another problem apart from failing to explain all of those cases we believe to be genuine promises. Scanlon presented this problem himself, and many other philosophers have explored and developed the concern since. In order for Scanlon’s conditions for promising to be met, it seems that there must already be an obligation stemming from the generated expectation—an obligation that can be recognized by the promisee and promisor. Hence, it is not clear what extra obligation is added by the promise.

Niko Kolodny and R. Jay Wallace and, in a later paper, Elinor Mason have argued that Scanlon has no compelling solution to this “circularity” problem. Kolodny and Wallace have presented a hybrid view that combines Scanlon’s expectation account of promissory obligation with a second obligation stemming from the value of the social practice of providing good assurance.⁹ It is this obligation arising from the social practice that gets recognized by both the promisee and the promisor. This recognition allows the two parties to fulfill the criteria for promise-making without appealing to the very obligation that the promise is meant to generate. In this way, the promise-maker is under two different obligations, and the promise-breaker commits two wrongs. Mason points out that Kolodny and Wallace have not explained how the hybrid view allows that promises generate a new kind of directed duty, since promissory obligations stemming from social practices are free-floating.¹⁰

⁹ Kolodny and Wallace (2003) Note that Mark van Roojen defends Scanlon against Kolodny and Wallace’s charge in an earlier issue of this volume (2013).

¹⁰ Mason (2005).

Promissory Obligation: Against a Unified Account 107

Judith Thomson grounds promissory obligation in an accepted invitation for the promisee to rely on the promisor. The *Reliance* model suggests that breaking a promise is wrongful because it frustrates the promisee's decision-making procedures that she used when relying on the performance of the promise.¹¹ (Again, *why* this constitutes a wrong requires a longer explanation, one that is unnecessary here.)

Before considering this view further, let me point out that Kolodny, Wallace, and Mason could try to make the same critique of circularity against Thomson that they made against Scanlon. However, I think that an important difference is that Thomson does not ground the obligation solely in the generated reliance of the promisee—something that might, by itself, be enough to explain why someone should do what he is relied upon to do. Thomson requires that the reliance be *invited*. Consider, I might rely upon you to drive me to the airport because you seem to regularly do such services for your friends, or because you have made a prediction that you will be free that morning to take me. If your behavior is extremely consistent, and if you are a very good predictor of your own future behavior, then my reliance might well be warranted. However, *you* are not warranting my reliance. My collected data are warranting my reliance. Whereas, when you invite me to rely on you, by making a promise to drive me to the airport, you yourself *warrant* the reliance. (Though we have not discussed it yet, I believe that this special role of the “invitation requirement” saves the Trust model from the circularity objection as well.)¹²

Friedrich and Southwood worry that the Reliance model cannot account for cases in which someone does not or cannot modify their behavior in light of the promise. They tell the story of Frank, lying on his deathbed, and Emily, his wife, beside him. Emily and their daughter, Gabriella, have been estranged for many years—a circumstance that brings great pain to Frank, especially as he contemplates his own

¹¹ Thomson (1990: 294–321).

¹² Seana Shiffrin worries that accounts grounded in reliance cannot explain why a promisor is bound to do something just because he said that he would—given that even a mere prediction can generate reliance. Specifically, she worries that the reliance account offers a promisee no ability to *reasonably* rely on someone's word (2008: 503). I think that adding in the invitation to rely, as Thomson does, might resolve this worry, and make the reliance reasonable. (Of course, whether a reliance is rationally reasonable might also depend upon what a promisee knows about a promisor's track record with promise-keeping—but we have discussed this problem already.)

death. As he begins to take his final breaths, Emily says, “I promise that I will make things right with Gabriella.” Frank smiles with understanding, and dies. Now, obviously in this case, Frank did not make any choices *relying* on his wife’s promise.¹³ (Assume that he had no control over the time of his own death, and was not “holding out” as it were, for just such a reassurance from Emily.) Yet, this utterance seems very much to be a promise. Emily now has a new moral reason to make things right to Gabriella: she owes it to Frank to do so.

I find this case convincing. However, if you’re skeptical about promises to the dead, and think that dead persons cannot be legitimate promisees, then we can just as easily take one of the counterexamples to the comprehensiveness of the Expectation model, modify it slightly, and use it as a counterexample to the comprehensiveness of the Reliance model. You can imagine that in *Cheating Spouse*, the husband has so little confidence in his spouse that he does not modify his own behavior in any way in light of the promise—he does not turn down any dates; he does not plan for a continued future together with the spouse. He proceeds exactly as he would if he were single, while allowing the new information (about his wife’s latest trial with fidelity) to roll in. In this case, we still think that she has made a promise and has been unfaithful to that promise if she strays.

What about David Owens’s own view? Owens argues that promises grant a promisee normative authority over a promisor. For instance, he points out that before I promise to drive you home from a party, I can decide whether or not I will take you home (should you want the ride). However, after I make the promise, it is in your moral discretion to determine whether or not I drive you home from the party.¹⁴ Owens thinks that a promise is broken when the promisor fails to allow the promisee to decide whether the promisor performs what is promised.¹⁵ Failing to allow the promisee to exercise this discretion is failing to recognize the promisee’s moral authority over the promisor. It amounts to violating a right held by the promisee, granted to the promisee via the promise.

¹³ Friedrich and Southwood (2011: 284–5).

¹⁴ Owens (2006: 53–4).

¹⁵ Owens (2012: 227).

Promissory Obligation: Against a Unified Account 109

Friedrich and Southwood think that there are cases in which a person assigns authority over his behavior to another person but has not undertaken any obligation to perform as directed. They tell the story of Henry, who hires Indira, the matchmaker, to find him the perfect spouse. Part of Indira's job is to assume authority over Henry's romantic life. Indira finds Henry a match. Friedrich and Southwood point out that, in the event that Henry declines to marry the person selected by Indira, Henry has not *wronged* Indira. Hence, granting someone authority over you does not amount to a promise.¹⁶

Friedrich and Southwood also point to the Frank and Emily case to show that there are cases of true promissory obligation that the Authority model cannot explain. After his death, Frank has no authority over Emily. If Emily is obliged to make things right with Gabriella, if she is obliged to Frank to do so in virtue of her promise, it is not because he now holds a right that he is arbitrating. He cannot decide one way or the other whether Emily will perform what she has promised. Nor is he a right-holder after he is dead.

I do not think that either of these portended counterexamples succeeds in posing problems for the Authority model, as Owens describes it. In the Henry/Indira case, Henry does not grant normative authority to Indira. He hires her as he would hire an accountant or a software consultant. Such advisors are hired to be authorities on a particular subject. But their authority is, at best, epistemic. After all, they are usually hired because they are experts in a particular field. Perhaps their authority extends to a set of responsibilities with which they are tasked, and they have control over how they carry out these responsibilities. However, Henry never commits to marrying the person that Indira selects. He commits to paying Indira for her selection services.

The Frank and Emily case might be one that Owens is willing to exclude from his account of promissory obligation. The Authority model, or some version of it, might exclude promises to the dead. However, Owens can still say that the utterance made by Emily is a promise. Perhaps the promissory obligation ends when Frank dies. A dead person holds no normative authority over anyone. He could also say that Emily owed it to the living Frank, the Frank who smiled his

¹⁶ Friedrich and Southwood (2011: 287).

acceptance of her promise to make things right with Gabriella. She owes the performance of this promise to someone who no longer exists. In this case, the Frank of the past holds authority over the present Emily. He had the discretionary ability to smile or not—that is, to accept the promise or not. For as long as he existed after the promise was made, he had the moral discretion to determine whether Emily would perform what she promised. The promise-breaking does not frustrate a reliance or disappoint an expectation, but it might still violate a right.

However, you can imagine a different case that might cause some trouble for Owens. Consider the plight of a young woman who must give her baby up for adoption. She lives in a region that allows a birth mother to choose her baby's adoptive parents. Face to face, a non-religious couple promises the young woman that they will raise the baby as a member and participant in a Christian church community. On the basis of this promise, the young woman chooses this couple as the adoptive parents. Imagine further that the adoptive parents and the young woman all wish to be anonymous. Names are never exchanged. After the adoption is complete, the young couple has no way of contacting the birth mother, nor has she means of contacting them. In this way, the promisee (the birth mother) has no continued power to decide whether or not the couple must perform or may refrain from performing the promise. If they were still in contact, then when the child wished to stop attending church at the age of twelve, the couple could have secured a release from the promise they made to the birth mother. Indeed, twelve years later, the birth mother might well have changed her religious convictions herself! She might regret having solicited any such promise. In this way, no matter what the couple does, they can *only* fail to allow the promisee (the current, living promisee, who holds normative authority over them) to decide whether they will perform what is promised. And yet, I think, they are still under promissory obligation to give their child a religious life, and certainly do not breach their promise in doing what they said they would do twelve years before.

This is not the only trouble that the Authority model has with matters of *release*. After all, the normative authority held by the promisee is partly composed of this discretion to hold a promisor to his word or release him. And yet, it seems that sometimes promissory obligation remains even after a promisee has exercised her discretion to offer release. You can imagine a scenario in which a promisee truly wants what is promised to

Promissory Obligation: Against a Unified Account 111

her, and has made plans relying on what is promised, but feels emotionally moved to release her promisor from a promise. For instance, Gigi has accepted an invitation to an event that requires a Plus-1 (i.e., for the invitee to bring a date). Hugo had promised that he would accompany her for the evening, allowing her to attend the event. The night arrives, and Hugo doesn't feel like a night out, and would rather stay at home with his favorite television programming. Now, Gigi does not like the idea of Hugo attending the event just because he feels like he has to do so. She feels badly about that. However, she would really like to attend the event, regardless of his mood. Of course, what she would really like is for him to rally his spirits and try to have a good time at the event. She says as much, and Hugo grumpily asserts that he won't rally his spirits, but he'll come out if she insists. Feeling guilty, Gigi says, "Fine, you can stay at home."

Now, if a promise is singularly some bit of authority granted to a person, then that person has the full power to abdicate that authority (or abdicate that moral right). When Gigi says, "Fine, you can stay at home," she expresses some irritation, and might not in the future count on Hugo in situations like this one, but he has no more promissory obligation in virtue of her releasing him. For instance, imagine that after all of this he called back and said, "You know, I'm sorry, Gigi. You're right. I will rally my spirits and attend the event and have a good time. You were counting on me, after all." On Owens' view, Hugo's change of heart is not an act of promise-keeping. There is no promise left to be kept. Yet, it seems that this is exactly what Hugo ought to say to Gigi, even after she offers release. Further, it seems that he ought to say this in virtue of the promise itself—not merely because it would be kind. He owes it to her.

Of course, Owens grants that just as promises can be invalidated because they were made under certain conditions of coercion, release can also be invalidated if given under certain conditions of coercion.¹⁷ However, Hugo is not compelling release from Gigi under any significant threat. He might be upset with her for holding him to the promise. But this is not a sufficiently bad alternative to conclude that Gigi is *forced* to release him from his promise. Because she isn't forced to release him, and

¹⁷ Owens (2012: 231–2).

because he leaves it up to her to decide, Hugo meets the conditions for promise-keeping on the Authority model. Now, I am not arguing that Hugo is, in fact, breaking his promise to Gigi. I am just suggesting that he is not *keeping* his promise either. Some people make a habit of “getting out of” promises. Perhaps they are particularly good at talking people into releasing them from promises. They are careful not to break promises—but they also do not give us the benefits that promising is supposed to yield—they do not earn our trust, and we learn not to rely on them. The authority account, unlike its competitors, cannot explain the difference between promise-breaking and failures in promise-keeping.

Daniel Friedrich and Nic Southwood argue that, instead, promissory obligation arises when we make a promise because, in promising, we invite someone to trust in our moral character. Promise-breaking is wrongful insofar as it is a breach of this trust.¹⁸ One can see how this resolves the problem with release that I just described. In inviting Gigi to trust Hugo to attend the event with her, Hugo is asking her to trust in his moral character. In this case, a person of good character would respect his friend’s time and interests, recognize that respecting her time means honoring his commitment, even if he also knows that he is perfectly capable of securing release from the commitment. A person of good character will rally his spirits rather than going out with his friend and being a drag (or threatening to be, if she holds him to his word). In these ways, the Trust model explains cases of promissory obligation that the Authority model cannot explain.

It is also clear how the Trust model can handle the cases that Friedrich and Southwood used as counterexamples to the Expectation and Reliance models. When Bertha promises Albert that she will be faithful to him, he may not expect her to keep her word. However, the very fact that he is giving her one more chance means that *something* is at stake, some morsel of regard that he has for her moral character is in the balance, or else there would be nothing chanced. Even Frank on his deathbed is capable of accepting an invitation to trust in Emily. The Trust model doesn’t rely on a promisee retaining the ability to arbitrate a right or any type of authority after a promise is made. So, the fact that Frank dies after accepting Emily’s invitation to trust her does not

¹⁸ Friedrich and Southwood (2011: 278–80).

Promissory Obligation: Against a Unified Account 113

dissolve the promise. Similarly, the birth mother in the adoption case trusts that the people adopting her baby will stick by their word, no matter how her own preferences might change after their contact is severed.

However, there is another set of cases that the Trust model cannot accommodate. Sometimes we make promises that we should not make, but they bind us nonetheless. For instance, if I have committed to standing guard as you rob a house, then I am under promissory obligation to you to do so, even if, all things considered, I should call the cops on both of us. Promissory obligation can be trumped by weightier moral considerations, after all.

Though some argue that promises with immoral content do not generate obligations, it is hard for such views to explain the difference between certain pairs of cases.¹⁹ If I call the cops and surrender both of us, then it is hard to tell if I have wronged you. If there is an obligation, it is outweighed by other moral considerations. However, imagine that, instead of calling the cops, I go help someone else rob a different house (maybe someone who is offering me a bigger cut). It seems that you certainly have cause to complain in this case.²⁰ When the moral obligation generated by the promise is not dwarfed by a more significant moral obligation, when the alternative to keeping the promise is just as immoral as the content of the promise, then it is clear to see that the promise is doing *some* work.

Even if the content of a promise does not involve a rights violation, as in the robbery case, it still might be morally wrongful in a way that, I will show, is problematic for the Trust model. For instance, imagine that Andrea solicits a promise from Beth not to tell their friend Carla that Andrea is having an affair with Carla's husband. Sympathetic to Andrea's panic, Beth solemnly makes the promise to Andrea without careful consideration of what that will mean for her future interactions with Carla—the deception in which she'll have to participate, etc. Nonetheless,

¹⁹ For instance, Shiffrin thinks that an immoral promise misfires in virtue of the fact that the promisor does not have the requisite authority to grant the promise (2011: 160–1).

²⁰ Owens has a similar case when explaining how wicked promises can still bind. He points out that if the woman who agreed to drive the get-away car did not keep her word to do so just because she decided the bank-robbing scheme wasn't going to work, she has wronged the robbers (2012: 245–6).

if Beth then goes and tells Carla about the affair, we can correctly say that, whether or not it was justified, Beth broke her promise to Andrea.

Why does this pose a problem for the Trust model? For Friedrich and Southwood, a promise is an accepted invitation to trust in one's moral character. However, when I promise that I'll stand guard as you rob a house, I am not asking you to trust in my moral character. I'm inviting you to trust that I'll be a loyal partner in crime. When Beth promises Andrea that she will not reveal the secret to Carla, she is not inviting Andrea to trust in her moral character. In fact, she is inviting Andrea to trust that she will behave deceptively, and that she will exhibit partiality for Andrea over Carla in a situation wherein Andrea does not *deserve* special regard. More importantly, if any of these immoral promise-makers should break their promises, then (assuming the promise-breaking is justified) the promisees have no grounds for thinking less of the promisors' moral characters, even if they correctly feel wronged in some *pro tanto* manner.

One might defend the Trust model against this objection by saying: the invitation to trust in the promisor's moral character is not to trust in all aspects of her character. The promisor only invites the promisee to trust in one aspect of her moral character—her fidelity (e.g., keeping her word). If I promise to do something malevolent or dishonest, and carry through with it, then I have not manifested a failure of fidelity. However, this does not seem to me to be a good defense. After all, making and carrying out a promise involves many virtues—not just fidelity. It involves honesty (in communicating a sincere intention to perform the content of the promise); sometimes it involves courage to carry out a promise, or cautious planning. Breaking a promise can manifest many kinds of flaws in one's moral character.

This concludes my account of the contemporary theories and their counterexamples. If you are not convinced by any or all of these critiques, that should not prevent you from being convinced by my overall project. The rest of the paper will be devoted to a positive argument for the conclusion that promissory obligation is not one unified sort of moral obligation.

2. AGAINST ANY UNIFIED ACCOUNT

What distinguishes promissory obligation from any other moral obligation that arises from a promise? In some cases it is clear. My promise

Promissory Obligation: Against a Unified Account 115

might generate an unfairness that I'm obliged to rectify. For instance, my promise to take one sister clothes shopping might insult my other sister who has been unsuccessfully soliciting just such a promise from me for many weeks. So, in virtue of making this promise, I am obliged to take each sister shopping. However, my obligation to take the second sister shopping is not a promissory obligation, even though it arose from a promise that I made to the first sister (and is an obligation I would not have had otherwise). In one case, my obligation is promissory; in the other, it is an obligation of fairness.

Many of the moral philosophers offering competing theories of promissory obligation have agreed that the other theorists have successfully identified moral obligations that arise from promises, even if they have unsuccessfully identified promissory obligation. For instance, David Owens, Daniel Friedrich, and Nic Southwood all allow that we might incur obligations as a result of generating expectations or inviting reliance in others. They say that a promise might generate expectations and reliance, but the obligations we have to respond to those expectations and reliance are not promissory obligations. On the basis of a mere prediction I might also generate an obligation to do as I predicted I would do, since I might be causally responsible for you being in a bad situation. However, for these theorists, this obligation is not a promissory obligation. The fact that I have this obligation does not render my prediction a promise.

However, despite there being cases of promising, like the one described by Friedrich and Southwood, in which neither generated expectation nor invited reliance is at work, there are other cases of promising in which the invited reliance is at the very heart of the promise—no matter what other moral features are also at work. In some such cases, the duty not to forsake an invited reliance does more explanatory work than the other candidates for grounding promissory obligation—especially in considering the conditions under which we might say that the promise has been broken. Consider the following case:

Case A: Adam and Asha are two colleagues who regularly host visitors in their department. Asha is planning to pick up the visitor from the airport. However, she gets busy working toward a deadline, and gets flustered. Adam observes Asha's distress and its source, and promises Asha that he will pick up the visitor himself. Asha happily accepts Adam's promise. She has faith that he will do as he says, and plans her day's work schedule accordingly.

All of the theorists we have discussed can explain this case. Adam is generating an expectation in Asha. Adam is inviting Asha to trust in his moral character. Adam is giving Asha the authority to determine the scope of things that is and is not wrong for Adam to do. However, Asha's reliance, and Adam's invitation for her to rely on him, play a special role in this case. I'll argue that these are the features of the promise that determine the exclusionary conditions for promising—that is, the situations in which Adam may fail to do what he says he will do without actually breaching his promissory obligation. For instance, Owens thinks that the social background can partly determine the “exclusionary force” of a promise. Owens says, “For example, there is a general understanding that a social arrangement excludes consideration of subsequent invitations, however attractive, but does not prevent you from handling your child's sudden illness in the way you judge best.”²¹ Similarly, Adam and Asha probably share the understanding that Adam need not pick up the visitor if there is a terrorist attack on campus and everyone is ordered to stay in their offices.

In order to better explain how the nature and extent of Asha's reliance on Adam (a reliance that was invited by Adam) mark out the scope of the promise, let me contrast Case A with a slightly different case.

Case B: Budd and Bianca are two colleagues who regularly host a visitor in their department. Bianca is planning to pick up the visitor from the airport. However, she is upset that she is always tasked with these jobs, and believes that Budd is not contributing his fair share to departmental service. Budd observes Bianca's distress and its source, and promises Bianca that he will pick up the visitor himself. Bianca happily accepts. She has no faith that he will do as he says. But she hopes that he will, and is prepared to go herself if Budd doesn't come through. Budd knows all of this.

Now imagine the following end to both stories:

Case A: Adam successfully recruits a reliable grad student to pick up the visitor from the airport.

Case B: Budd successfully recruits a reliable grad student to pick up the visitor from the airport.

²¹ Owens (2012: 229–30).

Promissory Obligation: Against a Unified Account 117

In response to hearing what happened, Asha says, “that’s fine—what mattered is that I was free to meet my deadline.” In response to hearing what happened, Bianca is frustrated. Budd has pawned off his own job on another person once again!

Now, we could read this as a situation in which Asha readily forgives the broken promise, or deems the compensation sufficient, and Bianca does not. However, I think it is also plausible to say that, unlike Budd, Adam has not broken his promise. The reason for this is that the two promises had different content, even if only implicitly.

How so? The content of the spoken promise and the intention of the speakers was the same. There was no implicit “unless I can get somebody else” involved in Adam’s intention. At the time he made the promise, he had the belief that he would do it himself, and Asha believed that this was his intention. (Owens points out that our intentions are not specified to include every single exception we would make if it were brought to our attention. For instance, I might fully intend to go to a movie this afternoon. Even though it is the case that, *were* the theater to raise its prices to \$50 a ticket, I would not go, that does not mean that I currently hold the intention not to go if the price is \$50.)²² The two men vocalized the same words in communities sharing the same expectations for standard exclusionary conditions on promissory obligation. (For example, both would have been free to skip the airport run in order to race an injured student to the hospital instead.)

Even though the social context is the same, the circumstance that gave rise to the promises and the shared understanding of what the promises were *for* resulted in different exclusionary conditions. Consider first Case A. Adam and Asha both understood that Asha needed to be free to get her work done. Adam’s promise served as an invitation to rely on him to take care of things so that she could have that time free. Further, the role of reliance in the promising scenario has some results that seem correct. If Adam comes back shortly after the initial encounter, having assessed his own workload and changed his mind, it is possible that he can request and receive release from his promise. If he comes back soon enough, before she starts relying on his word in any way, he can probably just withdraw the promise. On the other hand, if he tries to do this much

²² Owens (2012: 199).

later, after Asha has been working at a relaxed pace toward a midnight deadline, thinking that her afternoon is free, it is not clear that she *can* release Adam from the promise. After all, she has more than accepted his invitation to rely, she has used it! (Consider, you cannot meaningfully return or withdraw an invitation to a party that has already been used.)

Of course, Adam might have also invited Asha to trust in his moral character. He also granted her the normative authority to determine whether or not it would be wrong for him to skip the airport run. However, it is the reliance that marks out the scope of both the authority Asha holds as well as the set of actions compatible with Adam demonstrating good moral character. Given that Asha and Adam both take the promise to constitute an invitation to rely, consider how they would answer the following two questions: What set of actions has Asha the authority to determine it is impermissible for Adam to undertake? What set of actions is consistent with Adam honoring Asha's trust in his good moral character (the extent to which the trust was invited by the promise)? Answer: Asha has the authority to determine whether it is impermissible for Adam to do anything that she has been invited to rely on him to do, and these are also the actions that would be consistent with Adam demonstrating good moral character. For instance, if, despite their shared understanding, Adam had later pressured Asha to come with him on the trip to give him directions, then his promise would be broken. This is because Adam invited Asha to rely on him to free up her time.

In these ways, reliance plays a central role in explaining the promise itself—what is being invited. It also plays a significant role in explaining when and if the promise has been broken. Its role is central because it determines the scope of the other moral features of the promise—the extent of Asha's authority over the behavior of Adam that is compatible with good moral character (as pertains to this instance of promise-keeping). So, the duty not to forsake an invited reliance (Thomson's theory of promissory obligation) is an obligation that arises from the promise, but also is what offers the entire explanation of what Adam's duty is actually composed, and why it is so composed. This must be sufficient for a duty to count as promissory obligation. Honoring an invitation of reliance is at the heart of Adam's obligation to keep his promise to Asha.

Now let us look at Case B. Budd has certainly invited Bianca to trust in his good moral character. Something is at stake—Bianca is giving

Promissory Obligation: Against a Unified Account 119

Budd a chance to boost her opinion of him. He knows that Bianca thinks that he is not contributing his fair share, and he is promising to do something that would enhance his otherwise minimal contributions to the department. It is also clear that Budd has granted Bianca the authority to determine whether he may permissibly refrain from making the airport run. However, Budd has not generated any reliance or even an expectation in Bianca. (I should note: eliminating reliance from this second case is not crucial to my argument. We can imagine that Bianca, in some small way, relies on the promise—puts off some emailing she would have otherwise handled earlier.) It is not *reliance* that is marking out the scope of things that Budd may permissibly do.

Unlike in Case A, Budd may not delegate the job to a graduate student, because Budd has invited Bianca to trust that he is fair—that he will do his fair share. Also unlike in Case A, Budd might be *within* the purview of his promissory obligation if he put pressure on Bianca to come with him in the car to give him directions. He certainly cannot withdraw the promise, even if he attempted to do so very soon after making the promise. On the other hand, no matter how much later, he could attempt to seek release and, if Bianca was willing, he could obtain it from her. He could do so provided that he gave Bianca the full discretion to decide whether or not he would go to the airport.

If this analysis is correct, then it seems that Budd's promise is grounded in a granted moral right; Budd grants Bianca the authority to determine whether he fulfills his promise. However, I will not champion a candidate-account of promissory obligation as the best theory to explain and define Case B. Budd has some promissory obligation to Bianca, and it is not an obligation grounded in reliance—that is all I need. There has to be at least one other type of true promissory obligation that is doing the heavy lifting in Case B.

My argument is simple. I have already made my case for each of the independent premises.

Premise 1: If the duty not to forsake an invited reliance both arises from a promise and is the primary moral factor in explaining and determining the scope of what counts as promise-breaking, then that duty is a form of promissory obligation.

Premise 2: In Case A, as I have argued, the duty not to forsake an invited reliance both arises from the promise and is the primary moral factor in determining the scope of what counts as promise-breaking.

Premise 3: The duty not to forsake an invited reliance is a form of promissory obligation. (1, 2)

Premise 4: In Case B, as I've demonstrated, the duty not to forsake an invited reliance does no work in explaining the promissory obligation and certainly does not determine the scope of what counts as promise-breaking.

Premise 5: If the duty not to forsake an invited reliance amounts to a promissory obligation, but plays no explanatory moral role in another case of promising, then there is more than one type of obligation that is promissory obligation.

Conclusion: There is more than one type of obligation that is promissory obligation. (3, 4, 5)

Let me take one last opportunity to clarify what I am *not* trying to do in this section. Sometimes philosophers present two cases that seem similar, save one difference. They then offer different accounts of what might explain the difference, or a difference in intuition that the slightly different cases generate in their readers. The author makes a case that one explanation is better than the others. This is not what I have done in this section. However, because I have presented two cases that share some narrative features, it might appear to a reader familiar with arguments from the best explanation using paired thought experiments that I have attempted to do just this. Such a reader will be tempted to find alternate explanations for why the cases are different. This will be easy work—the cases are very different! The pair of cases that I use to support my premises are similar *only* in that the promises have the same explicit content. I wanted to use similar cases in order to highlight the implicit content and the role it was playing in generating the very different promises, and very different promissory obligations. If we took all of the implicit content and turned it into explicit content, my results would be the same. (The promises in question would just be very awkward utterances.)

3. CONCLUSIONS

In this paper, I have undertaken two arguments promoting the same conclusion. In my first, critical section, I presented counterexamples for the comprehensiveness of existing, contemporary accounts of promissory obligation. I agreed with Friedrich, Southwood, and Owens that the Expectation and Reliance models cannot handle particular cases that we

Promissory Obligation: Against a Unified Account 121

agree to be cases of promissory obligation. I went on to suggest that Owens' Authority model couldn't allow for the complexity of our promissory obligation, some portion of which might remain despite our promisee's willingness to release us. Finally, I argued that the Trust model could not handle immoral promises, or promises that, in being made, display a willingness to manifest an immoral aspect of character. If no current, unified explanation of promising is capable of handling all cases of promissory obligation, then that goes some way toward motivating the idea that there is no single moral obligation that is promissory obligation.

In the second half of the paper I presented two promises and asked: what obligation is both raised by the promise and plays the primary role in defining the boundaries of the promise? I argued that the answer was different in the case of each promise. I argued that this result requires more than one type of promissory obligation.

One virtue of giving up the quest for a unified theory of promissory obligation is that it makes it clear how welcome the *free-floating* obligations arising from promises might be to our analysis. As Rawls suggests, one of the ways that promise-breaking wrongs are manifest can be described by the wrong of free-riding. Though this paper has dealt with promissory obligation as a directed duty, the conclusion makes it easier to see why there can be both directed and non-directed wrongs involved in promise-breaking. After all, we have already given up on the wrong of promise-breaking being just one kind of wrong.

If there is more than one moral obligation that is promissory obligation, does it make sense to talk about promissory obligation at all? Why retain it as a distinct concept? As a moral phenomenon, it might be important to have a way of discussing all of those obligations that are taken on by people participating in a particular social practice. Further, I think that the concept of promissory obligation grasps a distinct thing that exists in the world, even if not a unified moral phenomenon. Promissory obligations are the things generated by a significant speech act. The generation and cessation of these varied obligations is the thing *done* by certain sorts of words and communications that have an important role in our human lives. So long as the promising act that gives rise to promissory obligation is an interesting feature of human behavior or language, then these obligations, however lacking in unity, can be sensibly examined together.

Acknowledgments

I received many valuable comments and objections while writing this paper. In particular, I would like to thank: Charles Beitz, Julia Driver, Elizabeth Harman, Alison McQueen, David Owens, Phillip Pettit, David Plunkett, Lucas Stanczyk, Mark Timmons, and very especially to Alec Walen for his shrewd and extensive comments on an early draft. I would also like to thank the participants of the 2015 Workshop in Normative Ethics for their excellent feedback and the Princeton Center for Human Values for its research support.

REFERENCES

- Atiyah, P. S. (1981). *Promises, Morals, and Law* (Oxford: Clarendon Press).
- Austin, J. L. (1975 [1955]). *How To Do Things With Words*, ed. J. O. Urmson and Marina Sbisa, 2nd edition (London: Oxford University Press).
- Darwall, Stephen (2006). *The Second-Person Standpoint: Morality, Respect, and Accountability* (Cambridge, MA: Harvard University Press).
- Darwall, Stephen (2011). "Demystifying Promises," in *Promises and Agreements*, ed. Hanoch Sheinman (Oxford: Oxford University Press), pp. 255–76.
- Friedrich, Daniel and Nicholas Southwood (2011). "Promises and Trust" in *Promises and Agreements*, ed. Hanoch Sheinman (Oxford: Oxford University Press), pp. 277–94.
- Kolodny, Niko and R. Jay Wallace (2003). "Promising and Practicing Revisited," *Philosophy and Public Affairs* 31(2): 119–54.
- MacCormick, Neil (1972). "Voluntary Obligations and Normative Powers I," *Proceedings and Addresses of the Aristotelian Society* 46: 59–78.
- Mason, Elinor (2005). "We Make No Promises," *Philosophical Studies* 123: 33–46.
- Owens, David (2006). "A Simple Theory of Promising," *Philosophical Review* 115: 51–77.
- Owens, David (2012). *Shaping the Normative Landscape* (Oxford: Oxford University Press).
- Rawls, John (1971). *A Theory of Justice* (Cambridge, MA: Harvard University Press).
- Rawls, John (1999). *Collected Essays* (Cambridge, MA: Harvard University Press).
- Ross, William D. (1930). *The Right and the Good* (Oxford: Oxford University Press).
- Scanlon, T. M. (1998). *What We Owe to Each Other* (Cambridge, MA: Harvard University Press).
- Shiffrin, Seana (2008). "Promising, Intimate Relationships, and Conventionalism," *Philosophical Review* 117: 481–524.
- Shiffrin, Seana (2011). "Immoral, Conflicting, and Redundant Promises," in *Reasons and Recognition: Essays on the Philosophy of T. M. Scanlon*, ed. R. Jay Wallace, Rahul Kumar, and Samuel Freedman (Oxford: Oxford University Press), pp. 155–78.
- Thomson, Judith Jarvis (1990). *The Realm of Rights* (Cambridge, MA: Harvard University Press).
- van Roojen, Mark (2013). "Scanlon's Promising Proposal and the Right Kind of Reasons to Believe," in *Oxford Studies in Normative Ethics: Volume 3*, ed. Mark Timmons (Oxford Scholarship Online).
- Warnock, G. J. (1971). *The Object of Morality* (London: Methuen).