11

So Close and Yet So Far

Reinach and Gilbert on Promises

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11.1 INTRODUCTION

Promises are ubiquitous in our social life: we plan our conduct based on the promises that we make and those addressed to us. We build our reputation on the promises we honor. We blame those who do not fulfil their promises, and we apologize if we are not able to deliver what we promised. The concept of a promise is also of crucial importance to disciplines such as law and economics, as promises arguably lie at the heart of contracts and economic exchanges.[1]

Given the pervasiveness of promises in our social world, it should not be surprising if they come in many shapes and forms. In line with considerations about promises developed by Adolf Reinach[2] and Margaret Gilbert,[3] this paper focuses on the "informal" or "everyday" sense of promise according to which, if something qualifies as a promise, it imposes an obligation on the promisor and an equivalent claim (or: demand-right) on the promisee, regardless of whether or not the speaker uses the term "promise."[4] One key question for any theory of promises, so

[1] Kent Bach, 'Terms of Agreement' (1995) 105 Ethics 604, responding to Margaret Gilbert, 'Is an Agreement an Exchange of Promises?' (1993) 90 Journal of Philosophy 627. See also Olivier Massin and Emma Tieffenbach, 'The Metaphysics of Economic Exchanges' (2017) Journal of Social Ontology 167 and Alessandro Salice, 'Wilhelm Schapp and the Standard Theory of Exchanges' (2023) 19 New Yearbook for Phenomenology and Phenomenological Research 132.

[2] Adolf Reinach, 'The Apriori Foundations of the Civil Law' (John F Crosby tr, 1983) 3 Aletheia 1, reprinted in Adolf Reinach, The Apriori Foundations of the Civil Law Along with the Lecture 'Concerning Phenomenology' (John F Crosby ed, Ontos Verlag 2012), originally published as Adolf Reinach, Die apriorischen Grundlagen des bürgerlichen Rechtes, 1(2) Jahrbuch für Philosophie und phänomenologische Forschung (Max Niemeyer 1913), 685.

[3] Margaret Gilbert, *Rights and Demands: A Foundational Inquiry* (Oxford University Press 2018).

[4] Gilbert (n 3) and Margaret Gilbert, 'Three Dogmas about Promising' in H Sheinman (ed) *Understanding Promises and Agreements* (Oxford University Press 2011), 80 reprinted in Margaret Gilbert, *Joint Commitment: How We Make the Social World* Oxford University Press 2014) 296. We will be quoting from the 2014 reprint.

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understood, is: how do promises generate obligations and claims? This chapter addresses this question by comparing Gilbert's theory of promise with the remarkably similar, and yet importantly different account developed by Reinach at the start of the twentieth century. This is the plan ahead.

In Section 11.2, we present Gilbert's background motivations for her account of promises. The account aims at vindicating two intuitions about promises and at rejecting three "dogmas," which she identifies as core to contemporary debates about promises. In this section we also show that Reinach warmheartedly shares Gilbert's intuitions and that therefore he, too, rebuts the three dogmas.

In Section 11.3, we introduce Gilbert's account of promises. According to her view, promissory obligations and claims are brought about by certain commitments that promisor and promisee jointly enter. Hence, the reason why promises generate claims and obligations is that promises are to be explained in terms of joint commitments, and joint commitments generate claims and obligations.

Sections 11.4 to 11.6 marshal ideas borrowed from Reinach's theory of promise to reject the account: while endorsing Gilbert's background motivations, Reinach's theory rejects the possibility for promises to have a (or any) substantive explanation and, thus, provides reasons for dismissing Gilbert's positive account of promise in terms of joint commitments. In particular, Section 11.4 argues, *contra* Gilbert, that promises do not necessarily require acceptance. Section 11.5 claims that Gilbert's account misidentifies the authors of promises and Section 11.6 that it misconstrues the content of promises.

While the result of our discussion is mainly negative, Section 11.7 maintains that Gilbert's research program of understanding the capacity of promises to generate claims and obligations without falling prey to the three dogmas remains wide open. We suggest that progress in this research program can be achieved by taking seriously Reinach's idea that the search for a substantive explanation of the fact that promises generate claims and obligations is pointless and that promises generate those normative entities in virtue of their nature or essence.[5]

11.2 THREE DOGMAS VS. TWO INTUITIONS

Three dogmas, according to Gilbert, steer contemporary debate about promising: the Moral Requirement dogma, the No Willing dogma, and the Immoral Promises dogma.[6]

[5] Karl Mertens develops an insightful comparison between Gilbert's and Reinach's theories of promises, which is equally critical of both and, in particular, of Reinach's metaphysical presuppositions. See Karl Mertens, 'On the Essence and Sources of Obligation: A Critique of Reinach's and Gilbert's Accounts of Promises', (2023) 19 New Yearbook for Phenomenology and Phenomenological Research 90. If our attempt to establish the point that promises cannot be subject to substantial explanation is successful, then Reinach's idea of promises carrying a nature (or an essence) becomes a viable way of understanding promises and Mertens' criticism of Reinach could be put to rest.

[6] Gilbert is wary that these assumptions are not universally shared and that they are not blindly followed by all participants in the debate about promises. However, she adds that "they tend not to be examined with a critical eye," although they should be (Gilbert (n 3) 214; see also Gilbert

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The Moral Requirement dogma goes back at least to Thomas Scanlon's understanding of promissory obligations: "When promises give rise to [...] obligation, these can be accounted for on the basis of general moral principles."[7] Scanlon's idea is that honoring a promise is dictated by a moral requirement, which derives from moral principle(s) and that these moral principles do not depend on contingent agreements or other conventional arrangements among people.

Moral Requirement dogma: When promises give rise to obligations, they do so in virtue of some moral principles.

The Moral Requirement dogma, Gilbert argues, is the most important among the three assumptions because it directly sustains the other two, as we will soon see.

The second dogma, called "No Willing" dogma, is expressed in Hume's notorious passage "'Tis impossible that we could ever will a new obligation,"[8] which can be reformulated this way:

No Willing dogma: Mere willing cannot bring about obligations.

In a nutshell, this dogma captures the idea that a personal (private or inner) act of the will does not have the normative power to generate an obligation. The Moral Requirement dogma and the No Willing dogma are related: given that the obligation to honor a promise is a moral requirement and given that moral requirements are not grounded in voluntary agreements or arrangements among people, mere acts of the will cannot bring about promissory obligations. Finally, we have the

Immoral Promises dogma: Immoral promises do not put their subject under an obligation to act as promised.

Gilbert argues that this third dogma, too, gains persuasive force from the Moral Requirement dogma. For, if promissory obligations are moral requirements, then promises with an immoral content do not generate obligations. The moral requirement the promisor is actually subject to is *not* to keep immoral promises.

Gilbert contrasts these dogmas with two intuitions. The first intuition is what she calls "Inevitability Point."[9] This point relates to Prichard's view that "[o]nce call

(n 4) 299). Interestingly, those assumptions were already circulating at Reinach's time. As Gilbert, so does Reinach discuss Hume's theory as representative of the No Willing Dogma; the Immoral Promises and the Moral Requirement dogmas are exemplified in the theory of contract developed by German philosopher Wilhelm Schuppe. Reinach also tackles Theodor Lipps' psychologistic theory of promises, but that discussion is of no concern to this paper.

7 Thomas Scanlon, *What We Owe to Each Other* (Harvard University Press 1998) 315.

8 David Hume, *A Treatise on Human Nature* (Oxford University Press 2000) 332.

9 Gilbert (n 3) 113; also called "Prichard's point" in (n 4) 303.

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some act a promise [*sic*], and all question of whether there is an obligation to do it seems to have vanished."[10] She formulates the intuition as follows:

Inevitability Point: "[I]f someone has made a promise to do something, then he is obligated to it, by virtue of his promise."[11]

Reinach concurs: "The promising produces a unique bond between two persons in virtue of which the one person [. . .] can claim something and the other is obliged to perform it or to grant it."[12] So, Reinach agrees with Gilbert that promises inevitably generate obligations. However, it is worth noting that Reinach here goes beyond Gilbert's "inevitability point" as stated above, for her "point" does not state that the noted obligation correlates with a claim. However, we will soon see that, for Gilbert too, promissory obligations correlate with claims (or demand-rights).

The Inevitability Point, Gilbert adds, is something that is known a priori.[13] Reinach, again, agrees: "[. . .] claim and obligation are grounded with essential necessity in the act of promising as such."[14] It is noteworthy that this last point can have two different readings: a strong and a weak one. The weak reading is this:

Inevitability Point (weak reading): If someone has made a promise to do something, then, *in the absence of sufficiently powerful countervailing considerations*, he is obligated to do it by virtue of his promise.

Yet, Gilbert and Reinach both insist that only the strong reading properly captures our intuitions on this matter:

Inevitability Point (strong reading): If someone has made a promise to do something, then he is obligated to do it by virtue of his promise.

They are not claiming that one is obliged to keep one's promises, no matter what. Their position tacitly builds on the distinction between *pro tanto* and *pro toto* obligations.[15] *Pro toto* obligations are *resultant* or *all things considered* obligations: these are obligations which result from weighing all – possibly conflicting – *pro tanto* obligations that are attached to one and the same action.[16] Promissory

[10] Harold Arthur Prichard, *Moral Obligation and Duty and Interest* (Oxford University Press 1968) 198.
[11] Gilbert (n 4) 303.
[12] Reinach (n 2) 8.
[13] Similar ideas can be found in Austin ("'I promise but I ought not' is parallel to 'it is and it is not'," John Austin, *How to Do Things with Words* (JO Urmson and Marina Sbisà, eds, 2d edn Harvard University Press 1975) 51; and in Searle ("I say if a person promises he is committed to doing the thing promised, and this is purely in virtue of the meaning of 'promise'," John Searle, *Speech Acts* (Cambridge University Press 1969) 190f).
[14] Reinach (n 2) 46.
[15] Gilbert (n 3) 135–143; Reinach (n 2) 45.
[16] On that notion of resultant/overall/pro toto obligation, see David Ross, *The Right and the Good* (Oxford University Press 2002), 28–29; Charlie Dunbar Broad, 'Some of the Main Problems of Ethics' in H Feigl and W Sellars (eds) *Readings in Philosophical Analysis* (Appleton-Century-Crofts

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obligations may conflict with and be overrun by other obligations, and then be contrary to resultant or *pro toto* obligations.[17] Against this backdrop, Gilbert and Reinach's strong reading of the Inevitability Point is that an obligation is necessarily brought to existence by the promise, but this obligation is only *pro tanto*, so that it may conflict with and be overrun by other obligations.

On this strong reading, the Inevitability Point is incompatible with the Immoral Promises dogma. For, if promises always generate obligations, then so do immoral promises, *contra* the Immoral Promises dogma. Furthermore, this suggests, *contra* the Moral Requirement dogma, that promissory obligations are not moral obligations because moral principles cannot generate obligations with morally heinous content.

The second intuition Gilbert endorses is that promissory obligations are relational, that is, they are directed at somebody else: the promisee. Gilbert captures this idea by talking of "directed" obligations and "directed" claims (or "demand-rights"[18]): it is because the promisor's obligation is directed to the promisee that the promisee (and only them) have the "standing to demand" the promised action of the promisor. If Laura has an obligation to Sam to call him, then Sam can authoritatively demand of Laura that she call him. In a certain sense, Laura owes it to Sam to call him, and Sam therefore has the standing to demand that of her: if Laura does not do that, Sam is in a position to rebuke her. This suggests that any promissory obligation of the promisor, in virtue of its directedness, is equivalent to a promisee's claim against the promisor:

Directed Obligations (and Claims): Promissory obligations (and claims) are relational.

The relationality of obligations and claims also is at the core of Reinach's theory: "There [. . .] exists a correlativity between [promissory] claim and obligation: each has identically the same content, and the relations of bearer and partner are mutually interwoven according to strict apriori law."[19]

1949) 552; John Searle, 'Prima Facie Obligations' in J Raz (ed) *Practical Reasoning* (Oxford University Press 1978) 81–90.

[17] "Its existence [i.e., the existence of the promissory obligation] is not affected, however, even by the existence of factors such that all things considered one ought not to fulfill it" (Gilbert (n 4) 319). "We can know whether a [promissory] obligation should be fulfilled only by going beyond it to the moral duty grounded in it. For only in this sphere is a comparison with other duties possible. *The extra-moral obligation remains untouched by all this*" (Reinach (n 2) 45, our emphasis).

[18] In what follows, we will use the term "claim" to design the right of the promisee that is equivalent to the promisor's obligation (as we have seen, Gilbert's own term for "promissory claim" is "demand-right"). We use "claim" because of the ambiguity between liberty-rights and claim-rights (see Wesley Newcomb Hohfeld, 'Fundamental Legal Conceptions as Applied in Judicial Reasoning' (1917) 26 Yale LJ 710). Clearly, the right acquired by the promisee is not of the same kind as the right to free speech or the right to do what we want with what is ours.

[19] Reinach (n 2) 12.

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This second intuition is in tension with the Moral Requirement dogma because it assigns a particular standing to the promisee, which the Moral Requirement dogma is not able to accommodate. Why? Recall that, according to the Moral Requirement dogma, promissory obligations are moral requirements.[20] When a moral requirement is violated, everybody has the same "standing to demand compliance, if anyone does." If so, the Moral Requirement dogma leaves unexplained Laura's *special* standing towards Sam, which is captured by the idea that Sam has an obligation directed towards Laura (and, conversely, Laura has a claim that is directed towards Sam).

The interim conclusion of this discussion is that the two intuitions put unsurmountable pressure on the Moral Requirement dogma. In addition, given that the No Willing dogma and the Immoral Promises dogma are directly supported by the Moral Requirement dogma, if this goes, they too stand on shaky ground. Gilbert and Reinach agree on all this: a good account of promises should preserve the two intuitions and reject the three dogmas. Put differently: promises are intentional acts,[21] which necessarily give rise to nonmoral, relational claims and obligations. They part ways, however, when it comes to the positive account of promises.

11.3 THE JOINT COMMITMENT ACCOUNT OF PROMISING

Endorsing the two intuitions and, thus, rejecting the three dogmas leaves one with the proverbial elephant in the room: if promissory obligations necessarily arise from promises, though not in virtue of some moral principles, how do promises bring them about? To provide an answer to the question, Gilbert introduces her joint commitment account of promises:[22]

[20] It is worthwhile emphasizing that, according to the Moral Requirement dogma, the moral principles generating promissory obligations are general. A moral principle qualifies as general if it is valid unconditionally insofar as it applies to every moral agent (e.g., "one ought not to lie"). As such, they are different from non-general moral principles, i.e., from moral principles that are valid conditionally because they do not apply to every moral agent (as an example, consider the special moral obligations that only parents have towards their children). While the obligations generated by the latter principles, insofar as they are directed obligations, are similar to promissory obligations in some respect, they differ from them. We have already seen that it is possible to carry a promissory obligation, which has an immoral action as its content (whereas moral principles cannot generate obligations with immoral content). In addition, promissory obligations are created by free acts and can be modified by free acts (e.g., transferred to other persons under specific conditions or assumed by other persons), but this is impossible in the case of directed (and undirected) moral obligations. Reinach devotes important considerations to this matter, see Reinach (n 2) 13ff.

[21] Gilbert and Reinach concur that an act of a mere inner will is not capable of generating relational obligations and claims. However, they do insist upon the idea that the promise, which has that power, is intentional in the sense that it stands under the promisor's (and, according to Gilbert, the promisee's) voluntary control. Accordingly, while the will alone is inefficacious in creating promissory obligations and claims, this is not to say that it plays no role at all in the explanation of how those obligations and claims are brought about.

[22] It merits attention that Gilbert's account is based upon her influential and sophisticated theory of plural subjects. Despite the importance of her positions to many areas of philosophical

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Joint commitment account: X has made a promise to Y if and only if (1) X and Y are jointly committed to endorse as a body a particular plan of action P, and (2) X and Y created this joint commitment by virtue of appropriate, explicit expressions on the part of each, in conditions of common knowledge and (3) P specifies an action for X.[23]

Promises are accounted for in terms of (joint) commitments. What are commitments? Although "committing oneself" has a psychological connotation, on Gilbert's understanding, *commitments – personal or joint –* are *normative*, nonpsychological phenomena.[24] The psychological process of committing oneself should not be conflated with its normative product: "to commit" and "committing" are psychological; "to be committed" and "commitment" are normative.[25]

Against this background, *personal* commitments are normative phenomena created by acts of the individual will, namely intentions or decisions.[26] In this sense, commitments are "creatures of the will."[27] Although normative, no moral valence is attached to commitments: "[t]o commit oneself [in this sense] is to make it the case that one has sufficient reason to do a certain thing."[28] If Laura decides to kill Sam, Laura now has a sufficient reason to do so because her decision has brought about a personal commitment, independently of its immoral content. (One could add that the commitment at stake is *pro tanto*, given that other reasons, and especially moral reasons, which may speak against the action, accrue to her.) Importantly, a personal commitment can be reneged on by its very bearer *solo*, as it were. Changing one's mind is a personal affair, which may be difficult and may come with psychological costs, but which is possible without the subject consulting with anybody else. Yet, this very possibility is precluded when it comes to *joint* commitments. Why is that and, more generally, what are joint commitments?

A joint commitment is one commitment (not a combination of commitments) of two or more persons by these two or more persons. Roughly put, the form of joint commitments is this: "A and B are jointly committed to φ as a body" (where φ is an agential or psychological predicate). A joint commitment is brought about when individuals express their readiness for a particular joint commitment with one

research, the scope of this paper forces us to address only those parts of her general theory that are immediately relevant to the discussion of promises. Also, note that this paper only objects to the relationship between promises and joint commitments, but it targets neither Gilbert's notion of joint commitments as such nor its heuristic value in accounting for other social phenomena.

[23] Gilbert (n 3) 204.

[24] ibid 161, 181.

[25] Margaret Gilbert, 'Introduction' in *How We Make the Social World* (Oxford University Press 2014) 6.

[26] Gilbert (n 3) 162.

[27] Margaret Gilbert, 'Rationality in Collective Action' (2006) 36 Philosophy of the Social Sciences 1, 6.

[28] Gilbert (n 4) 310.

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another, under conditions of common knowledge.[29] Importantly, "expressing readiness" should be understood as "expressing that state of [the] will that is readiness [...]."[30] Imagine Laura telling Sam "should we go for a walk?" and Sam "sure, lets!"[31] In this case, Laura and Sam have expressed, under conditions of common knowledge, their relevant states of the will that is each one's readiness jointly to commit to taking up as a body the goal of going for a walk. They are, therefore, jointly committed to doing so. Thus, in the same way in which personal decisions create personal commitments, so expressions of states of the will that are readiness to jointly commit (under conditions of common knowledge) create joint commitments. A joint commitment (just as with a personal commitment) provides each of the parties sufficient reason to conform to it: "If [...] one is jointly committed [...], [o]ne therefore has sufficient reason for performing actions that conform to the commitment, sufficient reason that is independent of one's inclinations and self-interest." Interestingly, Gilbert continues by stating that: "in the case of a personal decision, intention, and so on, the normative force of this commitment can be eradicated by one's own fiat. Failing special background understandings, that is not so in [the] case [of joint commitment]."[32]

So, joint commitments, in contrast to personal commitments, cannot be rescinded by a single party unilaterally (barring special background understandings). Why? Because a joint commitment, Gilbert claims, creates a set of directed obligations and correlative rights. These obligations and rights block the possibility for a single individual to renege on a joint commitment unilaterally. Put another way, each party of a joint commitment not only is obligated to the others to conform to the commitment, they can also authoritatively demand conforming actions of the others. Note that these obligations and rights are content-independent, meaning that they are not moral and do not derive from moral principles. As long as a joint commitment is in place, corresponding obligations and rights arise, regardless of the moral content of that commitment.

Before assessing the joint commitment of promises, three clarifications are in order.

First, Gilbert's position on what X and Y are committed to, when X makes a promise to Y, has evolved through time. In a former version of her theory,[33] X are Y are held to be jointly committed to the *decision* that X performs a certain action. In the last version presented here,[34] X are Y are jointly committed to an *action plan*

[29] On common knowledge, see Margaret Gilbert, *A Theory of Political Obligation* (Oxford University Press 2008), 138ff.
[30] Gilbert (n 3) 216.
[31] Margaret Gilbert, 'Walking Together: A Paradigmatic Social Phenomenon' (1990) 15 Midwest Studies in Philosophy 1, 1–14.
[32] Gilbert (n 29) 156.
[33] Gilbert (n 4).
[34] Gilbert (n 3).

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that specifies an action of X. While the distinction between commitment to decisions to act and commitment to plans to act matters in various respects, we shall consider the two versions of theory to be equivalent for the purposes of our paper given that our objections do not hang on that point.

Second, it should be stressed that, despite its name, *the joint commitment account does not equate promises with joint commitments*. As we have seen, commitments are normative phenomena that ensue from the persons' acts of *committing*. The distinction between the joint commitment and the actions of X and Y that give rise to it is reflected in the use of the present and past tense in Gilbert's definition. This is perhaps more easily seen in Gilbert's earlier formulation of her view:

> for one person to make a promise to another is *for them jointly to commit themselves*, by an appropriate, explicit process, to the decision that one of them ("the promisor") is to perform one or more specified actions.[35]

We infer from this that, on the joint commitment account, making a promise consists in the acts of jointly committing, not in the (normative) state of being jointly committed.

Thirdly, a clarification about the notion of "jointly committing" is in order. The acts of jointly committing mentioned in Gilbert's account of promises must not, on pain of circularity, be understood as joint actions in a collective sense, according to which an action is joint if it is performed upon a shared intention.[36] For her notion of shared intention is explained by that of joint commitment: in brief, the intention to φ is shared by X and Y iff X and Y are jointly committed to intend as a body to φ.[37] So, if joint commitment were created by joint acts of committing (in the collective understanding of "joint acts," which presupposes shared intentions), then her theory would become vulnerable to a charge of circularity. Therefore, the appeal to the notion of "jointly committing" in her account should be read in the noncollective (or "distributive") sense, according to which X's act of expressing personal readiness for the joint commitment in question and Y's act of expressing personal readiness for the same joint commitment do *not* presuppose X and Y's shared intention to perform the relevant acts. Once the necessary expressions have been made under condition of common knowledge, then the joint commitment will be in place, as is understood by the parties.

We now have all the elements required to appreciate Gilbert's account of promises. Laura's promise to Sam to call him later is Laura and Sam's joint commitment to decide or endorse as a body the plan that Laura calls Sam later (a

[35] Gilbert (n 4) 317, our italics.

[36] David P Schweikard and Hans Bernhard Schmid, 'Collective Intentionality' in *The Stanford Encyclopedia of Philosophy* (Edward N. Zalta, ed., https://plato.stanford.edu/archives/win2020/entries/collective-intentionality/ 2020).

[37] Margaret Gilbert, 'What Is It for Us to Intend?' in G Holmström-Hintikka and R Tuomela (eds), *Contemporary Action Theory*, Vol. II (Dordrecht: Kluwer 1997) 65–85.

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joint plan arrived at by a particular process e.g., Laura's saying "I promise…" and Sam offering an accepting response; on such a "response" more later).

Why should one favor the joint commitment account of promises? Gilbert gives four arguments in its support.

1. The first argument is that the joint commitment account vindicates the two intuitions. Thus, the account explains why a promise necessarily generates an obligation and why that obligation is relational.
2. Second, the joint commitment account jettisons the three dogmas. It rejects the Moral Requirement dogma because no moral principle is appealed to in order to explain the *pro tanto* obligation of a promisor to perform the promise. The No Willing dogma is also dismissed: while the obligation, as a matter of fact, *is* willed into existence, but its creation does not happen merely in virtue of the *individual* will of the promisor, but in virtue of *two* individual wills.[38] Finally, the Immoral Promises dogma, too, is subject to rejection: promissory obligations are content-independent, which means that, regardless of their content, they are brought into being by the joint commitment.

Gilbert adds what in her eyes constitutes two further advantages of her view:

3. If promises are joint commitments to the decision that the promisor φs, then the jointness of that commitment requires that not only the promisor, but also the promisee, is active in a certain sense. This conforms to our intuitions, according to Gilbert, so that: "one point in favor of the joint commitment account of promises is that […] the promisee must do something of an accepting rather than a rejecting nature"[39] (note that acceptance does not have to be verbal, but it is not mere uptake or acknowledgment[40]).
4. Finally, Gilbert claims that her view entails that, when a promise is made, not only the promisor but also the promisee takes on some obligation (whose content is not specified in the content of the promise). She takes this to be a welcome consequence of her account, which again is supposed to conform to our intuition: imagine Laura promises to call Sam on the phone, Sam accepts that, but then he takes his phone off the hook. On Gilbert's account, Laura can rebuke Sam authoritatively because Sam has the obligation to Laura not to make her calling him impossible.[41] Since joint commitments generate both obligations and rights, on each of its parties, this intuition is also explained by the account.

[38] See Gilbert (n 4) 321, and (n 3) 214f.
[39] Gilbert (n 4) 318.
[40] Gilbert (n 3) 108ff.
[41] See Gilbert (n 4) 318.

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In the next three sections, we mount several objections against Gilbert's theory of promises. These objections are grounded in elements of Reinach's theory of promises. While we flag these elements by referring to Reinach's text, our objections are substantive, rather than historical or exegetical.

11.4 FIRST OBJECTION: ACCEPTANCE

One important element in Gilbert's theory of promises, which has been mentioned only briefly in the previous sections is this: "[p]romising," she writes, "is understood to include whatever is necessary to supplement the actions of the promisor in order to complete the promise; *this* [...] *includes the promisee's acceptance*."[42] Gilbert specifies that acceptance is a kind of concurrence as opposed to mere acknowledgment: "if Jeremy were to make a prediction, such as 'I think I'll be calling you tonight, it's going to be hard being home alone,' Julia might respond with 'I hear you.' This would be a case of acknowledgment without acceptance in the sense at issue."[43] However, Gilbert otherwise does not elaborate extensively on the credentials of this act. In this section, we follow Reinach in canvassing various senses of "acceptance" and show that none of them are necessary for the promise.[44]

First, "acceptance" could point to (1) an act of inner assent, which can be described as the experience of saying "yes" to a certain content that p as contrasted with the experience of merely entertaining the content that p or refusing it. The specific credentials of this act (e.g., whether it is a dispositional belief or an episodic action) are not of interest for our present purposes. What is important, though, is that this act (just as beliefs and other mental actions) is internal in the sense that it does not stand under the requirement of being expressed to others.

The second sense of acceptance (2) discussed by Reinach is the – nonintentional and noncommunicative – expression of (1), for example, nodding while reading a contract we are asked to sign. This sense of acceptance bears little or no relevance to our discussion, which is why we won't dwell on it, but it allows us to distinguish a third sense of acceptance, which is (3) the intentional act of informing somebody about one's acceptance of p in the sense of (1). In contrast to (2), (3) demands an addressee: informing your colleague that you have accepted the contract is an intentional act, which has to be distinguished from your (nonintentional) nodding in the presence of the colleague.

The fourth act is a *sui generis* intentional social or speech act of acceptance (4), which is performed, for example, when one accepts the contract by saying "I hereby accept the terms of the contract." One might wonder whether (3) genuinely differs from (4). The following consideration shows that it does: while (3), in principle, can

[42] See Gilbert (n 3) 113 n 25, our emphasis.
[43] Gilbert (n 4) 318.
[44] Reinach (n 2) 28–31.

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be addressed to anybody, (4) can be addressed sensibly only to the relevant person in the relevant given communicative situation: while one can inform their colleague about their inner assent to the contract, one cannot accept the contract in front of their colleague (in the fourth sense), unless they are or represent the other party of the contract. Furthermore, (3) can be repeated *ad libitum*, but (4) can meaningfully and efficaciously be performed only once. Finally, (3) can be made in the present, past or future tense ("[I inform you that] I have accepted" or "I accept" or "I will accept the contract"), but (4) admits only of the present tense.

Is acceptance in at least one of these four senses necessary for promises? Start with the first sense of acceptance. Inner assent, it can be contended, is irrelevant to promises: We have seen that the No Willing dogma declares mere internal willing unable to alter the space of interpersonal normative reasons, that is, to bring about normative entities like directed obligations or claims. But if mere internal willing does not have that power, neither does inner assent insofar as it is a personal (private and internal) act. Interpersonal reasons are just not the kind of entities that are created by individual and internal acts, be they acts of the will or of inner assent.

Since acceptance in the second sense merely is the nonintentional expression of (1), the inner assent's irrelevance to promises extends to (2) as well. Hence, promises' capacity to generate relational obligations and rights does not hinge on nonintentional expressions of inner acts. More importantly, it does not hinge on the *intentional* expression of internal assent either (in the sense of (3)). To see why, consider these two ideas. First, one can inform anybody about their assenting to a promise, but that does not amount to accepting the promise in the sense at stake here. Suppose Laura promises to Sam: "I will call you this afternoon!" and Sam, unbeknownst to Laura, informs Pam that he has assented to Laura's promise. While one can grant a sense in which Sam, towards Pam, has "accepted" Laura's promise and while this might have repercussions in the normative relations between Sam and Pam, no normative relation between Laura and Sam has been established by Sam's act of informing Pam about his assent. Because of that, this act is not relevant to promises. Second, the promisee can inform the promisor of their assent. Admittedly, this act can be confused with the proper act of acceptance. However, its linguistic expression will help disambiguate the communicative situation. If the subject's utterance is in the past or in the future tense ("I have assented to your promise" or "I will assent to your promise"), chances are that they are merely informing the promisor about their inner act. The same consideration holds if they repeat their utterance several times. In these cases, the promisor is likely to request clarification on what the promisee is doing. But no such request will be raised if the promisee's utterance is in the present tense and/or if they complement it with relevant adverbs like "hereby."[45] For these are linguistic signals that the promisee is performing a genuine act of acceptance.

[45] On the relevance of this adverb see Reinach (n 2) 30 and Austin (n 13) 57.

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Is acceptance *qua* specific intentional speech or social act different from (1)–(3) necessary for promises? Sometimes, this act is indeed required. Imagine Laura telling Sam: "I will call you, only in case you agree," and Sam replying: "I hereby agree." Laura is here issuing a *conditional promise*: its efficaciousness is contingent on an event, which is Sam's act of acceptance – in the fourth sense illustrated above. For the promissory obligation to get off the ground, Sam has to accept Laura's promise by performing an intentional act of a specific kind. (In this particular case, the promise is contingent on an act of acceptance, but promises could be made contingent on all sort of events: for example, "if it rains, I promise I'll bring the dog for a walk.")

However, not all promises are conditional. Imagine Laura who struggles to keep up with her jogging schedule. To motivate herself, she tells Sam, her flatmate, while he is doing the dishes: "I promise to go for a run at 5 pm." In uttering those words, Laura creates a promissory obligation that motivates her to go for a run at 5 pm. Now, it is true that Laura's motivation to make the promise is entirely private (she wants to keep her jogging schedule). However, this doesn't mean that she has not entered a promissory obligation. In fact, the motivational power Laura intends to elicit precisely derives from its relationality: since Laura cannot renege on the obligation unilaterally, she is bound to honor it. The promissory nature of Laura's obligation can also be inferred by the fact that Sam acquires a content-identical claim. This claim may well have practical insignificance to Sam, but this is not to say that it does not exist. Under specific circumstances, Sam may decide to enforce it. For instance, imagine that Sam schedules an online meeting for 5 pm, which requires the use of Laura's room. Around that time, he notices that she hasn't yet prepared for jogging and demands that she honors her commitment to go for a jog. Sam's demand carries normative force, meaning that if Laura fails to meet it, Sam is entitled to rebuke her. This normative force wouldn't exist if Laura had merely informed Sam of her intention to go for a jog at 5 pm. Having established all this, let's go back to Laura's promise; while Sam is doing the dishes, she tells him: "I promise to go for a run at 5 pm." Does Sam need to accept the promise in a case like this? No, he can continue doing the dishes without saying a word.[46]

For at least some promises, acceptance is therefore not necessary: call these promises "unconditional." It is true that many promises that are explicitly unconditional appear to be tacitly conditional. So, for example, promises like "I will sell you the house at the best price" or "I will take care of your children for the next three days" are not explicitly formulated in conditional terms, but do require acceptance

[46] Interestingly, Gilbert makes a similar example, but draws a different conclusion (see Gilbert (n 3) 111). Another example: "I may promise someone in person, face to face, to come and visit him in hospital tomorrow. He receives the promise stone-faced, saying nothing and moving not a muscle. My promise is binding, and it requires some imagination to claim that it has been accepted." Joseph Raz, *The Roots of Normativity* (U Heuer ed., Oxford University Press 2002) 205.

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on the promisee's end to generate obligations and rights. These observations suggest that conditional promises may be more ubiquitous than usually thought. But this does not imply that all promises are conditional. We surmise that the view that all promises require acceptance stems from a natural, but ultimately overbroad generalization from conditional to unconditional promises.[47]

Perhaps acceptance-based accounts of promises[48] are motivated by a concern to include a mechanism that safeguards the interest of the promisee, for example, in a case where they perceive the promise to endanger them (e.g., the promise of transferring shares in a company that involve liability). Charles Fried writes in this vein: "I admit unease [...] about insisting on acceptance in the case where the promise is clearly communicated and where it would be captious to doubt that the promisee is delighted the promise." But he then continues: "Since [...] any putative benefit may in fact be unwanted by a particular (putative) promisee, there must at least be the option to refuse or reject not just the benefit but the promise of the benefit."[49] We think that the concern is legitimate, but misplaced. For the promisee can avail themself of a mechanism to protect their interest unrelated to acceptance. In fact, the promisee has the power to release: in waiving their claims, they, by the same token, release the promisor of their obligation and make the promise null and void. (As we will see, one of the criticisms we raise in the next section against Gilbert's theory is that it disavows this power.)

Our interim conclusion is that promising as such does not require acceptance. To dismiss this conclusion, defenders of an acceptance-based account of promises should dismiss the notion of unconditional promise as inconsistent and empty. However, this notion does not involve any internal contradiction and, hence, is not inconsistent. Also, many of our promises do appear to be unconditional.

[47] Reinach is not alone in endorsing the existence of unconditional promises: Raz, as we saw above, concurs. But this idea has a long history: Thomas Aquinas (and other medieval philosophers) do as well, see James Gordley, *The Philosophical Origins of Modern Contract Doctrine* (Clarendon Press 1991) 45. John Searle only mentions the promisee having "knowledge" (not "acceptance") of the promise as condition for successfully promising (Searle (n 13) 60). For what it's worth, promises not conditional on acceptance are recognized to give rise to "unilateral obligations" (in contrast to "mutual contracts") in Scottish law, see Gloag and Henderson: *The Law of Scotland* (H MacQueen and The Right Hon Lord Eassie, eds W. Green/Smith and Maxwell) 5.1.

[48] In addition to Gilbert, a number of other philosophers impose an acceptance-condition on promises. Some recent contributions that emphasize the role of acceptance include: Stephen Darwall, 'Demystifying Promises' in H Sheinman (ed) *Promises and Agreements: Philosophical Essays* (Oxford University Press 2011) 256; Abraham Sesshu Roth, 'Intention, Expectation, and Promissory Obligation' (2016) 127 Ethics 88); Brendan de Kenessey, 'Promises as Proposals in Joint Practical Deliberation' (2020) 54 Noûs 204.

[49] Charles Fried, *Contract as Promise. A Theory of Contractual Obligation* (Oxford University Press 2015) 43.

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11.5 SECOND OBJECTION: THE AUTHORS OF PROMISES

We ordinarily think of promises as actions of the promisor. However, the joint commitment account misidentifies the authors of the promises by equating the promisor's singular act of promising with actions performed by promisor and promisee: "for *one* person to make a promise to another is for *them* jointly to commit. . ."[50] It is true that, on Gilbert's theory, there is more to promises than that (e.g., appropriate and explicit expressions on the part of promisor and promisee must have occurred). While these details are important to Gilbert's general account,[51] our focus in this section will be restricted to the idea that what appears to be an act of an individual (the promisor's *promising*) directed at another (the promisee) turns out to be a plurality of acts of those individuals (the promisor's and promisee's *committing*). This amounts to a strongly revisionary account of the authors of promises.

Note, first, that our point is not that the promisor/promisee asymmetry gets lost on the joint commitment account. It does not: the promisor – not the promisee – figures *as the author of the decided action* in the content of the decision to which the promisor and the promisee commit. Our point rather is that what distinguishes the promisor from the promisee is not *just* that the promise bears on the promisor's action. The distinction between the promisor and the promisee is first and foremost content-independent: the promisor is not only the author of the promised action, he also is the author of the promise (or, as Reinach calls him, the "originator"[52] of the promise). Gilbert's account fails to capture that aspect of promises.

In answer, Gilbert might simply challenge the notion that promises, as we submitted, are, in fact, ordinarily conceived of as acts of the promisor and not as acts of the promisor and the promisee.[53] However, the following considerations suggest that that is very much the case indeed:

1. We tend to ascribe the authorship of promises to the promisor alone:
   a. Suppose that, after Laura promised Sam to call him, Jim asks Sam: "Did *you* commit together with Laura to the decision that she will call you?" Sam is likely to answer in the negative: "No – this is Laura's commitment!" If Laura were asked the same question, a similar answer may be expected – perhaps accompanied by an element of remonstration: "No, what I promise is entirely up to me, why should have I consulted with Sam in advance on what to promise to him?".

[50] ibid 317, our italics.

[51] They, for instance, help Gilbert distinguish between promises and agreements, see Gilbert (n 3) 204f.

[52] Reinach (n 2) 18.

[53] Note that, as we make explicit below, we do not deny that there can be promises made by two or more individuals *together*. Here, we are only putting pressure on the claim that *all* promises are joint actions.

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b. Imagine an evil demon announcing that he will kill the first person who makes a promise after *t*. In a heroic sacrificial act, Sam shouts "I promise never to forget you Laura!". Should the demon kill them both?

c. A promisor can plan to make a promise, without any uncertainty being caused by the possible lack of cooperation of the promisee. One's promises are easy to plan, in contrast to agreements and joints actions.

2. The contrast between individual and collective promises ("I promise" vs. "we promise") is, on the face of it, content-independent:[54] it is simply the contrast between the promise made by a single subject and the promise made by a plurality of subjects. The joint commitment account has to reject this. On the joint commitment account, the difference cannot depend on the number of subjects performing the act (one *versus* many). Rather, what distinguishes individual from collective promises pertains to their content: individual promises are joint commitments bearing on individual actions, while collective promises are joint commitments bearing on collective actions (more on the content of promises in the next section).

So, the ways in which we conceive of, plan, and evaluate promises converge in showing that promises are acts *of the promisor*. The joint commitment account is, as mentioned above, robustly revisionary in that respect. Couldn't Gilbert bite that bullet? We doubt it. First, this revision concerns such a core feature of promises that one may wonder whether an account denying that promises are acts of the promisor can still legitimately claim to be *about promises*. Second, the revision entails four further problematic consequences to which we now turn.

(i) *Too many obligations for the promisee*. Let us start by formulating a worry concerning the standard obligation of the promisor, that is, the "performance obligation" to act as promised, which is at stake in the Inevitability Point. The worry is this: if X and Y jointly commit to endorse the decision that X will φ, then both X and Y should have an obligation to that effect. However, this is not so in the case of promises.

Gilbert denies that X and Y's joint commitment entails that performance obligations accrue to both, X and Y: "[. . .] the only performance obligations associated with a promise X makes to Y are those of X [. . .]."[55] But if the promisee incurs no performance obligation, then we confess to lose grip on the very idea that, when X promises Y to φ, X *and* Y *are jointly committed to endorse the decision that* X will φ.

[54] See Reinach (n 2) 24.
[55] Gilbert (n 3) 204.

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That is, we doubt that there is any ordinary notion of joint commitment such that X and Y are jointly committed to an action of X, without Y incurring any (performance) obligation as a result.[56] It just doesn't seem that Y has committed to anything in such a case.

However, it is important to note that, in denying that X and Y's joint commitment entails that performance obligations accrue to both X and Y, Gilbert is not denying that other, "ancillary" obligations accrue to the promisee. She writes: "the promisor's performance obligation is not the only obligation arising, inevitably, in the context of a promise." What are these obligations? "A promisee's ancillary obligation," she continues, "is at a minimum an obligation to his promisor not to act in ways that prevent his promisor from fulfilling the promise."[57]

Does the existence of ancillary obligations deflate our criticism? Let us reply by highlighting that we do not dispute the existence of such ancillary obligations. However, we resist the idea that they are generated by the promise. Instead, we suggest that these obligations are generated by a general moral principle. While the exact formulation of this principle is the topic for another paper, we can state it in a loose manner as follows: one ought not to thwart the realization of somebody else's intention (barring special circumstances: e.g., if the intention carries a morally heinous content). Since honest promises presuppose the promisor's intention to perform the promised action, the promisee (and, actually, given the moral nature of the principle at stake: anybody else) ought not thwart the realization of the promisor's intention (barring special circumstances). So, if Laura promises Sam, in the presence of Robert, that she will meet Sam at the pub at 5 pm, then not only Sam but also Robert should refrain from actions that would hinder Laura from fulfilling her promise.

(ii) *Loss of power of release for the promisee.* A second problematic consequence of the joint commitment account pertains to the rescission of a promise. Gilbert claims that, since not only the promisor, but also the promisee, places himself under an obligation when a promise is performed, then the promisee cannot, on the face of it, unilaterally rescind the promise. This is in contrast with the widely accepted idea that the promisee has a "power of release."[58] Gilbert offers two replies to alleviate the tension with this widely endorsed idea.

Her first reply is to question the systematic existence of such a power of release. Gilbert suggests that we are under the impression that such a power exists because, in our analyses of promises, we selectively focus on promises that the promisor has

[56] In her works, Gilbert repeatedly contends that her notion of joint commitment is "a fundamental everyday concept," ibid 164.
[57] ibid 114.
[58] Reinach (n 2) 75.

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no personal desire to perform. These are cases in which the promise has been solicited by the promisee. While looking at this specific class of promises, it may sound plausible that the promisee has a power to release, given that the promisor has no interest in the promise. However, Gilbert claims that if the promisor *does* have the desire to promise, then the promisor will be justified in resisting the promisee's attempt to waive their right unilaterally (thereby making the promise null and void). This is the example Gilbert makes to illustrate the point:

> [. . .] suppose Joe promises to return Jane's book on Tuesday. Jane calls him to say that it is not that important for her to have the book, so he may keep it. He might then say 'No, I promised to return the book on Tuesday and that's what I'll do.' It is at best not clear that Jane is [in] a position to say 'But the promise is over, I just said so'.[59]

We disagree: it seems to us that Jane is very much in a position to do so. We suspect that confusion is at play here between Jane's rescinding the promise and Jane's forbidding Joe from returning the book. Of course, Jane is in no position to issue such an interdiction. While Jane's rescinding of the promise destroys Joe's obligation to return the book, his permission to do so remains intact.

If you are nonetheless under the impression that Jane is in a position to forbid Joe to return the book, then perhaps, Reinach argues,[60] you conceived of Joe's "promise" as a promise *together with some nonpromissory act*. For instance, it might be that by uttering the word "I promise to return your book on Tuesday," Joe performed not one, but two acts: a promise to return the book *and* a request to Jane that she accept that he will return the book on Tuesday. Of course, if Jane accedes to the *request*, she takes on an obligation. This is the obligation to accept that Joe returns the book, and it is one that she cannot revoke unilaterally. While Jane retains the power to waive the claim deriving from Joe's promise, she cannot exercise that power, given the obligation she entered by accepting Joe's request. In this scenario, Jane therefore is under an obligation that she cannot rescind, but this is not, as the joint commitment account would have it, because the promisee is tied by the promise that was made to her, but because she is tied by her having accepted the concomitant request of the promisor.

Gilbert's second reply is to point out that should one insist on the promisee's power of release, one could modify the joint account so as to accommodate it in the following way: "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'*."[61] Our reply is that while promisor and promisee may have

[59] Gilbert (n 4) 318f, and (n 3) 210f. Note that the example is slightly confusing, given that we have a duty to give back what we lent independently of any promise.
[60] Reinach (n 2) 32f.
[61] Gilbert (n 4) 319, our italics.

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that understanding and may even render it explicit in the process of making the promise, a great many promises are *not* associated with that understanding simply because the parties do not possess it. And yet, even in those promises, we would maintain that the power of release accrues to the promisee. So, for example, Laura promises Sam that she will call him at 5 pm. Sam (and, for what it's worth, Laura too) might not be aware that Sam can release Laura (perhaps they have never reflected on these matters). Yet Sam does possess that power (even though, due to his ignorance on the matter, he will not exercise it). If that is correct, it goes to show that the power of release does not depend on such an understanding.

(iii) *Too much responsibility for the promisee.* Intuitively, the responsibility for a promise accrues to the promisor in a way that does not accrue to the promisee. Thus, in the case of immoral and, especially, unconditional promises, the promisor is blameworthy in a way the promisee is not. Likewise, the promisee does not get any credit for the courageous or generous promises made by the promisor. Since on the joint commitment account both the promisor and the promisee perform the promise together, such asymmetries in responsibility ascription run the risk of getting lost.

Gilbert may reply by relying on the fact that her account does not erase the difference between the promisor and the promisee but traces it back to the content of the joint commitment: the promisor, to recall, is the one whose action figures in the joint commitment. Thus, on the joint commitment account, it may be argued that the promisor incurs the responsibility of the promised action because that action is hers. By extension, if the promised action is immoral, then the promisor – not the promisee – is blameworthy.

However, there are two reasons why such a view fails to capture the relevant asymmetry in responsibility. First, given that both the promisor and the promisee are jointly committed to the decision that the promisor will perform the immoral action, the promisee, on the joint commitment account, should still incur some responsibility for that blameworthy action, should it be performed. But if Sam makes the unconditional promise to Laura to kill a cat for fun, how is Laura even partly responsible if Sam delivers on his promise?[62]

[62] One might object that whether Laura incurs responsibility depends on how she reacts to this unconditional promise, which is left unspecified in the example. Laura might (i) ignore Sam's promise; (ii) insist on Sam's delivering the promise; (iii) exercise her power to release Sam. Admittedly some form of responsibility accrues to Laura in scenario (i) and surely in (ii) – but not in the third scenario (iii). However, that responsibility, we submit, is not for Sam's action (she is not the one who, after all, has killed the cat), but rather the responsibility for not deterring Sam to act, as in (i), or for encouraging him to act, as in (ii). At this juncture, it is interesting to recall that Gilbert's theory deprives Laura of the power to release. Because of that, the joint commitment account precludes Laura to evade whatever form of responsibility Laura might incur in (i) by activating that power. Finally, it should be mentioned that moral

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Second, one might be blameworthy (or praiseworthy) for a promise without this deriving from the blameworthiness (or praiseworthiness) of the promised action. Suppose it is forbidden to make promises on Mondays. If Sam nevertheless unconditionally promised to Laura on Monday, Laura does not incur any responsibility for violating the interdiction. However, in such a case the asymmetry in blameworthiness cannot be traced back to the blameworthiness of the promised action. Indeed, the promised action may well not be blameworthy. In such a case, if Sam is blameworthy and Laura is not, this cannot be because they jointly commit a blameworthy action of Sam. In short, differences in blameworthiness of promises cannot always be derived from differences in blameworthiness of promissory contents.

(iv) *Second-order promises and Euthyphro*. Consider this second order promise: Sam promises Laura that he will promise to call her. On the joint commitment account, such a second-order promise amounts to Sam and Laura jointly committing to the decision that Sam will promise to call Laura, which in turn amounts to Sam and Laura jointly committing to the decision that Sam and Laura will jointly commit to the decision that Sam calls Laura. Let us focus on the wide scope, second-order promise. That promise is, *ex hypothesis*, a promise made by Sam. On the joint commitment account, this should mean that the promise bears on an action by Sam. However, the joint commitment account entails that this is not the case: the content of that second-order joint commitment is an action of Sam and Laura – namely a first-order joint commitment. This highlights that the joint commitment account is in no position to maintain that, with respect to the second-order promise, Sam is the promisor.

The natural reply on behalf of the joint commitment account is that the first-order joint commitment (of Sam and Laura to the decision that Sam will call Laura) is a promise by Sam, because it bears on an action by Sam (calling Laura). If so, the second-order joint commitment bears on an action by Sam – a first-order promise – so that it is itself, in turn, a second-order promise by Sam.

This reply, we submit, brings to the fore how wrong-side-up it is to identify the promisor via the content of the promise.[63] To determine whether a second-order joint commitment of Sam and Laura corresponds to a promise by Sam, by Laura, or is not a promise, we must look into the content of that second-order order

consequences bearing on Laura would have reverberated if Sam's promise was conditional on Laura's acceptance and Laura accepted it.

[63] To be sure, this is not the only way in which the role of the promisor is identified by Gilbert's theory. For instance, the promisor is also identified by the ritual in which the relevant joint commitment is entered: the promisor, though not always, is the one who utters "I promise" and the promisee is the one who accepts the promise.

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commitment. Since that is another joint commitment, we have to look further and check the content of that first-order commitment. This puts the cart before the horse. We need not know what is promised to determine *who* has promised. Gilbert is certainly right that our promises necessarily bear on actions of ours. But they are not our promises because they bear on actions of ours. They bear on actions of ours because they are our promises.

For all these reasons we conclude that authorship of promises should not be attributed to both the promisor and the promisee, as entailed by the joint commitment account. We now turn to our third objection to the joint commitment account of promises.

11.6 THIRD OBJECTION: THE CONTENTS OF PROMISES

In this section we argue that the joint commitment account of promises mischaracterizes the *contents of promises* by equating them with decisions to act (or endorsement of action plans) and not with actions *tout court*. Remember Gilbert's account:

Joint commitment account: X has made a promise to Y if and only if (1) X and Y are jointly committed *to endorse as a body a particular plan of action P*, and (2) X and Y created this joint commitment by virtue of appropriate, explicit expressions on the part of each, in conditions of common knowledge, and (3) P specifies an action for X.[64]

On this view, "Laura promised to Sam that she will call him" ought to be paraphrased into "Laura and Sam jointly committed to endorse the plan [or 'decide'] that Laura calls Sam."[65] However, what we typically promise is neither to *decide* to act nor to *endorse* an action, but *to act* (sometimes, Reinach argues, the promisor promises *results* rather than actions – but these results still are results of the promisor's actions[66]). All in all, Gilbert's *analysans* is more complicated than the *analysandum* in two respects. First, promises – which *prima facie* are individual acts – are analyzed in terms of a plurality of acts. Second, promises – which *prima facie* have a first-order content directed at the action of the promisor – are analyzed in terms of committal acts of the will directed at a *joint decision to act* (or at the *joint endorsement of some action plan*). A first order individual act is analyzed in terms of a plurality of second order acts.

[64] Gilbert (n 3) 204, our italics.

[65] Couldn't one read the account in such a way that the content of the joint commitment simply is the action of one of the two committers (rather than their joint endorsement of a plan of action)? We come back to this alternative interpretation in the final part of this section where we show that, in addition to going against the letter of Gilbert's account, it also is uncharitable to it as it generates a number of problematic consequences.

[66] Reinach (n 2) 11f.

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In principle, one could maintain that promises are in fact more complex than they seem to be by arguing that this complexity is a cost worth paying – for instance, because joint commitments allow analysis of a wide variety of other phenomena, such as agreements. However, we submit that such gains are overridden by substantial costs which, all things considered, should advise us against endorsing the joint commitment account of promises.

To begin with, there is a cost in intuitive simplicity: promises are something else than what they appear to be. Preferring an elaborate account of promises to our intuitive grasp of them stands in tension with Gilbert's laudable attempt to stick to appearances in other places. For instance, elsewhere she argues against the view that agreements are exchanges of promises by raising the worry that an "agreement, for one, does not look like a pair of promises, mutual, exchanged or whatever."[67] We agree, but by parity of reasoning, one should also note that promising does not look like jointly committing to a decision to act.

Furthermore, although one chief aim of the joint commitment account is to explain the Inevitability Point (according to which if X promises to φ, then X is, without exception, under the *pro tanto* obligation to φ), equating promises to joint commitments to a *decision* to act might be incompatible with that point. To see that, suppose that Laura promises to call Sam. If Laura and Sam are jointly committed as a body to the decision that Sam calls Laura, then it seems that Laura now has an obligation *to espouse as a body the decision* that Laura calls Sam. If that is the case, Laura will have promised to call Sam without ever having been under the obligation to call Sam (*contra* the Inevitability Point).

One could object to our reconstruction and note that, in this scenario, Sam and Laura are not committed to decide or endorse as a body the plan that Laura will call Sam, rather they have jointly decided that.[68] Accordingly, neither of them has an obligation to decide anything (unless it is a decision to accord with the joint decision). And since the joint decision has been made, it is incumbent upon Laura to make the call, if she is to accord with the decision they have made. Hence, the theory preserves the Inevitability Point. We welcome the objection because it enables us to specify that our criticism rests on two general assumptions about commitments as such. Below we provide reasons for endorsing these assumptions. Our criticism, therefore, is conditional: if those assumptions are misplaced, it fails.

Our first assumption concerns a general point about commitments, already highlighted in Section 11.4: a commitment (personal or joint) to φ is a sufficient reason for φ-ing (e.g., acting or forming a certain attitude). This goes to show that, at the moment in which the joint commitment has been formed, φ *has not yet happened*, rather the agents are motivated to make it happen. Note that the creation

[67] Gilbert (n 4) 315.

[68] This is, as a matter of fact, the objection Margaret Gilbert has raised to us in private correspondence.

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of the joint commitment might well lead to the immediate realization of its content. Perhaps, this is how joint commitments lead to the formation of, especially, psychological attitudes (in contrast to actions). But our assumption concerns the motivational or normative nature of the relation between the joint commitment and its content, not its temporal determination. It is at least in principle possible for the (personal or joint) committer to disregard the commitment: in this case, the commitment does not necessitate the committer to φ (regardless of the temporal relation that binds the commitment and φ in the case where the committer conducts themselves according to their commitment).

The second assumption relates to the idea, again discussed in Section 11.4, that a joint commitment cannot be unilaterally rescinded because it generates directed obligations and claims on X and Y. As Gilbert writes: "If Anne and Ben are jointly committed to doing something as a body, each owes the other appropriate actions by virtue of their joint commitment."[69] It stands to reason that these appropriate actions must be in accordance with the joint commitment. Hence, our second assumption here is that the obligations inherit, as it were, the content of the joint commitment. So, e.g., if Anne and Ben have jointly committed to φ, where φ is to climb a mountain together, then each of them has the obligation against the other to climb the mountain (the same, of course, applies to cases where φ is a psychological and not an agentive predicate).

Now, according to Gilbert's account, Laura has made a promise to Sam to call him if, among other conditions, Laura and Sam are jointly committed to endorse as a body a particular plan of action φ. Based on the first assumption, it seems to follow that the content of the joint commitment is to endorse as a body the particular plan of Laura's calling Sam. Hence, Laura and Sam have a sufficient reason to endorse as a body that particular plan of action. But this means that the agents are motivated to endorse that plan, which *has not yet happened* at the moment when they have formed the commitment.

Further, the joint commitment cannot be unilaterally rescinded because Laura and Sam have acquired directed obligations. What is the content of the obligation accrued to the promisor, and in our example, to Laura? Based on our second assumption, this is the same content of the joint commitment. In other words, this is an obligation Laura has against Sam to endorse as a body the particular plan of calling Sam.

If our assumptions are on the right track, then Laura, in promising Sam to call him, acquires the obligation to jointly endorse the plan to call him – she does not acquire the obligation to call him. But then, as we highlight above, this infringes upon the Inevitability Point. Our two assumptions seem to consistently square with the two ideas about commitments and directed obligations presented in Section 11.4.

[69] Margaret Gilbert, *Sociality and Responsibility. New Essays in Plural Subject Theory* (Rowman & Littlefeld 2000) 56.

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Yet nothing in what we have argued excludes the possibility that that the Joint Commitment Account of Promises can do without the two assumptions. Though doing so, we presume, will come at the cost of revising other principles of the general theory of joint commitments. We won't explore this possibility, but ask further whether Gilbert's theory of joint commitments couldn't be amended (or interpreted) in another way so as to obviate the mischaracterization of the promises' contents and to salvage the general idea that promises are joint commitments?

Consider the scenario in which a child and their parents, after a disastrous parents–teacher meeting, enter the joint commitment that the child will spend more time doing his homework. This seems to be a case of joint commitment the content of which is the action of *only one* of the commitment's parties. Based on this idea, Gilbert's theory of promises could be revised by now claiming that promises are joint commitments whose content is the promisor's decision only (and not a joint decision of promisor and promisee): for example, if Laura promises to call Sam, then Laura and Sam jointly commit to Laura's decision that she calls Sam. The revised version of the account secures the Inevitability Point (Laura's promise obligates Laura to the decision of calling Sam) and correctly attributes a first-order content to promises, while maintaining that promises are joint commitments.

Unfortunately, this amendment appears to have all the advantages of theft over honest toil (which is why, we presume, Gilbert nowhere hints at this possibility). For one can only commit to what is up to oneself or to what is (on some salient interpretation) under one's control: actions or attitudes of another are not something one can commit to.[70] Accordingly, the subject of the psychological predicate in the commitment's content can only be the subject of that very commitment and this holds for both singular and joint commitments. Our joint commitment is a commitment of ours that has an action or an attitude of ours as its content – something that is up to us or stands under our joint control.

[70] See Annette Baier, 'Doing Things with Others: The Mental Commons' in L Alanen, S Heinämaa, and T Wallgren (eds) *Commonality and Particularity in Ethics* (St. Martin's Press 1997) 15; Frederick Stoutland, 'Why Are Philosophers of Action So Anti-social?' in L Alanen, S Heinämaa, and T Wallgren (eds) *Commonality and Particularity in Ethics* (St. Martin's Press 1997), 45; J. David Velleman, 'How to Share an Intention' (1997) Philosophy and Phenomenological Research 29. Suppose one successfully rebuts this general point about commitments, as it is sometimes held in theories of joint actions (see Abraham Sesshu Roth, 'Shared Agency and Contralateral Commitments' (2004) 113 Philosophical Review 359 as one example among others). What would follow for our critique against Gilbert? Not much, we contend. Let us assume for the sake of the argument that the commitment of Laura and Sam to the action that Laura calls Sam is a genuine case of joint commitment. It would follow from this that all parties – Laura *and* Sam – incur performance obligations. And yet, when Laura promises Sam to call her, it is only upon Laura, not Sam, that a performance obligation accrues. To come back to the relevant point raised in Section 11.5: using "joint commitment" to describe cases like promises in which (performance) obligations accrue only to one committer, strikes us as a misnomer.

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If that is correct, then alleged cases of joint commitments which have the action of a committer as their content are not genuinely joint. Going back to the previous example, the putative case of joint commitment that the parents and the child have turns out to be a combination of two different commitments: the child's commitment to spend more time doing homework and the parents' commitment that they will do their best to facilitate the child doing their homework. These two commitments have different contents and therefore do not qualify as one joint commitment.

Because it imposes an acceptance-condition on all promises and because it mischaracterizes the author and content of promises, we conclude that the joint commitment account of promises must be rejected. Of course, this result is doomed to reignite the original question: How should one then explain the Inevitability Point? If promissory obligations and claims are not grounded in joint commitments, then what grounds them? While we won't be able to fully answer these questions in this paper, the next section advances a suggestion on how progress could be made in these matters.

11.7 GILBERT, REINACH, AND A FOURTH DOGMA ABOUT PROMISES

A general consideration shall conclude our assessment of the joint commitment account of promises: in addition to the three dogmas about promises discussed in Section 11.3, we suggest the existence of a fourth dogma. In a nutshell, this dogma assumes that the fact that promises generate claims and obligations calls for a substantive explanation. In order to better clarify what we mean by this "fourth dogma," it might be helpful to come back to Reinach's account of promises.

As we have seen, Reinach insists that all promises, including immoral ones, generate *pro tanto* obligations – this is in accordance with Gilbert's Inevitability Point (strong reading) as well as with Gilbert's rejection of the Immoral Promises Dogma. Furthermore, Reinach maintains that promissory claims and obligations are not moral, which is in accordance with Gilbert's rejection of the Moral Requirement Dogma. Also, Reinach argues that promises are speech acts that bring about obligations – and this, again, is in accordance with Gilbert's rejection of the No Willing dogma. Finally, Reinach holds that promissory claims and obligations are relational or directed – in accordance with Gilbert's Directed Obligation. Thus, Reinach and Gilbert independently arrive at the same five key desiderata for an account of promises.[71]

While one can only be struck by these many affinities, there is one fundamental divergence between the two accounts. Gilbert rejects – correctly, we believe, with Reinach – substantive explanations of the binding character of promises that equate promises to expectation triggers, solicitations of trust, useful social practices, etc., or

[71] Their respective analyses actually converge on even more issues. To mention but one, both pinpoint an easily overlooked distinction between unconditional promises with conditional content (I promise that if p, I φ), and conditional promises (If p, I promise that I φ) – see Gilbert (n 1) and Reinach (n 2) 22–23.

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that appeal to moral constraints. However, she concurs with these accounts of promises in that she accepts that some substantive explanation has to be given as to why promises generate obligations and claims. In fact, her main contribution to the debate is to propose a new explanation that, by accounting for promises in terms of joint commitments, is alternative to those previously theorized.

Reinach, on his part, rejects all substantive explanations of the binding character of promises: promises – so his claim goes – generate obligations and claims in virtue of their very nature. On his view, this is a truth that does not need to be grounded in any other: promises are what they are and not anything else. More precisely, promises are generators of obligations and claims. Obviously, this does not mean that nothing else informative can be said about promises: Reinach agrees that we still need to clarify what kind of event a promise is, what kinds of obligations and claims promises generate, whether promises need to be heard and/or accepted in order to have force, and more. But looking for some explanation of why promises generate obligations and claims is, in his view, a pointless endeavor. It is pointless because promising is a primitive kind of action and cannot be reduced to other, more primitive kinds of action.

Does Reinach's position matter in this context? We submit that it does – for two main reasons. First, it matters because, if Reinach is right, then the view that the Inevitability Point demands a substantive explanation may be a fourth dogma about promises (a dogma to which even Gilbert has fallen prey). Second, it also matters because, if it can be shown that abiding by the fourth dogma generally dooms an account to failure, then the question of whether Reinach is right is an urgent one. However, tackling the question of whether – and/or to what extent – Reinach is right can only be a topic for future research.

11.8 ACKNOWLEDGMENTS

This chapter underwent a lengthy development process and benefited from feedback and discussions with numerous colleagues. We are grateful to John Michael and Donnchadh O'Conaill for their comments on previous drafts and to Jed Lewinsohn for discussing the acceptance of promises with us. We presented the chapter detail at events in Cork, Frankfurt, Lugano, Oxford, and Warwick, where we received very valuable feedback from the audience. Finally, we would like to express our deepest gratitude to Margaret Gilbert for her generous feedback on our chapter, which has greatly contributed to refining our arguments, although we suspect she remains unpersuaded.

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