

Cambridge University Press

978-0-521-10965-9 - Exercises in Analysis: Essays by Students of Casimir Lewy

Edited by Ian Hacking

Excerpt

[More information](#)

1 *Wicked promises*

J. E. J. ALTHAM

I

When philosophers discuss promising, they frequently concentrate on central cases. Central cases are those where the promisor, in full possession of all relevant information and subject to no undue pressure, sincerely promises to perform some action which, independently of the promise, it is perfectly all right for him to perform, and where the promisee, also in full possession of all relevant information and subject to no undue pressure, sincerely accepts the promise. In a central case, no force, fraud, mistake or duress is involved, and the promise is not one to do something that, independently of the promise, one ought not to do. A central case is one in which it seems most clearly true that the making of a promise, together with its acceptance, gives rise to an obligation to perform. A concentration on such cases seems therefore to allow a philosopher to attend undistractedly to the nature of the obligation created, and to how it is possible for an obligation to come about in this way at all. But if he forgets or underestimates the importance of the peripheral cases, he is liable to produce a misleading or even an erroneous account. The purpose of this paper is to attend to what can be learned about promising from a consideration of one class of peripheral cases in particular, namely those in which the promise is to do something that ought not to be done. The example I shall consider is of a promise to do something that there is a stringent obligation not to do. I call such promises wicked, thinking mainly of the wicked things that would be done if they were carried out, but recognising also the wickedness of making them, where the promisor is in a position to know what he is about.

Cambridge University Press

978-0-521-10965-9 - Exercises in Analysis: Essays by Students of Casimir Lewy

Edited by Ian Hacking

Excerpt

[More information](#)

2 J. E. J. ALTHAM

Recognition that there are wicked promises provides the clearest way of seeing what is wrong with Searle's purported derivation of 'ought' from 'is'. This is the first lesson I shall draw. The second lesson concerns another kind of attempted refutation of Searle, that put forward by Hare, who is followed in the relevant respect by Mackie. Both argue that in order to conclude from the fact that someone made a promise that he ought to perform, *where the 'ought' is genuinely an evaluative one*, one must subscribe to, or endorse, the institution of promising. I argue that this is at best misleading, because there is no one thing that is the institution of promising. An institution is here a set of practices: practices of making and keeping promises, of encouraging their keeping, and criticising and taking sanctions against those who do not perform. There are many such sets of promising practices. There are promises, for example, that it is all right to make in one social group (i.e. that that group treats as all right to make), but that it is not all right to make in another. In one group a promise to do a certain kind of thing may be one a person would be encouraged to keep, and condemned for violating, whereas in another he would be condemned for keeping it. What particular institution of promising there is in a social group is to an important extent determined by the general morality prevailing in that group. A thinking individual may very well partly agree and partly disagree with the general morality prevailing in his social group, and accordingly he may neither wholly endorse nor wholly reject a particular institution of promising. To conclude from the fact that a particular promise was made that it ought to be kept he does not need to endorse any complete institution at all. He needs the moral premiss that this kind of promise, made in these circumstances, ought to be kept. It is true that in the absence of any practice the giving and acceptance of a sign could not create an obligation, so that the existence of a practice is necessary for promising. But that is compatible with the possibility of a variety of practices, and the fact that a claim, about any given promise, that *it* gave rise to an obligation, is never analytic.

Once one has seen the complexity and variability of practices connected with promising, and the falsity of the proposition that all promises voluntarily made ought to be kept (if one is not released from them by the promisee), one may go too far, and reject the fundamental idea that the point of promising is volun-

Cambridge University Press

978-0-521-10965-9 - Exercises in Analysis: Essays by Students of Casimir Lewy

Edited by Ian Hacking

Excerpt

[More information](#)*Wicked promises*

3

tarily to undertake an obligation. This is, unfortunately, what Atiyah (1981) does. Perhaps more than anyone else, Atiyah has recognised and insisted upon the exceptions and qualifications that have to be made to the general idea that to make a promise is voluntarily to undertake an obligation, but he is so impressed by the number and variety of these exceptions and qualifications that he is led to reject the model of the voluntary undertaking of an obligation. Instead, he wishes us to think of promises as at least very like *admissions* of pre-existing obligations. But admissions are so unlike promises that this idea is unhelpful. Fortunately, it is also unnecessary. We can and should both retain the conception of a promise as voluntarily creating an obligation, and acknowledge and give due weight to Hume's point that 'As the obligation of promises is an invention for the interest of society, 'tis warp'd into as many different forms as that interest requires'. (1740: III, V, 524).

II

The first thing to show is that a wicked promise *is* a promise, but does not create any obligation to perform the act promised. I take as my main example a promise to kill someone, and ask the reader to suppose that in the circumstances to carry out the promise would be murder. It is convenient to set down Searle's famous sequence of five propositions, but with the example changed and consequent minor adaptations (1969: 177).

- (1) Jack uttered the words 'I hereby promise you, Luigi, that I will kill Harry'.
- (2) Jack promised Luigi that he would kill Harry.
- (3) Jack placed himself under an obligation to kill Harry.
- (4) Jack is under an obligation to kill Harry.
- (5) Jack ought to kill Harry.

In his later presentation, Searle clarified his argument by putting forward the following three propositions, and claiming that they are analytic:

- (2a) All promises are acts of placing oneself under an obligation to do the thing promised.

Cambridge University Press

978-0-521-10965-9 - Exercises in Analysis: Essays by Students of Casimir Lewy

Edited by Ian Hacking

Excerpt

[More information](#)

4 J. E. J. ALTHAM

- (3a) All those who place themselves under an obligation are (at the time when they so place themselves) under an obligation.
- (4a) If one is under an obligation to do something, then as regards that obligation one ought to do what one is under an obligation to do.

Further, Searle does not think that (2) follows from (1) alone, but does hold that there are purely empirical premisses which, in conjunction with (1), entail (2). For he holds that the conditions under which a man who utters 'I hereby promise' can correctly be said to have made a promise are in a perfectly ordinary sense empirical conditions. He would, therefore dissent from the view that a promise to do something wicked is not really a promise. On this last point he is correct, as we shall see.

Assuming then that the empirical conditions sufficient for Jack's utterance to be a promise are fulfilled, we reach (2). On Searle's view, (5) may be derived from (2) with the help only of the analytic propositions (2a), (3a), and (4a), provided that the sentence (5) is understood to mean 'As regards Jack's obligation to kill Harry, Jack ought to kill Harry'. If it means, 'All things considered, Jack ought to kill Harry', (5) is not claimed to follow.

Searle's view of wicked promises is therefore that if the empirical conditions are fulfilled, a promise to do something wicked *is* a promise, and it *is* true that the promisor ought to perform. However, this 'ought' may be *overridden* by a contrary one arising from the evil nature of the deed.

It is helpful to compare this account with a corresponding account of wicked commands. One who promises, undertakes an obligation, but one who commands, *imposes* an obligation on the person commanded. Command therefore requires authority in the commander. Let us then consider the following sequence:

- (1') The Colonel uttered the words 'I hereby command you, Lieutenant, to drop napalm on the villagers'.
- (2') The Colonel commanded the Lieutenant to drop napalm on the villagers.
- (3') The Colonel placed the Lieutenant under an obligation to drop napalm on the villagers.
- (4') The Lieutenant is under an obligation to drop napalm on the villagers.

Cambridge University Press

978-0-521-10965-9 - Exercises in Analysis: Essays by Students of Casimir Lewy

Edited by Ian Hacking

Excerpt

[More information](#)*Wicked promises*

5

(5') The Lieutenant ought to drop napalm on the villagers.

Corresponding to (2a) one can imagine a philosopher advancing as analytic the following:

(2a') All commands are acts of placing the addressee under an obligation to do the thing commanded.

A pair of propositions corresponding to (3a) and (4a) might also be put forward. It is not necessary to put them down here.

Just as (2) follows from (1) in conjunction with suitable purely empirical premisses, so (2') follows from (1') in conjunction with suitable empirical premisses. But even supposing that a set of such premisses is added, the sequence is still hardly a convincing derivation of 'ought' from 'is'. It is unconvincing even if (5') is read as 'As regards the Lieutenant's obligation to drop napalm on the villagers, he ought to drop napalm on the villagers'. On the other hand, if the example is changed so that the Colonel's command is one that the Lieutenant shall defend the village against the approaching enemy, then the resulting sequence of five propositions looks *superficially* a more convincing derivation. Similarly, (1)–(5) is superficially a more convincing derivation if the example is different, and one chooses a promise to perform some more or less indifferent action, as in Searle's original case of a promise to pay \$5.

In the commanding case, a brief explanation runs as follows. The exercise of authority is part of a practice that proceeds in accordance with rules. The practice includes issuing commands and giving permissions, and on the part of one subject to authority it includes practices of compliance with command, and taking advantage of permissions. It also includes criticism of non-compliance, and often sanctions as well. It includes a number of linguistic ways of insisting on compliance, such as 'You must do it', or 'You've got to do it' (Anscombe 1981a,b: sect. II; sect. II). These expressions and other similar ones are very important. The ordinary point of issuing a command is no doubt to get someone else to do something, but the command achieves this object (where it does achieve it) through the recipient's understanding that, because of the command, he is under a necessity to act, or that he is bound or under an obligation to do it. Recognition of this might lead somebody to espouse (2a'), but wrongly. For the

Cambridge University Press

978-0-521-10965-9 - Exercises in Analysis: Essays by Students of Casimir Lewy

Edited by Ian Hacking

Excerpt

[More information](#)

6 J. E. J. ALTHAM

social practice of commanding to be established, there must be commands whose addressees take them as creating an obligation to comply, but once the practice is established, so that 'command' is understood, people can distinguish commands that create an obligation from those that merely purport to do so. Now if we were to think *only* of commands like the Colonel's command to the Lieutenant to defend the village against the approaching enemy, we might be inclined to forget the distinction between a command that does, and one that merely purports to, create an obligation to comply. We might thus erroneously come to think that we had forged a route from 'is' to 'ought'. Examples such as the one about dropping napalm should then remind us that the route does not lead to its imagined destination. Premiss (2a'), then, far from being analytic, is not even true.

The position may be obscured by the thought that the Lieutenant may indeed have a serious conflict. If he does not drop napalm on the villagers, he will be court-martialled and shot. The thought that this may happen may lead one to think that it is true that he ought to drop the napalm, but that this should be weighed against the moral horror of the act itself. This would be a confusion. It is not a necessary truth that disobedience leads to sanctions. The question concerned whether the obligation followed from the fact that the command was given (and received), and this should be considered independently of possible sanctions for disobedience. *If* it is in any sense true that the Lieutenant ought to drop the napalm, it is not the command in itself that makes it so. This should become clearer in what follows.

A commander normally has a certain sphere of authority. A sphere of authority may be explicitly defined in a table of rules, or it may simply be informally understood what the sphere is. To answer the question whether a particular command imposes an obligation, we must ask first whether the commander was acting within his sphere of authority in giving it. This first question should be understood in a sociological sense, as whether there is in fact an institution in being whose rules involve a commander being able, acting within those rules, to issue that command to that addressee. If the answer is 'Yes', then the second question is whether it is a good thing, or at least acceptable, that there should be such an institution with those particular rules. If the answer to that too is 'Yes', then the addressee is under

Cambridge University Press

978-0-521-10965-9 - Exercises in Analysis: Essays by Students of Casimir Lewy

Edited by Ian Hacking

Excerpt

[More information](#)*Wicked promises*

7

an obligation to comply. It is then the command that created the obligation to comply, independently of further reasons that there might be, such as those deriving from the consequences of non-compliance. In the case of the command to napalm the villagers, the Colonel either has authority to order the Lieutenant to do it, or he has not. If he has not, his command, being *ultra vires*, creates no obligation to comply (though of course there may be other reasons for doing what is commanded). If he has the authority in the sociological sense, then if it is not acceptable that military authority should encompass the power to order the napping of civilians, his command still creates no obligation to comply.

The analogue to a command that is *ultra vires* is a promise that 'doesn't count'. The particular promising practice that obtains in a society may be one in which certain promises, made in certain circumstances by certain people, are not taken to create any obligation to do the thing promised. It is outside a person's power to bring about that he has a certain obligation by making a particular promise. His promise is treated as of no effect. An example might be a promise not to exercise an important right. For instance, someone might promise not to defend himself if attacked, but in the practice of his society this promise simply does not succeed in creating an obligation not to defend himself. As such a thing is possible in the law, it is also possible in more informal settings. One should then think of the practice of promising in a given society as having a certain sphere of validity, analogous to the sphere of authority of a commander or the position he occupies. If a given promise does fall within the sphere of validity, that is still not sufficient to establish that it creates an obligation to perform. For there is the further question whether it is acceptable that there should be a promising practice in which that promise, made in those circumstances, should be valid. Before trying to enforce the truth of these points, I shall set out some of the objections to regarding (2a) as analytic, and hence accepting the validity of the derivation (for (3a) and (4a) seem clearly true).

First, it is significant, though admittedly not decisive, that Searle's position is unnatural in relation to what we should normally say. It is hard to envisage circumstances in which one would naturally say that Jack is under an obligation to kill Harry,

Cambridge University Press

978-0-521-10965-9 - Exercises in Analysis: Essays by Students of Casimir Lewy

Edited by Ian Hacking

Excerpt

[More information](#)

8 J. E. J. ALTHAM

and still harder to think of ones in which one would naturally say that he *ought* to do so (unless, of course, one shares the underworld ethic, which I am assuming no reader does). Further, the expression 'As regards his obligation to kill Harry, Jack ought to kill Harry' is unnatural in itself, and there seems little reason to believe that the sentence (5) would naturally be used to mean what this unnatural sentence says.

Secondly, there are, of course, cases in which an obligation arising from a promise conflicts with another obligation, but the usual ones are quite unlike the conflict there would be if (2a) were analytic. In the usual cases the promise is to do something it is normally at least all right to do, but some unforeseen event takes place that makes it imperative to do something that would prevent the keeping of the promise. The obligation to do the thing that is, in the circumstances, incompatible with the keeping of the promise, has a source that is independent of the obligation to keep the promise itself. The resulting conflict of obligations is a misfortune that one cannot be sure of avoiding. A wicked promise, on the other hand, purports to create an obligation to do something which is in itself evil. The description of the act given in the promise itself marks it as something not to be done. Because of this difference, it is possible to hold the commonsense position that in some cases a promise creates an obligation that is overridden by a contrary one, and yet to deny that wicked promises belong in that class.

Thirdly, where a promise does create an obligation, it also creates a right. The promisee has the right to require that the thing promised be done. But if it is odd to think that Jack is under an obligation to kill Harry, it is still odder to think that Luigi has the right to require that Jack kill Harry.

Fourthly, we must ask what *weight* is supposed to attach to the alleged obligation to keep a promise, where it was to do something it is wrong to do. To say that no weight attaches to it would be tantamount to admitting that there was no obligation. So it must be supposed that the alleged obligation has *some* weight. Now if one has an obligation of a given weight, then all things considered one should do what one has that obligation to do unless there are contrary considerations of at least equal weight. In that case, however, a difficulty arises. For it would then seem that if a man wanted to do something that would normally be just a

Cambridge University Press

978-0-521-10965-9 - Exercises in Analysis: Essays by Students of Casimir Lewy

Edited by Ian Hacking

Excerpt

[More information](#)*Wicked promises*

9

little bit wrong, he could arrange to promise to somebody that he would do it. He could, in suitable cases, arrange a promissory obligation that would outweigh the normal obligation not to do the act in question, so that, all things considered, he ought to do the thing that, but for the promise, would be wrong. For example, suppose that there is some small lie that it would be in my interest to tell John Doe. Nobody would be harmed by the telling, but it would be an act of deception and leave an unpleasant taste. I find that it would also be in the interest of Janet Roe that I should tell the lie. After a short discussion with her, I solemnly promise to tell Doe the thing that I believe to be false. Reflecting on the seriousness of my promise (after all Janet Roe is relying on me), I conclude that it is now, all things considered, better to tell the lie.

The story is absurd. For it would be a case of somebody using promises to re jig the moral world in his favour, so that normal prohibitions are overridden. To avoid this possibility, the weight given to the obligation to keep a wicked promise must be reduced to something purely nominal. The claim that there always *is* such an obligation is then nugatory.

At this point one might think to try to save the analyticity of (2a) by denying that a wicked promise is really a promise. There would then be no obligation, because there had really been no promise. We have already seen that Searle would disagree with this line, and he would be right. Anscombe has put the main objection (Anscombe 1981c: 16). While a promise to perform an evil deed imposes no necessity to perform it, it does not follow that the promise cannot be invoked at all. If Jack has received money in exchange for his undertaking to kill Harry, then if he does not keep it, Luigi can invoke the promise in demanding that the money be returned. If there was not really a promise, Luigi would have nothing to invoke in demanding his money back.

The right course is to give up the analyticity, and indeed the truth, of (2a). This may seem a reckless thing to do. For it may seem to destroy the very basis of our understanding of what promising is. One thing we must hold fast to is surely that the point of making a promise, what we have the institution for, is to place oneself under an obligation. A second axiom is, or seems to be, that in promising one uses a sign which *signifies* the creation of

Cambridge University Press

978-0-521-10965-9 - Exercises in Analysis: Essays by Students of Casimir Lewy

Edited by Ian Hacking

Excerpt

[More information](#)

10 J. E. J. ALTHAM

an obligation. Together these may make it difficult to see how anything more could be needed to bring the obligation into being beyond using the sign which signifies the bringing into being of that obligation. The difficulty can be surmounted, but before saying how, one further piece of evidence is appropriate to show that it must be. This is the fact that some promises made under duress do bind, whereas others do not.

At the end of his discussion of promises in the *Treatise*, Hume makes clear his opinion that if a highwayman forces a traveller to pay him a sum of money, the traveller is not bound to perform (1740: III, V, 525). He seems to mean that the traveller has *no* obligation to pay, as he speaks of force as invalidating contracts, and freeing us from their obligation. But Searle, and others who think like him, must disagree. For if the traveller really *did* make a promise, and the propositions (2a)–(4a) are analytic as claimed, then it is also true that as regards his obligation to pay the highwayman, the traveller ought to pay. One might, as before, try saying that the putative promise is not a real promise, but this route is open to serious objections. Some promises made under duress do bind the promisor. There can be no general doctrine that only a freely made promise binds, and hence no general doctrine that only a freely made promise is really a promise. Parents, for example, may use their authority over their children to require their children to promise to do things, and may on occasion use threats to extract such promises. This would be self-defeating if promises thus extracted were not binding on those making them. Similarly, a judge may require that a man in the dock promise to keep the peace, where the man knows that if he does not so promise he will be sent to prison. Parents and judges will usually be demanding that the promisors promise to do what they ought to do anyway, but there is still point to the promise in that it adds further weight to the obligation. Further, Anscombe's objection holds here also. A man may make a promise under duress but still be paid for it. If he does not perform, the promise can be invoked to demand the money back. For these reasons it should be agreed that a promise a person is forced to make is still a promise.

It would be even more hopeless to make the question whether a forced promise is really a promise turn on whether in the particular circumstances there is some obligation to keep it. For that would be to abandon all pretence of having derived 'ought'