

The Authority of Professional Roles

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Abstract

Are professional roles bound by the norms of ordinary morality? This article begins with a discussion of two existing models that give contrary answers to this question; the practice model detaches professional ethics from ordinary morality, while the translation model denies any real divergence. It is argued that neither model can give a satisfying account of how professional roles ground distinct claims that are morally authoritative. The promise model is articulated and defended, wherein the obligations of professional roles are grounded in an act of self-binding by the profession; the public is the promisee, and thereby entitled to make role-dependent claims. This model retains a connection to ordinary morality, but does not reduce role authority to individual conscience. Legitimate promises bind the role holder even in the face of moral disagreement.

Are the norms that bind professionals derived from ordinary morality or from features internal to their practices? This question colors much theory on professional ethics. The debate concerns the status of norms that govern professional roles. The norms in question are general, role-dependent requirements, like confidentiality, respect for patient autonomy, and zealous representation. One side of the debate pictures professional ethics as a branch of ordinary morality, in which role requirements are ordinary moral norms fitted to context. The other side thinks professional ethics has its own normative foundation, in which the norms that govern the role derive from the values internal to professional practice. The heart of the debate is the source of the authority of professional roles: what is the ground of justification for an ethics that seemingly diverges from ordinary morality?

Issues of loyalty to patients or clients provide paradigm cases of what appears to be a substantive conflict between ordinary morality and the demands of the professional role. Imagine a lawyer with a client who has borrowed a sizeable amount and promised to pay it back. The loan enabled the client to create a flourishing business, while the lender has gone bankrupt. Years have passed, and the lender wants to reclaim the money. Words did not get him anywhere, so he goes to court (this resembles *Zabella v. Pakel*, a stock example in legal ethics). The ordinary moral considerations are clear: the client who has borrowed money has a moral obligation to repay it. Nevertheless, the lawyer has a professional duty to represent his client zealously. The lawyer therefore advises the client to plead the statute of limitations,

which provides that an action to recover on a debt must be filed within six years of the debtor's default. There seems to be a substantive divide between the call of moral duty and the professional role here. The role is concerned with a legal technicality that serves the client while ordinary moral considerations identify an obligation to repay the money. A less quotidian example, but a realistic one, is the physician who discovers that the gold medal-winning athlete she is treating is doping. Again, ordinary morality would call on this physician to stop the injustice against those deceived by this athlete. However, it is not evident that this is a sufficiently compelling reason to disclose the information, according to the ethics of the professional role.

These cases not only illustrate diverging requirements, but also decisions that have somehow been taken out of the hands of those who hold professional roles. For some reason, they are supposed to act in accordance with norms that are declared part of a professional practice. The role calls for compliance even in the face of disagreement. The notion of the authority of professional roles gestures toward this recalcitrant feature, and the question is how this authority is grounded. In this article, I will articulate and defend a promise model for professional roles, which claims that these roles stand in promissory relation to the public. This elaborates and clarifies a strand of contractual theory in professional ethics. A main task in this paper is to investigate how the contract between a profession and society can provide reasons for the moral deliberation of those who hold professional roles.

It should be noted from the outset that the notion of promising is used in a way that differs from some existing theories. Daryl Koehn's (1994, esp. 54-68) account of what she calls "the ground of professional ethics" emphasizes the binding power of the professional pledge or vow. This pledge binds those who occupy professional roles by being accepted by the public, and thereby enables clients to trust them. Kent Greenawalt (1990, esp. 280-81) provides a more detailed account of how voluntarily assuming a role can amount to a tacit promise, making the role a promissory obligation even without an oath. Both accounts use the concept of promising as a way of explaining how agents are bound to the role, which concerns a different question than the one pursued in the current article. The tacit or explicit pledges of agents presuppose that the institution is endorsable. The pledge refers to a practice that is somehow considered worthy of allegiance. The models I discuss aim to describe how professional roles can have this quality and still diverge from ordinary moral thinking. They attempt to clarify what makes an apparent divergence justified.

1. Two Competing Models

In this section, I will outline two competing models—the practice model and the translation model—and explain why neither is satisfactory.

Benjamin Freedman (1978) offers a proto-account of what I will call the practice model: “The difference between professional morality and ordinary morality is in the way they resolve value conflicts, professional morality granting an added weight to its own value” (14). This way of looking at professional ethics has developed into an influential approach that draws on Alasdair MacIntyre’s (1984) teleological concept of a practice. The notion of an internal good is important in this regard. A practice, like painting or playing chess, is constituted by an internal good; one does not understand the practice without seeing how actions promote this good. One plays chess to win, and one paints to achieve a certain artistic expression. An agent may, of course, do either of these things solely to obtain prizes or fame. Based on MacIntyre’s line of reasoning, the agent in this case does not really participate in the practice. This conception of practices and internal goods has a structure that is shared to a varied extent by different accounts of professional ethics (e.g., Pellegrino and Thomasma 1993; Oakley and Cocking 2001; Alexandra and Miller 2009; Sellman 2011). These accounts view professional roles as being structured around key goods like health or legal justice. The normative credentials of the role derive from the fact that it promotes a key human good.

Contrast this with the translation model. Many theorists describe professional ethics as binding when understood as ordinary morality translated into a special context (e.g., Veatch 1981, 106; Luban 1988, 155; Freidson 2001, 215). This approach finds most sophisticated expression when linked to the notion of a “common” morality. The idea of a common morality has been elaborated by bioethicists such as Bernard Gert (2004) and Tom L. Beauchamp and James F. Childress (2009). This morality is common in the sense that it consists of norms to which *anyone* serious about living a moral life must be committed (Beauchamp and Childress 2009, 4). It has abstract moral content, like “be truthful” and “do not cause suffering.” These are standards of action that ground individuals’ more intuitive case-specific judgments. Common morality also comprises various character traits that are supposedly universally recognized, like integrity, trustworthiness, and kindness. The content of these lists is fundamental in the sense that there is no more basic starting point for justification. However, these lists are abstract and need to be interpreted in light of specific circumstances. Beauchamp and Childress surmise that “the reason why directives in particular

morality often differ is that abstract starting points in the common morality can be coherently specified in more than one way to create practical guidelines” (16).

It seems undeniable that both of these models capture aspects of professional morality. For instance, there are surely key goods like health and legal justice associated with professional practices, and the norms that govern these roles are partly justified by their reference to these goods. At the same time, our evaluation of professional role holders is not radically detached from ordinary moral evaluation, so there must be some translational work going on. Nevertheless, neither model can answer the question of how professional roles gain their authority. In order for a model to succeed in this regard, it must explain how the role creates *special obligations*. The challenge is to reveal both what makes role obligations *distinct* from ordinary morality and what gives them moral *authority*.

The two models briefly described here are inadequate for this task. Let us look at the practice model first. It provides us with distinct obligations, but cannot account for authority. This is laid bare in a claim by Edmund Pellegrino, a prominent defender of the model: “This morality is internal since it is derived from the nature of medicine itself and not from the application of pre-existing moral systems to medicine” (2001, 562). This defense of the practice model inadvertently exposes the need for an account that better preserves some connection to ordinary morality. The notion of deriving an ethical system “from the nature of medicine itself” provokes the question of how anyone could be morally bound by this system. If there is no transmission from the “pre-existing moral system” to professional roles, then professional role obligations seem insulated in a way that makes them morally arbitrary.

For example, let us assume confidentiality is a norm properly derived from the nature of psychiatry. Why should the psychiatrist disclose information to prevent serious injury to a third party if disclosure cannot be derived from the practice itself? And what about physicians who respect patient autonomy in cases where patients choose the actions that do not serve their health, the key good of the medical practice? Advocates of the practice model have provided various responses to such objections. It has been proposed that ordinary morality “overpowers” professional morality in some cases (Freedman 1978, 10). Others claim that a proper understanding of health, as the key goal of practice, requires an appreciation that patients have other interests as well (Oakley and Cocking 2001, 91-92). These solutions are not sufficient to explain how professional ethics gains moral authority. Ordinary moral considerations appear like annoying obstacles that have to be respected in order for the

practice to be tolerated by society; these considerations do not explain how the inner nature of practice could provide moral reasons in the first place.

The main deficiency of the translation model, on the other hand, is that it makes the practice superfluous. It can account for the authority of professional norms as long as they are derived correctly from common morality. But it is unclear how a translation would have authority for people who disagree with it. Some defenders of the model claim that an institutional decision is “morally preferable to another *only* [italics added] if we can show that the position rests on a more coherent specification or interpretation of the common morality” (Beauchamp and Childress 2009, 25). The true test of a code of ethics is whether it is something one could wind up with through the process of “reflective equilibrium” when starting from one’s personal judgments (cf. Beauchamp and Childress 2009, 385). These strong claims on behalf of the translation model overreach. They ignore that one can agree that an institutional decision is a coherent interpretation of the principles of common morality and without contradiction deny that role holders are bound by it. For instance, one may agree that common morality’s principle of autonomy is adequately translated in a new decision on patient rights, but still oppose the way this decision was made. Perhaps some important groups were not consulted, or the decision was made for the wrong reasons. Conversely, one may disagree with the content of a decision, but still accord it authority by virtue of the way it was made.

Professions are entrusted with social values that can be realized in a multitude of ways. Issues of education, health, and legal justice are shot through with reasonable disagreement. How do we deal with disruptive students? What counts as futile treatment? Can lawyers filter their clients, or should they accept them according to the “cab rank rule”? The translation model focuses on *content* and neglects to explain how the social *process* of articulating this content plays a part. An adequate model must establish a connection to common morality that also acknowledges a lack of consensus on how to specify its principles. By acknowledging, I do not mean just recognizing it as a disturbance to be reckoned with;ⁱ an adequate model should incorporate reasonable disagreement as part of the normative logic that accounts for the authority of roles.

In the next section, I will consider a contract approach to professional ethics, which emphasizes the negotiated character of professional obligations. I do not describe it as a separate model of role authority, but rather take it to be a preliminary step towards my own promise model. This serves to situate the professional role as a social institution and to clarify

that the professional role is obligated *to the public*. However, I will argue that the contract perspective does not explain the authority of the role by itself. The promise model is needed to account for how the contract gains force in moral deliberation.

2. The Contract Perspective

Professions present themselves as worthy of being entrusted with tasks of great social importance and claim that their way of doing things is most responsive to the needs of society. This claim is something they need the public to endorse. They need this endorsement in order to acquire what Andrew Abbott (1988) calls their *jurisdiction*. This is a key term in his influential analysis of the structure of the professional system, and it refers to a monopoly over a domain of tasks: “In claiming jurisdiction, a profession asks society to recognize its cognitive structure through exclusive rights” (59). The normative relation that Abbott identifies is privilege; the professions ask to be handed special rights.

In an article on the purposes of codifying a professional ethics, Lisa Newton (1981) emphasizes that jurisdictional privilege is one side of a *contract* between the profession and society (46-48).ⁱⁱ That is, there is an *exchange* of promises. The other side of the contract is the profession’s promise to reliably deliver skilled services. Important for our purposes, she writes that “the Code of Ethics is a profession’s major offer in the negotiation of that contract” (48). The manifest code is described as the external and enforceable side of professional ethics. However, Newton is not satisfied with the strategic negotiation perspective on professional ethics. She introduces a second purpose of codification: The code is not simply a bargaining chip, but also a refinement of personal conscience. The second purpose concerns the process where ethical conscience is externalized, tested, and refined (48-49). She describes this as the “internal aspect” of professional ethics (1981, 45).

This internal aspect is evidently not some arbitrary addendum, because professional ethics should somehow connect to first-person moral reasoning. The role must interlock, in one way or another, with the moral outlook of the role holder. Only then will it be recognizable as something shaped by genuine moral reasons. In bargaining mode, one may treat the negotiated code as a mere strategic instrument. Its reason-giving force depends on the negative consequences that follow a transgression. In that case, the role itself does not have authority. It is rather something to be conformed out fear of sanctions.ⁱⁱⁱ A physician who merely conforms to norms regarding patient rights does not take a stand on their justification

and will not internalize them. Patients' rights are there like brute facts to be obeyed on pain of negative consequences.

A model for the authority of professional roles should account for how they can function as a source of reasons independently of sanctions. This means that it will be useful to investigate what Newton frames as the internal aspect of the code. As mentioned, she describes this aspect as the process of "articulating and refining" ethical convictions to purge them of the "subjective and irrational" character they may have in the individual practitioner (48-49). The code of ethics belongs on a path of purification, where one discovers the core motivation and justification for engaging in a practice and striving for excellence. Newton describes the dialectical enterprise of testing the internal conscience against the external code as "the heart of the professional ethic" (49). Practitioners test their convictions through experience and against colleagues through dialogue, and this results in common rules that must be further tested and internalized. Newton does not spell this out with examples, but the idea seems clear enough. A medical professional may, for instance, experience a disturbing discrepancy between her sense of when it is permissible to treat without informed consent and the existing regulations. For the role holder, these rigid regulations are unsuitable for a practice truly sensitive to moral principles. Newton seems to be describing a procedure for dealing with such cases. This practitioner should test her convictions against others; she must check whether her arguments are strong enough to persuade, or perhaps she herself needs to correct her perception of the matter. If her convictions gain a foothold within the practice, the role requirements may be changed for the better and become internalized by other members.

According to my reading of Newton's account, the promise involved in the contract does not gain real authority in the internal perspective. Instead, the model seems to come close to being a variant of the translation model. The internal perspective is introduced as something inherently opposed to codification: "it is of the essence of conscience to resist prior decision of cases by rules, which is precisely what a Code aims at doing" (46). The dialectical process she describes is a kind of specification of moral principles, where the opinions of others serve as useful input. It is, however, unclear how the role gains authority when there is a gap between conscience and code. Newton's account of the internal aspect sits in tension with the kind of pre-emptive decision that the external code seems to call for. This may be why she describes "the heart of professional ethic" as a dialectical process towards unification between the external and the internal. Neither aspect is satisfying in its own right; they must unify in order to resolve the tension. This indicates how the genesis of professional ethics, as

a “bargaining chip” in negotiations for jurisdiction, creates a tension between the “external” code and the “internal” conscience.

The task for the rest of this paper is to show how the promise model can resolve this tension. This can be achieved without requiring full agreement or overlap between conscience and code. A dialectical process towards this harmony may be a regulative ideal for any profession, but the notion of role authority must apply to roles long before any such unification. In the next section, I will incorporate into the internal perspective the notion of promising, and thereby overcome the tension.

3. The Promise Model

The promise model I will articulate in this section focuses on one side of the contractual relationship between society and the professions. The pertinent side of the contract is the *authority handed to the public*, the act of *self-binding by the profession*. In this conception, the authority of the professional role is grounded in the act of giving the public a special standing to make demands. It is useful to develop this account as a response to Benjamin Freedman’s (1978) protest against the idea of seeing professions as promisors. The response should establish that the notion of promising delivers a coherent theory of how professional roles gain authority in practical deliberation.

My model focuses on promises as an instrument of changing normative statuses between agents. To promise is to give up part of one’s liberty by binding oneself to another. For example, I am at liberty to refuse to mow my neighbor’s lawn. Without a promise on my part, my neighbor cannot demand any such action of me. If I were to promise, however, I would relinquish this liberty and give my neighbor a claim on me. My neighbor now has the authority to demand that I mow the lawn.

Freedman’s objection is that the case of professional ethics is not analogous. His main example is the rule of confidentiality, which he interprets as a case of *reordering* values (1978, 12). Professional ethics gives loyalty to patients or clients a higher priority than ordinary morality suggests, which means that it overwrites moral laws. This allegedly causes problems for the image of a professional practice handing authority over to the public. The promise model describes professions as relinquishing a right, but they cannot relinquish a right they do not have.^{iv} For example, I can give up a right to refrain from mowing my neighbor’s lawn, but I cannot relinquish a right to refrain from stealing gas to start her lawnmower. In this case, I am not at liberty to steal anything, so I cannot promise to do so.

Similarly, one cannot bind oneself by moral procedures to “contravene” ordinary morality, which is supposedly what professional roles demand (Freedman 1978, 12). The promise is therefore invalidated, because one cannot promise to do evil.

Freedman’s own solution is that we see professional ethics as a kind of “special privilege.” Not the privilege of task monopoly, as discussed by Abbott, but rather liberation from ordinary moral constraints. Allegedly, society “allows” this because of the beneficial consequences (Freedman 1979, 11, 14). This is not a viable alternative to the promise model, and the reasons for this are worth mentioning. First, many of the situations the governed by professional ethics cannot be described without an institutional background. This gives reason to doubt that the public has exempted professionals from the same obligations that nonprofessionals are bound by. The actions involved in patient consultation or witness examination are given meaning by the larger practices they are part of and have no determinate analogues in ordinary morality.^v Even if we ignore this, we are still left with the range of professional role obligations that are morally good but not obligatory for ordinary people. Discussions of the divergence between ordinary and professional morality often focus on seemingly immoral deeds that are warranted by the professional role (cf. the examples used in the Introduction). However, professionals are sometimes obligated to risk their lives or make great sacrifices for the sake of some socially valued end. Such professional obligations are often considered above and beyond ordinary moral duties (supererogatory). This makes the category of “special privileges” particularly unsuited for professional ethics as a whole.

In the search for the authority of professional roles, we are looking for a grounding that justifies the role as a coherent source of moral reasons for action. Part of the attraction of the promise model is that it handles acts that resemble supererogation (e.g. risking one’s life) within the same framework as act that would be transgressions of ordinary moral norms absent special justification (e.g. zealous representation of immoral clients).^{vi} That is because the promise binds in the same way in both cases, they are all acts that members of the public are entitled to demand of role holders. It offers a unified source of authority, where compliance to the principle of confidentiality is owed to the public in the same way as the duty to care in the face of virulent epidemics. It is not as if professional ethics contains some requirements that by coincidence are morally praiseworthy, and other actions that need to be *excused* from the perspective of ordinary morality.

Furthermore, the “special privilege” proposal is vulnerable to Freedman’s own arguments against seeing professions as promisors: it is just as impossible to authorize someone else to contravene morality as it is to bind oneself to immorality. Therefore, his solution fails by his own view of what constitutes professional ethics. However, there is no reason to accept a view that describes any part of professional ethics as a contravention of ordinary morality. There may, of course, exist norms in professional ethics that some would want to characterize as genuinely contrary to moral principles. For example, medical professionals who are opposed to abortion may see their role requirements connected to such medical procedures morally unjustifiable. The debate on the right to conscientious objection for professionals is about reactions to particular requirements that are seen as immoral. These cases concern special topics with particular connections to fundamental moral principles, like the inherent worth of humans. This debate makes little sense on the assumption that professional ethics as a whole is a contravention of ordinary morality. The issue of conscientious objection is rather an indication of the strong sense of personal moral responsibility that persists even when one acts in the name of a practice. The problem lies not with the promise model, but with Freedman’s implausible notion of the divergence between ordinary morality and professional ethics. This divergence does not consist in rearranging the moral landscape, but in arranging a promissory relation within the bounds of morality.

By drawing attention to the impossibility of evil promises, Freedman has, in fact, emphasized a prime asset of the promise model: the model is attractive *because* it comes with built-in constraints against illegitimate role requirements. It does not presuppose the possibility of promising to do evil. Rather, it concerns a promise to act in accordance with a set of moral standards that have been negotiated with the public. Of course, many of the decisions that govern professional roles involve a kind of compromise with the role holder’s own views. However, the claim is not that professional role holders are bound by a promise to compromise their basic moral principles. Nobody thinks that a physician who simply accepts one morally grotesque role requirement after another can appeal to his role as justification. Instead, the question is how a professional role can have the authority to demand compliance in cases of disagreement among people who respect key social values but have different conceptions of them.

4. Actual or Hypothetical Promise?

What kind of promise has the profession made and how does it happen? This account of the promise model has so far been concerned with the formal possibility of promising a

commitment to professional ethics. The previous section established that the promise is not undermined by the content of role obligations. However, the account has not yet explained what actually constitutes the promise. This section investigates the nature of the performative that binds the profession to public expectations.

Paradigm examples of promising usually include some specific speech act that has the effect of self-binding. However, in the case of the professions, we have a plurality of invitations to trust. The arenas of public opinion, law, and workplace are used to communicate that the standards of the practice warrant trust. The problem is that these claims do not automatically fit together as puzzle pieces of one big promise. They need interpretation. The case of the physician with a doping athlete illustrates this well. The variety of relevant codes issued by the governing bodies reveal deep tensions with regards to whether the physician should disclose or not (McNamee & Philips 2009). On the one hand, physicians are liable for any type of complicity involving an anti-doping violation. On the other hand, it is not clear that the consequences of doping are sufficiently harmful to warrant disclosure. In other words, the distinct codes seem to generate mutually defeating expectations and the idea of a unified grounding promise seems to disintegrate.

We cannot simply write this off as an exceptional case. Instead, the promise model must face this and other kinds of tension as part of professional practice. In addition to the tensions between various codes, the statements of the distinct codes are general and vague. There can be no mechanical application of principles that govern issues like medical futility or conflict of interests with regards to client loyalty. Furthermore, the written code is not exhaustive of professional ethics. It is a breach of professional ethics to prescribe a drug that is not effective, regardless of whether it has been made explicit in the rules or not (cf. Beauchamp and Childress 2009, 42). These tensions and indeterminacies are part of an ongoing process where both the public and the professions continuously renew their commitments. Given this processual nature of role obligations, there is no hope in grounding their authority in some discrete event of self-binding. What is the nature of the promise then?

Another possibility is that the model ascribes the promise to the profession without presupposing any actual performative utterance. In this case, the promise model uses a hypothetical transfer of authority to explain how the public has the moral standing to make demands on professionals. This option has the merit freeing us from the need to identify some specific act that constitutes promising. However, it also has the major disadvantage of

entangling us in the notorious contractualist problem of explaining how hypothetical promises can bind. The model becomes mere wishful thinking if no authority has actually been shifted.

Summing up, both alternatives are implausible. The promise of professional practice can neither be a single event nor a hypothetical construct. I have given attention to these alternatives in order to separate them from the conception of promising that is actually at work in the promise model. My claim is that the promise involves *real performatives* and therefore a genuine shift of authority, even though it is *not constituted by a discrete act*. It is not a hypothetical promise, because the profession overtly invites the public to trust by way of assurances concerning the commitments involved in professional practice. These assurances come various forms, like of codes of ethics, announcements, patient or client conversations, and institutional self-representations (symbols, titles, and mottos). In general, invitations to trust have the normative effect of promising (cf. Scanlon 1998, 306-7). They declare a certain intention and commitment with the aim of getting others to rely on it. This goes for the various kinds of assurances given by the professions as well. These invitations to trust warrant the public in relying on the word of the profession and holding members of practice accountable for transgressions.

The idea that a profession's invitations to trust are real promissory acts still leaves us with the difficulties of incompleteness, vagueness, and tension. The worry above was that these features of professional ethics show that there is no unified promise. However, the fact that professional ethics is complex and in need of interpretation does not by itself warrant the conclusion that it is incoherent and divided. Importantly, this conclusion would not be a morally neutral and purely theoretical observation. Denying the coherence of the professional promise is to make a moral verdict concerning what it is to be a responsible role holder. It implies taking a stand on how professionals are accountable to the public. We should therefore see where this judgment leads, and, if the result is unappealing, consider an alternative. In order to do this, let us go back to the physician with the doping athlete. Suppose she decides to disclose the doping information. The athlete is upset and demands a justification. One possible response is to acknowledge that the practice is committed to patient confidentiality, but to add that in this case there is an *incompatible yet equally valid* commitment to public interest. The role involves loyalty both to patient and public, and in this case she simply had to choose. The public interest in doping-free sports won, but the contrary decisions would also be justified.

The athlete is right to find this answer deeply unacceptable. One cannot make contradictory promises and simply choose among them. This defeats the basic function of promises to enable trust. We therefore have reason to examine a different approach to the seeming tensions between the commitments of the role. This approach seeks to integrate the various requirements into a coherent source of moral reasons. On this approach, a satisfactory justification should explain how the professional decision flows from a single promise. The physician's answer must explain why the athlete had no right to confidentiality in this case. This involves offering an interpretation of the commitment to patient loyalty that shows how it remains intact despite the decision to disclose. For example, the physician could argue that the athlete is systematically exploiting the rule of confidentiality in a way that undermines its purpose. In disclosing the doping information in the name of public interest, she is trying to honor the true values of patient loyalty. In other words, she is not treating the various commitments of professional practice as incompatible promises. Instead, she is offering a moral interpretation of them in order to speak in the name of practice with a unified voice.^{vii}

Perhaps the physician is mistaken in the specific content of her conclusion, but the substantive issue concerning doping disclosure is not important here. What matters is how she approached the demand for justification. She interpreted her role as a morally comprehensible promise and not just a ragbag of incompatible rules that she is free to choose among. Of course, it could also happen that some particular requirement is truly incompatible with the principles that ground other valid requirements. For example, she may see a requirement of not revealing clinical trial results to her patients as genuinely conflicting with her loyalty to them. In this case, the promise model implies that either her conception of patient loyalty is misguided or the requirement is not a valid part of the promise. Her conception of patient loyalty is faulty if the moral reasons that support it are indeed compatible with withholding trial results in the search for better medicines.

What if her conviction that there is an insoluble conflict between the requirement to withhold clinical trial information and patient loyalty survives an epistemically responsible reconsideration of the matter? In that case, she has reason to dissent in the name of *professional integrity*. This is the virtue that calls on role holders to champion an integrated and morally coherent view of practice. As some describe it, it takes the form of an "interpretive stance" and is constituted by a "deliberative capacity and competence which is deployed in the context of complex professional and organizational work to find appropriate answers and ways forward" (Andrew Edgar and Stephen Pattison 2011, 103). The promise

model provides direction to this interpretative stance that guides professional integrity. Role holders with integrity seek to honor the word given by the practice by interpreting the various requirements as something endorsable by the public. In acting in the name of the practice, they make the “complex professional and organizational work” cohere in a principled and unified promise.

This outline of how the promise model fits together with an interpretive account of professional integrity touches upon another important issue. One could agree that the promise model fits with an attractive conception of professional integrity and still question the model’s relation to *personal integrity*. That is, we still do not have a full resolution of the alleged tension between “the internal and the external aspect” of professional ethics to which Newton drew attention above. For example, the physician dissenting to a requirement in the name of professional integrity is guided by her interpretation of practice as it exists and not by a direct responsiveness to the moral principles that constitute her conscience. In the next section I will argue that it is misleading to characterize conscience, or the internal aspect, as inherently opposed to handing over decision-making authority and giving ethics an external grounding.

5. Integrity and Authority

Personal integrity is often described in terms of standing for one’s principles and moral convictions before others (Calhoun 1995). This may seem incompatible with subordinating oneself to an existing code ethics that one partly disagrees with. Therefore, Newton’s point could be restated in terms of integrity; this virtue is inherently opposed to governance by something other than what conscience has sanctioned. I will argue that this tension can be resolved by greater appreciation of how integrity is also about responsiveness to fair principles of cooperation. This clarifies why perfect harmony between existing requirements and personal conviction is not required for the authority of professional roles.

I will borrow a case from Martin Benjamin (1990, 32-38), where he describes a conflict between a nurse and a physician over whether to continue aggressive treatment on a patient with severe brain damage due to viral encephalitis. The physician wants to continue aggressive treatment, while the nurse wants to reduce treatment. Like many issues of professional ethics, this involves both factual uncertainty and moral complexity. The prognosis is unclear, the treatment is expensive, the wishes of the patient are unknown, what counts as a tolerable living condition is undefined, etc. In addition, there is the question of how to deal with institutional hierarchies: who is entitled to decide what? The nurse and

physician agree to continue aggressive treatment for a specific period, and then, if after that period there has been no improvement, reduce treatment significantly.

Benjamin writes that if we suppose that the nurse and the physician place a “high value on tolerance and mutual respect, it is not so clear that agreeing to the proposed compromise constitutes a threat to their integrity” (36). This is essential to the promise model. The description of the “integrity-preserving compromise” draws attention to how decisions can gain authority from being grounded in the way people value their relations to each other. Importantly, in the case where the nurse and the physician negotiate their agreement on what to do with the brain-damaged patient, they are exercising their personal and professional integrity at once. Their personal integrity guides their commitment to comply with fair decision-making procedures that preserve the equal moral standing of the participants. Their professional integrity guides their reasoning towards a course of action that can be defended in the name of the practice.

This brings out how personal integrity interlocks with professional integrity in a way that allows divergence between private moral conviction and actual role requirements. When the role holders justify their decision with reference to existing guidelines and regulations, they do not offer evidence for the truth of their personal moral convictions. The code does not figure in their arguments as an external manifestation of their conscience. Rather, it calls for compliance *independent of its content*. This feature of the code connects with a central aspect of promises: the binding force of promissory obligations is not conditional on what the promisor thinks of the merits of the action to be performed. It was H.L.A. Hart who first introduced the notion of content-independent authority, and he used promises as example: “Promises have pre-eminently the feature I have called independence of content: the obligation springs not from the nature of the promised action but from the use of the procedure by the appropriate person in the appropriate circumstances” (1958, 102).

Relying on Hart’s analysis of promises in terms of content-independence could provoke the question of whether this is compatible with dissent in the name of professional integrity. How can professionals object to requirements if they have authority independent of their content? It is worth emphasizing that we do not have to follow Hart further in associating the content-independence of promises with the exclusion of deliberation (what he calls the preemptory function). In his view, promises are “intended to be a reason not merely for the promisor doing the action when the time comes but for excluding normal free deliberation of the merits of doing so” (1982, 255). Exclusion of deliberation is not part of the

promise model advocated in this paper. One can easily have content-independence without the strong peremptory premise. We want professionals to question their existing roles and to publicly suggest improvements, not blind adherence to the practice. Professional role holders are perhaps the ones best situated to grasp the imperfections in defined roles that need sorting out. A concept of authority that excludes moral deliberation implies that the role can exculpate agents for carrying out illegitimate tasks. But the model I have suggested does not shield persons from being morally tainted when their actions fail to respect the dignity of those they are supposed to serve. Instead, professional roles have authority only within the bounds of morality.

In explaining the content-independent authority of promises, Hart draws attention to how they presuppose a conventional background. His double invocation of the notion of “appropriateness” refers to the requirement of a shared understanding of how we can bind ourselves through voluntary acts. This shared understanding includes *acceptance by the promisee* as a condition of satisfaction for the transfer of authority. This emphasis on the conventional nature of performatives and their reliance on public acceptance invites an objection that is useful because of the way it challenges that status of the promise model as a separate alternative. The possible worry is that my suggestion is merely a version of the translation model that grounds professional ethics in “common morality.” Presumably, public approval is ultimately grounded in the ordinary moral outlook of the citizens. Why, then, should their specifications of moral principles matter now, when they were held to be insufficient in the discussion of the translation model? The promise model was presented as an alternative to the claim that the true test of a code of ethics is that its content can be arrived at through the process of “reflective equilibrium,” when starting from ordinary moral judgments. I argued that the translation model fails because of the plurality of reasonable translations. But how does the promise model avoid this problem when it still requires acceptance by the public? I reply to this objection in next section by developing the more political aspect of the promise model.

6. Legitimacy and Promissory Obligations

In this section I want clarify how the promise model sees the authority of the role obligations as “enabled” by the principle of respect for equal standing in social cooperation.^{viii} In particular, the aim is to show how the model contrasts with the suggestion of seeing professional ethics as translation the substantive content of ordinary morality into the

professional context. Let us first consider the alternative of simply modifying the translation model so that it provides more leeway in how well the principles of common morality are translated. For example, an institutional decision is binding as long as it is reasonable or makes moral sense; it does not have to be correct or perfect. Why would that not be a satisfactory alternative?

The reason is that this modification does not yet tell us anything about the moral relations between those involved in a decision. This is what the promise model offers. It gives us an alternative that connects role authority to the standard of *legitimacy*. This is the “normative relative” to power in the enterprise of creating political order (cf. Williams 2005, 77). It represents the choice of treating those affected as having the right to respect and justification. The specifics of the concept of legitimacy are of course much contested, but important for our purposes is the claim that it involves a dual evaluative perspective: The legitimacy of a decision rests both on *how* the decision was made and *what* the decision is, to both procedure and content (cf. Christiano 2004; Dworkin 2011, 321-322). This dual evaluative perspective is operationalized in the promise model. The content perspective is accounted for by the constraints on promising discussed above. One cannot hand over rights one does not have, one cannot promise to do evil. The ensuing discussion aims to show that the procedural perspective is equally well accounted for in the concept of promising.

Let us revisit the case of ordinary promising. The action performed in this case, to make a promise, does not simply change the normative relation, but also acknowledges an existing moral standing. When I promise my neighbor to mow her lawn, I address her as a subject of respect and as already in possession of moral prerogatives (cf. Darwall 2011, esp. 268-274). In offering her my word, I appeal to her as someone who has a right not to be deceived and who can hold me accountable for not recognizing her moral standing. In short, the promise both assumes and expresses my acknowledgment of her status as bearer of rights. In the same way, the promise of a given profession addresses the public as source of genuine claims. The public takes part in the promissory transaction on the assumption that it has the standing to change the normative relation.

By accepting a promise, the promisee agrees to be owed something and thereby also agrees to the possibility of being wronged in ways not possible prior to the promise. Imagine that I fail to discharge the promise to my neighbor to mow her lawn. The promise has raised the bar for excuses. My reasons for not mowing her lawn must be compatible with respecting the special claims she has on me. A compatible reason could be taking my wife to the

hospital, because I would not be at liberty to ignore this is competing obligation. Compare this with a physician who regards current regulations of informed medical consent as too strict and acts instead on his own judgment. As argued above, competing models of professional role authority have difficulties explaining how this physician is bound to anything but what promotes the key good of his practice or translates principles of common morality. By contrast, the promise model brings out the relational nature of the role obligation; in order to act justifiably, the role holder should be able to explain how decisions respect the public as promisee. The decision not to discharge the promise is unjustified unless the role holder is bound by a competing obligation. Does the physician violate a moral obligation in complying with rules of informed consent that are too strict? The point of the promise model is not to deliver substantive answers to such questions, but to identify what the justification should achieve. The decision must show due respect for the public as promisee. But why should we think there is any disrespect of the public involved in the physician pursuing his own vision of how things ought to be?

In developing the promise model, I started with the contract perspective and the negotiation towards jurisdiction. This claim about the genesis of professional ethics is not just a sociological observation without normative consequence. It says something about the cooperative and political character of the social institution of professional practice. It is born out what Jeremy Waldron (1999) describes as the “circumstances of politics,” in which members of a group feel the need for “a common framework or decision or course of action on some matter, even in the face of disagreement about what that framework, decision or action should be” (102). The circumstances of politics do not necessarily involve bargaining in the name of self-interest on the part of the public or the professions. All parties involved may sincerely articulate their views of what is best for society as a whole. Nevertheless, that does not cancel the public’s need to extract promises from the professions. Even though members of the public and of the professions largely agree on the value of such ends as health, education, and legal justice, they differ on how to realize them. They recognize the need for institutions such as the medical or legal professions, but they have different conceptions of what these institutions should be like.

These circumstances reveal something substantive about the authority of professional roles. The promise of a profession responds to a need to have a common framework for decision-making and accountability. For example, we disagree on what our patient rights should be exactly, but we agree that there should be some. The need for a common framework

on key matters like health and legal justice is the need for institutions with content-independent authority. In order to be legitimate, these institutions must be established out of the circumstances of politics in a way that respects the moral standing of those involved. The logic of promising brings this out well. As we saw, there are normative presumptions involved in addressing someone as a promisee: The acceptance of a promise is effective insofar as it is an expression of a will that calls for moral respect. For example, I cannot put myself under an obligation to my neighbor if she has no will of her own, and is under the complete command of someone else. Her acceptance must be issued by her own will. Analogously, a body politic in which domination has ousted fairness cannot accept promises on behalf of the public. These promises “misfire”^{ix} because there is no proper addressee in the absence of a principled basis that unifies the citizens. A political promise presupposes that the public can act as a collective agent, using procedures that allow decisions to be made in the name of the community. In other words, the public must be more than just a “mere heap of individual people” in order to accept promises (cf. Korsgaard 2009, 142). Citizens must be able to raise demands for justification and have reasonable opportunity to recognize the validity of its institutions.

These reflections on the role of the promisee are also claims about the authority of the promise. The promise model does not interpret the authority of the role in terms of respect for the *practice* of promising. Rather, the relevant respect is one owed to the public. As Ronald Dworkin puts it (1986), this respect is lacking when the role holder chooses to “plant the flag of his convictions over as large a domain of power or rules as possible” (211). In rejecting the framework that has been adopted through established political channels, role holders express a judgment about their relation to their fellow citizens. They execute their roles in a manner that denies equal standing to participate in the design of shared social institutions.^x Their decisions are made in the name of their institutional practices, but their deliberations circumvent the procedures that respect the equal authority of citizens over their own institutions.

We can now use the promise model to reframe the example with which this article began: a lawyer finds himself bound by the principle of zealous representation to advise his client to plead the statute of limitations, even though the outcome will be a manifest injustice. The client gets to keep money that he has come by through unfair means. The question we have been dealing with the whole time is how the professional role gains authority to make such a demand on the role holder; the suggestion now is that the professional role represents the authority of the public to make claims on the role holder. Zealous representation of clients

is one such claim. The binding force of the claim depends on its being appreciated as legitimate. Perhaps a lawyer's use of secret tricks of the trade to secure every possible advantage for clients would fall short of legitimate expectations. But as noted in the discussion of professional integrity, to discharge the promissory obligation requires interpreting role requirements in such a way that they make moral sense. It is a poor interpretation of the principle of zealous representation to secure every possible advantage for clients. This principle is more attractive when read as a requirement to secure genuine legal entitlements (cf. Dare 2009, 76-88). The promise model makes clear why this is not some kind of partiality towards a practice-internal good, nor does the authority of the requirement depend on its being recognized as the correct translation of common morality. Rather, it is a legitimate expectation grounded in a promissory transaction between the profession and the public.

7. Conclusion

Public roles are said to have a "slippery moral surface" (Nagel 1978, 192), and professional roles perhaps especially so. As we have seen, there are various ways to conceptualize how the norms of professional roles both *diverge* from ordinary morality and still claim moral *authority*. I have suggested that the notion of promising provides the best model for removing this slipperiness. First, the divergence cannot be adequately accounted for by the existence of practice-internal goods or by contexts for specification of universal principles. Rather, norms like confidentiality are divergent because they are the content of a contract between the profession and the public. Professions offer to adhere to certain standards in exchange for jurisdiction. Second, the authority of professional roles is grounded in an act of self-binding: the public has been given the word that services will be delivered in compliance with the specified standards. In this way, morally complex decisions are taken out of the hands of role holders and made into legitimate public expectations that have authority independent of their content.

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Notes

- ⁱ As when it is deplored as the contemporary “confusion of voices” in Pellegrino and Thomasma 1993, 41.
- ⁱⁱ I am grateful to an anonymous reviewer for the journal for this reference.
- ⁱⁱⁱ Cf. the distinction between being obligated and merely obliged in Hart 1958, esp. 89-91.
- ^{iv} Cf. the formulation in Watson 2009, 165, and the discussion of normative constraints on promising.
- ^v The moral relevance of the adequate description of the professional act is discussed by Bernard Williams (1995, 193-194) and at greater length by Arthur I. Applbaum (1999, esp. 76-110).
- ^{vi} It is a further question whether professionals can perform supererogatory actions as professionals. See Eriksen (2015) for discussion of the conceptual possibility and moral importance of the notion of professional supererogation
- ^{vii} This account of professional integrity draws on some central features of the theory of interpretive legal adjudication developed by Ronald Dworkin (1986).
- ^{viii} Respect as an enabler of content-independence is instructively discussed in Sciaraffa 2009, esp. 251-252.
- ^{viii i} The term “misfire” stems from Austin (1975, 16) and describes instances where the invocation of a performative is without effect. For example, but the promise is not, heard, understood, or accepted by the receiver.
- ^{*} I am not suggesting that legitimate decisions presuppose equal influence or equal participation, but rather that none are excluded for any reason that denies their standing as a citizen on par with every other citizen.

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