

Afterthought on the dilemmas of binding

by Francis Sejersted*

Keeping promises is a key problem in politics. Promises must be made. That is to say we must know what frameworks apply so that we can act rationally and plan ahead. As Henrik Syse asserted in his address – we plan our lives based on predictability and credibility or confidence. But perhaps we should not promise too much. One should be cautious about promising so much that the promises cannot be kept or that keeping them entails disproportionately high costs. On the other hand, it may be difficult to know in advance the costs associated with keeping a promise. And if the costs are higher than assumed, perhaps the promise can be broken? Moreover, what is a promise? Promises are subject to interpretation. Steinar Tjomsland maintained in the debate that the concept is not very precise, and that political promises are particularly imprecise. The question also arises of the extent to which promises are expected to be kept when other principles are brought to bear. This brings us back to the starting point – the need for predictability and confidence, the relationship between short-term considerations and long-term confidence-building. The need for a sensible balance between short-term and long-term considerations was highlighted by Jan F. Qvigstad in his introductory speech.

No area is better suited to illustrate all these general dilemmas than monetary policy, as demonstrated by Qvigstad in his account of Norway's monetary policy history from the establishment of Norges Bank in 1816 to the present day. For more than 100 years, from the monetary act of 1816 until 1931, Norway had a stable monetary value linked to precious metals. There were two periods, after 1816 and during World War I, when the redemption obligation was suspended with an attendant fall in the value of money. However, on both occasions Norges Bank managed to increase the value of money to par through a monetary policy with – in the short run – detrimental effects on the Norwegian economy. Keeping a promise for more than 100 years is no minor accomplishment, but was it worth it? Keeping this promise was made possible by “binding oneself to the mast”. Norges Bank's task was, as highlighted by among others Eivind Smith in the discussion, to ensure that the promises made by the state were kept by Norges Bank. Norges Bank was in effect assigned the responsibility for long-term confidence-building simply because the political authorities were of the view that they would not be able to keep their own promises, that they would too easily be led astray by short-term considerations.

The central bank governor during the interwar years, Nicolai Rygg, was the warmest defender of

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keeping promises, which was indeed also his task. In the Supervisory Council's meeting room in 1927, he reaffirmed the commitment to return to par value:

“It would not suffice to note that adhering to that once adopted would entail disadvantages; but it would also have to be manifestly clear that one was really not able to [...]. This is a question of fundamental importance for the nation through time. The difficulties that arise in connection with the transition to normal, legal conditions are transient. No one can close his eyes to the fact that they are very serious. But the life of the people is eternal and this involves a decision of significance across generations.”

The consideration of long-term confidence-building is here given absolute precedence over the immediate exigencies ensuing from a crisis.

To use Qvigstad's sober turn of phrase, the ambitions were admirable, but unfortunate. The Bank “adhered rigidly to the letter of the law” with “considerable real economic costs”. Experiences led to the pendulum swinging in the opposite direction through “considerable changes in views on economic policy”.

Keynes' famous phrase that “in the long run we are all dead” is as such a rejection of giving priority to long-term policy considerations. His message expresses the prevalence of pragmatism and short-term considerations, which means that we should address today's problems today and tomorrow's problems tomorrow. One must not promise too much, at least not in the long term.

Over time, the pendulum would swing even farther out. This occurred when the Bretton Woods system collapsed in 1971 followed by a unique period of inflation in the 1970s and 1980s. As Qvigstad succinctly put it, the background for this period of inflation was not only that the importance of a stable value of money had faded into the background, but also that this implied “reduced weight given to keeping promises”. In 1986, it became clear that confidence had to be restored. In reality, we had “no choice”, as Qvigstad writes (– a phrase that was criticised in the debate). Since that time, central bank policy has sought to find a balance between short-term and long-term considerations, or between the situation's immediate exigencies and long-term confidence-building, by not promising more than what should and can be delivered. Today's policy is based on inflation targeting, i.e. interest rate changes are aimed at maintaining a moderate and predictable inflation rate.

From the mid 1980s, Norges Bank has gained a more independent role than it had during the social democratic period. Paradoxically, this occurred after the Storting (Norwegian parliament) adopted a new central bank act in 1985, which provided less leeway for Norges Bank than the previous and outdated act from 1892. Thus, Alex Cukierman has in his book *Central Bank Strategy since 1992* formally ranked Norges Bank as the least independent central bank among the

western industrialised countries. In reality, however, the authorities have followed the international trend towards a new positive view of independent central banks. As *The Economist* wrote in 1993, “the principal battle for central bank independence has largely been won”. Independence reinforces predictability, in line with the original notion of independence where a commitment is made to honour the state’s promises independently of what the state would have done.

As I read him, Qvigstad cautiously draws a normative conclusion from his historical account: in weighing short-term considerations against long-term considerations, we saw an unfortunate tendency towards giving priority to short-term considerations. He wanted to remind us that keeping promises and instilling confidence is a long-term project and utterly fundamental both for monetary policy and more generally for growth and development. He also pays a little visit to the legal field. With reference to the ruling in the gold clause case, which he by no means seeks to refute, and where the consideration of “society’s vital interests” forms part of the grounds for the ruling, he notes that there is no discussion of short-term interests versus long-term interests, of which interests are ultimately the most vital. It is precisely this assessment which is essential for him – and for Norges Bank.

Endre Stavang’s speech provides a glimpse of the legal view of these dilemmas. In relation to his interpretation of the view of economists – that there are considerable gains associated with keeping promises – he raises the question as to whether this line of reasoning is fruitful in law. He does not really provide an answer to this question, but it is precisely the absence of an answer that may be of particular interest. It is sufficiently clear that predictability is fundamental to a legal system, i.e. laws must to some extent have the character of promises, or that contracts are made to be honoured. However, it is just as clear that these considerations might have to give way to other and more pressing considerations. The pragmatic view seems to be more prominent here than in the economist Qvigstad’s view.

Stavang does not take a historical approach, but a certain development can perhaps be interpreted from the examples in his text. In the context of legislation, he points out that with regard to property seizure for nature conservation purposes, there has been a shift away from a practice without compensation to providing compensatory damages to the property owner. In principle, this involves a “contract” that must be honoured, as he says. Likewise, with regard to administrative authority, there has been a shift from a situation where local government could change area development plans without taking into account already planned development projects to legal provisions for regulating development contracts where predictability is secured to a larger extent. Finally, with regard to jurisdiction, he can perhaps be interpreted in the direction that the ex-ante school has become more dominant, i.e. when judicial discretion comes into play, and it does so in many cases, the judge should be guided by the general considerations that applied

prior to a conflict rather than the present situation. This provides greater consistency over time and can be interpreted as the will to keep promises.

Stavang opens by quoting the general provision in Section 36 of the Act relating to contracts of 1983. The Act provides that a contract can be rescinded if it would seem unreasonable to apply it. To the layman, this seems at first sight very radical, and there was some discussion about this when the Act was adopted. As pointed out by Ola Mestad in the debate, the Supreme Court ruled in 1990 that contracts must be respected if the parties had agreed on the implications of the contract – even if they may seem unreasonable at a later time. This can also be interpreted as a tightening in the direction of the importance of keeping promises.

Predictability is a fundamental value in the legal system. These examples indicate that in the recent past there has been an evolution towards strengthening predictability, in parallel with the evolution of monetary policy since the 1980s. As Mestad has argued, keeping promises can seem to follow changing fashions, or be culturally determined. Perhaps this movement towards a greater degree of predictability could be interpreted as a reaction against social democracy's decisionism, which to a large extent made a virtue of being politically unbound, i.e. a certain disdain for a limited use of force and for giving weight to long-term confidence building in the form of giving and keeping promises.

If it is correct that such a movement exists, it is consistent with the breach in general international policy developments, as described by Tony Judt in the book *Postwar: A History of Europe since 1945*. Judt notes that in the 1980s the European left was in desperate need of a new rhetoric, and what they found, to their own collective surprise, was the constitutional rights rhetoric in European constitutions (p 564).

Stavang concludes his speech with a reference to the road project ruling of 2007. This Supreme Court ruling applies the traditional constitutional principle that municipalities could not make a precommitment to allocate funds. The Supreme Court argued that such a precommitment could prevent a shift in policy direction and hence represent a constraint on democracy. The general point relates to the question of how far the obligation of keeping “promises” made by *others* should extend. In the debate, Fredrik Sejersted stipulated that such an obligation is not that apparent. A parliament should not be able to bind the next parliament. It is legitimate to change the law. Laws are not contracts. He referred to the current private pressure on the public authorities to enter into legally binding contracts as an alternative to laws or resolutions.

The notion that binding undermines democracy is a somewhat curious argument that implies that there is a conflict between democracy and the constitutional state. The argument implies that it would be particularly democratic to be able to change democratically decided resolutions. If this view is taken to the extreme, democracy's possibility for adopting resolutions of any impact over

time would be undermined. Is there perhaps a tendency to neglect long-term considerations here? The dilemma naturally exists, and is illustrated by the serious proposals put forward during the great era of constitutionalism 200 years ago, which suggested that we should write a new constitution every 30 years on the grounds that one generation should not be able to bind the next one.

The moral in this context is that one should *not* let oneself be bound too tightly to the mast. We have seen that Norges Bank was to keep a promise made by another – notably the state. But the point here was the binding. Norges Bank was by no means free in relation to the state's promise. On the contrary, the Bank was to ensure that the promise was kept. In the debate, Ola Storeng maintained that this was precisely the problem with central banks – that they kept promises to an excessive degree. This was for example said to have been the case when the Bank went too far in defending the krone exchange rate at the beginning of the 1990s, or when it later maintained a low interest rate for too long a period in order to push up inflation.

A recurrent theme in the discussion was that caution must be exercised in binding oneself or in making excessive promises. Steinar Tjomsland quoted Carl Jacob Arnholm: “You should not promise more than you can deliver when storms gather on the horizon”. *Promises* of different kinds must naturally be provided simply because our lives are based on *predictability*, as Syse underscored in his introductory speech. Predictability is also a fundamental concern underlying our entire constitutional state. In the debate, Heidi Høivik warned us against excessive caution and promising too little. It would be too defensive not to make promises, she said. It is important that we have ambitions that can entail some form of promises for the future and that they are associated with a will to go to considerable lengths to fulfil the promises.

The parity policy of the interwar years is the great example of how detrimental it can be to make the great promises, and thereafter insist upon the great sacrifices that are needed to keep the promise (“the life of the people is eternal”), and finally have to lay down one's arms. The pendulum was going to swing to the opposite side, again with unfortunate consequences. Today, there seems to be some retreat from extreme pragmatism, and this applies to both fields we have visited – monetary policy and law – that is a step, albeit a very modest one, back to Rygg's position under parity policy.

The normative conclusion we can draw from the many speeches and interventions seems not only to be that we must strive to strike a balance between short-term and long-term considerations, but that it is still important to emphasise that creating confidence in the longer term is fundamental to politics and is not always safeguarded to the extent it should be. Pragmatism must not be driven too far. It may still be relevant to establish certain binding mechanisms. Moreover, promises *must* be kept because our lives are based on *credibility*, to quote Syse once again. On the other hand, exceptions from keeping promises must be accepted, but they must, as Syse noted, remain exceptions.