



CRESCENTE MOLINA\*

## PROMISES, RIGHTS, AND DEONTIC CONTROL

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**ABSTRACT.** This article argues that the notion of a promissory right captures a central feature of the morality of promising which cannot be explained by the notion of promissory obligation alone: the fact that the promisee acquires a full range of *control* over the promisor's obligation. It defends two main claims. First, it argues that promissory rights are distinctively grounded in our interest in controlling others' deontic world. Second, it proposes a version of the 'Interest Theory' of rights (the 'Deontic Interest Theory') that incorporates our interest in purely deontic forms of control into the various human interests that constitute the grounds of our rights.

The questions regarding the nature and justification of the rights to performance that promisees acquire over their promisors ('promissory rights') have received significantly less philosophical attention than similar questions regarding promissory obligations. Perhaps this neglect of promissory rights is based on the assumption that they are mere mirror images of promissory obligations, with the latter considered as the primary explanandum for an account of promising. I maintain that this assumption may lead us to miss a crucial aspect of the morality of promising. Under the account I will defend, the notion of a promissory right captures a central feature of promissory morality. A promise may not only put the promisor under an obligation to perform the promised act. It constitutes a tool by which agents (promisors) grant others (promisees) *control* over their obligations on a certain matter. It is in this aspect of the normativity of

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\* Brasenose College, University of Oxford. E-mail: [crescente.molina@bnc.ox.ac.uk](mailto:crescente.molina@bnc.ox.ac.uk). Many thanks for their helpful comments to James Edwards, Raffael Fasel, the late John Gardner, Manuel González, Felipe Jiménez, Maximilian Kiener, Christopher Kutz, Grant Lamond, Sebastian Lewis, David Owens, Olof Page, Luca Passi, Joshua Pike, Alejandro Saenz, Sandy Steel, Samuel Williams, Tarek Yusari, to the participants of the Oxford Jurisprudence Discussion Group and the Iberian-American Private Law Theory Seminar, and to two anonymous referees for *Law & Philosophy*.

promising where the notion of promissory rights finds its distinctive role. Or so I will argue.

After some general remarks about the complexities associated with offering a successful account of the grounds of promissory rights, Section I provides a critique of T.M. Scanlon's influential theory of promising and its treatment of promisees' rights. This critical section on Scanlon's account lays the groundwork for the positive contribution this article makes. As I shall argue, the central flaw in Scanlon's account resides precisely in its incapacity to account for the significance of deontic control in promissory morality. In Section II, I provide an account of the grounds of promissory rights. I shall argue that promissory rights are grounded in our interest in being able to control others' obligations; an interest which is distinct from any other interest we may have in our promisors keeping their promises, such as our interest in the promised act itself (i.e., in the content of the promise), or in being able to receive assurance about its occurrence.

If successful, my account of promissory rights contributes to solving a long-standing problem of the Interest Theory of rights; that is, its incapacity to account for right-holders' control. I hold that the Interest Theory can overcome this difficulty if it is taken to comprise our interest in purely deontic forms of control among the various human interests which ground our rights. If reformulated into what I will call the Deontic Interest Theory, the Interest Theory becomes able to provide a framework to account for all those rights which constitute powers to control others' obligations – such as promissory and property rights.

#### I. PROMISSORY RIGHTS AND THE VALUE OF ASSURANCE

It seems natural to hold that promises give a right to performance to the promisee. As Joel Feinberg put it, 'it always follows necessarily from the fact that a person is a promisee that he has a right to what is promised'.<sup>1</sup> However, difficulties arise when trying to determine what the ground is for such a right. According to Joseph Raz's well-known version of the Interest Theory of rights, "X has a right" if and only if X can have rights, and, other things being equal, an aspect

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<sup>1</sup> Joel Feinberg, "Duties, Rights, and Claims", *American Philosophical Quarterly* 3(2) (1966): pp. 137–144, 132.

of X's wellbeing (his interest) is a sufficient reason for holding some other person(s) to be under a duty'.<sup>2</sup> Thus, according to the Interest Theory, the promisee would have a right to performance if, and only if, an aspect of her wellbeing (her interest) is a sufficient reason to hold the promisor under the duty to perform the promise. Yet, an interest of the promisee in the promised act alone (i.e., in the content of the promissory duty), cannot justify the duty to perform our promises. Even if my  $\phi$ ing is in your interest, I am never under a *promissory* obligation to  $\phi$  if I have not promised it to you. Promissory obligations are content-independent obligations.<sup>3</sup> What matters is just that the validity conditions of the making of a promise (i.e., that it was not made under duress, etc.) have been fulfilled for promissory obligations to obtain, and the nature or quality of the promised act (besides it being promised), at least to a significant extent, does not figure as one of these validity conditions. Thus, from all this follows that the interest which would justify the right to the performance of a promise – an interest which would be sufficient to justify promissory obligations – cannot be an interest in the promised act alone, but an interest which promisees have in the performance of the promises made to them regardless of their content, solely because it was *promised* to them. But what can that interest be?

T.M. Scanlon has famously suggested that the promisee's interest that is sufficient to justify the promisor's obligation is an interest in receiving assurance regarding the promisor's future behaviour. He maintains that the obligations and rights that promises generate are explained in terms of 'what we owe to other people when we have led them to form expectations about our future conduct'.<sup>4</sup> On Scanlon's view, there is a general principle of fidelity ('principle F'), which demands that, in absence of justification, an agent A who, with the aim of providing assurance to another person B, voluntarily and intentionally causes B to expect that he will perform or omit a certain action, and B wants to be assured of this (and both parties know about the other's relevant beliefs and intentions), A should act as he said he would unless B consents otherwise. The standard case of promising triggers principle F, since it fulfils the conditions stated

<sup>2</sup> Joseph Raz, *The Morality of Freedom* (Oxford: OUP, 1986), p. 166.

<sup>3</sup> H.L.A Hart, *Essays on Bentham: Jurisprudence and Political Philosophy* (Oxford: OUP, 2011), p. 254.

<sup>4</sup> T.M. Scanlon, *What We Owe to Each Other* (Cambridge, MA: HUP, 1998), p. 296.

by it, making it the case that: (1) in absence of justification, the promisor has an obligation to fulfil the expectations of performance she has created in the promisee by performing her promise; and (2) the promisee has a “right to rely” on this performance: that is to say, [she] has grounds for insisting that the [promisor] fulfil the expectation he or she has created’.<sup>5</sup> Many writers have pointed out that Scanlon’s account fails to adequately explain the nature of promissory obligations.<sup>6</sup> Here I maintain that it also fails to account for promissory rights.

Scanlon argues that the promisee’s right to performance consists in a right that the promisor fulfils the expectations of performance she created in the promisee. But which interest of promisees justifies such right? Imagine that Guido promises Aldo that he will pick up Aldo’s daughter Carla from school tomorrow. Let us assume that all the conditions of principle F are fulfilled and thus Aldo acquires a right that Guido keeps his promise by picking up Carla. What makes principle F a sound foundation for Guido’s right to performance? Scanlon argues that the interest of the promisee that justifies his right to performance is the “value of assurance”.<sup>7</sup> However, Scanlon is not entirely clear about what this value is and how it provides the grounds for the promisee’s right.

Perhaps Scanlon understands the value of assurance to be something like the value of being able to know how others will or are likely to act in the future.<sup>8</sup> It would be what we may call a purely ‘predictive interest’. We can have, I am assuming, some kind of knowledge regarding future state of affairs. If I take the bus every day at the same bus stop at 9 AM, it makes sense for me to say that, other things remaining equal, the bus will be there at 9 AM and to claim that I know this. Similarly, when someone makes a promise to

<sup>5</sup> *Ibid.*, at p. 305.

<sup>6</sup> For different critiques of Scanlon’s account see e.g., N. Kolodny and R. Jay Wallace, “Promises and Practices Revisited”, *Philosophy & Public Affairs* 31 (2) (2004): 119–154; Daniel Markovits, “Making and Keeping Contracts” *Virginia Law Review* 92 (2006): pp. 1325–1374, 1358 ff.; Seana V. Shiffrin, “Promising, Intimate Relationships, and Conventionalism”, *Philosophical Review* 117 (4) (2008): pp. 481–524, 486 ff.; David Owens, *Shaping the Normative Landscape* (Oxford: Oxford University Press, 2012), Chap.9; Michael Pratt, “Some Features of Promises and Their Obligations”, *The Southern Journal of Philosophy* 52 (3) (2014): pp. 382–402, 390 ff.

<sup>7</sup> Scanlon, *What We Owe to Each Other*, p. 303. See also T. M. Scanlon, “Rights and What We Owe to Each Other: Reply to Leif Wenar”, *Journal of Moral Philosophy* 10 (2013): pp. 400–405.

<sup>8</sup> He maintains that the value of assurance consists in [...] being able to be reasonably certain that a thing will happen unless one consents to its not happening.’ See Scanlon, *What We Owe to Each Other*, p. 316.

us, our experience of the phenomenon of promising plus our knowledge of the promisor's individual character may justify maintaining that we know that it is at least likely that the promisor will act as promised – we may say that we acquire at least “probabilistic” knowledge regarding the promisor's performance. And, one may argue, being able to acquire this knowledge through promises is a valuable thing. But is the promisee's interest in knowing that their promisor is likely to act as promised sufficient to justify the promisor's obligation to act as promised (and thus to serve as a ground for promissory rights)?

One could argue that promises operate as a behaviour-predicting-mechanism precisely *because* they impose an obligation on the promisor to act as promised: promisors tend to act as promised because they are under an obligation to do so (i.e., the fact that they are obliged to act as promised sets the motivational grounds for their acting as promised). Thus, if the predictive function of promises holds only because promisors are under an obligation to act as promised, our predictive interest would be what justifies the promisor's obligation and thus the promisee's right. Writers have, I believe correctly, pointed out that Scanlon's account runs into a bootstrapping or circularity problem here, since what he takes to be the grounding value of promissory obligations (i.e., the value of assurance) would hold or be realised only if we presuppose the bindingness of promises. Promises would generate assurance only if they are capable of producing obligations, yet it is precisely their capacity to produce obligations that we are trying to account for.<sup>9</sup> But even if Scanlon could respond to this objection, his account would still fail to provide a plausible account of the grounds of promissory rights, as I will show in the following.

First of all, promises are often not enough to satisfy our interest in predicting others' behaviour, since people frequently breach their promises. The fact that someone promised us that they will  $\phi$  is not always sufficient for us to acquire predictive power regarding the fact of them  $\phi$ ing. Second, and more importantly, promising is not necessary to satisfy our predictive interest. We can acquire knowledge about others' future behaviour by, for example, them declaring to us their firm intention to act in a certain way, by us carefully

<sup>9</sup> See e.g., Kolodny & Wallace, “Promises and Practices Revisited”, pp. 131 ff.; and Markovits, “Making and Keeping Contracts”, pp. 1358 ff.

observing their habits and patterns of behaviour, etc. Thus, alluding to our predictive interest alone does not tell us anything on what is distinctive about promising when compared to other behaviour-predicting-mechanisms. And it provides no explanation regarding why promises impact our obligations and rights while other of these mechanisms do not. For example, *it* cannot explain why I acquire a right that you perform your promise to  $\phi$  while, even if I have an interest in receiving assurance about you  $\phi$ ing, the fact that you have declared to me your firm and serious intention to  $\phi$  is not sufficient to make it the case that I acquire a right that you  $\phi$ . Arguably in both cases I acquire knowledge about your future behaviour but only the promising scenario gives me a right that you  $\phi$ .

One might argue that what distinguishes the promising case from other cases of assurance-giving is that by promising the promisor declares not only that she will act as promised but also that she cannot change her mind about it. However, it is still not clear to me why this feature of promising would be necessary to justify promissory rights *if* the value which grounds these rights is just our predictive interest. There are surely cases in which others' firm declarations of intention to act in a certain way would provide better grounds than promising for us to know how they will behave in the future. For example, suppose that your most diligent friend declares her firm and serious intention to go to your party, and also that your flakiest friend promises that she will go. It could be the case that your interest in predicting your friends' behaviour is better satisfied by your diligent friend's declaration than by your flaky friend's promise. If this is correct, I cannot see why – if the interest which justifies promissory rights is our predictive interest – only the promising case seems to give you a *right* to rely on your friends' declarations.

Perhaps Aldo's interest is not merely in knowing how Guido will or is likely to act, but in avoiding the harmful consequences or losses that could follow from Aldo *relying* on this knowledge.<sup>10</sup> Because of Guido's promise, Aldo will not show up to pick up Carla. And if Guido does not pick her up, nobody will – and this is likely to cause harmful consequences for both Aldo and Carla. On this view, the

<sup>10</sup> A view along these lines was defended by Neil MacCormick, "Voluntary Obligations and Normative Powers", *Proceedings of the Aristotelian Society* (46) (1972): pp. 59–102, 70 ff; and, arguably, by Judith Jarvis Thomson, *The Realm of Rights* (Cambridge, MA: HUP, 1990), pp. 307–310.

promisee's right is a right that the promisor undertakes the actions necessary to avoid the harmful consequences of his breach. But Scanlon wants to deny this. He rightly argues that if the ground of promissory obligations and rights consists only in our interest in avoiding the harmful consequences that may follow from relying on other's words, promissory duties would be most of the time dischargeable by actions different from *performing* the promise (e.g., by timely warning the promisee that one will not perform or by compensating the promisee for her losses in case of failing to act as promised).<sup>11</sup> Thus, a harm-prevention view of the value of assurance cannot provide the grounds for the promisee's right to performance even if it does provide the foundation for other rights that may arise from the breach of a promise, like the right of the promisee to receive compensation for the losses caused by the promisor's breach.

But even if Scanlon is capable of accommodating all these objections, his account of promising reveals its most important deficiency as an account of the normativity of promissory rights once we realise that it fails to provide an explanation of what I will show in Section II to be a crucial aspect of promissory morality: that promisees may acquire exclusive *control* over promisors' obligations. Consider the following example.

Suppose that Aldo works as a waiter in Guido's pizzeria. Aldo is in a difficult financial situation and asks Guido for a pay raise. Guido responds that the restaurant's finances are not great at this time, but promises to give Aldo a raise in two months. Assume that Guido's promise fulfils all the conditions of principle F. But imagine also that Aldo is not the only one to want a raise. Octavio, another waiter at the restaurant, does, too. Assume furthermore that there is a labour regulation which prescribes that there cannot be differences in salaries for workers who perform the same job at the same company. Assume also that Octavio is aware of Aldo's request for a pay raise, and that Guido knows that Octavio is aware of Aldo's request (there is a well-established gossip culture at the restaurant). Octavio does not request a promise from Guido but is interested in receiving assurance about any pay raise that would result from Aldo's request. Octavio knows only too well that even if Guido made the promise

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<sup>11</sup> Scanlon, *What We Owe to Each Other*, p. 301. Moreover, Scanlon denies that the value of assurance is merely 'experiential', that means, it does not consist in the psychological relief that the promisee may experience by knowing that a certain act will or is likely to take place. *Ibid.*, at p. 303.



only to Aldo, Guido would be providing assurance to him as well, since the restaurant has adopted a very strict policy of complying with labour regulations. Aware of all this, that is, knowing that his promise to Aldo involves providing some assurance to Octavio as well, Guido goes ahead and makes the promise to Aldo. Under principle F, not only Aldo but also Octavio would now have a right to demand performance from Guido. If principle F provides the grounds for promissory obligations and rights, the fact that Guido makes the promise only to Aldo is normatively trivial. Both Octavio and Aldo have a right to Guido's keeping his word, and these rights have exactly the same ground (i.e., the value of assurance).<sup>12</sup> Yet, I shall argue later, the example reveals that principle F fails to capture a very fundamental aspect of the phenomenology and normativity of promising. Aldo, *qua* promisee, may acquire a power that Octavio lacks, namely, the exclusive control over Guido's obligation. It may be only Aldo who can *release* Guido from his promissory obligation, and, if exercised, this release extinguishes any obligation generated by the promise.

It seems to me that if one day before performance is due Aldo informs Guido that he does not need the raise any longer and that he liberates Guido from his promissory obligation, Octavio would have no right to Guido's performance. By contrast, if it were Octavio who approached Guido and told him that he is aware of his promise to Aldo but that he (Octavio) no longer required the raise and thus waived his potential complaint under principle F, this clearly would *not* liberate Guido from his promissory duty. On Scanlon's account, principle F would be indeed cancelled if the person who received the assurance consented to the assurer acting otherwise.<sup>13</sup> However, such consent or waiver, exercised by Octavio, would not have the same obligation-cancelling effects as the promisee's (Aldo's) release.<sup>14</sup> True, both Octavio and Aldo may have an interest in receiving assurance from Guido, and this interest, under principle F, may justify holding that both of them have standing to request that

<sup>12</sup> Perhaps one might argue that the promise makes principle F more *stringent* for the case of Aldo. However, still both Aldo and Octavio's claims would be of the same nature; grounded in exactly the same value (i.e., the value of assurance). And, in any case, it is not clear at all why promising cases would necessarily trigger principle F in a more stringent way than other non-promissory cases.

<sup>13</sup> Scanlon, *What We Owe to Each Other*, pp. 301–304.

<sup>14</sup> Helpfully distinguishing waivers from obligation-cancelling acts see Nicolas Cornell, "The possibility of Preemptive Forgiving", *The Philosophical Review* 124 (2) (2017): pp. 241–272, 267 ff.



Guido keeps his promise, and to blame him in the case of breach. Yet, principle F cannot explain why only Aldo acquires exclusive control over Guido's duty.<sup>15</sup>

To be clear, in determining the scope of a promise there may arise interpretative issues regarding the parties involved in the promise. A promise which is in principle thought to be between A (promisor) and B (promisee) may in fact include C (promisor 2) or D (promisee 2), and so on. Also, there may be promises between multiple parties which are interconnected in complex ways (e.g., A's promissory obligation towards B may be conditional on C's keeping of his promise to A, etc.). Moreover, as was the case for Octavio, the breach of a promise may, under certain circumstances, have a normative impact on people who are not parties of the promise (e.g., because they formed reasonable expectations about the promisor's performance, because they detrimentally relied on it, etc.).<sup>16</sup> The point I am making here is that promisees are capable of acquiring a power to terminate the promisor's obligation; a power that third parties to the promise lack even if they have standing to request performance, and to blame the promisor for his breach.

Scanlon's difficulty to explain the control that promisees may acquire over promisors' obligations is a serious problem for his account of promising. This is because, as I will argue in the next section, the deontic control acquired by promisees over promisors constitutes a fundamental aspect the normativity of promising.

## II. PROMISSORY RIGHTS AND THE VALUE OF DEONTIC CONTROL

Promises impact our normative world. In principle, promisees have the standing to request that promisors act as promised, and to blame them in case of breach. And it is appropriate for promisors to constrain their practical deliberation towards the matter of the promise, and to feel guilty for failure to perform. I believe that all these

<sup>15</sup> Margaret Gilbert argues that Scanlon's theory fails to explain the promisee's power to release *and* his power to rebuke the promisor in case of breach. Margaret Gilbert, "Scanlon on Promissory Obligation: The Problem of Promisees' Rights", *The Journal of Philosophy* 101 (2) (2004): pp. 83–109, 94 ff. I disagree with Gilbert on this point. I believe that principle F does make it the case that Octavio has standing to rebuke Guido for his breach. What he lacks is the power to release Guido from his promissory obligation. One may hold that, when pretending to release Guido, Octavio is just waiving a potential future complaint but *not* releasing Guido from his obligation.

<sup>16</sup> Contract lawyers usually have to deal with such difficult cases when considering the claims of third parties to a contract.

phenomena are captured by the idea that promisors are under an *obligation* to perform their promises; an obligation which is directed towards the promisee. But there is still a crucial explanatory role for the idea of promissory *rights* in accounting for the morality of promising. We learned from the Guido/Aldo/Octavio example that both promisees and third parties like Octavio, under certain circumstances, may have standing to request performance, and, in case of breach, to blame the promisor. Yet, we saw that, unlike third parties, promisees may gain *control* over the promisor's obligation. The promisee may be imbued with a power to, before either the performance or the breach of the promise takes place, *release* the promisor from his promissory obligation.<sup>17</sup> Moreover, the promisee may not only acquire the power to release the promisor from her duty before the breach or performance of the promise has taken place. In case the promisor breaches the promise, the promisee may be entitled to demand compensation or other reparative actions for the losses caused by the breach. And she may be also exclusively entitled to release the promisor from these compensatory and reparatory obligations.<sup>18</sup> I shall maintain that this set of deontic powers that the promisee may acquire over the promisor regarding the matter of the promise indeed constitute her *right* to the promisor's performance.<sup>19</sup>

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<sup>17</sup> Two clarifications regarding the power to release are needed. First, the promisee's power to release the promisor may be morally regulated by varied considerations (e.g., by the fact of the promisor's relying on the execution of her promise, by the fact that performance has become overly burdensome for the promisor, etc.). These considerations may constitute strong reasons for the promisor to exercise her power to release the promisee, or to refrain from doing so. Second, I am not arguing that every promise necessarily gives the promisee a power to control the promisor's obligation. I am just arguing that *one* of promising's central functions is to grant this type of power to the promisee. What I aim to provide here is a theory of promissory rights that is able to account for the normativity of this aspect of the promising phenomenon.

<sup>18</sup> Hart makes a similar claim regarding private law rights. He argues that the fullest measure of control involved in private law rights includes: (1) the power to waive or extinguish someone's duty; (2) the power to enforce those duties by suing for compensation and, in some cases, for injunction; and (3) the power to cancel or extinguish the defendant's duty to pay compensation. See Hart, *Essays on Bentham: Jurisprudence and Political Theory*, pp. 183–184.

<sup>19</sup> In conceptualising promissory rights, I have avoided W.N. Hohfeld's typology of rights. W.N. Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning* (New Haven: YUP, 1919). Under Hohfeld's account, powers are always correlative to liabilities. If what the promisee acquires is a Hohfeldian power over the promisor's obligation, this entails affirming that the promisor is under the liability to his duty being abolished by the promisee. And that seems to me a rather odd formulation. Can we say instead that the promisee has a Hohfeldian claim-right which she can waive but not strictly a power to cancel the promisor's obligation? We may do so, but I believe this description of the promisee's right obscures the idea that it is precisely the fact that the promisee can abolish her claim-right what gives its distinctive moral salience to promissory rights. I believe that describing this right as a power to control the promisor's obligation better grasps its moral significance.

Now, can this characterisation of the promisee's right be accommodated by the Interest Theory?

Under the Interest Theory, the promisee would have a right to performance – understood as a power to control the promisor's obligation – if and only if she has an interest in being able to control the promisor's obligation that would be *sufficient to justify* this obligation (the promisor's promissory obligation). Thus, we would need to find a human interest in the kind of deontic control that the promisee acquires which would be enough, on its own, to justify the promisor's duty to keep his promise. Here I endorse and defend the view that we have such an interest. We have what David Owens calls the 'authority interest', that is, an interest in being able to control what others owe to us.<sup>20</sup> I shall argue that it is the authority interest (which here I will call our 'deontic control interest'), that grounds promissory rights. Let us see what makes it the case for such an interest.

Several authors have convincingly defended the view that being under special obligations to others is valuable for its own sake.<sup>21</sup> Most of the relationships that are fundamental in our lives, such as friendship and familial relationships, entail obligations (e.g., duties of loyalty and care) between the parties involved. And these special obligations are in themselves basic elements of what makes or constitutes the value of these relationships. They are as such conclusive reasons people have for valuing relationships such as friendships and familial relationships. In this sense, obligations are basic goods that give value to our lives. They are part of the list of things that enhance human well-being.<sup>22</sup> Yet, a life that is not only good but also an autonomous life is one in which we not only engage in valuable projects, activities, and relationships, but one in which we have some control over which of these projects, activities, and relationships we pursue. Thus, since obligations belong to the

<sup>20</sup> See Owens, *Shaping the Normative Landscape*, Chaps. 4–6; and David Owens, "A Simple Theory of Promising" *The Philosophical Review* 115 (1) (2006): pp. 51–77, 67 ff.

<sup>21</sup> For some prominent examples see Joseph Raz, "Liberating Duties", *Law and Philosophy* 8 (1) (1989): pp. 3–21, 18–21; Samuel Scheffler, "Relationships and Responsibilities", *Philosophy & Public Affairs* 26 (3) (1997): pp. 189–209; and David Owens, "The Value of Duty", *Proceedings of the Aristotelian Society Sup. Vol. XXXVI* (2012): pp. 199–215.

<sup>22</sup> This does not mean that there cannot be people for whom a life without special obligations is overall better. The (I hope fairly uncontroversial) claim I am endorsing is that people lives are *generally* better off when they are under special bonds with others, or at least when they have the opportunity to develop these bonds. .

list of goods that constitute our well-being, in principle, a good *and* autonomous life is one in which we have some degree of control over our deontic world.

Promisees often care about the fact that the promisor keeps his promise (i.e., they care about him acting as promised). And they may care about being able to predict the occurrence of the promised act. But even if they do not care about these things, it would still be reasonable for them to value a promise. That is because it is perfectly reasonable for an agent to value a promise *just* because she has an interest in possessing deontic control over the promisor with respect to the promised act. For example, I may value my friend's promise to come to my party even if I do not really care whether he shows up or not (I might even prefer that he does not show up, because he tends to be quite embarrassing at social events). Here I do not value the performance of the promised act itself, nor receiving assurance about it happening. However, my valuing his promise may still be perfectly reasonable. I value it because it serves my interest in being the one who has the power to determine that he *owes me* to come to my party. In fact, promisees may care about the promised act (and about being able to predict its occurrence) precisely because it has been promised to them: they care about the occurrence of the promised act *because they have a right over it*, namely because they have control over its deontic significance. I believe it is precisely this interest in possessing a *purely* deontic form of control over others that grounds promissory rights.<sup>23</sup>

Let us now see how this account of the interest that underlies promissory rights would fit within the framework provided by the Interest Theory. In what follows, I propose a version of the Interest Theory, which I call the Deontic Interest Theory, that accommodates our interest in purely deontic forms of control among the list of interests that serve as grounds for our rights.

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<sup>23</sup> The explanatory priority that I am giving to our interest in deontic control in the justification of promissory rights may worry someone like R.J. Wallace, who, when discussing the possibility of normative interests as grounds of rights, argues that alluding to this kind of interest seems to 'reverse the order of priority between our normative and our nonnormative concerns'. R.J. Wallace, *The Moral Nexus* (Princeton: PUP, 2019), pp. 168–169. Yet, it seems to me that just postulating an absolute explanatory priority of the nonnormative in accounting for the deontic does not constitute as such any challenge to the idea that we have an interest in deontic control. It consists just in ruling out the possibility of a deontic control interest *ab initio*, and not an argument against it. What I am arguing is precisely that *some* rights (e.g., promissory rights) are grounded in our interest in normative or deontic phenomena, and in possessing control over them.

### A. *The Deontic Interest Theory*

As stated before, according to the Interest Theory, X has a right that Y performs or abstains from an action  $\phi$  if and only if X has an interest sufficient to justify Y's duty to perform or abstain from  $\phi$ ing. This formulation may suggest that, under the Interest Theory, the relationship that is capable of justifying our rights is always between someone's interest (some aspect of their well-being) and the actions or omissions of others that directly affect that interest, for example, by harming or benefiting it. For instance, my interest in maintaining my body's healthy functioning is sufficient to justify your duty to not stab me. And you have the duty not to stab me because this action itself (stabbing me) undermines or harms my body's functioning. However, if the interest that is sufficient to justify promissory obligations is an interest in deontic control as such, things would look a bit different for the Interest Theory. The relevant justificatory link would not be between our interest and the way in which others' actions or omissions harm or benefit this interest, since the promisee's deontic control interest is not harmed by the promisor's breach nor benefited by his performance. After the breach, the promisee preserves the deontic control she has over the promisor, with the only difference being that now, instead of having a power to cancel the promisor's promissory obligation, she has the same kind of power over the compensatory and reparatory obligations that arise from the breach. And the fact of the promisor performing his promise does not necessarily benefit or uphold the promisee's deontic control interest – indeed, the promisee's deontic control over the promisor terminates when the promisor performs his promise. Thus, the interpretation of the Interest Theory that I am suggesting, one that would be able to accommodate the deontic control interest among the interests which serve as moral grounds of our rights, would read roughly as follows:

*Deontic Interest Theory (DIT):* X has a right that Y  $\phi$  if and only if X has an interest sufficient to justify Y's duty to  $\phi$ ; either because X's interest is sufficiently affected (harmful or benefited) by Y  $\phi$ ing; or because X's interest sufficiently justifies her possessing control over Y's duty to  $\phi$ .

I believe *DIT* provides a justificatory framework not only for promissory rights but, in principle, for all rights that give right-holders control over others' duties. For instance, this is the case of

property rights. What is distinctive of property rights is that they involve granting the property holder not only physical control over objects, but control over others' obligations.<sup>24</sup> Having a property right over my bicycle gives me a power to control whether you wrong me if you undertake certain actions regarding my bicycle (e.g., you wrong me if you use it without my permission), and a power to control your duty to pay compensation for the losses caused by your breach. By taking the Interest Theory to incorporate our deontic control interest as part of the list of interests which serve as grounds of our rights, we will have a better framework to account for the normativity of all the rights, such as promissory and property rights, that constitute powers to control others' duties. Yet, there is still one fundamental point that a complete defense of *DIT* must address.

When compared to other rights, there is an additional step needed in order to determine the existence of (at least some) rights that are grounded in our deontic control interest like promissory rights. If *X* has a right that *Y*  $\phi$  because *X*'s interest is sufficiently affected (harmed or benefited) by *Y*  $\phi$ ing, *X* has this right regardless of any other conditions obtaining. For instance, my interest in preserving my bodily functions and avoiding pain is sufficient on its own to justify your (pro tanto) duty to not punch me in the face, and thus to justify my (pro tanto) right that you do not punch me. Yet this interest not only *justifies* my right, but it is enough to make it the case that I *have* this right. The same is not true of rights like promissory ones. Our deontic control interest is sufficient to justify promissory rights, but it is not sufficient to make it the case that we have these rights. I may have an interest in you being under a

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<sup>24</sup> For different accounts highlighting deontic control as a constituent feature of property rights see Morris R. Cohen, "Property and Sovereignty", *Cornell Law Review* 13 (1) (1927): pp. 8–30, 12–15; Christopher Essert, "Property and Homelessness", *Philosophy and Public Affairs* 44 (4) (2016): pp. 266–295, 271 ff.; Hanoch Dagan & Avihay Dorfman, "The Human Right to Private Property", *Theoretical Inquiries in Law* 18 (2) (2017): pp. 391–416, 398 ff.; David Owens, "Property and Authority" *The Journal of Political Philosophy*, 0 (0) (2019): pp. 1–23, 13 ff. I discuss the relationship between deontic control and property rights in Crescente Molina, "The Authority in Property" *Jerusalem Review of Legal Studies*, 19 (1) (2019): pp. 14–20.

promissory duty to help me move houses, and thus an interest in controlling your obligation to help me. However, you are not under a promissory obligation to help me, nor have I a promissory right that you do so (not even a *pro tanto* one) – unless you actually promised it.<sup>25</sup> What explains this feature of promissory rights?

As we saw, the promisee's right is grounded in her interest in possessing deontic control over the promisor, that is, in possessing a power to control the promisor's obligations in the matter of the promise. However, it is necessarily the promisor who must intentionally purport to grant this power to the promisee. And it is the making of a promise that constitutes the act by which the promisor does so. Promissory rights are *voluntary undertakings*: their obtaining is conditional upon someone's (i.e., the promisor) choosing to bring them about.<sup>26</sup> Why is this so? The voluntary nature of promissory rights is grounded in our interest in being able to choose and mould our own deontic world. We have an interest in being able to grant others deontic control *by choosing to do so*. It is this interest which gives promising and other normative powers like property transfers and consent their basic shape as necessarily choice-dependent acts. Thus, because promises are tools by which we serve our interest in being able to choose our own deontic world; the existence of promissory rights must always be preceded by the making of a promise (i.e., by an act of intentional right-granting from one agent to another). To be clear, it is the promisee's deontic control interest that provides sufficient *justificatory* grounds for promissory rights even if the justificatory force of this interest is displayed only when preceded by an act of right-granting by the promisor. Fundamentally, the promisor's right-granting act (i.e., his promise) only succeeds in giving the promisee a promissory right because the promisee has an interest in possessing deontic control over the promisor. It is this interest that provides sufficient justificatory

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<sup>25</sup> Similarly, I may have interest in having proprietorial control over O, over which you have property rights. However, my interest in having proprietorial control over O does still not make it the case for my *having* a property right over O. I must first acquire those rights over O. A worry along these lines regarding the possibility of grounding rights in normative interests is raised by Wallace, *The Moral Nexus*, p. 167.

<sup>26</sup> Indeed, promissory rights and obligations are conditional upon both the promisor's choosing to bring them about *and* the promisee's accepting to acquire them. I discuss the normative structure of voluntary undertakings in detail in 'Voluntary Undertakings, Control, and Allegiance' (MS).



grounds for promissory rights even if the existence of these rights is always conditional upon the making of a promise.<sup>27</sup>

Let me conclude this article by discussing what the reader might have considered an elephant in the room so far. Why do we need *DIT* at all to account for promissory rights? Why not just adopt the so-called Will Theory of rights instead? According to the Will Theory, the defining feature of rights is precisely that they give right-holders control over others' duties. Along these lines, H.L.A Hart argued that:

Y [the right-holder] is [...] morally in a position to determine by his choice how X shall act and in this way to limit X's freedom of choice; and it is this fact, not the fact that he stands to benefit, that makes it appropriate to say that he has a right.<sup>28</sup>

Hart's Will Theory is right in highlighting deontic control's important role in accounting for the normativity of rights. However, there are problems with the Will Theory, or at least with Hart's version of it. The Will Theory holds that deontic control ought *always* to be present for us to appropriately deem someone's entitlement as a right.<sup>29</sup> *DIT* is more plausible in that it admits the possibility that agents can possess some rights even if they do not have an interest in controlling others' obligations. For example, in-

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<sup>27</sup> I believe that it is the fact that promissory rights are conditional upon the existence of a previous right-granting act, namely the making of a promise, that has led some writers to endorse the doctrine that holds that promissory rights come from an act of right *transfer* from the promisor. There is a grain of truth in this view. It appropriately captures the idea that the existence of promissory rights always depends on the promisor's granting of these rights. Yet, maintaining that by making a promise the promisor transfers a right that she previously had to the promisee obscures rather than illuminates the nature of promissory rights. In all its versions, the right transfer doctrine fails to identify what exactly the right is that promisors are transferring to promisees by the making of a promise. None of them is capable of building a continuity of identity between the right that the promisor is supposed to be transferring and the one that the promisee acquires. For different versions of the transfer doctrine see e.g., Hugo Grotius, *The Rights of War and Peace* (Indianapolis: Liberty Fund, 2005), pp. 704 ff.; Peter Vallentyne, "Natural Rights and Two Conceptions of Promising", *Chicago Kent Law Review* 81 (1) (2005): pp. 9–19, 12–13; Shiffrin, "Promising, Intimate Relationships, and Conventionalism", pp. 501 ff. For discussion and criticism see Thomas Pink, "Promising and Obligation", *Philosophical Perspectives, Ethics*, 23 (2009): pp. 299–420, 389, 404–406; and David Owens, "Does a Promise Transfer a Right?" in Gregory Klass et al. (eds), *Philosophical Foundations of Contract Law* (Oxford: OUP, 2014), pp. 84–89.

<sup>28</sup> H.L.A Hart, "Are There Any Natural Rights?", *The Philosophical Review* 64 (2) (1955): pp. 175–191, 180.

<sup>29</sup> In his later work on legal rights Hart became open to the possibility that some legal rights require a different justification. See his *Essays on Bentham: Jurisprudence and Political Theory*, p. 189. Defending a view labelled by its author as a hybrid theory of the nature of rights (which I believe is compatible with *DIT*) see Gopal Sreenivasan, "A Hybrid Theory of Claim-Rights", *Oxford Journal of Legal Studies* 25 (2) (2005): pp. 257–274, 267 ff.

fants, the mentally disabled, and some non-human animals may not have an interest in deontic control but still possess some rights (e.g., the right not to be tortured). And even some of the rights of fully capable agents may not be grounded in their deontic control interest at all, like the so-called “inalienable rights” (e.g., the right not to be enslaved). Moreover, *DIT* is capable of accommodating rights that have a more complex, hybrid justificatory structure. The complete justification of some rights rests both in how others’ actions and omissions directly affect our well-being (by sufficiently undermining or benefiting it) *and* in our interest in having deontic control over those actions or omissions. For example, I have a right that you do not chop my legs off because I have an interest in preserving my bodily integrity (and your chopping my legs off undermines that interest), but I also have an interest in being able to grant you a permission to chop my legs off – that is, I have interest in possessing some control over your duty to avoid chopping my leg off. *DIT* provides a framework to account for these cases.

Finally, Hart’s Will Theory merges the claim that rights are powers to control others’ obligations with the idea that rights are powers to interfere or limit others’ freedom of choice, and, furthermore, argues that all our rights are grounded in a natural right to be free.<sup>30</sup> Though I am not sure what exactly Hart meant when making these claims, I do not wish to argue against them here. The only important point is that if we adopt *DIT*, we have a justificatory framework that can account for rights which involve deontic control by the right-holder like promissory rights without the need to endorse the Will Theory’s more substantive package of claims regarding the relationship between rights and freedom. An ethical theory which finds the grounds of rights in aspects of human well-being, is capable of accounting for the rights that involve the right-holder’s possessing deontic forms of control over others precisely by arguing that obligations and control over them are constitutive of our well-being. Both the non-normative and normative or deontic aspects of our well-being may serve as ground of our rights. I have

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<sup>30</sup> Hart, “Are There Any Natural Rights?”, pp. 190–191.

argued that it is in the latter aspect where we find the justification of promissory rights.

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*Brasenose College  
University of Oxford, Oxford, UK  
E-mail: [crescente.molina@bnc.ox.ac.uk](mailto:crescente.molina@bnc.ox.ac.uk)*

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