

## RIGHTS, ROLES, AND INTERESTS

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ACCORDING TO the interest theory of rights, rights exist to promote the interests of their bearers. The interest theory fits within a tradition in moral theory that assigns a fundamental role to well-being in the explanation of deontic concepts. In spite of its pedigree, the interest theory has fallen out of favor in recent years. It has been subject to sustained and telling critiques by a number of prominent rights theorists, including Frances Kamm, Leif Wenar, Rowan Cruft, and Gopal Sreenivasan.<sup>1</sup> One prominent objection focuses on the rights of role bearers: since many roles are burdensome, and since their justification hinges on their social value rather than their value to the bearer, it is hard to see how role bearers' rights exist to promote their interests alone.

In this article I aim to defend the interest theory against this particular line of objection. My aim is not to definitively establish the merits of the theory (I doubt that can be done) but to show that it at least offers a reasonable account of the rights of role bearers. I argue that role bearers' rights are grounded in their interests: under certain conditions, the interests of the individual role bearers provide sufficient reason for existence of the right. After illustrating the problem at greater length, I make my argument in three stages. First, I argue that many of our valuable roles are partly constituted by duties or obligations. Second, I argue that our valuable roles—even when they are apparently burdensome roles—promote our interests. Once it is bestowed upon them, a role is no longer just a role; it is a role that has special value for its bearer. I then argue that, under certain conditions, the individual's interest in performing their role is sufficient to ground rights to perform that role. In the final section, I briefly discuss the possibility of “detached” or “noncommitted” rights attributions, and their significance to the description of the rights of role bearers in social morality and law. Within law and other systems of positive norms, role-based rights may be attributed in a noncommitted way in situations where it is believed by others that the roles in question sufficiently promote the interests of their bearers.

1 Kamm, *Intricate Ethics*, ch. 8; Wenar, “The Analysis of Rights” and “The Nature of Claim-Rights”; Cruft, “Rights”; Sreenivasan, “A Hybrid Theory of Claim-Rights.”

## 1. THE PROBLEM: ROLE BEARERS' RIGHTS

The problem that role bearers' rights pose for the interest theory can be illustrated by considering the legal rights of parents. In most jurisdictions, parents have legal rights with respect to the education, religious upbringing, and medical treatment of their children. For instance, in most jurisdictions, parents have a right to information concerning the medical treatment of their children, which correlates with a duty on behalf of medical practitioners to provide parents with this information. Yet these rights are conferred on parents with the child's interest in mind. Possessing these rights on behalf of their children may even be quite burdensome for parents. This is problematic because, according to the interest theory, parents' rights are supposed to be grounded in the interests of the parents, not their children.

This is the crux of the challenge considered in this article. I will argue that rights promote the interests of their bearers. Wherever there are rights, there are interests—not just any interests, but interests that are in themselves sufficient reasons for the existence of a duty or set of duties owed to the rights bearer.<sup>2</sup> But the rights of parents appear to offer a direct counterexample to this philosophical position. How can it always be in a parent's interests to act on their child's behalf? Surely, parenting at least occasionally involves burdens and self-sacrifice. Furthermore, the interests that ground the right appear to belong to the child, not to the parent. The parent has a right to act in their child's interest, and might even have an interest in doing so, but they do not have this right *because* it serves their own interests to have it.

The problem presented by parental rights to interest theories of rights is a variant of a more general problem, which has been noted by any number of prominent critics of the interest theory (and some of its supporters).<sup>3</sup> Many of our roles, both within our special relationships and within social or institutional structures, appear to exist because they serve the interests of others, rather than the interests of the role bearer. A promisor has the right to keep their promise,

2 As will become clear, I have in mind Joseph Raz's theory of rights (*The Morality of Freedom*, 166). A closely related account is the account of rights commonly attributed to Bentham and defended assiduously by Matthew Kramer; see Hart, "Bentham on Legal Rights"; Kramer, "Rights without Trimmings" and "Refining the Interest Theory of Rights." I will not concern myself with defending this alternative version of the interest theory, though similar arguments to my own are broached by Kramer and by Steiner, "Theories of Rights," 288–94.

3 See, e.g., Cruft, "Rights," 372–75; Kamm, *Intricate Ethics*, 244–48; Sreenivasan, "A Hybrid Theory of Claim-Rights," 265–66; Wenar, "The Analysis of Rights," 241–42, and "The Nature of Claim-Rights," 204–7. Raz acknowledges the difficulty in his own work in "Rights and Individual Well-Being."

even though they might have promised to do something that appears to be burdensome or unpleasant.<sup>4</sup> A journalist has the right to free speech, even when that right does very little to protect the journalist's own interests, and mostly seems to promote the interests of his readers.<sup>5</sup> Legal officials have rights to perform responsibilities that do not appear to be to their benefit. The rights of a police officer seem to exist so that they can act in the interests of their fellow citizens, rather than in their own interests. It is therefore hard to imagine how, on the interest theory, any of these role bearers could accrue any rights properly associated with their responsibilities. Problems like this can be created for just about any purportedly burdensome role—especially those roles (like the roles of parent or police officer) that require us to perform duties on behalf of others.

The focus of my discussion will be on claim rights that protect role bearers in the performance of their duties. Nonetheless, it is worth noting that the rights of role bearers doubtless involve other Hohfeldian incidents.<sup>6</sup> It may well be that these other incidents are also grounded in the interests of the role bearer. For instance, many roles are associated with normative powers to impose duties on others. A standard justification of normative powers is that they serve our autonomy interests—they give us some sort of control and ability to impose a chosen pattern on our own lives.<sup>7</sup> The explanation of the way in which these powers might serve our interests, and the explanation of the claim rights that enable or protect these powers, are closely related if not identical projects.<sup>8</sup> Moreover, many of the claim rights of role bearers protect them in the exercise of normative powers. Parents' powers to make decisions about the health of their children are protected by claim rights against doctors to inform them about the nature of their child's illness. Without such rights, the power to consent to examination or treatment would be vulnerable to failures on a doctor's behalf to explain the child's condition. Similarly, the extraordinary powers of police officers are very often protected by claim rights that they have against interference with the exercise of their powers.

4 Wenar, "The Nature of Claim-Rights," 204; cf. Owens, *Shaping the Normative Landscape*, ch. 6.

5 Kamm, *Intricate Ethics*, 244–48.

6 Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning and Other Legal Essays*.

7 For a compelling defense of the view that we have such normative interests see Owens, *Shaping the Normative Landscape*.

8 See Kramer and Steiner, "Theories of Rights."

## 2. THE INTEREST THEORY AND THE PROBLEM OF ROLE BEARERS' RIGHTS

### 2.1. *Interests and the Interest Theory*

According to interest theorists, rights promote their bearer's interests or well-being. There are different versions of the interest theory. On Joseph Raz's widely cited formulation of the interest theory, we have a right if and only if we have an interest "that is, other things being equal, sufficient to justify holding some other person to be under a duty."<sup>9</sup> A number of features of Raz's theory need further explication. To begin with, Raz's own account is intended to preserve an ambiguity when he talks of being justified in "holding" someone to be under a duty; he might be taken to be referring to our reasons for the act of asserting that someone is under the duty, our reasons for an attitude like acceptance or "internalization" of the duty, or he might be taken to be referring to the duty's actual normative grounds—the reasons for the existence of the duty.<sup>10</sup> I will assume here that he is referring to the reasons for existence of the duty, and not reasons for an act or attitude.

An equally important aspect of Raz's version of the interest theory is its focus on the sufficiency of the individual's interest as a reason for the duty owed to the interest bearer. The interest must be, other things being equal, a sufficient reason for the relevant duty. Many counterexamples to the interest theory focus on the insufficiency of the individual interest in question, as we shall see. The sufficiency requirement might be interpreted in a number of ways, including the straightforward truth-functional account: if the interest exists then it is a sufficient reason for existence of the duty.<sup>11</sup> I will assume that this truth-functional approach to the sufficiency requirement is the correct one, though I think my argument could also be adapted to defend other interpretations of the sufficiency requirement.

Raz's formulation focuses on the relationship between an interest and a singular duty. It sometimes may be the case that the interest in question is sufficient to justify a set of duties rather than a single duty. This is particularly clear in the case of social roles. The interest of role bearers is often associated with a set of duties, each of which protects the role bearer in the performance of different duties associated with their role. The role of parent may be supported through a complex set of duties, including, for example, a duty to provide them with child

9 Raz, *The Morality of Freedom*, 166. Cf. Kramer, "Refining the Interest Theory of Rights," 32.

10 Raz, *The Morality of Freedom*, 171–72. See also Cruft, "Why Is It Disrespectful to Violate Rights?" 205.

11 See further Cruft, "Why Is It Disrespectful to Violate Rights?" 205.

support, duties to provide opportunities for childcare and education, and a duty not to interfere with the parent's decisions regarding their child's religious upbringing. None of these duties is individually necessary for the protection of the parental role. But the entire set of such duties is collectively sufficient to protect the role.

I will assume that an interest is the kind of good we have in mind when we say that something is *good for* another person.<sup>12</sup> Many accounts of our interests treat them as equivalent to an individual's well-being. But it is possible to envisage substantive theories about what is in a person's interest that do not have well-being in mind, at least as well-being is commonly understood.<sup>13</sup> It is also possible to imagine that different interest theories of rights might invoke different theories about what constitutes individual well-being.

My argument does rely on the assumption that our individual roles contribute to our interests in a manner analogous to other projects and attachments. Crucially, I will assume that the contribution that our roles make to our well-being is at least partly dependent on the value of the role—particularly the contribution that it makes to the well-being of others. My argument is therefore incompatible with approaches to well-being that deny that the contribution that our roles make to our well-being could depend on anything other than the pleasure we take in the achievement or the preferences or desires that we satisfy.<sup>14</sup>

## 2.2. Role-Based Counterexamples

As Leif Wenar has noted, significant problems for the interest theory are created by apparently burdensome social roles, since they involve what John Rawls referred to as “enabling rights”: “rights we have so that we can fulfill certain duties that are prior in the order of grounds.”<sup>15</sup> Many of the rights of parents are rights of this sort: they arise with respect to the performance of their duties toward their children. Just about any social role will be associated with a set of enabling rights. Police officers, for example, have exceptional rights that are meant to enable them to fulfill the special duties associated with their office.

Rights to perform role-based duties are problematic for the interest theory in

12 Moore famously thought we could do without the concept *good for* (*Principia Ethica*, sec. 59). But perhaps even the most devout contemporary Moorean will wish to make use of some kind of relativization that will suffice for the purposes of analyzing rights—a relativization like “good in the life of” or “good belonging to,” for instance. See Rosati, “Objectivism and Relational Good.”

13 See, e.g., Macklem and Gardner, “Value, Interest, and Well-Being.”

14 See, e.g., Crisp, “Utilitarianism and Accomplishment.”

15 Rawls, *Lectures on the History of Political Philosophy*, 144; Wenar, “The Nature of Claim-Rights,” 206–7.

two ways. First, they appear to show that rights are not to the benefit of the role bearer—that they do not serve their interests at all (in fact, they may even be damaging to their interests). Second, they appear to show that even when rights are to the benefit of the rights holder, the rights holder's interest is not an individually sufficient reason for the corresponding duty. The rights holder's interest is dependent on the interests of others whom the role benefits, and therefore not an individually sufficient reason for any duty.

The first set of counterexamples supposedly shows that the promotion of interests is not even a *necessary* feature of rights. Philosophers point to rights that are thought to demonstrate that interests are not even a necessary feature of the right (or that they do not play any necessary role in the justification of the right). Other counterexamples concede *arguendo* the association of rights with interests, and focus solely on the sufficiency of the interest—they do not intend to deny that the role bearer has some interest that is protected by the right, but they do deny that the role bearer's interest would, on its own, be sufficient reason for a duty.<sup>16</sup> Parents have a right to receive a child's benefits payment, for example, but that right exists because it serves the child's interest.<sup>17</sup> We can also think of the rights of police officers, or journalists, or the rights of other legal officials, which seem to be entirely justified by the interests of those they serve. The journalist may have an interest in publication, but the individual interest is not a sufficient reason for assigning them a right. Only the combination of the journalist's interests with the interests of others who are served by the socially valuable role of journalist could result in the journalist having such a right. The journalist does have such a right, so it must follow that the interest theory of rights cannot be correct. According to Kamm, "if the satisfaction of the interests of others is the reason the journalist gets a right to have his interest protected, his interest is not sufficient to ground the duty of non-interference with his speech."<sup>18</sup>

The latter set of counterexamples is the one that creates the most difficulty for the interest theory. The sufficiency requirement is an important aspect of the interest theory—it is needed to rescue the theory from trivial counterexamples involving beneficiaries of duties who are not rights bearers. Hart's example of the third-party beneficiary to a contract illustrates the problem nicely: interest theories without a sufficiency requirement allow us to derive a right, on behalf of the third-party beneficiary, that the contract be performed. But not all jurisdictions recognize such a right.<sup>19</sup> In the context of rights within roles that are

16 See especially Wenar, "The Nature of Claim-Rights," 204–5; Kamm, *Intricate Ethics*, 244–48.

17 Cf. Raz, *Ethics in the Public Domain*, 50.

18 Kamm, *Intricate Ethics*, 246.

19 Hart, *Essays on Bentham*, 187–88.

justified by their social value, however, the sufficiency requirement is problematic. The interests of the journalist only justify holding others to be under the requisite duties because the role in question serves other interests. So it appears as though the role bearers' interests are not sufficient to justify the duties—since their own interests depend on the role serving the interests of others.

### 3. THE EXISTENCE AND WEIGHT OF ROLE BEARERS' INTERESTS

The gist of the response to the role-based counterexamples lies in the observation that our projects and attachments make an indispensable contribution to the shape of our lives, and accordingly are vital to our interests. Roles and relationships are among our valuable projects and attachments. Since the duties and responsibilities associated with our roles are *constitutive* of those roles, it follows that they are constitutive of our interests in a more fundamental way than is commonly supposed. Where our interest in performing these roles is sufficient to justify holding others to be under duties, it is capable of grounding a right on behalf of the role bearer. The major premise of the argument is that duties are constitutive of valuable roles and relationships. The minor premise is that roles and relationships, where they are valuable, contribute to the interests of their bearers. From both premises we thus conclude that the duties and responsibilities that are constitutive of valuable roles and relationships serve their bearer's interests. Below I will defend each premise in turn. I then discuss the relationship between the considerations that justify the role, which are often only weakly related to the interests of the individual, and the individual's interests in performing the role. This last point is important—it allows us to distinguish the manner in which the individual interests are sufficient to justify the duties in question.

#### 3.1. *Duties and Roles*

Duties are constitutive of all roles—at least when roles are understood in the thicker sense that is favored by most philosophers and many sociologists. Some writers working in a broadly sociological tradition have tried to argue that it is possible to identify and define social roles without referring to those roles' constituent deontic features. These explanations of roles are inadequate precisely because they fail to describe exactly what distinguishes these roles for internal participants.<sup>20</sup> Other sociological accounts have never sought to deny what we might describe, paraphrasing Hart, as the “internal aspect” of roles—it is im-

20 For critiques of this conception see Emmet, *Rules, Roles and Relations*, 17–32; Downie, *Roles and Values*, 121–27.

possible to describe role bearers' behavior without referring to their belief in the existence of certain role-based reasons for action.<sup>21</sup> Jerry Cohen notes that statements like "John is a barrister, but he does not have the right to plead in court" or "Sir William is chancellor of the exchequer, but he does not have the duty to prepare a budget" have a paradoxical ring to them.<sup>22</sup> Deontic features like rights, duties, and permissions are inextricable from the proper description of these roles. A sociologist who sought to describe roles without reference to these features would be failing to understand the role as the role bearers themselves understand it.

### 3.2. *Roles and Interests*

The roles and relationships we fulfill and pursue are an important source of our projects and attachments. Performing roles and assuming responsibilities within relationships contributes directly and indispensably to role bearers' interests. The contribution that roles and relationships make to our interests is well discussed in the philosophical literature. A broad philosophical consensus holds that, where roles and relationships have value, they contribute to our interests.<sup>23</sup>

This consensus is typically associated with what Derek Parfit referred to as "objective list" theories of well-being—theories that stipulate that "certain things are good or bad for us, whether or not we want to have the good things, or avoid the bad things."<sup>24</sup> Many objective-list theories of well-being stipulate that our valuable relationships and social roles are among those things that are good for us.<sup>25</sup> Yet we need not be objective list theorists in order to acknowledge the importance of valuable goals and achievements to the promotion of our interests. Those who hold that well-being consists in the satisfaction of desires or preferences might be willing to concede that there is some objective component to our interests—that the contribution of our desires or preferences to the promotion

21 Hart, *The Concept of Law*, 88–91. In fact, sociologists, rather than philosophers, may have been the first to draw our attention to these attitudes. Lacey notes, for example, that Hart's ideas in *Concept of Law* were influenced by Weber's sociology ("Analytic Jurisprudence versus Descriptive Sociology Revisited," 951–52).

22 Cohen, "Beliefs and Roles," 21.

23 See Brighthouse and Swift, "Parents' Rights and the Value of the Family"; Cottingham, "Ethics and Impartiality"; Miller, "Reasonable Partiality towards Compatriots"; Raz, "Liberating Duties," 59, 93.

24 Parfit, *Reasons and Persons*, 493.

25 Finnis, *Natural Law and Natural Rights*, 88; Griffin, *Well-Being*, 67; Hurka, *Perfectionism*, ch. 10; Kraut, *What Is Good and Why*, ch. 3.

of our interests depends in part on the value of the object that is desired or preferred.<sup>26</sup>

It is instructive to note the different ways in which our fundamental individual interests are themselves socially dependent. Many of our goals depend on the forms that are given to them by different social attitudes and practices. If the role is otherwise worthwhile, it is in my interest to perform the role of dogcatcher. But the precise responsibilities and rights associated with the role of dogcatcher may depend on either or both social practices or legal instruments that define the role and its constitutive duties. In many circumstances, legal or social rules will determine the specific content of our moral rights. Our specific moral rights may depend upon how our roles are socially defined.<sup>27</sup> What is in my interest as a parent or friend, and therefore what is sufficient to ground a right, depends in part on how the particular role is shaped by different social customs and pressures.

In this respect it is important to concede that at least some of the constituent rights and duties that define our social roles are not indispensable to the existence of the role. There is something contingent about the particular duties we attribute to role bearers, and so too with the rights that enable them to fulfill these duties. The role of journalist would almost certainly continue to exist even if journalists had no right not to disclose their sources. No one doubts that even if parents were denied the right to receive child-benefit payments the role of parent would continue to exist and to have value to its bearers. However, the interests we have in these roles are in the roles as they are currently (and contingently) defined—not as they might otherwise be defined. In contemporary liberal society the role of journalist is partly defined by a duty not to divulge one's sources. It is part of the social value of the role that is a condition of its special value to the role bearer. Journalists have an interest in conforming with the duties that currently attach to their role, even if the role itself is susceptible to being redefined by law, custom, or other social pressures. A journalist who is told that she must disclose her sources is unlikely to be consoled by the thought that she will still be able to call herself a journalist even if she does not fulfill one of the duties of the role.

### 3.3. *General Justifications and Special Interests*

Recall that in Rawls's definition of "enabling rights," he defines them as rights that are dependent on prior duties that ground them. The possibility of enabling

<sup>26</sup> See, e.g., Parfit, *Reasons and Persons*, 501–2.

<sup>27</sup> Raz, "Legal Rights"; Honoré, "The Dependence of Morality on Law"; Owens, "Wrong by Convention."

rights thus provides an important counterweight to some prominent distortions of the role of rights in practical reasoning, including the view that rights are by their very nature conceptually prior to duties. Rights can certainly have priority over those duties that the rights themselves justify. But it is also evident that rights may be dependent upon the existence of certain valuable duties—the duties, in virtue of the role or practice that they constitute, may contribute to an individual interest, and that individual interest may itself be sufficient reason for further duties that enable the performance of the role.

A distinction needs to be made between having an interest in the general practice or institution within which the role occurs, and having an interest in the particular role that one occupies. The role-based rights and responsibilities of journalists offer one example of the importance of this distinction. Roles like “journalist” are often said to have a non-individualistic justification.<sup>28</sup> Many of the role-based duties associated with journalism are grounded not by the interests of the journalist, but by the way in which journalists serve the interests of others. It appears to follow that any rights associated with the role of journalist must also be justified by consideration of the general interest, and that therefore the interests of the individual are not sufficient to ground any duties.

This puzzle draws attention to an important distinction between what Hart called “special” rights and “general” rights.<sup>29</sup> Special rights are those rights that arise out of special transactions or relationships between people, where general rights are those rights held by everyone, which are not “peculiar to those who have them.”<sup>30</sup> (Hart goes further than this in drawing the distinction, but I do not think his particular explanation of the distinction is important here.) Role-based rights are *special* rights—they are held by particular individuals who occupy particular roles within relationships or social institutions. And the social institutions within which these roles occur are frequently justified by a diversity of considerations apart from the interests of the role bearers.<sup>31</sup>

Role-based rights qualify as special rights in two ways—they depend on the particular responsibilities of the role as it is currently defined, but they are also particular to the individuals who occupy the role. The individual’s interest is pro-

28 For a nice elaboration of these problems see Cruft, “Why Is It Disrespectful to Violate Rights?”

29 Hart, “Are There Any Natural Rights?” 183–88.

30 Hart, “Are There Any Natural Rights?” 188.

31 In addition to having rights that arise with respect to the relationships we have already formed, we might have certain general, fundamental rights to form relationships with others; see Brownlee, “Ethical Dilemmas of Sociability” and “A Human Right Against Social Deprivation.”

moted by fulfilling the role, in part, because it is their role, because, like other projects and attachments, it enables them to shape their lives around a particular pattern of responsibilities. It is not simply the fact that journalists have a generic interest in publication that justifies holding others to be under respective duties. It is the fact that the particular individual occupies the role of journalist that gives their interest its particular weight, and which makes it a sufficient reason for the relevant duties. The same can be said, *mutatis mutandis*, with respect to the rights of parents. The role of parent is at least partly conditional on the needs of the child. But once a particular person becomes a mother or a father, they gain a particular and significant interest in serving their child's interest. They have rights because it is their child, and because the particular child that they have has particular needs and interests to which they are committed. It is true that the role that they have occupied is a fiduciary one that it is centered mainly if not entirely on the promotion of the child's interests. But this does not preclude parents from having what Brighouse and Swift call a "non-fiduciary interest in playing this fiduciary role."<sup>32</sup>

Raz argues that role-based rights exist to protect the interests of persons with general characteristics.<sup>33</sup> In law and other rule-based institutions, rights (and their correlative duties) cannot help but trade on generalizations of this sort—we do not know who exactly will possess a given role or what their characteristics will be. However, our moral, role-based rights are also tied to the uniqueness of the role to the role bearer. My rights as a parent are not just the rights I possess *qua* parent, they are rights I possess as a particular parent of a particular child—rights shaped by a history of interaction and attachment to that child.<sup>34</sup> A journalist's rights are not just rights *qua* journalist, they are rights possessed by the individual who has chosen the role, and who has imposed a particular pattern of responsibilities on their life. Their rights enable them to continue to fulfill the role that has meaning to them.

The interests of the particular individual in occupying the role that they occupy thus possess greater gravity than many of us have previously considered. When we consider role bearers *de dicto*—in terms of the generic interests of someone who possesses their role—their interest in fulfilling their responsibilities can be hard to envisage. Once we consider role bearers *de re*, however, we

32 Brighouse and Swift, "Parents' Rights and the Value of the Family," 95.

33 Raz, *The Morality of Freedom*, 180.

34 On the role played by histories of interaction in constituting valuable projects and attachments, see Raz, *Value, Respect, and Attachment*, 10–40; Kolodny, "Which Relationships Justify Partiality? The Case of Parents and Children" and "Which Relationships Justify Partiality? General Considerations and Problem Cases."

get a greater sense of the significance that their role might have to them. To the extent that the roles that we perform are part of imposing a meaningful pattern of responsibilities on our lives, they make an indispensable contribution to our interests.

It is true that, for some people, performing a role is against their interests. I consider these cases, which are indeed problematic for the interest theory, in greater detail below.

#### 4. THE INTEREST AS A SUFFICIENT REASON FOR DUTIES

It might still be objected that, the gravity of role bearers' interests notwithstanding, their interests are still not sufficient to justify rights because these interests are dependent on the value of the role, and the role itself is justified by its instrumental value. The role exists for the promotion of collective interests. If the role itself is dependent on instrumental justification, then how could the individual's interest in that role be sufficient to ground the relevant duties? Recall Kamm's objection concerning the journalist's rights of freedom of speech: the journalist's interests are only protected by the right in virtue of the right's also serving the public good.<sup>35</sup> Similar objections, focusing on the sufficiency requirement, are repeated by Sreenivasan and Cruft.<sup>36</sup>

When philosophers like Kamm formulate these objections, they often have something like an additive picture of the justification of these rights in mind: the reasons supporting the existence of the role, together with the individual's interest in performing that role, jointly ground the role bearer's rights.<sup>37</sup> They are following Raz, who himself acknowledged that the interests of the journalist's readers were part of the "justifying reason" for the right.<sup>38</sup> If Raz's reference to the "justifying reason" is taken to refer to the grounds of the right, it follows that the role bearer's interest is not individually sufficient to ground the right. I do not think this is the correct way to conceive of the justificatory relationship between the two interests and the right. Rather the role bearer's interest is conditioned in some way on the value of the role. That the role serves the journalist's interest would in and of itself be sufficient reason to hold others under relevant duties. But it is a condition of the role serving the journalist's interest in this way that the role also serves the interests of their audience.

An analogy with promising might be helpful. That someone has promised to

35 Kamm, *Intricate Ethics*, 245–46.

36 Cruft, "Rights," 372–75; Sreenivasan, "A Hybrid Theory of Claim-Rights," 265–66.

37 Kamm, *Intricate Ethics*, 245–46.

38 Raz, "Rights and Individual Well-Being," 55.

dance is, other things being equal, a sufficient reason for there being a duty for them to dance. But a condition of the promise acting as such a reason is that it was not extracted under duress. According to various theories of promising, the presence of duress either “disables” or defeats the validity of a promise.<sup>39</sup> It is tempting to insist on specifying the absence of duress as part of the reason for the duty: the existence of a promise is a necessary, but not itself sufficient, reason for the duty. Only the existence of the promise and the absence of duress (or other disabling factors) are jointly sufficient for the existence of the reason. But I am convinced that this response is inappropriate in the context of value and practical reasons.<sup>40</sup> The relationship between the conjunction of the promise and the absence of duress and the duty is not the same as the reason relationship. Rather, the absence of duress is a condition of the promise acting as a reason for the duty.

Once we distinguish between the normative grounds of the duty and the conditions of those grounds, the relationship between the role bearer’s interest and the duties it grounds can be determined. The role bearer’s special interest in serving their role is dependent on the interests of others. The social value of the role and the individual’s interest in the role do not make a joint contribution to justification of the duty. Rather, the social value is a condition of the interest, which in turn is sufficient to ground the duty. It is worth noting that our interests in performing other roles might be conditional on the role’s instrumental value in other ways than serving the common good. The conservationist tasked with preserving a historic piece of art has an interest in performing their role that is conditioned on the value of the artwork. If they were to find out that the work was an elaborate forgery, then their interest in performing this role would largely disappear. If we can appeal to conditional value in the case of the conservationist, then we can appeal to it in the case of roles that depend on their social value.

That the social value of the role acts as a condition of the role’s value to its bearer is also consistent with the rights that protect that role having a greater stringency than if we just consider the role bearer’s interest in isolation. This is the true point behind Raz’s insistence that the social value of the role forms part of the “justifying reason” for the duty to protect the journalist’s readers—the duty has a greater stringency than it otherwise might because the journalist’s

39 Dancy, *Ethics without Principles*, ch. 3. For a filled-out account of the way in which duress invalidates promises, see Owens, *Shaping the Normative Landscape*, ch. 11; cf. Hart’s treatment of duress as a “defeater” of contractual responsibility in “The Ascription of Responsibility and Rights.”

40 For frameworks that distinguish between the grounds of a reason and its enabling or modifying conditions see Dancy, *Ethics Without Principles*; Horty, *Reasons as Defaults*, 55–59; Bader, “Conditions, Modifiers, and Holism.”

interests protect a diversity of other interests. As Raz rightly observes, there are cases where “interests of the right-holders and those of the others” are “doubly harmonious”: “not only do the others benefit through the benefit to the right-holders but the right-holders themselves benefit from the service their rights do to those others.”<sup>41</sup> The right gains its stringency partly because a condition of its value is its social value.

##### 5. ROLES, CONFLICTS, AND LOSS OF INTEREST

The argument I have offered here provides a counterweight to the tendency to overstate the prevalence of conflict between interests. It is true that in some circumstances promotion of my interests necessarily precludes promoting the interests of others. Sometimes these conflicts of interest arise because resources are scarce. More frequently these conflicts arise because we are required to allow one party’s choice about what is in their interests to prevail over another. Laws that give minors the power to determine when they should obtain an abortion conflict with laws that endow the minor’s parents with similar powers. More fundamentally, the interests of children in having a secure and comfortable upbringing do restrict the capacity for parents to make the sorts of choices that they otherwise might make. The sacrifices that we make in performing our different role obligations are real, and it is important not to diminish them. In the context of parental rights, this is what leads Brighouse and Swift to refer to the conflict between parents’ rights and children’s rights as embodying an “underlying tension” between the promotion of children’s autonomy and toleration of parental choices.<sup>42</sup>

Yet focusing on these conflicts can be misleading because they conceal the ways in which the interests of role bearers can converge with the interests of those for whom the role is being performed. The real conflict concerns who should be able to exercise authoritative control over those interests. For instance, many of the conflicts that characterize relationships between parents and their children revolve around shared interests. Both parent and child can agree that it is in their shared interest that the child obtain the correct medical treatment while disagreeing as to who should have the power to determine the correct course of treatment. These conflicts have a higher-order quality; they arise with respect to who has most interest in deciding how those interests are best pursued. Though they are pressing conflicts, they should not be allowed to conceal deeper convergences between the interests of parents and children.

41 Raz, “Rights and Individual Well-Being,” 51.

42 Brighouse and Swift, “Parents’ Rights and the Value of the Family,” 81–84.

None of this is to deny that it may be against someone's interest to perform a given role. There are people who would be better off if they had never become a parent, or if they had never become a magistrate. We should be wary of concluding too much from these cases. In fact, they tend to illustrate the complex interplay between individual and collective interests. There is a difference between saying that someone should never have occupied a role and saying that they should abandon the role. Perhaps I would have been better off if I had never become a parent. It does not follow that I would *now* be better off if I abandoned my responsibilities as a parent. Roles, and our interests in performing them, follow complex patterns of path dependency.

Nonetheless, those of us who are interest theorists should be willing to concede that there are at least some cases in which individuals lose their moral right to perform a role because it has ceased to promote their interests. Even in these cases, we might be unwilling to intervene in their performance of the role for other reasons unrelated to the rights of the role bearer—it might be simply inappropriate to intrude on their life or second guess their decision-making about what is in their interests. For this reason, it may be that the individual does not lose their legal rights to perform the role. The grounds of the moral right that the legal right was designed to protect disappear, but the legal right persists for other perfectly sound reasons.

#### 6. DETACHED RIGHTS ATTRIBUTIONS

I have argued that duties, even apparently burdensome duties, are constitutive of many valuable relationships and roles, and that these valuable relationships and roles promote the interests of those who share in them. It ought to follow, then, that all rights associated with roles are in the interests of their holders, and this ought to be enough to dispense with any concerns that we might have about role-based or relationship-based rights. However, a further complication for the interest theory of rights arises due to the fact that many roles actually socially practiced may not have the value that they are believed to have by those who practice them, and that, as a result, they might not actually contribute to the interests of the individual. It appears as though we can felicitously cite a kamikaze pilot's right to fuel, or parents' rights to arrange marriage on behalf of their children, even when we are personally certain that roles or relationships that are constituted in this way are lacking in value, and thus do not actually believe that the rights promote their bearers' interests.<sup>43</sup>

When discussing the rights of role bearers, it is important to recognize the

43 These examples are provided by Wenar, "The Nature of Claim-Rights."

possibility that some of our rights attributions will be detached or noncommittal. This is an important (and I think occasionally overlooked) component of our understanding of rights in law and within social roles more generally. It may be true, for instance, that children's rights to access certain medical procedures without their parents' consent do not actually serve their interests. It does not follow that attributing a legal right to children to obtain the procedure is infelicitous. Any deontic language may be used in what legal philosophers usefully describe as a "detached" manner. This kind of detachment is equally evident in the case of legal duties as in the case of legal rights. It would apply equally if, rather than speaking in terms of the child's legal rights to a medical procedure, I was to speak of the doctor's legal duties to provide the procedure. In either case, I would have cited the norm as a norm, without endorsing it as a guide to action.

Though there are dissenting voices, the possibility of detached or noncommitted use of deontic language is well known and has been discussed at length elsewhere in a variety of philosophical contexts.<sup>44</sup> It is a crucial feature of normative language and thought that is often resisted in discussions of legal rights. For instance, Leif Wenar says that "what legal rights there are cannot depend on what makes a human life go well," and that "we cannot make the analysis of the former depend on the truth about the latter."<sup>45</sup> Others find the idea of detached statements about legal rights implausible. Nigel Simmonds worries that basing a theory of legal rights on the moral beliefs of legal officials is an "abandonment of positivism."<sup>46</sup> Cruft worries that the theory makes "what qualifies as a right overly dependent on lawmakers' judgments about people's interests."<sup>47</sup> If these objections succeed, then they succeed against a reasonably prominent position in legal philosophy. The philosophical theses associated with this position may be wrong, of course. But there is little basis for taking them to be obviously incorrect, or for asserting that they are an unprecedented abandonment of positivism. In fact, many (though not all) legal positivists are committed to the thesis that the validity of legal rights and duties is dependent on facts about the psychology and practices of legal officials.<sup>48</sup>

44 E.g., Raz, "Legal Validity." For a critique, see D'Almeida, "Legal Statements and Normative Language." Compare with Shapiro's notion of "perspectival legal claims" (*Legality*, 184–86). For example discussions of the possibility of descriptive usage of deontic language elsewhere in the philosophy of language, see Hare, *The Language of Morals*, 159–60 (on "descriptive" usage); Lasersohn, "Context Dependence, Disagreement, and Predicates of Personal Taste," 643, 672 (on "exocentric" usage); Lyons, *Semantics*, 792–93 (on "objective" usage).

45 Wenar, "The Nature of Claim-Rights," 205.

46 Simmonds, "Rights at the Cutting Edge," 202.

47 Cruft, "Rights," 375.

48 See, e.g., Raz, *The Authority of Law*, 37–52; Gardner, "Legal Positivism." For a defense of an

In many circumstances, to assert that a parent has a right against interference with the arrangement of his child's marriage, or that a victim's family has a right to attend an execution, may merely be to say elliptically, without necessarily endorsing such a right, that the existence of such a right is accepted by others. In the case of law, the assertion that there are certain legal rights by law-applying officials has been said to result in a claim or representation, made by the legal officials at the time of application, that such rights are valid moral rights.<sup>49</sup> In these cases, the individuals' rights within the role must ultimately be explained in terms of mistaken beliefs in the value of the role, and thus a mistaken belief in the contribution that the role makes to the interests of its bearer. Social norms become norms in virtue of being accepted or practiced by a given social group. That social norms support a role indicates a collective belief in its value to the bearer—the belief that it is, other things being equal, a meaningful and worthwhile pattern of responsibilities and burdens to impose on one's life.

Invoking the possibility of detached legal statements in order to buttress any theory of rights risks trivializing the identification of rights in legal systems—since almost anything could be claimed as a right by legal officials, depending on their beliefs, and thus almost anything could be claimed to be in the interests of their subjects. Because legal systems create or acknowledge purported rights and obligations, there is no limit to the kinds of purported rights and obligations they can be said to create or acknowledge, and thus to the kinds of moral claims that legal officials might wish to make. There is something in this objection. But defenders of the interest theory are still constrained by the plausibility of attributing these false beliefs to legal officials. Usually it is possible to imagine why certain law-applying officials might believe that a certain duty serves the interests of the rights holder. It may well actually run against a parent's interest to have the right to determine whether or not their child receives a blood transfusion, but it is easy to see why some law-creating or law-applying officials might believe that it was in their interest to have such a right. Supposing it is not the case that it serves parents' interests to allow them to arrange marriage on behalf of their children, it still seems plausible to attribute the belief that it serves those interests to those who practice the custom.

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alternative characterization of positivism, see Kramer, *Where Law and Morality Meet*, pt. II.

49 See Gardner, "How Law Claims, What Law Claims"; Raz, *The Authority of Law*, ch. 2. Plunkett similarly suggests that the law *represents* itself as moral ("Legal Positivism and the Moral Aim Thesis," 592–603). For a dissenting view, see Kramer, *In Defense of Legal Positivism*, ch. 4.

## 7. CONCLUSION

It is possible that we have reasons to act for the sake of others that are not grounded in facts about what would be good for them. If we do have such reasons, it is likely that some of these reasons will ground rights. But I do not think the rights we have to perform our social roles are the right place to look. Once we offer an appropriately detailed philosophical account of the way in which various social connections serve our interests, and the relationship between these interests and the rights they ground, many apparent difficulties with this category of rights disappear.<sup>50</sup>

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