

*Szymon Osmola*

## Promises to Unidentified Individuals

### Obietnice składane osobom niezidentyfikowanym

#### Summary

Is it possible to make a binding promise to an unidentified individual, i.e. an individual whose identity is unknown to a promisor? The answer to that question seems to be negative, regardless of the philosophical theory of promises one decides to adopt. The particular autonomy theory considers promises as one of the tools for enhancing morally valuable relationships through recognizing another party's particular personality, which enables individuals to live a better life. The generic autonomy theory considers promises as a tool facilitating cooperation between strangers, which enables them to create some kind of shared end. The utilitarian theory considers the practice of promising as a tool of increasing social welfare. The premises of each of these theories seem to rule out the possibility of promises to unidentified individuals. Accordingly, reflections on that topic may some shed light on some problems related to the issue of the identifiability effect, widely discussed in psychological literature.

Key words: promise, identified, statistical, identifiability effect, autonomy

#### Streszczenie

Czy możliwe jest złożenie wiążącej obietnicy osobie niezidentyfikowanej, tj. osobie, której tożsamość jest składającemu obietnicę nieznana? Odpowiedź na to pytanie wydaje się negatywna, niezależnie od tego, jaką teorię dotyczącą mocy wiążącej obietnic przyjmiemy. Zwolennicy teorii autonomii partykularnej uznają obietnice za jeden ze sposobów wspierania moralnie wartościowych relacji poprzez uznawanie nawzajem swoich szczególnych osobowości, co pozawala na prowadzenie bardziej wartościowego życia. Zwolennicy teorii au-

tonomii uniwersalnej uznają obietnice za narzędzie pozwalające na współpracę pomiędzy jednostkami sobie obcymi. Zwolennicy teorii utylitarystycznej uznają praktykę obiecywania za jeden z instrumentów przyczyniających się do zwiększenia dobrobytu społecznego. Założenia każdej z tych teorii zdają się wykluczać możliwość złożenia skutecznej obietnicy osobie niezidentyfikowanej. Rozważania nad tytułową kwestią mogą się również przyczynić do wyjaśnienia pewnych problemów związanych z szeroko dyskutowanym w literaturze psychologicznej efektem identyfikowalności.

Słowa kluczowe: obietnica, zidentyfikowane, statystyczne, efekt identyfikowalności, autonomia

## 0. Introduction

Imagine the following situation:

[...] a group of men and women, believing that it is important to hold down population growth, pick out my name at random from the telephone directory and each writes me a postcard promising me to produce no more than two children. Is there not something strange in the proposal that all of these people are now under a promissory obligation *to me* to limit the size of their families? In order to have a third child without violating a duty to me must they really secure a release from me? (Fried 1981, 41)

The above story, taken from Charles Fried's book about promises and contracts, exemplifies a controversial case wherein one cannot say whether the promise created an obligation (or whether a promise has been made at all). A promise may be understood as a tool for imposing voluntary obligations on oneself. Theories of promissory obligations often distinguish between normal promises – e.g. standard promises, which are the most common, where there is no doubt that the promise was given and that the promisor acquired an obligation

towards the promisee – and abnormal, viz. controversial promises, where such doubts often arise.<sup>1</sup> The “normality” of a promise, according to Dori Kimel, may be seen “as opposed both to necessary conditions, and to circumstances in which or purposes for which the practice may be used but which are, in one sense or another, marginal, esoteric, atypical” (Kimel 2003, 7). Accordingly, to recognize a certain promise as abnormal does not necessarily mean that it is not a promise at all – although this may sometimes be the case. The most frequent examples of abnormal promises are coerced promises, so called self-promises, or proverbial deathbed promises. Fried’s story concerns another controversial case – promises to unidentified individuals.

Fried claims that in the above situation a promise was not made at all, because the promise as such has to be – at least tacitly – accepted by a promisee. Thus, due to the lack of such acceptance, we cannot describe it as a promise, but rather as a kind of a vow instead (Fried 1981, 41–42). I agree with Fried that it is impossible to make a promise to an unidentified individual, but I find less convincing his argumentation – especially the vague concept of tacit acceptance of the promise by the promisee. However, it is not my aim to critically analyze Fried’s theory of promising. Instead, I propose to adopt a broader perspective on the issue by: (1) analyzing three dominant philosophical theories of promises – the particular autonomy theory (favored by Fried, among others), the generic autonomy theory, and the utilitarian theory; (2) arguing that it is basically impossible to justify promises to unidentified individuals on the basis of each of these theories; and (3) combining these considerations with an ongoing psychological and ethical debate on the so-called identifiability effect. I would like to investigate this last issue in greater detail since, to the best of my knowledge, the identifiability

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<sup>1</sup> The terminology used in the text I borrowed from Sheinman 2004.

effect has never been examined in the context of promissory obligations, and such an examination seems to be a valuable philosophical project.

One more issue had to be clarified. Why would we be interested whether a certain utterance counts as a promise, a vow, or as something else? Is this not just a linguistic dispute without any practical consequences? I am not able to deal with this objection at length. However, I think there is a genuine difference between promises and vows, namely that the promisee may validly require the performance of the promised action by the promisor; this is not true in the case of vows. Furthermore, if we agree, as the vast majority of authors do, that the promise is the moral basis of the contract, the conceptual distinction between promises and vows becomes even more significant, especially when we take into account the institutionalized coercive power that may be used in the process of enforcing contractual obligations. Moreover, in the progressively digitalized legal environment – covering all sorts of online transactions, smart and self-enforcing contracts, the Internet of Things etc. – the issue whether promises, and consequently contracts, can be validly made, becomes increasingly more pressing. I hope that these rudimentary remarks are sufficient to conclude that the question of the possibility of promises being made to unidentified individuals is not merely a linguistic concern, and that it has strong implications for our legal practices.

### *1. Philosophical Theories of Promises*

There are a few possible ways of classifying philosophical views on promises, with different criteria of distinction. I propose classifying them according to the way in which each of those views utilizes (or not) the notion of personal autonomy. Within this classification one can distinguish the particular autonomy view, the generic autonomy view and the utilitarian view. My

goal is not so much to analyze each of those views in detail or to compare them, but rather to highlight their distinctive features – for in the next section I want to argue that it is basically impossible to genuinely promise something to an unidentified individual in terms of any of those views. I will focus on the function promises serve in our lives according to each view, the source of their normative power (the power to impose obligations) and the promises which each view considers to be normal (in the above, technical sense of the term). Therefore, one should not treat the following classification as a complete coverage of the state of the art, but rather as a brief introduction to the philosophical discussion of promises. Although certain names will be mentioned in the course of the article, the three views that I will analyze should not be associated exclusively with those names.<sup>2</sup>

It is also worth mentioning that the classification I propose is not concerned with the question whether a promise is a conventional artefact – whether we need to invoke some pre-existing practice of promising to genuinely promise (cf. Sheinman 2011, 12–15). On the one hand, the utilitarian view is, in most of its variants, conventional,<sup>3</sup> but on the other, both autonomy theories may be conventional as well as non-conventional. Fried’s theory, for example, is a conventional particular autonomy theory (Fried 1981, 12–14), while Seana Shiffrin’s theory (2008) – one of the most important contemporary particular autonomy theories – is explicitly non-conventional. I will say more about the conventional nature of promises while discussing the utilitarian view.

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<sup>2</sup> A more comprehensive overview of the literature – which adopts slightly different classification of different views – may be found in Habib 2014.

<sup>3</sup> Although it seems to me that it is possible to develop a non-conventional utilitarian theory of promises.

*1.1. The particular autonomy theory*

Proponents of the particular autonomy view see promises primarily as a tool for enhancing morally good personal relationships. Creating such relationships requires mutual respect and trust, so agents are able to see each other as equal, autonomous individuals with innate dignity and unique personalities. Making a promise – voluntarily undertaking an obligation – plays a dual role here: on the one hand, it is an expression of the promisor’s autonomy, who, as a person imbued with free will, is able to bind herself for the future; on the other, it is a sign of recognizing the promisee’s autonomy, as it gives her a right to demand the promised act or to relieve the promisor from her duty. “The ability to promise”, Seana Shiffrin writes, “provides a crucial tool to permit mutual engagement among equals, who are nevertheless distinct and diverse, without either party feeling the pressure to homogenize” (Shiffrin 2008, 506–507). Making a promise creates a new link between the promisor and promisee, which enhances their relationship and makes it more valuable, due to the mutual recognition between two unique and autonomous individuals. Therefore, the promise is one of the instruments that shape our moral lives and makes them better, through generating trust between members of society. And this is a necessary condition, proponents of the particular autonomy theory claim, to successfully generate promissory obligations. A simple declaration of intention to act in certain way would not suffice to achieve this aim – only a promise, which, in a way, submits promisor to the promisee’s will, is able to successfully bind the promisor for the future. The particular autonomy view considers promises made to intimates as normal. Accordingly, it considers promises made to strangers as abnormal, although it does not deny that such promises are sometimes possible. Nevertheless, it claims that a promise made to a stranger often creates some kind of relationship between the promisor and promisee, so the parties

of the promise cannot be considered as absolute strangers anymore. For a similar reason, promises to unidentified individuals seems to be inconceivable in terms of the particular autonomy view, since it seems impossible to think about a relationship which could arise between parties of the promise who are unidentifiable to each other, without wiping out this (un) identifiability factor.

### *1.2. The generic autonomy theory*

The generic autonomy theory was formulated by – among others – Daniel Markovits (2011) in a direct polemic with the particular autonomy theory. Basically, Markovits agrees that promises help to enhance valuable human relationships. He also admits that the parties of a promise achieve this through recognizing another individual as an equal and autonomous person, which consequently leads to creating some shared objective between the promisor and promisee. But these relationships, as well as a way of recognizing another individual as an autonomous person, are, in the case of promises, entirely different from relationships between intimates – contrary to what proponents of the particular autonomy theory claim. Markovits writes:

Thus promissory recognition is thin, whereas the recognition involved in intimacy is thick: whereas promissory recognition takes as its object the generic humanity of the promisee – her perspectival nature, or personality, simpliciter – the recognition involved in intimacy takes as its object the humanity of the promisee as it receives a particular, contingent expression in her distinctive person (Markovits 2011, 296).

And later he adds: “Promisors engage their promisees’ pure personalities – that is, the generic perspectival capacities in virtue of which promisees are like all other persons” (Markovits 2011, 308). The main difference between intimacy and

promising lays in the formal structure of recognizing another person's autonomy. In the case of intimacy, it is an *ex post* recognition – an intimate, valuable relationship with another individual may be created only after we appreciate her as distinct person gifted with a distinct and unique personality; in the case of promising, it is an *ex ante* recognition, since to successfully promise it is sufficient to recognize the promisee's generic humanity and to be able to create some shared goal with her. It is the shared objective of the promisor and promisee – and not merely a recognition of the promisee's autonomy as in the case of the particular autonomy theory – that makes the promise binding, since the breach of the promise leads to the abandonment of that objective. The generic autonomy theory considers promises made to strangers<sup>4</sup> as normal cases of promises – as Markovits claims, “promises prototypically do not promote intimacy, but rather an arm's-length relation” (Markovits 2011, 303). This leads him to the conclusion that private law contracts are not, as many scholars think, degenerate cases of promises, but rather the highest expression of promises and their real value.

### 1.3. *The utilitarian theory*

The utilitarian theory of promises, rooted in the works of David Hume (2007, 331–337) operates on entirely different premises. Utilitarians do not pay much attention to the issue of how making, accepting and keeping promises may contribute to developing or recognizing personal autonomy – either particular or generic; of course, that is not to say that they deny such possibilities. Rather, they concentrate on how either individuals, or the whole society, may benefit from making and keeping

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<sup>4</sup> On the difference between the “stranger” in the above sense and the “stranger” in stronger sense (i.e. an unidentified or statistical stranger), and the implications of such distinction for the issue of promises to unidentified individuals in terms of the generic autonomy theory, see below.

promises. Utilitarians see the practice of promising as a tool for facilitating social cooperation, which is supposed to serve the increase of the overall welfare in society. It is important to note the primacy of the practice of promising over single promises here – it was Hume (2007, 307–311) who first realized that keeping a single promise may be extremely detrimental rather than beneficial. Benefits from the practice of promising make promises binding – if keeping one’s word in principle leads to increasing social welfare, we are, according to utilitarians, morally obliged to keep our promises, unless some exceptional circumstances arise. Utilitarians do not distinguish between normal and abnormal promises, but this does not pose a problem for my main thesis, as we will see below. Before I turn to this main thesis, the chart below summarizes the above classification of the theories of promising.

	<b>Particular autonomy theory</b>	<b>Generic autonomy theory</b>	<b>Utilitarian theory</b>
<b>Proponents</b>	C. Fried, S. Shiffrin, J. Raz, D. Kimel	D. Markovits	D. Hume, G. Anscombe, J. Rawls
<b>Function of promises</b>	Enhancing morally valuable relationships through recognizing another party’s particular personality	Creating shared ends between parties through recognizing another party’s generic personality	Facilitating social cooperation
<b>Why promises are binding</b>	They contribute to the development of parties’ autonomy and enable them to live a better life	They create shared goals which cannot be abandoned without denying another party’s autonomy	The practice of promising increases social welfare
<b>Normal promises</b>	Promises to intimates	Promises to strangers	-

## *2. Promises to Unidentified Individuals*

Is it possible to successfully make a promise to unidentified individuals in the light of each of these theories? The answer seems to be relatively simple in the case of autonomy theories. According to them, making a (normal) promise is possible due to the recognition of the promisee's personality – either particular or generic. In case of an unidentified person – like the randomly chosen person in Fried's story – it seems that such recognition is impossible. This person is obviously unknown to people who give up their reproductive abilities, but she is not a "stranger" in the sense that the generic autonomy theory requires; she is more than just a stranger – she is an unidentified, "statistical" stranger (I will use the terms "unidentified" and "statistical" interchangeably, although there are some subtle differences between them). Making a promise to an unidentified individual obviously would be something abnormal in the case of autonomy theories. The issue is not just the psychological difficulties with making promises to unidentified individuals – although most of us would never be willing to make such promises – but about the conceptual impossibility which lies at the core of both autonomy theories. The "statistical" individual is so far from being perceived as an autonomous person – since we are not able to recognize her autonomy, whether particular or generic – that we cannot even say that the promise made to an unidentified individual is an abnormal promise in terms of autonomy theories. We just cannot speak about promises at all in this case. If the parties in Fried's example somehow got to know each other better, they would no longer be unidentified to each other. They would become "identified" strangers, so the mutual recognition of their generic personalities – and thus making a binding promise – would become possible.

Then what of the utilitarian theory? As we have seen, it does not invoke the concept of autonomy and it does not highlight which promises it considers normal. Accordingly, neither

does it distinguish between promises to intimates, promises to strangers or even promises to unidentified individuals. Should we therefore conclude that it is possible to successfully promise to unidentified individual on the basis of the utilitarian theory? I would be inclined to answer in the negative – and, to make this more definitive, I propose looking more closely at one of the most influential versions of the utilitarian theory of promises, namely that proposed by John Rawls in his article *Two Concepts of Rules* (Rawls 1955).<sup>5</sup>

As I mentioned before, most utilitarians proclaim the primacy of the promising practice over single promises, which is justified by the social benefits of that practice – such a view may be attributed to Rawls as well (Rawls 1955, 10). He brilliantly deals with the argument that the benefits from the practice of promising are not sufficient reasons for keeping a single promise, if breaking it would be more beneficial. This objection is wrong, according to Rawls, because it does not make a distinction between a justification of the practice of promising and a justification of keeping a certain promise (Rawls 1955, 15). While it is reasonable to evoke utilitarian arguments in case of the former (the practice of promising increases social welfare), it is not in case with the latter. The practice itself, justified from the utilitarian point of view, imposes duties on the members of the community. An agent can have different reasons for refusing to perform her duties, but the reason for constituting the practice cannot be one of them – otherwise the relevance of the whole practice would be in question. Rawls

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<sup>5</sup> Many would not agree with my labelling Rawls as utilitarian. Nevertheless, I think that his conception of promises, especially from *Two Concepts of Rules*, is rule-utilitarianism at its best. I do not claim that Rawls is utilitarian or even “semi-utilitarian” overall – such a statement would be obviously absurd, given the variety of anti-utilitarian arguments in *A Theory of Justice*. However, I guess it is possible to be a utilitarian in one aspect of one’s thought and anti-utilitarian in the other (or even in every other).

illustrates this with the example of chess. There are many reasons to think that chess is a wonderful game. There might also be many reasons to change some of its rules. But it would not make sense if a chess player invoked this second type of reason during a game, e.g. by refusing to make a certain move because she thinks that the rule which enables her to do so is irrational. Rawls also proposes making a distinction between two types of rules: summary rules and practice rules.<sup>6</sup> Summary rules are rules which classify (summarize) past decisions in certain cases – e.g. in the case when one person is fatally ill and we have to decide whether to tell him or not – and on that basis, by applying the utilitarian principle, they recommend certain behavioral patterns for the future. Practice rules, in turn, do not refer to past decisions, as they rather constitute a certain practice themselves, just like rules of chess or rules of promising. Rawls, just like Hume, claims that a promise is something “naturally unintelligible” and merely conventional, something which cannot be properly understood without presupposing some kind of conventional practice of promising. In case of practice rules, Rawls says that “if a person is engaged in a practice, and if he is asked to defend what he does, then his explanation, or defense, lies in referring the questioner to the practice” (Rawls 1955, 25). To answer the question of whether our promise is binding, we have to invoke the practice of promising; and it is immanent in the practice of promising that promises are binding. Similarly, in order to recognize that our promise is not binding for some reason, we would also have to invoke the practice of promising and check if its rules includes some exceptions, qualifications or more specific rules which apply to our case, and allow us to claim that our promise is not binding, or even that our act was not a promise at all.

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<sup>6</sup> After J. Searle’s development of Rawls’ theory (Searle 1969) it may be more convenient to refer to regulative rules and constitutive rules. However, I will remain faithful to Rawls’ terminology.

Therefore, to answer the question of whether it is possible to make a binding promise to an unidentified individual on the basis of the utilitarian view, one has to consider whether it is possible to create a practice of promising which would allow such a possibility. In the case of such a practice, it would not be necessary to make a distinction between normal and abnormal promises. Instead, one would have to invoke the utilitarian principle and ask whether the system of rules which would allow binding promises to be made to unidentified individuals would be more effective (in increasing social welfare) than the system which would not. It is very hard to give an unambiguous answer to this question. However, it seems to me that it is really hard to imagine how making promises to unidentified individuals – who are not able to force the promisor to perform her promissory obligations, and even if she is, then they are not unidentified to her any more – would contribute to increasing social welfare. Nevertheless, even if there are some reasons for allowing promises to unidentified individuals within the utilitarian theory, the burden of proof is on those who claim that such reasons exist.

### *3. Identifiability effect*

I would like to tackle one more issue connected – to a certain extent – with my previous considerations. It is worth noticing that Fried himself, in the cited paragraph, emphasizes that people fighting with over-population are (or are not) “under a promissory obligation *to me*”. Fried probably meant that promissory obligations are somewhat partial – in contrast to most moral obligations, which are general, promissory obligation obligates promisor only towards promisee. But there is also different interpretation available. How is it possible that people who have randomly chosen my telephone number may be under a promissory obligation to me – an autonomous, distinct, individual person – while my personality (neither particular nor generic)

apparently does not matter for them at all? We can see a clear tension between an “identified” individual – a specific person with some distinctive features, as most of us consider ourselves – and a mere “statistical” individual, whose uniqueness is in our case reduced to a randomly chosen telephone number.

A similar phenomenon, although in a different context, was observed half a century ago by Thomas Schelling, who noticed that it is much more easier to raise money for “a 6-year-old girl with brown hair who need thousands of dollars for an operation that will prolong her life until Christmas” than to encourage people to pay a tax without which “the hospital facilities of Massachusetts will deteriorate and cause a barely perceptible increase in preventable deaths” (Schelling 1968, 115). Schelling’s initial intuition was confirmed by a number of psychologists, who proved that people are more willing to help victims they are able to identify than to help victims who are merely “statistical” – the phenomenon called the identifiability effect (IE) (Jenni and Loewenstein 1997; Small 2015). The IE obviously raises some questions. The first one is merely psychological, concerning the issue of specific psychological mechanisms between the IE – for our purposes we may here limit ourselves to saying that the identified individual induces greater emotional reaction in the observer than a statistical individual. The second question is of a conceptual nature and concerns the distinction between “identified” persons and “statistical” persons, or the exact meanings of the words “identified” and “statistical”, which seem to be quite vague. The answer to this question is also relatively simple – one just has to decide to what degree the victim must be personalized in order to be “identified” (cf. Załuski 2018). However, we do not have to settle this issue here; it suffices to introduce some “identifiability scale” on which a person may be more or less “identified” or more or less “statistical”. There is a hypothetical “perfectly identifiable person” and a hypothetical “perfectly statistical person”, and a wide grey area between them. There are some

very weak forms of identifiability: such as the simple information that the individual has already been determined (as opposed to a victim yet to be determined) (see: Small and Loewenstein 2003); the intermediate forms, such as providing the individual's name, hair color and some of her distinctive features, or providing her photograph; and the strongest forms of identification, such as providing the complete autobiography of the individual. We may suppose that the force of the IE is strictly correlated to the force of the identification. For example, in Fried's story the force of the identifiability effect is very low, because the force of the identification is limited to the randomly chosen telephone number. We may thus say that Fried's example considers not only an unidentified individual in the common sense meaning of the term, but also an "unidentified" or "statistical" individual in a sense just mentioned.

It is also worth mentioning that the IE seems to be present in very many situations, also including ones in which it is hard to talk about victims at all. The identification of an exact person may strengthen not only positive emotions like caring, but also negative ones such as, for example, blame, when the victim is considered as responsible for her misfortune (Kogut 2011). Other studies found that people are generally more punitive toward identified wrongdoers than they are to unidentified ones (Small and Loewenstein 2005). The IE, or a very similar phenomenon, appears in many institutional contexts as well. For example, Paternoster and Deise (2011) investigated so-called victim impact evidence (the victim's or her relative's testimony that contains information about the harm produced by the crime from the victim's and her relative's perspective) and demonstrated that jurors in trials in which such evidence was used tend to feel more negative emotions toward the wrongdoer and are more sympathetic towards the victim, and thus are more willing to impose the death penalty. Another study, conducted by Nordgren and McDonnell (2011), concerned the so-called scope-severity paradox. The authors

showed that, despite the legal standard that “punishment should fit the crime”, people, including criminal judges, tend to recommend more lenient punishment for crimes that victimize more people. Even more recent studies (Ritov and Zamir 2014) demonstrated that people are more willing to accept the negative consequences of affirmative action when the harm is suffered by unidentified “statistical” individuals.

Apart from the merely psychological dimension, there is also a normative dimension to the discussion about the identifiability effect and the possibility of its ethical justification. Generally speaking, it is very hard to justify the identifiability effect on utilitarian grounds.<sup>7</sup> However, there have been some attempts to justify it from the non-utilitarian perspective. For example, Wojciech Załuski (2018) claims that some non-utilitarian ethical theories (e.g. Kantian duty-based ethics) can provide a normative justification for the identifiability effect, as they do not, in contrast to utilitarianism, consider helping to be a full-fledged moral duty. Once again, we do not have to settle this issue here. We just have to keep in mind that the peculiar partiality present in the identifiability effect is unacceptable for many moral philosophers (who do not consider an individual’s position on the “identifiability scale” as a relevant factor in moral decision-making).

It seems to me that the above considerations about promises to unidentified individuals may somehow contribute to the development of the research on the identifiability effect. The aforementioned “identifiability scale” may be perfectly well interpreted in terms of the distinction between particular personality and generic personality. The fully identified person may thus be considered as a person who has her par-

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<sup>7</sup> Cf. Żuradzki (2017) who criticizes three arguments for the normative justification of the identifiability effect – ex ante contractualism, fair distribution of chances and risks, and anti-aggregationist principles that recommend the distribution of bad effects and the concentration of good ones.

ticular autonomy recognized, namely – an intimate. The partially identified person may be considered as a stranger who has only her generic personality recognized. Finally, the unidentified “statistical” person may be considered as someone who is not recognized as an autonomous agent at all – like the randomly chosen individual from Fried’s story. The degree of recognition of certain individual’s personality, as well as the degree of identification, may be somewhat blurred, but nevertheless it seems to be a criterion that is easier to understand and thus much easier to adopt. Therefore, the philosophical discussion on promises – especially about promises to unidentified individuals – may contribute to a conceptually clearer understanding of what the identifiability effect is. Although insights from the above-mentioned theories of promises will not suffice to answer the fundamental psychological and ethical questions about the IE, they may at least provide some useful framework (i.e. the distinction between particular and generic autonomy) for the discussion. In other words, while the philosophy of promising is not capable of finding an answer to the most pressing questions about the IE, it may help to clarify the questions themselves.

The conclusion about the apparent impossibility of promises to unidentified individuals also seems to be able to provide some arguments for the discussion on the normative implications of the identifiability effect. It may be thought that such a conclusion may strengthen the argument for the normative preference of the identified individual, at least in some cases. I think that it is not true, for several reasons. Firstly, I did not entirely exclude the potential of the utilitarian theory of promises for defining which promises to unidentified individuals are intelligible. Secondly, even if we admit that there are some reasons for the preference toward identified individuals in the case of promises, that argument will hold only in the realm of promises, which is a relatively narrow scope, especially taking into consideration the variety of occurrences of the IE given above.

Last but not least, I mentioned that the main utilitarian argument against the identifiability effect was that of its partiality – the fact that identified individuals induce stronger emotional response than unidentified ones cannot provide a justification for the preferential treatment of the former. But we have to keep in mind that the partiality connected with the identifiability effect is something different than the partiality of promises and promissory obligations. The former kind of partiality is a merely psychological one, which is clearly unacceptable from the utilitarian point of view. The partiality of promises, on the contrary, is an immanent part of them (most utilitarians would say that it is a necessary feature of the practice of promising) in at least two ways. Firstly, it is a distinctive feature of a promissory obligation that it always connects a particular promisor with a particular promisee. Secondly, it is also a distinctive feature of a promissory obligation that it is a voluntary obligation, that we cannot force anyone to make a binding promise (in that case it would not be a promise at all).<sup>8</sup> Psychologists have not investigated whether people are reluctant to make promises to unidentified individuals but I think it is rather clear that it is a case. Would such result outrage Rawls and rule utilitarians? I guess not, because the preference toward identified individuals in case of promises is immanent in the practice of promising as a whole, which they consider to be justified on utilitarian grounds. It seems, then, that the peculiar partiality of promises is not at odds with basic utilitarian principles.

### *Conclusion*

I have attempted to argue that it is impossible to successfully promise to unidentified individuals – certainly in terms of both autonomy theories and probably also in terms of utilitarian

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<sup>8</sup> So-called “coerced promises” are generally not considered to be promises at all.

theory. Fried's initial conclusion is therefore correct – we cannot conclude that is a promise in the “over-population” example; it is better to talk about a vow instead. Nevertheless, I admit that the above argumentation is not fully reliable. It may be possible to develop a theory of promises which includes promises to unidentified individuals or to modify the utilitarian theory in a suitable way. But I think neither of these options seems very promising – they would require the development of some very extravagant and unorthodox theory or a way of argumentation.

I also attempted to link my considerations on promises to the on-going debate on the so-called identifiability effect, to which they may contribute. On the conceptual level, through the implementation of the concepts of particular and generic personality, they may shed light on the crucial notions of “identified” and “unidentified”/“statistical” individuals. When it comes to the normative implications of the preference toward identified individuals, I was arguing that, perhaps contrary to original intuitions, the impossibility of promises to unidentified individuals is not at odds with basic utilitarian principles. Taking into consideration some specific features of promises, as well as the potential possibility of creating a utilitarian theory of promises, including promises to unidentified individuals, the main conclusion of the article should therefore not affect the overall discussion about the normative implications of the identifiability effect. The overall conclusion of the article is therefore very modest – the philosophy of promising may contribute to the clarification of some problems surrounding the discussion about the identifiability effect, but bears no significant normative consequences. Nevertheless, posing the right question is a first step towards finding the right answer, and conceptual clarity is the first step towards posing the right question. For that reason, the philosophical insights sketched above may be found useful for psychologists and ethicists interested in the identifiability effect.

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Szymon Osmola  
Department of Law  
European University Institute in Florence  
szosmola93@gmail.com

