

The Logic of Human Rights

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ABSTRACT

This article argues that human rights are intermediate nodes in a network of legal facts. The rights themselves have no content, but as nodes in the network they are connected to duties, permissions, competences, immunities, and other kinds of legal status by rules in a very broad sense of the word. Some of the nodes are 'output nodes' which interact with physical reality. These output nodes are all obligations and the interaction with non-legal reality consist in compliance with these obligations.

Keywords: competence, duty, human right, legal status, obligation

1 What this article is about

There are several international conventions on human rights and substantial parts of international law consist of human rights law. In this article, I will address the question of what follows if a person has a human right.¹ As it will become clear, my arguments – although they take international human rights as their starting point – are also relevant for human rights based on national instruments such as constitutions.

I will argue and illustrate that human rights are intermediate nodes in a network of legal facts. The nodes in this network are connected by rules in a very broad sense of the word. Some of the nodes are 'output nodes' which interact with physical reality. These output nodes are all obligations and the interaction consist in compliance with these obligations.

2 The function of law

Legal rules attach many kinds of consequences to fact situations. We have, amongst others, (human) rights, obligations – including prohibitions, permissions, and competences. Other examples are classification as, for instance, a vehicle in the sense of a Traffic Act, as a legal representative, as a suspect for the purpose of criminal prosecution, and so on ... What is the point of all these different legal consequences? Most of them mark intermediate stages in legal arguments which are in last instance aimed at establishing legal obligations. For example, the classification of some action as a crime has as its ultimate purposes to impose on legal subjects the obligation not to perform such actions and to permit state officials to punish persons who committed a crime. Law has a function and that is to guide the behaviour of its subjects (Fuller 1963, p. 74; Moore 1992). It fulfils this function by

1. An earlier version of this article was presented at the Maastricht conference on the logic of international law, 14 and 15 November 2022. Thanks to the organisers of this conference for allowing me to present the paper, and to the other participants for their helpful comments and questions.

imposing, limiting, or taking away legal obligations², based on the assumption that legal obligations are often efficacious in influencing people's behaviour (Hage 2013). If in some society legal obligations would not by and large be efficacious, this society would not have law.

To perform this function in a precise manner, the law uses an extensive framework of concepts, including the legal consequences we already encountered, and many more. Most of these legal concepts have a subordinate function: they play a role in intermediate steps of legal arguments that have the existence or limitation of an obligation, or the existence of a permission, as their ultimate conclusions. In the end, it is all about obligations or the absence thereof (permissions), and all the rest is a means for establishing these obligations. Take, for instance, Article 8 of the *International Covenant on Civil and Political Rights* (ICCPR), which claims in Section 3:

- (a) No one shall be required to perform forced or compulsory labour; ...
- (c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:
 - (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention; ...

Section 3a imposes on States the obligation not to require forced or compulsory labour and this prohibition gives meaning to the limitation of what counts as forced or compulsory labour in Section 3c. A typical legal argument might go as follows: State S has imposed the sanction of labour in a mine on a lawfully convicted criminal, where the possibility of this sanction is recognised in the laws of S. The imposed labour does, according to Section 3c, not count as forced or compulsory labour. Therefore, there was no obligation on the State based on Section 3a not to require this labour and the behaviour of S was not unlawful as far as this provision is concerned.

As this example illustrates, law contains rules that impose obligations and other rules, including rules that determine the scope of application of the obligation-imposing rules. The rules that determine scopes derive their sense from the rules that impose obligations. Rules that impose obligations affect non-legal reality because obligations tend to be efficacious. Other rules need the obligation-imposing rules to affect non-legal reality.

3 Kinds of human rights

Article 2 of the *European Convention on Human Rights* (ECHR) proclaims in its first Section that:

Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

The first sentence creates an obligation for States to create laws that protect human lives. The second sentence also creates an obligation, this time the (negative) obligation, or prohibition, not to take human life intentionally, except in some special circumstances. In both cases the right holders, human

2. In this article I will not distinguish, as I did in earlier publications (e.g. Hage 2018, pp. 123-126), between duties and obligations. Following the practice in international law, I will call both duties and obligations 'obligations'.

beings, are the beneficiaries of the obligations, but the right does not directly affect their legal positions. This topic will receive more attention in section 5.

Article 12 ICCPR proclaims in Section 2 that:

Everyone shall be free to leave any country, including his own.

The Section creates the freedom for all human beings to leave any country. There is no immediate obligation, although we will see (in sections 7 and 8) that the existence of the freedom may have implications for others, in particular States. In this case, the primary consequence of the regulation is for the right holders, because their legal position is affected, primarily by creating a permission to leave a country.

Article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) proclaims in Section 9 that:

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

This formulation does not provide much information about who is competent, permitted or obligated to do what. However, typically States take care of social security, so it is reasonable to assume that there is something in the sphere of an obligation for States to provide social security. ‘Something in the sphere of an obligation’ is quite vague, and that is on purpose. The right to social security is a so-called ‘social right’ and these social rights do not lead to ‘hard’ obligations in the way civil and political rights do. Section 9 addresses the logical implications of this ‘soft’ nature of the right to social security and comparable rights.

4 Legal status and legal positions

The idea that many legal rules derive their relevance for the real world from their role as support for rules that define obligations finds expression in the phenomenon of legal status. Many legal rules regulate legal status by defining when a status is present, how it ends, and what the consequences are if the status is present (MacCormick 1986; Lindahl and Odelstad 2013). As Ross (1957) pointed out, legal status functions as an intermediary step in legal arguments. The structure of these arguments is as follows:

If any of some alternative conditions is satisfied, the status is present.

(At least) one of the alternative conditions for the presence of the status is satisfied.

The status is present.

If the status is present, all the consequences of the status are also present.

All the consequences of the status are present.

This is one of those consequences.

This consequence is (also) present.

It makes sense to use arguments with this structure if there are two or more ways in which the status can originate and if there are two or more consequences attached to this status. The best-known example is the status of being the owner of some good (Ross 1957). There are rules that specify how somebody becomes the owner of a good, and rules that specify how somebody loses ownership. And there are rules specifying the legal consequences if somebody owns a good. For instance, somebody can become the owner of a car through transfer of the car by the previous owner, by building the car herself, or by inheriting the car. She can lose the ownership if she transfers it to a new owner, if the car is forfeited, or if the car is destroyed. Moreover, while she owns the car, the owner is permitted to use the car, and she is competent to transfer the ownership to somebody else, or to permit or prohibit others to use the car.

Competence is itself also a legal status, which is a necessary precondition for performing valid juridical acts (Hage 2018, pp. 195-211; forthcoming). There are rules that:

- specify how a legal subject becomes competent to perform some juridical act (e.g. transfer of ownership),
- how a competence can be lost (e.g. insolvency), and
- a competence is required for performing a valid juridical act (e.g. competence as a precondition for valid transfer).

Graphically, this can be depicted as in figure 1.

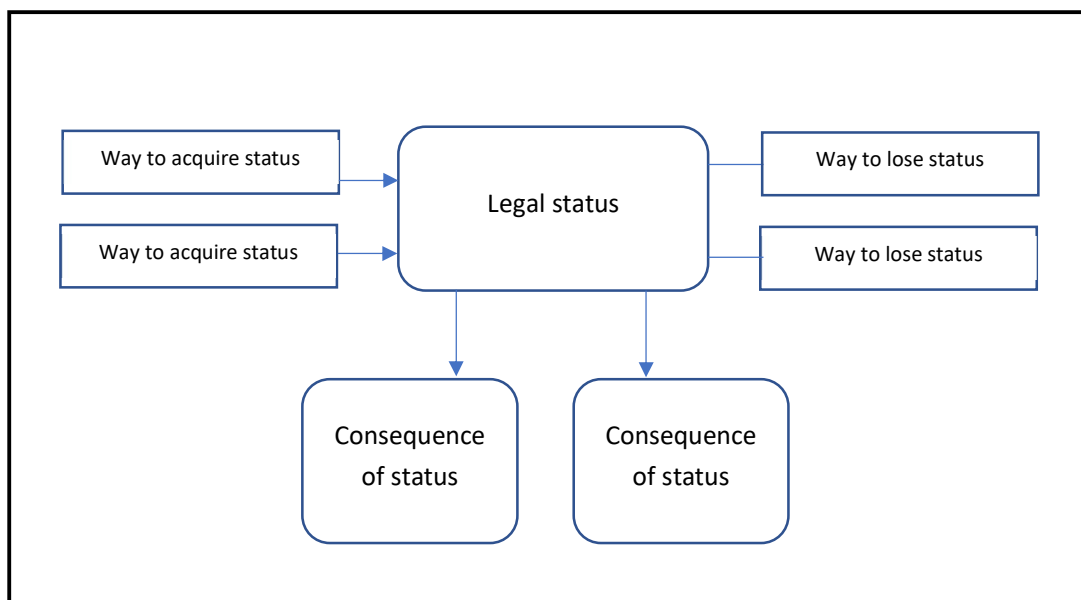


Figure 1: Three kinds of rules involved in legal status

Often, a legal status attaches to a legal subject. Being the owner of a good is an example, as is the competence to perform a particular kind of juridical act. Then we also speak of a legal position of this subject. Legal positions are a form of legal status.³

As the example of competence illustrates, a common consequence of a legal status is another legal status. It is hard to overestimate the importance of legal status in law and in the definition of how legal rules hang together. All rights, including human rights, are cases of legal status, and their relevance lies in the consequences that legal rules attach to the possession of a right and, in last instance, in the obligations – for the right holder and for others – that the law attaches, directly or indirectly, to the existence of a right.

Regarding these consequences it is useful to distinguish between consequences that are defined by the specific legal rules which attach these consequences, and consequences which are determined by basic legal concepts and their interrelations.⁴ For instance, if something has the legal status of a vehicle in the sense of the Traffic Act, the rules of the Traffic Act which have ‘being a vehicle’ as a precondition determine the consequences⁵ of being a vehicle. Nothing general can be said about the consequences of being a vehicle; everything is defined by specific legal rules in the Traffic Act. Other kinds of status, sometimes called ‘basic legal concepts’, have relations to other basic legal concepts which do not depend on a specific regulation or field of law. Examples of such concepts are ‘valid’, ‘obligation’, ‘prohibition’, ‘permission’, ‘competence’, and ‘right’. These concepts stand for legal status which has relations to other kinds of status in a manner that is not limited to a special regulation or field of law, but which hold for law in general.⁶ These relations are often called ‘logical’.⁷ In the following sections, some of these general relations between kinds of legal status will be discussed in more detail, with special attention to human rights and their relations to other legal statuses.

5 The right to life

Article 2 ECHR deals with the right to life. It starts with proclaiming that everybody’s right to life shall be protected by law. The Article does not specify what this right means and what precisely should be done to protect human life. The second sentence of the same Article imposes an obligation, with some

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3. An example of a legal status that does not adhere to a legal subject is the status of a vehicle for the purpose of some Traffic Act.
 4. It should be noted that the distinction between status with field-specific relations and ‘global’ status connected to basic legal concepts is not very strict and that there may be intermediate cases. That is not a topic for the present article, however.
 5. From here on, I will omit the qualifier ‘legal’ when rules, status and rule consequences are at stake. Everything is assumed to be legal unless the contrary is explicitly stated or evident from the context.
 6. A *caveat* is in place here. The present article is written from the Western legal tradition, and it is possible that other legal traditions lack the global relations between some kinds of legal status which seem to hold in the Western tradition.
 7. This is based on the Quinean (1951) view of logic as a characterisation of those relations between our beliefs that we are least willing to give up.

exceptions, not to intentionally deprive anybody of his life. How does this obligation relate to the right to life? Does it come on top of it, is it a repetition of the proclaimed right in terms of an obligation, or is the obligation merely one of the consequences attached to the right to life and are there also other consequences? And, in the latter case, what might these other consequences be?

One way to answer these questions – next to, for instance, consulting relevant literature – is to ask whether the right holder derives something from his right. If not, the States' obligation to protect life by law is – in a sense – similar to the obligation of traffic participants to halt for red traffic lights. In that case, there is an obligation, but there is no corresponding right holder. A 'right' to which the law attaches no consequences is merely an empty label, a legal 'nothing'. So, if the right to life is to be more than a mere obligation for States to protect human life by means of laws, there must be something in it for the right holder.

This 'something' might be a competence to waive the right, or to give up its protection for a special case. Suppose that a State's obligation not to intentionally take somebody's life includes the obligation not to recruit persons for tasks which almost certainly will cost the recruited person's life. Think for example of requiring from an expert on nuclear energy to enter the building of a nuclear reactor to stop a process that will lead to a melt-down of the reactor, knowing that the level of radiation in the building will almost certainly kill the expert. A State is not allowed to require this from an expert unless the expert volunteers. By volunteering to enter the building, the expert performs a juridical act whereby she waives the obligation towards her that the human right imposed on the State. The expert can only perform this juridical act in a valid manner if she is competent to do so. This competence, if it exists, is entailed by the same human right that also entails the obligation of the State. Graphically, the situation can be depicted as in figure 2:

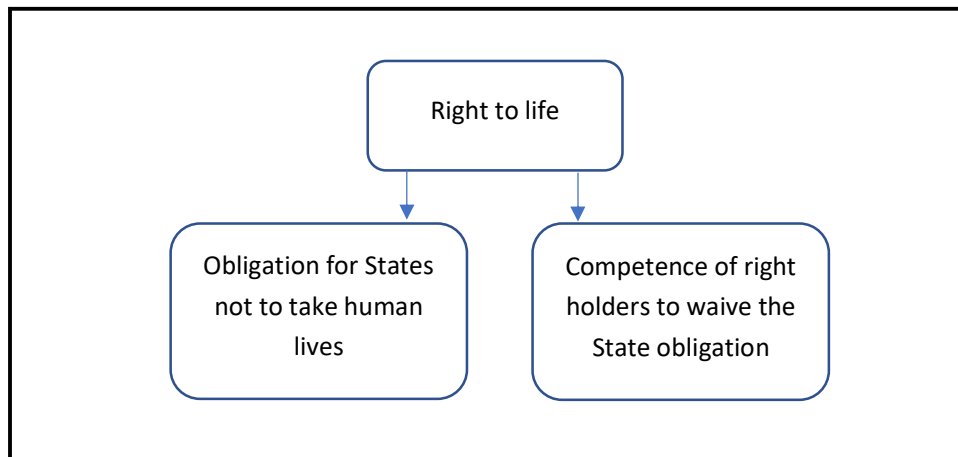


Figure 2: Two consequences of the right to life

Let us assume that people are competent to waive the obligation that is based on their right to life.⁸ Then there are at least two consequences attached to the right to life: (1) an obligation on States not

8. It is not the right that is waived, but the obligation on the State which is entailed by the right. Waiving this obligation is not taking away the right. The waiver can most likely be withdrawn

to intentionally take human lives, and (2) a competence for the right holders to waive this obligation of States to the extent that their own lives are at stake.⁹ Notice, however, that neither the obligation for States nor the competence for right holders to waive this obligation are not parts of the right to life. There must be rules which attach the obligation and the competence to the right to life and these rules create the obligation and the competence. The rules that attach consequences to a right may change in the course of time, but the right as a legal status to which consequences are attached remains the same.

If a legal subject uses his competence to waive the obligation for a particular purpose, the State receives the permission to intentionally take his life for that purpose. For a full understanding of what this means, it is necessary to delve deeper into the nature of obligations and permissions.

6 Obligations, prohibitions, and actions

There are obligations to do something and obligations not to do something. The latter obligations are also called 'prohibitions'.¹⁰

This 'something' which is the object of an obligation is always an action.¹¹ Most actions are changes in the world which are ascribed to an agent. For example, if the commander in chief of a State sends armed forces to another country to conquer it, this counts as an action. This action is ascribed to the State. The same holds if the forces were sent on request of the UN Security Council to restore peace. However, other actions consist in nothing happening where some positive action was required. For instance, if a State does not provide health care where this was required from the State, this 'doing nothing' can count as an action.

If an agent, for instance a State, has an obligation, this is a legal status to which the law can attach any consequence.¹² What these consequences are, for instance whether and how the obligation can be enforced, is a matter of law and not a matter of logic and will in general not be discussed here. With one exception: if an agent has the obligation to perform an action, but does not do so, this doing nothing will often count as an unlawful action. For instance, not protecting human life by laws will normally count as an unlawful action of the non-performing State. If an agent has an obligation not to do something, doing it also counts as an unlawful action. If an action is unlawful, this is again a legal status to which the law can attach any consequences. A consequence that is typically attached to an

and then the right revives in the sense that its entailed obligation revives. Thanks to Ulf Linderfalk for pointing out this complication to me.

9. Article 2 ECHR also mentions a third consequence, namely the obligation for States to protect human life by laws.
10. There are also obligations to do (or not to do) things *in a particular way*, but these will be ignored in the present article. For a discussion, see Hage 2018, p. 126.
11. In this contribution, I ignore the distinction between action types and tokens. For a discussion, see Hage 2018, pp. 129/30.
12. Not really *any* consequences, because the status is an obligation and the consequences should fit this kind of status.

unlawful action is that damage resulting from the action must be compensated.¹³ Figure 3 depicts how the law attaches consequences to the legal status of having an obligation.

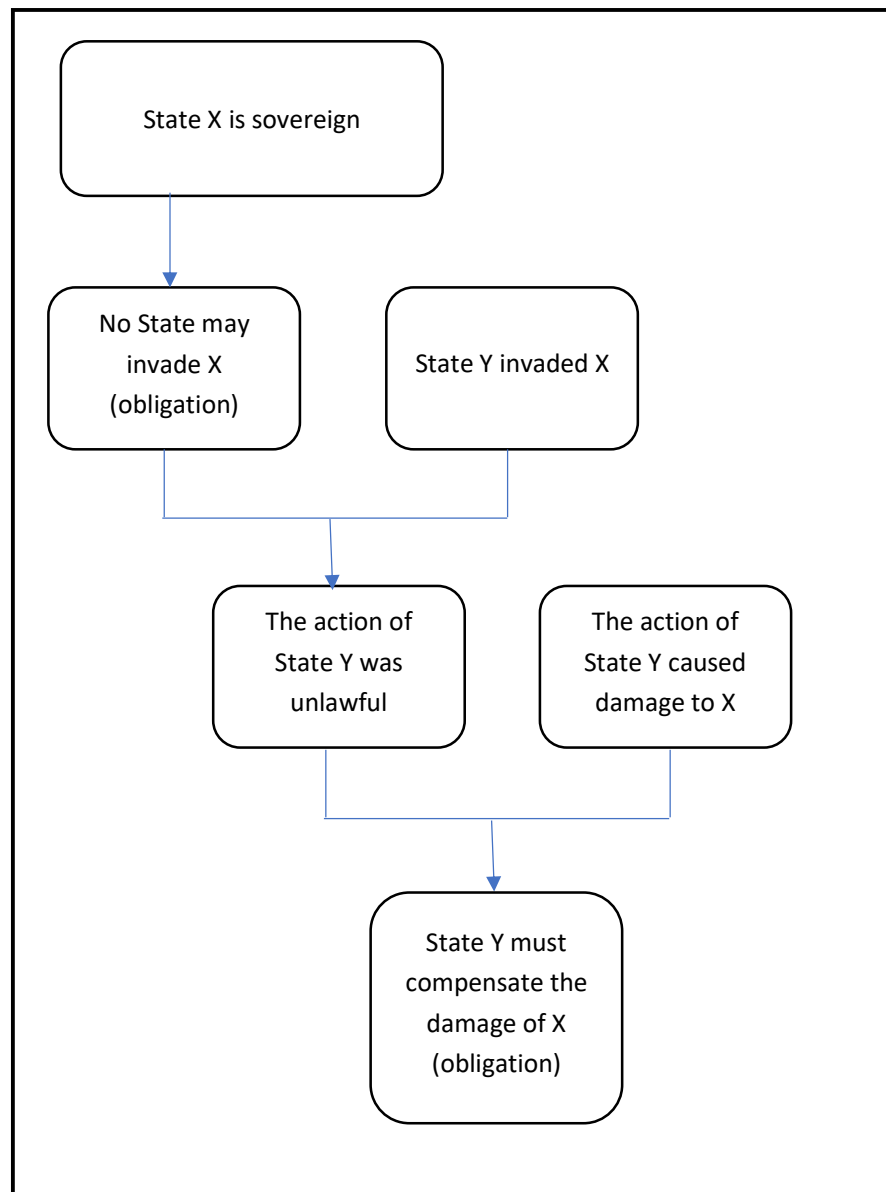


Figure 3: Obligations as legal status/position

7 Permissions and the freedom to leave a country

If an action is not prohibited – that is: if there is no obligation not to perform that action – the action is permitted. Permission is nothing other than the absence of an obligation to refrain from an action.

13. In criminal law, unlawful actions are often called 'illegal', and the liability to be punished is the typical consequence.

Normally, no rule or right is required for the existence of a permission as the permission is, strictly speaking, nothing. This explains the adage that everything that was not forbidden is allowed.

Nevertheless, we encounter rules and juridical acts that permit actions. This can be explained from the need to make exceptions to prohibitions. For instance, the sovereignty of countries (a legal status) has as one of its many consequences that the police of one country is not allowed to perform its tasks in another country. Sometimes this is an undesirable situation, especially if the borders between two countries are effectively open, as is the case in the Schengen area of the European Union. It may therefore be useful to allow the police of a neighbouring country to perform some of its tasks – e.g. pursue fleeing criminals – in one's own country.

Such a permission can be given in general, by means of a permissive rule which specifies under what circumstances, and for what purposes, the police of a neighbouring country can perform its tasks in one's own country. It can also be done by means of a juridical act, consisting of a permission for a single case. Whatever the means chosen, such a permission always makes an exception to a more general prohibition. In the absence of such a prohibition, no explicit permission would be required.

One way to read Article 12, Section 2 ICCPR is as creating a permissive rule that makes an exception to all prohibitions to leave the country that a State might create. Under this reading, the rule does not affect the validity of State prohibitions but takes their force away by making an exception to them.

This reading is possible, but not the only possible one. A second reading is that the rule prohibits States to disallow people to leave the country, whether by means of rules or by means of individual juridical acts. If a State nevertheless forbids an individual person to leave the country or creates a rule that prohibits persons that belong to a particular category – e.g. highly educated persons or potential soldiers – to leave, this action will violate a State obligation and will typically be unlawful.

There is, moreover, also a third reading: the rule may be interpreted as taking away the competence of the State to disallow people to leave the country. Both individual prohibitions to leave and the creation of a prohibitive rule to this effect are juridical acts for which a competence is needed. If this competence is lacking, the juridical act is normally invalid and has no effects. This topic deserves a separate section.

8 Human rights as immunities

Many legal rules attach consequences to events. For instance, if somebody commits a crime, he becomes liable to be punished. Or, if a child is born, she becomes the bearer of human rights. The events to which the law attaches consequences often count as actions. Crimes are such events, but also contracts, or legislation.

Some of the rules that attach legal consequences to actions make these consequences dependent on the intention with which these actions were performed. Contracts and legislation are examples, but also administrative decisions and judicial verdicts. These are all cases where agents perform actions with the intention to create legal consequences and where the law honours (most of) these intentions by indeed attaching the intended consequences. For instance, if Parliament follows the procedure to adopt a Bill with the obvious intention to turn this Bill into valid law, the adopted Bill will normally become law. If a court convicts a criminal suspect to a term of incarceration, the executive receives the permission – if not the obligation – to incarcerate this person. Or – perhaps the best known

example – when two parties contract to buy and sell a car, the seller undertakes the obligation to deliver the car to the buyer, while the buyer undertakes the obligation to pay the price to the seller.

If the law attaches consequences to an action which depend – perhaps not exclusively, but to a large extent – on the intentions of the agent(s), we call the action a *juridical act*.¹⁴ Examples of juridical acts in private law are contracts, last wills, and divorces. Examples from public law are legislation, administrative decisions, and judicial verdicts.

Not everybody can perform every kind of juridical act. Often a special status is required. For instance, only Parliament can adopt a Bill, only married people can divorce, and only courts can convict criminals.¹⁵ Moreover, even if an agent has the status required for performing a juridical act, she cannot create any kind of legal consequences by means of that kind of juridical act. What consequences can be created depends on the kind of juridical act – it is not possible to convict a criminal by means of a contract – but sometimes also on personal characteristics of the agent. For instance, people under a certain age typically cannot marry, or a parent can, in some legal systems, not completely disinherit her or his child. To be capable of creating consequences by means of some kind of juridical act, the agent needs the competence¹⁶ to do so. If the competence to create legal consequences by means of a kind of juridical act is lacking, the agent fails in creating this consequence, even if she follows the correct procedure.¹⁷ The juridical act is then said to be invalid or (null and) void, and the same holds for the intended product of the act, such as a contract, or a law.

Here is where human rights appear in the story. Let us have another look at the freedom to leave a country. In one reading, this freedom entails a prohibition on States to stop people from leaving the country. In this reading, a State acts unlawfully if it nevertheless prevents somebody from leaving the country, be it as a matter of physical fact or by means of a juridical act (legislation, a specific prohibition). However, a different reading is also possible. Having a human right may mean that one is immune¹⁸ against some State actions. Such an immunity is the mirror image of a lack of competence on the side of the State. For instance, if a State forbids a person to leave the country, it is possible that the State exceeds its competence – the State's action is *ultra vires* – and the prohibition is not valid. The same holds for legislation that forbids some people to leave the country: it may be invalid and fail to lead to valid law. Notice that an immunity does not take a competence completely away. The competence of States to forbid leaving the country may still be in force for, for example, companies which do not have the freedom to leave. Immunities are to competences what permissions are to prohibitions. A permission limits the scope of a prohibition without completely invalidating the prohibition. Even if secret agents have a license to kill, this does not mean that others also are allowed

14. Different legal systems have slightly different conceptualisations of a juridical act – Germany, for instance, limits the notion to actions in private law – and use different terminology. The notion of a juridical act that is used here is a reconstruction from the different conceptualisations.

15. No doubt, there will be exceptions to some of the examples.

16. Different fields of law use different words for a competence, such as capacity, or power.

17. There are exceptions, typically made to create legal certainty.

18. This is an immunity in the sense of Hohfeld (1913).

to kill. If human beings with the freedom to leave are not affected by juridical acts that forbid them to leave a country, those acts may still create valid prohibitions for non-human agents.

It should be noted that the second reading can only apply to juridical acts, as it holds that the freedom to leave entails a lack of competence, where competences are only needed for juridical acts. A lack of competence does not make it impossible for a State to physically stop a person who tries to cross the border. Therefore, it is important that the two readings are not mutually exclusive. It is possible to read the freedom to leave as entailing both a prohibition for the State to stop a person from leaving the country by either factual or juridical acts, as well as a lack of competence to do so by means of a juridical act. See figure 4.

It goes without elaboration that what holds for the freedom to leave the country may also hold for other human rights: sometimes they can be read as imposing obligations on States, sometimes as limitations on the competences of States, and sometimes as both. It is a matter of law, not of logic, which reading of a human right is correct.

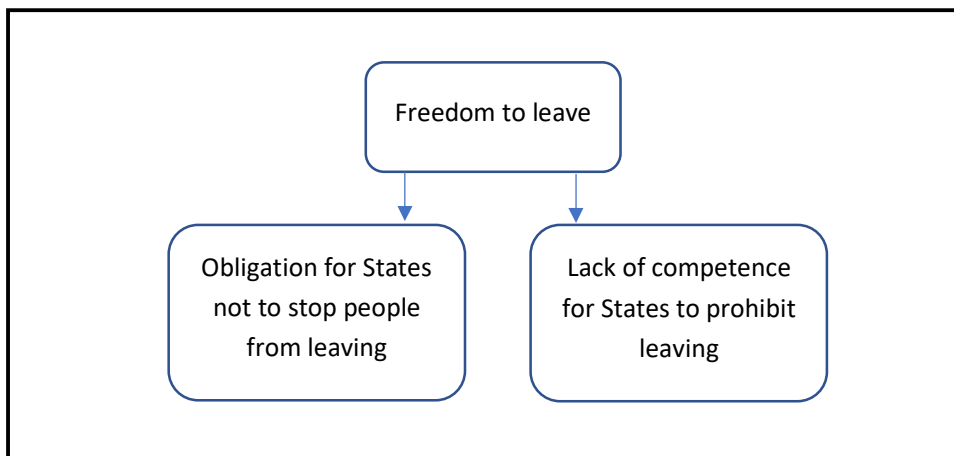


Figure 4: Two consequences of the freedom to leave

9 Human rights as goals

Article 9, Section 9, ICESCR proclaims that:

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

This is a rather open formulation, as it does not by itself make it clear what such ‘recognition’ might mean. Article 2, Section 1 of the same Covenant provides more detail:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

Apparently, the right to social security is a goal that States adopt (recognize) and this adoption leads to an obligation to take steps, to the maximum of a State’s available resources, to fully realize this

goal. Given that there are more goals that a State recognizes, the available resources may have to be divided over several goals. This requires the balancing of goals. One question that arises in this connection is whether the human right status of some goals influences how the goals ought to be balanced.¹⁹ In this section, I will outline the logical apparatus that can be used to deal with these questions.

If a human right is a goal²⁰, a State action, whether it be law making or a change in the legal position of an individual person, is good to the extent that it promotes the right and bad to the extent that it harms the right. This simple insight can be translated into the language of reasons in the following manner:

1. The fact that a measure promotes a goal, such as a recognized human right, is a reason for a State to take that measure (a pro-reason).
2. The fact that a measure harms a goal, is a reason for a State not to take that measure (a con-reason).
3. A state (legally) ought to take a measure if the pro-reasons outweigh the con-reasons.
4. A state (legally) ought not to take a measure if the con-reasons outweigh the pro-reasons.
5. Whether the pro-reasons outweigh the con-reasons, or the other way round, is not a matter of logic, but requires substantial information (weighing knowledge) that is in principle determined by law.

Let me give a simple example.²¹ A State considers increasing the amount of monetary support for people who cannot pay their energy bills. This measure promotes social security and that is a reason for taking the measure. However, the measure costs money which cannot be spent on other useful purposes such as traffic safety. That is a reason against taking the measure. These two reasons, assuming they are the only relevant ones, need to be balanced and if this balancing is to be a rational operation, some information about the relative weight of the reasons is necessary. One possible reason why the pro-reason outweighs the con-reason is that the pro-reason is based on a human right. The human right status of a goal then positively influences the relative weight of this goal and leads to specific weighing knowledge. If no other considerations play a role in deciding about monetary support for people who cannot pay their energy bills, it is possible to conclude that the reason for this support outweighs the reason against it, and that the State legally ought to take this measure. In other words, the State has an obligation to raise the amount of monetary support. See figure 5.

19. Another question is whether local differences between States, for instance cultural differences, may influence the balancing operation. This issue has in EC law been addressed under the heading 'margin of appreciation'.

20. The idea that human rights are goals that need to be optimized in balance with other goals plays a central role in Alexy's theory of human rights (Alexy 1986).

21. This simple example makes no claim to being legally correct. It only serves to illustrate the logical mechanism of balancing pro- and con-reasons, and the possible role of human rights in this connection.

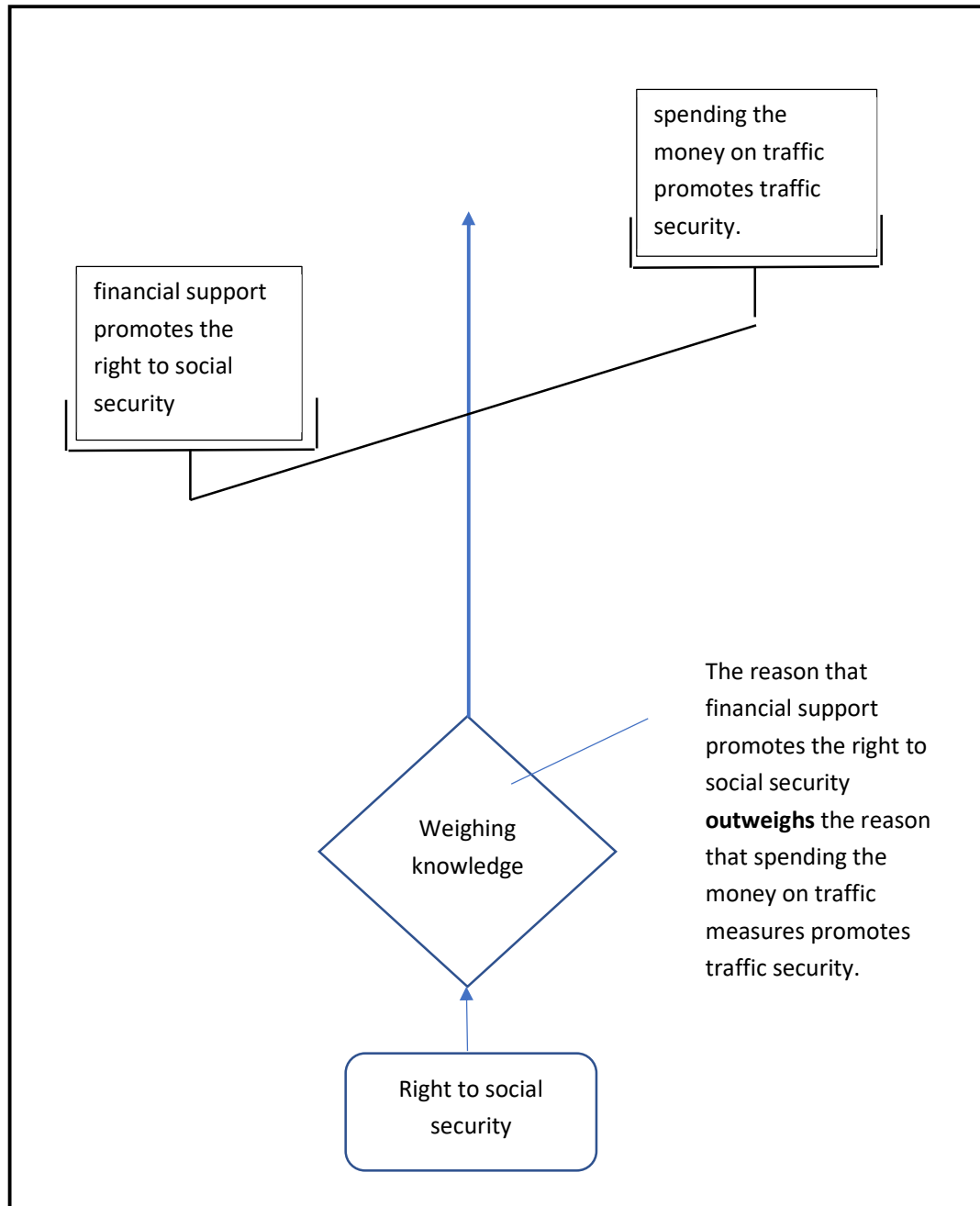


Figure 5: How a human right influences the weighing knowledge required for balancing reasons

It deserves pointing out that this account of how human rights are relevant for making policy decisions leads to a moderate version of the theory that rights are trumps in political and legal debates. This idea was popularised by Dworkin (1978, 1981) who claimed that rights trump policy considerations. In our example this claim might be substantiated as the claim that since people have a *right* to social security, other considerations such as traffic safety do not come into play at all if they would violate

the right. My account above is a moderate version of this view, because it does not exclude other goals or values from coming into play, but it assigns added weight to reasons based on rights.²²

10 The world of law as a network

In the introduction, I claimed that human rights are intermediate nodes in a network of legal facts. Now I can substantiate that claim. Having a human right is a legal position. The right holder has a legal status, and this status is a node which connects the conditions for the existence of the status to the consequences of this existence. In the case of human rights, the typical condition for the existence of the status is that the right holder is a human being. The consequences of holding a particular human right depend on the nature of the right and may include permissions or competences for the right holder, or obligations on others – in the case of human rights often States – that have the right holder as their beneficiaries. As nodes in a network of legal facts, human rights never directly interact with the world outside the law. The interaction is always through the consequences that legal rules attach to the right. Rules can only have immaterial consequences and not that some event takes place, or that an action is performed. Obligations are immaterial entities, and rules often lead to the existence of obligations. As the existence of law in a particular society presupposes that the obligations that the law imposes are typically complied with, for whatever reason, the interaction of law takes place through these obligations. This also holds for human rights.

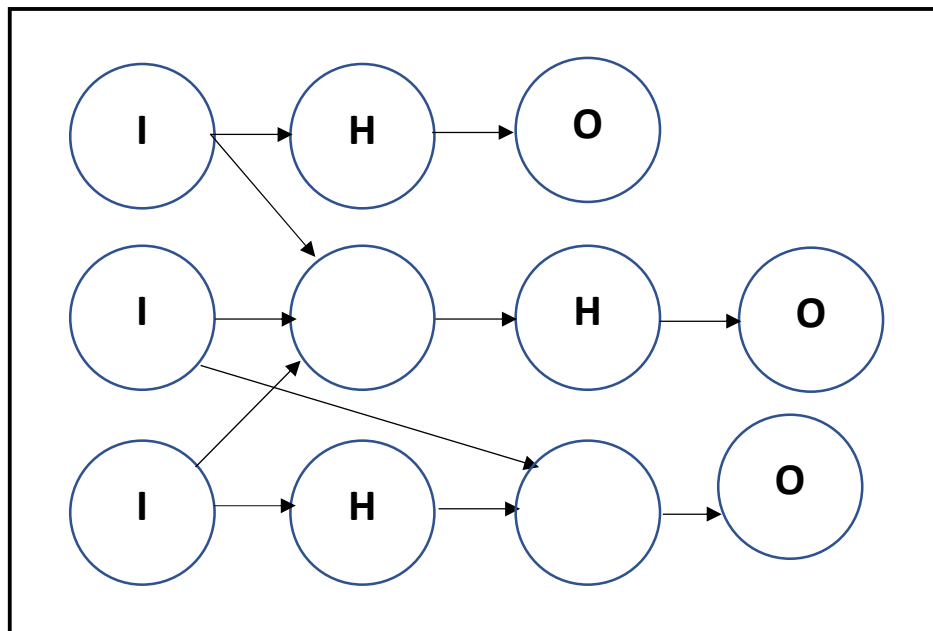


Figure 6: A legal network with input and output facts and human rights

22. As a side note it may be pointed out that this moderate view can easily account for the balancing of colliding rights, while the full-blown theory of rights as trumps makes colliding rights inconsistent as each of the colliding rights would put the other right out of play.

If human rights are to affect the world outside the law, they must do so by leading to obligations in one or more steps. Figure 6 depicts this. The nodes labelled with a capital 'I' represent input facts. These input facts are the not product of legal rules. They may be physical facts, such as the fact that country Z makes it impossible for citizen K to leave the country. The nodes labelled 'O' are output facts, which must be obligations. Human rights are not input facts, as the existence of a human right is always the product of a rule which attaches the legal position of right holder to some other fact such as being a human. Human rights are no output facts either, as they are not obligations themselves. Of course, there may be rules attaching obligations to human rights and these obligations can be output facts. Human rights are labelled with the letter 'H'.

11 Conclusion

It is often assumed that rights, and therefore also human rights, are the correlates of (duties or) obligations. If there is a right, there is an obligation of another person. According to the United Nations:

International human rights law lays down obligations which States are bound to respect. By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights.²³

Some have even assumed that it is also the other way around, that if there is an obligation, the beneficiary of the obligation has a right. In one version of this view, obligations and rights are the two sides of a single coin. Bentham, for instance, held that a right holder is the beneficiary of an obligation (cf. Lyons 1969). I hope to have shown in this article by means of examples that it is not so simple. The right to leave a country, for instance, can be interpreted as a permission that overrules all obligations not to leave a country. In a narrow construction, which does not represent the current views (cf. Caballero-Perez 2022), the right to vote is merely a competence. In both cases the rights under the suggested interpretations do not involve any obligations.

This does not mean that there is no relation at all between rights and obligations. Often there are obligations attached to rights. However, even if there are obligations attached to rights, these obligations do not always exhaust the right, as there are also other consequences. In an illuminating article, Raz (1984) argued that rights are interests that are in principle sufficient reasons for holding some other person(s) to be under a duty. There is much that can be said about this circumscription of what rights are, but I want to mention on only two aspects. First, according to Raz rights are not identical to obligations (duties) but reasons for their existence. And second, this circumscription does

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not exclude that rights are also reasons for other legal positions, such as permissions or immunities. Both aspects are captured in the view of rights as nodes in a network of legal statuses.

Rights are not identical to obligations, permissions, competences, or immunities, not even to clusters of these, but they are legal positions to which all these other things are attached by rules in a broad sense. These consequences of rights may change in the course of times, while the rights remain the same. The main message of this article is that human rights – and also other rights – should be seen as intermediate nodes in a network of legal facts, typically legal status.

References

Alexy, R. (1986). *Theorie der Grundrechte*, Suhrkamp.

Dworkin, Ronald (1978). *Taking Rights Seriously*, 2nd ed., London: Duckworth.

Dworkin, Ronald (1981). 'Is there a right to pornography?' in *Oxford Journal of Legal Studies* 1, pp. 177-212.

Fuller, Lon L. (1963). *The morality of law*, revised edition, New Haven: Yale University Press.

Hage, Jaap (2013). 'Conceptual Tools for Legislators. Part 2: Pathways Through the World of Law', in *The Theory and Practice of Legislation* 1, pp. 277-304.

Hage, Jaap (2018). *Foundations and Building Blocks of Law*, Den Haag: Eleven International Publishing.

Hage, Jaap (forthcoming). 'Capabilities, Powers and Competences', to be published in a forthcoming issue of the Springer Law and Philosophy Library.

Hohfeld, W.N. (1913). 'Some Fundamental; Legal Conceptions as Applied in Judicial Reasoning', 23 *Yale Law Journal* 16.

Lindahl, Lars and Jan Odelstad (2013). 'The Theory of Joining Systems', in Dov Gabbay, John Horty, Xavier Parent, Ron van der Meyden and Leendert van der Torre (eds.), *Handbook of Deontic Logic and Normative Systems*, College Publications, pp. 545-634.

MacCormick, Neil (1986). 'Law as Institutional Fact', in N. MacCormick and O. Weinberger, *An Institutional Theory of Law* Dordrecht: Reidel 1986, pp. 49-76.

Moore, Michael (1992). 'Law as a Functional Kind', in Robert P. George (ed.), *Natural Law Theory*, Oxford: Clarendon Press, pp. 188-242.

Quine, W.V. (1951). 'Two Dogmas of Empiricism', in *The Philosophical Review* 60, pp. 20-43.

Ross, Alf (1957). 'Tûtû', *Harvard Law Review* 70, p. 812.