

## ANGELIC, BRUTE OR RESPONSIBLE RIGHTS? \*

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**Abstract.** The specification of legal rights in the Analytical Theory has been characterized by sobriety and rigor and such a lesson has become of great significance in contemporary normative debate on justice and fairness. In this paper I will primarily mention Hohfeld's table of correlatives and Ross's variation of it (1), secondly, two competing theories of rights: on the one hand, the 'choice theory' of rights in the version defended by Hart (2) and, on the other hand the 'interest theory' supported by MacCormick (3). Far from engaging in reasoning about the nature or the foundation of rights, the present paper identifies potential weaknesses in these accounts since, from one hand they do not suitably help us to understand what is truly in jeopardy in the debate over the issue and on the other hand they do not take stock of a philosophical justification of the genesis of the "new" human rights (4). The attempt of achieving an understanding of rights as *responsible* rights, neither as *angelic* outcomes of positivity nor as *brute* interests, is via the concept of the person. Within a normative *praxis*, persons partake and construct reasons so that freedom takes shape *sub nomine* of responsibility. In a nutshell, I refer to the Aristotelian normative *praxis* – at length interpreted by José de

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Sousa e Brito – as the place where deciding is to be justified in view of “all possible ends” and humans take the responsibility for it (5).

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### 1. Preliminary remarks

The realm of normativity is larger than it is generally admitted. We daily engage in a conspicuous number of normative judgments. We do attribute to things and persons different properties. We say that A is a talented cellist, that B is a good wine, that C is an unscrupulous professor. But also, we may say that A *should be* a talented cellist, that B *ought to be* a good wine, that C *must be* an unscrupulous professor<sup>1</sup>.

Normativity is not solely a matter of ethics. Most of the ethical judgments hang together with legal judgments as they do share the same idea of what is good or just. So, we engage in taking rights upon ourselves and in attributing duties on others; we think to have a right even if it is not actually recognized by the legal system and conversely, we do not think to have a duty though it is so under the positive law. We all in fact do so, as we think it is good or just to think so. In terms of contemporary philosophy of language<sup>2</sup>, one may say that statements of legal obligation or containing deontic terms, not only may *entail* an alleged correlativity between duties and rights, but they may also conversationally *implicate* a *claiming*. It would be conventional for people who say “I have a right to x”, to conversationally implicate “I expect others to respect x” or “I expect others to refrain from doing x”, or more generally, “Law must guarantee the accomplishment of my right to x”<sup>3</sup>.

The distinctive features of the modern dispute over the concept of right, have been shaped into two rival theories of rights, each of them based on different fundamental commitments, such as freedom and individual and/or collective interest. A deeper interest in values and principles that lie under the surface of the reassuring and refined meta-

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<sup>1</sup> J.J. THOMSON, *Normativity*, Chicago, 2008. The author studies what counts for a normative judgment to be as such by sub-dividing the category of normative judgments into two main groups, the evaluative judgments and the directive judgments.

<sup>2</sup> See, for instance, P. GRICE, *Studies in the Ways of Words*, Cambridge, 1989.

<sup>3</sup> On this point, see, F. POGGI, *Brevi osservazioni sulla retorica dei diritti*, in: *Ragion Pratica*, 31, 2008, pp. 369-370.

ethical analysis, got the upper hand. To generalize, proponents of the will and the interests theories have followed the footsteps of older traditions. The will theory finds its roots into the Kantian doctrine of right according to which rights are powers to bind another individual's external conduct (I. Kant, *Die Metaphysik der Sitten*, 1797). Similarly, in *System des Heutigens Römischen Rechts* F.C. von Savigny accounted legal personality as grounded on moral freedom and the subjective right as a power inherent to the individual regarded as a person. His concept of subjective right has been borrowed by private and public law doctrines, in later years. Along similar lines, J. Austin in his *Lectures on Jurisprudence*, carefully distinguished two meanings of "right": the noun substantive "a right", as "signifying faculty which resides in a determined party or parties, by virtue of a given law" from the expression "right" as "equivalent to the adjective just"<sup>4</sup>. A reviewed idea of the will theory is represented by H. Hart's choice theory of rights.

Differently characterized, the rival theory traces its origins back to the benefit or interest theory of rights referring to Bentham's concept of legal right. Bentham regarded the right of an individual A as correlated to a duty of some other party B whose performance was in the interest of A<sup>5</sup>. It is worthy of mention that Bentham did not apply his notion of legal right to the moral domain at all. Actually, he openly rejected the concept of moral right. Von Jhering's definition of subjective right as "legally protected interests"<sup>6</sup> inherited the account of rights as benefits although the notion of interest was actually intended as a reason for individual rights within a social framework. Surely, a crucial step forward has been taken by contemporary philosophers such as J. Raz and N. MacCormick who applied the interest theory to both domains of legal and moral rights. To generalize, both authors share the view that the interest is a recognized ground for imposing duties on others<sup>7</sup>.

Such alternative analysis and their very many specific variations, provide criteria to the Hohfeldian settlement of legal rights according to

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<sup>4</sup> J. AUSTIN, *Lectures on Jurisprudence, or the philosophy of positive Law*, ed, by R. CAMPBELL, London, 1869, p. 293.

<sup>5</sup> J. BENTHAM, *Of Laws in General*, IN: H.L.A. HART, London, 1970, pp. 82 ss.

<sup>6</sup> R. VON JHERING, *Geist des Römischen Rechts auf den verschiedenen Stufen seiner Entwicklung*, Part III, 5<sup>th</sup> ed., Leipzig, 1906, p.339.

<sup>7</sup> N. MACCORMICK, *Rights in Legislation*, in: P.M.S. HACKER, J. RAZ, *Law, Morality and Society. Essays in Honour of H.L.A. Hart*, Oxford, 1977, pp. 192 ss. J. RAZ, *Right-Based Moralities*, in: J. WALDRON, *Theories of Rights*, Oxford, 1984, pp. 182-200. For an interesting outlook of the debate regarding the "will" and the "interest" theories, see the introduction of J. Waldron to *Theories of Rights*, Oxford, 1984, especially p. 4-14; also, P. ELEFThERIADIS, *Legal Rights*, Oxford, 2008, with particular reference to pp. 1-22.

which rights presuppose correlative duties. To say it with J.J. Thomson's metaphoric language, Hohfeld's account of legal rights "*has supplied us with the means of making a map, showing the roots between the territories within [the realm of rights]*"<sup>8</sup>. Let us begin with a brief outlook of Hohfeld's rigorous inquiry on legal right and Ross's modified variation of it. Along the Hohfeldian lines, the forthcoming competing will and interest theories expanded.

## 2. Referring to Hohfeld's table of correlatives

Hohfeld's "duty-rights division" undoubtedly underpins non cognitivism. In his view, a legal right gives rise to four typologies, respectively to: claim-right, privilege, power, immunity to which, logical relationship, duty, no-right, liability, disability, correspond. Any legal relation can be reduced to the game of entailed opposites, as any type of right is not isolated but forms an atomic relationship necessarily involving two persons. I schematize Hohfeld's analysis – as suggested by Finnis:

- a) A has a claim-right that B should do X, if and only if B has a duty to A to do X;
- b) B has a liberty to do X, if and only if A has no-claim-right that B should not to do X (or that B should do X);
- c) A has a power to do X, if and only if B has a liability to have his legal position to be changed by A's doing X;
- d) B has an immunity, if and only if A has no power (i.e. a disability) to change B's legal position by doing X<sup>9</sup>.

By this too brief summary of his analysis of rights, we may say that Hohfeld provided a purely technical approach to the fundamental components of jural relations. He set jural relations in a scheme of "opposites" and "correlatives", as follows<sup>10</sup>:

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<sup>8</sup> J.J. THOMSON, *The realm of rights*, cit., p. 68.

<sup>9</sup> J. FINNIS, *Natural law and Natural Rights*, Oxford, 1980, p. 199, as quoted in: E. J. MITNICK, *Rights, Groups and Self-Invention*, Hampshire, 2006, p. 35.

<sup>10</sup> W.N. HOHFELD, *Fundamental Legal Conceptions as Applied in Judicial Reasoning* (1913), in: D. CAMPBELL, P. THOMAS, with an introduction by N.E. SIMMONDS, Adershot, 2001, p. 12.

Jural opposites	right	Privilege	power	immunity
	no-right	Duty	disability	liability

Jural correlatives	right	Privilege	power	immunity
	duty	no-right	liability	disability

If from one side we wonder whether correlativity is an analytical truth whose meaning solely relies upon its meaning, on the other side some other questions arise in the light of the new right perspective. If right terms are all, in their specification, reducible to duty terms, legal rights seem to be lacking in their specific reason for being as they are deprived of any alternative substantive justificatory reason. Legal rights, in such a view, are only semantically justified: the reduction to atomic relationships is a semantic reduction.

In Hohfeld's table of correlatives, there is an even more demanding implication, that is the "two-persons necessarily involving relation"<sup>11</sup>. Also in Italy, one may find an explicit example of the correlativity thesis. Few years before Hohfeld, the Italian Del Vecchio proposed an approach comparable to that of Hohfeld. He had regarded law as logically different from morality: the former is characterized by a mutually bilateral relation between two agents<sup>12</sup> whilst the latter is characterized by unilaterality. To legally conceive an action means, in his view, to conceive it as belonging to an external order: on this relies the logical function of Law. Conversely, moral criteria suppose a possibly internal antithesis of conflicts<sup>13</sup>. In his view the logical specification of law consists of something parallel to Hohfeld's instances of law and the cardinal point of the law's empire is the mutual bilaterality<sup>14</sup>, namely the

<sup>11</sup> W.W. COOK, *Hohfeld's Contribution to the Science of Law* (1919), in: W.N. HOHFELD, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, New Haven, 1964, p. 10; See, also, B. CELANO, *I diritti nella giurisprudenza anglosassone contemporanea. Da Hart a Raz*, in: *Analisi e Diritto*, 2001, pp. 1-58, especially pp. 7-11; M. BARBERIS, *Etica per giuristi*, Roma-Bari 2006, pp. 4-6.

<sup>12</sup> G. DEL VECCHIO, *Il concetto del diritto*, Bologna, 1912, p. 69.

<sup>13</sup> *Ivi*, p. 68.

<sup>14</sup> *Ivi*, p. 69.

correlativity between powers and duties<sup>15</sup>. But, of course, Del Vecchio's straightforward 'a priori' account of law was miles away from Hohfeld's down-to-earth approach.

For the case we are considering, one may wonder: how to manage such a bilateral relation when it comes to "new-globalised rights", lacking in mediation? Let us consider the right to a healthy environment against harmful acts. Who is exactly the corresponding duty-bearer? Further, Hohfeld's argument that only the first typology of rights – the claim-rights – are "rights in the strictest sense", narrows the range of legal rights, thus leading to more complicated consequences. Let us use the same example, the protection of the right to a healthy environment implies sets of further duties and rights: the duty-right of information; the duty of arranging environmental appropriate safety measures; the duty of punishing the transgressors, and so on. Hohfeld's mere correlativity does not hold water: it may only count as one of the possible specifications in the waves of rights and duties<sup>16</sup>.

Although theoretically promising – and we can see this from the large popularity it has gained especially in private law – Hohfeld's strategy does not capture the various parties involved in right claiming as well as the shifting application of legal rules<sup>17</sup>. I relish the idea of conceptualizing rights as relationship – notoriously anticipated by Bentham<sup>18</sup> – but the practical implications of such an approach accordingly fall short.

The strict correlativity thesis was in the same vein advanced by Alf Ross. He defined the norm as a directive which corresponds to certain social facts, such as biological or physical patterns, technical patterns and folk ways<sup>19</sup>. What differentiates a directive from a proposition is its operator, which is in Ross's view expressed by several deontic terms as "ought", "must", "duty", "obligation", etc. all translatable by the words

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<sup>15</sup> See, also, L. VELA, *El Derecho Natural en Giorgio Del Vecchio*, Roma, 1965; G. DEL VECCHIO, *Presupposti, concetto e principi del diritto: trilogia*, Milano, 1959. In 1914, a translation by John Lisle with the title *The formal basis of Law* was published in Boston.

<sup>16</sup> I do agree with the argument settled by J. Waldron, *Rights in Conflicts*, in: *Ethics*, 99, 1989, p. 510; on this point, see, also, M. BARBERIS, *Etica per giuristi*, cit., p. 6.

<sup>17</sup> J. FINNIS, *Natural Law and Natural Rights*, cit., pp. 201-202.

<sup>18</sup> On the relations between rights and duties in Bentham's thought, see: J. DE SOUSA E BRITO, *Falsas e verdadeiras alternativas na teoria da justiça*, in: *Ars Iudicandi. Estudos em homenagem ao Prof. Doutor António Castanheira Neves*, Coimbra, 2008, especially pp. 292-309; H.L.A. HART, *Legal Rights*, in: *Essays on Bentham: Jurisprudence and Political Theory*, Oxford USA, 1982, p. 162.

<sup>19</sup> A Ross, *Directives and Norms*, London, 1968, pp. 83-84.

"so it ought to be"<sup>20</sup>. What all these words commonly express is the feeling of validity and obligation as "the existential basis of norms". Therefore, and in order to stylize normative language, Ross introduces the word "obligation" as the fundamental directive category in which any norm may be expressed. So it may be no wonder that Ross had considered von Wright's argument on *strong* and *weak* permissions as "rooted in fallacies about jurisprudence"<sup>21</sup> and his reasoning as "obviously circular"<sup>22</sup>. Following von Wright's account on norms, the concept of *weak* permission means that an act is not forbidden since the legislator has not decided to command, permit and prohibit its performance. Instead, an act can be said a *strong* permission, if and only if the legislator has expressly decided (thus permitted) on the normative status of it. By virtue of that, a strong permitted act is not a mere negation of obligation but it is identical with the constitutional guarantees of the liberties of the citizen<sup>23</sup>. The crux of the dispute is based on von Wright's view according to which "permission" is an independent normative modality irreducible to the legal language of "obligation". Ross's account on legal modalities and his table of legal modalities is – as he expressly admitted – not his own creation but "a modified edition of one elaborated by Hohfeld"<sup>24</sup>. In spite of that, Ross's view differs from that of Hohfeld in a crucial point: he interprets the normative modalities not only as linked to logical relations of contradiction and correlation but also in terms of legal functions, thus getting to the conclusion that legal modalities are no more than linguistic tools for the knowledge of law (or theoretical constructs serving to systematically represent the law in force (A Ross, 1968). Short of that, too, talks on justice are "det same som at slå i bordet"<sup>25</sup>, no more than expressions of emotions, equivalent to banging on the table<sup>26</sup>. The point is that legal right terms function as disjunction of operative facts and a conjunction of legal consequences so that legal rights are mere "tools of presentation"<sup>27</sup>. Apart from that, words such as

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<sup>20</sup> Ivi, p. 116.

<sup>21</sup> Ivi, p. 124.

<sup>22</sup> Ivi, p. 121.

<sup>23</sup> G.H. VON WRIGHT, *Norm and Action*, London, 1963.

<sup>24</sup> A ROSS, *Directives and Norms*, cit., p. 124.

<sup>25</sup> A. ROSS, *Om Ret og Retfærdighed, Ein indførelse I den analytiske retsfilosofi*, København, 1953, p. 358.

<sup>26</sup> A. ROSS, *On Law and Justice*, London, 1958, p. 274.

<sup>27</sup> Cfr. A. ROSS, *Tû Tû*, in: *Scandinavian Studies in Law*, pp. 139-153; A. SERPE, *Realismo nordico e diritti umani. Le 'avventure' del realismo nella cultura filosofico-giuridica norvegese*, Napoli, 2008, especially chapter 3; T. SPAAK, *Alf*

“duty” and “right” lack of any semantic reference: they are merely linguistic facts. Beyond doubt, Ross was inspired by Axel Hägerström who shockingly – as early as the very beginning of XX’s – had anticipated the strict distinction between normative ethics and meta-ethics later introduced by the adherents of logical positivism and analytical philosophy (see, A. Hägerström’s inaugural lecture *On the truth of moral proposition* delivered in March 1911). Ross asserted that there could not be any scientifically established morality.

This is a too strong and controversial view as it precludes the possibility to rationally resolve ethical as well as legal disputes. This would require some space for comments. Of course, I do not canvass the question here. It is enough to say that whatever be the merits and demerits of Ross’s contribution in contemporary theory, his analysis like that of Hohfeld, clearly proves that legal rights are divested of any anthropomorphic “nature” in such a way to impede any connection with the genuine concept of person. Moreover, in their own views the concept of “legal right” relies upon the existence of *jus conditum*, the positive law. Do their perspectives successfully support a human-centered view? Rather, in their views the positive norms determine what facts constitute the enabling conditions for creating, changing and extinguishing relations. Accordingly, the *quid juris* domain is constitutive of rights. So the analysis of legal rights shadows or simply pushes back the very quest of person.

### **3. Referring to Hart’s legally respected individual choice**

In his analysis of legal rights, Hart had referred to Bentham’s doctrine as – in his words – “*more thought-provoking guide than Hohfeld*”<sup>28</sup>. Bentham’s ‘rational reconstruction’ of the concept of legal rights had – in Hart’s view – anticipated Hohfeld’s table of correlatives in the sense that three of Bentham’s principal kinds of rights correlative to obligation corresponded to Hohfeld’s ‘claim-right’, ‘liberty’, and ‘power’<sup>29</sup>. However, and of the greatest importance, if my interpretation of Hart is correct, I would say that he identifies at least two main potential weaknesses within the benefit theory: 1) the correlativity between duties and rights, more specifically the fact that a right-holder is nothing but the intended

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Ross on the concept of legal rights, in: SSRN 2009, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=923433](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=923433).

<sup>28</sup> H.L.A. HART, *Legal Rights*, in: *Essays on Bentham. Studies in Jurisprudence and Political Theory*, Oxford, 1982, p. 162.

<sup>29</sup> *Ivi*, p. 164.



beneficiary of a duty makes a right being merely an “*alternative formulation of duties*”<sup>30</sup>. This means that my right to not to be killed or abused is nothing but the alternative formulation of a legal duty not to kill or to abuse. (Beyond doubt, I find crucial Hart’s argument. Let us suppose the case in which I should be unfortunately killed: according to the benefit theory translation, it would be simply said that my right not to be killed has been infringed by other’s correspondent duty not to kill me!); 2) the right correlativity to an obligation defined in terms of the intended beneficiary of the obligation, or, in Hart’s words (1982): “*the identification of a right-holder with the person who is merely benefited by the performance of a duty*”, “*is not satisfactory as a necessary condition of having a right*”<sup>31</sup>. So, one may be a direct beneficiary of a duty without having legal control over the duty and, on the contrary, one may have the legal right although not being the person intended to benefit from the performance of the duty. And this commonly occurs in contract law.

Further, Hart explained the term “right” through its usage within complete sentences, thereby he connected the single term to the social and linguistic contexts. A sentence such as “A has a legal right” is nothing but a conclusion of a practical reasoning whose premises are that a legal system exists, that another person B is obliged in doing or abstaining from some actions, that law confers a choice to A or to another person authorized to act on his behalf, to act in such a way to bind B to do x or to abstain from doing x<sup>32</sup>. Hart elaborates an alternative theory of a right as a “*legally respected individual choice*”, so grounding the rights (legal rights) on a substantive justification. Hart (1952) supplemented the notion of individual benefit with the one of individual choice in the sense that for “A having a right” means – broadly speaking – she “*may waive or extinguish the duty or leave it in existence*”<sup>33</sup>. The choice power is the position for a person to choose, either to demand or to waive the performance of a duty by another person.

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<sup>30</sup> *Ivi*, p. 182.

<sup>31</sup> *Ivi*, p. 187.

<sup>32</sup> H.L.A. HART, *Definition and Theory in Jurisprudence*, in: *Law Quarterly Review*, 37, 1952, pp. 16-17. See, also, N. MACCORMICK, *H.L.A. Hart*, Stanford, 2008, pp. 113-114.

<sup>33</sup> *Ivi*, p. 188. I use the expression “*broadly speaking*” as Hart openly acknowledges the limits of both his own and Bentham’s doctrine of legal rights as they do not sufficiently provide with a complete analysis of individual rights, for instance the fundamental rights aimed at protecting individuals even against the processes of legislation. See, pp. 189 ss.

What I intend to stress here is that Hart bended the Hohfeldian approach to the quest of justificatory substantive reasons of rights in the sense that the "*legally respected individual choice*" is the *ratio* of legal rights (a justificatory framework for individual rights as reasons, is at length argued by R. Dworkin. In defense of his idea of individual rights as not ghostly entities, he talks of individual rights as "*political trumps held by individuals*"<sup>34</sup>. Nevertheless, in the light of the "new human rights", "globalised" and without counterparty, the individual choice as a justificatory reason for rights, identifies potential fragilities. The advantages for the right-bearer coming from the performance of a duty do neither help to capture what is truly in jeopardy in the present debate nor provide standards especially useful for understanding the full character of today's new rights. Returning to our example, the right to a healthy environment against harmful acts envisions the difficulty not only in supporting the duty-rights division but also in defending the choice theory of rights. How to specifically identify the duty-bearers engendered by legal rights in such a way for the individual choice to take shape? Hart (1982) apologized for the choice theory was primarily designed "*as accounts of the rights of citizens against citizens; that is of rights under the 'ordinary' law*"<sup>35</sup>. He was aware of the fact that his theory would only be satisfactory on one level – the level of rights under the 'ordinary' law. In other words, such a theory would not be sufficient "*to provide an analysis of constitutionally guaranteed individual rights*"<sup>36</sup>, thus being far from taking the rights against the legislature or the limitation of its powers or the disability of legislature into account. By not having included "*an element corresponding to Hohfeld's 'immunity'*"<sup>37</sup>, Hart provided in fact something parallel to Bentham, notwithstanding his awareness in requiring a criterion of supplementation for his theory.

How to deal with the individuals who can not satisfy the condition of choosing? Would they be deprived of rights? And in particular, would not law secure them any fundamental rights? Hart's exclusion of certain kinds of immunities fits well in his account of legal system as union of

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<sup>34</sup> A justificatory framework for individual rights as reasons is at length argued by R. Dworkin. In defense of his idea of individual rights as not ghostly entities, he talks of rights as "*trumps held by individuals*". He wrote: "*Individuals have rights when, for some reasons, a collective goal is not a sufficient justification for denying them what they wish, as individuals, to have or to do, or not a sufficient justification for imposing some loss or inquiry upon them*"(R. DWORKIN, *Taking rights seriously*, London, 1978, xi).

<sup>35</sup> *Ivi*, p. 190.

<sup>36</sup> *Ivi*, pp. 190-191.

<sup>37</sup> *Ivi*, p. 164.

primary norms and secondary norms and of the term "rights" used expressly in "drawing conclusions of law". If rights do not figure as premises or as "*intermediate conclusions*"<sup>38</sup>, then we lose sight of the justificatory force of inalienable rights as premises within legal reasoning. The upshot is that Hart's will theory has a great piece of trouble accommodating fundamental rights.

#### **4. Referring to MacCormick's legally protected interest**

MacCormick's perspective seems more convincing, somehow. In depicting his renown doctrine of Law as a social practice, he appealed to the more complex phenomenon of moral policy. As to the normative justification of rights, he shifted from the individual choice, towards the notion of interest by speaking of rights-conferring rules as those rules that have "*a specific aim, the protection or advancement of individual interests or goods*"<sup>39</sup>. More generally, he referred to the individual as well as to the collective benefit. In his perspective, if Law has to be a means of social control, the form of generality is required, both in legislation and in adjudication. The appeal to formal justice, as fundamental for the existence of a legal system, is clearly manifested with regard to the justification of rights: "to ascribe to all members of a class C a right to treatment T is to presuppose that T is, in all normal circumstances, a good for every member of C, and that T is a good of such importance that it would be wrong to deny it or withhold it from any member of C. That as for moral right; as for legal rights"<sup>40</sup>. The criteria for membership are grounded on the very social quality of the right itself: it might happen – nowadays this is no wonder – that some individuals are in the position of being right-bearers but not "*in the position to choose, either to demand or to waive the performance of a duty by another person*"<sup>41</sup>. Following MacCormick's argument aimed at displaying the falsity of the choice theory, not necessarily the individual choice grounds rights. And this is not only the case of persons mentally incapable but something which more in general occurs. We could say that this is the paradigm of "new" human rights. MacCormick (2004)

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<sup>38</sup> J. RAZ, *Legal Rights*, in: J. RAZ, *Ethics in Public Domain: Essays in the Morality of Law and Politics*, Oxford, 1994, p. 259.

<sup>39</sup> N. MACCORMICK, *Rights in Legislation*, in: P.M.S. HACKER and J. RAZ, *Law, Morality, and Society. Essays in Honour of H.L.A. Hart*, Oxford, 1977, p. 192. See, also, B. CELANO, *I diritti nella giurisprudenza anglosassone contemporanea*, cit., pp. 35-41.

<sup>40</sup> *Ivi*, p. 204.

<sup>41</sup> See, H.L.A. HART, *Legal Rights*, in *Essays on Bentham. Studies in Jurisprudence and Political Theory*, cit., p. 188.

suggests the awkward example of children as a test-case for theories of rights, as children "are not always or even usually the best judges of what is good for them"<sup>42</sup>, therefore, they "cannot in fact, cannot in morals, and cannot in law relieve his or her parents of their duty towards him or her in those matters"<sup>43</sup>. The Convention on the Rights of a Child, by considering children as physically and psychologically immature, ensures the rights for children through an obligation for another persons, such as parents, guardians or custodians. Because of their immaturity and impossibility of controlling the obligations of other persons, legal rights, in MacCormick's view, represent forms of protections of the interest of an individual. Accordingly, who has the child in care takes the responsibility to raise the child (i.e. art. 5, 7, 9, 18, 19) by fulfilling a range of obligations such as the protection for the child from being harmed or for the third party from being harmed by the child's acts and decisions; to prevent the child from causing damages and committing crimes; to give the child supervision, etc. Children's rights represent a test case for theories of rights in the sense that they should be given protection for the very reason of the incapacity for autonomously choosing, or controlling or waiving the obligation of another person. This is the key-point of rejection of Hart's theory. The Convention is one of the most established examples of how legal rights are supposed to express the "best interest"<sup>44</sup> (Convention, 1989) of an individual whose protection is due to its sufficient importance, so that the others are under an enforceable duty to be performed. Legal rights are, in MacCormick's social democratic perspective, "among the most important institutions of the welfare state"<sup>45</sup> committed to protect both individuals in their own person and their shared equality.

In sum: the correlativity between rights and duties is conceptually possible, but a right can survive albeit the absence of a correlative duty. Surely, this conclusion also provides a more adequate explanation of the "new human rights": a right conferred by a legal norm does not always

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<sup>42</sup> See, N. MACCORMICK, *Children's Rights: A Test Case for Theories of Rights*, in: M.D.A. FREEMAN, *Children's Rights*, Vol. I, Ashgate, 2004, p. 82. See, also, N. MACCORMICK *Children's Rights: A Test Case for Theories of Rights*, in: *Archiv für Rechts – und Sozialphilosophie*, 62, 1976, pp. 305-313.

<sup>43</sup> *Ivi*, p. 73.

<sup>44</sup> As to the notion of "best interest", compare with Art. 3.1. of the UN Convention on the Rights of a Child: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child should be a primary consideration".

<sup>45</sup> L. GREEN, *The techniques and limits of Law: A review of Neil MacCormick, Legal Rights and Social Democracy*, in: *Queen's Journal* 9, 1984, p. 329.

generate a correlative duty, for it may arise or change in the course of time. It appears clear in MacCormick's view that one thing is to say that one has a right (moral right) and another thing is that legal provisions ascribe rights (legal right). Thus, it cannot be denied that the appeal to the interest, individual as well as collective, more adequately accounts for the complexity of a vocabulary of rights as it allows the inclusion of more humans within the category of right holders. In particular, the interest theory more prominently defends the dynamical aspect of rights: accordingly, "having a right" does not only entail a correlative obligation "to waive or extinguish or to enforce or leave unenforced another's obligation"<sup>46</sup>, but the notion of interest also significantly widens the core of the right itself.

This seems to be a more comfortable approach in the very understanding of rights in the view of the constitutional limits of a sovereign legislature in countries such as our own. To acknowledge the moral significance of moral rights is simply useful for a clearer understanding of legal rights and their – at least formal – analogical relationships. *Ubi ius, ibi remedium*<sup>47</sup>.

I think that the importance of this thesis is considerable. But does the notion of interest as justificatory reason for imposing duties properly cover the whole field of legal rights? How to settle criteria to make the interest a basis of a right? To regard an interest as the justificatory basis of a right would lead to an infinite regress to other interests to which a special concern has been attributed. Therefore, I am afraid that behind the appearance, the notion of interest is more sculptured in the mud than in the best white alabaster.

## 5. Common criticisms of the choice and interest theory

Rights, in my view, belong to a great political project: the claim to our individual, political and social rights developed through bloody fights. The history of rights has been the history of fights against the political and economical absolutism, against wild disparities, in short against the law of the strongest<sup>48</sup> and the violent nature of human beings. Uprooted from history and politics, rights – which do not arise once and for all<sup>49</sup> – turn into empty labels and embody in reasons

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<sup>46</sup> H.L.A. HART, *Legal Rights*, cit. p. 188.

<sup>47</sup> N. MACCORMICK, *Children's rights*, cit., p. 75.

<sup>48</sup> Cfr. L. FERRAJOLI, *Quali sono i diritti fondamentali?*, in: *Analisi e Diritto*, 6, 2006, p. 114.

<sup>49</sup> N. Bobbio, *L'età dei diritti*, Torino, 1992, p. xii-xv.

justifying arbitrariness<sup>50</sup>. It is out of question that human rights are *de facto* protected only where political institutions are *de facto* able to protect them<sup>51</sup>. Nowadays, one of the risks of globalization is the emptying of political power in favor of jurisdiction: the paradox of the era of globalization is the claim to new rights and not to democracy and political power<sup>52</sup>. I am not expressing reasons for not holding the political dimension of rights. Someone could object to that, one ground for dissatisfaction with the perspectives discussed above is that rights are a creation of legislators, and that the political assignment of rights and duties might be easily and radically criticized on the ground that it is not neutral but inherently conservative. It should not be unsaid that a range of policies also aims at exploiting the possibilities of human rights.

The great merit of the choice and interest views, consists of having pushed forward the semantic justification of rights towards a matter of substantive reasons and of having considered – more or less openly – rights not as mere logical correlatives of duties. However, in spite of these attractions, rights, in such a perspective, however thought of and justified, only exist as political rights: “*The first point to be made about legal rights – as MacCormick had written – must seem, when made, to be of a breath-taking banality. The point is that legal rights are conferred by legal rules, or (if you will) by laws*”<sup>53</sup>. By saying so, MacCormick was concerned with defending the view endorsed by Raz<sup>54</sup> (J. Raz, 1970). Roughly put, rights can be justified only if legally conferred or recognized by legal rules or laws. Although MacCormick criticized Hart for failing to consider certain kinds of ‘immunities’ in a way that the foundation for the will theory “*is not sound as it sounds*”<sup>55</sup> he did assert that “*in all normal cases rights ought to carry with them powers of waiver or enforcement*”<sup>56</sup>. In accepting the liberal principle embedded in the will theory, he accommodates the outcomes of his own theory with those of Hart’s, save exceptional cases such as that of children’s rights. In this, the choice and the interest theory climb to the same mountain top but from different sides.

How to sort out with the justificatory reasons for future rights? How do we identify grounds for creating rights and correlative duties? What

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<sup>50</sup> P. BARCELLONA, *Le passioni negate. Globalismo e diritti umani*, Troina, 2003, p. 134.

<sup>51</sup> J. RAZ, *I diritti umani senza fondamento*, in: *Ragion Pratica*, 2007, p. 466.

<sup>52</sup> P. BARCELLONA, *Diagnosi del presente*, Acireale-Roma, 2007, p. 89.

<sup>53</sup> N. MACCORMICK, *Rights in Legislation*, cit., p. 189.

<sup>54</sup> . See, J. RAZ, *The Concept of a legal System*, Oxford, 1970, pp. 175-183.

<sup>55</sup> N. MACCORMICK, *Rights in Legislation*, cit., p. 199.

<sup>56</sup> N. MACCORMICK, *Children’s rights*, cit., pp. 81-82.

about the *jus condendum*? If we only engaged in analyzing the notion of right from the legislative angle, we would be incapable to reflect upon our needs of humans as such. The above discussed views can not be taken as exhausting the notion of a legal right, since the very core of legal right must be common to law and morality. Although my following arguments need caution, for it is tempting to pack too much into the notion of right, there is something in the concept of right which escapes the legislator himself.

## 6. Grounds of normativity

It is necessary to refer to other grounds of normativity, beyond positive law. The crux of the matter is this: rights can be approached in terms of legal relations or of their individual or social role, yet the very core of them would not be captured and be hidden in shadow. Hohfeld's instances of law grossly lack in supplying any answer to the issues of the moral significance of having a right and in the understanding of how rights are linked to what people ought to do<sup>57</sup>. In her provoking the Nazi question of rights, Thomson discarded positivist arguments, namely what she calls the Two-Species Thesis: according to it two species of rights differ according to their fall into two different species of sources (legal system and morality). She supposes that the legislator declares that there is no penalty attached to murdering Jews and conversely a penalty to preventing Jews not to be murdered. Whether it is true of the legal system that in case of murder no *legal right* is infringed, what is certainly true is that a *right* is infringed, namely a fundamental right<sup>58</sup>. The greatest difficulties concerning the Two-Species Thesis might be passed in favor of a Three-Species Thesis. Arguably, this thesis is not saddled with the naive assumption that besides legal and moral rights, a third species "rights with both legal and moral sources" exist. For there are many ways to understand what is for a legal system to assign a right as well as many ways to understand what a legal right is<sup>59</sup>. It is rather the other way around. A proper account for both questions would barely switch on moral considerations: a legal right is not by itself generated by a legal system's actually attaching a penalty to a kind of conduct<sup>60</sup>. There are manifest dangers of a vicious circle here.

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<sup>57</sup> J.J. THOMSON, *The realm of rights*, London, 1990, pp. 68-69.

<sup>58</sup> *Ivi*, pp. 74-75.

<sup>59</sup> *Ivi*, p. 74.

<sup>60</sup> *Ivi*, p. 75.

The main problem with the descriptive theories such as that of Hohfeld's lesson of formalism<sup>61</sup>, Kelsen's<sup>62</sup> and Ross's<sup>63</sup> forcedly neutral frameworks is that rights are divested of any practical dimension in the sense that they are not understood as justificatory reasons of our actions, of a particular legal decision and, more generally of law as legal order. How to justify the legal relation of correlativity? Are rights inclusively incorporated by legal relations? And if so, how to appropriately explain the peremptory force of rights? Would the very meaning of "right" be defended in case a legal system should create a morally content-free right?

In my opinion, legal rights are not mere legal instances of law but they do incorporate a value which is specified by their content. This is a crucial point which casts great light on the theory of rights. It is certainly unarguable that Hart's and MacCormick's theories have taken the analysis some steps further. As I have suggested in the foregoing pages, Hohfeld did not apply his analysis of legal rights to non-legal rights. Unlikely, Hart asserted that for an individual's having a right relies upon the legal (or, in certain circumstances moral) acknowledgment of his choice. But once the individual person's choice is legally respected, the doors of the legal system building are locked up and the keys are thrown away. *Ubi remedium, ibi ius*, N. MacCormick, had maintained. This point is clarified by Hart when he accounts rights as conclusions of a legal reasoning and not as premises. Surely, there is much more sense in the view of MacCormick: by denying the universality of correlativity, it makes it clear that a right is not only connected by a purely logic relation of entailment to a duty but it is to be conceived as a reason *because* a duty and/or other forms of protections are imposed. Also Raz, by regarding law as system of practical reasoning is involved in the view that "*legal rules are sometimes hierarchically nested in justificatory structures*"<sup>64</sup>. Thus, the logic of entailment does not provide an overarching solution to the complexity of rights. Nevertheless, to recur to my earlier remarks, the interest theory only has the merit for displaying how controversial and unfeasible is to encapsulate rights into the value of freedom of choice

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<sup>61</sup> In reference to Hohfeld's table of correlatives, one might say that perhaps its neutrality is less than admitted. The correlativity thesis might be based on moral values as it responds to a demand of public justification grounded on equality and respect. See, for example, P. ELEFThERiADiS, *Legal Rights*, cit., pp. 114-119.

<sup>62</sup> H. KELSÉN, *General Theory of Law and State*, Cambridge, 1945.

<sup>63</sup> A. ROSS, *Tû Tû*, in: *Scandinavian Studies in Law*, 1, 1957, pp. 139-153.

<sup>64</sup> J. RAZ, *Ethics in the public domain. Essays in the Morality of Law and Politics*, cit., p. 243.



as an analytic truth. Apart from that, the interest may be itself overridden by other justifiable values. For this reason, the interest theory also shows itself to be sensitive to criticism.

What I intend to stress here is that we cannot account rights without engaging in a practical reasoning: rights play a crucial role within legal deliberation. A conscious turning of attention away from the account of our beings as rational agents would be misleading. Persons are neither angels nor brutes, but rational animals possessing the capacity of being involved in practical reasoning<sup>65</sup>. Kant's argument in favor of autonomy in its special interplay between freedom and responsibility, sheds light on the fact that the justificatory reasons of rights are grounded on reflective and un-fragmented agency and the absolute value of persons. From this it follows that individuals are persons in the sense that they possess the capacity of thinking themselves as free persons. For this, they do acknowledge the autonomy of their own will.

What are the implications of this? When I think from the moral point of view, namely when I ask "what ought I to do?" I construct a set of moral reasons, thus I constrain myself to an interrelated mutual recognition of others in such a way to conceive reasons as public reasons. Moral reasons are neither perceivable nor deducible; they are constructed through a partaking public practice grounded on the recognition of the others as agents endowed with equal dignity. Agents as such, autonomously question on the sources of normativity. Why ought I to do this? Why should I do this? Why should not I do something else? Insofar we engage in questioning on the sources of moral reasons, we understand how reasons for actions generate. If we didn't question, we would fall out of the moral realm and would not be able to recognize certain considerations in favor or against the performance of an action. But *de facto* we do always choose an action, we never act at random. The "*normative question*" arises when an agent acknowledges the truth of a moral claim and wonders about the reason of authority of moral concepts over us. To wonder is to explain how such concepts have the power of ordering, commanding, guiding and obliging us. This means that the sources of normativity are located in the persons' rational activity of judging as – in Korsgaard's words (1996) – "*the capacity of self-conscious reflection about our actions confers on us a kind of*

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<sup>65</sup> C. BAGNOLI, *L' autorità della morale*, Milano, 2007, pp. 20-21; I. KANT, *Grundlegung zur Metaphysik der Sitten*, in: *Kants gesammelte Schriften*, Königlich Preußische Akademie der Wissenschaften, de Gruyter, Berlin, 1902, Vol. IV, pp. 425-427.

*authority over ourselves, and it is this autonomy which gives normativity to moral claims*<sup>66</sup>.

This objection has much to do with Aristotle's framework of ethics. As brilliantly interpreted by de Sousa e Brito, Aristotle distinguishes the end of action – and with it the practical reasoning leading to the performance of an action – between production (*poiêsis*) and practice (*prâxis*). The former characterizes art as well as technique (*techne*). *Poiêsis* is so driven by an idea (*eidos*) or a model according to which an object is to be produced. In this sense, action is only a necessary means in order to fulfill an end though it is not the end in itself<sup>67</sup>. In other words, as Aristotle said (as cited in J. de Sousa e Brito): “*while production has an end distinct from itself, this could not be so with practice, since the end here is the good practice itself*”<sup>68</sup>. De Sousa e Brito understands this sentence as follows: “in the production (and also in the arts) the action is justified in view of a given end whose goodness is not to be justified [...], but in the practice action is to be justified in view of all possible ends”<sup>69</sup>. This implies that such an end of action – in the latter sense – “*can then be said a means for the ultimate end of the good practice*”<sup>70</sup>. Aristotle's words, in view of de Sousa e Brito's interpretation, draws a portrait of practical rationality as construction. From this understanding of *praxis*, the justification of a good practice is done by envisaging every possible ends of action, including the ends of other's actions. Others – as rationally involved in a reflexive activity – can also question how rational the deliberation is, by appealing to their own ends, and then the answer must be given by seeking their approbation.

Aristotle's ethical framework gives my argument force. This human-centered view is crucial in the analysis of rights, of both moral and legal rights, as it demonstrates that rights are first and foremost reasons of our daily practical rational enterprise. The way with which Thomson portrays rights as “cluster rights” (or cluster of Hohfeldian's instances of law) is definitely incisive as it better accommodates today's explosion of the vocabulary of rights. A cluster of rights is aimed at justifying rights and deliberative conclusions. All Hohfeldian jural relations are justifiable

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<sup>66</sup> C. KORSGAARD, *The sources of normativity*, Cambridge, 1996, pp. 19-20. Also, pp. 10-11.

<sup>67</sup> Cfr. J. DE SOUSA E BRITO, *Falsas e verdadeiras alternativas na teoria da justiça*, cit., especially pp. 309-320.

<sup>68</sup> ARISTOTLE, *Nichomachean Ethics*, VI, 1140b, pp. 3-4, 6-7.

<sup>69</sup> J. DE SOUSA E BRITO, *From Mill to Aristotle*, in: [www.fd.unl.pt/docentes\\_docs/ma/jsb\\_MA\\_3990.doc](http://www.fd.unl.pt/docentes_docs/ma/jsb_MA_3990.doc).

<sup>70</sup> *Ibidem*.

through the means of cluster-rights (which are not rights in the strictest sense) as every right, such as “*the rights to life, liberty, and property*”, also contains rights<sup>71</sup>. The concept of “cluster-rights” better engraves the picture of ethics (and law) similar to life with the difficulties of deliberation. Moral disputes in daily life affect the justification and application of legal rights and, vice-versa the application and justification of legal rights affect our moral concern. Let us remember that Thomson analyzed Hohfeld’s table of correlatives, by assuming that her enterprise was not legal, but moral. I shall say straightway that the concept of cluster-rights is also applicable to the legal domain, and in order to adequately account for rights as justificatory reasons (thus as reasons involving individuals’ practical rationality), we cannot pass over their moral content, although it must of course be noted that in the practice of law, legal arguments suffer constraints which are not allowed in ethics (for instance: the doctrine of legal sources, criteria for resolving conflicts between legal norms, etc). The suggestion I have drawn attention to is that, by taking de Sousa e Brito’s enquiry on Aristotle in great concern, and following Aristotle’s concept of *praxis*, the realm of ethics coincides with that of reasons for action. All legal reasons may be ethically justified, though not all legal reasons for actions are ethical (J. de Sousa e Brito, 2008; J. de Sousa e Brito, 2007). This implies that ethical and legal reasons interconnect as reasons in the justification of juridical decisions and of law as an order of rules. Let us remind ourselves the implicit and/or explicit incorporations of ethics within Constitution in countries such as our own.

## 7. Summary conclusions

The theoretical approaches I have presented above, leave many uncertainties unsolved, thereby they are unable to account for the large range of “new rights”. Normativity of rights cannot be caught only by referring to the concept of legal validity or of a rule of recognition since it is neither only a matter for legislators and officials (P. Eleftheriadis, 2008) nor a matter of accommodating socio-economic interests. On the one hand, rights are not *angelic* outcomes of positivity. On the other hand, not every interest may be straightforwardly regarded as the ground of a right (J. Waldron, 1984). Those rights which escape the space of a partaken normative *praxis*, *in view of all possible ends*, would regress to the status of *brute* rights. As relevant today as ever, a proper account for legal and moral rights presupposes normative arguments

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<sup>71</sup> J.J. THOMSON, *The realm of rights*, cit., p. 55.

about individual freedom and responsible agency. If legality and normativity are taken apart, reason goes astray and the person detrimentally lives in fragments. Law and rights are matters of practical realm. This causes that law as a fact is not sufficient by itself if we do not account for the practical role of rights as action-guiding reasons. Put in other terms, if law and rights are not to be taken but as practical matters, then legal validity and legal reasoning cannot be told apart. My concern is that a theory of substantive rights can provide a test-case for general theories about law, even if we must admit that a general legal theory would fail the test in a plain case of moral blindness.

## References

- ARISTOTLE (1908). *Nichomachean Ethics*. (W.D. Ross, Trans.). Oxford: Clarendon Press. Available from <http://www.ilt.columbia.edu/publications/artistotle.html>
- AUSTIN, J. (1869). *Lectures on Jurisprudence, or the philosophy of positive Law*, in: CAMPBELL, R., *Austin on Jurisprudence*, Vol. I. John Murray, Albemarle Street, London.
- BAGNOLI, C. (2007). *L'autorità della morale*, Feltrinelli, Milano.
- BARBERIS, M. (2006). *Etica per giuristi*, Laterza, Roma-Bari.
- BARCELLONA, P. (2003). *Le passioni negate. Globalismo e diritti umani*, Città Aperta, Troina.
- BARCELLONA, P. (2007). *Diagnosi del presente*, Bonanno, Acireale-Roma.
- BENTHAM, J. (1970). *Of Laws in General*, in: H.L.A. HART, Athlone Press London.
- BOBBIO, N. (1992). *L'età dei diritti*, Einaudi, Torino.
- CELANO, B. (2001). *I diritti nella Jurisprudence anglosassone contemporanea. Da Hart a Raz* in: *Analisi e Diritto*, pp. 1-58.
- COOK, W.W. (1919). *Hohfeld's Contribution to the Science of Law* in: 28, *Yale Law Journal*, 721.
- DE SOUSA E BRITO, J. *From Mill to Aristotle*. Retrieved from [www.fd.unl.pt/docentes\\_docs/ma/jsb\\_MA\\_3990.doc](http://www.fd.unl.pt/docentes_docs/ma/jsb_MA_3990.doc).
- DE SOUSA E BRITO, J. (2007). *A Constituição do Direito e o Positivismo Jurídico*, in: AA.VV., *Prof. Doutor Inocêncio Galvão Telles: 90 Anos. Homenagem da Faculdade de Direito de Lisboa*, Almedina, Coimbra, pp. 705-718.
- DE SOUSA E BRITO, J. (2008). *Falsas e verdadeiras alternativas na teoria da justice in Ars Iudicandi. Estudos em homenagem ao Prof. Doutor António Castanheira Neves*, Coimbra Editora, Coimbra, pp. 289-334.
- DEL VECCHIO, G. (1912). *Il concetto del diritto*, Zanichelli, Bologna.
- DEL VECCHIO, G. (1959). *Presupposti, concetto e principi del diritto: trilogia*, Giuffrè, Milano.
- DWORKIN, R. (1978). *Taking rights seriously*, Duckworth, London.
- ELEFTHERIADIS, P. (2008). *Legal Rights*, Oxford University Press, Oxford.
- ENG, S. (2007). *Rettsfilosofi*. Universitetsforlaget, Oslo.
- FERRAJOLI, L. (2003). *Diritti fondamentali e democrazia costituzionale* in: *Analisi e Diritto*, 6, pp. 331-350.
- FINNIS, J. (1980). *Natural law and Natural Rights*, Clarendon Press, Oxford.

GREEN, L. (1984). *The techniques and limits of Law: A review of Neil MacCormick, Legal Rights and Social Democracy* in: *Queen's Journal*, 9, pp. 328-344.

GRICE, P. (1989). *Studies in the ways of words*. Harvard University Press, Cambridge.

HART, H.L.A. (1953). *Definition and Theory in Jurisprudence*, in: *Law Quarterly Review*, 37.

HART, H.L.A. (1982). *Legal Rights* in: HART, H.L.A., *Essays on Bentham: Jurisprudence and Political Theory*, Clarendon Press, Oxford, pp. 162-193.

HOHFELD, W.N. (2001). *Fundamental Legal Conceptions as Applied in Judicial Reasoning by Wesley Newcomb Hohfeld*, in: CAMPBELL, D., THOMAS, P., Ashgate Publishing Company. Aldershot.

HÄGERSTRÖM, A. (1908). *Das Prinzip der Wissenschaft. Eine logisch-erkenntnistheoretische Untersuchung, I, Die Realität*, Almqvist & Wiksell, Uppsala.

HÄGERSTRÖM, A. (1911). *Om moraliska föreställningars sanning*, Bonnier, Stockholm.

JHERING, R. VON (1888). *Geist des Römischen Rechts auf den verschiedenen Stufen seiner Entwicklung* (4<sup>th</sup> ed.). Breitkopf & Haertel. Leipzig.

KANT, I. (2007). *Fondazione della metafisica dei costumi*. (F. Gonnelli, Trans), Laterza, Roma-Bari (original work published 1785).

KELSEN, H. (1945). *General Theory of Law and State*, Harvard University Press, Cambridge.

KORSGAARD, C. (1996). *The sources of normativity*, Cambridge University Press, Cambridge.

MACCORMICK, N. (1976). *Children's Rights: A Test Case for Theories of Rights* in: *Archiv für Rechts und Sozialphilosophie*, 62, pp. 305-313.

MACCORMICK, N. (1977). *Rights in Legislation* in: HACKER, P.M.S. & RAZ, J., *Law, Morality, and Society. Essays in Honor of H.L.A. Hart*, Clarendon Press, Oxford, pp. 189-209.

MACCORMICK, N. (2004). *Children's Rights: A Test Case for Theories of Rights* in M.D.A. FREEMAN, *Children's Rights, Vol. I*, Ashgate Publishing Company, Aldershot, pp. 71-82.

MITNICK, E.J. (2006). *Rights, Groups and Self-Invention*, Ashgate Publishing Company, Hampshire.

POGGI, F. (2008). *Brevi osservazioni sulla retorica dei diritti* in: *Ragion Pratica*, 31, pp. 365-373.

- RAZ, J. (1980). *The Concept of a legal System*, Oxford University Press, Oxford.
- RAZ, J. (1984). *Right-Based Moralities*. In: WALDRON, J. *Theories of Rights*, Oxford University Press, Oxford, pp. 182-200.
- RAZ, J. (1994). *Ethics in Public Domain: Essays in the Morality of Law and Politics*, University Press, Oxford.
- RAZ, J. (2007). *I diritti umani senza fondamento* in: *Ragion Pratica*, 2, pp. 449-468.
- ROSS, A. (1953). *Om Ret og Retfærdighed, Ein indførelse I den analytiske retsfilosofi*, Nyt Nordisk Forala, København.
- ROSS, A. (1957). *Tû Tû*, in: *Scandinavian Studies in Law*, 1, 1957, pp. 139-153.
- ROSS, A. (1958). *On Law and Justice*. Steven & Sons, London.
- ROSS, A. (1968). *Directives and Norms*. Routledge & Kegan Paul. London.
- SERPE, A. (2008). *Realismo nordico e diritti umani. Le 'avventure' del realismo nella cultura filosofico-giuridica norvegese*, Editoriale Scientifica, Napoli.
- SERPE, A. (2008). *The doubting philosopher: Norberto Bobbio. Outlines of his legal philosophy within Italian legal culture*, Universitetet i Oslo, Oslo.
- SERPE, A. (2009). *Oltre l'internalismo e l'esternalismo delle ragioni. Il costruttivismo come risveglio dal sonno*, in: DIAS, A.S., RAPOSO, J.A., ALVES, J.L., D'ALMEIDA, L.D., DE SOUSA MENDES, P. *Liber Amicorum de José de Sousa e Brito. Em comemoração do 70º. Aniversário. Estudos de Direito e Filosofia*, Coimbra: Almedina, Coimbra, pp. 491-505.
- SPAACK, T. (2009). *Alf Ross on the concept of legal rights*, in: SSRN 2009. Retrieved from [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=923433](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=923433).
- THOMSON, J.J. (1990). *The realm of rights*, Harvard University Press, London.
- THOMSON, J.J. (2008). *Normativity*, Illionis, Chicago and La Salle.
- U.N. Convention on the Rights of the Child (1989). Available from <http://www.cirp.org/library/ethics/UN-convention/>
- VELA, L. (1965). *El Derecho Natural en Giorgio Del Vecchio*. Libreria Editrice dell'Università Gregoriana, Roma.
- WALDRON, J. (1984). *Introduction*, in: WALDRON, J. *Theories of Rights*, Oxford University Press, Oxford, pp. 1-20.
- WALDRON, J. (1989). *Rights in Conflicts*, in: *Ethics*, 99, pp. 503-519.

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WRIGHT, G.F. VON (1963). *Norms and Actions. A Logical Enquiry*,  
Routledge & Kegan Paul, London.