

CONCEPTUAL TOOLS FOR LEGISLATORS PART 2: PATHWAYS THROUGH THE WORLD OF LAW

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Abstract

The main purpose of this article is to show a number of implications if legislation is seen as a way of building the world of law. The focus in this connection is on the ways in which the world of law relates to the rest of the World. The paper is structured as follows. It starts with distinguishing between two perspectives on legal rules, the ‘world of law’ perspective that is central in this paper, and the perspective according to which rules are tools in legal argumentation. Second the idea of a more or less separate world of law is elaborated by distinguishing between kinds of facts, by comparing the roles of causal laws and legal rules in structuring the World, and by studying how the different kinds of facts can influence each other. This leads to the third topic of this article, namely the issue how the world of law interfaces with the rest of the world, the ‘outside world’. The basic idea in this connection is that facts in the outside world are transformed by counts as rules into facts inside the world of law (‘input facts’) and that these input facts lead to other facts in the world of law, ending with so-called ‘output facts’ which lead human beings to bringing about changes in the outside world. The chain of facts within the world of law from input facts to output facts is called a ‘pathway through the world of law’. The conclusion formulates and briefly argues for the recommendation to legislators to pay attention to the ‘pathways through the world of law’ which they build by maintaining the set of legal rules.

Keywords

world of law, legal rule, dynamic rule, static rule, rule-based fact, counts-as rule, input fact, output fact, intermediate fact, sanction, power, competence, duty, obligation, permission, prohibition, legal status, claim right, property right, human rights, pathways

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A. Introduction¹

Although legislation can also be used for different purposes, the creation, modification and abrogation of legal rules is still the legislator's main task. Legislation may therefore be aptly described as the maintenance of a set of legal rules. Rules can be used in arguments about the content of the law, and from this perspective, the output of legislation is a tool in the hands of legal reasoners and the study of legislation is an important branch of the theory of legal reasoning. The function of rules can also be seen as independent: legal rules attach consequences to fact situations and they do so 'by themselves'. From this perspective legal rules can be seen as elements of a part of the world which these rules structure. This part of the world may be denoted by the expression 'world of law'. From this second perspective, the task of the legislator is to build this world of law² and to give it structure by means of the body of rules over which the legislator has command.

This article adopts the second perspective. Its main purpose is to show a number of implications of seeing legislation as a way of building the world of law, and the emphasis in this connection is on the ways in which the world of law relates to the rest of the world.³ The argument is structured as follows. First the difference between the two perspectives on legal rules will be developed in order to clarify both that the world of law perspective is not the only possible one, and how it differs from the rules as argument tools perspective. Second the idea of a more or less separate world of law is elaborated by distinguishing between kinds of facts, by comparing the roles of causal laws and legal rules in structuring the world, and by studying how the different kinds of facts can influence each other. This leads to the third topic of this article, namely the issue how the world of law interfaces with the rest of the world, the 'outside world'. The basic idea in this connection is that facts in the outside world are transformed by counts as rules into facts within the world of law ('input facts') and that these input facts lead to other facts in the world of law, ending with so-called 'output facts' which lead human beings to bringing about changes in the outside world. The chain of facts within the world of law from input facts to output facts is called a 'pathway through the world of law'. The conclusion formulates and briefly argues for the

¹ The author wants to express his gratitude to Pauline Westerman and an anonymous reviewer for the *Legisprudence* journal. They commented on two draft versions of this paper in a way that allowed the author to make substantive changes which the author considers to be improvements. Of course, the author takes all responsibility for remaining errors.

² JC Hage, "Building the World of Law", (2007) 1 *Legisprudence*, 359-379.

³ Other aspects have been discussed in JC Hage, "Building the World of Law" (fn. 2) and in JC Hage, "Conceptual Tools for Legislators Part 1: Rules and Norms", (2012) 6 *Legisprudence*, 77-98.

recommendation to legislators to pay attention to these ‘pathways through the world of law’ which they build by maintaining the set of legal rules.

B. Two perspectives on legal rules

On a winter’s day, the rich but somewhat eccentric spinster Harriet Stapleton died at the blessed age of 92 years in her cabin on the moor. In her last will she bequeathed all her worldly goods to her niece Deniece Stapleton, of whom Harriet was very fond. Deniece, however, was not even aware of the existence of Harriet. Moreover, not any family member of Harriet did even know whether Harriet was still alive and where she might live. The inhabitants of the little village where Harriet did her exceptional shopping had not seen Harriet for quite a while, but that was not unusual. Under these circumstances it was not surprising that the passing away of Harriet was only discovered many weeks after it occurred.⁴

This brief story raises the question to whom the possessions of Harriet belonged during the period after she died and before her death was discovered. The answer that seems obvious is that they belonged to Harriet’s niece Deniece, even though neither Deniece, nor anybody else in the world was aware of Harriet’s death and of the transition of ownership of Harriet’s possessions. The rules of inheritance operate even if nobody is aware of it, and through them Deniece became the owner of Harriet’s belongings at the moment that Harriet died.⁵ This idea, that legal rules can operate ‘by themselves’, even if nobody is aware of it, illustrates the perspective on legal rules according to which they are part of a world of law which is to some extent autonomous.

The other perspective, according to which rules are tools in the hands of legal reasoners, is illustrated by a different story. In 2010 the Dutch politician Geert Wilders was prosecuted for hate speech against Muslims. The issues at stake were both legal-technical and fundamental. The legal-technical issue was whether hate speech against the Islam counts as hate speech against Muslims. The fundamental issue was whether some members of society and in particular politicians should be allowed to express their opinion about other members of this society, or their religion, even if they do so in a manner that may be considered as insulting and

⁴ This example, and the following one, have been adapted from JC Hage, “Legal Reasoning and the Construction of Law”, (2012) 7 *i-Lex* issue 16, 81-105, <http://www.i-lex.it/nc/previous-issues/volume-7/issue-16/103-legal-reasoning-and-the-construction-of-law.html>

⁵ I assume here that the law of inheritance which governs this case does not require acceptance of the inheritance.

may very well evoke hatred. Neither one of these issues has an easy answer and the case might well be considered to be a hard one. Several arguments were adduced, pleading in different directions and the court of first instance discharged Geert Wilders (Rechtbank Amsterdam 13-1-2011).

In this second case, it is unlikely that the legal rules applied themselves and that the court only discovered the already existing fact that Geert Wilders was not punishable. That does not mean that legal rules did not play a role in this case, but only that their operation cannot well be characterised as autonomous. The legal rules only indicate what are good reasons in a discussion about the punishability of Wilders, but they do not generate the outcome of the case by themselves.

Both perspectives on rules play a role in legal practice. In easy cases and also in basic legal education, the world of law perspective plays an important role. In hard cases, like the Wilders case, this world of law perspective becomes unrealistic and the rules as tools perspective becomes more attractive. Elsewhere⁶ I have argued that in last instance the tools perspective is the more fundamental one, but that conclusion was drawn in the context of finding the law. If the context is law making, the world of law perspective seems the more attractive one, because legislators aim to determine the content of the law, ad not merely to provide legal reasoners with tools that they can use to their own purposes.

C. The Outside World And The World Of Law

1. Terminology

Following Wittgenstein⁷, we may define the world as the set of all facts. Since there is only one set that contains all facts, there is only one world. There is no separate world of law. However, it makes sense to distinguish within the World (with a capital ‘W’ from now on) a subset of facts which are the result of applying legal rules. This subset will be called the world of law. The rest of the World, all facts that do not belong to the world of law, will be called the ‘outside world’.

⁶ In JC Hage, “Construction or reconstruction? On the function of argumentation in the law”, in C Dahlman and E Feteris (eds.), *Legal Argumentation Theory: Cross-Disciplinary Perspectives* (Dordrecht, 2012), 125-144 and in JC Hage, “Legal Reasoning and the Construction of Law” (fn. 4).

⁷ L Wittgenstein, *Tractatus logico-philosophicus* (Frankfurt a/M, 1984), 1.1.

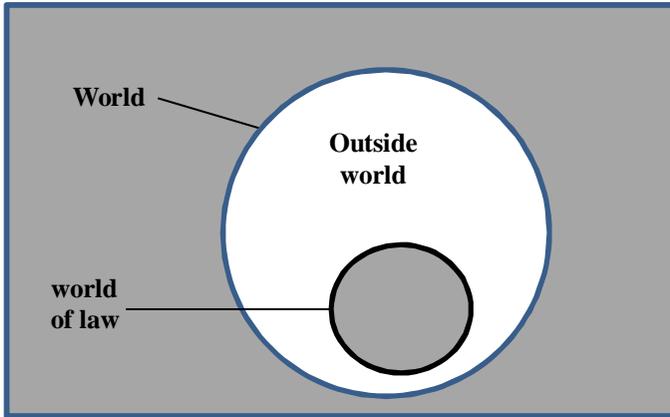


Figure 1: The World

2. Kinds Of Facts

The World consists of all facts, but not all facts are of the same type. We often take some form of ontological realism for granted when it comes to facts. Ontological realism is the view that facts and things exist independent of the mind, and more in particular independent of our beliefs about them.⁸ For many facts this is not adequate. Think for instance of the fact that the United Nations has its seat in New York city, and the fact that tortfeasors are liable for damages. Even though all facts have in common that they correspond to true declarative sentences, the direction of this correspondence differs from one type of fact to

⁸ M Devitt, *Realism and Truth*, 2nd ed. (Oxford, 1991), 13-17.

another type of fact.⁹ In this connection it is useful¹⁰ to distinguish between four or five kinds of facts.¹¹

Objective Facts

The first category consists of facts of which we assume that they are mind-independent. These facts exist, no matter whether anybody is aware of them, knows what they are, or believes in their existence. They include that the highest mountain on Earth is Mount Everest, that computers were invented after 1700 AD, that there are Higgs particles and that the amount of solar systems in the universe equals some as yet unknown number. We will call them 'objective facts'.¹²

Social Facts

Facts in social reality are those facts which exist because they are recognised or accepted by sufficiently many and sufficiently relevant members of some social group. The precise conditions of existence of these facts are still object of discussion¹³, but typical examples from the Netherlands are that sunny weather is good weather, that there is nothing wrong with gay marriages, and that legislation is a source of law.

Rule-based Facts

Many facts are facts because they are the result of the application of some rule, or principle, or the outcome of a real or the best possible argument. These

⁹ More details on the double direction of correspondence in JC Hage, "The Deontic Furniture of the World. An Analysis of the Basic Concepts that Embody Normativity", in J Stellmach e.a. (eds.), *The Many Faces of Normativity* (Kraków, 2013), 73-114.

¹⁰ The usefulness reflects the fact that we humans tend to distinguish between different ways in which something can be a fact. However, in particular with regard to rule-based and subjective 'facts' one may doubt whether there is an objective basis for distinguishing them. And yet, large parts of our discourse on facts only make sense if rule-based facts are recognised as facts rather than as mere figments of our minds.

¹¹ This distinction was inspired by a distinction made by Leiter between different kinds of objectivity. See B Leiter, "Law and Objectivity", in J Coleman and S Shapiro (eds.), *The Oxford Handbook of Jurisprudence and Philosophy of Law* (Oxford, 2002), 969-989.

¹² Notice that all facts, including objective facts, are of the type 'the fact that ...', where the dots stand for some declarative sentence. For this reason, all facts are language-dependent. Cf PF Strawson, "Truth", *Proceedings of the Aristotelian Society*, Supplementary Volume, 1950. Also in PF Strawson, *Logico-Linguistic Papers* (London, 1971), 190-213.

¹³ See for instance R Tuomela, *The Philosophy of Sociality. The shared point of view*, (Oxford, 2010) and JR Searle, *Making the social world*, (Oxford, 2010).

seemingly different categories of facts are taken together because arguments are based on inference rules, while rules and principles need to be applied in arguments. Examples of rule-based facts would be that in chess the person who has check-mated his opponent's king has won the game, that nobody can chair the hockey club for more than two subsequent periods, that $3+5$ equals 8, and that in the EU, States are in general not allowed to subsidize local industries.

In connection with rule-based facts we can make a subdivision based on the issue how the rules that generate the rule-based facts exist. There are two possibilities. Either the rules exist as a matter of social fact, that is by being accepted. This is the case with rules of customary law. Or the rules exist because their existence is the result of the application of some other rule. This is the case for all rules that were made by means of legislation. Facts that are directly or indirectly based on rules that exist as a matter of social fact seem to be more 'solid' than rules based on rules, which are based on rules, which ... etc. Such facts are without foundation, and they are easily confused with the subjective 'facts' soon to be discussed. Facts of critical morality seem to belong to this category, and because they do, some might argue that there are no such facts at all.¹⁴

To give the two kinds of rule-based facts different names, we will call the facts which are directly or indirectly based on rules that exist as a matter of social fact 'founded rule-based facts', and the rule-based facts that lack such a foundation 'unfounded rule-based facts'.

Subjective 'Facts'

The final category consists of facts which are purely subjective, such as the fact that spinach tastes better than Brussels sprouts, and the fact that Peter Green is a better blues guitar player than Joe Bonamassa. Arguably, these 'facts' are not facts at all, but merely personal preferences.

A common mistake in normative and evaluative theorising is to identify unfounded rule-based facts and subjective facts. That this is a mistake is clear from the phenomenon that we consider it as rational to argue about unfounded rule-based facts, and not to argue about purely subjective facts. The identification of the two categories only makes sense if we consider arguments in both cases as equally unreasonable.

¹⁴ It lies beyond the scope of this paper to discuss these unfounded rule-based facts extensively. Arguably they exist if the sentences describing them are true, and these sentences are true if and only if they belong to a comprehensive coherent set of sentences. Details can be found in JC Hage, "Three kinds of coherentism", to appear in M Araszkievicz and J Savelka (eds.), *Coherence: Insights from Philosophy, Jurisprudence and Artificial Intelligence* (Dordrecht, 2013).

3. Interrelations

The facts in the World are often interrelated. For a good understanding of the relation between the world of law and the outside world, it is important to have some insight in these relations between kinds of facts. These relations are either based on causal laws, or on rules.

Causal Interrelations

Causal interrelations exist first and foremost between objective facts. For instance, there can be a causal relation between the fact that something (a piece of metal) is heated, and the fact that it expands, or there can be a causal connection between the fact that a window is hit by a stone and the fact that it breaks.

It may seem that there can also be a causal connection from objective facts to social facts. For instance, there may be an event which makes that most people start to accept a particular rule. But this case is more complicated than the previous ones, because there are two steps involved. First the purely causal one between the event and the acceptance of the rule, and second the conceptual step between this acceptance and the existence of the rule. Arguably this conceptual step is based on the convention (rule) that social rules exist by being accepted and then the social fact is not caused by the objective fact.

No matter how the step from objective facts to social facts is seen, the causal direction goes at most one way only; the existence of a social fact cannot directly cause an objective fact to exist. This impossibility deserves some attention, because it has direct implications for the interface between the world of law and the outside world which is a central theme of this article. It may seem possible that a social fact causes an objective one. A seeming example would be that the fact that somebody is the chair of a society for charitable purposes causes her to be proud. This appearance is deceptive, however, because it is not being the chair that makes her proud, but believing (knowing) to be the chair which has this effect.

At least two objections can be made against this last argument. One objection is that there is at least an indirect link between being the chair and being proud: the fact that she is the chair makes her believe that she is the chair, which in turn makes her proud. It should be doubted, though, that being the chair, an immaterial fact¹⁵, causes her to believe that she is the chair. It is other beliefs, such as the belief that she was elected as chair, which cause her to believe that she is the chair, not the fact itself.

¹⁵ Arguably, objective facts which are material can cause beliefs by causing the brain state on which the belief supervenes. This possibility will not be explored here any further.

But that brings us to the second objection: how can beliefs, which are immaterial, cause other beliefs? One belief may be a reason for having some other belief, but being a reason in this connection is not being a cause. How can immaterial beliefs have causal effects? As immaterial beliefs, I would say that they cannot. But arguably the mental state of believing something supervenes on a brain state, and this brain state may cause another brain state on which the second belief supervenes.¹⁶ In this sense one belief may cause another belief, and still the ‘real’ causal connection is between objective facts about brain states.

Since rule-based facts are by definition brought about by rules, there cannot be a direct causal connection between objective facts and rule-based facts. An indirect connection is possible if the last step in the chain is rule-based. For instance, a car accident causes damage to a car, and a rule attaches an obligation to compensate damages to the presence of this damage. But then the rule-based fact is directly based on the operation of a rule, and only indirectly on a causal relation. Moreover, this causal relation holds between two objective facts.

Purely subjective ‘facts’ cannot be brought about by anything, causal law or rule. The fact that somebody likes spinach can be caused, but this fact is not the same as the ‘fact’ that spinach tastes good. Moreover, these subjective ‘facts’ cannot cause anything either. The fact that John likes spinach may cause him to eat it, but the ‘fact’ that spinach tastes good does not cause anything, not even the belief that spinach tastes good.

Rule-based Interrelations

Only rule-based facts of both kinds can be brought about by rules. They must be brought about by rules, because otherwise they cannot exist. Moreover, on the world of law perspective on rules, rule-based facts are brought about by rules without any human intervention. If the facts that match the rule conditions exist and if the rule exists, the consequences of the rule also exist.¹⁷

Most kinds of facts can trigger rules to make them generate rule-based facts. For instance, the fact that it rains may obligate taxi drivers to take along passengers for free (if there is a rule to that effect). Social facts can also trigger rules, such as the fact that somebody chairs a charitable society can give her the

¹⁶ This argument step presupposes a supervenience view of mental states. This is not the place to argue for such supervenience, but the interested reader can find more information in the lemmas on “Epiphenomenalism” and on “Supervenience” of S Guttenplan (ed.), *A Companion to the Philosophy of Mind* (Oxford, 1994), written by respectively BP McLaughlin (277-288) and J Kim (575-583).

¹⁷ For the sake of exposition, the possibility of exceptions to rules is ignored. In JC Hage, “Rule consistency” in JC Hage, *Studies in Legal Logic* (Dordrecht, 2005), 135-158, it is shown how the world of law perspective on rules can be combined with exceptions to rules (and with conflicting rules, for that matter).

right to open the annual ball of the society. And the law contains an endless list of illustrations of the fact that rule-based facts can trigger rules and in that way lead to new rule-based facts. It is this very possibility which makes the idea of a world of law interesting.

It is not clear whether subjective ‘facts’ can trigger rules. At first sight it may seem possible that a rule would attach a consequence to the ‘fact’ that spinach tastes good. On second thought, however, it is unclear how such a fact might lead to something if it is not a real fact. The temptation is strong to assume that if a fact that seemed to be subjective can trigger a rule, it really must have been an unfounded rule-based fact.

Dynamic And Static Rules

The rules the application of which leads to rule-based facts can be subdivided into dynamic and static rules.¹⁸ Dynamic rules attach new facts, or modify or take away existing facts as the consequence of an event. For example, the event that John promised Richard to give him €100 has the consequence that from the moment of the promise on John is under an obligation to pay Richard €100. In general, rules which lead to the existence of obligations are dynamic rules.

Whereas dynamic rules govern the development of the world of law in time, static rules constrain the facts that can go together at the same moment in time. There are at least two kinds of them. *Fact-to-fact rules* attach a fact to the presence of some other fact. An example is the rule which makes that if P is an inhabitant of the Netherlands, then P has the duty to pay Dutch income tax. Another example is that the Mayor of a city has the competence to make emergency regulations for this city. In general, duty imposing rules and competence conferring rules are fact-to-fact rules.

Counts-as rules make that some ‘things’, often events, count in the law also as something else. For instance, under particular circumstances, causing a car accident counts as committing a tort, or offering money to another person counts as attempting to bribe an official.

Counts-as rules are particularly important to transform ‘ordinary’ facts into facts in the world of law, because the rules that structure the world of law tend to have typical ‘legal’ facts as their conditions. For example, the main Dutch rule for tortious liability attaches the obligation to compensate damage to the event that there was ‘unlawful behaviour’, not to the occurrence of a car accident.

¹⁸ See JC Hage, “Conceptual Tools for Legislators Part 1: Rules and Norms” (fn. 3).

D. The Structure Of The World Of Law

1. Rule-based Facts As Intermediaries

The world of law consists of rule-based facts. Most of these rule-based facts derive their relevance from legal rules which attach additional consequences to them. For instance, the fact that somebody acted unlawfully derives its legal relevance from a rule that attaches the legal consequence that this person ought to compensate the damage resulting from the tort. The fact that somebody is a suspect under criminal law has as consequence that the public prosecutor is allowed to take compulsory measures against this person which would otherwise not have been allowed.

Inspired by Alf Ross¹⁹ I can depict the function of these rule-based facts, often denoted by legal status words²⁰, by the following figure:

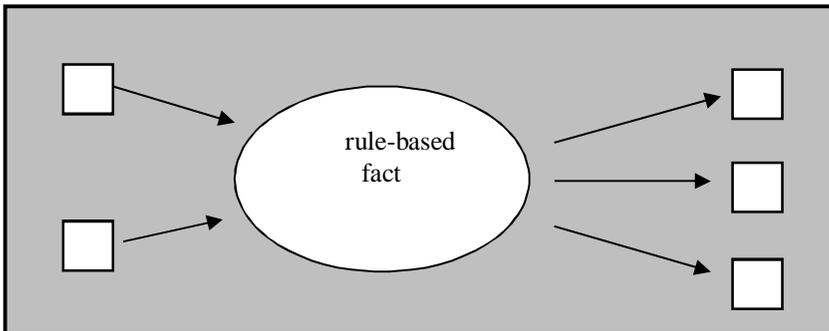


Figure 2: Intermediate facts

The squares on the left stand for different sets of facts which suffice for the presence of the rule-based fact. For instance, there are two different ways in which a person can be a suspect under criminal law: either there are good reasons to assume that this person committed a crime, or criminal prosecution against this person has commenced. The squares on the right indicate the legal consequences which the attaches to the rule-based fact, for instance the different compulsory measures which the public prosecutor is allowed to take against the suspect.

¹⁹ A Ross. 'Tû-Tû', (1957) 70 *Harvard Law Review*, 812-825.

²⁰ See JC Hage, "The Meaning of Legal Status Words", in JC Hage and D von der Pfordten (eds.), *Concepts in Law* (Springer, 2009), 55-66.

2. Transfer Of Real Estate: An Elaborated Example

Often the legal consequences of some legal status are (parts of) the conditions for other rule-based facts. The transfer of ownership in real estate, which makes that the original owner loses the permission to destroy a house while the new owner obtains this permission, illustrates this well. Let us have a closer look at an example case in which A sells her house to B. We assume that the sale takes place in the Netherlands, a jurisdiction that works with a tradition system, where a notarial deed is required to transfer the ownership of real estate.²¹ Then the following will occur.

A and B draw up a document which they both undersign. Under some assumptions concerning the content of this document, the document counts as a sales contract and the event of signing the document counts as entering into a sales agreement. Both the facts that the document counts as a sales contract and that the signing counts as entering into an agreement are rule-based facts. The rules which make that the document counts as a contract and that the signing counts as entering into an agreement are counts-as rules, rules which make that something legally also counts as something else. The facts that result as consequence of the application of a counts-as rule are rule-based facts.

The event that A and B entered into a sales agreement leads to two new facts. One is that A is from that moment on under an obligation to transfer the ownership of the house to B, and the other is that B is under an obligation to pay A the price of the house. Both legal consequences are the result of a dynamic rule which attaches new facts to the occurrence of an event. The existence of both obligations is a rule-based fact.

In order to fulfil A's obligation to transfer the ownership of the house to B, A and B visit a notary who makes up a deed according to which A declares to transfer the ownership and B declares to accept the ownership. This event counts, on the basis of a counts-as rule, as the delivery of the ownership.

Moreover, this delivery in its turn counts as the transfer of the ownership. The delivery can, according to Dutch law, only count as a valid transfer of ownership because of A's obligation to make the transfer, which counts as the title for the transfer.

There is another precondition for the delivery to count as a valid transfer and that is that A had the competence to transfer ownership of the house. This competence is attached to A's ownership of the house by a fact-to-fact rule.

²¹ For an exposition of the difference between consensual and tradition systems, see Lars van Vliet, "Transfer of Movable property" in JM. Smits (ed.), *Elgar Encyclopedia of Comparative Law*, 2nd ed (Cheltenham, 2012), 886-897.

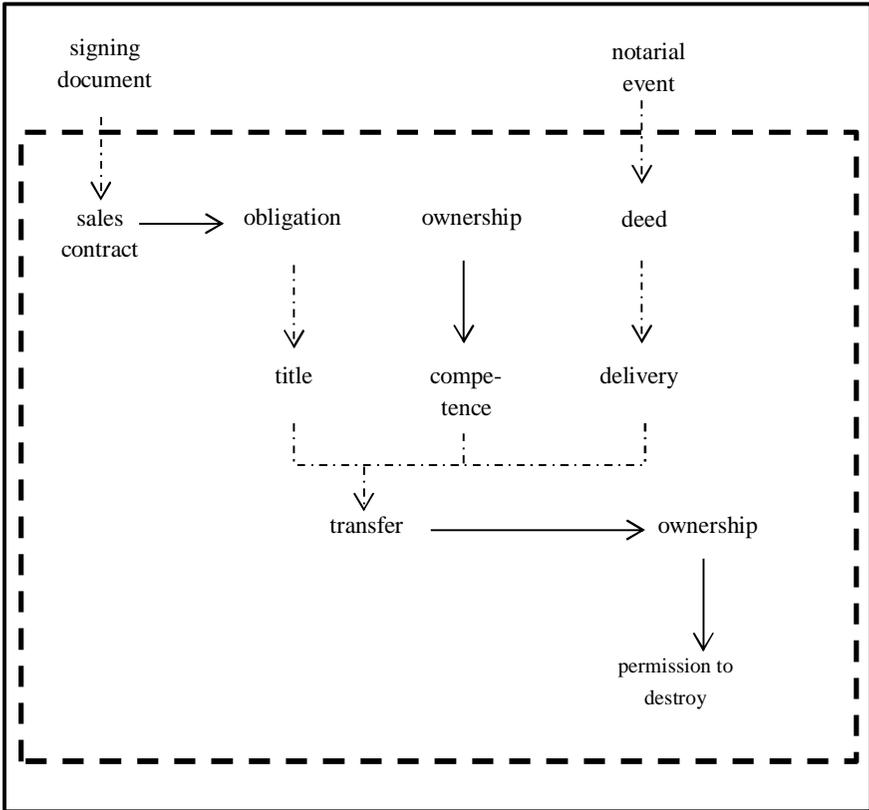


Figure 3: Transfer of real estate

If the transfer of ownership is valid, a dynamic rule attaches to this event the consequences that A has lost the ownership of the house and that B has become the new owner. A fact-to-fact rule attaches to this latter fact that B has permission to destroy the house if he wants to.

The above figure pictures the described events and their consequences. Horizontal arrows represent the operation of dynamic rules. Solid vertical arrows represent fact-to-fact rules, and dotted vertical arrows represent counts-as rules. The facts within the dotted box are rule-based.

F. Interfacing The World Of Law And The Outside world

1. The world of law and the outside world

The world of law is not a toy world for legislators which they can manipulate by creating rules and by events which trigger the operation of these rules. It is meant to have impact on the ‘outside world’, the world that consists of facts which are not the result of the operation of legal rules. In very broad lines, the operation of the world of law can be sketched as follows²²:

Some facts in the outside world count, on the basis of legal rules, as facts in the world of law. In that quality, they play a role in the world of law, usually by leading to other facts in the world of law. For example, taking away a car may, under certain circumstances, count as theft, and lead to the power of a judge to impose a penalty. At the end of the chain the facts in the world of law should impact the outside world again. As we will see, it is far from obvious how this impact of the world of law on the outside world operates.

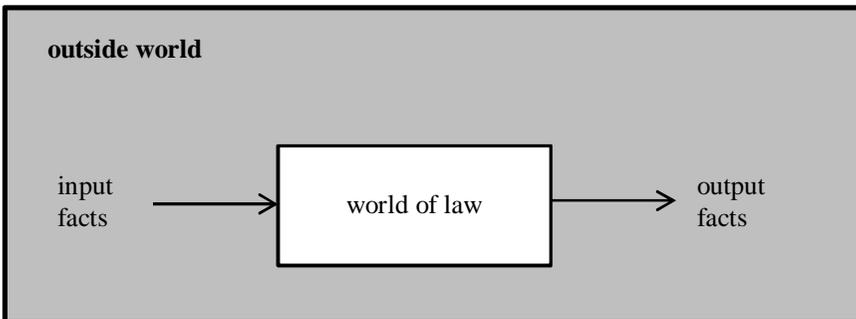


Figure 4: Interfaces with the world of law

²² To make the picture easier to understand, the input facts and the output facts have been positioned outside the world of law. Since both categories of facts are defined in the next subsection as parts of the world of law, be it on the border with the outside world, the picture is not fully accurate. Figure 5 will be more precise in this respect.

2. Input, Intermediate, And Output Facts

The facts in the world of law are interconnected by rules, while the existence of those rules is a fact in the World.²³ Together the facts and the rules form a network of interrelated rules and facts. To answer the question how elements of this network can impact the outside world it is useful to have a closer look at the facts in the world of law and more in particular to distinguish between input facts, intermediate facts and output facts.

Input facts are facts in the world of law which also exist in the outside world, be it under a different name. In the world of law they have a special status that is specified by fact-to-fact and dynamic rules. In our example about the sale of a property right in real estate, the signing of a document is a fact in the outside world. This same fact counts in the world of law as the entering into a sales agreement. What happened at the notarial office counts as the delivery of the sold house. The facts that A and B entered into a sales agreement and that A delivered the house to B are input facts in the world of law.²⁴ They are entry points in the network of the world of law.

Output facts are those facts in the world of law which impact the outside world. One example is the duty – or is it a permission? – of the public prosecution to take away the money that constitutes a fine, or to imprison a criminal convict. Another example is the permission for the owner of a good to use it. In the following subsections we will take a closer look at these output facts and then it will become clear that there are only a few kinds of them.

Every fact in the world of law that is not an input or an output fact is an intermediate fact.²⁵ Most of the world of law consists of intermediate facts. Examples from private law are the facts that somebody has a claim on somebody else, is liable for damages, is married, has a particular name, is the chief executive officer of a company, is competent to transfer a particular property right, has the capacity to make a last will, and many other facts. Examples from public law are that some entity is a state, that a political party got so many votes in the elections, that a judge is competent to review laws against the constitution, that a public

²³ It is not necessary that the existence of the rules that connect facts in the world of law is itself a rule-based fact in the world of law, although this will hold true for by far most legal rules. Rules of customary law would be a counter-example.

²⁴ The idea that facts in the outside world are interpreted as facts in the world of law can already been found in the first (1934) edition of the *Reine Rechtslehre*. See H Kelsen, *Introduction to the Problems of Legal Theory*, (Clarendon Press, 1992), 10. Basically the same idea can also be found in the work of John Searle. See JR Searle, *The Construction of Social Reality* (The Free Press, 1995), 43-51.

²⁵ An output fact may at the same time function as an intermediate fact. For instance, a legal duty may lead to behaviour of the person under this duty, but it may also be a precondition for the existence of another intermediate fact, such as the unlawfulness of the behaviour which violates this duty. This possibility is also indicated in Figure 5.

officer has the competence to grant building permits, that individuals have the right to freedom of expression, and that some particular intergovernmental organisation exists.

The intermediate facts can be subdivided into facts which lead to new facts through the application of dynamic rules and facts which only fulfil a role in argument chains concerning facts which are connected in an a-temporal fashion. Examples of the former are the facts that somebody was granted a subsidy, caused a car accident, or that a Bill was adopted. Examples of the latter are the facts that somebody is the Mayor of a city, is under a contractual obligation, or has a particular name.

Some facts are on the borderline. An example is the fact that somebody has a competence to perform some juridical act such as enter into a contract, pass a Bill, or pronounce a verdict. The fact that someone has a competence does not lead to anything new, but it is a kind of fact which is a necessary precondition for some other events to lead to new legal consequences. For instance, having the competence to transfer ownership in some good is a necessary precondition for a delivery to lead to a transfer of ownership. The competence to legislate is a necessary precondition for a vote to lead to new legislation and therefore to new rules.

Figure 5 depicts the relation between input, intermediate and output facts in the world of law. For reasons that will become clear later, there are no arrows from the output facts to the outside world.

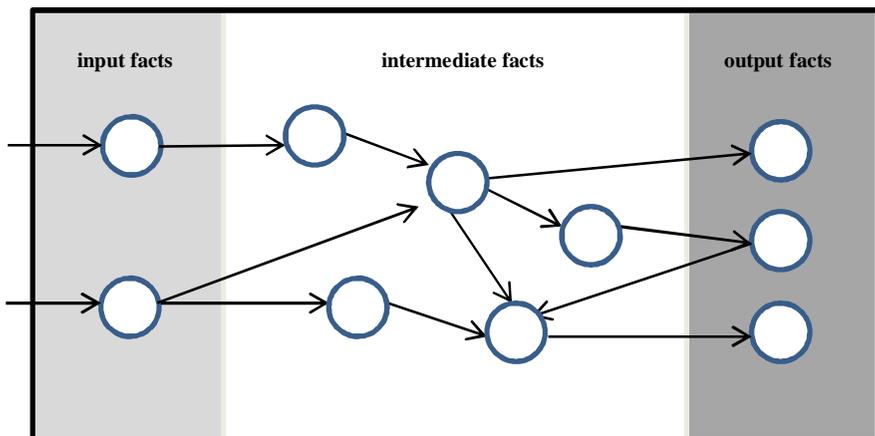


Figure 5: Input, intermediate and output facts

3. Kelsen On Sanctions

The rule-based facts in the world of law are immaterial, because otherwise they could not have been created through the application of a rule. Consequently they cannot impact the outside world in a causal way. Moreover, since the facts in the outside world are not rule-based²⁶, they cannot be brought about by the application of a rule. So it seems that the facts in the world of law cannot impact the outside world, purely for logical reasons. However, the world of law would not make much sense if it could not impact the outside world at all. The question is how this crucial relation from the world of law to the outside world is brought about.

Although this way of phrasing it may be new, the question itself is far from novel. In fact, it played an important role in the way in which Hans Kelsen characterised the law.²⁷ A legal system (*Rechtsordnung*) is according to Kelsen a system of norms based on the same basic norm (*Grundnorm*). These norms regulate human behaviour by prescribing, prohibiting, permitting or empowering (*ermächtigen*) it.

All of this is still compatible with the view that the world of law is completely confined to itself, without any links to the outside world. However, there is according to Kelsen another characteristic of legal systems which gives an indication of how the world of law may be linked to the outside world. This characteristic is that legal systems consists of rules that should be or are enforced (*Zwangsortnung*). The nature of this enforcement is that the law attaches a sanction to illegal behaviour. Or rather, behaviour counts as illegal if and only if the law attaches a sanction to it.

Sanctions are mostly physical events, such as taking away somebody's money, or imprisoning a person. As such they cannot be attached to the violation of a legal duty by means of a rule. That is why Kelsen writes that legal rules create legal duties by determining that some sanction *ought to be* applied in case of violation of these duties. This time, the duty rests on the officials who have the execution of sanctions as their task. The duty of these officials is still a legal ought, though, which has to be backed up by a sanction. Since this sanction is still a sanction that ought to be applied, which seems to lead to an infinite regress of sanctions that ought to be applied backed up by sanctions that ought to be applied, etc. Nowhere does this chain end in sanctions that are actually applied, in the physical reality; all that happens on the basis of legal rules is that duties to enforce duties to enforce duties ... etc. are created. The rules by

²⁶ This is not completely true: a fact in the outside world may be rule-based, be it not based on a *legal* rule. For the argument in this paper, this theoretical possibility can be ignored, however.

²⁷ The following discussion of Kelsen's views is based on Hans Kelsen, *Reine Rechtslehre*, 2nd ed. (Franz Deuticke, 1960), chapter I.

themselves cannot enforce anything.. Kelsen is aware of this complication and writes therefore that the final element of the chain is not a sanction that ought to be applied, but a sanction that an official is empowered (*ermächtigt*) to apply. Since empowerments cannot be violated, there is no need for sanctions to back them up.²⁸

Kelsen's solution for the threatening infinite regress faces two objections. The first objection can be dealt with right away. It is that an empowerment is only necessary for juridical acts (*Rechtsgeschäfte*), and that an empowerment for physical behaviour does not make much sense. For example, a bailiff who is to take away some goods from an insolvent creditor needs a legal permission to do so, and this permission is given in a judicial verdict. However, the bailiff does not need to be empowered to take the goods away, since taking something away is a physical act for which no competence is needed. The first objection that Kelsen's solution does not work because the execution of a sanction does not require empowerment, but 'only' a permission can be overcome by replacing the empowerment which Kelsen proposed by a permission. Officials are allowed to apply a sanction in case a legal duty was violated. Permissions can exist without being backed up by a sanction, and this takes away the threat of an infinite regress of sanctions requiring duties requiring sanctions, ...etc. Therefore the replacement of duties to apply sanctions by permissions to apply sanctions seems to solve Kelsen's problem.

4. The Transition From The World Of Law To The Outside world

The second and more serious objection to Kelsen's solution for the problem of a threatening infinite regress of duties to apply sanctions is that a permission, just like a competence, is still a mere legal status, and that nothing happens if the officials do not exercise their permissions or competences. The existence of this complication is not something that should cause surprise. Legal consequences are brought about by legal rules and legal rules can only have effect in the world of law. Counts-as rules can bridge from the outside world to the world of law, but only in the direction of the world of law, because the facts in the world of law are, in contrast to those in the outside world, rule-based. Legal rules cannot bring about that facts or events in the world of law count as facts or events in the outside world. In a sense, therefore, the problem is insolvable.

Does this mean that the world of law does not impact the outside world at all? Clearly not, but the impact can only be indirect, namely by motivating people to act by changing their legal status. There are at first sight four kinds of status which are candidates for bringing about changes in the outside world, that is legal

²⁸ Hans Kelsen, *Reine Rechtslehre* (fn. 26), 26.

duties, prohibitions, permissions and powers. We will discuss these four in turn and will then consider the possibility of other legal positions being similarly connected to the outside world.

Legal Powers

Legal powers can be taken in a broad and in a narrow sense. Somebody has a legal power in a broad sense if he can perform some kind of act to which a dynamic legal rule attaches a legal consequence. An example would be that somebody can bring about that she has to pay less municipality taxes by moving to another municipality. Another example is that somebody can make himself liable for damages by committing contractual default.

Although legal powers in a broad sense include the power to bring about legal consequences by means of so-called juridical acts (e.g. entering into a contract), juridical acts are not necessarily involved in legal powers in this broad sense. This is different for legal powers in the narrow sense: they can by definition only be exercised by means of juridical acts. In this connection juridical acts may be defined as acts performed with the intention to bring about legal consequences, to which the law attaches these consequences for the reasons that they were intended.²⁹ Both legal powers in the broad and in the narrow sense require the existence of dynamic rules which are triggered by the behaviour of the power exercising person. For the exercise of legal powers in the narrow sense an additional requirement exists, namely that the acting person has the *competence* to perform the juridical act by means of which he intends to bring about the legal consequences. This may be the competence to make a last will, to found a company with limited liability, to create legislation, or to pronounce a judicial verdict.³⁰

Although the existence of a legal power may be a precondition for the performance of some acts, these acts will by definition not be acts which directly impact the outside world. The reason is that legal powers are powers to create legal consequences with the help of dynamic legal rules. These legal consequences are by definition consequences in the world of law, rule-based facts. Therefore legal powers do not provide the bridge from the world of law to the outside world that we are looking for.

²⁹ More elaborate on the nature of juridical acts is Jaap Hage, "A Model of Juridical Acts: Part 1: The World of Law", (2011) 19 *Artificial Intelligence and Law*, 23-48.

³⁰ Here I distinguish between powers and competences, which are seen as different phenomena which exist next to each other. The terms 'power' and 'competence' are sometimes seen as alternative ways of designating the same phenomenon. See for instance T Spaak, *The Concept of Legal Competence. An Essay in Conceptual Analysis* (Aldershot, 1994), 1.

Legal Duties And Obligations

The point of legal duties and obligations is that the persons who are under such duties or obligations comply with them. A legal system can only exist if its participants by and large voluntarily comply with the duties and obligations they are under.³¹ So, if the world of law contains a duty or obligation for somebody to do something, this embodies at least the beginnings of a bridge to the outside world. The connection is not necessarily strong, though, because there is no guarantee that the obligated person will transform this requirement into actual behaviour. For instance, if somebody acted unlawfully and caused damage, he will normally be under an obligation to pay damages. If she violates this obligation by doing nothing, there is still no change in the outside world.

Of course there is the threat of the sanction in case of non-compliance, but this sanction only impacts the outside world if some legal official applies it. The bridge to the outside world should then be looked for in the rule that obligates or permits the official to apply this sanction, rather than in the duty or obligation which is backed up by the sanction.

The bridge from a duty to behaviour in the outside world may become stronger if it is the duty of a legal official. Judges are, we may take it, under a duty to apply the law. Moreover, as a matter of fact, they normally comply with this duty and actually apply the law. If they do not, the reason is most likely that they are mistaken about what the law demands from them. Downright refusal to apply the law is highly exceptional. So if a judge must decide a case the probability is high that her verdict will be in agreement with the law. However, a judicial verdict is a juridical act, and has consequences attached to it by a dynamic rule. These consequences are still facts in the world of law.

If duties and obligations are to bridge the world of law to the outside world, it is better to look at the duties of sanction applying public officers. Bailiffs provide a good example. They may be assumed to comply with the legal rules that impose the duty upon them to apply legal sanctions. So if a judge has convicted a tortfeasor to pay damages and the person entitled to the compensation hires a bailiff to enforce this legal requirement, the bailiff is under a duty to take the money away from the convicted person. Most likely he will comply with this duty

³¹ This is the seemingly obvious point that Kelsen made by his demand that legal systems must be effective because otherwise the presupposition of the basic norm would not make much sense. See Hans Kelsen, *Reine Rechtslehre*, 2nd ed (Franz Deuticke, 1960), 204. Hart made a similar point by claiming that participants in a legal system should by and large take the internal point of view towards the rules of the system. See HLA Hart, *The Concept of Law*, 3rd ed (Oxford University Press, 2012), 103/4.

and this compliance bridges the gap between the world of law and the outside world.³²

Legal Prohibitions

A prohibition is nothing else than a duty not to do something. Compliance with a prohibition means that nothing happens. It may therefore seem unlikely that legal prohibitions constitute bridges to the outside world. And yet it is possible, namely in case something would likely happen if the prohibition were lacking. For instance, if people normally, that is if there were no prohibition, would walk on the lawn, the existence of the prohibition might impact the outside world by making that fewer people tread on the lawn.

Legal Permissions

Legal permissions are only likely to impact the outside world in case the permitted behaviour would otherwise be prohibited and if this prohibition would mostly be effective in the sense that it is complied with for the reason that the behaviour was prohibited. The lawn example can also illustrate this point: if people would not set foot on the lawn for the reason that it is prohibited, then a permission to walk on the lawn may lead more people to tread on the lawn.

Legal Status

Legal rules, whether they be dynamic or static, often attach the presence of some legal status to an event or a fact in the world of law. Examples of such statuses are being the president of the US, being the Mayor of a city, being a criminal suspect, being the head of police, being a vehicle in the sense of the Traffic Law, being the owner of Blackacre, having the capacity to make last wills, land, and so on ... Arguable, even such deontic facts as being under a duty or not being allowed to do something are examples of legal statuses.

It is not doable to run through the list of all kinds of legal status, but a superficial inspection of the examples mentioned above already indicates that the possession of most of these statuses by itself does not lead to any changes in the outside world. That does not mean that the possession of the status of, for instance, criminal suspect has no impact at all, but the impact is indirect. For instance, if P is the suspect of having committed a serious crime, police officers may have the permission to search the body of this person on weapons. It is not unlikely that the officers will perform such a search when P has incurred the

³² In the end, the question whether duties on officials are more effective than duties and obligations on 'ordinary' legal subjects is an empirical one.

status of suspect, where they would not have done so if P would not have incurred this status. However, it is not the status of criminal suspect in itself that changes the behaviour of the police officers, but the permission attached to this status.

In general, the presence of most legal statuses is either an entry or an intermediate fact in the world of law. It may be important for the impact of the world of law on the outside world, but if so, only in an indirect fashion.

General Observations

For purely logical reasons, there cannot be direct bridges from the world of law to the outside world on the basis of causal laws or legal rules. What is possible is that the awareness of a fact in the world of law influences (on the basis of a causal law) the behaviour of human beings. On the world of law model of rules, legal rules autonomously attach legal consequences to facts. Human reasoners can mentally reconstruct this constitution of new facts, and if they do so they will know which new facts are present in the world of law. This knowledge has a counterpart in the outside world in the shape of brain states, and the facts about brain states are objective and can stand in causal relations to other objective facts. The 'bridge' from the world of law to the outside world is made if such a causal relation exists. As argued above, this is most likely with regard to 'deontic' facts such as duties, obligations, prohibitions and permissions, in particular but not exclusively if these deontic facts address legal officials. Where there is no knowledge of facts in the world of law, the world of law cannot impact the outside world.

G. Legal rights

Having a legal right, such as the claim to be paid €100, the title to some real estate such as Blackacre, the copyright to a song text, the right to vote, the right not to be wounded, and the right to education, is a special case of possessing a legal status. For these statuses holds what holds for most legal statuses: they function as intermediate facts in the world of law, and do not have immediate impact on the outside world. Since rights take a special place in law and legal thinking this general point will be elaborated in a short discussion of the nature of different kinds of rights.

1. Claims

Claims are rights in private law which one person holds against another person.³³ If A holds a claim against B, then B is under an obligation towards A to do something, or to refrain from doing something. Typical examples are that somebody has a claim to the payment of some amount of money, to the delivery of some good, or to the performance of some service. The use of the term ‘obligation’ in connection with claims is telling, because claims are the result of an event which brought about the relation between two parties according to which the one party has a claim against the other and the other is under an obligation towards the one. Typical examples of such events are contracts and torts.

Hohfeldian Claims

Claims as defined here differ in several aspects from claim rights as defined by Hohfeld.³⁴ A Hohfeldian claim right is the counterpart of a duty, and nothing else. If A has a claim right against B that B will do X, this means the same as that B is under a Hohfeldian duty towards A to do X.

The first difference to be noticed is that Hohfeld does not use the word ‘duty’ to express a way of being obligated because of some status, but rather for (more or less) the same purpose as the word ‘obligation’ is used in the present article. That is merely a terminological difference and does not have to have any practical implications.

A more important difference is that a Hohfeldian claim right is exhausted by the Hohfeldian duty of the person against whom the claim is held. A claim in tort law or in contract law involves more than merely the mirror side of a Hohfeldian duty. Normally the holder of the claim can enforce the performance of the corresponding obligation, can waive the obligation and thereby end the existence of the claim, and can transfer and pledge the claim and thereby change the content of the corresponding obligation. (If A transfers her claim on B for the payment of €100 to P, then B is from then on under an obligation *towards P* to pay him €100.)

Claims On The Interface?

A person who holds a claim against somebody else has a set of powers which allow him to bring about intentional changes in the world of law. If these powers

³³ To keep the exposition relatively simple, the possibilities that claims are held by more than one person or organisation, or against two or more persons or organisations, are ignored. For the main argument line these possibilities hardly make a difference.

³⁴ WN Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning: And Other Legal Essays* (New Haven, 1920).

are exercised, the only changes that are brought about involve the world of law. To this extent, claims have no direct impact on the outside world.

This is different for the obligations that necessarily go together with claims. If the law is by and large effective in the sense that legal obligations and duties tend to motivate people to act in accordance with them, the obligation of a person B, or rather the awareness thereof, will normally motivate this person to fulfil this obligation. Moreover, obligations tend to be enforceable, which means that if the appropriate steps have been taken, legal officials have the duty to apply sanctions. Obligations are on the interface between the world of law and the outside world. But these obligations are not identical to the claims, although they necessarily go together with them.

2. Property Rights

Claims are rights against some other person. The other main category of rights in private law consists of right on some 'good'. The good can be material, such as land or something movable. It can also be immaterial such as a claim, an invention or the result of artistic creativity. Since these rights are not directed towards one or more concrete persons, they are called 'absolute rights', where 'absolute' does not mean 'unlimited', but 'non-directed'. To keep the discussion relatively straightforward, it will be confined to property rights on material goods, with the right of ownership to a movable good as the prime example.³⁵

Suppose that A owns a book. This implies that A is permitted to damage the book and even to destroy it. Other persons, who do not own the book, are not permitted to damage or destroy the book. In other words, they have the legal duty not to damage or destroy the book.

Notice that the counterpart of ownership is a duty, not an obligation.³⁶ This duty rests on non-owners because of their quality of being a non-owner. A can make an exception to this duty by giving permission to damage or destroy the book. Moreover, A has the powers to forbid any non-owner to use the book and to transfer the ownership of the book to somebody else.

More in general, if A has the ownership of a material good G, amongst others the following legal consequences hold:

³⁵ The following analysis is based on PW Brouwer and JC Hage, "Basic Concepts of European Private Law", in (2007) *European Review of Private Law*, 3-26, but deviates from it in a number of details.

³⁶ More on the difference between duties and obligations in JC Hage, "The Deontic Furniture of the World" (fn. 9) and also in JC Hage, "Conceptual Tools for Legislators Part 1: Rules and Norms" (fn. 3). The basic idea is that obligations are constituted by a dynamic rule as relation to an event such as a contract or a tort, while duties are attached to persons by a fact to fact rule because of their status of being, for example, a criminal suspect, the Mayor of a city, or a car driver.

- all other persons have prima facie the legal duty not to damage or destroy G, or to interfere with A's use and enjoyment of G;
- A is permitted to damage or destroy G;
- A has the power to grant other persons the permission to damage or destroy G and to forbid them to use G;
- A has the power to transfer the ownership of G to somebody else.

Property Rights On The Interface?

A person who holds a property right on some good has a set of powers which allow him to bring about intentional changes in the world of law. In the case of ownership of movables, these include the power to alienate the good, to forbid others to use the good, and to grant them permission to damage or even destroy the good. If these powers are exercised, the only changes that are brought about involve the world of law. To this extent, property rights have no direct impact on the outside world. However, if permissions are granted, the existence of these permissions may lead to behaviour which would not have taken place otherwise. For instance, if somebody was given permission to take the bell of a bicycle owned by somebody else, the person may exercise this permission by taking away the bell.

Property rights do not lead to obligations, but the existence of property rights as a legal institution presupposes a background of general legal duties not to damage or destroy an owned good and not to interfere with the owner's use and enjoyment of the good. If somebody becomes the holder of a property right, this does not create the legal duties, but it gives the pre-existing duties a focus which they did not have before.³⁷ For example, an arbitrary person P is under the general duty not to destroy goods that have a different person as owner. If a particular car belongs to Sheryl, this duty becomes more focused because it now includes the duty not to destroy Sheryl's car. By giving pre-existing duties focus, the existence of property rights may impact the outside world. If somebody catches a bird that was previously free, other persons may be withheld from catching the bird themselves, because that would now amount to interference with the existing ownership of the bird.

³⁷ In this respect, duties differ considerably from obligations, because obligations are new when they originate, while duties already existed when they receive their focus. This difference is exploited to argue how it is possible in connection with obligation-generating events to 'derive ought from is' in JC Hage, "Legal Transactions and the Legal Ought" in Jerzy Stellmach and Bartosz Brozek (eds.), *The Normativity of Law* (Krakow, 2011), 167-190.

3. Human Rights

In the sphere of public law, there exists a range of rights which are taken to adhere to human beings for the very reason that they are human beings. These human rights are quite diverse by nature. Many of them, including the freedoms of religion, expression, and association, involve permissions. Many of them imply duties for states, or even private persons and organisations, such as the rights to education, housing and health care, and the prohibition of discrimination. Others involve powers (right to vote) and limitations on powers (freedom of expression). Most rights exhibit several of these aspects.

4. Two Theories About The Nature Of Rights

As the brief discussion above has illustrated, the law employs the notion of a right in diverse ways. Maybe for that reason very different theories about the nature of legal rights are in circulation.³⁸ Two of those theories, which are historically taken to be each other's opponents, are the will (or choice) theory and the interest theory. Briefly stated, the will theory holds that somebody has a right if the right holder can enforce and waive the duty corresponding to the right at will. The interest theory holds that a legal right is an interest protected by the law.

This is not the place to discuss the advantages and disadvantages of both views on the nature of rights. It is interesting, however, to notice that the will theory emphasises the power of right holders to bring about changes in the world of law by making the duty holder liable to sanctions in case of non-compliance, or by taking away the duty that corresponds to the right. The interest theory, on the contrary, emphasises the legal protection of an interest by the imposition of duties and prohibitions on others than the right holder and by granting permissions to the right holder. Since duties, prohibitions and permissions tend to be on the interface between the world of law and the outside world, the interest theory of rights has a stronger focus on the relation between the world of law and the outside world than the will theory which mainly pays attention to powers, which play their roles in the world of law itself.

No matter which general theory about the nature of rights one adopts, the general picture is that rights impact the outside world mainly by imposing duties and prohibitions and by granting permissions. Powers and limitations thereof 'merely' concern the changes that can be brought about in the world of law itself.

³⁸ Good overviews can be found in NE Simmonds, *Central Issues in Jurisprudence*, 3rd ed, (London, 2010), 275-333, and WA Edmundson, *An Introduction to Rights* (Cambridge, 2004).

H. Pathways Through The World Of Law

Arguably it is the main function of law to guide human conduct by providing mandatory rules. And yet, by far most of the law does not consist of mandatory rules, and most legal rules have not as their primary function to guide conduct. Legal rules are the cement of the world of law, just like causal laws may be seen as the cement of the physical universe.³⁹ Legislators should not see it as their primary task to guide human conduct by means of mandatory rules, but rather to build the world of law and to provide this world with structure by means of rules. And yet, this world of law has a purpose outside itself, and this purpose is to impact the outside world by influencing human behaviour.

To make the world of law fulfil its purpose, legislators should not only pay attention to the internal structure of the world of law; they should also have eye for the interface of the world of law with the outside world. Neither self-defined legal statuses, such as that of legal suspect, or of Mayor, nor legal rights, powers or competences will normally provide the necessary direct interface from the world of law to the outside world. This interface is mainly given by deontic facts such as the facts that somebody is under a duty or obligation to do something, or to refrain from doing something. Permissions which make exceptions to duties or obligations can also fulfil this function of interface. It is these deontic facts that are the main 'output facts' of the world of law.

The world of law can itself be treated as a kind of black box, which takes in facts of the outside world, transforms them by means of counts-as rules into 'input facts', processes them, and provides them with legal consequences in the form of 'output facts'. In order to do so, there must be 'pathways' through the world of law, consisting of facts which are linked by means of rules, either cotemporary, or through a development in time, which connect the input facts to the output facts. The example about the transfer of a house from A to B in section C2 illustrates not only the structure of the world of law, but also such a pathway from the signing of a document and a transaction at the office of the notary to the permission for B to destroy the house of which he became the owner.

If the world of law is to fulfil its function, there must be pathways through the world of law from every input fact to some output fact. Input that does not lead to any output could just as well be disregarded by the world of law. Output which cannot be reached by any input makes little sense. This may seem obvious, but nevertheless legal practice shows that this guideline to safeguard pathways from the input facts to the output facts is not always observed. Human rights law is a case in point. Human rights treaties impose duties on the participating States to 'respect, protect, and fulfil' the rights to which the states have committed

³⁹ Cf. the title of JL Mackie, *The Cement of the Universe* (Oxford, 1980).

themselves.⁴⁰ However, apart from some special settings such as the one provided by the European Convention on Human Rights, the possibilities for right holders to enforce their rights are limited. Possibly this is the reason why the steps from the existence of a human right and the State duties that are attached to them, via the recognition that these duties actually exist, to the compliance with these duties and actual behaviour in the outside world, are far from obvious. Arguably, the human rights legislators – that is the States who engaged in the human rights treaties – did not take care to ensure that the path through the world of law, human rights law in this case, ended with output facts which could fulfil their function of impacting the outside world.⁴¹

To speak of the world of law and of pathways through it is only a metaphor. But it is a metaphor which provides the legislator with a useful perspective on his tasks: he must create a well-structured world, and one aspect of a good structure is that there are rule-defined pathways through the world of law from every input fact and to every output fact. Moreover, as the human rights example illustrates, the legislator must pay attention to it that output facts can only function as such if the awareness thereof motivates human beings, or collective actors such as States, to adapt their behaviour to these facts.

⁴⁰ F Mégret, “Nature of Obligations”, in D Moeckli, S Shah and S Sivakumaran, *International Human Rights Law* (Oxford, 2010), 124-149.

⁴¹ One can even imagine that some States did not do this on purpose.