Norm Structure in Fundamental Rights: 
From Addressees to Legal Positions

Extended abstract

Fundamental rights norms, as all norms, comprehend a triadic structure of antecedent, deontic operator and consequence:
- for instance «q P r»;
- representing «[q] in any opportunity of expression [P] it is allowed to [r] do it».

The common analytical notations of norms, currently based on representing material content in those structural elements, are, however, reductive. Norms also define addressees and the representation of norms is only complete when that subjective side is integrated as well.

Norms can have three subjective fields, meaning that in the norm structure there might be three circles of addressees.

First, and only when the antecedent regards human actions and not states of affairs, there is the antecedent subjective field (antecedent addressees):
- for «q», «those who have an opportunity of expression»;
- antecedent: «q (those who have an opportunity of expression)».

Second, and within the consequence, there is the subjective field of those who perform the action (or omission) foreseen (consequence direct addressees):
- for «r», «those who are allowed to express themselves»;
- consequence: P (those who are allowed to express themselves) b.

Third, and also within the consequence, and when the norm creates a three-point relation, there is the subjective field with those who are connected with the action (or omission) previously mentioned (consequence indirect addressees):
- for «r», «those who cannot prevent or interfere with the expression of others»;
- complete consequence: P (those who are allowed to express themselves) b (those who cannot prevent or interfere with the expression of others).

This leads to understand that a complete norm has to be something like this:
- q (antecedent addressees) P (consequence direct addresses) b (consequence indirect addressees).
Subjective fields in fundamental rights norms can be fulfilled, as in all norms, with three classes of addressees: (i) all, (ii) some, or (iii) one. This classes are:
- all: when the circle is defined by all persons in the legal order (for instance, «every person»);
- some: when the circle is defined by a subcategory in the legal order (for instance, «workers»);
- one: when the circle is defined by a determinate subject in the legal order (for instance, «the State»).

One of the main steps when interpreting a fundamental right norm sentence is, precisely, to decode which class of addressees is foreseen in each subjective field. Generally speaking, this is done by what is written in the norm sentence and with the definition made in other norms, establishing the definition of circles. For instance:

- «all citizens have freedom of expression» (q [citizens] P [citizens] b [citizens]);
- with «foreigners living within the legal order have the same rights that citizens do», then:
- «all have freedom of expression» (q [all] P [all] b [all]).

Directly from the norm sentence or with other norms defining the circles of addressees, with a norm sentence like «every person shall have the right to freely express and disseminate his opinion in speech, writing and pictures […]» (Portugal 37, Serbia 46, Germany 5,) the complete representation can be done as follows:

- [q] in any opportunity of expression [P] it is allowed to [r] do it;
- q (all) P (all) b (all);
- under the interpretative arguments that sustain the interpretative proposition regarding subjective fields, «freedom of expression» can be stated as not against «the state», but against «every person».

The definition of subjective fields for each fundamental right norm helps to understand some controversial issues in the theory of fundamental rights. Two examples can be offered: (i) conflicts of a norm with itself, and (ii) the so-called horizontal effect.

For the first. If it is not completely understandable how can a norm conflict with itself, the scenario becomes more comprehensible if one accepts that a norm with «all» or «some», as consequence addressees, can enter into a conflict that, being with itself, it is a conflict among different addressees. Since there are so many «freedom of expression» particular norms as each one of the «all» addressees, it is understandable that a case consisting in two incompatible exercises of «expression» is no more than the conflict between the same norm under two addressees. Thus, and being a partial-partial conflict, unable to be solved by norms of conflicts, only balancing can provide a solution, which means, thus, that balancing is the common tool to solve this kind of conflicts. For instance:

- if John wants to say something and Tom wants to say something as well, but, for some empirical reason, only one of them can speak, then «q P r» is in conflict with itself;
- «q P r» in conflict with itself is only understandable because what is really in conflict is «q (John) P (John) b (Tom)» and «q (Tom) P (Tom) b (John)», two particular refractions of the same norm.
For the second. If a norm has a subjective structure that connects «persons» with other «persons», as it happens in the «q (all) P (all) b (all)» structure, then the horizontal effect is something that is given directly from that norm:

- if John (consequence indirect addressee) has the duty to not interfere with the exercise of Tom’s freedom of expression (consequence direct addressee), and if this duty is immediately defined by the circle of normative addressees, then the horizontal relation is directly established by the norm «q P b».

On the contrary, if a norm has a subjective fields structure different than «q (all) P (all) b (all)», specifically with a class of «one» in the direct consequence addressees, then there is no horizontal effect. For instance, with the «right to social security», where there is a duty for the State to act and a correlative right to each one of «all»:

- q (all) O (State) s (all);
- no horizontal effect is recognizable, since the norm only connects the State to each one of «all».

The main point on assimilating subjective fields into norms can be found, however, in the definition of fundamental rights norms legal positions. The main claim here is that fundamental rights norms legal positions can be explained in a basic scheme of rights and duties defined by the deontic operator and only with two types of rights (rights to an action and rights to act without interference) and two correlative types of duties (duties to act and duties to not interfere).

- duty to act (Da) ↔ right to an action (Rta);
- right to act without interference (Ra~i) ↔ duty to not interfere (D~i).

First. Fundamental rights norms legal positions are just what is conferred by an individuated norm structure with a specific deontic operator connecting both consequence subjective fields. Thus, fundamental rights norms legal positions can be fully listed by the following examples:

- with «every person has freedom of expression», there is a norm like «q (all) P (all) r (all);»
- then the norm confers a right to act without interference (Ra~i) and a duty to not interfere (D~i);
- with «the State has to realize social security provisions», there is a norm like «q (all) O (State) s (all);»
- then the norm confers a duty to act (Da) and a right to an action (Rta);
- with «human life is inviolable», there is norm like «q (all) F (all) ~l (all);»
- then the norm confers a duty to not interfere (D~i) and a right to act without interference (Ra~i).

Second. This four legal positions conferred by fundamental rights norms show that the common distinction between «rights» and «liberties» only has deontic grounds if a «right» is a «right to an action» and a «liberty» is a «right to act without interference».

For instance:

- if the norm is «q (all) F (all) ~l (all)» (Portugal 24, Serbia 24);
- then the norm establishes a «liberty» under a prohibition;
- the same with «q (all) P (all) l (all)» (Germany 2/2);
- in both cases, a «right to act without interference» correlative of a «duty to not interfere».
Third. Rights to act without interference is a common position for all the cases that can be called «liberties» because all «liberties» are directly protected - and in the same way - by the norm that creates simultaneously the «duty to not interfere». A greater protection than the «duty to not interfere» depends on a third norm. For instance:
- with «everyone has freedom of enterprise» there is a norm like «q (all) P (all) w (all)»;
- under this «liberty», John and Tom can both win Ian as a costumer;
- however, there is a «duty to not interfere» for both John and Tom;
- this «duty to not interfere» imposes to each one of them to respect the others offer to Ian;
- thus, the reason for the apparent «less» freedom they have rests on the fact that they have both simultaneously the «right» and the «duty» «q (Tom) P (Tom) w (John)» and «q (John) P (John) w (Tom)»;
- Having another protection than a «duty to not interfere» only can come from another norm; for instance, a norm establishing anti-competitive offers.

Fourth. This necessary means that a «positive liberty» is something that, in a norm individuation basis, does not exist: in the structure of «right to act without interference» there must be a third norm conferring the right to an action. For instance:
- in «q (all) P (all) r (all)», there is only a D~i to the consequence indirect addressees;
- a positive protection of the «liberty» (Ra~i) necessarily has to be conferred by other norm;
- for instance, something like «newspapers have to publish answers from offended readers».

Fifth. Since fundamental right norms do not define the capacity (or competence) of the addressees, the content of these positions (primitives) depends on other norms defining their «power». With a normative structure where consequence indirect addressees are «all», it is visible that there are different «powers» among them. For instance:
- in «q (all) P (all) r (all)», there is only a D~i to the consequence indirect addressees;
- if the indirect consequence addressee is Tom, then Tom is forbidden to physically prevent John from speaking, as he is forbidden to celebrate a contract with Ian to prevent John from speaking;
- if the indirect consequence addressee is the State, then the State is - at least prima facie - forbidden to enact a norm or a decision that somehow prevents John from speaking;
- however, and just from «q (all) P (all) r (all)», there is no duty for the State to «promote» freedom of expression.