Obligations Directed from Bearers to Counterparties

Henning Herrestad and Christen Krogh
NRCCL and Department of Philosophy
University of Oslo

Abstract

This article provides a logical analysis of the concepts of directed obligation, prohibition and permission. These concepts are used to express normative relations between a bearer and a counterpart. They play a predominant role in Hohfeld's analysis of rights. On our analysis, a directed obligation is defined as a conjunction of a statement expressing that a bearer ought to do a certain act and a statement expressing that it ought to be the case for the counterpart that the bearer does this act. A similar definition is offered for directed prohibition and permission. The proposed analysis is discussed in view of two competing theories of rights: the benefit theory and the claimant theory. The present proposal is found to be supported by the benefit theory.

1 The problem of how to represent directed obligations

This paper contributes to the formal analysis of the concept of rights in the tradition from Hohfeld, Kanger and Lindahl. In a number of papers, Allen and Saxon have defended the value of a formal representation of rights when making programs to aid the process of drafting or interpreting law (cf. [AS86], [AS93a], [AS93b]). Concerning the relevance to automated tools for legal drafting, see also [HG93]). This supports the relevance of our paper to AI and Law. Furthermore, Jones and Sergot argue that certain complex systems are best analysed from a 'normative perspective', and suggests Lindahl's analysis as a useful tool (cf. [JS93]). In [Kro95] it is argued that a representation of normative relations discussed here may be useful to the design of multi-agent systems, as these systems have reached a level where full regimentation is impossible and reliance will be based on the ability to make contracts between agents. This suggests the relevance of the present paper to mainstream AI as well.

Hohfeld perceived statements about rights as statements concerning a legal relation between a bearer and a counterparty (cf. [Hoh66]). Typically, Hohfeld perceived a right for an individual towards an individual that a state of affairs is the case, as a claim held by against that a state of affairs is brought about by . Moreover, he held that this claim of against correlates to an obligation on towards that sees to it that . This is what we term a directed obligation from the bearer to the counterparty. Introducing a semi-formal notation, we may represent Hohfeld's correlation between a claim and a directed obligation as:

\[ \text{Claim}(j, i, A) \equiv \text{Ought}(i, j, A) \]

reading: " has a claim against that , if and only if, has an obligation towards that ." As noted by Waldron, we need to analyse what distinguishes obligations held towards someone from obligations lacking this type of direction in order to justify this correlations between one individual having an obligation and another individual having a claim (cf. [Wal84, page 8]).

A formal explication of Hohfeld's concepts was first proposed by Stig Kanger (cf. [KK66], [Kan71], [Kan72]), where statements of the form \( O(EA) \) are used to explicate Hohfeld's conception of rights. Here \( O \) may be regarded as the obligation operator of Standard Deontic Logic (SDL), \( E \) is an intensional action operator with a classical modal logic of type ET (cf. [Che80]), and \( A \) expresses a state of affairs. A sentence \( EA \) may be read as "the individual sees to it that \( A \) is the case". A sentence \( O(EA) \) may be read as "it is obligatory that sees to it that \( A \) is the case". (The rest of Kanger's explications of Hohfeld's concepts are obtained by the various possibilities for negating the sentence or the modal operators.)

Note that Kanger's explication lacks reference to the counterpart of the obligation; i.e. Kanger can be interpreted as stating the following:

\[ \text{Claim}(j, i, A) \equiv O(i, EA) \]  

As we have an equivalence, we may infer from any sentence \( O(i, EA) \) that there is some other individual that

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has a claim on i with respect to A. That this may lead to counter-intuitive inferences is illustrated by the following example: Let $O(i, EA)$ represent that it is obligatory that the policeman i sees to it that ‘the murderer j is arrested’. On Kanger’s equivalence it is implied that the murderer j has a claim (right) against the policeman i that ‘the murderer j is arrested’ (cf. [Lin94]). Generally, we get the counter-intuitive inference that there are arbitrary bearers of claims (rights) whenever someone has an obligation.

That the reference to the counterpart is missing is not apparent, as Kanger puts $A(i, j)$ instead of $A$ in ordinary cases, $i$ and $j$ figure in a non-redundant way, $A$. Kanger defends his representation by stating that, in and in many such cases we may talk of $i$ and $j$ as standing in a right-relation (i.e. as bearer and counterpart y of a directed obligation). But Kanger does not make any suggestion concerning how to make a representation in which these particular non-redundant cases may be distinguished from the redundant ones.

Kanger may be interpreted as having introduced his theory of atomic types of right in an attempt to include reference to a counterpart for his rights statements (cf. [KK66]). An example of an atomic type of right is the conjunction:

$$O(i, EA) \land O(j, EA)$$

Kanger informally read (3) as ‘a right for j of the type claim, not counter-freedom that $A$.’ However, as noted by Makinson [Mak86, page 420], each of the two conjuncts may represent an obligation directed at another counterpart other than a conceptually trivial role in the statement $A$. Kanger defends his representation by stating that, in ordinary cases, $i$ and $j$ figure in a non-redundant way, and in many such cases we may talk of $i$ and $j$ as standing in a right-relation (i.e. as bearer and counterpart of a directed obligation). But Kanger does not make any suggestion concerning how to make a representation in which these particular non-redundant cases may be distinguished from the redundant ones.

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Lindahl proposes an improvement of Kanger’s representation (cf. [Lin94]). He uses a predicate $W(i, j)$ interpreted as ‘$j$ is wronged by $i$’ to make what is often termed an ‘Andersonian reduction’.

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Kanger’s representation of $j$’s claim that $i$ sees to it that $A$ as $O(i, EA)$, Lindahl suggests writing:

$$\square(-i, EA) \supset W(i, j)$$

We read (4) as ‘it is necessary that if $i$ does not bring about that $A$, then $j$ is wronged by $i$’. This explication does not suffer from a loss of direction. Furthermore, it makes explicit the important idea, which we shall discuss below, that the counterpart is someone who benefits by the fulfilment of the right and is wronged by its violation. We find it unsatisfactory, however, to represent rights only in terms of someone being wronged on the occurrence of a non-action, as we find it intuitive that such a wrong should be the result of the non-fulfilment of an obligation.

### 2 Bearer-relativised ought-to-do statements

As noted above, Kanger’s deontic operator is isomorphic to the $O$ operator of SDL. In a recent paper, we point out that a formula $OA$ of SDL is ambiguous in two different respects (cf. [HK95]). First, it is uncertain whether $OA$ expresses that all individuals ought $A$, or whether only some individual, or some particular individual, ought $A$. Secondly, it is uncertain whether $OA$ expresses that it is obligatory to see to it that $A$ is true, or simply that $A$ ought to be true.Conventionally, $OA$ is read as “it ought to be the case that $A$”. Castañeda argues that this reading indicates that SDL is the logic of ought-to-do statements of preference rather than a logic of ought-to-be statements prescribing a course of action to some specific individual (cf. [Cu70, page 452]). To avoid both ambiguities, we suggest to represent the latter statements as $iO(i, EA)$ reading “$i$ is obliged that $i$ sees to it that $A$”. The only difference from Kanger’s representation is the index on the obligation operator.

The definition $OA \equiv \square(-i, EA)$ where $\square$ is a modal necessity-operator and $s$ is a propositional constant which symbolizes that something bad is true or that a violation has occurred (cf. [And58]).

This argument generalizes to hold for most reductions of the Andersonian kind. The notion of bad, sanction, or wronged seems to arise from the non-fulfilment of an obligation, not vice-versa.

Surveying the literature on deontic logic, we found that: in [Han70] $OA$ means “it is obligatory for everyone to do $A$”; in [Kor75] $OA$ has an even stronger meaning implying the meaning above; in [Hin71] $OA$ means that some particular individual is obliged that $A$; while in [Hil74] $OA$ has the weak meaning of an obligation that $A$ implied by the existence of an obligation that $A$ for some, non-specific, individual. In [HK95] we use these differences to argue for a multiplicity of notions of obligation of varying strength. Here we shall only argue that these differences illustrate the need to place an index on the obligation operator to indicate that it is an obligation for some specific bearer.

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2 Hence Kanger perceives $j$ as bearer of the claim that $i$ sees to it that $A$ and $i$ as the bearer of the correlative obligation to see to it that $A$. The obligation that $j$ also sees to it that $A$ is irrelevant to this correlation. The atomic type includes this obligation as it is logically compatible with the obligation that $i$ sees to it that $A$; i.e. one atomic type or other includes each normative relation compatible with any other normative relation expressible as $\square_iO(i, EA)$.

3 An ‘Andersonian reduction’ of a deontic operator is given by
indicating that the obligation is relativised to a particular bearer. We shall consider each individual in question to have one such corresponding obligation operator \((O_i, O_0, \ldots)\). As we do not aim at making a contribution to the discussion of how to represent conflict and conflict resolution between obligations, we shall simply regard each operator \(O\) as a relativised SDL operator; i.e. as having a normal modal logic of type \(KD\) (cf. [Che80]). Semantics for \(O\) are given in the conventional way. The following truth conditions suffice for the bearer–relativised obligation operator:

\[
\mathcal{M}, \alpha \models iO A \text{ iff } R_i(\alpha) \subseteq A
\]  

(5)

reading: "\(iO A\) is true at a world \(\alpha\) in the model \(\mathcal{M}\), if and only if, \(A\) is true at all worlds that are ideal relative to \(\alpha\)." We do not want to make syntactical restrictions on the scope formula, but, as suggested by Kanger’s explication, it is only when the scope formula is an action sentence of the form \(iE A\) that it is suitable to interpret the deontic statement as an ought–to–do statement. We again follow Kanger in regarding the logic of \(iE\) to be a minimal modal logic of type \(ET\). Furthermore, we follow Hintikka in regarding the semantic notion of \(ideality\) to be qualified as a preference for worlds where all obligations holding in \(\alpha\), the world in evaluation, are fulfilled (cf. [Hin69, page 186]).

As we introduced this paper by pointing to the need to represent directed obligation, we might question whether such non–directed obligations are needed in the representation of law. Without preempts the subsequent analysis of directed obligations, we suggest that legal duties towards animals, like the Norwegian statute prohibiting the exhibition of live fish in a shop window, must be represented simply as a non–directed obligation on the shopkeeper that he sees to it that no live fish is exhibited in his shop window.

\[6\] Even if we hold the conjunction \(iO A \land iO \neg A\) to be not satisfiable, we hold the conjunction \(iO A \land iO \neg A\) to be satisfiable; i.e. the so–called \(D\) schema holds only relative to each individual. Because of this we are able to represent conflicts between obligations belonging to different bearers, but we have no mechanism for resolving them. It is not certain, though, that all conflicts between obligations are resolvable: there may be real dilemmas. The reader interested in suggestions for how to represent conflict and conflict resolution between obligations should take a look at the proceedings of ICAIL–93 (and will probably find papers of relevance in the present proceedings as well).

\[7\] The semantics are given by a model–structure: \(\mathcal{M} = (W, \mathcal{R}, I, P)\). We interpret \(W\) as a set of worlds = \{\(\alpha, \beta, \gamma, \ldots\)\}. \(P\) is a (standard) valuation function which assigns the values true or false to a sentence at a world in \(W\). \(I\) is a set of individuals \(\{i_1, i_2, \ldots, i_n\}\), and \(\mathcal{R}\) is a set of functions = \{\(R_1, R_2, \ldots, R_n\)\} for each individual \(i_1, i_2, \ldots, i_n \in I\). Each member of \(\mathcal{R}\) takes a member of \(W\) and returns a subset of \(W\); i.e. \(R_i : W \rightarrow \mathcal{P}(W)\). The intuition behind the functions in \(\mathcal{R}\) is that each individual has a function which returns the deontically ideal worlds (for that individual) given a world.

3 Counterparty–relativised ought–to–be statements

When Castañeda thinks of SDL as being a logic of preference or value judgement rather than of obligation, he thinks of the semantic relation as relating a world \(\alpha\) to worlds that are ideal also in other respects than that all obligations of \(\alpha\) are fulfilled there. The semantic relation is regarded as a relation of preference reflecting some scale of values. He suggests that one might need a more extensive ranking of worlds. Indeed, if a logic of preference shall be tailored to fit some specific scale of values, more structure may be needed than what is imposed by the semantic relation of SDL. It is, however, outside the scope of this paper to suggest what structure will be most adequate. We simply note that a logic isomorphic to SDL may be used to express a logic of preferences justifying the reading of \(OA\) as "it ought to be the case that \(A\)." The only further structure we shall impose is a relativisation of the \(O\) operator to particular individuals as above. To distinguish relativised ought–to–be statements from relativised ought–to–do statements we place the index after the operator, writing \(O_j\). Here, \(j\) is not to be regarded as an agent, but rather as a patient to whom something ought to be the case. Due to how we will use this operator later, we shall term statements of the form \(O_j A\) 'counterparty–relativised ought–to–be statements’, and we shall read \(O_j A\) as "for \(j\) it ought to be the case that \(A\)." We shall say that this statement expresses a 'counterparty–relativised preference'.

One might ask what sort of preference we want to express. Our idea is simply that when the law expresses something like "for \(j\) it ought to be the case that \(A\)," then a legal authority expresses a preference on behalf of \(j\) that \(A\) is the case. We consider it plausible to say that, when expressing such a preference, the legal authority regards \(A\) to be a benefit for \(j\) (and \(j\) to be the beneficiary of \(A\)).

When representing ought–to–be statements there is no need to restrict the scope of the \(O_j\) operator to action sentences, and neither are action sentences precluded. Typically, \(O_j\) will, however, have in its scope an action sentence where some individual different from \(j\) is agentive; i.e. \(O_j(IA)\). If this is expressed by the law, then one might be inclined to qualify i's failure to see to it that \(A\) as a wrong–doing against \(j\). Hence, our analysis

\[8\] Hence, the authority may regard \(\neg A\) to be a detriment to \(j\), but this is not implied on the present analysis. Some might argue that it is because \(A\) is a benefit for \(j\) that \(A\) ought to hold for \(j\). Others may hold that the statement "for \(j\) it ought to be the case that \(A\)" implies that \(A\) is of benefit for \(j\). We shall here maintain that the two notions are synonymous. The synonymous nature of the two notions is even clearer if we substitute 'benefit for \(j\)' with 'ideal for \(j\)'.

Note also that expressing that 'A is ideal for j' is not to express that A is an overall ideal for the legal authority. We may have that something, say B, is ideal in an overall sense, while still having \(O_j(\neg B)\) for some particular individual \(j\).
may be developed further in order to express Lindahl’s idea of being wronged, but we see no need for doing so.

Do we need ought–to–be statements to represent law? Consider the following example. The state k has signed a convention stating that: “All children ought to be nurtured”, or what we would regard as an equivalent statement, “All children have the right to be nurtured”. As noted by Lindahl, these statements do not imply statements of duty; hence, it cannot be inferred from these statements alone any statement placing an obligation on any specific individual(s) to nurture these children (cf. [Lin94, page 898]). It is necessary, therefore, to represent this convention by a counterparty–relativised ought–to–be statement, and to postpone any inference of bearer–relativised ought–to–do statements until they can be inferred from additional legal sources, or some bridge is offered from ought–to–be to ought–to–do.

4 Directed obligation

We denote a directed obligation from i to j that i sees to it that A, as $iO_j (iEA)$, reading “i has a directed obligation towards j that i sees to it that A”.

Consider the following example: i and j have a contract which states that: “i ought to pay j 1000 ECU”. We would say that this contract implies a directed obligation from i to j that i sees to it that j receives 1000 ECU. Equivalently, we would say that this contract implies a combination of a bearer–relativised ought–to–do statement expressing an obligation on i that i sees to it that j receives 1000 ECU, and a counterparty–relativised ought–to–be statement expressing that for j it ought to be that i sees to it that j receives 1000 ECU. Hence, we want to argue that both the existence of a bearer–relativised obligation for i and a counterparty–relativised preference for j are necessary conditions for the existence of a directed obligation from i to j. Assuming that they are also sufficient conditions, we propose to define a directed obligation simply as a conjunction of a bearer–relativised obligation for i that i sees to it that A and a preference relativised to a counterpart j that i sees to it that $A$: $iO_j (iEA) \equiv de^f iO_j (iEA) \wedge O_j (iEA)$ (6)

(6) may be read as: “i is obliged towards j that i sees to it that A, if and only if, i is obligatory for i that i sees to it that A, and for j it ought to be that i brings about that A’. As we argue in [HK95], if we allow the deontic operators to have simply arbitrary sentences (e.g. A) in their scope, the problem of loss of direction, which we found in Kanger’s representation, reappears when we consider more than one pair of individuals. This is a reason to only interpret formulae where each of the deontic operators take action sentences as their scope–formulae as expressions of directed obligation.

It is now a straightforward matter to offer an explanation of Hohfeld’s claim–right in terms of our newly defined directed obligation:

$$\text{Claim}(j, i, A) \equiv iO_j (iEA)$$ (7)

We note that this explication avoids Kanger’s problem of loss of directionality, without being based on a notion of being wronged.

We have met the reaction that this recurrence of the problem of loss of direction would have been avoided if we instead of the above definition treated $iO_j$ as a logical primitive. However, this solution fails to answer Waldron’s question about what it means to be the counterpart of a directed obligation. This may create problems for the representation of law, as the lack of such an analysis sometimes makes it uncertain who should be regarded as the appropriate counterpart of a directed obligation. Consider the following example: the state k has a law which states that: “All children ought to inform the state about their parents’ subversive activities (which are punishable by capital punishment)”. We would not say that this law implies that for some parents j it ought to be the case that they are informed upon by their children i; and, hence, we would not say that this law implies a directed obligation from i to j. On the other hand the law may be interpreted as implying an obligation directed from i to the state k. If no legal subject is benefitted by the fulfillment of the obligation, as in the example above concerning the exhibition of live fish, then we would not represent the obligation as a directed obligation, but rather as a non-directed bearer–relativised obligation instead.

We may consider that a legal authority is moved to create a directed obligation in order to secure certain interests of certain individuals. Hence, the authority may hold that for j it ought to be the case that $iEA$, and therefore the authority creates a directed obligation $iO_j (iEA)$. If the authority holds that for j it ought to be the case that not $iEA$, the authority may be moved to issue a directed prohibition that $iO_j (iEA)$; i.e.

$$iO_j (iEA) \equiv O_j (iEA) \wedge O_j (\neg (iEA))$$ (8)

On our view on directed prohibition, a legal duty under the criminal law not to do battery or assault may be represented as a directed prohibition on any person i (the possible aggressor) towards any other person j (the possible victim) that i not batters or assaults j.

Indeed this is how we treated directed obligation earlier (cf. [HK93, page 3]).

This example from [Lyo69] is close to Lindahl’s argument against inferring that a murderer has a claim to his own arrest from the policeman’s obligation to arrest him, but by having capital punishment as the threat it is even less likely that anyone will hold that the parents do benefit after all.
5 Directed permission

We have considered whether or not to define a corresponding notion of directed permission. We have not been able to find much reflection on this concept in the literature on either deontic logic or on legal philosophy. Neither are our own intuitions very firm, but we still want to make a suggestion in order to stimulate further discussion.

Hohfeld [Hoh66, page 39] clearly assumes the existence of a notion of directed permission (which he terms privilege). He assumes directed obligation and directed permission to be interdefinable: \( iP_j (iEA) \equiv \neg O_j \neg (iEA) \). Given our conjunctive definition of directed obligation, holding on to interdefinability would commit us to a very weak notion of directed permission:

\[
iP_j (iEA) \equiv iP (iEA) \lor \neg O_j (iEA)
\]  

(9)

We may read (9) as "i is permitted towards j that i sees to it that A, or it is compatible with that for j it ought to be the case that i sees to it that A". First, we find it counter-intuitive that i will have a directed permission against j even if \( iEA \) is prohibited for i (i.e. we may infer a directed permission simply from the truth of the second disjunct.) Secondly, as a directed permission may be inferred also when only the first disjunct is true, we again encounter the problem of loss of direction.

We accept von Wright's original defense of interdefinability for non-relativised obligation and permission, maintaining a parallel to the interdefinability of alethic necessity and possibility (cf. [vW51]), and we also accept that our notion of bearer-relativised obligation is interdefinable with a corresponding notion of bearer-relativised permission. When turning to directed obligation and directed permission, however, as, on our account, both notions should be seen as incorporating an element of preference. The problems with retaining interdefinability may be seen as stemming from the different role this notion of preference play in the notions of directed obligation and permission, respectively. Though, different, we still would look for some notion of preference of the following types: \( O_j (iEA), \neg O_j (iEA), O_j (iEA), \neg O_j (iEA) \). Rejecting interdefinability, we will investigate definitions of directed permission that facilitate weaker bridge-principles than interdefinability between directed permission and directed obligation.

We have considered changing the disjunction in (9) to a conjunction:

\[
iP_j (iEA) \equiv iP (iEA) \land \neg O_j (iEA)
\]  

(10)

This definition offers a nice parallel to the definition of directed obligation. Assuming that the schema \( D \) holds for the \( O_j \)-operator, we would also have the principle \( iO_j A \supset iP_j A \). A problem with (10) is that we do not have any strong intuitions as to why a directed permission for i towards j must be compatible with what is beneficial for j. One might argue that if \( iEA \) is beneficial, or compatible with what is beneficial, for one of the parties, it should be for the bearer of the permission i, and not for the counterparty j; i.e. we might consider:

\[
iP_j (iEA) \equiv iP (iEA) \land \neg O_j (iEA)
\]  

(11)

However, by making the second conjunct refer to i, we lose reference to j and, therefore, lose directionalilty once again.

One may argue that, rather than being beneficial for j, i's seeing to it that A may, intuitively, be detrimental for j. An idea, which we believe may be attributed to Bentham, is that explicit permissions are needed either to express an exception from an existing prohibition or to express that no prohibition will be issued. In both cases one might argue that the law recognizes it as being in j's interest that it is not the case that i sees to it that A, but that the law nevertheless affirms a permission for i to bring about that A. The legal authority may be seen as accepting that for j it ought to be the case that \( \neg O_j (iEA) \), but as holding that this is an insufficient reason for creating a directed prohibition \( O_j (iEA) \land O_j (iEA) \). A directed permission, therefore, may be regarded as a negation of the first conjunct and affirmation of the second conjunct of the above notion of a directed prohibition;\(^{11}\) i.e.:

\[
iP_j (iEA) \equiv iP (iEA) \land O_j (iEA)
\]  

(12)

We read (12) as: "i is permitted towards j that i sees to it that A, if and only if, it is permitted for i that i sees to it that A", and for j it ought to be the case that not i sees to it that A".

Searching for an example of directed permissions in the law, we have found that according to Norwegian law everybody has permission to walk on someone's uncultivated property (land) as long as this does not represent an unreasonable disadvantage for the owner.\(^{12}\) One might argue that it is just because the owner j may have a personal interest in preventing i's walking that there is a need to assert a permission for i to walk. Hence, we would regard this as an instance of a directed permission for i towards j that i walk on j's land.

One might hold that what we are presenting here is very close to the view that the meaning of a directed permission implies that the counterparty to the permission has an obligation not to interfere (cf. [Lin77, pages 17–19], [Har82, pages 168–169]). However, we agree with Hohfeld [Hoh66, page 41] in that a permission and an

\(^{11}\) To be more specific, our definition of directed permission may be seen as the result of negating the first conjunct, \( O \neg (iEA) \) only (and using the interdefinability principle \( \neg O \equiv iP \)).

\(^{12}\) In other words, it may represent a reasonable disadvantage for the owner.
obligation not to interfere are logically distinct. We do not agree that a 'protective perimeter' (cf. [Har82, page 167]) must be a part of the analysis of notion of permission itself, as it may be seen as a contingent fact of the legal system. There may be particular permissive rights where an obligation not to interfere is part of the right itself. However, these expressions of rights may be interpreted as conjunctions of several logically distinct statements of both special and directed obligations and permissions (cf. [Lin77, pages 34–36]).

There may still be other intuitions which our theory is unable to make account of. One might hold, for instance, that a statement like "I permit you to give me a kiss" intuitively is a permission you have against me (i.e. a directed permission), and it is a directed permission which possibly is not to my discomfort. Whether this and similar examples must be regarded as counter-examples to our theory is not certain. There may be ways to represent them within our theory, or they may be regarded as different not yet analysed types of directed permission. What to make of them will have to be discussed in a later paper.

6 Directed obligation in the light of benefit theory

We are not the first to suggest that the notion of being a beneficiary is central to the understanding of counterparts of directed obligations. However, most of the literature focuses on directed obligations as correlative to claim-rights, and, therefore, discusses the notion of being a beneficiary in relation to fixing who are the bearers of various rights. Thus, Bentham, for instance, is attributed the view that to have a right is to be the beneficiary of another's duty or obligation. Bentham is an exponent of what has been termed 'benefit theories'. Lyons has discussed how Bentham's view may be further qualified to avoid the criticism of the rivalling 'claimant theories' (cf. [Lyo69]). We may ask how our definition (6) of directed obligation squares with Lyons' qualifications of what is meant by the expression 'intended to benefit'.

First, Lyons notes [page 175] that as obligations are not always kept, the beneficiary is not one who actually benefits, but one who would benefit from the fulfillment of the obligation. This point is captured in our representation; as the semantic relation $R_j$ of $O_j$ is non-reflexive, $A$ is not necessarily true in the world of evaluation.

Secondly, Lyons wants to restrict the notion of counterpart to specific, assignable individuals who benefit directly from the fulfillment of the obligation in question. Unless reference to a specific counterpart benefiting from the obligation is a (fairly) explicit part of the meaning of the specific expression of obligation itself, the question of who is the intended counterparty soon leads to loose speculations concerning legislative intent (cf. [Har82, page 180], [Wel90, pages 191 and 193]). If one accept as directed obligations also statements of duties which merely are useful because some individual may ultimately benefit from their fulfillment through some chain of events, then all those who eventually benefit may be regarded as claim-holders against the bearer of the obligation (cf. [Lyo69, pages 174–176]). As stated above, we prefer the use of a non-directed bearer-relativised obligation where no specific, assignable individuals are referred to by the law. In our representation of directed obligations, on the other hand, the idea of a specific counterpart intended to benefit is made an explicit part of the meaning by use of the deontic operator $O_j$.

7 Benefit versus claimant theories

As noted, another set of theories holds that what is most central to the notion of being a counterpart is that the counterpart is a claimant. This type of theory is held by Hart and Makinson (cf. [Har82], [Mak86, pp. 423-424]). Restricting his discussion to law, Wellman makes the claim (where 'relative duty' is synonymous with our term, 'directed obligation'):

A relative duty in the law is owed to the party who has the legal power to initiate proceedings in the courts to enforce that duty.

[ Wel90, page 197 ]

Which of these views is correct - the benefit theory or the claimant theory? This question may possibly not be settled simply by appeal to illustrative examples and intuitions. For instance, under the legal system referred to by both Lyons and Wellman, victims of criminal offenses can only complain, while power to initiate legal action is held by the public prosecutor only.13 To Lyons, as to us, duties under the criminal law exemplify a problem for the claimant theory, as Lyons holds the counterpart of duties under the criminal law to those who will be offended by a violation of these duties. Wellman, however, holds the public prosecutor to be the counterpart of all duties under the criminal law. This indicates that the intuitions of the various authors are weak on this point as the same examples, with minor changes in emphasis or interpretation, are made to support both views.

Responding to criticism of his earlier proposal for a claimant theory, Hart argues that the claimant theory is the most satisfactory for the lawyer concerned with the working of the 'ordinary' law, but that some benefit

13 Under Norwegian law, however, private individuals have (a limited form of) power to initiate legal action for criminal offenses.
interpreted as expressing that A is a benefit to j.

In sections 4 and 5 we defined the notions of directed obligation, directed prohibition, and directed permission as respectively:

\[ \text{iO}_j(iEA) =_{df} iO(iEA) \land \text{iO}_j(iEA) \]
\[ \text{iO}_j(iEA) = \text{iO}^{-}(iEA) \land \text{iO}_j(iEA) \]
\[ \text{iP}_j(iEA) = \text{iP}(iEA) \land \text{iO}_j(iEA) \]

\[ \text{O}^{-}(iEA) = \text{O}(iEA) \land \text{O}^{-}(iEA) \]

\[ \text{P}(iEA) = \text{P}(iEA) \land \text{O}_j(iEA) \]

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14 In personal communication.
15 See [JS94] for a recent treatment of institutionalised power.
work with us. We would also like to thank David Makinson and the anonymous referees for stimulating criticism. Jens Petter Berg deserves gratitude for supplying us with jurisprudential intuitions, and Lee Bygrave for helping us with linguistic matters.

References


