

Izostanak ljudskih prava u pravnoj teoriji H. L. A. Harta: kritički osvrt na prirodu prava zasnovanu na ljudskim pravima

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Pravna teorija H. L. A. Harta (H. L. A. Hart) koju je razvio u svom delu „Pojam prava“ razume pravo kao sistem primarnih i sekundarnih pravila, razdvajajući pravo od morala, dok istovremeno prihvata moralne elemente unutar pravila priznanja. Međutim, Hartovo izostavljanje ljudskih prava ograničava relevantnost njegovog okvira za savremenu pravnu filozofiju, posebno u pogledu pravnog legitimiteta u okviru međunarodnog sistema. Ovaj članak kritički razmatra Hartovo pravilo priznanja tako što uključuje ljudska prava u pravni okvir, oslanjajući se na ontološki pristup ljudskim fenomenima, koji zastupa turski filozof Takijedin Mengüşöglü (Takiyeddin Mengüşöglü). Ističe se da su pravo i ljudska prava međusobno povezana ljudska dostignuća ukorenjena u zajedničkim fenomenološkim osnovama. Ova integracija unapređuje kapacitet pravnog okvira da odgovori na globalne probleme kao što su sukobi, autoritarne države i kršenja prava. Uključivanjem ljudskih prava u pravilo priznanja, ovaj revidirani okvir obezbeđuje zaštitu ljudskih prava i osnažuje pravni legitimitet u uslovima koji se stalno menjaju u međunarodnom kontekstu.

Invisibility of Human Rights in H.L.A. Hart's Legal Theory: A Critical Review of the Nature of Law Based on Human Rights

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H.L.A. Hart's legal theory in "The Concept of Law" defines law as a system of primary and secondary rules, distinguishing law from morality while allowing moral elements within the rule of recognition. However, Hart's omission of human rights limits his framework's relevance to modern legal philosophy, especially regarding legal legitimacy in the international system. This article critiques Hart's rule of recognition by incorporating human rights into the legal framework, drawing on Turkish philosopher Takiyeddin Mengusoglu's ontological approach to human phenomena. It contends that law and human rights are interconnected human achievements rooted in shared phenomenological foundations. This integration enhances the legal framework's capacity to address global issues such as conflicts, authoritarian states, and rights violations. By embedding human rights within the rule of recognition, this revised framework ensures the protection of human rights and bolsters legal legitimacy amidst evolving international contexts.

1. INTRODUCTION

Since the emergence of the Universal Declaration of Human Rights (UDHR)¹ as the moral foundation of the international legal order, the relationship between law and human rights has not been clearly established. Herbert L.A. Hart, one of the most influential legal philosophers, defined the features of law in his seminal book, *The Concept of Law* (Hart 2012, 79–91). In the book, Hart introduces law as the union of primary and secondary rules, with the rule of recognition serving as the criterion for legal validity (Hart 2012, 100). This definition has significantly shaped modern legal philosophy. However, the connection between Hart's concept of law—particularly the rule of recognition—and human rights remains insufficiently explored. Therefore, this study directly addresses how Hart's rule of recognition can be reformulated to conceptually integrate human rights within the legal framework. For this reformulation, the article draws on the ontological approach of Turkish philosopher Takiyeddin Mengusoglu, developed under his philosophical anthropology.² Mengusoglu's perspective provides a foundation for understanding human phenomena and achievements, guiding the renewed definition of the rule of recognition to conceptually unite law and human rights and address the human rights inherent within the legal framework.

The article uses this new definition to address current global challenges involving human rights and law. These concepts are often exploited by modern international legal actors to achieve ambitious goals, such as entrenching oppressive regimes or perpetuating destructive conflicts. Examples include the Russia-Ukraine and Israel-Hamas wars. The study explores an ontological-anthropological foundation with an ethical-historical basis, from which human rights emerge as responses to injustice. This foundation guides human perspectives in addressing injustice, as suggested by Gustav Radbruch (2006, 7). Human rights are thus seen as claim-based rights grounded in phenomenology, drawing on Wesley Newcomb Hohfeld's analysis of rights and Mengusoglu's phenomenological view (Hohfeld 1913, 32; Mengusoglu 2021, 85). When human rights are considered in relation to law, their legal incorporation is achieved through establishing legal validity via Hart's rule of recognition (Hart 2012, 204).

In this context, the second section examines how eminent philosophers address the normative validity of law against the backdrop of morality. Based on these views, their perspectives on human rights are derived from their positions on mo-

1 Universal Declaration of Human Rights. UNGA Res 217 A(III).

2 Takiyeddin Mengusoglu is a Turkish philosopher establishing a new theory of philosophical anthropology, which he called ontological anthropology. Ontological anthropology can be defined as a philosophical theory that brings the human being into the center of its study of reality.

rality and the normative validity of law, with Hart's critique of these positions. The section then turns to Hart's views on morality and human rights, highlighting the shortcomings of his concept of the rule of recognition regarding human rights. It argues that the rule of recognition should be revised in light of human rights—not from an abstract human rights perspective, but from a different view derived from human phenomena observed ontologically, centering the human perspective, which is called the anthropological view, as suggested by Ioanna Kucuradi (2013, 50–59).

The third section claims that the current rule of recognition cannot address today's real-world human rights violations—illustrated through concrete examples—and indicates the need for its epistemic reformulation (Freedom House Report 2024, 2). Hart's rule of recognition is presented as a handy concept for this task. Accordingly, the section develops a new approach to the relationship between law and human rights by redefining Hart's rule of recognition through the phenomenological-ontological anthropology of Takiyeddin Mengusoglu. This redefinition aims to contribute to legal philosophy by offering a fresh perspective on their relationship. It examines the conceptual collaboration between law and human rights through concrete facts linking them under an ontological approach based on human phenomena. This exploration addresses new global challenges, such as the rising violence of regional wars, ongoing systemic human rights violations by repressive regimes, and growing concerns about the legitimacy of the post-Second World War rule-based international order.

2. THE NATURE OF LAW: LEGAL PHILOSOPHY AND HART'S VIEW THROUGH THE QUESTION OF HUMAN RIGHTS

2.1. Legal Philosophy, Morality and Human Rights

For centuries, the relationship between law and morality has been the central issue in legal philosophy. Natural law has adopted moral principles accessed through human reason that direct human conduct over the authority of positive law, whereas legal positivism has defended a certain legal system, without moral considerations, conditioned by a political authority, as suggested by Brian Bix (2004, 96–97). Yet this distinction is scattered within contemporary legal philosophy, as natural law and legal positivism have weaker versions of their theories. Natural law has evolved to depart from its traditional roots, transforming the classical natural law theory into a modern natural law theory that connects moral principles with the structure of the legal system. In contrast, legal positivism has developed a new version, known as inclusive legal positivism, as explained by Robert Alexy (2008,

285). Various legal theories were developed alongside these two mainstream approaches, such as legal interpretivism, critical legal theory, feminist theory, historical-social theory, anthropological jurisprudence, and legal realism, as explained by Raymond Wacks (2021, 142–384). It is also observed that human rights in this sense have been an essential part of the legality-morality dispute as the norms incorporated into the content of international and national legal systems after the Second World War, as mentioned by Henry B. Veatch (2018, 255). Human rights can be seen as part of the dispute within the moral sphere. Among these traditions, three leading legal philosophers criticize Hart's handling of morality. These philosophers are Lon Fuller, Ronald Dworkin, and Joseph Raz; though they developed different legal theories, they converge in the critique of Hart's view on morality and its relationship with law.

Before moving on to Hart's views on morality and human rights, it is guiding to see the main criticisms of Hart's conception of morality.

2.1.1. Lon Fuller's Internal Morality of Law

Lon Fuller, the main critic of Hart in the modern natural law tradition, develops the procedural natural law theory in his book, *The Morality of Law*. Fuller defends eight basic requirements for a legal system to be effective within what he calls “the internal morality of law” (Fuller 1964, 46–81). On this basis, he proposes that the question of whether there is a law precedes the question of whether it is good law. The latter concerns whether the rules in the legal system comply with human values, while the former concerns whether the rules are based on legality—namely, whether they comply with the eight basic requirements of legality, as suggested by Fuller (1964, 157–162).

Fuller points out that the external morality of law, such as providing justice, depends on the adoption of the internal morality of law. He cites historical examples such as Nazi and apartheid laws, which do not meet the requirements of legality, and shows how these laws fail to meet the principles of legal morality (Fuller 1964, 157–161). However, Fuller does not explicitly discuss human rights. His probable view can be inferred from his reference to the human perspective embedded in the internal morality of law. For instance, Fuller establishes a connection between the application of the internal morality of law and responsible, self-determining humans, arguing that failure to respect this internal morality undermines human dignity (Fuller 1964, 162). Furthermore, Fuller adopts communication and fraternity among humans as the substantive aim of natural law—if such a substantive aim exists—along with its procedural aim (Fuller 1964, 186). Thus, the internal morality of law acts as a guide to safeguard human rights within a legal system that adheres

to the principles of legal morality. As is well known, Article 1 of the UDHR establishes human dignity and fraternity as the philosophical foundations for protecting human rights. In this context, Fuller criticizes Hart for his conceptual separation of law and morality, since Hart considers wicked law to still be law, thus rejecting the conceptual unity of morality and law advocated by Fuller (1958, 644–657). Fuller’s criticism can be evaluated within the conceptual relation between law and human rights, reinterpreting the concept of morality in the contemporary debate.

2.1.2. Ronald Dworkin’s Legal Interpretivism

The second legal philosopher criticizing Hart is Ronald Dworkin, who swims in the deep waters of legal interpretivism in the current debate in legal philosophy. His legal theory focuses on adjudication and the judge’s role rather than the legal system itself. His approach neither complies with natural law nor legal positivism. Dworkin’s interpretivist approach follows a similar path to natural law in evaluating the role of morality in law, trying to include morality in legality. He divides the legal cases before the courts into easy and hard cases (Dworkin 1977, 81). One can answer the easy cases based on the relevant law cited in the case. This answer finds its place within the model of rules developed in Hart’s legal theory (Dworkin 1977, 15–45). However, problems arise when judges face hard cases where a definitive answer does not exist within the relevant rule. According to Dworkin, in such cases, the judge must interpret the rule to find the one right answer to the current problem (Dworkin 2006, 41–42). He agrees that rules are open to interpretation but disagrees with Hart’s view of judicial discretion (Dworkin 1977, 68–69).

Dworkin’s disagreement with Hart stems from the judicial discretion of the judge in hard cases when interpreting the rule and the existence of principles in law. According to Dworkin, Hart grants the judge strong discretion in interpreting the rule, allowing room for the judge to create new law (Dworkin 1977, 82). He doesn’t assign a distinct existence to principles if they are not incorporated into the content of legal rules, unlike Dworkin (Hart 2012, 204). Dworkin objects to Hart’s views, proposing a constructive interpretation method based on legal principles that are hidden within the legal chain of judges who have decided similar hard cases before the current one (Dworkin 1986, 65–68). In this perspective, Dworkin argues that principles can be derived from these cases and applied to future cases to establish individual rights, which then trump collective goals (Dworkin 1977, 88–101). The argument of principles is used to interpret rules through moral reasoning instead of relying on broad judicial discretion to create laws (Dworkin 1977, 88–101). Ultimately, this interpretation should be rooted in principled arguments to identify the correct approach to protecting rights (Dworkin 1977, 90–130).

It can be implied that Dworkin conceptually merges law and morality. His emphasis on the importance of rights protection, alongside human dignity and equality, suggests that human rights are implicitly inherent in his legal interpretation and moral reasoning — a shortcoming that Hart's theory does not address (Dworkin 1977, 205).

2.1.3. Joseph Raz's Weak Social Thesis Argument

The third legal philosopher criticizing Hart is Joseph Raz, who supports exclusive legal positivism and defends the strong social thesis, which excludes morality from the realm of legal validity. (Raz 1979, 47). Therefore, his criticism of Hart centres on the concept of the rule of recognition, as Hart accepts the inclusion of morality into the content of the rule of recognition, which leaves room for an unnecessary link between law and morality. Raz rejects this view, calling it the weak social thesis that incorporates moral arguments into legal validity (Raz 1979, 46). In his perspective, including moral arguments in legal validity dilutes the authority of law, which provides reasons for action without necessitating individuals to make moral judgments themselves (Raz 1986, 59; Raz 1979, 52). Following this view, Raz's strong social thesis continues in his approach to human rights, placing them within a practical framework without moral foundations. However, Raz acknowledges the moral aspect of human rights as a justification for international intervention in cases of serious human rights violations (Raz 2010, 321–338).

As a conclusion, it can be stated that three different philosophers criticize Hart on different grounds. Yet the common point among them is Hart's conceptual ambiguity regarding the concept of law—whether it serves as a certain guide to conduct, includes any principles, or respects morality. In this regard, the study will seek to understand Hart's views on morality and human rights, reformulate the concept of the rule of recognition to make it clearer, and revise it within the framework of human rights in the light of ontological anthropology.

2.2. Hart's View on Morality and Human Rights

Following Hart (1961, 77–89), the law is described in the context of social phenomena through the union of primary and secondary rules. By doing so, Hart defines the law differently from John Austin's view, which understands law as the sovereign's commands backed by punishment (Hart 1961, 49–76). Yet, Hart's theory omitted addressing the concept of human rights, which was a new language of the international legal order at the time, in his concept of law. In this regard, the main question is why this omission can be considered a lacking part of his book. The answer becomes clear if a legal researcher examines the construction of the newly

established international legal order after the Second World War. When Hart wrote his book, 13 years had passed since the UDHR was adopted by the member states of the United Nations (UN). Despite this historic moment, which led to other critical human rights developments in the international legal system and, consequently, in the concept of law, Hart did not incorporate human rights into his reflection on the concept of law, even though he critically examined the concepts of morality and justice, subjecting them to his philosophical criticism (Hart 1961, 151–176). In this regard, it can be helpful to examine how Hart understands the law as the union of primary and secondary rules in constructing his legal theory, to evaluate the shortcomings of his theory concerning the concept of human rights. In his theory, primary rules are duty-imposing, such as those found in criminal law, while secondary rules are power-conferring, like those in constitutional law. However, the distinction between them is not rigid, as a rule can serve both functions simultaneously, such as in administrative law, which imposes duties on public officials and confers power to regulate affairs (Hart 1961, 92). Secondary rules are the most significant part of Hart's theory, representing his original contribution to jurisprudence, especially when compared to the previous legal theories preceding him, as suggested by Hart (1982, 21–243) and Hart (2001, 286).³

Hart identifies three types of secondary rules: rules of adjudication, rules of change, and rules of recognition (Hart 2012, 94–99). The first two empower public officials—judges, in the case of adjudication, to resolve disputes, and administrative or legislative bodies, in the case of change, to amend the law. The ultimate and most essential secondary rule is the rule of recognition, which grants legal validity to all other rules, making it the cornerstone of Hart's concept of law (Hart 1961, 97). According to Jules Coleman (1991, 707–708), Hart regards the rule of recognition as the foundation of the legal system, emerging from an existing social construction. Hart's rule of recognition cannot be confined to strictly positivist terms that exclude moral evaluation, allowing room for the incorporation of moral arguments within its content if it is accepted in this way (Hart 1961, 199). As an example, he cites the U.S. Constitutional Amendments, which embody universal values, to illustrate his point. These values can include justice, fairness, or equality, concepts that he critically engages with in his theory (Hart 1961, 151–199). At this juncture, he could have considered human rights as part of the rule of recognition. However, he never refers to human rights in *The Concept of Law* and his other works. Joseph Raz implicitly emphasizes this situation, saying that “there is a Hart theory of legal rights but no Hart theory of moral rights” (Raz 1984, 124). To understand why he did

3 The most remarkable legal philosophers are Jeremy Bentham, John Austin, and Hans Kelsen. Even though Hart placed Austin into the center in the construction of his theory, he also examined theories of Bentham and Kelsen.

not consider embedding human rights into his concept of law, it can be helpful to analyze his identification of moral rights as a concept, given that human rights are moral rights before being recognized as legal rights (Hart 1955, 175).

Hart does not refer to moral rights in his book, *The Concept of Law*, as is the case with human rights (see Hart 1961).⁴ He defines moral rights elsewhere but does not specifically mention human rights (Hart 1955, 176). He regards one moral right (or natural right) as the equal right of all men to be free and bases his formulation of legal rights on this foundation (Hart 1955, 175–191). When it comes to both the right to equality and the right to freedom as human rights in the modern legal system, the equal right of all men to be free can offer some insight into Hart's perspective on human rights. According to Hart (1955, 175), this natural right has two characteristics: all men possess this right due to their capacity to make choices, and it arises by virtue of being human, unlike other moral rights. Given his implications, Hart partly acknowledges the principles of modern human rights enshrined in Articles 1 and 2 of the UDHR, which establish the universal validity of human rights and recognize human reason and conscience as the basis for possessing these rights.

Hart recognizes only the equal right of all men to be free as a natural right (Hart 1955, 175–176). He does not accept inviolable and inalienable moral rights but permits them only under specific conditions that justify limiting others' freedom based on the equal right of all men to be free (Hart 1955, 175–191). However, Hart overlooks an important issue by not clarifying his formal propositions concerning the right to liberty for all men, as suggested by Robert L. Simon (1970, 236–237). What, then, is the meaning of men? As mentioned in Article 1 of the UDHR, does it apply to every human? If so, how can positive law enact the right to liberty by granting equal status to all individuals within a legal system that is unjust and excludes certain groups based on their origin? Hart should have extended his notion of the right to liberty for all men by clarifying its content and explaining how a legal system can derive other rights from this right to liberty for all men.

On the other hand, although he never mentions human rights, even in the postscript added to his book, he explicitly defends the doctrine of human rights in one of his later works (Hart 2001, 196). In this defence, he refers to the inhumanity among humans that became evident in the second half of the 20th century, emphasizing the importance of human dignity as a fundamental value within the expanding international human rights system (Hart 2001, 197).

He acknowledges the current triumph of human rights over utilitarianism following the adoption of the UN Charter, while also expressing doubt about whether

4 Hart explores the relationship among law and other values in his book. Surprisingly, he never refers to the relationship between law and rights.

the doctrine of human rights is complete and convincing, and whether it will be as effective in ensuring human welfare as utilitarianism once was in past societies (Hart 2001, 196–197). In this regard, when this passage is read alongside Hart’s distinction between social morality, which resonates as moral populism, and critical morality, which encompasses universal values, his main concern may be that basic human rights cannot be given meaningful content by not establishing their connection with other universal values, as Hart advocates, and they can put those values at risk, rather than protecting them, at the hands of repressive governments or legal systems (Hart 1962, 70–81). Though he endorses the doctrine of human rights, he did not address human rights within his concept of law, leaving the post-World War II developments in human rights—central to the relationship between law and human rights, untouched.

In the following section, the relationship between law and human rights will be examined through an ontological approach regarding the existence of human rights and law in Hart’s concept of law.

3. HUMAN RIGHTS IN THE CONCEPT OF LAW: AN ONTOLOGICAL-ANTHROPOLOGICAL APPROACH

3.1. The Meaning of Ontological Anthropology

As Hart’s rule of recognition is tried to be redefined within the approach mentioned as ontological anthropology, it’s necessary to clarify the concepts, which are ontology and anthropology, to comprehend its appearance in the Hart’s concept of rule of recognition.

3.1.1. *Ontology*

According to Nicola Guarino, Daniel Oberle, and Steffen Staab (2009, 1–2), ontology is divided into two main branches. The first and well-known branch of ontology is the philosophical ontology, whereas the second one is the recent ontology, which is the computational ontology. In terms of philosophy, the term ontology means the investigation of the properties of reality that are essential for it to be considered reality. This exposition is not necessarily confined to the physical reality, as it can encompass the investigation of things in the metaphysical world. Aristotle defines ontology as the science of being qua being as suggested by Barry Smith (2012, 47). Philosophical ontology investigates things being in all spheres to expose their nature as well as their relations to each other (Smith 2012, 47). On the one hand, in the context of computational sciences, a new branch of ontology has recently emerged, referred to

as computational ontology, which deals with the structure of entities in the digital world. (Guariono, Oberle, Staab 2009, 2). Ontological anthropology is grounded in philosophical ontology. Hence, the study relies on ontology in the sense of philosophy and acknowledges that the ontological framework adopted here—based on human phenomena—departs from formalist or quantificational approaches to ontology. According to Willard Van Orman Quine's turn in ontology, "to be is to be the value of a variable" (Quine 1948, 32). This means that questions of what exists can be translated into questions of what our variables must range over in formal logic, reducing ontological commitments to what is required by our scientific theories (Quine 1948, 35–36). In contrast, Francesco Berto and Matteo Plebani suggest different metaontological stands as an alternative to Quine's ontology, including the grounding approach and various theories of realism and nominalism. The study places itself within what Berto and Plebani describe as a "moderate realist" position (Berto, Plebani 2015, 172). On this basis, the study accommodates human rights as discoverable entities anchored in historical experience, not in set-theoretic abstraction, and revises Hart's rule of recognition with human rights under this ontological view.

3.1.2. *Anthropology*

Following Julia Morris (2021, 9–34) anthropology is a science that investigates the development of humans in terms of different aspects. Based on these different aspects, anthropology is divided into four sub-fields: biological anthropology, cultural anthropology, linguistic anthropology, and archaeology (Morris 2021, 26). Biological anthropology investigates the origin and evolution of humans, analyzing the data obtained from records or remains (Morris 2021, 26). Cultural anthropology examines humans within cultural and social contexts by studying different cultures and societies worldwide (Morris 2021, 31). Linguistic anthropology investigates the development of language among different human societies, analyzing the impact of words in language to comprehend the diverse experiences, related to the use of language, observed in societies (Morris 2021, 30). What's more, archaeology, as the final sub-field of anthropology, investigates different types of records found in the past to understand human cultures and the appearance of humans in those cultures (Morris 2021, 29). Archaeologists conduct their research in terms of different aspects (Morris 2021, 29). They focus solely on human artefacts and materials in prehistoric archaeology, whereas, in historical periods, they investigate written materials in addition to human artefacts and non-written records (Morris 2021, 29).

3.1.3. *Ontological Anthropology*

Ontological anthropology is a philosophical anthropology, which became an independent discipline of philosophy in the 20th century, starting from German philosopher Max Scheler's study named *Human Place in the Cosmos* (Scheler 2009).

In general, as opposed to other branches of anthropology, philosophical anthropology is not an empirical discipline belonging to anthropology. Instead, it investigates the difference between humans and other entities in the potentialities rooted in human nature, as suggested by Frederick A. Alafson in *Britannica* (2019, 1). Ontological anthropology, in this sense, can be regarded as a new approach to philosophical anthropology, proposed by Mengusoglu (2021, 84). This is because ontological anthropology does not rely on abstract inferences about human nature to understand the place of humans in the world. Rather, it reveals the concrete human achievement in the world that is based on human phenomena (Mengusoglu 2021, 64–96). Thus, a phenomenological methodology is grounded in ontological anthropology. It doesn't reduce human rights to moral premises; rather, it seeks to identify how human rights emerge from historical experiences—what Mengusoglu (2021, 95) calls “human phenomena.” The methodology is therefore descriptive, not prescriptive. It doesn't universalize a priori moral norms; instead, it analyzes how human suffering, such as the Holocaust, became ontological grounds for normative systems like the UDHR. Hence, the study does not engage in hermeneutics or textual interpretation but in an existential analysis of the ontological grounding of human rights.

3.2. Application of Ontological Anthropology to the Concept of Rule of Recognition in Hart's Legal Theory

Hart's rule of recognition originally draws on a social construction aimed at validating norms in the legal system, not on a phenomenological approach (Hart 2012, 100). The main focus here is to redefine its epistemic role by applying ontological anthropology. This redefinition understands the rule of recognition not only as an intersubjective agreement between legal officials, but also as a rule shaped by historical human achievements. Thus, the study retains the concept's original meaning as norm validation embedded within social construction, while redefining it within a phenomenologically grounded human rights framework.

Hart addresses the long-standing debate between natural law and legal positivism, adopting a new position he terms “soft positivism” (inclusive legal positivism) in the 1994 postscript to his book, named *The Concept of Law* (Hart 2012, 250). There, he reiterates that the rule of recognition can include moral claims, citing the limiting clauses of the American Constitution as examples of substantive constraints (Hart 2012, 204). In this way, Hart opens the door for his concept of law to incorporate human rights into the legal framework, with substantive constraints embedded in the rule of recognition forming the link between law and human rights. In the international legal human rights system, human rights act as substantive constraints on governments, offering a path to revise Hart's concept of law. This revision can be

achieved through an ontological approach that seeks to uncover the human value in his work, as described by Mengusoglu (2021, 76). Mengusoglu observes this value in the entirety of the human world, encompassing humanity's intellectual, technical, social, institutional, cultural, and scientific activities and their results (Mengusoglu 2021, 95).

In this vein, human rights are a concrete historical achievement of humanity, as evidenced in the UDHR and subsequent human rights documents such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). This achievement is not illusory or grounded in speculative reasoning about human nature. On the contrary, it is rooted in the historical human phenomena that occurred during the Second World War: the Jewish genocide and the cruel, unjust, and iniquitous legal system of the Third Reich (Alexy 2010, 28).⁵ These events prompted humanity to derive knowledge of human worth, leading the international community to legalize human rights based on these phenomena to prevent humans from being subjected to inhumane treatment in the future, as defended by Johannes Morsink (2019, 159). This injustice not only damaged the historical achievements of humanity but also jeopardized potential opportunities for further achievements along humanity's historical trajectory.

In this regard, human rights shaped the international legal system, culminating a legitimacy test for the conduct of states as suggested by Allen Buchanan (2013, 7). In our age, new injustice phenomena have emerged worldwide that need to be addressed to steer the current international legal system towards a new path: an augmented concept of law with the knowledge of human rights. What are these new injustices as new human phenomena? Since the adoption of the UDHR, founded on the fact of genocide, a series of threats—evaluated through the lens of philosophical anthropology—have arisen in forms different from the impact genocide had on the international order during the Second World War.

First, significant criticism has been put forward by the Global South against the current international legal system, which is grounded in the political superiority of the UN Security Council, composed of the victors of the Second World War—essentially, an objection to the Global North—leading to the rise of Third-World Approaches to International Law (TWAIL) according to Naz K. Modirzadeh (2023, 81). Second, authoritarian governments have increasingly violated the rights of their citizens, a trend that can be empirically observed according to the Freedom House (2024) by its latest report, which notes in its introduction chapter:

5 Robert Alexy emphasizes the injustice formula in Gustav Radbruch's article titled 'Gesetzliches Unrecht und übergesetzliches Recht' (Statutory Lawlessness and Supra Statutory Law).

“Global freedom declined for the 18th consecutive year in 2023. The scope and scale of deterioration were extensive, affecting one-fifth of the world’s population. Almost everywhere, the downturn in rights was driven by attacks on pluralism—the peaceful coexistence of people with different political ideas, religions, or ethnic identities— that harmed elections and sowed violence. These intensifying assaults on a core feature of democracy reinforce the urgent need to support the groups and individuals, including human rights defenders and journalists, who are on the front lines of the struggle for freedom worldwide. A total of 52 countries suffered declines over the past year, while only 21 improved. The manipulation of elections was among the leading causes of global erosion in freedom. In Cambodia, Guatemala, Poland, Turkey, and Zimbabwe, incumbents took steps to prevent the political opposition from competing on an even playing field. Leaders in El Salvador and Venezuela bent the rules to ensure their own victories in planned contests. Ecuador’s elections were marred by widespread violence, including the murders of several state officials and political candidates. As a result, that country declined from Free to Partly Free status. Thailand inched up from Not Free to Partly Free thanks to highly competitive national elections, but a militarydrafted constitution allowed unelected forces to distort the government-formation process and box out the leading opposition party (Freedom House Report 2024, 2).”

Finally, two regional wars remain ongoing in different parts of the world: the Russia-Ukraine War, as demonstrated by Elena Chachko and Katerina Linos (2022, 125), and the Israel-Hamas War, as suggested by Oona A. Hathaway (2024, 86). These wars have further undermined the legitimacy of the current international legal system, with the veto power of the UN Security Council’s Permanent Members preventing the Council from taking an active role in stopping these conflicts. Considering these human phenomena, a new reconstruction of the international legal order has become essential to protect human rights within this flawed system. For this purpose, revisiting Hart’s concept of law and emphasizing the rule of recognition in light of human rights knowledge drawn from these human phenomena can shed light on the shortcomings of the current concept of law that is shaped by Hart’s contribution. In this context, the rule of recognition can be reconsidered with Hart’s guidance, given his acknowledgement of the incorporation of moral ideals into the rule of recognition and his recognition of substantive constraints, particularly those concerning the importance of universal human rights doctrine (Hart 2001, 196–197). Drawing on Hart’s view, the rule of recognition can be revised as both a formal and substantive legal validity criterion for assessing the validity of national or international legal systems. Formal legal validity ensures that legal authorities follow procedural requirements prescribed by the rule of recognition when enacting

laws. Substantive legal validity ensures that legal authorities fulfil their obligation to protect human rights, which act as substantive constraints through international conventions, customary international law, and peremptory norms. Human rights, as part of the rule of recognition, can be defined as ethical principles that emerge from extreme injustices, such as genocide, to guarantee perpetual opportunities for all of humanity.

This definition sheds light on the doctrine of human rights by grounding them in their phenomenological-ontological existence within the legal world. In addition to satisfying Hart's conceptual objections against the vague meaning of human rights, this definition can also support Hart's minimum content thesis of natural law, as explained by Leslie Green (2013, 240). Humanity, having witnessed the injustices of the Second World War, recognized the value of the human being through empirical experience, rather than abstract notions of human nature. All in all, human rights can be defined as an epistemological value of law aimed at protecting the value of the human (Kucuradi 2022, 63–64). Incorporation of this definition into the rule of recognition can encourage legal philosophers to adopt an ontological approach to better understand the relationship between law and human rights, as Hart suggested in his views on human rights (Hart 2001, 196–197). More importantly, this collaborative definition between law and human rights can address the contemporary problems, which revolve around the speculative reasoning of human rights and law in the realm of national and international law.

4. CONCLUSION

In the tradition of legal positivism, Hart's contribution, especially through *The Concept of Law*, has been pivotal. His rule of recognition, as a social rule identified by legal professionals, along with his primary and secondary rules tested by the rule of recognition for validity, advanced the theoretical framework of positivism beyond John Austin and Hans Kelsen. However, given the human rights challenges faced by the international order today, it is necessary to renew Hart's concept of law by exploring the relationship between law and human rights, revisiting his rule of recognition. This reformulation integrates human rights through the lens of ontological anthropology, as developed by Mengusoglu, who views the human value through historical achievements based on an ontological-phenomenological investigation of human phenomena (Mengusoglu 2021, 84). Applying this approach, the knowledge of modern human rights emerges from the extreme injustices of the Second World War rooted in such concrete phenomena, human rights become part of the concept of law through conventions, customary international law, and peremptory norms.

In other words, human rights exist in the concrete legal achievements that spring from extreme injustice. Thus, the conceptual relationship between law and human rights is clarified: human rights serve as a substantive criterion of validity in the revised rule of recognition, guiding the conduct of legal authorities at national and international levels. By achieving conceptual clarification of human rights within the borders of law, significant policy changes can be influenced not only at the state level but also within regional and international organizations, including the United Nations, the European Union, the Council of Europe, the Organization of American States, and the African Union. More importantly, the conceptual clarification of human rights can address the reliance on absolute legal principles often invoked in national and international courts under the guise of balancing law, excluding the protection of human rights. By incorporating a clarified concept of human rights into the legal glossary used by these courts, such issues can be mitigated. For instance, the European Court of Human Rights could refine its interpretative principles, such as the margin of appreciation and European consensus, when adjudicating complex, borderline cases that demand a case-by-case analysis to protect human rights.

Consequently, this study attempts to bridge Hart's theory with phenomenological ontology without conflating the conceptual distinctions between morality, rights, and legal validity. By defining human rights as ontologically grounded but epistemologically integrated into legal framework, the revised rule of recognition opens a new path for understanding substantive constraints in both national and international law. This ontological framework can offer a renewed focus on the law-human rights relationship, ensuring the protection of human rights amid challenges to the rules-based institutional order, because it offers a concrete perspective, realizing the real-world human rights violations within the concept of law.

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