Linkage Arguments and Levels of Realization

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Some well-implemented rights provide indispensable or at least useful support to other rights. Support relations among rights generate the possibility of arguing that accepting, respecting, and implementing some controversial right is called for because its successful operation is indispensable or useful to that of an established and uncontroversial right. I call an argument of this sort a “linkage argument” because the support relation provides the crucial link. Linkage arguments are perennially popular as ways of justifying and extending rights. Part of their attraction is that they avoid or supplement more theoretical justificatory arguments. They are short, quick, seem to deal mainly with practicalities, and thus seem to stay close to the ground.

Linkage arguments can be applied to single rights, families of rights, elements of rights, implementation mechanisms, and even to background conditions. The most common use of linkage arguments in the contemporary human rights movement, however, has been to defend economic and social rights. The 1968 UN Proclamation of Teheran asserted that "the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible." Henry Shue in Basic Rights mounted a similar defense of economic and social rights by arguing that subsistence rights (as well as security rights) are basic in the sense that it is impossible to fully enjoy any other rights if both of these families are not enjoyed.¹ A recent

example is found in James Griffin’s *On Human Rights*, where Griffin uses a linkage argument to enable his agency-based conception of human rights to endorse economic and social rights.\(^2\)

This essay offers a framework for understanding and evaluating linkage arguments pertaining to legal rights. Its main thesis is that knowing how well the rights in question are realized is crucial to the evaluation of the linking premise of such arguments.\(^3\) And it argues that if one specifies an idealized level such as “full” realization this will make the argument unable to yield prescriptions that are applicable here and now in countries with much lower levels of realization.

The purpose of this essay is not to criticize economic and social rights. In many writings I have defended economic and social rights with substantive moral and political justifications.\(^4\) Accordingly, I do not think that the case for them stands or falls with the availability of good linkage arguments. Still, I believe that linkage arguments provide one useful way of defending rights and have used them myself.\(^5\) I would like to see linkage arguments used carefully and well, and it is for that reason that I wish to encourage clear specification of levels of realization when we use them.

This essay is mostly concerned with legal rights at the national level because the realization of rights today usually requires legal implementation at that level. I believe, however, that the essay’s main thesis applies as well when linkage arguments are used to defend moral rights.

\(^3\) An earlier attempt is James Nickel, "Rethinking Indivisibility: Towards a Theory of Supporting Relations between Human Rights," *Human Rights Quarterly* 30 (2008): 984-1001. Some material here is adapted from that paper.
I. LINKAGE ARGUMENTS

Supporting relations between rights are most visible when rights are in operation, when they are actually at work (or standing ready to be called upon) within a system of legal rights. Rights in operation might be described as “enforced” or “implemented,” but the broader notion of “realization” includes factors relevant to success that do not fall under the narrower notions. The underlying metaphor is to make the right real, to transform it from an envisioned or formally approved norm to a one that actually delivers what is promised, that makes the protection or remedy effectively available to the rightholders. When the right to free public elementary education is well realized, for example, people who want elementary education for their children can generally get it by applying to the government school system.

The idea of realization combines the various things that make a system of rights successful or real. I take these to include: (1) acceptance of the rights by officials and the public; (2) people knowing about and making use of the rights; (3) general compliance by parties that have duties and responsibilities under the rights; (4) the implementation of the rights, including the availability of enforcement and remedies for violations; (5) the availability of all the rights to almost all the rightholders (the distributive dimension); and (6) the creation and maintenance of necessary background conditions such as the availability of electricity, communications, document storage, and transport.

When a right has these features to some degree I will say that it is realized to that degree. A high level of realization is not a perfect guarantee that every person in the jurisdiction will, in Shue’s words, “fully enjoy” the substance of the right as a right,
but it does a lot to make that more probable.

Countries vary enormously in regard to how well they realize human rights, ranging from non-realization, to levels that are low, medium, and high. High realization is not perfect realization; it rather represents the best levels of current practice worldwide.

Linkage arguments typically assert that a controversial right is justified because of the support that its realization provides to the realization of an uncontroversial and high priority right. The level of realization matters enormously to such arguments because poorly realized supporting rights cannot provide much support to the realization of the supported right. And rights that have high levels of realization tend to require more support from other rights.

The elements of a linkage argument are:

1. An uncontroversial and high-priority right (the anchor right or the supported right)
2. The defended (or supporting) right—which is usually more controversial.
3. A linking premise that asserts the indispensability or usefulness of the defended right to the anchor right
4. A conclusion that says that the defended right is worthy of acceptance and implementation.

Finding a strong linking premise is the hardest part of making a good linkage argument. When that premise is true we can say that the defended right supports the anchor right to some degree. The degree of positive support ranges from slightly useful to absolutely indispensable. Linking premises are usually partly empirical and partly
evaluative, although in a few cases they may reveal conceptual connections between two rights. There is little reason to believe that the truth of linking premises is invariant across countries or regions. Because of differences in threat levels and how well rights are realized, a right that provides indispensable or highly useful support in one country may only provide slightly useful support in another.

Here’s an example of a linkage argument in which rights to the fundamental freedoms are the anchor rights and due process rights are the defended and supporting rights.

*Premise 1:* *Everyone has human rights to the fundamental freedoms that ought to be realized to a high level.*

*Premise 2:* *If realizing any other right to a high level is indispensable to high-level realization of the fundamental freedoms, then that right ought to be realized to a high level.*

*Premise 3:* *Realizing due process rights to a high level is indispensable to realizing the fundamental freedoms to a high level.*

*Conclusion:* *Due process rights ought to be realized to a high level.*

This argument would probably still be sound if one substituted “medium” for “high” throughout. Premise 2 above is an application of a general principle of rationality, namely that a person pursuing a goal or end must also pursue the indispensable means to that end. Here the end is set out in Premise 1.

The relational premise in a linkage argument often needs to be defended by a supplementary argument. Here’s an argument in defense of premise 3 above:

*Well-implemented due process rights strongly support the fundamental freedoms*
by constraining abuses of the criminal law that undermine those freedoms. One’s odd lifestyle, or penchant for doing something annoying like skateboarding or door-to-door religious witnessing, may make one a target of government officials or police officers. They may think that a big fine or some time in jail will make one less of a nuisance. Well-realized due process rights such as habeas corpus, the right to a fair trial, and the prohibition of retroactive criminal laws make it more difficult for officials to do this. When due process rights and constraints on police use of violence are operative the police cannot just punish a person summarily with a beating or jail time. They have to show that he or she actually violated a previously existing law.

A baseline problem arises when we assess the indispensability of one operating right to another. When we are considering how much support is provided to some other right by, for example, the medium realization of the right to peacefully assemble and protest, should we consider what would happen to the supported right if (1) if no assemblies and protests ever occurred, or (2) if fewer of them occurred because of the absence of protection from a legal right to freedom to assemble and protest with medium-level realization? These two baselines are not the same since assemblies and protests occur even in countries without rights to freedom of assembly. I believe that the second baseline is the appropriate one even though it is harder to estimate. It is a mistake to assert the indispensability of the right to political assembly and protest to other rights on the grounds that if no assemblies and protests occurred this would be disastrous for the other rights.
The linking premise of a linkage argument claims that the defended right provides significant support to the anchor right. Rights with lower levels of realization provide (and need) less support to (from) other rights. For example, if only a few of the people convicted of serious crimes have access to an appeal process, and if the appeal process is very slow and cumbersome, this does little to support the general fairness of criminal trials—although it may give justice in a few particular cases. If the benefits of a right depend on the creation of a public good such as a low crime rate or an informed public, a low level of realization of the right may mean that the public good never emerges. Doing a little but not much to realize a right often fails to produce any support for other rights. The claim that low levels of realization weaken support relations is defended in section II.

Here’s an example of a linkage argument in which the linking premise asserts usefulness rather than indispensability:

Premise 1: Everyone has some human rights that ought to be realized to a high level

Premise 2: If realizing any right to a high level is useful to realizing all other human rights to a high level, then there is a pro tanto reason to realize the first right to at least a high level.

Premise 3: Realizing the right to education to a high level is useful to the realization of all other human rights to a high level.

Conclusion: There is a pro tanto reason to realize the human right to education to a high level.

This argument is weaker than the one for due process rights above because it is based
on usefulness rather than indispensability. The more useful the supporting right, the stronger the pro tanto reason for its realization.

The strongest linking premises say that there is no alternative to realizing the supporting right (to some specified degree) if you want to realize the anchor right (to some specified degree). Trying to have one without the other is practically inconsistent. In a few cases it may even be logically inconsistent. Weaker linking premises say that the supporting right provides useful support. Linkage arguments based on usefulness have weaker conclusions because they do not show that there is no alternative to realizing the supporting right. Often there are things that are useful and even highly useful to accomplishing a goal that we can nevertheless do without. Often we can find something more easily available that is nearly as good. For example, video projectors are useful in education but high-quality education can be provided without them. Blackboards and chalk are often adequate.

Judgments about the strengths of linkages among rights involve judgments of both fact and value (to use an old and crude distinction). Consider a traveler who wants to go from Atlanta to Brattleboro, Vermont, by commercial airliner and rental car. This traveler has no interest in sightseeing or visiting friends along the way. Someone tells the traveler that to make such a trip it is indispensable to fly to Hartford and rent a car there. We can show the falsity of this claim by observing that although Hartford is the closest commercial airport to Brattleboro (77 miles), there are good alternative airports such as Boston (105) and Providence (117). We have to get the facts about airports near the desired destination and then decide which if any of them are good (or at least passable) alternatives to the closest one. If someone suggested Syracuse (220) we
would say that it is an alternative but not a good one because it’s too far away.\textsuperscript{6}

Things that support a right’s realization can also conflict with it and undermine it. As an analogy, regularly running long distances may be good for the heart but bad for the joints. Support can be combined with creating dangers or undermining. Further, all rights compete for the resources needed for their realization. Adding more rights often means fewer resources for realizing the old ones.

As an example of combined support and undermining, consider the support provided for the fundamental freedoms by security rights that use the criminal law for implementation. A working system of public security through law (particularly criminal law) is indispensable to the successful realization of many other rights. This includes the fundamental freedoms. This system of laws, police, and punishments is dangerous, however, since measures taken to promote security against crime and terrorism can undermine the fundamental freedoms. The system is like a mean guard dog that keeps you safe from crime but poses the risk of biting you, your children, or your neighbors. Due process rights help reduce the dangers that misuse of the criminal law poses to other rights.

\section*{II. HOW LOW-LEVEL REALIZATION WEAKENS SUPPORT}

This section illustrates and defends the claim made earlier that a right with only a low level of realization can only provide weak support to other rights. For this purpose I will use the conception of realization proposed above. It said that high-level realization of a right would generally involve six conditions:

\textsuperscript{6} This example is adapted from James Nickel, Indivisibility and Linkage Arguments: A Reply to Gilabert," \textit{Human Rights Quarterly} 32.2 (2010): 439-446.
1. High levels of acceptance of the right by officials and the public

2. Most people know about the right and are prepared if appropriate circumstances arise to make use of it

3. General compliance with the right by parties that have duties and responsibilities under the right

4. High level implementation of the right, including the availability of effective enforcement and remedies for violations

5. The availability of all the rights to almost all the rightholders (the distributive dimension)

6. The creation and maintenance of necessary background conditions.

If a right’s realization in a particular country has a low level for all six of these dimensions, or even for 3 or 4 of them, its overall level of realization will be low. To show how a low level of realization can reduce the ability of a right to support other rights, I will discuss several of these dimensions of realization while supposing that the level is low.

1. The right has a low level of acceptance by officials and the public. Let’s imagine that in a particular country only 51% of people and officials display unqualified support for some legal right. The others have reservations about the right (25%) or are outright rejectionists (24%). Likely consequences of this include reduced compliance (particularly by the 24%), reduced willingness of officials to prosecute violators and provide remedies to victims, greater difficulties in obtaining funding for continued or increased implementation from the legislature, and reductions in how many people are able to use the right successfully when they choose to (effective universality). Suppose
that the supporting right is the right against discrimination and that the supported right is
the right to health care. The supporting right’s low level of acceptance would result in its
being less able to support the effective universality of other rights because of its own
weakness. When gays or immigrants receive discriminatory treatment in health care
they would find that a well-functioning right against discrimination is not available to help
support their claim to equal treatment. They would face the same discriminatory
attitudes in trying to exercise their right against discrimination that they faced in trying to
get health care.

2. There is a low level of knowledge of the right and willingness to use it when
appropriate circumstances arise. Let’s imagine that this means that only 60% of the
population both knows that the legal right exists and has some idea of what would be
involved in making use of legal remedies when the right is violated. Likely
consequences would be that available remedies and sanctions would get limited use
and that in turn would result in compliance with the right getting less motivational
support. If the poorly-known right was the right to petition government, widespread
ignorance of it and how to use it would result in its being less capable of supporting,
say, rights to decent working conditions. We have to careful here, however, because
knowledge of a right may not be entirely an individual matter. If there are people in
one’s family or neighborhood who are willing to share their knowledge of legal rights,
that can sometimes compensate for individual ignorance. Formal organizations and
agencies can provide sources of legal knowledge in neighborhoods where level of legal
knowledge are low. Still, if the general level of rights realization is low, such
organizations and agencies may be scarce.
3-4. The right has both low levels of compliance by the parties that have duties and responsibilities under the right and low levels of implementation. If a right has low levels in these areas its functioning is directly undermined. Duties to respect and protect frequently go unfulfilled. Suppose that the supporting rights are due process rights and that the supported rights are the fundamental freedoms (an example used earlier). If due process rights have low levels of respect and implementation, they will frequently fail to support the fundamental freedoms. If the police want to harass Jehovah’s Witnesses because of their door-to-door witnessing they will frequently be able to get away with it. And if the police can get away with beating up protestors whose causes they dislike then due process rights will provide limited support to freedoms to assemble and protest.

I do not deny that rights with medium levels of realization can provide very useful support to other rights, even if that support fails in some cases or under some conditions. For example, medium-level realization of the right to education can produce levels of literacy and civic knowledge that are very useful to achieving medium or high levels of realization of rights of democratic participation. Levels of realization for a supporting right may well have tipping points or thresholds that, when reached, suddenly provide a much higher levels of support.

To argue that rights with low levels of realization can sometimes provide significant levels of support to other rights, Pablo Gilabert used the example of a rusty fire escape on a building. If a lot of people are in a burning building, a rusty fire escape

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is better than none at all. This is certainly true if the fire escape actually conducts a lot of people to the ground without collapsing. But it the rusty fire escape collapses under the weight of the people trying to escape, or requires jumps that only the most athletic can make, then it is an example of non-realization. Maybe a better example of low realization would be a system of “free” public elementary schools that imposes numerous fees on parents, has a high percentage of poorly trained teachers, provides no transportation to school, and fails to cover many areas of the country. While failing in important respects, such a system could nevertheless do a lot to support low- or medium-level realization of other rights. My claim is not that rights with low levels of realization never provide significant support to other rights; it is rather that they seldom do so.

III. WAYS IN WHICH RIGHTS SUPPORT OTHER RIGHTS

To help us identify support relations between rights that can provide the basis for linkage arguments, I suggest some general ways in which rights support other rights.

A. Let’s start with the linkage argument above defending due process rights. It claims that realized due process rights help block some forms of police behavior that threaten the realization of the fundamental freedoms. A general description of this is that the supporting right helps mitigate the dangers that an implementation mechanism poses to other rights.

B. The second linkage argument above defends the realization of the right to education on the basis of what it contributes to the realization of all other rights. The idea behind is that a supporting right can contribute to the realization of the
supported right by increasing the number of people who know their rights, what they mean, and how to use them. Even a low level of realization of the right to education will result in there being more people in the population who know about legal rights and how to use them. The better educated can serve as sources of information and guidance for people who lack such knowledge. An even broader description of this kind of support is increasing the competencies of rightholders.

C. When the scopes of two rights overlap, to realize the second is to realize part of the first. Here the relation is conceptual and the linking premise will be analytic rather than empirical. The scope of the right to freedom of movement overlaps with the scope of the right to freedom of assembly since the absence of a right to move gives authorities a way of blocking the right to assemble. A familiar way of minimizing the size of an assembly and protest is to make it very difficult to get to the site of the assembly. Consequently, realizing the right to freedom of movement realizes a constituent part of the right to freedom of assembly.

D. Gaining acceptance of a right is part of its realization. Consequently, a realized right can contribute to the realization of another right by contributing to the degree to which the second right is accepted by officials and the public. For example, realized rights to freedoms of expression, press, and assembly help ensure that individuals and organizations are permitted to promote, advocate, and defend other rights and thereby promote their acceptance.

E. Promoting compliance by parties who have duties and responsibilities under a right is part of the right’s realization. These parties are more likely to satisfy their duties and responsibilities if the potential victims of their failures to do this have available
effective ways of "naming and shaming," retaliating, and obtaining remedies. For example, realized rights to petition government, to assemble and protest, and to have access to judicial remedies provide ways of doing these things. More generally, some realized rights provide effective ways of stopping, deterring, and remedying rights violations.

F. Some rights help make other rights less vulnerable to corruption. Realized rights to freedom of the press and rights of political participation can expose corruption and subject corrupt officials to loss of office and potential prosecution. For example, when officials running a food assistance program are discovered to be selling some of the food on the black market in order to enrich themselves, this can be reported and criticized in the press, protested by public demonstrations, and made an issue in upcoming elections.

G. Some realized rights promote and protect the universality of the supported right. Rights that do this include nondiscrimination and equality before the law. Human rights problems sometimes take the form of low quality realization for everyone, but they also frequently take the form of high quality realization for some and nonrealization for others—where these others may be individuals, groups, or regions. In a developing country, residents of the main cities may enjoy medium level realization of some rights while rural people—and particularly those in remote areas—receive no protection whatsoever, or receive very inadequate and spotty protection.

H. Some realized rights help prevent the widespread waiver of rights by the economically vulnerable. Individuals and families living in severe poverty often take big risks to get cash, find work, or leave the country. Elizabeth Ashford has pointed out
that these risks sometimes involve waiving rights against dangerous work and child labor. Realization of basic economic and social rights would reduce the number of people who waive their rights in this way. Ashford also points out that forbidding people to do these things instead of providing them with subsistence is often unattractive because it makes people living in severe poverty even worse off. We should note, however, that the International Covenant on Economic and Social Rights does take this approach when it requires that elementary education be both available to and compulsory for all children. Compulsory education when effectively enforced keeps parents from waiving their children’s rights against child labor.

IV. FULL REALIZATION AS AN IDEALIZATION

Linkage arguments that fail to specify the level of realization of the rights that are being linked are difficult or impossible to evaluate. This failure leaves out information that is usually necessary to evaluate the linking premise and estimate its strength. The early linkage arguments for economic and social rights did not fail in this way, however. They specified “full” realization. As we saw, the 1968 Proclamation of Teheran asserted that “the full realization of civil and political rights without the enjoyment of economic, social, and cultural rights is impossible” (my italics). And Henry Shue argued that it is impossible to “fully enjoy” any other rights if effective guarantees of subsistence are not available (my italics). I explain below some legitimate uses of the idea of full

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9 Shue, Basic Rights: 24. Elizabeth Ashford also relies on the ideal of full enjoyment in “The Alleged Dichotomy Between Positive and Negative Rights and
realization, but its use in linkage arguments usually deprives those arguments of conclusions that are of immediate application in most of the world.

The meaning of “full” realization is not clear. When a drinking glass is full there is almost no room for additional liquid. Applied to realization this analogy would suggest that full means that there are few areas in which improvements are possible. So perhaps full realization is a higher level than “high”. Perhaps it is very high or even perfect.

There are sometimes methodological advantages in considering moral and legal principles from the perspective of full realization. John Rawls, for example, insisted on pursuing “ideal theory” in which “full compliance” with principles of justice is assumed.\(^{10}\) One advantage of assuming full realization is that it makes it much easier to discern the practical implications of accepting and following a proposed norm. Full realization allows a norm to display its strongest level of functioning. (To increase discernibility still further one might assume the absence of competing considerations.) If realization or compliance is only partial it is much more difficult to discern the practical consequences of a right’s operation. Beyond this, support relations are strongest under full realization and hence are more likely to be visible or possible to project when we take that perspective.

There are disadvantages as well. One is that most countries in the world today have lower, and often much lower, levels of realization than “full” and are unlikely to reach a very high level for the entire set of human rights any time soon. Reaching

higher levels of realization would still take decades even if developed countries started delivering—as I think they should—much higher levels of international assistance to the least-developed countries and if the international system were reformed to makes its operation more favorable to developing countries.

If a linkage argument used to defend a controversial right is tied to aspirational levels of realization for the anchor right, the argument’s conclusion will often only produce an aspirational prescription in much of the world. A live prescription, in contrast, is one that can and should be acted upon in present circumstances.

Although Rawls usually worked at the level of ideal theory, he usually made clear that one had to go through “non-ideal theory” in order to reach practical conclusions for the present. Full realization is an idealization that one adopts for theoretical purposes. Idealizations need not involve the situation being ideal in the sense of extremely good. Galileo studied motion and acceleration by rolling balls down a grooved plank. To stay within his abilities of measurement he used the contrary-to-fact idealization that the balls fall without friction. He probably did not think that an absence of friction was somehow a better state of affairs (it would mean that the balls would slide rather than roll—and also make walking very difficult). Galileo justified using a false assumption on the grounds that friction was a small factor.

Idealizations are common in science, economics, and other theoretical work. They involve deliberately (1) taking a relevant factor out of a theory or experiment even though it is known to be present, sometimes present, or possibly present, and/or (2) representing a known factor in a way that is contrary to fact. Since a theorist may not

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know whether a factor is present and decide to proceed on the assumption that it is not, idealizations need not be contrary to known facts.

After idealizations have played their role in generating predictions or other results they need to be discharged. For example, if one’s economic theory assumed zero transaction costs in order to generate a result, when one applies that result to a real life situation the idealization must be shown to make little difference. If this is impossible to show in the circumstances of application then the conclusion must be weakened to say that if zero transaction costs obtain in these circumstances then the result follows. The idealization must be put into the antecedent of a conditionalized conclusion.

The trouble with linkage arguments tied to full realization is not always that they are unsound because their linking premise is untrue or exaggerated. The linking premise’s claim of indispensability may be perfectly correct under the assumption of full or high-level realization. The argument may be sound if its intended application is Norway or Denmark. The trouble comes when one tries to apply the argument to circumstances in which full realization is not immediately possible—the circumstances that we find in much of today’s world. We generally cannot say in those circumstances that the idealization makes little difference.

The way in which the idealization makes a difference is that it maximizes the strength of the linking premise. When a lower level is applied at the point of application, indispensable will often switch to useful and useful to not helpful. We saw earlier that lower levels of realization for supporting rights tend to lower the amount of support that they can provide. Thus the linking premise is likely to be weaker when we specify more realistic levels of realization. Levels of realization make such a large difference to
support relations that it is implausible to discharge the idealization of full realization by saying that it makes little difference. Since the idealization cannot be discharged it has to go into the antecedent of a conditionalized conclusion. This means that the conclusion would say that if full realization obtains in these circumstances, then the supporting right ought to be realized to that level. This is not a live prescription. If we want linkage arguments to yield live prescriptions in the developing world today our assumptions about levels of realization must be realistic. For the developing world the interesting and relevant question is which linkages are strong under low and medium levels of realization.

Although linkage arguments formulated under an idealization like full realization can help point us in a certain direction, the best ultimate direction does not always dictate the direction we should be going today in developing countries. The path to full realization of all human rights may not be direct and straight. As in sailing, reaching one’s destination may require a lot of navigating around obstacles and tacking to deal with unfavorable winds. Trade-offs and compromises may be necessary under partial realization that would be unnecessary if a country were close to high-level realization. Further, since countries are at very different distances away from full realization, the human rights strategies that are appropriate under high or medium levels of realization are unlikely to be the ones that are best everywhere. In the least developed countries, doing a little bit now for every single human right may be a bad strategy.12

V. KEEPING LINKAGE ARGUMENTS UNDER CONTROL

12 If correct, this suggests caution in urging the least developed countries to try to secure some minimum core of every human right.
Not everything useful or even indispensable to the realization of a right can itself be a matter of right. Some theorists oppose linkage arguments because of fear that they lead to the proliferation of rights. James Griffin posed this problem as follows:

[N]ot every necessary condition for one's having autonomy and liberty—for example, that one was conceived—comes into the class of human rights. We can stop the chain of necessary conditions that are rights from getting ridiculously out of control by restricting them to 'proximate' necessary conditions, though that leaves us in need of a criterion for 'proximate'.

I doubt that proximity or closeness is the best way to control the production of linkage arguments. If we have true indispensability relations between a chain of four rights such that R1 is indispensable to R2, and R2 is indispensable to R3, and R3 is indispensable to R4, then R1 and R3 have the same degree of indispensability to R4 even if R3 is much closer to R4 in its nature or role than R1.

This essay has suggested three ways of keeping linkage arguments under control. The first is using the appropriate baseline in estimating the indispensability of one right to another (not proceeding, for example, as if no right to assembly meant that no assemblies would occur). The second is distinguishing between support relations that involve indispensability and weaker ones that involve usefulness. When the weaker support relation obtains what we get is not a conclusive or near-conclusive justification for the supporting right but rather a pro tanto reason for its realization. This makes it easier for opposing reasons, including ones about costs, to prevent the all-things-considered justification of the right. The third way of keeping linkage arguments

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under control is to avoid the idealization of full realization and to attend carefully to the level of realization that is actually present or envisioned. If what is possible at present is only a low level of realization then setting out what would follow from full or high-level realization yields no live prescription.

These three ways of limiting linkage arguments are probably sufficient. If an additional means is thought necessary, however, one could propose reassessing the affordability of the anchor right whenever new rights or conditions are shown to be indispensable to it. If we have been thinking that we could have high-level realization of legal rights to fundamental freedoms without high-level realization of due process rights, and then discover that doing this is practically inconsistent, we could reassess the affordability of high-level realization of the fundamental freedoms.

V. CONCLUSION

Linkage arguments are more complicated and trickier than they initially appear. We can understand and use them most effectively when levels of realization are specified. Linkage arguments specifying full realization can be sound in the sense of being logically valid and having true premises. But full realization is a big idealization that cannot be discharged in most countries today. Because of this, in most countries linkage arguments pegged to full realization will not yield live prescriptions for the realization of supporting rights. At best they prescribe what should be done in some much-improved future.