

The Many Faces of *Remedy*

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I. The Challenge

What, in a legal context, is a remedy? The answer to this question is crucial, if we wish to use the term "remedy" intelligibly, i.e., in a way that will enable effective communication with others. A shared understanding of the term is important for yet another reason: it is a prerequisite for any attempt to think systematically about questions such as what phenomena a "law of remedies" might cover and, more fundamentally, if a "law of remedies" actually exists.¹ Unfortunately, the answer to these closely interrelated questions remains blurry and controversial, notwithstanding the remarkable contributions of the very few remedies theorists of our time.²

This paper is a modest attempt to improve the remedies discourse by making it more accessible. Rather than defending a specific definition of the term "remedy",³ my goal is simply to present the terminological uncertainty surrounding the concept. More ambitiously, I wish to propose a certain methodological tool that, I believe, can make the conceptual debate over the most "appropriate" terminology more comprehensible to lawyers, judges and legal scholars.

To assist me in this endeavor, I constructed an analytical timeline, which I suggest calling the "Right-Remedy Sequence" (RRS, for short). The RRS describes – and names – the chain of events, both empirical and imagined, connecting the initial (primary) rights that people hold against each other with the ultimate empirical outcomes of their infringement or nonfulfillment. The resulting product is a timeline

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¹ The negative answer was clear to A preeminent American Scholar writing in the mid-fifties: "[T]he most important thing to say [about the law of remedies] is that there is no law of remedies." Charles A. Wright, *The Law of Remedies as A Social institution*, 18 UN. DET. L.J. 376, 376 (1955).

² Glaring modern contributors here are Peter Birks, his disciple Rafal Zakrzewski, and Stephen Smith. For a collection of essays published in memory of Stephen A. Smith, addressing his contribution to remedy theory, see Evan Fox-Decent, John C.P. Goldberg and Lionel Smith (eds.), *UNDERSTANDING PRIVATE LAW: ESSAYS IN HONOUR OF STEPHEN A. SMITH* (2025).

³ For my own definition see Yehuda Adar & Gabriela Shalev, *The Law of Remedies in A Mixed Jurisdiction: The Israeli Experience* 23 TULANE EUROPEAN AND CIVIL LAW FORUM 111, 113-14 (2008).

covering every conceivable analytical phase (again, tangible or abstract) through which legally protected interests (rights) can turn into end-state sanctioned realities.

Notably, the RRS employs two analytical distinctions. The first is the distinction between first-order rights, second-order rights, third-order rights, etc. The second tool is the well-known Hohfeldian distinction between duty-rights (i.e., rights correlative to duties) and power-rights (rights correlative to liabilities). The combination of these analytical tools has greatly assisted me in thinking about the RRS and shaping it. The final product is a scheme that can clarify the complexity of the remedial landscape.

II. The Various Meanings of "Remedy"

In Anglo-American law, the term "remedy" has many different meanings. Texts and dictionaries have defined legal remedies in various ways, some of which so wide as to include every form of legal relief, anything a court can do for a litigant, or every means of enforcing rights.⁴ In the early eighties, a foremost Canadian scholar remarked:

*"It is apparent from an examination of these books [on remedies] that the scope and meaning of this legal subject area is by no means settled... no authority has tried to define or delimit 'remedies'".*⁵

Unfortunately, this reality is still with us. Indeed, ever since the publication of Peter Birks' *"Rights, Wrongs and Remedies"*,⁶ it has become common knowledge that "remedy" is an ambiguous concept with numerous meanings.⁷ In that path-breaking Article, Birks argued that in its broadest and least controversial sense, a remedy is

⁴ See, e.g. THE OXFORD DICTIONARY OF LAW (9th ed., 2018): "Any of the methods available at law for the enforcement, protection, or recovery of rights or for obtaining redress for their infringement."; Cf Andrew Burrows, *Judicial Remedies*, Ch. 21 in ENGLISH PRIVATE LAW, sec. 21.1 (p. 1253) (Andrew Burrows ed. 2013): "In this chapter, a remedy is used to denote the relief (whether an order or a pronouncement) that a person can seek from a court".

⁵ Stephen M. Waddams, *Remedies as A Legal Subject* 3 OXFORD J. LEG. STUD. 113, 113 (1983).

⁶ Peter Birks, *Rights, Wrongs and Remedies*, 20 OXFORD J. LEG. STUD. 1 (2000).

⁷ "'Remedy' is a very ambiguous word. It has multiple meanings, some of which overlap." Rafal Zakrzewski, REMEDIES RECLASSIFIED 7 (2005); "The term 'remedy' does not have a settled meaning in law" Stephen A. Smith, *Rights-Threats, Wrongs and Injustices: The Common Law's Causes of Action*, 27 NEW ZEALAND UNIVERSITIES L. REV. 1033, 1034 (2017); "The concept of a remedy has rarely been subjected to rigorous analysis. Views may differ as to precisely what one is talking about." Andrew S. Burrows, REMEDIES FOR TORTS, BREACH OF CONTRACT, AND EQUITABLE WRONGS 3 (4th ed., 2019); Smith, Stephen A., RIGHTS, WRONGS AND INJUSTICES 2-3 (2019) ("[W]hat is a remedy (and, relatedly, what is the subject matter of remedial law)? Some remedies textbooks do not address this question at all... With one notable exception, no textbook discusses the definitional question in depth").

simply "*a cure for something nasty*". Birks added that "*anything that alleviates, eliminates or prevents*" that unwelcome something can be referred to as a remedy.⁸

And yet, Birks claimed that in the law the term "remedy" has at least five concrete, narrow meanings.⁹ For reasons I explain below, my proposed list of meanings includes only four of those five. To these four I added three supplementary meanings, forming altogether a list of seven meanings, two of which were recognized by Zakrsewski, in his important remedies treatise.¹⁰

Meaning 1: Claim rights. Birks began his analysis by pointing out that *causes of action in law* can be called a remedy. A right of action represents the legal systems' recognition that certain grievances or anxieties create legal powers in individuals to bring an action before a court and ask for some kind of relief. *This very recognition*, e.g., that a breach of contract is a valid cause of action, *is a cure* – and hence a remedy for the claimant (e.g., an aggrieved promisee). In other words, the very *actionability* of certain types of events is a remedy for those that happen to be trapped in those events, to their detriment. In Birks' own words:

*The word "remedy" sees the availability of those sets of winning words, and hence the words themselves, as the medicine for the pain that brings the plaintiff to the law... That sufficiently sets up the resonance between pain and cure, and it is that resonance which suffices to justify the use of the word "remedy"... [A]ctionability... is the willingness of the law to respond to [a plaintiff's] problem.*¹¹

Meaning 2: Response to Wrongs. Next, Birks argued that *inter-personal private law rights arising immediately from the commission of civil wrongs* can be seen as "remedies". If I wrong you by breaking my contract with you or trespassing on your land, you now have a right that I do something for you (e.g., pay you damages or move out of your land).¹² This *secondary right*, arising of my violation of your *primary right*, is your remedy.

⁸ For an earlier Birksian formulation of this basic idea see Peter Birks, *Equity in the Modern law: An Exercise in Taxonomy*, 26 U. WA. L. REV. 1, 11 (1996) ("A right is described as a remedy when the speaker thinks of it as the means of curing a grievance").

⁹ The ensuing discussion is based on Birks, *supra* note 6, at 9-17. Birks' taxonomy – and critiques of extant terminology – was largely followed, with a more detailed exposition, by his disciple, Rafal Zackreowski, *id.*, Ch. 2 ("Instability of 'Remedy'").

¹⁰ Zackreowski, *id.*, at 18-22 (discussing what I shall call meanings 6 & 7).

¹¹ Birks, *supra* note 6, at 10, 11, 18.

¹² Whether or not this is an accurate depiction of the legal reality is under debate. Stephen Smith argued that in common law no such interpersonal obligations exist and that wrongs only create

Note the subtle analytical difference between this meaning of "remedy" and the previous one. Under the former, *the law's recognition of the general legal category that enables your claim right* is the remedy; whereas here, the remedy is *the concrete interpersonal relationship* that the law creates between me and you. Further, while Meaning 1 is potentially applicable to any hardship or grievance, Meaning 2 only applies to grievances brought about by wrongdoing.

Meaning 3: Response to A Grievance. Birks claimed that a third possible meaning of "remedy" is "*a right born of a grievance or injustice*". By "grievance or injustice" Birks referred to events that *do not involve wrongdoing*, but nonetheless put a person in dire straits. Whereas for Birks the first sense of "remedy" covers both wrongs and "*not-wrongs*" (grievances), the second and third senses are applicable to either wrongs or not-wrongs, but not to both. Also note that for Birks, a remedy in this third sense is *not a secondary right*, because secondary rights could only emanate from wrongs.¹³ For example, the right to restitution following a mistaken payment may exist independently of any wrongdoing. Nonetheless, it is a remedy in the third sense:

*A mistaken payment is not a wrong, but being out of one's money by mistake can be represented as a trouble or grievance needing a cure.*¹⁴

Meaning 4: Court Orders. Forth, and for Birks the most natural meaning of "remedy" is used to imply "*a right born of an order or judgement of a court.*" In this fourth sense, a remedy is simply any order or declaration in favor of a winning claimant.¹⁵ Birks argued that since a court order (or judgement) *novates or transforms* the rights existing prior to it, it in fact creates *new rights*. Arguably, this must mean

powers and liabilities. See e.g. Stephen A. Smith, *Duties, Liabilities, and Damages*, 125 HARV. L. REV. 1727 (2012).

¹³ For a different view see Kit Barker, *Rescuing Remedialism in Unjust Enrichment Law: Why Remedies Are Right*, 57 CAMBRIDGE L.J. 301 (1998) (claiming, *contra* Birks, that restitution rights can and should be regarded as secondary rights even if they do not emanate from wrongs). Elsewhere Birks described the right to restitution for not-wrongs (AKA restitution for autonomous unjust enrichment) as a primary right. See e.g. Birks, *supra* note 8, at 11 ("[I]n the category of unjust enrichment or, more fully, unjust enrichment at the expense of another, the obligation to make restitution is primary"). See also Peter Birks, *The Concept of A Civil Wrong*, in *Philosophical FOUNDATIONS OF TORT LAW* 31, 48-49 (1985) (same).

¹⁴ Birks, *supra* note 6, at 18.

¹⁵ It seems that Birks had in mind only final orders. He did not mention interim orders and procedural decisions.

that, when the cause of action is a wrong, those rights are better described as *tertiary* or third-order rights, because they replace pre-existing secondary rights.¹⁶

However, when the action is based on a "*not-wrong*", two analytical alternatives should be considered. Under the first view, which Birks himself seems to have embraced, a court order responding to a *not-wrong* creates a primary right in the plaintiff. However, this presumption is problematic, if only because Birks himself described court orders as constitutive rather than declaratory. If this is true, then, being substitutes for rather than mere replicates of pre-existing primary rights, court orders for *not-wrongs* may well be regarded as second-order rights.¹⁷

In fact, such orders might even be seen as creating *tertiary* rights. To illustrate, if one regards the failure to restore a mistaken payment as a normatively significant event that creates new rights, then a feasible description of the analytical sequence seems to be the following:

Phase one: a mistaken payment creates in the claimant a *primary right* for restitution against the recipient.

Phase two: a failure by the recipient to make restitution creates a *secondary right* in the claimant against the recipient.

Phase three: if the claimant brings an action before the court to enforce his primary or secondary rights, a restitutionary order will create a *tertiary right* in the claimant.¹⁸

Discretionary Remedies. Towards the end of his analysis, Birks introduced this fifth meaning. In this fifth sense, a remedy is nothing more than a plaintiff's hope or aspiration that a court will grant them an order of a certain kind. A discretionary remedy is, for Birks, "*not a right but only a hope that the court will see fit to create a right*". Remedies of this type are granted by courts on the basis of strong discretion rather than on the basis of any pre-existing rights of the plaintiff.

In my view, adding this conceptual option to the list is unhelpful. Unlike its four precursors, Birks' fifth meaning does not exclude all others but overlaps with them. It

¹⁶ Birks recognizes this explicitly. In the context of remedies for breach of trust, he said: "The wrong itself gives rise to secondary rights. The court's order effectuates the secondary rights and creates tertiary rights." Peter Birks and Arianna Pretto-Sakmann, '*Preface*' in BREACH OF TRUST xi (Peter Birks and Arianna Pretto-Sakmann eds., 2002).

¹⁷ For a similar critique see Barker, *supra* note 13.

¹⁸ Admittedly, under the same logic, the failure to pay damages for a wrong may be regarded as creating tertiary rights, which a court order can replace with a new set of quaternary rights.

certainly overlaps with Birks' fourth category, since discretionary remedies too are rights created by court orders. This puts Birks' fifth proposed meaning on a different analytical plane vis-à-vis the other four: whereas each of the first four meanings is an alternative that excludes all others, discretionary remedies seem to be a sub-category of the fourth meaning. This makes the adding of it to the list conceptually and methodologically unhelpful. It will therefore be ignored throughout the remainder of this paper. This is not because discretionary remedies are unimportant. Rather, the reason is that treating them as a separate phenomenon blurs rather than clarifies the conceptual landscape.

Three Additional Meanings. Inasmuch as it is illuminating, Birk's list of meanings is incomplete. I suggest supplementing it with three other "remedial" phenomena Birks failed to consider. Let us briefly present them and add them to the list.

Meaning 5: Procedural Remedies. Assume that an aggrieved party realizes his power to bring suit, say for a breach of contract. Upon its commencement, the litigation subjects both claimant and defendant to the rules of procedure and evidence governing it. These rules create a variety of rights, duties, powers and privileges. Some of these rights and duties aim at assisting the plaintiff in proving their case or ensuring the effectiveness of a final court order (e.g., *via interim* injunctions). In this sense, these rights and duties offer remedies – if only ancillary ones – in response to a claimant's initial grievance (e.g., the contract breach). Similarly, procedural rights that protect defendants from the risk of unjust or disproportionate sanction can be seen as remedies. I suggest naming rights of this type "procedural remedies".

Meaning 6: Execution Remedies. "Remedy" is sometimes used to describe the legal mechanisms available for enforcing and executing court orders.¹⁹ Execution procedures, garnishment, and sanctions for contempt are examples of rights and duties that serve such purposes. Because they assist in responding to a claimant's initial grievance, they can properly be called "remedies".

Meaning 7. Tangible Relief. In addition to the six meanings discussed, the term "remedy" is often understood as the real, tangible relief or benefit that an aggrieved party receives in response to a grievance (whether a wrong or a not-wrong).²⁰ A remedy

¹⁹ For discussion see Zakrzewski, *supra* note 7, at 18-21.

²⁰ For discussion see Zakrzewski, *id.*, at 21-22.

in this sense is not an abstract concept, like a right or obligation, but an empirical event that presumably alleviates an aggrieved party's hardship.

Self-Help Remedies. A final comment concerns self-help remedies, such as the right to evacuate a trespasser, enforce a possessory lien, forfeit a deposit, or terminate a contract. The leading theoretical works on remedies – and some very important remedies textbooks – have knowingly neglected this part of the remedial realm.²¹ This is regrettable, since self-help remedies can hardly be considered an insignificant legal phenomenon. Yet, describing self-help remedies does not necessitate adding a new and distinct conceptual category to our list of meanings. Rather, self-help remedies are themselves remedies in more than one of the senses discussed in this part of the paper.

III. The Right-Remedy Sequence

The idea behind the following scheme, which I suggest calling the Right-Remedy Sequence (RRS) is simple. It aims to sketch, in a chronological order, every possible stage from any primary right to its ultimate empirical manifestation in cases where the right is not realized in the ideal way envisioned by the law. Indeed, it is only in such cases that there is a need for a remedy.

Every chronological phase on the RRS is presented as a separate stage or tick on a scale running from primary right to ultimate relief. Note that these ticks symbolize events that are either empirical facts or imagined legal realities (most often the presumed creation of certain rights).

Stage No. 1: Primary Right Created. The first tick on the RRS represents the birth of a certain concrete primary right. While it is not easy to define a primary right, for our purposes it can usefully be described as a legally recognized interest of a certain legal person that has yet to be fulfilled or realized, and has not in any way been infringed. To illustrate, let us assume that A has entered an agreement with B and that this agreement is a legally binding contract. A conventional presumption among lawyers and courts would be that the very formation of the contract created certain primary rights in A towards B and vice versa. Let us call this tick on the RRS stage No. 1.

Stage No. 2(a): Claim Right Created. At this point, let us assume that B acted in a way that was inconsistent with A's primary contractual rights. In legal discourse, this

²¹ Clear examples are the works of Birks, Zakrzewski, Stephen Smith, Burrows and Dan Dobbs, whose legendary treatise covers judicial remedies only.

event would ordinarily be described as a breach of contract, which gives A a cause of action against B. The breach is thus a "remedy" in the first of the seven senses we discussed in Part II. Note, however, that, this remedy is not a duty-right (a right correlative to a duty) but a power-right (a right correlative to a liability).²² Stage No. 2(a) thus involves the creation of a "remedy" which can be described as a second-order (or secondary) power-right.

Stage No. 2(b): Rights Responding to Wrongs Created. Until fairly recently, it was common to assume that the commission of a civil wrong, such as a breach of contract, immediately creates certain secondary rights in the victim against the wrongdoer.²³ Applying this notion to our hypothetical, A is now believed to enjoy a secondary duty-right against B for the payment of expectation damages. Under this view, following breach A enjoys, in addition to his "remedy" in the first sense, a "remedy" in the second sense.²⁴ This legal event is marked on the RSS as stage No. 2(b), because it presumably occurs simultaneously with stage 2(a).

Stage No. 2(c): Rights Responding to Not-Wrongs Created. We mentioned this scenario when we discussed Meaning 3 above (Response to A Grievance). Rights of this sort are typically created simultaneously with the claim rights to which a not-wrong gives rise. This is why the creation of rights responding to not-wrongs share the same tick on the RRS with both claim rights and rights responding to wrongs.

Stage No. 3: Tangible Relief Provided. Assume now that following breach A asks B to compensate him for what he believes are his expectation damages. Or assume that A asks B to repay him a sum of money A had mistakenly paid B. If B assumes responsibility and complies with either of these demands, we can say that the bestowal of the requested sum upon A is his "remedy" in the seventh sense discussed above (Tangible Relief). The payment brings to fruition A's secondary (or primary) right against B.

Note, however, that unlike stages 1 & 2, stage 3 can take place at any point in time after the cause of action is complete. Describing it as stage No. 3 is thus slightly misleading, since the delivery of relief can occur much later in time, and sometimes

²² The *locus classicus* for the distinction is Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 26 YALE L.J. Vol. 710 (1917).

²³ A dramatic shift of viewpoint can be traced to the publication of Smith's Article, *supra* note 12.

²⁴ In addition to judicial remedies (in the second sense) A may enjoy self-help remedies (in the same sense).

only after resorting to coercive measures (e.g., a court order or an execution order). On the other hand, when a self-help remedy is concerned, the provision of tangible relief is carried out by the aggrieved party itself. It can thus, in principle, take place almost immediately after the cause of action is complete (e.g., termination for a material breach).

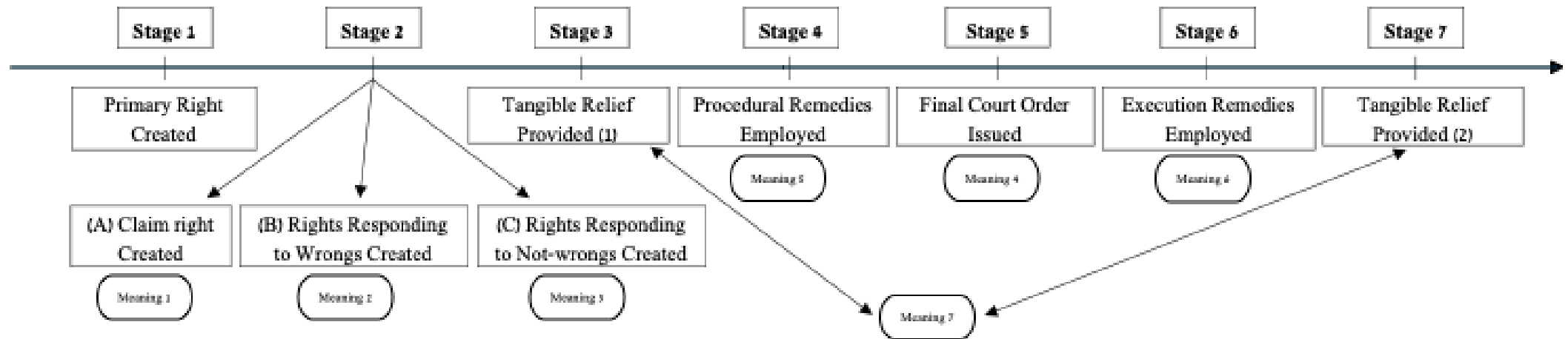
Stage No. 4: Procedural Remedies Employed. Assume that, in our hypothetical, A decides to realize the power to bring suit against B for breach of contract. As mentioned earlier, litigation opens up the option of employing a wide range of remedies in the fifth sense, namely judicial (or self-help) procedural remedies.

Stage No. 5: Final Court Order Issued. The official goal a final judgement is to clarify if the plaintiff's claim for permanent relief should be upheld. When a court answers this question in the affirmative, it will usually issue an order instructing the defendant to do or not to do something for the plaintiff (pay money, transfer ownership, stop a nuisance, etc.). This stage creates remedies in the fourth of the seven senses discussed in Part II.

Stage No. 6: Execution Remedies Employed. If a losing defendant fails to obey a court order, they might face proceedings aimed at forcing them to obey. Such proceedings create a variety of remedies. First, the very failure to obey a court order exposes the recalcitrant defendant to the risk that such proceeding will actually take place. The defendant thus becomes liable to the plaintiff, in the sense that the latter now holds a power-right against them. This, in fact, is a claim right of sorts, and hence a "remedy" in the first sense we mentioned earlier. Second, upon actual commencement of the execution or enforcement procedure, new rights and duties are created. The creation of such execution remedies is represented on the RRS as Stage No. 6.

Stage No. 7: Tangible Relief Provided (2). Ensuring the receipt or enjoyment by an aggrieved party of actual relief – a "remedy" in the seventh sense – is the ultimate objective of any remedial rule, principle or doctrine. Once a cause of action is established, the actual relief for a wrong or a not-wrong can arrive, either partially or in full. As mentioned, actual relief can be delivered or provided – voluntarily or by coercion – at any given time after a cause of action is complete. Hence, while depicting it as the last chronological stage is methodologically helpful, doing so should not be taken as a denial that actual relief can and often does take place earlier.

THE RIGHT-REMEDY SEQUENCE



IV. The RRS – What's in It for Us?

Having presented the reader with the RRS, it is time to ask if this simple analytical tool can improve remedial discourse and if so, in what ways. A number of preliminary responses come to mind.

First, the RRS helps realize that all of the seven meanings this paper discussed (in Part II) are legitimate definitions of a legal remedy. This is because each of them passes the "cure to a hardship" test, which is arguably the core notion behind the word remedy in any legal context and beyond. The first insight is thus that no one is wrong or mistaken to propose any of these seven meanings as the "correct" one. Rather, the interesting question is what can be done in the face of this terminological uncertainty to make remedial discourse more productive. Put differently, *nobody is right or wrong* to insist on a particular definition of "remedy". Rather, the challenge becomes one of making a terminological choice (or choices) that will improve our ability to understand, accurately describe, discuss, debate and ultimately resolve "remedial" problems.

Second, the RRS assists in understanding that to give any one meaning of "remedy" exclusivity carries with it a considerable price. Any such decision runs the risk of being interpreted as an invitation to push out of the remedial realm at least six other phenomena. In this context the RRS is important. Looking into it immediately reveals that adopting an exclusive definition might result in ignoring significant similarities between the chosen phenomenon and other phenomena. This is problematic not only because all seven phenomena share similar features, but because they are inextricably intertwined and connected as stages along one sequence. Each of the seven meanings represents an important stage in a complex process through which legal rights, which are purely abstract constructs, change shape and turn into legitimate tangible end-state realities. To understand this process is to understand law. To limit the law of remedies to the law related to only one of the seven phenomena which remedies involve is thus to narrow our understanding of the law.

Thirdly, the RRS can assist in understanding why "remedies" has not yet established itself as a recognized doctrinal field like contracts, torts, unjust enrichment, property or family law. The reason is that the law of remedies is everywhere: it is potentially applicable to every conceivable grievance or hardship, regardless of their empirical or doctrinal origin. Indeed, remedies appear in every corner of the legal system. This is why remedial discourse is not limited to civil or private law. It extends

far beyond, to the realms of criminal, administrative, constitutional, and public law generally. This insight is important. On the one hand, it demonstrates the usefulness of remedial analysis, in terms of allowing fruitful comparisons that cut across established legal fields to be made and studied. On the other hand, it emphasizes the need to establish a clearer jargon, so that claims and suggestions to modify certain rules of remedy could be better understood and assessed.

A possible way forward would be to develop a wholly new jargon. The new terminology will consist of *dissimilar terms* denoting the various distinct meanings of "remedy", so to avoid confusion and inconsistency. To do so, we must overcome the urge to impose our terminological preferences on others. We must be willing to embrace a new shared vocabulary, which we can all employ regardless of our personal stance on any semantic, conceptual, descriptive or normative controversy concerning remedies. Having established a common jargon, remedies scholars can return to defending their positions on any of these issues, this time with more clarity and effectiveness.

A forth, and final insight stemming from the RRS is that the process leading from primary right to ultimate relief consists of both empirical facts and imagined legal constructs – mostly legal rights of various kinds.²⁵ The RRS enables us to realize this, to see which is which, and to understand why heated debates about remedies and the exercise of judicial discretion in the award of remedies concentrate around abstract events. This can be illustrated on the fierce controversy on whether court orders are governed by private law (law directed at individuals) – as Peter Birks strongly believed, or by public law (law directed at judges) – as Stephen Smith strived to demonstrate. Does a tort or a breach of contract actually create secondary remedial rights in the victim as against the perpetrator, or is this merely a rhetorical tool courts use to conceal their strong discretion? While the answer to such questions will probably not cease to be disputed, the RRS can ease access to these interesting debates, and can make them more comprehensible. This awareness is itself a good starting point for framing and assessing doctrinal, theoretical and normative arguments concerning the shape, scope, and often the very existence of legal remedies.

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²⁵ Some events have both a tangible and an abstract dimension. For example, a judgement consists of the rights generated by the judgement, but the judgement itself is a physical phenomenon.