

# Treaties in context I.

An interdisciplinary contribution to the course on the law of treaties

## **WHY ARE TREATIES BINDING? WHY ARE THEY OBEYED?**



**Presented by Boldizsár Nagy  
at the Mykolas Romeris University,  
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## In place of a motto

„On April 9, 1997, John R. Bolton, a former Assistant Secretary of State for International Organization Affairs in the Bush Administration [and US ambassador to the UN in 2005-2006 – BN], testified before the House International Relations Committee. In his written statement he asserted, »Treaties are 'law' only for U.S. domestic purposes. In their international operation, **treaties are simply 'political,' and not legally binding**«.,,

From: „Treaties as Binding International Obligation”

By Frederic L. Kirgis: ASIL Insights May 1997

<http://www.asil.org/insights/insight9.htm>

- Vienna Convention on the Law of Treaties, 1969, preamble

„*Considering the **fundamental role** of treaties **in the history** of international relations,*  
....

*Recalling the **determination** of the peoples of the United Nations to establish conditions under which justice and **respect for the obligations arising from treaties** can be maintained,....*

## On the growing role of treaties

- No time to wait for the formation of customary law in technically complicated areas (radiocommunication, e.g.)
- Conflict between world systems (East- West, North –South, e.g.: arms limitations, environmental protection)
- The growing number of states – new states' wish to form i.l.
- Inherent reason: treaties are more precise, allow for clarity of obligation

## Definition(s)

# 1969 Vienna Convention on the Law of Treaties

### Article 2 Use of terms

1. For the purposes of the present Convention:

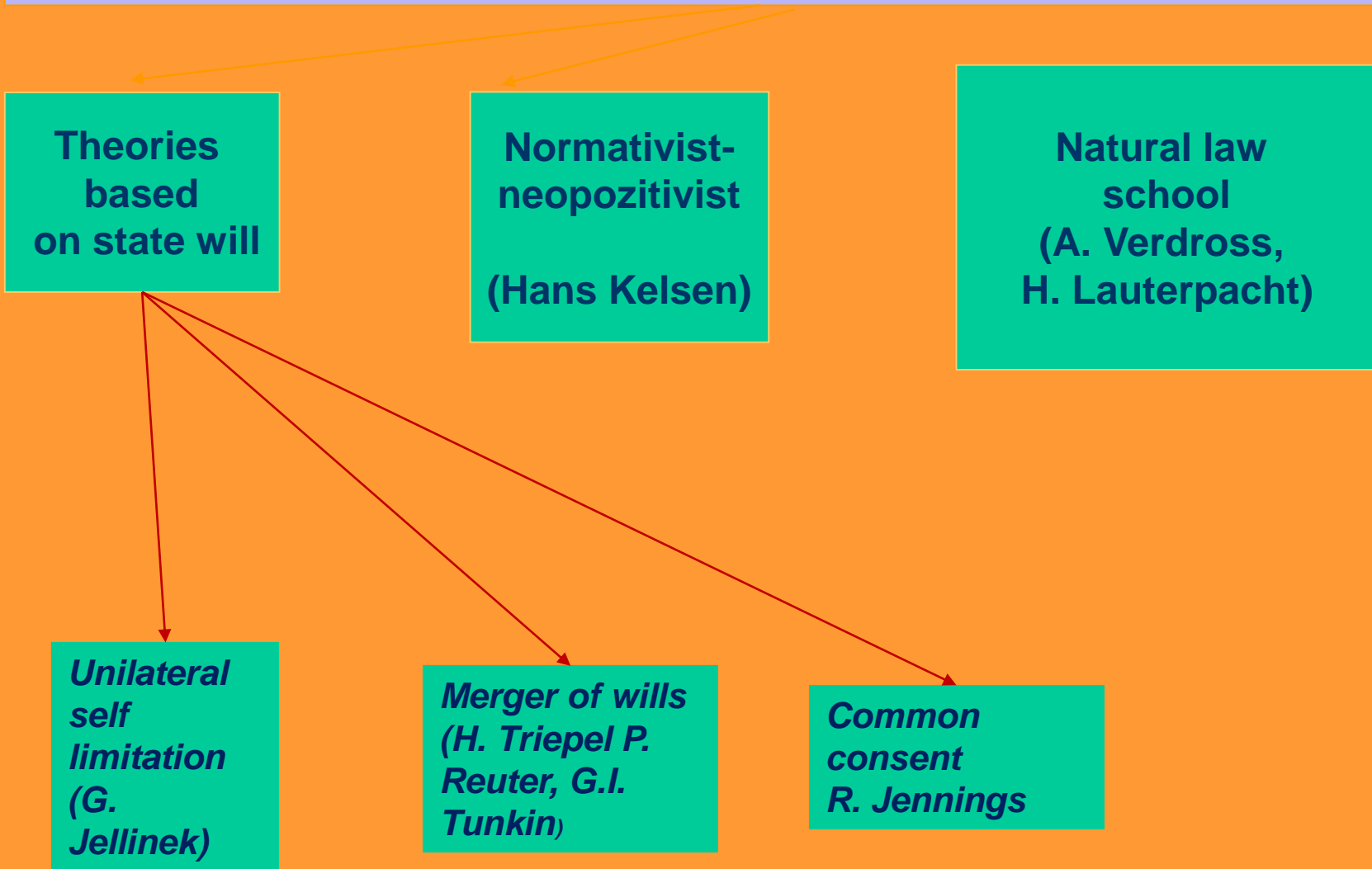
(a) “treaty” means an international concluded between States in written form and **agreement** governed by **international law**, whether embodied in a single instrument or in two or more related instruments and **whatever its particular designation**;

Paul Reuter:

„A Treaty is an expression of the **concurring wills**, attributable to two or more **subjects of international law**, and intended to have legal effects under rules of **international law**”

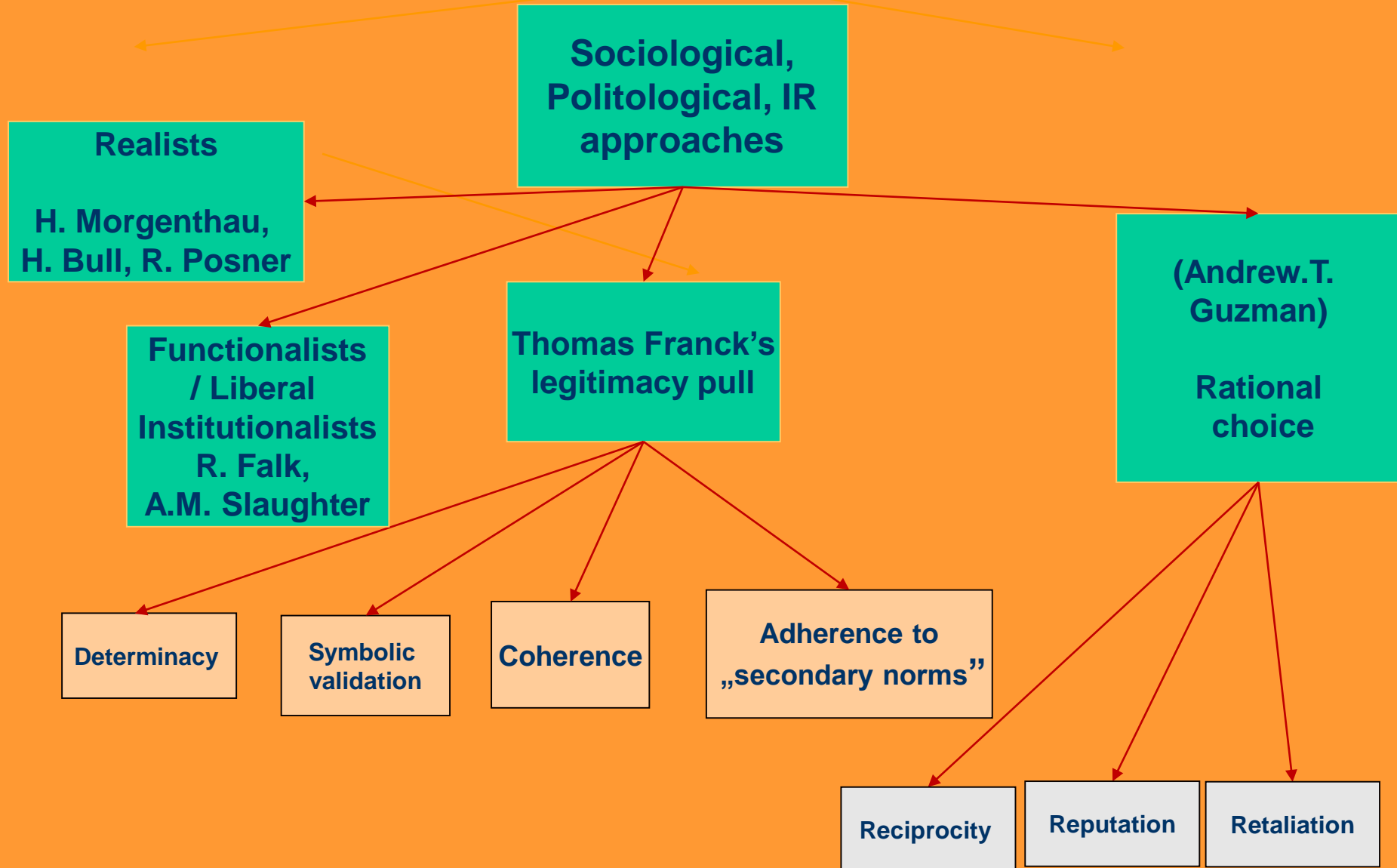
Introduction to the Law of Treaties,  
1989, p. 22

# EXPLANATIONS WHY TREATIES (AND INTERNATIONAL LAW) ARE BINDING



# COMPLIANCE THEORIES

## EXPLANATIONS WHY TREATIES (AND INTERNATIONAL LAW) ARE OBEYED



# COMPLIANCE THEORIES

## EXPLANATIONS WHY TREATIES (AND INTERNATIONAL LAW) ARE OBEYED

**Managerial Model**  
A. Chayes  
and A.H. Chayes

Regimes with policy reviews and NGO-s are key actors in enhancing compliance

### Norms

Negotiated in pursuance of state interest + consent to be bound

### Transparency

- Clear meaning of rules and procedures
- Transparent action of players

**Active management of treaties**

### Verification and Monitoring

- Bilateral
- Multilateral (IO)

### Reporting and Data Collection

May induce domestic compliance +leads to transparency

**Dispute settlement**

**Capacity building**

**Amendment and modification of obligations**

# EXPLANATIONS WHY TREATIES (AND INTERNATIONAL LAW) ARE BINDING

Oona A.  
.Hathaway  
  
„Integrated  
theory of  
compliance”

Harold H.  
Koh  
„Transnational  
Legal process”

1  
Interaction  
initiated

2  
Generation and  
interpretation of  
norms by  
transnational  
actors

3  
Internalisation of  
the interpretation  
through  
repetition and  
introduction in  
the domestic  
sphere – identity  
formation

TABLE 1

Summary of Incentives for State Commitment and Compliance

	Legal Enforcement	Collateral Consequences
<b>Domestic</b>	Incentives for commitment and compliance arise from expected enforcement of the treaty, where the source of the enforcement is actors inside the state.	Incentives for commitment and compliance are created by anticipated reactions of domestic actors to a government's decision to commit to an international treaty.
<b>Transnational</b>	Incentives for commitment and compliance arise from expected enforcement of the treaty, where the source of the enforcement is actors outside the state.	Incentives for commitment and compliance are created by anticipated reactions of transnational actors to a government's decision to commit to an international treaty.



# Codification

## *Adopted Conventions*

- 1969. Vienna Convention on the Law of Treaties (concluded by States)  
Entry into force: 27 January 1980. In Fall 2014 it had 114 parties.
- 1986. Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations  
Fall 2014 32 states expressed consent to be bound and 12 intergovernmental organisations were parties. 35 states are needed to enter into force
- 1978. Vienna Convention on Succession of States in respect of Treaties
  - Entry into force: 6 November 1996. In Fall 2014 it had 22 parties
    - *Texts not yet adopted or not constituting binding agreement*
- Guide to Practice on Reservations to Treaties, 2011
- Draft articles on the effects of armed conflicts on treaties, 2011
- Treaties over time/Subsequent agreements and subsequent practice in relation to interpretation of treaties (in progress since 2008)
- The provisional application of treaties (in progress since 2012)

# Literary hints

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# Thanks!

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