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It has sometimes been suggested that, instead of prioritizing the duty to respect over the duty to protect (a) or of taking a 'hands-off' approach (b), courts presented with situations of conflicting rights may have to develop specific methodologies to address clashes between rights are appropriate (c).

One influential proposal on how to adjudicate issues of conflicting rights was put forward by the German constitutional lawyer Konrad Hesse when he suggested reliance on the *principle of 'practical concordance'* in such situations.

The doctrine of 'practical concordance' seeks to avoid, to the fullest extent possible, sacrificing one right against the other. Instead, it posits, a compromise should be sought between the rights in conflict which will respect their respective claims, by '*optimizing*' each of the rights against the other.

This idea already represents a significant progress from the metaphor of 'balancing': whereas the 'balancing' of one right against another should lead to preferring the right with the highest '*value*' (or the most important '*weight*'), above the other, the principle of 'practical concordance' instead rejects the very idea that this may be a desirable outcome.


In substance, the principle acknowledges that it is inappropriate to set aside one claim simply because a competing claim appears, in the particular circumstances of a case, to deserve to be given more weight. Instead, a solution should be found that achieves the best "fit" between the two rights in conflict, and such a solution could be defined based on the idea that the greater the enjoyment of each right, the less important it becomes for the individual to benefit from even higher levels of protection for that right. In other terms, rights have a *decreasing level of utility* for the rights-holders.

Is this an appropriate way of thinking of how to address conflicts between rights? Or would you favour another approach? Are there examples from your country or region, where imaginative solutions were given to situations of conflicts between rights?

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