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Faculty of Humanities

Theses of Doctoral Dissertation

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Deontic Logic and Formalizing Rights

*Actions, Agents and Relations in the Hohfeldian Theory and Its
Formalization*

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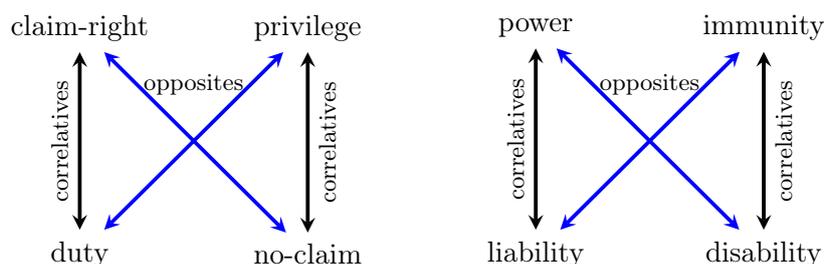
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Wesley Newcomb Hohfeld's analysis (*Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 1913, 1917) on the different types of rights and duties is highly influential in analytical legal theory. Yet a century later, the formalization of his theory remains, in various ways, unresolved. In this dissertation—after presenting Hohfeld's original ideas, the classical formalizations of them by Stig Kanger and Lars Lindahl, and the reception and shortcomings of those—I provided my own amended version of the Hohfeldian conceptions' formal representation.

The well-known starting point for Hohfeld is that the word ‘right’ is overused in judicial reasoning: judges mean different rights, sometimes even duties using the very same word. Hohfeld was convinced this "inadequacy and ambiguity of terms unfortunately reflect, all too often, corresponding paucity and confusion as regards actual legal conceptions", so he provided an analysis engaging in terminological and conceptual clarity. The system of correlative pairs of rights and duties he built can be reconstructed in the following way:



The dissertation contains a survey reviewing those works from the rich reception of Hohfeld that are relevant from the viewpoint of the formalization, especially the ones relevant for the way of formalizing his theory that is presented in the second half of the study. The investigation primarily concerns how actions, agents and deontic modalities relate; meanwhile, the main guidelines were provided by David Makinson’s and Marek Sergot’s critiques of the Hohfeldian theory and its classical formalizations. The major underlying considerations I used for formalizing the Hohfeldian system of rights and duties reflect on the reception’s most relevant findings involving also some proposals from the philosophy of language and from the philosophy of law as well as legislation. The aim was to provide a comprehensive formal analysis using basically the same formal tools that have been used in the classical formalizations, but instead of focusing on the right positions’ computational features, saying something substantial about what these right positions and relations actually mean. The conclusions and results of the formal conceptual analysis can be summed up in the following theses.

- All the Hohfeldian right and duties are directed. This should not be surprising considering that Hohfeld described them as parts of rights relations, ordering them into correlative pairs. Still, the only pair that the reception clearly handles as containing directed right and duty is the first one: the correlative pair of Claim-right and Duty. But all pairs have this property. The formal language I used automatically shows the involved agents—and, therefore, the directedness of the given right position—in the case of passive rights and duties (Claim-right, No-claim, Liability, Immunity); while in the case of active rights and duties (Duty, Privilege, Power, Disability) we needed to use the notation

of directedness involving into their formal representation this way the other agent concerned by the given right position. In this way equivalences according to which Hohfeld described these conceptions: the correlativity and the opposition could be clearly shown.

- First group's right positions can be expressed by Duty, while the second group's right positions can be expressed by Power. The reception of Hohfeld points out that there are some crucial differences between the two dimensions, as Makinson calls them—that is, the first group's and the second group's right positions. Still, in this dissertation an approach has been presented by which we can provide descriptions of what right positions mean in a uniform manner. I did not define them in the strict sense, since Hohfeld himself—considering them *sui generis*—had refused their reducibility to something else; but I described each in a way that makes them identifiable by assigning different conditional consequences to them. The conditions we presented are actions—or their absence. This way we could delineate how legal rights and duties "behave" in the legal system: under which condition they result in other right positions' arising. This provides a static picture of how this system works.
- State enforcement is the institution I based the formalization of the first group's right positions on. The starting point was Makinson's definition that intended to define who the counterparty of a duty is as the claimant, that is, as he says, the one who has the power to initiate a legal action in the case of non-fulfillment. This definition of the counterparty happened to be a definition of a duty-claim-right pair, too. I showed that while I think that the state enforcement is the proper starting point of defining what a legal duty (or a legal claim-right) is, Power should not be involved since then we lose an important difference between the ability of having rights and the ability to change them. If we take the state enforcement as the crucial factor—which, again, I think it is reasonable to take—the main point of having a claim-right is the new claim-right which arises in the case of non-fulfillment: the one which is against the judiciary to enforce that the original duty-bearer fulfill his duty. That is, the specific feature of the first group's rights relations—if we consider law—is that they are two-sided with the threatening/potentiality (depending on which position is ours) to become three-sided.
- It has been shown that the formal description I gave to what Claim-right is can be used to explain rights in cases where usually we see them undirected, like in criminal law. What we need to see, and what Hohfeld himself explained in his second essay, is that directedness does not exclude the interpretation of positions we feel (and in legal the-

ory usually call) absolute: just like in the case of property, where the owner has, as Nigel Simmonds says, "a series of multital claim-rights that persons should not trespass on the land; a series of multital privileges to enter upon and exploit the land himself; a series of multital powers to transfer title to the land or create lesser interests in it, such as leases or easements; and a series of multital immunities against having his title affected by act of other persons"; right to life and right to physical integrity also can be described as going against every other agent—but being directed toward everyone does not mean that it is not directed. Realizing this important feature of the Hohfeldian theory and the passage between directedness and "undirectedness" helps us show that Hohfeld was right in not taking vested liberty (protected freedom) fundamental: what this kind of freedom means can be expressed—conceptually and formally—with Claim-right. This also shows that Hohfeld was right, though, in taking Claim-right to be fundamental.

- It has been shown that—as Hohfeld’s reception found, too—the notions of constitutive rules and counts-as relations have a strong connection to how Power works. I argued, though, that in order to understand what was crucial to Hohfeld in his system we need to concentrate on the structure of constitutive rules that create actions requiring power to be done, and not primarily the count-as feature of these actions that creates the special context: when analyzing Hohfeld, the relationality of Power is more important to see than the generality brought on by an action which counts as something institutional. Power is directed, too: someone has a power to change someone’s legal position. It is an important difference between the two groups of rights that in the case of Power these two someones can be the same, while in law the Claim-right-Duty pair only makes sense involving two different agents.
- I argued that Makinson is right in referring to a power-requiring action as a "performative utterance or inscription or some other conventionally recognized gesture or procedure" and showed what this utterance is about: how and why it results in altering one’s right position—*if* the utterer has a power to see to it that the constituted action be done. I sketched a connection between power-required utterances and speech acts theory arguing that it might seem an obviously adequate conceptual frame to describe what happens in the case of Power, but ‘utterance’ has to be understood in such a broad sense when used in the explanation of the Hohfeldian theory that probably exceeds the speech act’s conceptual frame: legal statements can be made with implicit conduct, too—where ‘implicit’ shows that they substitute an oral or written utterance.

- Meanwhile my starting point was to use the same formal tools that have been used in the classical formalization (ET logic of action and Standard Deontic Logic), there was a need to extend the language with a (legal) necessity operator coming with the logic S5, ending up in this way in describing legal metaphysics. This approach is not far from the original Hohfeldian intentions: he provided his analysis to bring terminological and *conceptual clarity* to the area of rights in judicial reasoning and, therefore, in law. Such an analysis practically realizes metaphysics of law since it is about what its ontology is and nature of things within the realm of law. Or, how they should be: a study engaging in conceptual clarity starts out as a descriptive study, but eventually acquires, if it is any good, a normative element.

To sum up, my aim has been to present a comprehensive formal analysis of the Hohfeldian fundamental legal conceptions, proposing that rights and duties have descriptions in a uniform manner according to their conditional legal/logical consequences. The formal tools I used are basically the same as the logics that has been used in he classical formalizations, but instead of computational features, I focused on the internal relations of a right system describing what the differences are between the various rights and duties if we consider them from the same viewpoint of potential consequences. With this analysis we could shed light on several crucial points of the Hohfeldian theory, at the same time deflecting some objections to it.