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## KEEPING HOHFELD SIMPLE

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**ABSTRACT.** In this paper, I want to engage in, and move forward, a heated contemporary debate over certain normative positions within the well-known Hohfeldian table of legal relations – a table of dramatic explanatory power. After outlining the uncontroversial core of the table, I will leave the realm of uncontroversiality to enter the realm of controversy. I will enter, and stake out a stance in, a debate over the no-right position. Upon introduction of no-rights, a splinter occurs. There are two positions one might take on no-rights, which I call the Strict Hohfeldian and the Dual. My paper offers decisive reason to favour the latter. Let there be any doubt – arising from the paper’s chief focus on no-rights – the conclusion is one of great philosophical significance: by the paper’s end, we will, if only at the high level of abstraction at which this paper is pitched, have a complete understanding of Hohfeld’s table.

### I. INTRODUCTION

In this paper, I want to engage in, and move forward, a heated contemporary debate over certain normative positions within the well-known Hohfeldian (1923) table of legal relations. It is a table of dramatic explanatory power. I propose to show what it is to argue about normative positions within the table by *doing* – by arguing about them myself.

At a sufficiently high level of abstraction, much about the Hohfeldian table is (fairly) uncontroversial. I’ll begin by very briefly outlining this uncontroversial core of the table. That will enable me to set up a scorecard for the table, and for ensuing different inter-

pretations thereof, in terms of numbers of types of relations of *correlativity*, *contradictoriness*, and *duality* recognised therein.<sup>1</sup> After the uncontroversial core, and the setting up of the scorecard, I will leave the realm of uncontroversiality to enter the realm of controversy. I will (re)enter, and stake out a decisive stance in, a debate over the no-right position.

Here, upon introduction of no-rights, a splinter occurs. On the assumption that one recognises the deontic position of no-rights,<sup>2</sup> there are two – exhaustive and exclusive – positions one might take. I will call these, respectively, the *Strict Hohfeldian*<sup>3</sup> position and the *Dual* position. Each is a coherent position. Moreover, each is a (fully) *comprehensive* position – in the sense of each being able, on the most charitable construals thereof, to explain all possible legal scenarios to which no-rights are relevant. My strategy will be to, by turn, demonstrate all this. To demonstrate, that is, the coherence and comprehensiveness of the two candidate positions on no-rights – the Strict Hohfeldian and the Dual. And I'll do all this with the help of three (partly stipulative) characters, the Workman (W), the Trespassor (T), and the Licensee (L).

To this extent, each position – the Strict Hohfeldian and Dual – is on a par. But I shall continue filling in the scorecard outlined two paragraphs above. And a striking asymmetry between the two positions will emerge as a result. Despite being equally comprehensive, the Dual position will be shown to be radically *simpler* (and

<sup>1</sup> The final scorecards will be collated in the Appendix. All these italicised notions are elaborated on in detail in Section II, but, given duality may be the least familiar to certain readers, it's worth a quick elucidatory note on it in passing now. An uncontroversial case of the relationship of duality is that which obtains between *necessity* and *possibility*. That, *necessarily*, grass is green, is equivalent to it's *not possibly* the case that grass is *not* green. And so on. This equivalency arising from the twofold process of negation is the hallmark of the duality relation. And the claim in this paper will be that it obtains between claim-right and no-right (just as with necessity and possibility, as we've just seen, and just as with duty and liberty, as we are about to see).

<sup>2</sup> And so this is to somewhat sideline Hurd & Moore (2018, 2019) from the present argument, for whom the no-right position does not constitute a *genuine normative position*, a stance which in turn jeopardises the existence of Hohfeldian liberties (and possibly more beyond). I'm here trained on their affirmation that no-rights just designate 'the *absence* of some thing' (2018: 307). Such an affirmation on the face of it precludes their status, as Kramer (2019: 220) puts it, as: 'A position within a deontic relationship [...] constituted by the absence of a claim-right. [...] A position of rightlessness that is the correlate of a liberty.' As a closing note, my sidelining of Hurd & Moore here is in fact a backhanded compliment. Their daringly dramatic project deserves more extended treatment than space allows here. I can say this, however. On the one hand, their background metaphysical assumptions lead them to an ontological picture whereupon the foregoing seems a fair interpretation of them. On the other hand, insofar as we bracket such assumptions, they can, I take it, aptly be added to the Strict Hohfeldian camp for purposes of the present debate. In part due to the vastness of their project, rather than speculate further on this, I prefer to leave the matter to them.

<sup>3</sup> The sense in which this position is *Strict Hohfeldian* is explained later, and is compatible with there being alternative *better* available interpretations of Hohfeld.

more elegant) – in the sense of invoking significantly fewer working parts – than its rival Strict Hohfeldian position. This constitutes decisive philosophical reason to choose the former over the latter: if, of two equally comprehensive positions, one such position is overwhelmingly simpler (and more elegant) than the other, we choose the simpler.

It may be worth elaborating a little on the point of method detailed in the previous paragraph. Though I depart from some of Leif Wenar's (2008: 252) reflections on method, the following passage of his, trained on theories of rights, is especially instructive for our purposes:

A theory of the nature of rights [or Hohfeld's table] will also aim for greater explanatory power, where two primary measures of explanatory power are again comprehensiveness and simplicity. All else equal, a theory of rights [or Hohfeld's table] will be more powerful when it accounts for more rights [or legal scenarios], and when it uses fewer basic concepts and relations. As with scientific theories no one believes that there is an exact schedule for trading comprehensiveness against simplicity. But there is no reason to think that there will be more dissensus when it comes to [rights or Hohfeld's table] than there is in the comparison of scientific theories.

There are two regards in which Wenar's discussion is of help here. First, we get a nice window from Wenar into the workings of our present method and, in particular, its non-uniqueness to jurisprudential enquiry. Quite the opposite: our method has its roots in the philosophy of science, and beyond. Second, we also get a nice snapshot of difficulties with the method delivering conclusive verdicts when there are trade-offs involved. For example, what if theory 1 scores higher on comprehensiveness, yet lower on simplicity, than theory 2? Such results are commonplace and pose problems – even if such problems are not insurmountable. But the nice moral for us is that our present enquiry is not bedevilled by any such difficulties. As noted, I work hard initially to establish the full comprehensiveness of the picture I resist – the Strict Hohfeldian. I then do the same for my preferred Dualist picture, which is, in the process, shown to be much simpler than its Strict Hohfeldian rival. Thus, vindication of the supremacy of the Dual picture can be effected while side-stepping contentious trade-offs that often surface in the act of theory comparison.

More concretely, then, the roadmap ahead is as follows. In the next section, I set out the uncontroversial core of the Hohfeldian table. In the ensuing Section III, I delineate the normative positions of our three assisting actors – the Workman (W), the Trespassor (T), and the Licensee (L). Then, in Section IV, I set out the most char-

itable version of the Strict Hohfeldian position, concluding with its scoresheet. And in the final substantive section, Section V, I do the same for our Dual position. With all the data in, the conclusions to be drawn are obvious.

Lest there be any doubt – arising from the paper’s chief focus on no-rights – the conclusion is one of great philosophical significance: by the paper’s end, we will, if only at the high level of abstraction at which this paper is pitched, have a complete understanding of Hohfeld’s table. As a general matter, given the increased interest in Hohfeld’s table amongst theoretically inclined doctrinal lawyers, such a deliverance will be of interest not just to scholars of Hohfeld, but to the broader jurisprudential community also. More specifically, for our purposes, I come, in Section V (alongside in my previous work (2021)), to discuss the doctrinally significant deontic position of *rightlessness* – a position that the Dualist picture is well positioned to elucidate.

## II. THE UNCONTROVERSIAL CORE OF THE HOHFELDIAN TABLE

For an overview of the uncontroversial core of the Hohfeldian table (and a sneak preview of the controversy beyond), a fairly lengthy initial quotation from Matthew Kramer (2019: 213-4) will serve us well:

Each of the four entitlements in the top half of the [Hohfeldian] table is correlated with a position in the lower half. Correlativity in the Hohfeldian sense is biconditional entailment; the existence of any Hohfeldian entitlement with a certain content entails the existence of the correlative position with the same content, and vice versa [at any rate, for the claim/duty, power/liability, and immunity/disability pairs].<sup>4</sup> For example, Joe’s claim-right to be paid \$10 by Sally entails Sally’s duty to pay \$10 to Joe, and vice versa.

### HOHFELDIAN TABLE OF LEGAL POSITIONS

ENTITLEMENTS	claim (or claim-right)	liberty	power	immunity
CORRELATES	duty	no-right	liability	disability

<sup>4</sup> My note: Whether this form of correlativity additionally obtains for the liberty/no-right pair is a core issue of controversy in this paper. Kramer (and I, and others) says yes; but others say no, and so to pitch this as the uncontroversial core, the parenthetical insertion is needed.

[T]he [duty/liberty] positions diagonally across from each other on the left-hand half of the table are logical duals, whereas the positions diagonally across from each other on the right-hand half are logical contradictories.

[...] Consider, for example, the proposition “Sally bears a duty to pay Joe \$10” and the proposition “Sally is at liberty not to pay Joe \$10.” The former proposition is true if and only if the negation of the latter proposition is true. Each proposition is the negation of the other, and the content of the deontic predicate (that is, the content of the duty or liberty) in each proposition is the negation of the content of the deontic predicate in the other proposition. These twofold instances of negation, the negation of the proposition and the negation of the predicated content, are characteristic of logical duals.

By contrast, the diagonal opposites on the right-hand side of Hohfeld’s table [...] are contradictories rather than duals. Thus, for example, “Peter bears a liability to undergo a certain change X in his legal relations brought about by Melanie” is the contradictory of “Peter has an immunity against undergoing a change X in his legal relations brought about by Melanie.” The former proposition is true if and only if the negation of the latter proposition is true, but the content of the normative predicate (that is, the content of the liability or immunity) in each proposition is the same as the content of the normative predicate in the other proposition. (internal footnotes omitted)

Following the order of presentation in the above quotation, let’s note a few additional things by way of emphasis. First, and most generally, while there are many aspects of controversy over Hohfeldian analysis which arise upon descending in abstraction from the above level – as just one example, whether, and how, the table can adequately capture various legal-doctrinal scenarios – at this level of abstraction, the portions of the table discussed above are pretty much universally agreed upon.

Second, beginning to make our way through the quotation itself, note that a notion of correlativity is introduced by Kramer, and is termed Hohfeldian. It’s worth setting that out again:

Correlativity in the Hohfeldian sense is biconditional entailment; the existence of any Hohfeldian entitlement with a certain content entails the existence of the correlative position with the same content, and vice versa.

Now there are several things to analyse and flesh out here. (i) We can break down this notion of Hohfeldian correlativity into two (both-ways) independent components, as follows:

- (H-C)
1. Biconditional entailment between the two positions.
  2. The *deontic predicate* in each of the two positions has the same *content*.<sup>5</sup>

<sup>5</sup> For example, in the left-hand half, in Kramer’s example: (not) to pay Joe \$10. Hereafter, I at times abbreviate what this italicised portion comes to as ‘deontic content’. (Compatibly with all this, Sally’s paying (or not) Joe \$10 is a form of conduct, or an event.)

(ii) This bipartite notion of correlativity is aptly described as Hohfeldian. As can be extrapolated from Kramer's examples, the claim/duty, power/liability, and immunity/disability pairs exhibit both features 1 and 2 from (H-C). At least three of the four correlative pairs in Hohfeld's table indubitably instantiate (H-C). (iii) Consistently with this, the two components of (H-C) – namely, 1 and 2 – can come apart. Most saliently for our purposes, two positions may exhibit 1, but not 2.<sup>6</sup> Two positions, that is, may exhibit biconditional entailment *without* sharing the same content of the deontic predicate. And to somewhat anticipate our key argument over normative positions in this paper, one picture – the Strict Hohfeldian – will make just such a claim about the liberty/no-right pair. Moreover, the Strict Hohfeldian will argue that the liberty/no-right pair is no less a pair of correlativity for this. More on all this later. For now, back to further excavation from Kramer's quotation.

Third, then, it's worth emphasising that I've intentionally omitted elaboration of the claim(-right)/no-right diagonal – and any concomitant elaboration of the liberty/no-right pair – from Kramer's quotation. The nature of these pairs is the very matter I am pondering in this paper, and dialectical charity demands that I prescind from committing on that matter at the outset.

But fourth, and consistently with the foregoing, we can and should elaborate on the uncontroversial nature of the duty/liberty diagonal pair. These are (logical) duals. If the relationship between two operators such as these is one of duality, it means – has as a consequence – that the following propositions are equivalents:

Sally bears a duty to pay Joe \$10

It's not the case that Sally is at liberty not to pay Joe \$10<sup>7</sup>

We negate the proposition and the predicated content in switching from the former proposition to the latter. If you want to test for whether two operators – such as claim-right/no-right, to anticipate matters – possess the relation of duality with one another, one should test whether putatively equivalent propositions generated by

<sup>6</sup> They may also exhibit 2, but not 1, but that is not so interesting. Later I will introduce a third possible characteristic of correlativity of some relevance to our discussion, but we do well to sideline it for now.

<sup>7</sup> And this is of course equivalent to: Sally is not at liberty not to pay Joe \$10. The specification in the main text simply emphatically shows the external negation to have as its scope the ensuing proposition.

the foregoing twofold negation operation are indeed equivalent. And lo and behold this duty/liberty pair involving Sally and Joe, and all other duty/liberty pairs generated by this twofold process of negation, are indeed equivalent. Note that, strictly, duality is a relationship which may obtain between operators such as duty/liberty, and is not a property of propositions themselves.<sup>8</sup> Contrastingly, equivalence is a relationship which may obtain between propositions – and we see it here exhibited in those duty/liberty pairs generated by the foregoing dual process.

Fifth, and finally, the diagonals on the right-hand half of the table – *all of them* – are (logical) *contradictories*. If the relationship between two operators such as these is one of *contradictoriness*, it means – has as a consequence – that the following propositions are contradictories:

Peter bears a liability to undergo a certain change X in his legal relations brought about by Melanie

Peter has an immunity against undergoing a change X in his legal relations brought about by Melanie

And, uncontroversially, the same will go for the power/disability pair. Given certain background assumptions, this is to say that the foregoing two propositions – *each containing the same deontic content, X* – cannot both be true, and the foregoing two propositions cannot both be false. Note that, strictly, contradictoriness is a relationship which may obtain between propositions, such as the foregoing two involving Peter and Melanie, and is not a property obtaining between operators such as liability/immunity (and power/disability) themselves. But so long as we bear this in mind, and given there is no ready alternative label for the relationship between operators which generate contradictory propositions in the foregoing manner,

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<sup>8</sup> Kramer (2019) is adamant that duality is (strictly, also) a property of certain pairs of propositions, here:

Sally bears a duty to pay Joe \$10  
Sally is at liberty not to pay Joe \$10

But I see no lineage for such a (strict) usage, in any context of duality, and, moreover, in this debate at any rate, it has risked engendering confusion. Better to say of the two propositions above that they are contradictories, arising from the duality of the duty/liberty relation.

I will continue to (aptly) speak of the relationships between the diagonals on the right-hand half as ones of *contradictoriness*.<sup>9</sup>

To sum up, and in light of this excavation work, we can set up a provisional scorecard for the uncontroversial elements of the table – the not-fully-complete table, presented thus far – in terms of numbers of types of relations of *correlativity*, *contradictoriness*, and *duality* recognised therein:

*Correlativity*: 3 relations of (H-C) (claim-right/ duty, power/liability, immunity/disability)

*Contradictoriness*: 2 relations on right-half (power/disability, liability/immunity)

*Duality*: 1 relation on left-half (duty/liberty)

These results are in the bank – they are incontestable. But now we must begin the process of leaving the realm of uncontroversiality, to enter the realm of controversy. That will involve introducing our three actors, the Workman (W), the Trespassor (T), and the Licensee (L), as a prolegomenon to entering a debate over the no-right position. As we work through that debate – and work through, respectively, the Strict Hohfeldian and Dual positions – we will add to, or augment, our provisional scorecard.

### III. DUTIES, LIBERTIES, AND NO-RIGHTS: THE WORKMAN (W), THE TRESPASSOR (T), AND THE LICENSEE (L)

Focusing on normative positions concerning entering a piece of land that I, say, own, there are four possible statements concerning duties borne (or not) by other actors:

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(i) A duty to enter the land	((W))
(ii) A duty not to enter the land	((T))
(iii) No duty to enter the land	((T) and (L))
(iv) No duty not to enter the land	((L) and (W))

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These statements – (i)-(iv) – exhaust the possibilities concerning duties borne (or not) by actors, with (i) and (ii) being correlative to my claim-rights that they enter or not. Some combinations are

<sup>9</sup> I place it in italics, here and throughout, to indicate that it is slightly loose talk.



exclusive of one another (e.g. (i) and (iii), and (ii) and (iv)), but others, assuming the possibility of conflicting duties,<sup>10</sup> are not (e.g. (i) and (ii), and (iii) and (iv)).

Alongside each of these statements, to assist us in our argument, I listed above the actors who possess the relevant duties (or not). Let us flesh this out, and take the actors by turn, adding in the liberties that they possess (or not). Significantly, in this section, we continue to prescind from the nature of the no-rights I possess (or not) correlative to the actors' liberties.

(W), the Workman, who has contracted to enter my land to perform labour, has the following normative position:

- (W) A duty to enter the land, which is to say, No liberty not to enter the land
- No duty not to enter the land, which is to say, A liberty to enter the land

(T), the Trespassor, who has entered, or who threatens to enter, my land, has the following normative position:

- (T) A duty not to enter the land, which is to say, No liberty to enter the land
- No duty to enter the land, which is to say, A liberty not to enter the land

Finally, (L), the Licensee, who has been granted access to my land, has the following normative position:

- (L) No duty to enter the land, which is to say, A liberty not to enter the land
- No duty not to enter the land, which is to say, A liberty to enter the land

So, our strategy in this (short) section, has been to sketch out the normative positions of three actors, beginning with statements concerning their duties, some of which are correlative to claim-rights I possess; to then translate these statements to liberties, some of which are correlative to no-rights I possess. And to stop there. We have at this point, and with some necessary preliminary spadework, reached the end of common ground. Consensus is over. The nature

<sup>10</sup> I should stress that this is, of course, an assumption many will be unwilling to make. Thankfully, making it is not critical to the central claims of this paper.

of the no-rights I possess (or not) is in dispute. Now, with the help of consideration of the Workman, the Trespassor, and the Licensee, we can carve out the fundamental remaining disagreement over the table, by in turn fleshing out the Strict Hohfeldian, and the Dual, positions over no-rights.

#### IV. THE COHERENCE OF THE STRICT HOHFELDIAN POSITION, AND ITS SCORECARD

The first – coherent and comprehensive – position is what I dub the Strict Hohfeldian one. I want to keep the positions themselves – Strict Hohfeldian and Dual – front and centre, and to, as far as possible, downplay dialectic between advocates of those positions, so as not to get bogged down in potentially distracting *ad hominem* skirmishes. But, in terms of advocates of this position, we can list Wesley Hohfeld (1923) himself (possibly), Andrew Halpin (2020), Glanville Williams (1956), Peter Jones (1994), and the early John Finnis (1972) (all, definitely).<sup>11</sup>

The Strict Hohfeldian position has not been previously explicitly articulated as such, so the foregoing philosophers are advocates thereof chiefly by implication from their other analyses. Relatedly, as my only (brief) detour into Hohfeldian exegesis in this paper, why is Hohfeld only *possibly* a Strict Hohfeldian (in the sense I'm about to outline)? Well, the Strict Hohfeldian stance I'm about to outline on no-rights is derived from Hohfeld's (1923: 39) *only* relevant remark on no-rights in his work – when *using* that term, rather than simply *mentioning* it. And who's to say this shouldn't be set aside as a mistake? We all make them – even Hohfeld. The position is, thus, *Strict* Hohfeldian only in the sense of ascribing no errors to him; compatibly with which, other positions – the Dual rendering, to come – may very well better advance, or serve, the overall

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<sup>11</sup> I am grateful to Kramer (2019) for the careful exegetical digging here (and in what follows). He there, additionally, notes that Cruft (2004), Edmundson (2012), Harel (2005), Wenar (2005), and Upton (2000), all make less than helpful terminological moves with respect to no-rights. Finally, I should single out Halpin (2022) – the most ardent and explicit proponent of the Strict Hohfeldian position's coherence, and the Dual position's incoherence – for special mention. While there is much in his piece which is dismaying, I must, gratefully, acknowledge it as the chief stimulus for my choosing to restate here the Dual position, which I endorse (alongside my setting out the Strict Hohfeldian position, which I reject). In that spirit, rather than nit-picking over correcting every error in his article (I move in that direction in a companion piece (forthcoming)), I choose to approach it here in a constructive mode, only pursuing leads from his article when it is in the service of aiding my rearticulation of the Dual (and, indeed, Strict Hohfeldian) position. Thus, in Section V, when I restate the Dual position, I'll make select correctives in footnotes.

Hohfeldian project. So, at least, I shall argue (though philosophical analysis, rather than Hohfeldian interpretation, is my foremost aim).

To articulate the Strict Hohfeldian position we do best to begin with the Workman (W), transitioning to the Trespassor (T), and finishing with the Licensee (L). In terms of the key liberty the Workman (W) possesses, we have:

(W) A liberty to enter the land

For the Strict Hohfeldian, the correlative no-right which I, the landowner, possess is:

A no-right that (W) not enter the land

To complete the picture, given (W) has No liberty not to enter the land, I have No no-right that (W) enter the land, which is to say A claim-right that (W) enter the land, correlative to (W)'s duty to enter the land.

For the Strict Hohfeldian, the distinction between, on the one hand, a no-right, and, on the other, not-having-a-claim-right, has been effaced. On this picture, the following two (predicates of)<sup>12</sup> propositions are equivalent:

No claim-right that (W) not enter the land

A no-right that (W) not enter the land

A different way to put the same point, drawing on our earlier (somewhat loose) notion of *contradictoriness* as a relation between operators, is that the claim-right/no-right diagonal is, on this picture, a pair of *contradictories*. And this is borne out, on this view, by the fact that (strictly):

A claim-right that (W) not enter the land

and

A no-right that (W) not enter the land

are contradictory propositions. I can't have both. And I can't have neither.

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<sup>12</sup> Here, and beyond on occasion, I am putting on display *predicates of propositions* (and statements). But, having noted this, I use *propositions* (and *statements*) as convenient shorthand.

Now this is a perfectly coherent picture. Put vernacularly, I can't *make a claim* – in the sense of *standing* on a claim-right<sup>13</sup> – that the Workman *should not* enter the land. I can't do that, as I don't have such a claim-right, given my contract with the Workman *to* enter my land to perform labour.<sup>14</sup> By contrast, of course, I do have A claim-right that (W) enter the land, correlative to (W)'s duty to enter the land.

Let us deal now with the Trespassor (T) and the Licensee (L), on this picture. Trespassor first. With the above groundwork laid, we can be briefer here. For the Trespassor (T), things are exactly *flipped* from the Workman (W) scenario. In terms of the key liberty the (would-be) Trespassor<sup>15</sup> possesses, we have:

(T) A liberty not to enter the land

For the Strict Hohfeldian, the correlative no-right which I, the landowner, possess is:

A no-right that (T) enter the land

To complete the picture, given (T) has No liberty to enter the land, I have No no-right that (T) not enter the land, which is to say A claim-right that (T) not enter the land, correlative to (T)'s duty not to enter the land.

This is, again, a perfectly coherent picture. Put vernacularly, I can't *make a claim* – in the sense of *standing* on a claim-right – that the Trespassor *should* enter the land. I can't do that, as I don't have such a claim-right, given I've ex hypothesi no contract with him *to* enter my land, for example, to perform labour.<sup>16</sup> By contrast, of course, I do have A claim-right that (T) not enter the land, correlative to (T)'s duty not to enter the land.

Finally, for the Licensee (L), by contrast, we *build on* the Workman (W) scenario, and *fold in* the privileges of the Trespassor. In terms of the key liberties the Licensee (L) possesses, we have:

<sup>13</sup> I develop this notion further in my rearticulation of the Dual position. I trust it is intuitive, workable, and, indeed, illuminating in this form (and it should not be taken to in any way involve subscribing to the Will Theory's conception of what the holding of a claim-right entails).

<sup>14</sup> And so I assume the contract (perhaps implicitly) confers on the Workman a liberty to enter the land (and correspondingly *don't* assume that his duty to enter *entails* a liberty to enter).

<sup>15</sup> If you prefer, you can think of the would-be Trespassor as a Workman pre-contract.

<sup>16</sup> Fully explicitly, in addition to the absence of a contract, there is likewise no other basis for my possession of a claim-right with this content.

- (L) A liberty to enter the land (as per (W))  
 A liberty not to enter the land (as per (T))

For the Strict Hohfeldian, the correlative no-rights which I, the landowner, possess are, respectively:

A no-right that (L) not enter the land

and

A no-right that (L) enter the land

Put vernacularly, I can't *make a claim* – in the sense of standing on a claim-right – *either way* with respect to (L), and his conduct.

Now this is all well and good. The Strict Hohfeldian picture is perfectly coherent and comprehensive. But we are now in a position to augment our provisional scorecard (for the uncontroversial elements of the table) in terms of numbers of types of relations of *correlativity*, *contradictoriness*, and *duality* recognised therein. We can now give a complete scorecard for the Strict Hohfeldian.

The introduction of no-rights to the picture has generated two new relationships to account for: the claim-right/no-right diagonal, and the liberty/no-right correlative. I have demonstrated that, on the Strict Hohfeldian position, the claim-right/no-right diagonal is a relation of *contradictoriness*. And the liberty/no-right correlative is one which *does not* bear all the hallmarks of Hohfeldian correlativity (H-C), in the sense outlined above – a sense which is instantiated in the three uncontroversial relations of correlativity outlined in Section II (namely, claim-right/duty, power/liability, immunity/disability).

Here is that Hohfeldian sense again:

- (H-C)
1. Biconditional entailment between the two positions.
  2. The deontic predicate in each of the two positions has the same content.

To repeat, it is apt and fair to label this Hohfeldian in the sense that at least three of the four relations in the table indubitably instantiate it. But, on this Strict Hohfeldian picture, the liberty/no-right correlative involves 1, but not 2.<sup>17</sup> Biconditional entailment obtains between the liberty/no-right pair, but, as we've seen, the content of the deontic predicate gets negated as we alternate between the two positions.<sup>18</sup>

The opponent of the Strict Hohfeldian now reaches a dialectical cross-roads. Here are three options for him, descending in levels of bullishness. First, he could deny as genuine any notion of correlativity which rejects either component of (H-C). While I am at times tempted by such a bullish stance – a stance which would vanquish the Strict Hohfeldian in one fell swoop, if vindicated – I don't need to adopt it here. Second, he could accept as genuine notions of correlativity which reject a component of (H-C) (here, 2), but argue that such notions are, in some sense *defective* or *peripheral*. I'm very tempted by such a stance, take it to be fairly easy to vindicate such a stance, and such vindication would count fairly decisively against the Strict Hohfeldian, on account of his introduction to the table of a *defective* or *peripheral* notion of correlativity. But, again, I don't need to make here what I take to be the foregoing, fairly undeniable, defective/peripheral claim. Instead – the third, least bullish, option – all I need to, and shall, invoke are basic considerations of simplicity (and concomitant elegance) in critiquing the Strict Hohfeldian.

Here is the resulting Strict Hohfeldian scorecard (with additional complexities, beyond the uncontroversial elements, highlighted in bold):

*Correlativity*: 3 relations of (H-C) (claim-right/duty, power/liability, immunity/disability), **plus 1 extra distinctive relation of correlativity (liberty/no-right)**

<sup>17</sup> A problem, or challenge, for this picture is that, shorn of 2, the content of each deontic predicate could, without more, be *just about anything*. In more bullish moods I might be tempted to press this further as a conclusive mark against the Strict Hohfeldian. But for two reasons I am hesitant to do so. First, the Strict Hohfeldian may well have something more to say in cabining or restricting the content of each deontic predicate (cf. n.18). They should be allowed their say. Second, such bullishness is not in keeping with the overarching method of this paper, namely, to appeal purely to considerations of simplicity (and comprehensiveness).

<sup>18</sup> A notion of correlativity shorn of 2 would clearly need to supplement 1 in order to avoid overinclusiveness. Halpin (2019) interestingly discusses (among other possibilities) a requirement that the two positions aid the 'practical understanding' of each other. An interesting question – but one for another day – is to what degree (H-C) (i.e. 1 and 2) *itself* needs such supplementation, or whether, instead, 1 and 2 combined themselves guarantee such 'practical understanding'.

*Contradictoriness*: 2 relations on right-half (power/disability, liability/immunity), **plus 1 relation on left-half (claim-right/no-right)**

*Duality*: 1 relation on left-half (duty/liberty)

One final point bears emphasising about this more complex scorecard, and is less germane to simplicity in a strict sense, and more to the related metatheoretic virtue of elegance. The Strict Hohfeldian picture rides roughshod over the left-half/right-half divide – a significant divide, distinguishing first- from second-order entitlements<sup>19</sup> – by inelegantly introducing complexities *within the left-half of the table*: one diagonal therein is a relation of duality, and one of contradictoriness.

At present – and prior to elaborating on the Dual position – we only have provisional reason for scepticism about the Strict Hohfeldian position, on account of the foregoing complexities. But as we shall see in the next section, no extra distinctive relations of correlativity are needed on the Dual picture, and no concomitant inelegant asymmetry within the left-half is thereby introduced. The Dual picture results in *no added complexities beyond the uncontroversial elements*. Given, as I'll show, the Dual position is fully coherent and comprehensive, by the next section's end we shall have decisive reason to adopt it (over the Strict Hohfeldian position).<sup>20</sup>

## V. THE COHERENCE OF THE DUAL POSITION, AND ITS SCORECARD

The second – coherent and comprehensive – position is what I dub the Dual one. As noted, I want to keep the positions themselves – Strict Hohfeldian and Dual – front and centre, and to, as far as possible, downplay dialectic between advocates of those positions, so as not to get bogged down in potentially distracting *ad hominem* skirmishes. But, in terms of advocates of this position, we can list

<sup>19</sup> And distinguishing *deontic* relations from *modal* relations – for more on which, see Kramer (forthcoming).

<sup>20</sup> Halpin (2022) helpfully flags a road considered, but not taken, by Hohfeld. We can dub it the *No-duty* position. On this position, all talk of liberties is excised from the table, and, for example, (W)'s duty to enter the land, has, as its contradictory, (W)'s *no-duty* to enter the land (which is equivalent to (W)'s liberty not to enter the land), which in turn has as its correlative my no-right that (W) enter the land (which is the contradictory of my claim that (W) enter the land). The scorecard for such a position is interesting: 4 relations of (H-C) correlativity, and 4 diagonal relations of *contradictoriness*. It is top of the table for simplicity. But it's bottom of the table for comprehensiveness, and by some margin: by foregoing all talk of liberties, it is patently inadequate as a picture of the table. Hohfeld had good reason not to take this road.

George Rainbolt (2006a, b), the later Finnis (2011), Kramer (1998, 2019), and myself (2021).<sup>21</sup>

In fact, the best way into uncovering the Dual position, and its relationship with the Strict Hohfeldian one, is through an adaptation of some incisive remarks from the later Finnis (2011). Adapting Finnis's insight allows us to see how the Dual position denies the Strict Hohfeldian's effacement of, on the one hand, a no-right, and, on the other, not-having-a-claim-right, while at the same time showing the relationship between a no-right and the absence of a claim-right. Importantly, in terms of complexity of the table, this (Dual) denial of the effacement of no-right and no right is *not* an added complexity: *only a (Dual) no-right is a position on the table.*<sup>22</sup>

Here, adapting Finnis, are the two no-rights I might possess, on the Dual picture, utilising our familiar actors, namely, the Workman (W), the Trespassor (T), and the Licensee (L):

(N-R1) I have no right (a no-right) that (W)/(L) not enter the land (or concerning (W)/(L)'s entering the land)

(N-R2) I have no right (a no-right) that (T)/(L) enter the land (or concerning (T)/(L)'s not entering the land)

Now that is really dense. So, fear not, we must, and will, unpack. But in its bare bones, this adaptation<sup>23</sup> from the later Finnis's insightful presentation pithily shows the nature of the no-rights I possess on the Dual picture in the cases of (W), (T), and (L); and also the relationship between no-rights and no rights on the Dual picture. It's very simple: the no-right is the position on the Hohfeldian table constituted by the absence of a claim-right. But, insofar as the claim-right/no-right relation is one of duality, we will need to internally negate the content of the deontic predicate as we switch from one to the other (as well as externally negating the proposition). A proper way to assess the coherence (and comprehensiveness)

<sup>21</sup> As with the Strict Hohfeldians, Rainbolt and the later Finnis are best considered advocates of the Dual picture by implication from their other analyses. In terms of most ardent *detractors* of the Dual position, we must note Halpin (2022). As indicated above, the ensuing restatement of the Dual position is stimulated by Halpin (2022). But, also as indicated above, the most constructive way forward is to directly restate the Dual position, and only obliquely to counter Halpin. Still, I can condense his errors into three major ones: the first (related) two, logical/foundational; the third, dialectical. I'll set these out in footnotes as they become relevant.

<sup>22</sup> Cf. n.2 above. Moreover, it is a distinction which more than pays its way in comprehensiveness.

<sup>23</sup> The adaptation lies in use of the connective 'concerning' – a use which shall be explained presently.



of this picture is to assume the duality which we are testing for, and to see if the *deliverances* of said duality – the outcome of the dual process of twofold negation – result in intuitively equivalent propositions. (And of course, remove the external negation, and we should get contradictory propositions.)<sup>24</sup> If one wanted to be high falutin one would describe this process as testing whether the Dual picture gives an adequate *semantics* of the claim-right/no-right relation. Let us, then, engage in that process, but without the high falutin terminology.

Let's unpack (N-R1) first. Moreover, as with the coming treatment of (N-R2), let's bracket the Licensee till the very end. So, let's, more specifically, unpack (N-R1) focusing on the Workman:

I have no right (a no-right) that (W) not enter the land (or concerning (W)'s entering the land)<sup>25</sup>

The Workman has no duty not to enter the land (he is at liberty to enter the land), correlative to which I have no claim-right that he not enter. So much, so uncontroversial. The position of holding a no-right is the position on the table constituted by the *absence* – the position resulting from *negating*, from *saying I don't have* – the claim-right in question. Again, providing we are careful, so much, so uncontroversial. That is to say, providing we are careful, the Strict Hohfeldian and Dual pictures can be aligned up to this point.

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<sup>24</sup> Halpin (2022) error 1 (logical/foundational): Time and again (esp. Sections 4.1–4.3), Halpin expresses puzzlement over the relationship between duality, equivalence, and contradictoriness (in a strict sense). But there is no reason for puzzlement. They are *distinct* properties, but *related* in the following way. A relation of duality between two operators (e.g. uncontroversially, duty/liberty) will generate equivalent propositions by the twofold process of negation, and remove the external negation and we will have contradictory propositions.

<sup>25</sup> Halpin (2022) error 2 (logical/foundational): Time and again (esp. Section 4), Halpin chides the Dual picture for being unable to explain the relationship between the absent – negated – right and the correspondingly present no-right. It's a fair challenge (if not chide), but we are in the process of taking up the challenge in the main text. Here is some added technical detail. Both the no right and the no-right in the compound proposition in the main text are equivalent. Both the no right and the no-right, constitute, or are, the absence – negation – of A right that (W) not enter the land. This means the no right and no-right propositions each contradict my having the foregoing right. This is contradiction in a strict sense pertaining to propositions: they cannot both be true, and they cannot both be false. As noted in Section III, though, *contradictoriness*, when predicated of relations between operators (e.g. uncontroversially, power/liability, immunity disability) is somewhat loose talk, and has a slightly special meaning. (This is fine, so long as we're clear about it, and given there's no better alternative term available.) In this special sense, contradictoriness has the foregoing strict truth-value requirements *plus additionally a requirement that the positions contain the same deontic content*. Given all this, the Dual picture will describe the claim-right/no-right relation as one of duality, rather than contradictoriness (consistently with which, the no-right proposition contradicts the absent right).

The crux, or disagreement, lies in what happens next. What is it, on the Dual picture, in terms of a no-right, for me *not* to have the claim-right that (W) *not* enter the land?<sup>26</sup> It's this (unpacking (N-R1) further):

I have a no-right *concerning* (W)'s entering the land

First, then, why is this the outcome of the Dual picture? Well, to add external and internal negation to the foregoing proposition on display, in the way characteristic of duals, we get my having no claim-right that (W) not enter the land, as captured by (N-R1) itself. Secondly, to vindicate the Dual picture, can the absence of a claim-right and the no-right within (N-R1) be understood as equivalent (as they must be, on this picture)? Yes.<sup>27</sup>

The key here lies in charitably picking up on Kramer's (2019) remarks on no-right on the Dual picture. On this picture, 'no-right' is a hyphenated single term.<sup>28</sup> It is an unusual neologism. As such, there is no neat way of connecting 'no-right' to its deontic content. Accordingly, we link 'no-right' to its deontic content by means of words or phrases such as 'concerning' (which I have adopted), 'regarding', 'in relation to', 'pertaining to', or 'in respect of'. And so my having a no-right *concerning* (W)'s entering the land is to be understood readily as my being in a position of *rightlessness* – being *unable to make a claim* – *in the event of*<sup>29</sup> (W)'s entering the land. And this can readily be seen to be equivalent to my having no claim-right that (W) *not* enter the land. As a closing note, I am not, of course, in a position of rightlessness *tout court* or *simpliciter*, with respect to (W). On account of (W)'s duty to enter the land, I have a correlative claim-right that he enters. No no-right here. I *can* make a claim. Note finally that the deontic content of (W)'s liberty, namely, *to enter the land* is *identical* to the deontic content of my correlative no-right,

<sup>26</sup> Recall, in the previous section we outlined the Strict Hohfeldian's (coherent) story here, on which the claim-right/no-right relation is one of *contradictoriness*.

<sup>27</sup> Kramer's (2019, forthcoming) way of putting the key to this affirmative answer is that the absence of a claim-right occurs *within a deontic relationship*.

<sup>28</sup> As such, as I was at pains to point out in my (2021), it won't, unlike no right, admit of double negation elimination: no no-right does not resolve to (claim-)right. Moreover, it should have gone without saying that Kramer's claim about the logic of no-right is not generalisable to the logic of *every* such hyphenated term.

<sup>29</sup> 'in the event of' might profitably be added to Kramer's list of connectives between 'no-right' and its deontic content.

concerning his *entering the land*. We have correlativity in the Hohfeldian sense, (H-C).

By *make a claim*, in the foregoing paragraph, I mean: to *stand* on the first-order claim in question, namely, that (W) enter the land. As such, it presupposes that the correlative duty in question exists. This phrase can be read inclusively *provided it at all times connects back to the first-order claim with this deontic content*. Principally, I have in mind what I think of as the pre-compliance stage, where (W) might seem to be wavering, or about to waver, in his performance of his duty. I can let (W) know – remind him of – his first-order duty. After the time has passed for (W) to enter and labour, I can stand on my rights to try get him to perform. Should that fail, there's a broader sense in which I can make a claim by bringing legal proceedings. That involves an exercise of a power, but such an exercise will piggy-back on a claim of a breach of the first-order duty in question. And so on for post-proceedings enforcement.<sup>30</sup>

So, we have assumed Duality for the claim-right/no-right relation in the context of the Workman, and the upshot of that duality has generated the equivalences we expected, and needed. Now let's deal with the Trespassor (T), on this Dual picture. So let's, more specifically, unpack (N-R2) focusing on the Trespassor:

I have no right (a no-right) that (T) enter the land (or concerning (T)'s not entering the land)

Palpably, the Trespassor has no duty to enter the land; and correlatively I have no claim-right that he enter. On the Dual reading, the no-right position constituted by this absent claim-right is that:

I have a no-right *concerning* (T)'s not entering the land

And so, again, my having a no-right *concerning* (T)'s not entering the land is to be understood readily as my being in a position of *right-*

<sup>30</sup> Halpin (2022: section 4.5) error 3 (dialectical): Strangely, and evidencing no small amount of desperation, Halpin oddly seized upon my use of '*make a claim*' in my (2021), and uncharitably restricted it to meaning: make a claim *to a remedy*. So construed, it would not technically be a claim-right (it would be, or comprise, the exercise of a power), and certainly not a candidate correlative of the first-order duties we've been pondering here. The foregoing paragraph in the main text has just corrected this last major error of Halpin's: my use of italics in my (2021) for *make a claim* was a clue that I was speaking somewhat vernacularly as a dialectical aid to making the status of (partial) *rightlessness* more vivid. Should one have persistent worries in this regard, one should feel free – focusing on *rightlessness* cases – to replace 'can't make a claim' with 'don't have a claim'. Nothing much would be lost by such a substitution, and perhaps something would be gained.

lessness – being *unable to make a claim* – in the event of (T)'s not entering the land. And, again, this can readily be seen to be equivalent to my having no claim-right that (T) enter the land. As a closing note, I am, again, not, of course, in a position of rightlessness *tout court* or *simpliciter*, with respect to (T). On account of (T)'s duty not to enter the land, I have a correlative claim-right that he not enter. No no-right here. I *can* make a claim. Note, again, finally that the deontic content of (T)'s liberty, namely, *not to enter the land* is identical to the deontic content of my correlative no-right, concerning his *not entering the land*. We, again, have correlativity in the Hohfeldian sense, (H-C).

Finally, to see a position of rightlessness *tout court* or *simpliciter* we need to have recourse to the Licensee (L). This involves unpacking (N-R1) and (N-R2), focusing, of course, on the Licensee:

I have no right (a no-right) that (L) not enter the land (or concerning (L)'s entering the land)

I have no right (a no-right) that (L) enter the land (or concerning (L)'s not entering the land)

The first no-right mirrors my position with respect to the Workman (W); while the second mirrors my position with respect to the Trespassor (T). My no-right position with respect to the Licensee is an amalgam of the two. As much of the spadework has been done already, we can jump to the novel punchline introduced by consideration of the Licensee: I'm in a position of rightlessness *tout court* or *simpliciter* with respect to the Licensee. I'm unable to make a claim either way – whether he enters or not.

And so, having (almost) completed our (Dualist) journey, through consideration of, by turn, the Workman (W), the Trespassor (T), and the Licensee (L), we're in a position to delineate and rubber-stamp the following distinction. That is, the distinction between, on the one hand, rightlessness *tout court* or *simpliciter*, borne by me, we've just seen, with respect to (L); and, on the other hand, what might be called *partial* rightlessness, borne by me, we saw earlier, with respect to (W) and (T) (albeit in different ways for each of (W) and (T)). My rightlessness *tout court* or *simpliciter* with respect to (L) correlates with (L)'s *bilateral* liberty (to enter the land or not); my *partial* rightlessness, meanwhile, with respect to (W) and (T) correlates with

their *unilateral* liberties (to enter, and not to enter, the land respectively).

It may be worth rubber-stamping a final matter here. Let's revisit the Workman (W) one last time (though the Trespassor (T) could also be used to draw the same moral). The unilateral liberty of (W) to enter the land, borne against me, means (W) has no duty not to enter the land, borne against me, which means I have no claim-right that (W) not enter the land. Drawing upon our previous adaption of Finnis, we can bundle all this together into the following equivalence:

(W) has a liberty as against me to enter the land iff [I have no claim-right that (W) not enter the land and I have a no-right concerning (W)'s entering the land]

Appearances here can be misleading. This is assuredly *not* a position of rightlessness *tout court* or *simpliciter* which I am in with respect to (W) (correlative to which (W) could be said to possess a *bilateral* liberty). On the contrary. The first conjunct on the right-hand-side is the *absence* of a claim-right, that is, it is the absence of a position on the table. It tells me I *can't* make a claim, well, *that (W) not enter the land*. The second conjunct is the corresponding no-right, that is, it is the position on the table *constituting* the absence of the foregoing claim-right. And it tells me I *can't* make a claim – I'm in a position of rightlessness – *in the event of (W)'s entering the land*. These two conjuncts are the same. Or, perhaps better, two sides of the same coin.

Crucially, this position of rightlessness that I'm in is only *partial*, with respect to (W) (and thus (W)'s liberty is only *unilateral*). In the event of (W)'s *failing* to enter the land I'm *not* in a position of rightlessness, as I have a claim-right *that (W) enter the land*. And so our distinction between rightlessness *tout court* or *simpliciter*, and *partial* rightlessness has been secured; and with it the distinction between unilateral and bilateral liberties.

Here, then, is the resulting Dual scorecard (with additional complexities, beyond the uncontroversial elements, highlighted in bold):

*Correlativity*: 4 relations of (H-C) (claim-right/duty, power/liability, immunity/disability, liberty/no-right)

*Contradictoriness*: 2 relations on right-half (power/disability, liability/immunity),

*Duality*: 2 relations on left-half (duty/liberty, (claim-right/no-right)

The keen reader will notice that there is *nothing* in bold. *The Dual picture generates no additional complexities beyond the uncontroversial picture delineated in Section II.* While being (coherent and) fully comprehensive, the Dual picture is *far simpler* than the Strict Hohfeldian picture. Moreover, and to accentuate this, while the Strict Hohfeldian picture rides roughshod over the left-half/right-half divide – a significant divide, distinguishing first- from second-order entitlements – by inelegantly introducing complexities *within the left-half of the table*, no such complexities are introduced on the Dual picture.

## VI. CONCLUSION

In sum, we have two pictures on the table, so to speak, as ways of understanding Hohfeld's schema. These are the Strict Hohfeldian, and the Dual, pictures. I have by turn worked through them, and revealed each to be coherent and comprehensive. This is an interesting result. Each can perfectly consistently account for all the data. Charitable reconstruction of each shows two different ways to account for the same data. The dramatic difference arises in terms of their complexity (and elegance). In the Appendix below, I collate the scorecard results. If, of two equally coherent and comprehensive philosophical pictures, one of the two is radically simpler than the other – as I've shown the Dual picture to be – one is duty bound to choose the simpler picture. I hereby invite you to do just that.<sup>31</sup>

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## DECLARATIONS

CONFLICT OF INTEREST None.

## VII. APPENDIX

Here, then, is our final set of scorecards collated (with additional complexities, beyond the uncontroversial elements, highlighted in bold):

A. *Strict Hohfeldian*

*Correlativity*: 3 relations of (H-C) (claim-right/duty, power/liability, immunity/disability), **plus 1 extra distinctive relation of correlativity (liberty/no-right)**

*Contradictoriness*: 2 relations on right-half (power/disability, liability/immunity), **plus 1 relation on left-half (claim-right/no-right)**

*Duality*: 1 relation on left-half (duty/liberty)

B. *Dual*

*Correlativity*: 4 relations of (H-C) (claim-right/duty, power/liability, immunity/disability, liberty/no-right)

*Contradictoriness*: 2 relations on right-half (power/disability, liability/immunity),

*Duality*: 2 relations on left-half (duty/liberty, claim-right/no-right)

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