In a short span, this Elements volume will delineate the general nature of legal and moral rights and the general nature of the holding of rights, and it will also sketch the justificatory foundations of rights. Hence, it will treat of some major topics within legal, political, and moral philosophy as it combines analytical theses and ethical theses in a complex pattern.

1 The Hohfeldian Analysis

We can best begin with the schema for analyzing legal relationships that was propounded in the second decade of the twentieth century by the American legal theorist Wesley Hohfeld.[1] His analytical framework has been hugely influential not only in legal and political and moral philosophy but also in several other areas of philosophy (including formal logic) and in some of the social sciences. The basic structure of that framework is encapsulated in Table 1.

Table 1 Hohfeldian table of legal positions

ENTITLEMENTS	claim-right (or claim)	liberty	power	immunity
CORRELATES	duty	no-right	liability	disability
	First-Order Positions		*Higher-Order Positions*	

To each of the four positions in the upper half of Hohfeld's table, the overarching term "entitlement" applies. Hohfeld himself revealed that, in everyday discourse and in juristic discourse, the noun "right" is very frequently employed to denote each of the positions in the upper half of the table. Indeed, one of his principal concerns was to disambiguate that noun by distinguishing carefully among the four types of entitlements to which it is commonly affixed.

Each of the four entitlements in Hohfeld's table is correlated with the position directly below it. A logical relationship of correlativity between the two positions in each column of the table is a relationship of biconditional entailment. That is, any instance of an entitlement with some specified content entails an instance of the position directly below it with the same content, and vice versa. For example, "John has a legal claim-right vis-à-vis Mary to be paid £100 by her" entails "Mary owes John a legal duty to pay him £100," and vice versa.

As important as the logical relationship of correlativity within each column are the logical relationships between the positions diagonally across from each other on the left-hand half of Hohfeld's matrix, and the logical relationships

[1] For a thorough exposition of the Hohfeldian analytical framework, with sustained arguments in support of what I assert in the present section of this Elements volume (and with attention to numerous other major aspects of the framework that cannot even be touched upon here), see Chapters 2 and 3 of Kramer (2024).

between the positions diagonally across from each other on the right-hand half. Duties and liberties are logical duals, just as are claim-rights and no-rights. For example, "Mary owes John a legal duty to pay him £100" is the negation of "Mary is legally at liberty vis-à-vis John not to pay him £100," and vice versa.[2] Liabilities and immunities are logical contradictories, just as are powers and disabilities. For example, "John is legally liable to undergo some specified change in his legal positions through the performance of an action A by Susan" is the negation of "John is legally immune from undergoing the specified change through the performance of A by Susan."

Although these logical relations may seem rather abstruse when they are recounted so laconically, they are what endow the Hohfeldian schema with its immense value in clarifying and analyzing the legal positions which people occupy vis-à-vis one another. Let us very briefly probe each of the four entitlements along with each correlative position. A claim-right is a position of deontic protectedness; when someone holds a claim-right, a typically beneficial aspect of his or her situation is deontically protected. The deontic protection consists in rendering impermissible any interference or uncooperativeness that is at variance with the content of the claim-right. Both the notion of interference and the notion of uncooperativeness are to be understood very broadly here. Interference occurs whenever there befalls some event that worsens the situation of somebody in any way, and uncooperativeness occurs whenever there does not befall some event that would have improved the situation of somebody in any way. Although countless types of interference or uncooperativeness can be legally permissible, any type that falls within the protective ambit of a legal claim-right is legally impermissible.

Correlative to any claim-right held by some party X vis-à-vis some party Y is a duty with the same content, owed to X by Y. A legal duty is a requirement that makes some kind(s) of interference or uncooperativeness legally impermissible. In other words, some kind of noninterference or cooperativeness is rendered legally mandatory by the existence of any legal duty. Except in circumstances where a legal duty is wholly unenforceable, a bearer of a legal duty is legally accountable for the fulfillment of that duty.

A Hohfeldian liberty is an instance of permissibility. When somebody is legally at liberty to φ, the applicable laws permit her to φ. Accordingly, she is not under a legal duty to refrain from φ-ing. A legal liberty is an instance of

[2] Each of these propositions is true if and only if the other is false. 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 at the level of the proposition and the negation at the level of the predicated content, which are often characterized as external negation and internal negation – are characteristic of logical duals.

freedom, but the freedom is deontic rather than modal; it consists in someone's being legally allowed to φ, rather than in her being able to φ. Of course, very often somebody is able to do what she is legally permitted to do. In many other cases, however, her legal liberty to φ is not accompanied by any ability of hers to φ. Conversely, very often someone is capable of doing things which she is not legally at liberty to do.

In the realm of law, the Hohfeldian neologism "no-right" designates a legal position that is correlated with a legal liberty. Any two such correlated positions make up a liberty/no-right relationship that obtains between some specified parties with a specified content. That is, if a liberty and a no-right are indeed correlated, the content of each of them is the same as the content of the other (and the parties between whom either of them obtains are transposedly the same as the parties between whom the other one of them obtains). A no-right in a legal relationship of that kind is a position of rightlessness or unprotectedness. A party P who bears a legal no-right with regard to any act of φ-ing by some other party Q is not legally protected against Q's φ-ing, which will therefore not legally wrong P.

A legal power in the Hohfeldian sense is an ability to effect changes, through one's actions, in one's own legal positions or in the legal positions of other people. A legal liability in the Hohfeldian sense is a position of susceptibility to the undergoing of changes in one's legal positions brought about through the exercise of a legal power by oneself or by somebody else. Powers and liabilities are higher-order legal positions in that their contents always presuppose the existence of other legal positions. By contrast, the contents of many legal claim-rights and many legal liberties do not presuppose the existence of any other legal positions.

Also higher-order positions are legal immunities and legal disabilities. If a person P holds an immunity vis-à-vis another person Q in regard to the modification of some legal position of P through the performance of some specified action(s) by Q, then P is insusceptible to undergoing that modification of his or her legal position through Q's performance of the specified action(s). As is evident, then, an immunity is the negation of a liability. P is immune from the modifying of his or her legal positions through Q's performance of some specified action(s) if and only if P is not liable to undergo any such modifying of those positions through the performance of the action (s) by Q. A disability is a position of powerlessness within the scope of its correlative immunity. In the example just broached, Q bears a legal disability vis-à-vis P with regard to the modifying of P's legal positions through Q's performance of any specified action(s). If Q attempts to modify those legal positions by performing the specified action(s), the attempt will be unavailing. Hence, just as an immunity

is the negation of a liability with the same content, so too a disability is the negation of a power with the same content.

Hohfeld was concerned to emphasize not only the biconditional entailment between the two positions in each column of his schema, but also the lack of any biconditional entailment between an entitlement in any one column and an entitlement in any of the other columns. Indeed, the absence of such entailments between the types of entitlements is what he strove to highlight through his efforts to disambiguate the language of "rights." All instances of legal claim-rights and legal liberties are commonly designated as "rights," and many instances of legal powers and legal immunities are commonly so designated. Jurists and legal scholars and ordinary people have therefore frequently been led into paralogisms, as their premises about rights are focused entirely on entitlements of one kind and as the conclusions which they draw from those premises are focused on entitlements of some other kind(s). Hohfeld adduced many examples of such confusion. In response, he and others influenced by his analytical matrix have time and again emphasized the logical disseverability of entitlements in any one column of the matrix from entitlements in any other column thereof. Thus, for example, the holding of a legal claim-right by Mary against being prevented from φ-ing does not entail her holding of a legal liberty to φ. Mary can hold a legal claim-right vis-à-vis John that requires him not to prevent her φ-ing, even while she owes him a legal duty not to φ (a duty correlated with a legal claim-right held by him, of course). Because this combination of legal relationships can initially strike some people as unfathomable – as can certain other combinations of legal relationships – Hohfeldian philosophers have essayed to dispel the appearance of oddity by bringing to bear the Hohfeldian categories in a rigorous fashion to show that such combinations are in fact possible.

At the same time, the exponents of Hohfeld's analysis can aptly underscore the closeness of the connections between certain types of Hohfeldian entitlements and other such types. Some links among Hohfeldian entitlements, indeed, are matters of metaphysical or conceptual necessity. For example, the abilities of people to exercise their legal liberties are deontically protected to quite considerable degrees by their elementary legal claim-rights against being subjected to major modes of mistreatment. The fact that people hold those elementary legal claim-rights is hardly a coincidence or an accident. Rather, as H.L.A. Hart contended in Chapter 9 of *The Concept of Law*, all or most people within the jurisdiction of any functional system of governance will hold such legal claim-rights (Hart 1994, 193–200; Kramer 2018, 164–172). No such system could endure more than fleetingly if it failed to impose and effectuate the legal duties that are the correlates of those claim-rights, since the effectuation of such

duties is essential for the very cohesiveness of any society. As Hart submitted, the indispensability of those duties and their correlative claim-rights for the sustainability of any system of governance is due to some fundamental features of human beings and of the world in which they live. In other words, it is due to the nature of human beings or to the nature of the human condition. Hart himself characterized the indispensability of those elementary legal duties and their correlative claim-rights as a matter of "natural necessity," but in the parlance of contemporary philosophy it is best characterized as a matter of metaphysical necessity. It is something which follows from the fact that human beings are as they everywhere are. As a matter of metaphysical necessity, then, all or most people within the jurisdiction of any functional system of governance hold legal claim-rights that are conferred upon them by the laws of the system which proscribe major forms of misconduct. Now, given that those claim-rights deontically protect the abilities of people to exercise their legal liberties, and given that the universal or very widespread holding of those claim-rights under any functional system of governance is a matter of metaphysical necessity, what is also a matter of metaphysical necessity is the fact that the abilities of people to exercise their legal liberties are deontically protected by elementary legal claim-rights which they hold. Legal liberties exist as such only when a functional system of governance is in existence, and as a matter of metaphysical necessity a functional system of governance is in existence only when the legal liberties of all or most people in the jurisdiction are accompanied by legal claim-rights that significantly protect the abilities of the holders of those liberties to exercise them. Hence, far from being fortuitous, the accompaniment of legal liberties by legal claim-rights in every jurisdiction is intrinsic to the human condition.

Even tighter are the connections between certain immunities and other entitlements. For example, if Melanie ostensibly has a legal claim-right against being punched in the face by Luke, and if she does not hold any legal immunity against being divested of that claim-right through Luke's clenching of his fist or through his movement of his arm toward her face, we shall have to conclude that she does not genuinely hold such a legal claim-right at all. Given that in those circumstances Melanie can be deprived of her legal claim-right by precisely the sorts of movements of Luke's body that would be involved in his contravening the claim-right, her legal protection against being punched in the face by Luke is then indistinguishable from her not having any legal protection against such misconduct by him. Consequently, the very existence of her claim-right is dependent on its being accompanied by certain legal immunities against the extinguishing of that claim-right. Similarly, if Melanie ostensibly holds a legal liberty vis-à-vis everyone else to walk down Grange Road in Cambridge at noon on any weekday, and if she does not hold any legal immunity (vis-à-vis herself)

against being divested of that liberty through her own action of walking down Grange Road at noon on a weekday, we shall have to conclude that she does not really hold such a legal liberty at all. Because in those circumstances Melanie is liable to lose her legal liberty through precisely the sorts of movements of her own body that would constitute her exercising of that liberty, her being entitled to walk down Grange Road at noon on a weekday is then indistinguishable from her not being so entitled. Consequently, the very existence of her legal liberty is dependent on its being conjoined with certain legal immunities (held vis-à-vis herself) against the extinguishing of that liberty.

2 What Does the Holding of a Claim-Right Involve?

A key question not answered by Hohfeld's table of legal relationships is the matter of identifying the holders of claim-rights correlative to specified duties. What is the criterion on which we should rely? To see the need for addressing that question, we should mull over the following two legal duties imposed by the system of governance in some (imaginary) country. First, every adult in the jurisdiction below the age of 65 with an income above a specified level is legally obligated to pay at least $5,000 per annum to each parent who is still alive. Second, every adult in the jurisdiction is legally obligated to report his or her parents to a domestic-surveillance agency whenever the parents utter any sentiments of dissatisfaction about the prevailing system of governance. John, a high-income citizen of the country in question, is thus under a legal duty to pay at least $5,000 every year to each of his parents and is also under a legal duty to inform upon either of his parents if either of them evinces any sense of unhappiness about the presiding system of governance. Does each of John's parents hold a legal claim-right correlative to either of his duties? With regard to the first of John's duties, the answer to this question is affirmative. John owes each of his parents a legal duty to pay each of them at least $5,000 per annum. Each parent holds a legal claim-right, vis-à-vis John, to be paid at least $5,000 by him. In regard to the second of John's legal duties, however, the answer to the question just posed is negative. Neither parent holds a legal claim-right to be informed upon by John to a domestic-surveillance agency. John's duty to disclose any recalcitrant utterances by the parents is owed to the prevailing system of governance and more specifically to the surveillance agency, but it is not owed to either of the parents or to anyone else.

At a pre-theoretical level – the level of everyday "common sense" – these conclusions about claim-rights held or not held by John's parents are quite straightforward. However, a philosophical exposition has to go beyond a pre-theoretical level. What is required is a richly theoretical account of the

conditions under which a party holds a claim-right correlative to some specified duty. Efforts by philosophers to provide such an account have led to the emergence of two main competing models of what the holding of a claim-right involves: the Interest Theory and the Will Theory.[3] Although each of those theories exists in many different versions that are inconsistent with one another, the best formulation of the Interest Theory is as follows:

> **Interest Theory of Right-Holding**: Individually necessary and jointly sufficient for the holding of a claim-right by *X* are (1) the fact that the duty correlative to the claim-right deontically and inherently protects some aspect of *X*'s situation that on balance is typically beneficial for a being like *X*, and (2) the fact that *X* is a member of the class of potential holders of claim-rights.

Several elements of this formulation are in need of elucidation. Let us begin with the phrase "and inherently." Such phrasing indicates that the content of a specified duty D cannot come to pass – and therefore that D cannot be fulfilled – without affecting *X*'s situation in some way that is on balance typically beneficial for beings like *X*. In other words, the reference to the inherency of the deontic protection bestowed by D on some typically beneficial aspect of *X*'s situation is meant to differentiate between protective effects that are fortuitous or incidental and protective effects that are always occurrent through the realization of what D requires. Note that the protection, rather than the derivation of some benefit from the protection, is what is inherent to the satisfaction of the duty; the protection conferred by D on the situation of the holder of a correlative claim-right is typically beneficial for anyone like that holder but is not invariably so.

The protection conferred by a legal or moral duty-not-to-φ is deontic rather than physical or modal. It consists in the fact that φ-ing is made legally or morally wrong by the existence of the duty, rather than in the fact (if it is a fact) that φ-ing has been prevented. Of course, a legal duty or even a moral duty might be given effect through anticipatory measures of enforcement which do prevent any occurrence that is contrary to the content of the duty. However, the undertaking of such anticipatory measures is wholly contingent and is not inseparable from the existence of the specified duty. (Even when legal duties are well enforced, the enforcement typically consists in the imposition of sanctions *ex post* rather than in the performance of preventative actions *ex ante*.) A legal or moral duty in itself – that is, in abstraction from any

[3] Some philosophers have essayed to develop alternatives to the Interest Theory and the Will Theory. Most notable are the efforts by Gopal Sreenivasan (2005, 2010) and Mark McBride (2022) to elaborate hybrid theories that combine elements of the Interest Theory and Will Theory. For a piquant variant of the Interest Theory, see Cruft (2019, 11–86); and for a piquant variant of the Will Theory, see Gilbert (2018).

processes of enforcement that might accompany it – does not prevent actions or other occurrences that are at odds with what it requires. Instead, it establishes that any such actions or occurrences are legally or morally impermissible.

Also in need of elucidation is the phrase "on balance is typically beneficial." Because nearly every feature of a person's situation is typically beneficial in some respect or another even when that feature is typically detrimental on the whole, the evaluations essential for applying the Interest Theory to various situations are about what is beneficial or detrimental on balance. Were those evaluations instead about what is beneficial in some respect or another, they would be almost entirely undiscriminating. As for the qualifying adverb "typically" appended to "beneficial," it too is indispensable for the Interest Theory. As has already been mentioned, the aspects of people's situations inherently protected by the holding of claim-rights can be detrimental on balance in exceptional cases even though they are beneficial on balance in the preponderance of cases. Thus, although one's holding of a claim-right always bestows deontic protection on some aspect of one's situation that is normally beneficial on balance, the aspect that is inherently protected is not always beneficial on balance; it is usually beneficial on balance rather than invariably so.

2.1 The Evaluative Premises of the Interest Theory: Objectivity

As is manifest, any application of the Interest Theory to this or that set of circumstances must draw upon evaluative premises in order to differentiate between the generally beneficial aspects and the generally detrimental or neutral aspects of people's situations. Having elsewhere expatiated on those premises (Kramer 2024, 181–187), I can here make only a few brief comments. First, the evaluative premises are predominantly objective rather than predominantly subjective. They are predominantly objective in that they ascribe typical on-balance advantageousness or typical on-balance disadvantageousness to various aspects of people's situations irrespective of anyone's beliefs about those aspects or anyone's attitudes thereto. When Interest Theorists gauge whether sundry features of people's situations are typically beneficial on balance or typically detrimental on balance, most of the assessments are not accommodatingly individualized to match the outlook of each person. Still, although the evaluative premises of the Interest Theory of right-holding are preponderantly objective, there is a subjective dimension. Notwithstanding that multitudinous aspects of people's situations are evaluated by proponents of the Interest Theory in an objectively unaccommodating manner as typically beneficial on balance or typically detrimental on balance, one possible aspect of the situation of anyone resides in attaining what he or she keenly desires. That

aspect is typically beneficial on balance for a person, even though it is of course not always beneficial on balance.

Hence, for example, somebody who masochistically yearns to be subjected to a specific type of torture can benefit on balance from being subjected to such torture. If a masochistic person Damian enters into a contract that legally obligates his contractual partner Gregory to subject Damian to the specified type of torture – and if the law of the jurisdiction countenances such a contract as a binding agreement instead of invalidating it on grounds of public policy – the aspect of Damian's situation inherently protected by Gregory's contractual duty is the subjection of Damian to the specified type of torture in accordance with his desires. Precisely because the subjection of Damian to torture is indeed in accordance with his deeply felt desires, it is an aspect of his situation that is beneficial on balance for somebody like him even though subjection to torture would be detrimental on balance for just about any non-masochistic person. Consequently, we can correctly conclude that Damian holds a legal claim-right to be subjected to the preferred type of torture by Gregory, who is of course under a legal duty correlative to that claim-right.

What should be noted here is that this subjective element in the evaluative premises of the Interest Theory of right-holding is itself specified objectively. One of those premises is that the realization of the desires intensely felt by a sane person is typically beneficial on balance for anyone like that person. Such a premise is not dependent on the beliefs of any particular individual about the goodness of realizing his or her keenly held desires, nor is it dependent on the higher-order conative attitudes of any individual toward the realization of his or her intense desires. Accordingly, even when the evaluative underpinnings of the Interest Theory accommodate some of the idiosyncrasies of people, those underpinnings remain objective – for the accommodation is objectively specified.

2.2 Evaluative Premises of the Interest Theory: Generality

The set of evaluative assumptions informing any application of the Interest Theory will be thin and general rather than thick and concrete. For example, those assumptions will not enable us to say whether being skillful in the sport of basketball is better than being skillful in the activity of chess, nor will they tell us whether earning a lofty salary in a stressful and regimented line of work is better than earning a moderate salary in a relaxed and flexible line of work. Concrete evaluative matters of those sorts are not addressed in any satisfactory account of the holding of claim-rights. Rather, the judgments about the typical on-balance advantageousness or disadvantageousness of myriad aspects of people's situations are pitched at much higher levels of generality.

Whenever the Interest Theory is marshaled by someone who is seeking to identify the holder of a claim-right, the relevant comparison – at the very high levels of generality just mentioned – is between a party's situation with a certain feature present and a party's situation with that same feature absent. If the presence of that feature will typically improve the situation of the party on balance or will typically avert a worsening of the party's situation on balance, then the feature is of a kind that is inherently protectable by a legal duty and its correlative legal claim-right. Fine-grained evaluative judgments like those broached in my last paragraph above (involving comparisons between different pastimes, for example, or between different detailed ways of life) are beside the point in applications of the Interest Theory. No such detailed judgments are needed, and no such judgments would be pertinent.

2.3 The Interest Theory Applied to John's Duties

Let us now consider how the Interest Theory handles the two duties incumbent on John that pertain to his parents (discussed in the opening paragraph of Section 2). Whereas the first of those duties requires John to pay each of his parents at least $5,000 per annum, the second duty requires John to report his parents to a domestic-surveillance agency in the event that they give voice to any seditious sentiments. While one's being paid at least $5,000 per annum is an aspect of one's situation that is typically advantageous on balance, one's being informed upon to a domestic-surveillance agency for one's utterance of disloyal attitudes is an aspect of one's situation that is typically detrimental on balance. Hence, the Interest Theory generates the conclusion that each parent of John is a holder of a legal claim-right correlated with his legal duty to pay each of them at least $5,000 annually. Conversely, the Interest Theory generates the conclusion that neither parent of John holds a claim-right correlated with his legal duty to apprise the domestic-surveillance agency of any dissentient utterances by the parents. Each of these verdicts tallies with any credible pre-theoretical understanding of the legal relationships between John and his parents, and each verdict is indeed perfectly straightforward. Moreover, as will shortly be seen, the same conclusions are also reachable by the main rival to the Interest Theory: the Will Theory.

Nonetheless, although the Interest Theory as applied to the circumstances of John and his parents is a ratification of common sense, there are many other circumstances where common sense provides very little guidance or unreliable guidance. In regard to such circumstances, the Interest Theory furnishes reliable guidance that is grounded on a richly theoretical understanding of the phenomenon of right-holding rather than on ad hoc propensities. Furthermore, although