SOCIAL POWER AND THE HOHFELDIAN JURAL RELATION

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> [Human beings] ... so far as they aid themselves by legal rules, transform their social relations into legal ones, social dependence into a legal obligation, and the power of influence which they have over each other into rights. The legal rules fixing human interests delimit necessarily the realization of those interests and impose upon each man some obligation of guaranteeing the realization of others' interests.[1]

HOHFELD'S CELEBRATED "ANALYSIS"

WESLEY NEWCOMB Hohfeld is one of the great unsung heroes of twentieth century legal theory. His eponymous "analysis" – an eight-term relational configuration of legal concepts – represents one of the most perceptive and revealing contributions to the literature of analytical jurisprudence. The immense outpouring of secondary Hohfeldian literature – clarifying, refining and perfecting his analysis, often to the most recondite levels of abstraction – has testified to the profound influence that Hohfeld had in twentieth century jurisprudence.[2] Yet while Hohfeld unquestionably *theorised about* jural relations he fell far short of articulating a *theory of* jural relations. That task was undertaken by Albert Kocourek whose sesquipedalian treatise *Jural Relations* simply failed to capture the imagination of the academic community.[3] Hohfeld, in any event, would have been the first to deny that what he was attempting in *Fundamental Legal Conceptions* was, in theoretical terms, anything more ambitious than a dissertation aimed at clarifying basic conceptions of the law. Hohfeld made no great claims for his dissertation and even specified that its readers should be "law school students" rather than "any other class of readers".[4] Indeed, for all its theoretical importance his dissertation often amounts to no more than an attempt to clarify various terminological usages prevalent in practical legal discourse. But that is perhaps the enduring paradox of Hohfeld and his "analysis". Since its formulation Hohfeld's analysis has never failed to have a "place" in legal theory, in analytical jurisprudence. But the lack of a theoretical or philosophical dimension to Hohfeld's analytical work has made it all too easy for commentators to place Hohfeld at the periphery of "serious" legal theory rather than at its centre.

In this essay, as a step towards showing how Hohfeld might be positioned more centrally within the domain of theory I aim to identify a theoretical context in which

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[1] N. M. Korkunov, *General Theory of Law* (Trans. W.G. Hastings), The Boston Book Company [The Modern Legal Philosophy Series, Vol. IV] (1909), at p. 195.

[2] See generally Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning* (1919) (Ed. Walter Wheeler Cook), (Yale University Press, 4th Printing, 1966). Some of the secondary Hohfeldian literature is cited by Roscoe Pound in a footnote which is itself truly voluminous. See Roscoe Pound, *Jurisprudence* (West Publishing Co., St. Paul, Minnesota, 1959) Vol. IV, at p. 83, note 101.

[3] See Albert Kocourek, *Jural Relations*, (2nd Ed.) (The Bobbs–Merrill Company, Indianapolis, 1928). As Roscoe Pound comments: "[O]ne cannot but feel that [Kocourek] ... carries out schematic exposition and terminology far beyond what is practically worth while." Roscoe Pound, *Jurisprudence* (*op. cit.*), Vol. IV, at p. 82.

[4] W. N. Hohfeld, *op. cit.* at p. 27. Hohfeld comments: "If ... the title of this article suggests a merely philosophical inquiry as to the nature of law and legal relations ... the writer may be pardoned for repudiating such a connotation in advance. On the contrary ... the main purpose of the writer is to emphasize certain oft-neglected matters that may aid in the understanding and in the solution of practical, everyday problems of the law. With this end in view, the present article and another soon to follow will discuss, as of chief concern, the basic conceptions of the law. ..." (See Hohfeld, *op. cit.* at pp. 26–7.)

aspects of Hohfeld's analysis might be productively embedded. I wish to pursue a line of enquiry that is consciously interdisciplinary: demonstrating, in other words, how legal conceptual analysis of the Hohfeldian kind may inform an essentially *sociological* analysis of law as a site of social power. I will argue, for instance, that it is possible to link key aspects of Hohfeld's analysis with Max Weber's analysis of social power. As Hohfeld recognised, legal relationships, in their most abstract and irreducible form, are structured as correlatives: of right ↔ duty and power ↔ liability.[5] Relationality in both the non-legal and legal contexts is part of meaningful social behaviour. Human beings ascribe meaning (*Sinn*, as Weber terms it) to their behaviour and to the behaviour of others: e.g. good, bad, moral, immoral, worthy, unworthy, and so on. They also conceive of their position vis-à-vis others in relational terms: *as* relationships. In the legal context individuals similarly ascribe meaning – again in relational terms – and by reference to legal norms and other normative conceptions. The key assumption underlying much of the argument to follow, however, is that legal *relationships* – as opposed to legal *norms* as such – reveal and at the same time mirror the essentially social nature of the legal world.

Later in this essay I will point to ways in which the Hohfeldian jural relation – specifically, the right ↔ duty nexus – additionally has an underlying social power dynamic. I will focus in particular on the Hohfeldian right ↔ duty jural relation. It is beyond the scope of this essay to consider the Hohfeldian power ↔ liability jural relation in any detail owing to the more complex structure of that type of relationship. I will seek to show that Hohfeldian jural relations may in fact be regarded as relationships of social power in the sense that Weber contemplates. I will also touch upon the idea of legitimacy as an aspect of the wider context of subjective meaning within which legal social power relationships are located. But to begin with I will selectively outline a few of the main features of the jural relation, drawing on the work of Hohfeld and on secondary Hohfeldian literature.

THE JURAL RELATION

The Legal Bond

The conceptual apparatus of the jural relation by no means originated in the juristic writings of Hohfeld and Kocourek, although the expression "jural relation" appears to have done. While those writers were certainly the principal *twentieth century* "relational jurists" the essential idea of the jural relation probably had its historical origin at least as early as the Roman law concept of the legal bond (*juris vinculum*) which Justinian applied in the *Corpus Iuris Civilis*.[6] Hohfeld did not attempt to define "jural relation", reinforcing the view that his dissertation was essentially a practical one. Kocourek, on the other hand, whose approach was somehow more scientistic – though not necessarily more illuminating – undertook a critical assessment of a number of possible definitions drawn mainly from the work of nineteenth century jurists. According to Kocourek the jurist Puntschart recognised that Savigny had "vaguely apprehended" the *juris vinculum* element of the jural relation. Through the application of legal norms legal bonds were

[5] The use of a two-way arrow here and elsewhere in this essay is intended to accentuate the correlativity of Hohfeldian legal relationships in terms of which one legal concept (e.g. right) implies the other (duty) and *vice versa*.

[6] See *The Digest of Justinian* (Trans. and Eds. Theodor Mommsen, Paul Krueger and Alan Watson) (University of Pennsylvania Press, Philadelphia, Pennsylvania, 1985) (Vol. IV): D.44·7.3pr. See also *The Institutes of Justinian* (Trans. and Comm. J. A. C. Thomas) (North–Holland Publishing Co., Amsterdam, Oxford, 1975): *Inst.* III. 13.pr.: "An obligation is a legal bond whereby we are constrained by the need to perform something according to the laws of our state". (p. 197)

created "by which persons were gyved to persons and persons to things for definite purposes within the purview of the law".[7] Puntschart had also shown how the "bond" idea runs through the whole system of Roman legal conceptions. As Kocourek observes:

> Puntschart ... interposes a new mechanical element, the "juris vinculum", as a kind of distributing center through which legal advantages are apportioned among the members of a legal society as the purpose of the law directs. The norm creates the legal bond and from the legal bond are derived such claims and duties as are appropriate.[8]

According to J.A.C. Thomas, the developed Roman law idea of a legal bond contained no other subjection than that of the duty to perform or pay damages. The language used by Justinian, however, had associations with bondage and this more literal connotation reflected something of the true nature of obligation as conceived in early Roman law.[9] It might be argued that it required only a step rather than a great intellectual leap to move from the notion of physical bonds or fetters to that of *conceptual* bonds. Here the conceptual linkage which "gyved" persons to persons and persons to things, to use Kocourek's phrase, was more important than the physical linkage. Puntschart's clarification of the Roman law idea of *juris vinculum* of course stresses the conceptual element of the jural bond or *Rechtsverband*, as Puntschart terms it.[10] The idea of jural relation as conceptual linkage finds its expression in Hohfeld's arrangement of relations in the form of a scheme of correlatives and opposites, in which jural correlatives represent each side of one jural relation, viewed from the respective points of view of each party to the relation.[11] John Austin anticipated this correlativity when he defined legal right as "... the creature of a positive law: and it answers to a relative duty imposed by that positive law, and incumbent on a person or persons other than the person or persons in whom the right resides".[12] Austin was in no doubt concerning the relationality of law and to that extent was quite "Hohfeldian":

> [A]ll rights reside in persons, and are rights to acts or forbearances on the part of *other* persons. Considered as corresponding to duties, or as being rights to *acts* or *forbearances*, rights may be said to avail *against* persons".[13]

Hohfeld's Table of Jural Relations

In *Fundamental Legal Conceptions*, Hohfeld arranges jural relations in one table organised around the dichotomy between jural opposition and jural correlativity. Subsequent writers have preferred to show jural correlativity and jural opposition (or

[7] See Albert Kocourek, *op. cit.*, at p. 41.

[8] *Ibid.*, at p. 44. (Kocourek's references are to Puntschart, *Moderne Theorie des Privatrechts* (1893)).

[9] *The Institutes of Justinian* (*op. cit.*), J. A. C. Thomas' commentary at p. 198. See also W. W. Buckland, *A Textbook of Roman Law* (3rd Ed., Peter Stein) (Cambridge University Press, Cambridge, 1963), at p. 406.

[10] See Albert Kocourek, *op. cit.*, at p. 41.

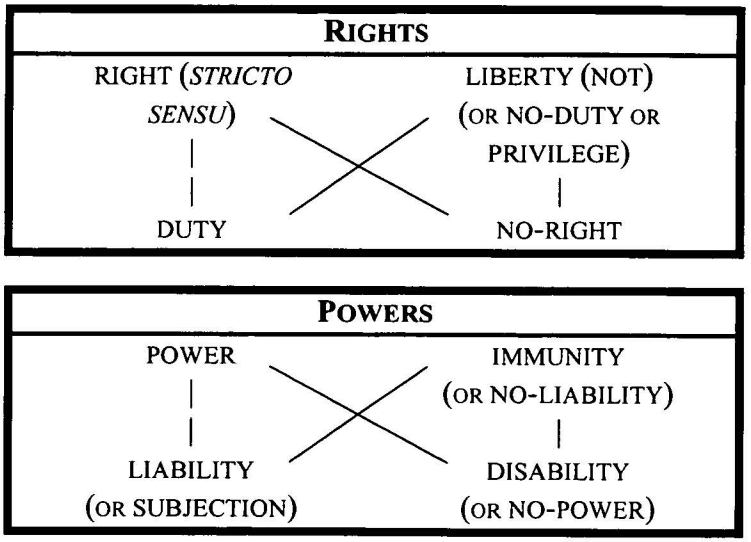
[11] Consider, for example, George W. Goble's characterisation of the power ↔ liability relation: "All acts or omissions legally significant involve the exercise of powers. The word describes a relationship of two persons from the viewpoint of the dominant or controlling party. The same relationship is described from the viewpoint of the servient or controlled party by the term *liability*". (See "A Redefinition of Basic Legal Terms" (1935) 35 *Columbia Law Review*, 535, partly reprinted in Jerome Hall (Ed.), *Readings in Jurisprudence* (The Bobbs–Merrill Company, Indianapolis, 1938) at pp. 516 *et seq.*) See also Hans Kelsen, *Pure Theory of Law* (Trans. Max Knight, of *Reine Rechtslehre*, 2nd Ed. (1960) (University of California Press, Berkeley and Los Angeles, 1967), at p. 166: "The reflex right is only the legal obligation, seen from the viewpoint of the individual toward whom the obligation has to be fulfilled". In "The Pure Theory of Law", (1934) 50 *Law Quarterly Review* p. 474, at p. 493, referring to contractual legal rights, Kelsen comments: "For no one can allocate rights to himself, since the right of the one exists only under the pre-supposition of the duty of another ... ".

[12] From John Austin, *Lectures on Jurisprudence*, (3rd Ed.), London (1869), reprinted in Jerome Hall (Ed.) *Readings in Jurisprudence* (*op. cit.*) at p. 442.

[13] *Ibid.*, at p. 450 (Austin's emphasis).

jural "contradiction"[14]) subsisting together in two tables, one pertaining to the right *stricto sensu* family of jural relations, and the other to the power family of jural relations.[15] The following tables are based on those appearing in the eleventh edition of *Salmond on Jurisprudence*. It should be noted that Glanville Williams, the editor, argued that Hohfeld's "privilege" was best conceived of as a "liberty (not)"[16] and Salmond himself preferred to substitute "subjection" for Hohfeld's "liability".[17] The two tables are arranged within rectangles, yet there is no necessary relationship between the rectangles for, as Salmond comments: "[T]he four concepts within each rectangle are intimately related to each other, whereas there is not the same relationship between the concepts in the one rectangle and the concepts in the other rectangle".[18]

In the tables, correlativity resides in *vertical* lines, while opposition or contradiction resides in *diagonal* lines.



The derivative Hohfeldian arrangement shown in these tables is substantially in line with what has become a characteristically twentieth century analytical position in which a principled distinction is drawn between on one hand rights in the "strict sense" (and duties) and on the other hand powers (and "liabilities"). H.L.A. Hart, of course, brought this distinction to the forefront of more recent jurisprudential writing. In 1964 Lon Fuller noted the "coincidence" of Hohfeld's analysis and Hart's distinction between duty-imposing and power-conferring rules:

> The Hohfeldian analysis discerns four basic legal relations: right–duty, no–right–privilege, power–liability, and disability–immunity. Of these, however, the second and fourth are simply the negations of the first and third. Accordingly the basic distinction on which the

[14] See generally Glanville Williams, "The Concept of Legal Liberty" in Robert S. Summers (Ed.), *Essays in Legal Philosophy* (Basil Blackwell, Oxford, 1968), at pp. 121 *et seq.* (especially at pp. 128 *et seq.*)

[15] A distinction between rights "in the strictest and most proper sense" and rights "in a wider and laxer sense" is maintained in *Salmond on Jurisprudence* (Glanville Williams, Ed.) (11th Ed.) (Sweet and Maxwell Ltd., London, 1957), at pp. 269–70.

[16] *Salmond on Jurisprudence* (*op. cit.*) at pp. 271–3. See also Glanville Williams, "The Concept of Legal Liberty" (*op. cit.*).

[17] *Salmond on Jurisprudence* (*op. cit.*) at p. 270 and at p. 275 note (c).

[18] *Ibid.*, at p. 270.

> whole system is built is that between right–duty and power–liability; this distinction coincides exactly with that taken by Hart.[19]

Fuller's assertion of an *exact* coincidence between the Hohfeldian and Hartian analyses of legal powers is overstated, however. A close examination of *The Concept of Law* shows that Hart's power–conferring rules are on any ordinary language account certainly power–conferring rules of a kind, but not of a rigorously Hohfeldian kind. Hart's distinction between power–conferring and duty–imposing rules centres upon perceived differences in the social functions which the respective rules perform. Hart's category of power-conferring or facilitative laws is distinguishable in terms of *social function* from certain duty-imposing laws and is probably wider than Hohfeld's abstract category of power ↔ liability legal relationships. As Hart points out "[l]egal rules defining the ways in which valid contracts or wills or marriages are made do not require persons to act in certain ways whether they wish to or not. Such laws do not impose duties or obligations. Instead, they provide individuals with *facilities* for realizing their wishes, by conferring legal powers upon them to create, by certain specified procedures and subject to certain conditions, structures of rights and duties within the coercive framework of the law".[20] The point here is that Hart's power–conferring rules are not in any strict sense *relational* power–conferring rules in the sense that Hohfeld envisages. Indeed, Hart virtually ignores Hohfeld's analysis in *The Concept of Law*: without doubt to the book's detriment. There are also very pronounced *analytical* differences between Hohfeldian legal rights *stricto sensu* and legal powers which Hart does not begin to address in *The Concept of Law*. Hart was undoubtedly aware of this, however, because in *Essays on Bentham* he referred to his "previous inadequate approach" to the subject of legal powers in *The Concept of Law*. Hart comments that he (Hart) made no attempt in *The Concept of Law* to analyse closely either the notion of a power or the structure of the rules by which powers are conferred.[21]

Jural Correlativity

Arguably the key notion underlying Hohfeld's analysis – echoing, as I will later suggest, *sociological* analyses of legal relationships in terms of social power – is that of correlativity. The correlativity of jural relations entails that one term of the relation (e.g. the right) implies the other term (the duty) and *vice versa*. The notion of jural *opposition* (or contradiction) is also important to Hohfeld. He uses the expression "jural opposite" to denote a term that is the negative of another term. This yields two jural correlatives: the negative jural relation of no–right↔privilege (i.e. the jural opposite in the right *stricto sensu* family of relations) and the negative jural relation of disability↔immunity (i.e. the jural opposite in the power family of relations). But jural correlativity is perhaps the more fundamental concept, underpinning as it does the relational nature of legal phenomena. The concept of jural opposition features only as a mode of classifying *types* of legal relationship.

Focusing, then, on correlativity, in the eleventh edition of *Salmond on Jurisprudence* Glanville Williams observes that the question whether rights and duties are necessarily correlative has resolved itself into two schools of thought according to one of which there can be no right without a corresponding duty, or duty without a corresponding

[19] Lon L. Fuller, *The Morality of Law* (Yale University Press, New Haven and London, 1964), at p. 134 note50.

[20] H. L. A. Hart, *The Concept of Law*, (2nd Ed., with Postscript edited by Penelope A. Bulloch and Joseph Raz) (Clarendon Press, Oxford, 1994), at pp. 27–8.

[21] See H. L. A. Hart, *Essays on Bentham: Studies in Jurisprudence and Political Theory* (Clarendon Press, Oxford, 1982), at p. 196.

right "any more than there can be a husband without a wife, or a father without a child".[22] The other school of thought does not deny the correlativity of many rights or duties, or types of right or duty, but distinguishes between correlative rights or duties described as "relative", and rights and duties described as "absolute". Absolute rights in this sense have no duties corresponding to them, and absolute duties similarly have no rights corresponding to them. Joel Feinberg, for instance, gives consideration to three classes of such duties: duties of status, duties of obedience and duties of compelling appropriateness.[23] Similarly Neil MacCormick has argued that there are some rights – legal rights, no less – which, being logically prior to any correlative duties, are therefore "dutiless" rights.[24]

According to Williams the dispute between the two schools is merely a "verbal controversy" devoid of practical consequences.[25] It may be that the dispute turns more upon how the words "right" or "duty" are used or defined in a particular context than upon the existence of any principled difference between relative rights (duties) and absolute rights (duties). The difficulty faced by the "absolutist" school, however, is to confront the underlying reality of norm-governed social action. It is difficult, in other words, to visualise a right or duty that does not in some sense avail against some other person or is at least in existence because the world of human beings is a *social* world. It may be that arguments favouring a concept of absolute rights or duties turn less on the denial of the possibility that such rights and duties avail against "others" than on the determinacy (or indeterminacy) of the "others" against whom they avail. For instance even if there is no–one in particular against whom (say) Max might assert a right "to life" such an assertion would be meaningless were it not for the existence of "others" – multitudes of indeterminate "others" – who are, minimally, rational and intelligent beings more or less capable of understanding, and respecting, Max's assertion. The fact of making such an assertion involves at least a tacit assumption that those other beings have a "social nature". It may be the lack of determinacy of "others" against whom absolute rights or duties avail that lends support to the "absolutist" school. It cannot be maintained, however, that lack of determinacy of such "others" – in the sense of difficulty of ascertainment of the specific individual or class against whom a right or duty avails – means *no–one at all.* In some cases the problem of identifying a party who "correlates with" the holder of an absolute legal right or bearer of an absolute legal duty may derive from a failure to visualise the right or duty in question in its "crystallised" form: that is, on the occurrence of relevant (Hohfeldian) "operative facts". In such a case, an "uncrystallised" right or duty merely exists as an indeterminate hypothesis.

Correlativity also entails that the *content* of someone's right is precisely equivalent to the content of someone else's duty in terms of the subject matter of the prescribed act or forbearance. Similarly, in such a case, the content of someone's duty is precisely equivalent to the content of someone else's right. Mere contentual equivalence, however, does not entail that a right *is* a duty or a duty *is* a right. That is the error which Max Radin commits:

> A's demand-right and B's duty in I are not correlatives because they are not separate, however closely connected, things at all. They are not even two aspects of the same thing. They are two absolutely equivalent statements of the same thing. B's duty does not follow

[22] *Salmond on Jurisprudence (op. cit.)* at p. 264.

[23] Joel Feinberg, *Rights, Justice, and the Bounds of Liberty* (Princeton University Press, Princeton, New Jersey, 1980), at pp. 137–9.

[24] Neil MacCormick, *Legal Right and Social Democracy* (Clarendon Press, Oxford, 1982), at p. 161.

[25] *Salmond on Jurisprudence (op. cit.)*, at p. 264.

> from A's right, nor is it caused by it. B's duty *is* A's right. The two terms are as identical in what they seek to describe as the active and passive form of indicating an act; "A was murdered by B"; or "B murdered A". The fact that A and B are wholly distinct and separate persons must not be allowed to obscure the fact that a relation between them is one relation and no more.[26]

Radin compounds his error by asserting that the fact that A and B are distinct persons may *obscure* the fact that the relationship between them is one relationship. It is precisely *because* the parties to whom such a relationship is ascribed are different that each side of the relationship requires a different term to describe it. Although A's right that B should φ is in terms of content (i.e. the prescribed act of φ–ing) equivalent to B's duty to φ, if the right were truly *identical* to the duty the relationship would be unintelligible. The point is that although there is identity with respect to the content of the prescribed act there is non–identity with respect to other important aspects of the relationship. For example if A has a right that B should φ A's position might be understood at least partly in terms of an expectation on A's part that B should φ but not in terms of any duty or compulsion to φ. In contrast B's position may be understandable in terms of a duty or compulsion on B's part to φ in fulfilment of A's assumed expectation. Nevertheless Radin usefully makes clear the identity of subject matter that characterises a jural relation: highlighting in particular that the act or forbearance that is the subject of the duty is also the subject of the right. Depending on the particular state of knowledge of the parties other "identities" that may be highlighted here include: (1) that a specified act (φ) is to be performed by the *same* person (the duty–bearer), (2) that each party's "opposite number" is identifiable (by each party) and (3) that the norms governing the relevant conduct are the same.

If each term of a jural relation, whether it be right or duty, implies the other term – *i.e.* A's right implies B's duty and *vice versa* – it follows that in order to understand either term properly it is necessary to have regard to the correlative term. In the context of Hohfeldian jural relations each term is inherently relational in that the expression "a right" in a sense *contains* the notion of "a duty" owed by another party. In his analysis of the underlying social power dimension of legal relationships – for example, in his sociological concept of legal right – Weber arguably lays the groundwork for, and demonstrates the relevance of, engaging in Hohfeldian-type legal conceptual analysis. Tellingly, both Hohfeld and Weber accentuate correlativity: for instance in the sense that the right of one may be regarded as the duty of another. In the legal world, social actors – and juridical entities such as corporations – are ideatively connected in a manner analogous to forms of social interaction or social relationships. Natural and juridical persons are, in other words, linked together in a legal nexus that echoes or replicates the social nexus.

Legal Relationships as Social Relationships

At several points in his *General Theory of Law* the Russian jurist N.M. Korkunov also demonstrated that he had grasped this essential correspondence between legal and social relationships. Whilst he did not attempt a sociological analysis of law based on the notion of social relationality he advanced the view that legal relations are social relations "but governed by a legal rule".[27] He argued that social relationships are

[26] Max Radin, "A Restatement of Hohfeld" (1938) 51 *Harvard Law Review* 1141 at p. 1150. See also *Salmond on Jurisprudence* (*op. cit.*), at p. 265 note (i).

[27] N. M. Korkunov, *General Theory of Law (op. cit.)*, at p. 192.

transformed into legal relationships by means of the conceptual apparatus of rights and duties. This stance led Korkunov to the view that not only is every legal relationship composed of a right and a duty[28] but also that legal relationships subsist only between natural and juridical persons: not between persons and *things*. That position was a concomitant of his more general stance according to which legal relationships were to be seen as "juridicised" social relationships. As Korkunov notes:

> We cannot in this matter subscribe to the opinion of ... [those] who recognize the existence of juridical relations with regard to things. The relation of the proprietor of a thing with that thing is not distinguishable from the relation of that thing towards one who has no right over it. The proprietor, just like one who has no ownership but uses it, employs the object according to fixed technical rules and according to personal taste. The only difference between the one and the other is in relation to other persons.[29]

Korkunov held that legal relations exist "not between an individual and a thing but only between several individuals on account of the use of a thing".[30] This was simply a reaffirmation of his more fundamental position on the nature of legal relationships as essentially social relationships: "Legal relations, it is readily seen, are possible, then, only between individuals. Only individuals can be subjects of juridical relations. They alone are capable of them."[31]

Korkunov may be right to insist that the only "true" legal relationships are essentially social relationships defined by legal norms. But that is not to say that a relationship – even a relationship endowed with legal significance – cannot exist between individuals and inanimate objects. Human beings *do* factually perceive themselves as standing in a relation to inanimate objects and this is reflected in language such as "this is mine", "that is hers", and so on. This use of language undeniably asserts a relationship between a person and a thing which is so compelling that the law cannot lightly disregard it. Person-thing relationships are thus all-pervasive within the law, but it is beyond the scope of this essay to dwell further on that important category of relationships.

Korkunov's standpoint is nonetheless interesting and instructive because it represents a relatively uncommon – and remarkably prescient – position in the middle ground between analytical jurisprudence and social theory. But I believe that it is *Weber's* writings, rather than (say) Korkunov's, that are a more appropriate point of departure for a sociologically informed enquiry into the Hohfeldian jural relation. In his sociological writings Weber sets out, among other things, to define concepts such as "social relationship" and "legal right", and to outline a theoretical basis for concepts such as social power. More specifically, though, in the *Sociology of Law* Weber combines the role of analytical jurist with that of sociologist. His sociological approach is applied to *law* as a social and institutional phenomenon. This interdisciplinarity gives him a unique insight into the demands of the analytical and expository part of jurisprudence and at the same time the underlying *social* dynamic of law. In the present context, however, what is most significant of all is the fact – already alluded to – that Weber's analysis of legal rights is strikingly Hohfeldian in character. It is to that, at first sight improbable, state of affairs that I now wish to turn.

[28] *Ibid.*, at p. 199.
[29] *Ibid.*, at p. 200.
[30] *Ibid.*, at pp. 200–1.
[31] *Ibid.*, at p. 201.

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Social Relationality and Power

The relationality underlying Weber's concept of social power probably originates in the more fundamental concept of social relationship, the latter concept implying in turn the related notions of (social) interaction and mutual social action. In sociology, interaction has been analysed as a "process" taking place "between two or more actors". According to Parsons and Shils, the interaction of ego and alter is the most elementary form of social system.[32] One person cannot in any meaningful social sense "interact" with himself or herself. Interaction may be seen as mutual social action – in Weber's sense of action "oriented to the past, present or expected future behaviour of others" – in which each participant acts, or orients his or her action, with respect to the other participant(s).[33] Parsons' concept of interaction closely resembles Weber's concept of the *social relationship*. Weber defines this as "the behavior of a plurality of actors in so far as, in its meaningful content, the action of each takes account of that of the others and is oriented in these terms".[34] Weber adds that as a defining criterion, "it is essential that there should be at least a minimum of mutual orientation of the action of each to that of the others".[35] Clearly it makes no sense to speak of the realm of the "social" unless at least *two* human beings are involved. The smallest possible interactional grouping thus involves two individuals.

The meaningful content of a social relationship – its subjective meaning (i.e. *Sinn* in Weber's terminology) – can be various. Weber's examples include conflict, hostility, sexual attraction, friendship, loyalty or economic exchange. Norms or "maxims", according to Weber, govern the constant or stable components of a social relationship:

> The meaningful content which remains relatively constant in a social relationship is capable of formulation in terms of maxims which the parties concerned expect to be adhered to by their partners, on the average and approximately.[36]

Parsons similarly comments that "within the action frame of reference, stable interaction implies that acts acquire "meanings" which are interpreted with reference to a common set of normative conceptions".[37] Action is at least partly explicable through an identification of the norms that individuals apply on one hand to evaluate and to "orient" or modify their *own* social action and, on the other hand, to evaluate and act upon the action, social or otherwise, of *others*. As soon as a norm (for instance, a legal norm) is used as a reference point for the orientation of social action – in other words, it is used by an actor to define some aspect of the content of a social relationship involving that actor and at least one other actor – the social power dimension of the relevant norm and the power dynamic between the actors become relevant objects of enquiry. For instance, let us say that ego has a legal right that alter should φ. The norm governing their conduct, using Hohfeldian nomenclature, may take this form:

[32] Talcott Parsons, Edward A. Shils and others (Eds.), *Toward a General Theory of Action* (Harvard University Press, Cambridge, Mass., 1951), at pp. 55 and 105.

[33] Max Weber, *Economy and Society. An Outline of Interpretive Sociology*, Guenther Roth, Claus Wittich and others (Eds. and Trans.) (Bedminster Press, Inc., New York, 1968), at p. 22. For Weber: "Action is 'social' in so far as its subjective meaning takes account of the behavior of others and is thereby oriented in its course". (See p. 4.)

[34] *Ibid.*, at p. 26.

[35] *Ibid.*, at p. 27.

[36] *Ibid.*, at p. 28.

[37] Talcott Parsons, "An Outline of the Social System" in Talcott Parsons, Edward Shils and others (Eds.) *Theories of Society* (Vol. I) (The Free Press of Glencoe, Inc., 1961), at p. 41.

Under circumstances N:
(i) alter has a duty to φ relative to ego, and
(ii) ego has a right relative to alter that alter should φ.

Here, ego as right-holder has social power over alter to the extent of performance of the specified act φ. Ego and alter – assuming that they consciously orient their action by reference to this acknowledged, applicable legal norm – engage in mutual social action equating to Weber's concept of social relationship. Ego and alter stand in a specific relationship to one another. According to the norm, alter must perform the act φ. Although ego for his part need not actually "do" anything, that is not to say that ego has no role as such to play. Ego may in fact tacitly acknowledge the act of φ-ing given that he is in a sense a "passive beneficiary" of the act. Doubtless he will have "expectations" that alter will perform the act and he may use persuasion or encouragement to induce her to φ if she is reluctant to do so. If, ultimately, alter should fail to perform the act φ ego may have to take positive action (e.g. through litigation) to compel performance from alter. Ego's role is mainly "passive" and expectational, however, whilst alter's role is essentially "active" and performative.

At the level of actors ego and alter, i.e. respectively right-holder and duty-bearer, the social power underlying the legal right ↔ duty nexus takes the form of – to use Weberian terms – an imposition of will or a power to issue commands. In the *Sociology of Law* Weber argues that social power, *Herrschaft* – traditionally translated as "domination" or "legitimate authority" – is manifested in legal relationships. According to Weber social power – the possibility of imposing one's will upon the behaviour of another person – emerges in a variety of forms. The rights which the law confers upon one person relative to one or more others may be conceived as powers to "issue commands" to the other or others in question. Weber equates the "whole system of modern private law" to the "decentralization of domination" in the hands of those to whom legal rights are accorded. Employees thus have power over their employers in the Weberian sense of "domination" to the extent of the employees' claim for wages.[38]

Weber stresses the distinction between "commands" directed by the judicial authority to an adjudged debtor and "commands" directed by the claimant to a debtor prior to judgment. An equivalent distinction exists between substantive legal relationships, such as those between litigating parties, and adjective legal relationships, such as those between court personnel – *e.g.* a judge – and litigating parties. A third class of legal relationships – which we might call *executory* legal relationships, such as those between enforcement organs and litigating parties pursuant to a court order – may be regarded as "commands" issued by the enforcement organ to the party identified by the court order. Thus a *version* of an "Austinian" notion of "command", which Hart so decisively rejects in *The Concept of Law*, is given a central role in Weber's characterisation of social power in the legal context. Legal relationships are conceived in terms of structures of "commands" not only at the level of – and as between – private individuals, but at the level of – and as between – the judicial authority (or enforcement agencies) and private individuals. The "commands" in question are, however, derivative: they result from the specific application of legal norms or rules in a given case. Kelsen for instance refers to this as "concretization". For Kelsen, adjudication is simply a mode of norm production. A material fact determined in the abstract in a general legal norm requires to be established as actually existing in concrete cases. The judicial decision individualises the general norm. Kelsen thus holds that the judicial function is constitutive in a unique sense:

[38] Max Weber, *Economy and Society (op. cit.)*, at p. 942.

> [I]t is law creation in the literal sense of the word. . . . Thus, the judicial decision is itself an individual legal norm, the individualization or concretization of the general or abstract legal norm. . . .[39]

Social Power and Correlativity

Examining more closely Weber's distinct concepts of social power two separate but complementary standpoints emerge: one causal, the other "hermeneutic" (or "*Verstehende*").

On one hand Weber's concept of "domination" or *Herrschaft* and the wider concept of "power" or *Macht* emphasise the *de facto* or causal element of social power, expressed in terms of probability. For Weber *Macht* is the probability that one actor within a social relationship will be in a position to carry out his or her will despite resistance, regardless of the basis on which this probability rests. *Herrschaft* is the probability that a command with a given specific content will be obeyed by a given group of persons.

> The concept of power is sociologically amorphous. All conceivable qualities of a person and all conceivable combinations of circumstances may put him in a position to impose his will in a given situation. The sociological concept of domination must hence be more precise and can only mean the probability that a *command* will be obeyed.[40]

On the other hand Weber offers a "hermeneutic" notion of power that lends weight to Alan Hunt's characterisation of power in the Weberian sense as a "relational concept", concerned as it is with the impact of one person upon another in so far as the behaviour of the one may be analysed as having been determined by the other.[41]

> *Herrschaft* (domination) does not mean that a superior elementary force asserts itself in one way or another; it refers to a meaningful interrelationship between those giving orders and those obeying, to the effect that the expectations toward which action is oriented on both sides can be reckoned upon. . . .[42]

Guenther Roth takes the notion of relationality one step further by characterising *Herrschaft* in the sociological sense as a "structure of superordination and subordination, of leaders and led, rulers and ruled".[43] This links in quite significantly to Hohfeld's analysis: superordination and subordination are mutually dependent and *correlative* notions. If ego is superordinate to alter, then alter is subordinate to ego; if alter is subordinate to ego then ego is superordinate to alter. In much the same way: if ego has a right that alter should φ then alter has a duty to φ relative to ego. If alter has a duty to φ relative to ego then ego has a right that alter should φ. Relationality and (a distinctly Hohfeldian) correlativity underlie both the Weberian concept of "domination" in the context of *legal* authority and the Weberian concept of legal right. In the legal setting "domination" equates to authoritarian power of command[44] involving a situation in which the will or command of a "ruler" is meant to influence the conduct of one or more others (the "ruled") and actually does influence it in such a way that the conduct of the ruled to a socially relevant degree occurs "as if the ruled had made the content of the command the maxim of their conduct for its very own sake".

[39] Hans Kelsen, *Introduction to the Problems of Legal Theory*, Trans. Bonnie Litschewski Paulson and Stanley L. Paulson (with Introduction by Stanley L. Paulson) (Clarendon Press, Oxford, 1992), at p. 68.

[40] Max Weber, *Economy and Society (op. cit.)*, at p. 53.

[41] Alan Hunt, *The Sociological Movement in Law* (The MacMillan Press Limited, 1978), at p. 113.

[42] Max Weber, *Economy and Society* (*op. cit.*), at p. 1378. See also pp. 212–3.

[43] See Roth's footnote to Max Weber, *Economy and Society* (*op. cit.*), at p. 61 note 31 (at p. 62).

[44] Max Weber, *Economy and Society (op. cit.)*, at p. 946.

From Weber's further observations it is clear that the protean concept of domination extends beyond the context of "rule" in the sense of the global-type rule (say) of civil government to more modestly scaled situations such as that of officials operating in different departments of a modern bureaucracy. Each official is subject to the others' powers of command in so far as the latter have jurisdiction. Such a "command structure" is present, according to Weber, even in the case where a customer places an order with a shoemaker for a pair of shoes.

Weber's sociological concept of legal right accentuates one aspect of the social power dimension of a right: the possibility of a "coercive apparatus" being invoked in favour of the right-holder's ideal or material interests. According to Weber this aid consists in the readiness of certain persons to come to the right-holder's support in the event that the "apparatus" is approached in the proper way and that it is shown that recourse to such aid is actually guaranteed by a legal norm.[45] More concretely, in specified circumstances a court can be relied upon in a causal sense to respond to a validly formulated "request" for intervention on the right–holder's behalf, for example, where civil proceedings are issued. Following such a "request" the court, again in a causal sense, can be relied upon to interpret relevant legal norms and also legally relevant facts established in evidence and to apply those norms to the facts so established.

Weber's concept of (correlative) legal *duty* also highlights relationality whilst stressing that (from the standpoint of the right-holder) the legal relationship has an expectational component:

> The fact that a person "owes" something to another can be translated, sociologically, into the following terms: a certain commitment (through promise, tort or other cause) of one person [alter] to another [ego]; the expectation [of ego], based thereon, that in due course the former [alter] will yield to the latter [ego] his right of disposition over the goods concerned; the existence of a chance that this expectation will be fulfilled.[46]

The social power element in Weber's sociological definition of legal right[47] perhaps lies more in the "readiness" of a "coercive apparatus" to be mobilised in favour of a right–holder's ideal or material interests than in any quality that attaches to the right–holder personally. In emphasising the link between social power and the availability of an enforcing "coercive apparatus" Weber adopts the viewpoint of the *right–holder* rather than of the "apparatus". This is consistent with his contention that private law may be seen as the decentralisation of social power or "domination" in the hands of those to whom legal rights are accorded. It is clear, in any event, that every right-holder is in the first instance potentially an enforcer of legal rights against relevant duty-bearers regardless of the actual or potential intervention of an organised "coercive apparatus". In seeking payment for goods or services, for instance, a shop assistant does not normally rely on the imminent possibility of court intervention. Shop assistants – or, for that matter, bus conductors, taxi drivers, builders, car salesmen and others – are an initial point of enforcement of legal rights against duty-bearers. For their part, duty-bearers (e.g. "consumers") may accept without question that in a given

[45] *Ibid.*, at p. 315.

[46] *Ibid.*, at p. 327. In this passage I have inserted references respectively to right–holder and duty–bearer ("ego" and "alter") in square brackets to clarify relationality in the situation described. Weber's concept of "legal relationship" designates "that situation in which the content of a right is constituted by a relationship, i.e., the actual or potential actions of concrete persons or of persons to be identified by concrete criteria". See *Economy and Society*, atp. 319.

[47] See Max Weber, *Economy and Society* (*op. cit.*), at p. 315: "Sociologically, the statement that someone has a right by virtue of the legal order of the state thus normally means the following: he has a chance, factually guaranteed to him by the consensually accepted interpretation of a legal norm, of invoking in favor of his ideal or material interests the aid of a 'coercive apparatus' which is in special readiness for this purpose. This aid consists, at least normally, in the readiness of certain persons to come to his support in the event that they are approached in the proper way, and that it is shown that the recourse to such aid is actually guaranteed to him by a 'legal norm'. ".

situation they have a legal duty to offer payment for goods or services rendered to them. Hart makes an essentially similar point when he stresses that the function of law as a means of social control is best seen in the variety of ways in which law controls, guides and plans life *out* of court.

Yet on the other hand, as Weber also recognises, it remains essential to attend to the viewpoint of those who possess and exercise a more significant degree of social power relative to a particular legal right than the right–holders or duty–bearers themselves. The *sociological point of view* which Weber defines in his *Sociology of Law* urges the adoption of the perspective of those significantly invested with social power.[48] The sociologist's concern – indeed the probable concern of the sociologically inclined jurist – is to discover what "actually happens" in a group owing to the probability that "those exerting a socially relevant amount of power" subjectively consider (legal) norms as valid and orient their conduct by reference to those norms.

It is beyond the scope of this essay to give detailed consideration to a viewpoint other than that of right-holder and duty-bearer. But if the focus of sociological enquiry were to shift to those exerting a socially relevant amount of power we might focus attention on (say) the activities of judges or others operating within ultimately coercive state apparatuses. It would then become clear that the beliefs, understandings and motivations of individual right-holders and duty-bearers are often irrelevant, or only partially relevant, to what "actually happens" as the outcome of some legal process. This holds even where the process has been initiated by those individuals. What, in other words, is arguable, is that the viewpoint of those whose decision-making mobilises specifically coercive agencies to take enforcement action – courts of law and other tribunals for instance – may be of more significance than the viewpoint of actual right-holders, duty-bearers, litigants, criminal defendants or other such individuals. It is always possible for a subject to misperceive his or her legal position. Nor is such perception, in any event, an institutionally authoritative interpretation. Even where the subject is as well informed as it is possible to be, his or her interpretation may remain at variance with an "institutionally correct" interpretation of the legal state of affairs: one that might for instance emerge as the judgment of an ultimate court of appeal or supreme court. An example is where two commercial organisations, benefiting from the expertise of the best available legal advice, enter into a carefully drafted agreement. In the context of a litigated dispute some time later they may find that the agreement has an entirely different legal effect from that intended. So it can matter what the office, status or identity is of the person who asserts the existence of a legal right or duty. It may thus be legally and sociologically more significant – *depending on the investigator's particular interests* – that one person (for instance, a judge in a court of law) rather than another person (for instance, a private individual entering into a contract) asserts the existence of a legal right or duty.

SOCIAL POWER AND LEGITIMACY

In this, the penultimate, section I wish briefly to consider – as a wider context within which to locate Hohfeldian jural relations – the notion of legitimacy. Often the existence or non–existence of instances of social power depends on the extent to which, if at all, an individual perceives an exercise of power to be either inherently legitimate or legitimate by virtue of the office, status or position of the individual exercising the

[48] *Ibid.*, at p. 311.

power. In a discussion of legitimacy in the context of social power, sociologist Herbert Kelman[49] gives an account of various ways in which a "power–target" may come to accept – and therefore to act upon without challenge – a legitimate request, command or order of a "power–source". In this context "acceptance" is perhaps similar to Weber's notion of "obedience". Obedience may be rendered "without regard to the actor's own attitude to the value or lack of value of the content of the command as such".[50]

Kelman analyses social power or social influence in terms of socially induced behaviour change. Social influence occurs whenever a person (P) changes his or her behaviour as a result of induction by another person or group, the influencing agent or O.[51] Induction occurs whenever O offers or makes available to P some kind of behaviour and communicates something about the probable effects of adopting that behaviour. Induction may involve persuading, ordering, threatening, "expecting" or providing guidelines.[52] From this basic starting point Kelman considers influence under conditions of legitimate authority.[53] Situations of legitimate influence are distinctive in that the influencing agent O is perceived as having the right to exert influence and to make demands by virtue of his or her position in the social system.[54] In the context of the Hohfeldian legal right ↔ duty nexus mentioned earlier, ego acting as right-holder, becomes influencing agent O whilst alter as duty-bearer takes the role of power-target P.

According to Kelman, once a demand of the influencing agent is categorised as legitimate the power–target P is in a situation in which personal preferences are more or less irrelevant for determining P's actions.[55] Ordinarily O would have to convince P that adopting the induced behaviour is preferable, assigning to P a measure of freedom of choice in pursuing a given course of action. Kelman notes that in situations of legitimate influence O does *not* have to convince P that adopting the induced behaviour is preferable, given the available alternatives. O need only demonstrate that the relevant behaviour is *required*.[56] The ability of an influencing agent to elicit desired responses in the context of a particular social system is dependent on the extent to which the system itself is perceived as legitimate. If it is perceived as legitimate it may function on a basis of consent "with relatively little need to resort to coercion or to confront constant challenges".[57]

Modes of Integration

In the course of his discussion Kelman outlines a model of processes of social influence. While it is beyond the scope of the present discussion to give a full account of Kelman's model, three modes of integration that he identifies are worth briefly considering here. These indicate possible bases upon which "obedience" might be rendered by such persons as a duty-bearer to a right-holder, or an enforcement official

[49] Herbert C. Kelman, "Further Thoughts on the Processes of Compliance, Identification, and Internalization", chapter 5 of James T. Tedeschi, (Ed.) *Perspectives on Social Power* (Aldine Publishing Company, Chicago, 1974), at pp. 125 *et seq.*

[50] Max Weber, *Economy and Society (op. cit.)*, at p. 215.

[51] Herbert C. Kelman, *op. cit.* p. 128.

[52] *Ibid., loc. cit.*

[53] *Ibid.*, at pp. 160 *et seq.*

[54] *Ibid.*, at p. 161.

[55] *Ibid., loc. cit.*

[56] *Ibid., loc. cit.*

[57] *Ibid.*, at p. 162.

in response to an order of a court. Kelman deals generally with influence under conditions of legitimate authority and specifically touches upon conditions of legal influence in his third mode of integration: normative integration.

The first mode of integration is *ideological integration*. According to Kelman:

> An individual who is ideologically integrated is bound to the system by virtue of the fact that he subscribes to some of the basic values on which the system is established. These may be the cultural values defining the national identity, or the social values reflected in the institutions by which the society is organized, or both.[58]

The individual internalises system values by incorporating them into a personal value framework. By this means, any demand for behaviour supportive of the system is likely to be met with a positive response provided the demand is consistent with the underlying values of the system, and is thus consistent with the values to which the individual has subscribed.

Kelman's second mode of integration is *role–participant integration*.

> An individual who is integrated via role–participation is bound to the system by virtue of the fact that he is personally engaged in roles within the system – roles that enter significantly into his self–definition.[59]

This mode of integration may involve emotional or functional participation in a role which is central to the individual's self–identity. If emotionally involved, the actor may be drawn into symbolistic and ritualistic trappings of the role. If functionally involved, the actor may be responsible for the performance of various roles considered necessary for maintaining the system in existence. The actor may identify with power holders if he or she has a stake in maintaining the system–related roles in which self–definition is anchored. The actor's preparedness to respond positively to the system's demands originates in the fact that the *role* also demands this response.

The third mode of integration is *normative integration*.

> An individual who is normatively integrated is bound to the system by virtue of the fact that he accepts the system's right to set the behavior of its members within a prescribed domain.[60]

According to Kelman, this involves legitimacy in its "pure form". Here questions of personal values and roles are irrelevant. The actor may accept the system's right to be rendered "obedience" based on his or her commitment to, for example, the state as a sacred object in its own right, or on a commitment – as Kelman puts it – to the necessity of law and order as a guarantor of equitable procedures.[61] The individual faced with demands to support the system may comply without question provided he or she believes that the demands are "authoritatively" presented as the wishes of the leadership or the requirements of law. An indication of authoritativeness, in Kelman's view, is the existence of a positive or negative sanction to control proper performance. The existence of a sanction with its connotations of a "Weberian" coercive apparatus standing in readiness to take enforcement action places Kelman's third mode of integration firmly in the realm of legal authority.

In varying degrees of applicability each of Kelman's three modes of integration is manifested in the relationships of social power that exist at all levels in the legal context. For instance, whilst a judge or enforcement official is likely to be integrated

[58] *Ibid.*, at p. 166.

[59] *Ibid., loc. cit.*

[60] *Ibid.*, at p. 167.

[61] *Ibid. loc. cit.*

in all three of the senses that Kelman envisages, role–participant integration may be the dominant influence. The enforcement personnel of a legal system may render "obedience" to the judgment of a court in much the same way as litigants. Such "obedience", however, is of a qualitatively different nature, linked as it is to the execution of an official function. The "obedience" rendered at a level hierarchically lower than that of officials – for example, at the level of private citizens – may emphasise an entirely different mode of integration. For instance it may be that in a particular community contractual obligations in general tend to be performed faithfully and expeditiously. This may be indicative – or a natural corollary – of a system of values that stresses the importance of keeping promises and honouring agreements. The ideological integration of an individual duty-bearer to the relevant system of values is the wider context of subjective meaning within which the power "wielded" by an individual right-holder in a given instance must be seen. The social power of right-holder vis-à-vis duty-bearer within such a Hohfeldian-type legal relationship – a relationship governed and defined by contractual right ↔ duty legal norms – may thus be enhanced as much by the availability of a coercive apparatus to intervene on behalf of the right-holder (if so called upon) as by the ability of the right-holder to appeal to a widely accepted principle that contractual obligations should be honoured.

CONCLUSION

Legitimacy is an appropriate point at which to conclude this brief account of the social underpinnings of the Hohfeldian jural relation. If a legal system or system of governance is not invested with legitimacy – attracting some degree of allegiance from those subject to it – it may become dysfunctional and ultimately break down completely. Such a system may, in the end, seek to maintain itself in existence through naked violence, brutality and repression in response to perpetual challenge and dissidence. Law *draws* power from legitimacy. At the same time law is the embodiment of state power. It is both a manifestation and an instrument of social power that permeates every area of human activity. From central sites of origin legal social power percolates to the nerve end of virtually every point of social contact between one human being and another.

In this essay I have sought to show how W. N. Hohfeld's main analytical writing might be positioned more centrally within the domain of theory. I have identified a (principally) Weberian context of social theory in which aspects of Hohfeld's analysis might be productively embedded. In identifying linkages between key aspects of Hohfeld's analysis and Weber's analysis of social power I have demonstrated how legal conceptual analysis of the Hohfeldian kind may inform an essentially sociological analysis of law as a site of social power. More concretely I have shown how the Hohfeldian right ↔ duty jural relation may in fact be regarded as a relationship of social power in the sense that Weber contemplates.

At a more fundamental level, however, I believe that the linkages between Hohfeldian and Weberian analyses demonstrate that it is necessary – as a first step towards understanding the nature of law as a site of social power – to perceive law not "as norms" but rather as a *relational* medium: one that creates power relationships among social actors, whether in the sense of private individuals or others who perform a specific role, such as a judge or prison officer. Law creates relational structures of social power that may be examined both in the abstract and in specific contexts. It is

possible to perceive those structures at a level of generality and abstraction that permits the discernment of an underlying universality of patterning. That patterning takes the form of legal relationships which "translate" to Hohfeldian-type jural relations.

Relationality is thus so deeply embedded in the subjective meaning of social action, and human social behaviour generally, that we cannot lightly ignore the manifestations of this in the legal context. The relationality of human social behaviour, as Hohfeld perhaps unwittingly taught us, *is* revealed in the concepts and conceptions ordinarily employed in legal thinking. Once recognised, it becomes clear that relationality in the legal context is merely a reflex of the more fundamental relationality of human behaviour in the wider social context. Inevitably, anything that is uniquely social and uniquely human will come to be manifested very markedly in the institutional and conceptual apparatuses of the law.