

# Hohfeldian Rights, Duties, Privileges, and No-Rights: A Warrant-Statement Analysis

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I wish to put forward an analysis of the following statements, where the expressions to be substituted for the variables 'A' and 'B' refer to persons, and the terms 'right,' 'duty,' 'privilege,' and 'no-right' have the meanings given them by W. N. Hohfeld:<sup>①</sup>

*A* has a duty to *B* to do *X*.

*B* has a right that *A* do *X*.

*A* has a duty to *B* not to do *X*.

*B* has a right that *A* not do *X*.

*A* has the privilege with respect to *B* of doing *X*.

*B* has a no-right that *A* not do *X*.

*A* has the privilege with respect to *B* of not doing *X*.

*B* has a no-right that *A* do *X*.

(I have not, of course, actually written out the statements I propose to analyze. Rather, I have written out several sentence forms related to those statements, sentence forms by reference to which, in virtue of that relation, those statements can be identified. If I were challenged to specify the relation in question, my reply would run, basically, as follows. The statements I propose to analyze are those statements that one would be making were he to use sentences of the above forms to make statements—supposing, of course, no changes to have been made in the meanings of those sentences as determined by English usage, with the modifications due to Hohfeld. For the sake of simplicity of exposition, I will, except where otherwise indicated, continue to refer to 'A has a duty to B to do X' etc. as statements.)

It is seldom entirely clear, I think, just what it is that a philosopher proposes to put forward when he proposes to put forward an analysis. Let me explain, then, that my claim to have analyzed the statements listed above will be the claim to have presented a systematic set of restatements of them. The restatements of 'A has a duty to B to do X' etc. which I shall put forward will be marked by the fact that the terms 'right,' 'duty,' 'privilege' and 'no-right' will be excluded from them.

We may, I suppose, demand of any analysis of this type, i. e., of any set of statements put forward as restatements of some original set of statements, that it be (1) correct, and (2) useful. What is it then, we may ask, for an analysis of this type to be correct? Perhaps we may best approach this question by asking another: What do we claim to have done in claiming to have restated a given statement? The answer, I think, is that we claim to have put that statement, given in certain words, in different words. This, at any rate, is how this claim is to be understood when made in this paper. A restatement of a given statement is correct, then, when the former and the latter are in fact the same statement, put in two different ways. An analysis which, like the one I will propose, consists of such restatements is then correct when each of its component restatements is correct. It appears, then, that a, and perhaps the, conclusive test of the correctness of a restatement, a rewording, of a statement given in certain words, as, ultimately, of an analysis consisting of such restatements, is this. Is it the case that, in any context in which one would be making the given statement in uttering the words in which it is given, one would be making that same statement in uttering the words put forward as a rewording of that statement?

One of my reasons for spelling out this conclusive test of the correctness of a restatement of a given statement is this. I do not plan to make use (or at any rate, extensive use) of conclusive tests of the correctness of the various parts of my analysis. For just this reason, problems will arise as to the degrees of strength, that is to say, the degrees of conclusiveness, of the tests I will use. My thought is that reference to this con-

clusive test might, in some cases, throw light on the strength of, or at least the rationale behind, the inconclusive tests that I shall use.

One inconclusive (perhaps very inconclusive) test to which I shall put my analysis is this. Does it appear to be useful? In arguing that it does, I will, at certain points in the paper, be arguing for and applying my analysis simultaneously. By a useful analysis (of the type I am undertaking), I understand an analysis that gives us certain insights (but not others) which we would not otherwise have, and that keeps us from falling into certain confusions (but not into others) into which we would perhaps otherwise fall. I will not claim to have shown by means of my analysis anything that is fundamental in any absolute sense about Hohfeldian rights, duties, privileges, and no-rights.

Perhaps I should add that I am concerned to bring out, by means of my restatements of the statements listed at the head of this paper, certain features of those statements that are strikingly evident under the type of analysis I shall adopt. I will not consider my enterprise on the whole a failure if my restatements are incomplete or inaccurate with respect to some of the other features of these original statements.

I speak above of a *systematic* set of restatements of the statements listed at the head of this paper, and of the *type* of analysis which I shall adopt. What makes the set of restatements I shall put forward a systematic set is the fact that it constitutes an analysis of a certain type. I shall refer to analyses of this type as warrant statement analyses. A warrant statement analysis of a statement consists in the restatement of it as an explicit warrant statement. A warrant statement, to quote Robert J. Fogelin, the founder of warrant statement analysis, is "any statement that indicates something about the evidential backing available for some further statement."<sup>2</sup> He offers the following as an example of a warrant statement: "There is strong evidence available on behalf of the claim: "There is life on Mars."

Fogelin's definition of a warrant statement immediately gives rise to a question. Why does he not say simply that a warrant statement is any

statement about the evidential backing available for some further statement? At least part of the reason, I think, is this. He wants to include within the class of warrant statements certain statements about subjects other than available evidential backing, in making which a person would nevertheless in a sense be saying something about available evidential backing. For example, he would argue that the statement 'Jones knows that Smith is the killer' is a warrant statement which can be restated, roughly, as follows: 'Jones has at his command information which constitutes conclusive evidential backing for the claim: "Smith is the killer."' Ordinarily, I suppose, one would say that either of these is a statement about Jones. (I am not quite sure why one would say this—perhaps because 'Jones' is the grammatical subject of both sentences.) Nevertheless, in making the second of these statements, and hence, if Fogelin's analysis is correct, also in making the first, one would in a sense be saying something about the evidential backing available for a claim—viz., that it is available to Jones, that it is conclusive with respect to the claim in question, and perhaps other things.

An explicit warrant statement is a warrant statement which, like 'There is strong evidence available on behalf of the claim: "There is life on Mars,"' or 'Jones has at his command information which constitutes conclusive evidential backing for the claim: "Smith is the killer,"' is put in such a grammatical form that it can be recognized upon inspection as a warrant statement. An implicit warrant statement may be defined as a warrant statement that is not put in such a grammatical form. Thus, if the analysis for which I said Fogelin would argue is correct, 'Jones knows that Smith is the killer' is an implicit warrant statement.

We may quite naturally divide the sentence 'There is strong evidence available on behalf of the claim: "There is life on Mars,"' into two components. By means of the first component—that part of the sentence which stands before the colon—a reference is made to certain available evidential backing, though of course this is not the only thing done by means of this component. By means of the second component—that part of the

sentence which follows the colon—the statement the evidential backing for which is in question is identified. I shall, borrowing the terms from Fogelin, refer to the first component of this sentence as the warrant component, and to the second component as the material component. Every explicit warrant statement will have a warrant component and a material component. I think that this is a consequence of what I have said about explicit warrant statements, though it could be made a matter of definition.

Now as warrant statements have thus far been defined, their material components may refer only to statements, that is, roughly speaking, only to utterances that are true or false. I wish now, in duplication of a move Fogelin makes in trying to show that value judgments are warrant statements, to liberalize the definition of a warrant statement in order to allow that the material component of a warrant statement may refer either to a statement or to a prescription.

But what, it may be asked, is a prescription? The following remarks, though certainly inadequate as a full account of prescriptions, may throw a little light on this question. By a prescription, I understand a direct answer to a question which is a request for directions—that is to say, to a question which is a request for, for example, advice or recommendations. Questions which are requests for directions may, I think, usefully be contrasted with questions which are requests for information, although I do not want to be understood to imply that all questions are requests either for directions or for information. To give a few examples of questions of these two types: In many, or most, cases in which a person asks ‘What am I to do?’ or ‘What is to be done?’, he is making a request for directions (though these words can also be used to make requests for predictions). Similarly, in many or most cases in which a person asks ‘What is the case?’, he is making a request for information. ‘Do such and such!’ is a direct answer to either of the first two of these questions, and hence is a prescription, where an indirect answer to either of these questions would consist either (1) of a list of reasons for or against certain

alternative courses of action, or (2) of assurances that reasons of (a) an indicated degree of conclusiveness, or (b) a degree of conclusiveness not indicated are available for or against certain alternative courses of action.

Let me try to cut off a potential source of confusion. The question 'What am I to do?' may be answered indirectly, according to what is said above, by giving reasons for or against certain alternative courses of action. We may well imagine at least some of these reasons being of the kind: such and such is the case—e. g., 'If you do this, then this will happen.' In a certain context, therefore, in which the question 'What am I to do?' is asked, he who asks the question may *want* an indirect answer, and in this sense, his question may be a request for information. But still, presumably he wants this indirect answer as a means of arriving at a direct answer to his question, to give which will be to give directions (to himself, if he put the question to himself). The question 'What am I to do?' is, then, even in such a context as that which I have hypothesized, ultimately, in the sense I have explained, a request for directions. Similarly for 'What is to be done?' etc.

A problem is still posed, however, by questions like 'What *should* be done?', for they appear to be at once requests for directions and requests for information, since answers like 'Do such and such!' and answers like 'Such and such should be done' seem equally appropriate and direct. I will deal with this problem by stating how I would classify such questions (whether as requests for directions or for information or for both or neither). I will not, for lack of space, argue extensively for the correctness of this classification. I will limit my purpose to that of making more readily comprehensible my discussion of prescriptions by way of showing in outline how I would deal with a possible objection to it. In a word, then, a question of the type indicated above appears to me to be a request for information the giving of which would constitute an indirect reply of type (2)(a) above to a request for directions. So, if I am correct, in asking a question like 'What should be done?', one does not make a request for directions; rather, one makes a request for information concerning the

available reasons for or against certain courses of action.

In defense of this position : Let the reader ask himself why there exist in English the two distinct locutions : (1) 'What is to be done ?' and (2) 'What should be done ?'. Their existence should, I think, make him suspect that they have different functions. The difference I think I see is this. In asking question (2), one is asking, roughly, 'For which courses of action are there good reasons ?', whereas in asking question (1), no such request is made for information concerning reasons for adopting a course or courses of action. I leave it to the reader's linguistic intuitions to convince him of this, although this appeal to linguistic intuitions will doubtless be weakened by the fact that 'What is to be done ?' *can* be answered by 'There are reasons of a conclusive nature for doing such and such,' since one who says this may be presumed to believe that 'Do such and such !' is a correct answer to the question, and by the fact that 'What should be done ?' *can* be answered by 'Do such and such !', since one who says this may be presumed to believe that there are reasons of a conclusive nature for doing such and such. Note that I am not claiming that in asking the question 'What should be done ?', a request is made that reasons for courses of action be spelled out. Such a claim would be false, since this question is fully answered by 'Such and such should be done,' to state which is not to spell out reasons for courses of action. What I have said concerning 'What should be done ?' I would, of course, apply to 'What should I do ?', etc.

I will not enmesh myself further in the subtleties that surround the distinction between requests for directions and requests for information, except to say that I recognize that the question might be thought to remain whether I have clearly enough defined the notion of a direct answer to a question which is a request for directions, by giving a large enough list (at the top of page 6) of types of indirect answers to such a question. Now I return to the problem of liberalizing the definition of a warrant statement.

The warrant component of a warrant statement whose material com-

ponent refers to a prescription will not, of course, refer to *evidential* backing for that prescription, for such backing is not appropriate to prescriptions. Some of my readers may wish to add that no kind of backing is appropriate to prescriptions, i.e., that prescriptions are not the kind of thing for which arguments can be given. But it appears to me that a strong presumption is established against this view by the fact that people do give arguments for prescriptions. Consider the following exchange: "Buy the pair of boots made in Austria!—Why?—Because they are the sturdiest, lightest, and cheapest." Here an argument is given for a prescription (though it appears to be enthymematic, and might be more fully stated as follows: "Because they are the sturdiest, lightest, and cheapest available, and one should buy the sturdiest, lightest, and cheapest boots available."). I can see nothing wrong in principle with such arguments. Note that the argument for the prescription concerning the boots is not an argument for giving that prescription, but rather an argument for following it. One might try, then, to develop the following parallel. An argument for a prescription is not an argument for giving that prescription, but rather an argument for accepting that prescription (as to be followed), as an argument for an assertion is not an argument for making that assertion, but rather an argument for accepting that assertion (as true). I will not, however, try to do this. It is enough for my immediate purposes to have lent, as I conceive it, considerable plausibility to the thesis that arguments may be given for prescriptions, and hence to the thesis that it makes sense to speak of the backing for a prescription, the backing for a prescription being that which can be presented as an argument for it, i.e., for accepting it.

I have now, I think, given initially adequate answers to the questions: What is a warrant statement analysis? How can such an analysis be appraised? What can be expected from such an analysis? It remains to give such an analysis of the statements listed at the head of this paper.

There are countless many kinds of warrant statements. Backing may be denied to be available for a given claim or a given prescription, may be asserted to be available for a claim or a prescription, may or may



not be said to be of such and such a degree of conclusiveness, where in the former case, any degree of conclusiveness may be claimed, and this claim put forward in any one of many different ways—e. g., by means of an evaluation (“There is *good* reason to conclude that. . .”)—may or may not be characterized as pertaining to a certain subject matter, and that any subject matter ; neither let us overlook the fact that a warrant statement; in accordance with all that I have said, may do more than indicate something about the backing available for a further statement or a prescription. What kind of warrant statements might the statements listed at the head of this paper be, then ? I begin with the conjecture that they are implicit warrant statements whose explicit warrant statement restatements are of the form : “There is conclusive backing available for the statement or prescription “*p*,”” and the forms obtained from this form by negating either its warrant component or its material component or both, where, of course, the expressions to be substituted for “*p*” are formulations either of statements or of prescriptions. (It will shortly become somewhat clearer what this means.) A sentence in either the declarative or the imperative mood, then, may be substituted for “*p*.” In thus allowing “*p*” to range over prescriptions as well as statements, I depart, needless to say, from the function usually allotted this variable in books on symbolic logic. That an argument for a prescription—which, as far as I can see, amounts to an argument for pursuing the course of action enjoined by that prescription—may in some ordinary sense of the word be conclusive, I leave as an unargued assumption.

I will make use of the following abbreviations : ‘*Wp*’ for ‘There is conclusive backing available for the statement or prescription “*p*”’ ; ‘*WNp*’ for ‘There is conclusive backing available for the statement or prescription “not *p*,”’ i. e., for the statement that *p* is not the case or the prescription which enjoins not doing what the prescription “*p*” enjoins doing ; ‘*NWNp*’ for ‘It is not the case that there is conclusive backing available for the statement or prescription “not *p*”’ ; and ‘*NWp*’ for ‘It is not the case that there is conclusive backing available for the statement

or prescription “ $p$ .” Now if the statements under analysis (those listed at the head of this paper) can be restated as statements of the forms ‘ $Wp$ ,’ ‘ $WNp$ ,’ ‘ $NWNp$ ,’ and ‘ $NWp$ ,’ then all the logical relations that hold among all statements of these forms will hold also among those statements. That is to say, if, for example, ‘ $A$  has a duty to  $B$  to do  $X$ ’ can be restated as a statement of the form ‘ $Wp$ ,’ and ‘ $A$  has a duty to  $B$  not to do  $X$ ’ can be restated as a statement of the form ‘ $WNp$ ,’ and the logical relation  $R$  (contrariety, say) holds between any two statements respectively of the forms ‘ $Wp$ ’ and ‘ $WNp$ ,’ then that same relation  $R$  must hold between ‘ $A$  has a duty to  $B$  to do  $X$ ’ and ‘ $A$  has a duty to  $B$  not to do  $X$ ,’ for these are then, by hypothesis, the same two statements as a certain two statements respectively of the forms ‘ $Wp$ ’ and ‘ $WNp$ ,’ It will be useful to find out, therefore, what logical relations hold among ‘ $Wp$ ,’ ‘ $WNp$ ,’ ‘ $NWNp$ ,’ and ‘ $NWp$ ,’ for this will enable us to conduct a test of their adequacy as restatements of the statements under analysis by asking whether those same relations hold also among the statements under analysis. If they do not, then statements of the forms ‘ $Wp$ ’ etc. cannot serve as restatements of the statements under analysis.

(1) ‘ $Wp$ ’ and ‘ $NWp$ ’ are contradictories, i. e. (a) if one is true, the other is false, and (b) if one is false, the other is true. This is evident from the fact that the second is the explicit denial of the first. (2) ‘ $WNp$ ’ and ‘ $NWNp$ ’ are contradictories, as is similarly evident. (3) ‘ $Wp$ ’ and ‘ $WNp$ ’ are contraries, i. e. (a) if one is true, the other is false, and (b) if one is false, the other might be true and might be false. The denial of (a), if “ $p$ ” is interpreted as a statement, leads to an absurdity. For on the assumption that there is *conclusive* backing available both for the statement “ $p$ ” and for the statement “not  $p$ ,” both “ $p$ ” and “not  $p$ ” are true, and thus it is the case that  $p$  and not  $p$ , which is absurd. Or suppose that “ $p$ ” is interpreted as a prescription, in particular, to make the argument concrete, the prescription: “Buy a Toyota rather than a Suzuki!”. This amounts to interpreting ‘ $Wp$ ’ as ‘There is conclusive backing available for the prescription: “Buy a Toyota rather than a Suzuki!”’. Suppose

further that 'Wp' is true and that the conclusive backing it refers to takes the form of the premisses of the following argument :

- (1) A Toyota and a Suzuki are the only options.
  - (2) From among the options, buy that car which is the safest !
  - (3) A Toyota is safer than a Suzuki.
- 

(4) Buy a Toyota rather than a Suzuki !

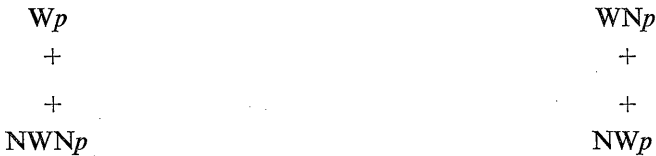
This appears to me to be a valid argument (valid, of course, in a wider sense than the usual). Premisses (1) and (3) are statements of fact. Premiss (2) is a prescription which expresses a criterion of choice (perhaps it does other things as well). Now if (1)–(3) constitute conclusive backing for (4), then, it seems to me, (1) and (3) must be true. So the question whether 'WNp' (as well as 'Wp') can be true in the circumstances under consideration becomes, I think, the question whether there can, in these circumstances, be constructed a conclusive argument of the form :

- (1') A Toyota and a Suzuki are the only options.
  - (2')
  - (3') A Toyota is safer than a Suzuki.
- 

(4') Do not buy a Toyota rather than a Suzuki !

Now premiss (2'), it seems to me, must be 'From among the options, do not buy that car which is the safest!', if together with (1') and (3') it is to yield (4'). So the question becomes whether, whatever mode of justification is appropriate to (2) and to (2') (it might, for example, be said to consist of reference to the desires of the parties concerned), (2') can, in the circumstances described, be justified. It appears to me that it cannot be justified, for if it could, then, it seems to me, (1)–(3) would not constitute *conclusive* backing for (4), because (2) would then be liable to abandonment in favor of (2'). This is the best argument that I am able to put forward, in the lack of a developed and well-established logic of prescriptions, for the claim that 'Wp' and 'WNp' cannot both be true, where "p" is interpreted as a prescription. (It might be objected, whether with justice I am not entirely sure, that (1') and (3') need not be the same statements

as (1) and (3), but rather need only be consistent with (1) and (3), and so (2') need not be what I say it must be. It might be said that (3') might be, for example, 'A Toyota is a shoddier car than a Suzuki,' where (2') is 'From among the options, do not buy that car which is the shoddiest !'. But even if this objection is sound, the acceptability of (2'), where (1')-(3') yield (4'), implies, I think, the liability of (2) to abandonment, and hence the lack of conclusiveness of (1)-(3) with respect to (4.) As for (3)(b) on page 10 above, it is clear that conclusive backing might be *available* neither for the statement "*p*" nor for the statement "not *p*," that conclusive reasons might be unavailable both for doing such and such and for not doing such and such (so that whatever one did, one could not be sure of having chosen the right action), that in cases in which conclusive backing is not available for the statement or prescription "*p*," it might still be available for "not *p*," and that in cases in which conclusive backing is not available for the statement or prescription "not *p*," it might still be available for "*p*." (4) 'NWN*p*' and 'NW*p*' are subcontraries, i. e. (a) if one is false, the other is true, and (b) if one is true, the other might be false and might be true. This follows from (1)-(3), for since the possible distributions of truth-values between 'W*p*' and 'WN*p*' are T-F, F-T, and F-F, but not T-T, the possible distributions of truth-values between 'NW*p*' and 'NWN*p*,' their respective contradictories, are F-T, T-F, and T-T, but not F-F. We can represent the logical relationships turned up in the course of this paragraph by means of the following square of opposition, where the statements at the top are contraries, those at the bottom are subcontraries, and those diagonally across from one another are contradictories (I give only the points at the corners and ask the reader to imagine the rest) :



Can we, then, construct a similar square of opposition for the state-

ments under analysis? The first thing we notice is that there are eight of them, whereas a square of opposition has only four corners. This, however, I do not believe to be a serious problem, for I think we may gather from Hohfeld's text (1) that '*A* has a duty to *B* to do *X*' is a restatement of '*B* has a right that *A* do *X*,' (2) that '*A* has a duty to *B* not to do *X*' is a restatement of '*B* has a right that *A* not do *X*,' (3) that '*A* has the privilege with respect to *B* of doing *X*' is a restatement of '*B* has a no-right that *A* not do *X*,' and (4) that '*A* has the privilege with respect to *B* of not doing *X*' is a restatement of '*B* has a no-right that *A* do *X*.' For Hohfeld calls *A*'s duty to *B* to do *X* and *B*'s right that *A* do *X* correlatives, and refers to correlatives as equivalents.<sup>8</sup> But if *A*'s duty to *B* to do *X* and *B*'s right that *A* do *X* are equivalents, i. e., are the same legal relation, then to state that *A* has a duty to *B* to do *X*, which is to assert that that legal relation obtains, is to state that *B* has a right that *A* do *X*, for this is then to assert that that same legal relation obtains. Similarly for (2)–(4) just above. (There remains, of course, the problem in what way saying '*A* has a duty to *B* to do *X*' differs from saying '*B* has a right that *A* do *X*,' where in saying either, one makes the same statement that one makes in saying the other. Put in more Hohfeldian terms, this is the problem in what way saying '*A* has a duty to *B* to do *X*' differs from saying '*B* has a right that *A* do *X*,' where the reference is to the same legal relation. Similarly for the other correlatives.)

I wish now to show that I : '*A* has a duty to *B* to do *X*,' or '*B* has a right that *A* do *X*,' and IV : '*A* has the privilege with respect to *B* of not doing *X*,' or '*B* has a no-right that *A* do *X*,' are contradictories. Hohfeld says that a privilege is the precise negation of the duty of opposite tenor.<sup>9</sup> *A*'s privilege with respect to *B* of not doing *X*, then, is the precise negation of *A*'s duty to *B* to do *X*. But then *A*'s privilege with respect to *B* of not doing *X* is the same legal relation as *A*'s lack of a duty (if I may so speak) to *B* to do *X*. But then '*A* has the privilege with respect to *B* of not doing *X*' and '*A* does not have a duty to *B* to do *X*' are restatements of one another, and hence '*A* has the privilege with respect to *B* of not

doing *X*' and '*A* has a duty to *B* to do *X*' are denials of one another, and hence are contradictories. (Hohfeld also says—if this be necessary to the argument—that a no-privilege equals the duty of opposite tenor,<sup>⑥</sup> and thus he is, it seems, committed to saying that a duty is the precise negation of the privilege of opposite tenor.) It follows that I and IV above are contradictories, given that the two statements listed under I, as also the two statements listed under IV, are restatements of one another. Here I should stress that, with Hohfeld, I am concerned with rights, duties, privileges, and no-rights insofar as they are considered as legal relations, and that therefore I am not trying to take into account the complications that might arise if some of these relations were considered as legal relations, and others as legal or moral or . . . relations.

Now II : '*A* has a duty to *B* not to do *X*,' or '*B* has a right that *A* not do *X*,' and III : '*A* has the privilege with respect to *B* of doing *X*,' or '*B* has a no-right that *A* not do *X*,' are also contradictories, by reasoning similar to that above, with the same qualification. Furthermore, I : '*A* has a duty to *B* to do *X*,' or '*B* has a right that *A* do *X*,' and II : '*A* has a duty to *B* not to do *X*,' or '*B* has a right that *A* not do *X*' are contraries. For (1) it might be the case that *A* has neither a duty to *B* to do *X* nor a duty to *B* not to do *X*, as ordinarily would be the case, for example, if it were truly said that *A* has the privilege with respect to *B* of not doing *X*; and (2) if *A* has a duty to *B* to do *X*, then *A* does not have a duty to *B* not to do *X*, as, similarly, if *A* has a duty to *B* not to do *X*, then *A* does not have a duty to *B* to do *X*. I here assume a legal system which cannot give rise to conflicting duties. The justification for making this assumption is that it is, to all appearances, an assumption of Hohfeld.<sup>⑥</sup> How to analyze statements ascribing duties etc. when made in circumstances in which conflicts of duties are possible is thus a question, and a most interesting one, with which I will not here concern myself.

It follows from what has been said that III : '*A* has the privilege with respect to *B* of doing *X*,' or '*B* has a no-right that *A* not do *X*,' and IV : '*A* has the privilege with respect to *B* of not doing *X*,' or '*B* has a no-

right that *A* 'do *X*,' are subcontraries, by reasoning similar to that presented above (see page 12). We may, then, represent certain of the logical relations (contrariety, contradictoriness, and subcontrariety) which hold among I-IV by means of a square of opposition which is to be interpreted in the same way as the square on page 12 of this paper. My hypothesis, viz., that the statements under analysis are implicit warrant statements whose explicit warrant statement restatements are of the form: 'There is conclusive backing available for the statement or prescription "*p*"' (and the related forms described above), has thus passed a fairly comprehensive test for logical isomorphism which it had to pass in order to remain tenable. The square of opposition is the following :

I : <i>A</i> has a duty to <i>B</i> to do <i>X</i> <i>B</i> has a right that <i>A</i> do <i>X</i>	II : <i>A</i> has a duty to <i>B</i> not to do <i>X</i> <i>B</i> has a right that <i>A</i> not do <i>X</i>
+	+
+	+
III : <i>A</i> has the privilege with respect to <i>B</i> of doing <i>X</i> <i>B</i> has a no-right that <i>A</i> not do <i>X</i>	IV : <i>A</i> has the privilege with respect to <i>B</i> of not doing <i>X</i> <i>B</i> has a no-right that <i>A</i> do <i>X</i>

It is evident upon perusal of the two squares of opposition so far presented (see page 12 above) that if the statements listed under I-IV are to be restated in the forms '*Wp*,' '*WNp*,' '*NWNp*,' and '*NWp*,' then, if the logical isomorphism which has been shown to obtain between '*Wp*,' '*WNp*,' '*NWNp*,' and '*NWp*,' and I-IV respectively is to be preserved as between I-IV and their respective restatements, as must be the case if these restatements are to be correct, then I must be restated in the form '*Wp*' (and not, e. g., in the form '*WNp*'), II in the form '*WNp*,' III in the form '*NWNp*,' and IV in the form '*NWp*.'

It is interesting to note, though not immediately relevant to my argu-

ment, that if we define *A*'s privilege with respect to *B* with respect to doing *X* as *A*'s privilege(s) with respect to *B* of doing *X* and of not doing *X*, then a privilege in this sense—a type of privilege which has been said to be of importance in the analysis of legal interests—may be represented, as in the following triangular array, as the contrary respectively of *A*'s duty to *B* to do *X* and of *A*'s duty to *B* not to do *X* :

- |   |  |
|---|--|
| (1) <i>A</i> has a duty to <i>B</i> to do <i>X</i> .  | (2) <i>A</i> has a duty to <i>B</i> not to do <i>X</i> . |
| +   | +  |
| +   |  |
| (3) (a) <i>A</i> has the privilege with respect to <i>B</i> of doing <i>X</i> and (b) <i>A</i> has the privilege with respect to <i>B</i> of not doing <i>X</i> . |  |

For suppose (1) to be false. Also suppose (2) to be true. Then (3)(a) is false. But then (3) is false. So (1) and (3) can both be false. Now suppose (1) to be true. Then (3)(b) is false. But then (3) is false. So (1) and (3) cannot both be true. Similarly for (2) and (3). We might, furthermore, expect this triangular array to replace the square of opposition above as a representation of the relations of the concepts of privilege and duty as they occur in speech, if the terms 'privilege' and 'duty' in Hohfeld's meanings of them came into widespread use. We might expect this due to the operation of the rule of strength: "Do not affirm an I or an O proposition where you think yourself warranted in affirming an A or an E proposition!" which has as a corollary: "Do not affirm one subcontrary where you think yourself warranted in denying the other!"

Let us return now to the square of opposition for 'W*p*,' 'WN*p*,' 'NWN*p*,' and 'NW*p*.' Now if "*p*" is interpreted as a statement, then (1) 'W*p*' implies "*p*," (2) "*p*" implies 'NWN*p*,' (3) 'WN*p*' implies "not *p*," and (4) "not *p*" implies 'NW*p*.' This is fairly obvious, and I will not go through the arguments for it. But I wish also to urge (1') that if there are available conclusive reasons for following the prescription "*p*," then



the prescription “*p*” is to be followed, (2′) that if the prescription “*p*” is to be followed, then it is not the case that there are available conclusive reasons for not following the prescription “*p*,” (3′) that if there are available conclusive reasons for not following the prescription “*p*,” then the prescription “*p*” is not to be followed, and (4′) that if the prescription “*p*” is not to be followed, then it is not the case that there are available conclusive reasons for following the prescription “*p*.” In the preceding sentence, as elsewhere, I treat the predicate ‘is to be followed,’ as applied to prescriptions, as an analogue of the predicate ‘is true,’ as applied to statements, in accordance with the parallel I suggest on page 8 above.

Now (1′) and (3′) seem clearly enough to be true (they are, I think, the kind of claim one usually accepts pending a disclosure of the use to which they will be put), though I suspect that (2′) and (4′) will run into some resistance. For I imagine the reader saying to himself with respect to (2′), for example, that it might well be the case that the prescription “*p*” is to be followed *for certain reasons*, while yet there are other considerations which conclusively establish that the prescription “*p*” is not to be followed. Let me explain, then, that when I say “if the prescription ‘*p*’ is to be followed . . .,” I mean “if the prescription ‘*p*’ is to be followed in a particular situation, given all the factors in that situation that are relevant to the question whether ‘*p*’ is to be followed or not—i. e., relevant facts (e. g., that the boots are the sturdiest, lightest, and cheapest available), criteria of choice (e. g., that one should buy the sturdiest, lightest, and cheapest boots available), and perhaps factors of other kinds.” I want to ensure by means of this explanation that in considering (2′), the reader assume that the grounds against which the statements (a) that the prescription “*p*” is to be followed and (b) that there are not available conclusive reasons for not following the prescription “*p*” are to be judged are held constant. Similarly for (4′). This is all that I will say in defense of (1′)–(4′).

I take the import of (1′)–(4′) to be that where the term ‘implies’ is understood in a broad sense which I will not try to specify accurately, a

sense considerably broader than that given it in textbooks on logic, (1)–(4) above hold whether “*p*” is interpreted as a statement or as a prescription. I conclude that we may expand upon the square of opposition given on page 12 above in the following way, where the reader is asked to imagine four arrows representing implication in a broad sense running from ‘*Wp*’ to “*p*,” from “*p*” to ‘*NWNp*,’ from ‘*WNp*’ to “not *p*,” and from “not *p*” to ‘*NWp*’ :



Notice that the intermediates “*p*” and “not *p*” are the material components of the warrant statements ‘*Wp*’ and ‘*WNp*.’

The square above represents a logical property of the family of statements ‘*Wp*’ etc. which is not represented by the square on page 12 above. Does the family of statements under analysis share this property? I would say that in the sense in which ‘*Wp*’ implies “*p*,” where “*p*” is interpreted as a prescription, ‘*A* has a duty to *B* to do *X*’ implies the prescription ‘*A*, do *X*!’ . That is, if *A* does have a duty to *B* to do *X*, then the prescription ‘*A*, do *X*!’ is to be followed (though not necessarily *given*). Put in yet a different way, if *A* has a duty to *B* to do *X*, then *A* is to do *X*. Similarly, I would say that ‘*A* has a duty to *B* not to do *X*’ implies, in the same broad sense of that term, the prescription ‘*A*, do not do *X*!’ . Here again let the reader assume that the grounds against which, for example, ‘*A* has a duty to *B* to do *X*’ and ‘*A* is to do *X*’ are to be judged are held constant.

To continue, that *A* is to do *X* implies, in the same way in which “*p*” implies ‘*NWNp*,’ where “*p*” is a prescription, that *A* does not have a duty not to do *X*, and hence that *A* does not have a duty to *B* not to do *X*. But, at least with the qualification that only legal relations are in question,

'*A* does not have a duty to *B* not to do *X*' is a restatement of '*A* has the privilege with respect to *B* of doing *X*.'<sup>②</sup> Similarly for the statement that *A* is not to do *X*. I conclude that we may expand upon the square of opposition given on page 15 above in the following way, where the reader is asked to imagine four arrows representing implication in a broad sense running from I to '*A*, do *X*!', from '*A*, do *X*!' to III, from II to '*A*, do not do *X*!', and from '*A*, do not do *X*!' to IV :



Once again, then, my incipient warrant statement analysis has survived a test for logical isomorphism, although that test was not, unfortunately, put in terms as clear as it might have been, due to ignorance (my ignorance, to be sure, though I suspect it is widely shared) of the precise nature of the logical relations of which prescriptions are capable. Now given the square of opposition immediately above, together with that immediately before it, together with my hypothesis that the explicit warrant statement restatement of '*A* has a duty to *B* to do *X*' is of the form '*Wp*,' etc., I will put forward tentatively, and then go on to qualify and explain somewhat, the following warrant statement analysis. (1) '*A* has a duty to *B* to do *X*' or '*B* has a right that *A* do *X*' may be restated as follows: 'There is conclusive backing available for the prescription: "*A*, do *X*!";' (2) '*A* has a duty to *B* not to do *X*' or '*B* has a right that *A* not do *X*' may be restated: 'There is conclusive backing available for the prescription: '*A*, do not do *X*!''; (3) '*A* has the privilege with respect to *B* of doing *X*' or '*B* has a no-right that *A* not do *X*' may be restated: 'It is not the case that there is conclusive backing available for the prescription: "*A*, do not do *X*!";' and (4) '*A* has the privilege with respect to *B* of

not doing  $X$ ' or ' $B$  has a no-right that  $A$  do  $X$ ' may be restated: 'It is not the case that there is conclusive backing available for the prescription: " $A$ , do  $X$ !"'.

Now this is clearly inadequate as it stands, since there is no reference to  $B$  in my warrant statement restatements. Now suppose  $A$ 's duty to  $B$  in (1) above arises from  $A$ 's having made a contract with  $B$ . Then this fact will clearly be part (at least) of the conclusive backing for ' $A$ , do  $X$ !' referred to in the warrant statement under (1). This, it seems to me, illustrates the way in which a reference to  $B$  is to be secured. I will therefore stipulate that in the case of the warrant statements listed under (1) and (2) above, the conclusive backing in question includes, or amounts to, the fact that  $A$  has undergone a legal transaction of a certain sort with  $B$ . (I will not try to specify what sort of legal transaction is in question here.) In the case of the warrant statements listed under (3) and (4), the point is that  $A$  has not undergone with  $B$  any legal transaction of the sort in question.

The fact that rights, duties, privileges, and no-rights, insofar as I am here concerned with them, are legal relations, is, then, reflected in the fact that the backing referred to in each warrant statement from (1) through (4) includes, or consists of, legal considerations—that such and such a legal contract was made, for example. My analysis thus suggests an explanation of the gross similarities and dissimilarities of legal, moral, and other kinds of rights, duties, etc. Statements ascribing them are all warrant statements having prescriptions as material components, but the backing referred to in a statement ascribing, e.g., a legal duty is of a different character from that referred to in a statement ascribing, e.g., a moral duty. I take the provision of this explanation to be an advantage of the present analysis.

Let me avert a possible misunderstanding. According to my analysis,  $A$  has the privilege with respect to  $B$  of doing  $X$  unless  $A$  has a duty to  $B$  not to do  $X$ , and  $A$  has a duty to  $B$  not to do  $X$  only when there is conclusive backing available for the prescription: " $A$ , do not do  $X$ !". In

any other case, e. g., when there is some, but inconclusive, backing available for “*A*, do not do *X*!”, *A* has the privilege in question but not the duty in question. Similar remarks hold for *A*’s having the privilege with respect to *B* of not doing *X*, in relation to *A*’s having a duty to *B* to do *X*. Thus, it seems to me, my analysis is compatible with the fact that a given Hohfeldian privilege is the absence of (the negation of) a certain duty.<sup>®</sup> The existence of a given privilege amounts, in fact, according to my analysis, to the absence of conclusive backing for a certain prescription, the presence (availability) of which establishes a certain duty.

To avert another possible difficulty: It might possibly be thought that whereas ‘NWN*p*’ and “not *p*,” where “*p*” is a prescription, are simultaneously acceptable, ‘*A* has the privilege with respect to *B* of doing *X*’ and ‘*A*, do not do *X*!’ clearly are not, and so my analysis must be incorrect. (And similarly for ‘NW*p*’ and “not *p*,” in relation to *A*’s privilege of not doing *X* and ‘*A*, do *X*!’.) The answer, I think, is that ‘NWN*p*’ and “not *p*” are not simultaneously acceptable, for, briefly, if it is not that case that there is conclusive backing available for the prescription “not *p*,” then it is not the case that the prescription “not *p*” is to be followed (though it may still be *permissible* to follow it).

A further advantage of my analysis is that it provides a ready explanation of the prescriptive force, i. e., the capability of serving as answers to questions which are requests for directions, of statements ascribing rights and duties. For if to ascribe a right or a duty is to assert that there are available conclusive reasons for doing such and such, then one who ascribes a right or a duty says something which implies, in the broad sense introduced above, that such and such is to be done (and thus he may be presumed to believe that such and such is to be done). Similarly, the present analysis provides a ready explanation of the incapability of statements ascribing privileges and no-rights to serve as complete answers to questions which are requests for directions. For to state that there are *not* conclusive reasons available for doing such and such, or for not doing such and such, is not to say anything which implies that such and such is

or is not to be done.

Furthermore, the present analysis provides a means of exhibiting in a grammatically perspicuous fashion some of the logical relations of rights, duties, privileges, and no-rights. (This is an argument for the usefulness of the analysis, not a further argument for its correctness.) For example, it is not immediately obvious that (1) 'A has a duty to B to do X,' and (2) 'A has the privilege with respect to B of not doing X' are contradictories. But this is immediately obvious in the case of (1) 'There is conclusive backing available for the prescription: "A, do X!"', and (2) 'It is not the case that there is conclusive backing available for the prescription: "A, do X!"'.

Let me add here that my analysis has the advantage over certain possible alternative analyses that it presents the relations of contrariety, contradictoriness, subcontrariety, and implication which hold among rights, duties, privileges, and no-rights as *logical* relations, which they are. This, I think, could not be done by, for example, an analysis which equated having a right or duty etc. with being in a certain state of mind.

Moreover, my analysis may, I think, be put to use in the solution of certain problems concerning rights, duties, privileges, and no-rights, which have a distinctly metaphysical or philosophical ring. For example: How can mental and physical facts (to use Hohfeld's expression) possibly give rise to, e. g., a legal duty, something apparently of such an utterly different kind? The answer, I think, in outline, is that they can provide backing for a prescription.

Now consider for a moment the following questions. (1) Is to ascribe a moral duty to someone to make a statement? (2) If so, how are we to account for the attractiveness of the contention that the ascription of a moral duty amounts basically to an expression of emotion? (3) Again if so, what connection is there between the truth of the statement made in the ascription of a moral duty and people's desires and emotions? These are difficult and important questions of ethical theory. Perhaps my analysis of statements ascribing legal duties, slightly modified, would

throw some light upon them; this, surely, would redound to its credit. Let us, then, assume for the moment that 'A has a (moral) duty to do X' can be restated as follows: 'There is conclusive backing (of a moral nature) available for the prescription: "A, do X!"'. (I will leave open for the moment the question what sort of backing might constitute moral backing.) On this assumption, it is clearly the case that to ascribe a moral duty to someone is to make a statement. This conclusion, by the way, is, I think, supported by the fact that one can respond without impropriety to 'A has a moral duty to do X' by saying 'That's true' or 'No, that's false.'

Let us consider question (3) next. This question can now be put as follows. What connection, if any, is there between (a) the truth of the statement 'There is conclusive backing (of a moral nature) available for the prescription: "A, do X!"', and (b) people's desires and emotions? Let us ask upon what the truth of this statement depends. Clearly, it depends upon there being conclusive backing of a moral nature available for the prescription: "A, do X!". So the question becomes: What connection is there between there being conclusive backing of a moral nature available for the prescription: "A, do X!" and people's desires and emotions? At this point, we must, I think, ask what the nature of such backing might be. Conclusive backing for the prescription "A, do X!" would constitute (could be presented as) the premisses of a sound argument having the prescription "A, do X!" as its conclusion. Now near the top of page 11 above, I give an example of an argument for a prescription. One of the premisses of that argument, as I point out, is itself a prescription. Now it appears to me, though I am not entirely sure of it, that an argument whose conclusion is a prescription must have at least one premiss which is a prescription. Perhaps it will be objected that premiss (2) of the argument near the top of page 11 could just as well be 'From among the options, you should buy that car which is the safest,' in which case that argument would have a prescription as its conclusion, but no prescriptions among its premisses. I agree that the

soundness of that argument would be preserved through this substitution, but, in accordance with what I say on pages 6-7 above, it appears to me that statements featuring the verb 'should' are warrant statements that imply prescriptions. This is how I would explain the adequacy of the substitution here suggested. I will proceed to ignore the case of arguments that have prescriptions as conclusions and statements implying prescriptions, instead of prescriptions, as premisses, since their existence does not, I think, tell against the point I want to make. Let us suppose, then, at least for the moment, that an argument whose conclusion is a prescription must have at least one premiss which is a prescription. Part of the backing to which one refers when one says 'There is conclusive backing (of a moral nature) available for the prescription: "A, do X!"' will, then, consist of a prescription.

Now let me raise again a question I touched upon briefly above: What mode of justification is appropriate to prescriptions? The most promising answer appears to me to be one I have already suggested in passing: Justification of a prescription consists, ultimately, in reference to the desires of the parties concerned. Needless to say, this answer calls for a great deal of amplification and qualification, as, for example, on the following points. (a) Who exactly are the parties concerned in cases in which the question arises whether a given prescription is justified? Are they to be identified with the people who would be affected in any way, or in certain special ways, by the carrying out of or failure to carry out the action enjoined by the prescription in question? Or are they to be identified with the people to whom that prescription is addressed, or perhaps with both or neither of these groups? (b) Is it not the case that one prescription can be justified by reference to another? For example, might not 'Do not touch that painting!' be justified by reference to a sign on the wall that says 'Do not handle exhibits!'? (This is why it is necessary to add the qualification 'ultimately' to the suggestion that justification of a prescription consists in reference to the desires of the parties concerned.) (c) Prescriptions are used in many different types of situations. It is



undoubtedly true that with reference to some of these types of situations, the claim that justification of a prescription consists ultimately in reference to the desires of the parties concerned is simply false. It remains to be spelled out, therefore, with reference to which types of situations this claim holds true. I will do no more in the way of spelling this out than to assert once more that it seems to me that prescriptions that are invoked in defense of ascriptions of moral duties are to be justified, ultimately, by reference to people's desires. Perhaps we may conclude, then, tentatively, that if 'A has a (moral) duty to do X' is true, then so is 'There is conclusive backing (of a moral nature) available for the prescription: "A, do X!"'; that if 'There is conclusive backing (of a moral nature) available for the prescription: "A, do X!"' is true, then a sound argument can be constructed having "A, do X!" as its conclusion and at least one prescription among its premisses; that if a sound argument can be constructed having "A, do X!" as its conclusion and at least one prescription among its premisses, then all of said premisses, and hence said prescription or prescriptions, can be justified; that if said prescription or prescriptions can be justified, then certain people's desires are such and such; and hence, that if 'A has a (moral) duty to do X' is true, then certain people's desires are such and such. This provides, in outline, a possible, and to my mind a plausible answer to question (3) above (see page 22). It also goes at least part way towards answering question (2) above, the question how to account for the attractiveness of the contention that the ascription of a moral duty amounts basically to an expression of emotion, though an examination of the history of this question would, no doubt, turn up additional explanations. For if the very validity (on the account I am defending, the truth) of an ascription of a moral duty depends essentially upon the state of people's desires, it is easy to see that one might take an ascription of a moral duty to be itself an *expression* of desire or emotion. Under the analysis I am defending, then, it can be shown plausibly and concretely how ascriptions of moral duties can be statements, as they seem to be, given the way they are treated in ordinary

speech, while yet they have an essential connection with people's desires and emotions. Whether this in itself lends much weight to the analysis I am not sure.

The following problem has arisen. If we are to distinguish moral duties from legal duties (and moral rights from legal rights, moral privileges from legal privileges, etc.) by reference to the character of the circumstances out of which they arise, which seems a plausible way of distinguishing them even if the present analysis be rejected, then it must be the case that people are able to recognize certain circumstances as being of the type out of which moral duties arise, and certain circumstances as being of the type out of which legal duties arise. Now it seems to me that no great difficulty stands in the way of specifying what circumstances are of this latter type: for certain transactions, undergone in certain situations, are more or less clearly recognized as giving rise to legal duties. But how are we to specify what circumstances are of the type out of which moral duties arise? It seems, at least at first sight, that it might prove very difficult to give an adequate answer to this question. Some people, I suppose, would answer that certain rules laid down in a certain religious work specify the circumstances out of which moral duties arise. They would thus, it seems to me, be attempting to establish, or arguing as if they were attempting to establish, a more or less rough parallel between the circumstances out of which moral duties arise, and the way in which moral duties arise out of them, on the one hand, and the circumstances out of which legal duties arise, and the way in which legal duties arise out of them, on the other. It is certainly tempting to try to view the circumstances out of which moral duties arise as being specified by rules laid down by a supreme authority—this, it seems to me, is at least the tendency of Austin (the jurist), for example. But for those of us who find it difficult to identify said rules or said authority, the interesting fact, I think, is the apparent *lack* of any such parallel as that here suggested between the sources and mode of origin of moral duties and the sources and mode of origin of legal duties. It would appear that to view

the former on the model of the latter is simply a mistake.

A promising view, in my opinion, is this. Moral duties etc. characteristically arise out of situations in which there exist at once more or less serious needs and possibilities of meeting them. This no doubt stands in need of supplementation, and, moreover, is admittedly rather vague. But perhaps there is in fact no well-defined set of types of situations out of which moral duties etc. arise. (One might even entertain the suggestion that we should abandon the terms 'moral,' 'morality,' etc. entirely—except for purposes of discussing what Austin called 'positive morality'—on account of their suggestion of a definite field of inquiry, and speak instead simply of what is sensible and foolish.) At any rate—whether or not this is to its credit—the present analysis of legal duties etc. brings this problem clearly to the fore.

It appears that an animal can have a right (e.g., not to be tortured) but not a duty (e.g., not to torture other animals), though it is not entirely clear that this is so. Perhaps the present analysis can provide some insight into this matter. If animals can have rights, it must make sense at least sometimes to say something like '(Animal) *A* has a right that (person) *B* do *X*.' That is, assuming the correctness of an extended form of the present analysis, it must at least sometimes make sense to say something like 'There is conclusive backing (which includes considerations having to do with animal *A*) available for the prescription: "(Person) *B*, do *X*!"'. I can think of nothing that indicates that it never makes sense to say something like this. On the other hand, if animals can have duties, it must at least sometimes make sense to say something like '(Animal) *A* has a duty to [e.g.] (person) *B* to do *X*.' That is, assuming the correctness of an extended form of the present analysis, it must at least sometimes make sense to say something like 'There is conclusive backing (which includes considerations having to do with person *B*) for the prescription: "(Animal) *A*, do *X*!"'. But there is something incongruous about such a statement. I am not quite sure what it is—perhaps the fact that, ordinarily at any rate, an animal cannot be said to *follow* a prescription as such (although

an animal can in some cases be made to perform the action enjoined by a prescription); perhaps, too, a prescription, as such, cannot ordinarily be *addressed* to an animal. (The present discussion suggests that the correlativity of Hohfeldian rights and duties might break down when rights and duties are considered in a broader context than that in which Hohfeld considers them. That (1) '(Person) *A* has a duty to (person) *B* to do *X*' and (2) '(Person) *B* has a right that (person) *A* do *X*' are restatements of one another seems dependent upon the fact that *A* and *B* are both persons.)

Hohfeld says that the fundamental legal relations, among which he includes (Hohfeldian) rights, privileges, duties, and no-rights, are *sui generis*, and that for this reason "attempts at formal definition are always unsatisfactory, if not altogether useless."<sup>9</sup> It is interesting to note that the same thing—or what I think to be the same thing, for I am not sure exactly what Hohfeld means by "formal definition"—that Hohfeld here says about e. g., the concept of a right has been said by others about the concept of goodness and the concept of knowledge. This is particularly interesting in light of the fact that plausible warrant statement analyses have been offered by Fogelin of statements featuring the terms 'good' and 'knows.'<sup>10</sup> The warrant statement restatements of '*X* is good' and '*A* knows that *p*' that are offered by Fogelin, and the warrant statement restatement of '*B* has a [Hohfeldian] right that *A* do *X*' that I have offered have this in common: their warrant components refer to certain backing for a statement or prescription (as must be the case if they are to be warrant statements), but they do not list or present that backing. It may be that the fact that terms like 'duty,' 'good,' and 'knows,' which are marks of warrant statements of this type, can all appear to the philosopher to be indefinable is somehow a consequence of their roles in warrant statements of this type. It is quite easy to see a connection here. Take, for example, the case of the term 'good.' If, to give a very rough account of Fogelin's view, '*X* is good' means something like 'There are adequate grounds for choosing *X*,' where the grounds in question are now these, now those, then, clearly, being good cannot be identified as a matter of

definition with being large (although the fact of being large might sometimes be the justification for calling something good), nor with being small (although, similarly, the fact of being small might sometimes be the justification for calling something good), nor with having any quality in particular except, trivially, that of being good. Similarly, if '*B* has a right that *A* do *X*' means, basically, 'There is conclusive backing (which includes considerations having to do with *B*) available for the prescription: "*A*, do *X*!"', where the backing referred to by means of the warrant component is now this, now that, then, clearly, having a right cannot be identified as a matter of definition with the fact of having entered into a contract (although the fact of having entered into a contract might sometimes be the justification for the ascription of a right), nor with the fact of having been injured by someone's dangerous pet (although the fact of having been injured by someone's dangerous pet might sometimes, at least in part, be the justification for the ascription of a right), nor with the fact of any particular event's having occurred or situation's having obtained. But, of course, if '*X* is good' and '*B* has a right that *A* do *X*' are indeed implicit warrant statements of the type described above, then it is a mistake to try to define '*... is good*' as meaning '*... is large*' or '*... is pleasant*' etc., or to try to define '*... has a right*' as meaning '*... has entered into a favorable contract*' or '*... has been injured by someone's dangerous pet*' etc. It is, if the present analysis is correct, a mistake which manifests a failure to understand the role of the terms 'good' and 'a right' in warrant statements. Now I am not entirely sure why Hohfeld concludes that the concepts 'right,' 'duty,' 'privilege,' and 'no-right' are *sui generis* and incapable of formal definition, nor, as I stated, am I entirely sure what he means when he says that they are *sui generis* and incapable of formal definition, but nevertheless, it seems to me quite possible, or perhaps I should say quite probable, that he has made the mistake I have just described.

In summary, I have put forward an analysis of Hohfeldian rights, duties, privileges, and no-rights, argued that it does not have any gross

logical defects, and indicated how it might be given further support. The analysis is clearly incomplete, but it appears to me to be a step in the right direction.

#### NOTES

Both in form and in content, this paper owes a great deal to the work of Robert J. Fogelin. I do not wish to claim as mine any idea or argument that is not very clearly the product of my own efforts.

1. W. N. Hohfeld, *Fundamental Legal Conceptions* (Yale University Press, 1966).
2. Robert J. Fogelin, *Evidence and Meaning* (Humanities Press, 1967), p. 9.
3. See Hohfeld, op. cit., p. 38 for this use of 'equivalent.'
4. Hohfeld, op. cit., p. 39.
5. Hohfeld, op. cit., p. 44.
6. See, for example, his final remark on p. 64, op. cit., concerning the fundamental unity and harmony of the law.
7. See Hohfeld, op. cit., top of p. 44.
8. See Hohfeld, op. cit., p. 39.
9. Op. cit., p. 36.
10. Fogelin, op. cit.