

A Fresh Approach to the Analysis of Legal Relations

Anthony Dickey *

The Hohfeldian analysis of law and legal relations, while generally accepted, has frequently been criticized by legal theorists.¹ Both Hohfeld's thesis and criticisms of it call for a new approach to legal duties and the basic relationships that can derive therefrom. The purpose of this article is first to analyse anew the basic types of legal relations, and then briefly to examine within the context of a formal scheme both the relationship between these basic types

* LL.B., Ph.D., of the Faculty of Law, University of Western Australia.

¹ For Hohfeld's own analysis, see Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning*, (1913) 23 Yale L.J. 16. Comments on, and criticisms of, Hohfeld's analysis are legion; the following are a selection: Cook, *Hohfeld's Contributions to the Science of Law*, (1919) 28 Yale L.J. 721; Corbin, *Legal Analysis and Terminology*, (1919) 28 Yale L.J. 163; Goble, *A Redefinition of Basic Legal Terms*, (1935) 35 Col.L.Rev. 535; Pound, *Fifty years of Jurisprudence*, (1937) 30 Harv.L.Rev. 557, 571-576; Radin, *A Restatement of Hohfeld*, (1938) 51 Harv.L.Rev. 1141; Williams, *The Concept of Legal Liberty*, (1956) 56 Col.L.Rev. 1129; Honoré, *Rights of Exclusion and Immunities Against Divesting*, (1960) 34 Tul.L.Rev. 453; Anderson, *The Logic of Hohfeldian Propositions*, (1971) 33 U. of Pitts.L.Rev. 29; Finnis, *Some Professional Fallacies About Rights*, (1972) 4 Adelaide L.Rev. 377; Wilson, *A Note on the Hohfeld Analysis*, (1972) 17 Jurid.Rev. 162. See also Kocourek, *Jural Relations*, 2d ed. (1928); and on the genesis of Hohfeld's analysis, Dickey, *Hohfeld's Debt to Salmond*, (1971) 10 U. of West. Aust. L.Rev. 59.

The principal conventional terms used in legal analysis (*e.g.*, right, duty, power, etc.) have been retained in the text in order both to facilitate comparison between the present and previous analyses and to avoid a proliferation of terms signifying the same (or very similar) concepts. These conventional terms will be defined when they are first met in the text. The only term that need be defined here is "correlative". As a general term the word "correlative" (noun) connotes a concept which is complementary to, and necessarily implied in the statement or definition of, another (reciprocal) concept; in legal analysis, however, this term usually connotes more specifically a concept which signifies the position of one party in a particular relationship to the other party (the two concepts which signify the position of each party to the same relationship constituting correlative concepts). On correlative concepts as here defined, see Williams, *supra*, 1141, and pp. 1144-45; Radin, *supra*, 1149-50.

of legal relations and the relationship between legal and non-legal relations.²

I

The examination and analysis to be undertaken in this article will be based upon the premise that a legal duty (which will also be referred to simply as a DUTY) is a non-contingent behavioural requirement which the courts will, if need be, officially recognise and support. More precisely, it is essentially a non-contingent requirement which (in respect of content) directs a certain individual³ to act in a particular way which (in respect of status) the courts will officially recognise as warranting compliance should they ever have officially to consider this matter; and which (in respect of backing to secure compliance) they are able to support⁴ by applying, or by authorising the application of, a sanction⁵ against an

² Although the analysis contained in this article specifically concerns only the product of a legal authority structure (or system), it applies equally to the product of any other authority structure within which the application of a sanction is recognised by the members of the group or society concerned as constituting an official social control. Of course, an appropriate modification must be made in respect of the nature of the sanction involved, and one may not wish to describe the structure's tribunal as a "court".

A "legal" authority structure may be defined as one within which the members of the group or society concerned recognise the (legitimate) use of (brute) force as constituting an official social control, which use of force is not substantially controlled by the use of superior force by any external person or body and cannot be controlled by the legitimate use of superior force by the agents of any other authority structure to which the person who can legitimately apply force as a social control in the initial authority structure belongs. The elements of this definition are further considered in the context of the definitions of a legal duty and the courts in Part I of this article.

³ For the purposes of this article, the terms "individual" and "person" will include bodies of individuals.

⁴ On the practical effect of this support, see f.n.19, *infra*.

⁵ As the definition of the courts which follows in the text will further indicate, the application of this sanction, by being administered or authorised by the courts of a society, is thereby regarded by the members of the society concerned as being legitimate. One should distinguish in this respect an act which is considered by the members of any authority structure to be legitimate (as here) simply because it is part of, or intimately connected with, the exercise of the authority with which that structure is concerned, from an act which is considered by those members to be legitimate because it is specifically declared to be legitimate by that person or body of persons (here referred to as the courts) which alone within that authority structure

individual⁶ in the event of their taking official cognisance of non-compliance either with the requirement itself or with a subsequent order of a court following non-compliance with that requirement.⁷ The courts⁸ may in turn be defined as that person, body of persons, or system of bodies of persons that is regarded by the members of a group or society as having the *de facto* authority⁹ both to determine the existence and content of those requirements which warrant compliance so far as that group or society *qua* authority structure¹⁰ is concerned, and to support such requirements by applying, or by causing or permitting to be applied, a sanction (ultimately the

is regarded as being able conclusively to determine whether any act is or is not legitimate. "Legitimate" in the first sense simply means "official" or "proper according to the definitive (or constitutive) rules relating to the exercise of the authority concerned"; "legitimate" in the second sense means "not in breach of a duty recognised by the courts of the authority structure concerned". When the propriety of an act is considered from the point of view of what is permitted within a given *legal* authority structure, the terms "legal" and "lawful" are often used as synonyms for both senses of the term "legitimate". (Note, however, that when the term "legal" is used to describe not acts but concepts, it means simply "concerning the law".)

⁶ This individual is usually the person who has failed to comply with the requirement in question, though this is not necessarily so, as witness the many instances of vicarious liability.

⁷ The essential characteristics of a legal duty as here defined thus do not concern form or origin, though the essential characteristics of those legal duties which will be recognised by the courts of any particular legal system may, and usually will, concern such factors. It should also be noted that a legal duty as here defined does not depend for its existence on an awareness by the person subject to it that he is in fact under a legal duty, though without such an awareness compliance with the requirement involved under any legal duty can only be fortuitous. A legal duty is thus, so far as the analysis contained in this article (and the writer's understanding of this matter) is concerned, a purely objective phenomenon.

⁸ This word is in the plural simply because most societies have not one court but a system of courts, which system is commonly referred to simply as "the courts". It is not theoretically impossible, however, for a society to have only one court, and that consisting of only one person.

⁹ *I.e.*, authority which results solely from the attitudes of the members of a group or society towards a particular person or body of persons. *Cf. de jure* authority, which is essentially a "liberty" or "power" (as those two terms are defined in the next section of this article) conferred on an individual by a person exercising existing *de facto* authority. On the distinction between *de facto* and *de jure* authority, see Peters, "Authority", in *Proceedings of the Aristotelian Society*, Supp. Vol. 32 (1958), 207. Authority, it should be noted, implies ability.

¹⁰ *I.e.*, *qua* body of individuals subject to the authority of a particular person, body of persons, or system of bodies of persons.

unfettered¹¹ use of brute force)¹² against an individual in the event of non-compliance either with a requirement which it officially recognises as warranting compliance or with a subsequent order issued by itself or one of its constitutive elements following non-compliance with such a requirement.¹³

From the foregoing, four points in particular should be noted. First, every legal duty concerns a particular act or a particular course of action; moreover, every legal duty concerns only *one* particular act or course of action.¹⁴ Second, for a legal duty actually (*i.e.*, presently) to exist in relation to any particular act or course of action there must be a requirement, compliance with which is not sought only upon the occurrence of either an act of another person or an event which is outside the control of the person subject to the requirement; if compliance with any requirement is sought only upon the occurrence of such an act or event there can presently exist at most only a possibility (albeit that that possibility may fairly be regarded as an inevitability) that a legal duty will come into being at some time in the future. Third, a legal duty does not depend for its existence on actual recognition or actual support by the courts;¹⁵ all that is necessary for a legal duty to exist is that there be a requirement which the courts will in fact officially recognise as warranting compliance should they ever have to consider its status¹⁶

¹¹ *I.e.*, unfettered either by the actual use of superior (brute) force by any external person or body of persons, or by the possible (legitimate) use of superior force by the agents of any other authority structure to which the person who can legitimately apply force as a sanction in the group or society referred to in the text belongs. *Cf.* f.n.12. *Internal* restrictions may nonetheless always be placed upon the legitimate use of force as a sanction in any group or society by means of rules recognised by that body as relating to the legitimate use of force as a sanction.

¹² It is this *de facto* authority to apply, or to cause or to permit to be applied, the unfettered use of force as a sanction which distinguishes a court as a strictly legal institution from any other person or body of persons that can authorise the application of a sanction. See the definition of a legal authority structure in f.n.2, *supra*. On the legitimate use of force as the necessary and ultimate sanction of any legal system, see Hoebel, *The Law of Primitive Man* (1967), ch. 2 (and also ch. 11).

¹³ Duties and courts are thus interrelated concepts, and *de facto* authority and a sanction are phenomena essential to both.

¹⁴ And see also Finnis, *supra*, f.n.1, 379 where a similar point is made with reference to Hohfeld's legal relations in general.

¹⁵ See also f.n.48, *infra*.

¹⁶ A legal realist might argue that one can never be absolutely certain that the courts will officially recognise any particular requirement as warranting compliance (and thus as being eligible for their official support) before they

and which they are able to support in the way specified. And fourth, if a person is not under a legal duty in relation to a particular act or course of action the courts are unconcerned¹⁷ whether he performs that act or course of action.

II

In order to examine the basic types of legal relations that can exist, two situations will be analysed. These situations concern the basic means by which an individual (X) can achieve a particular end or goal in a group or society which constitutes a legal authority structure. In each situation it will be assumed that X is neither under a DUTY to achieve his end nor under a DUTY to refrain from performing any act that is necessary to achieve that end. It will further be assumed that all acts are performed as a result of the exercise of free will,¹⁸ that all ends are capable of being achieved by the person or persons specified, that all persons who are subject to any DUTY are aware of this, that all DUTIES will be obeyed¹⁹

actually decide upon its status. One therefore can never be sure that a legal duty exists until after the courts have made an official decision to this effect; it may accordingly be argued that references to legal duties which have not been specifically recognised by the courts must strictly concern only requirements which one can predict may, or at most probably will, be officially recognised by the courts as warranting compliance. Valid though this argument is, it omits to take into account the fact that the common concept of a legal duty as defined in the text (a species of guide for present and future conduct) always has reference to *present* requirements which it is presumed the courts *will* recognise. It is with this *concept* of a duty, and not with the actual existence of a duty, that this present article is concerned.

¹⁷ *I.e.*, unconcerned (either directly or indirectly) in the exercise of their essential functions of determining the existence of and supporting actual legal duties.

¹⁸ *I.e.*, as a result of choice and not solely as a result of purely physical duress, an automatic physical reflex action, automatism, or inadvertance. An act which is performed in order to gain a reward or to avoid punishment (including further punishment) is nonetheless considered for the purposes of this article to be a result of the exercise of free will, the choice here being to gain the reward or to avoid the punishment in question.

¹⁹ Note that the mere imposition of a DUTY on a person will never automatically ensure that that person will act in accordance with the DUTY. At most the imposition of a DUTY on a person will simply prompt or encourage that person to act as required either by virtue of the sanction that can be applied against him, or against another person, should he not comply with that DUTY; or because he feels morally obliged to obey either that particular DUTY or DUTIES in general. Note, too, that since the sanction that the courts

and that the only sanction which is known and can thus be threatened or applied against an individual is one authorised by the courts.²⁰

Situation A

In this, the simplest of all situations, X can achieve his end (goal) by his own unaided efforts. The co-operation of any other person is thus unnecessary for the achievement of that end. So far as the courts are concerned, since X is neither under a DUTY to achieve the end in question nor under a DUTY to refrain from performing any act that is necessary for the achievement of that end, X is quite free²¹ to achieve or to refrain from achieving that end as he chooses.²² Because of this lack of concern by the courts about whether X does or does not achieve his end, X is said to have a LIBERTY²³ in respect of the achievement of that end; more particularly, he has a LIBERTY to perform any act or course of action that is necessary for the achievement of that end.²⁴

can impose to support a DUTY, including even the use of brute force, will never except in very rare circumstances physically and directly force a person to act in the particular way required by a DUTY, even the so-called "enforcement" of a DUTY by the courts will in general never ensure that a person under a DUTY will comply with it.

²⁰ This limitation is necessary in order both to restrict the analysis to a single — here legal — authority structure (see f.n.2, *supra*), and to exclude from the two basic situations to be analysed illegitimate acts, *i.e.*, acts which are in breach of a DUTY (n.b. text referred to by f.n.19, *supra*).

²¹ *I.e.*, free from the possibility of breaching any DUTY by performing or not performing any act necessary for the achievement of the end in question. The term "free" here does not necessarily imply any philosophical freedom or any physical freedom or ability, though note that it is assumed for the purpose of the analysis in this article that all acts are the result of the exercise of free will (see f.n.18 and text, *supra*) and that all ends can be achieved. See also f.n.24, *infra*.

²² Note that a LIBERTY does not concern the legal freedom to choose (*pace* Hart's statement in *Definition and Theory in Jurisprudence*, (1954) 70 L.Q.R. 37, 49, f.n.15, but concerns instead the legal freedom to act according to one's choice. On the factor of choice, see f.n.18 and text, *supra*).

²³ *I.e.*, to be at liberty (so far as the courts are concerned). In legal analysis states are often expressed as things for the sake of convenience.

The term "liberty" was first used specifically to connote the concept referred to in the text by Salmond in his *Jurisprudence* 1st ed. (1902), ch. 10, para. 75 (pp. 231-2). Hohfeld subsequently used the term "privilege" to connote the same concept; see his explanation for this, *supra*, f.n.1, 38-43. The present writer accepts Williams' reasons for preferring the term employed in the text; *cf. supra*, f.n.1, 1131-32.

²⁴ In the light of the foregoing it is clear first, that a LIBERTY concerns a freedom (as defined by f.n.21, *supra*) to act or not to act in a particular way

The concept of a LIBERTY thus implies the absence of any DUTY (either positive or negative) in respect of a particular act or course of action.²⁵ A LIBERTY and DUTY are consequently class-complements;²⁶ the one concept denies the existence of the other and they therefore mutually embrace the whole of the specific class of entities involved (here concepts connoting the official interest of the courts in the performance of any act or course of action). Under any given legal system every person is thus either under a DUTY (either positive or negative) in respect of any particular act or course of action, or he has a LIBERTY in respect of that act or course of action.²⁷

according to one's choice; and second, that (as will be further emphasised in the following paragraph in the text) a LIBERTY connotes the absence of any DUTY (either positive or negative) in respect of a particular act or course of action. It must therefore follow, *pace* Williams (*supra*, f.n.1, 1139-42), that a LIBERTY must always in theory involve choice, and that there cannot logically be a LIBERTY to perform a DUTY.

²⁵ *Cf.* Williams (*supra*, f.n.1, 1135-39), who makes the point that the class-complement of a DUTY is strictly a "LIBERTY not", and that a "LIBERTY" is strictly the class-complement of a "DUTY not". This is, of course, true but only in respect of the formal class-complement of a *specified* DUTY or LIBERTY. The point being made in the text is that the class-complement of a DUTY, whether of positive or negative content, is a LIBERTY which is neither of a positive or negative content. To put this matter in another way: if there is *any* DUTY (either positive or negative) in respect of a particular act there can be no LIBERTY at all in respect of that act; conversely, if there is a LIBERTY in respect of any particular act there can be neither a positive nor a negative DUTY in respect of that act.

²⁶ The term "class-complement" used in the text follows Stone, *Legal System and Lawyers' Reasonings* (1968), 139. Salmond used the term "absences (in oneself)" (*cf. supra*, f.n.23, 231, 236), and Hohfeld used the term "opposites" (*cf. supra*, f.n.1, 30, 32-33) to signify this relationship.

²⁷ It should be evident from Situation A that, contrary to popular juristic opinion, the concept of a LIBERTY does not necessarily imply a relationship between two people (though particular LIBERTIES may involve such a relationship). Thus this concept does not necessarily imply a correlative concept which connotes the position of another person in respect of the exercise of any LIBERTY. For example, if the particular end or goal in Situation A were to read a book, X's LIBERTY to read a book would not necessarily involve another person, and thus could not involve a correlative concept to connote the position of another person in respect of the exercise of that particular LIBERTY. This highlights one of the principal deficiencies of Hohfeld's article, namely that, notwithstanding his stated aim of analysing the basic elements of the law, his analysis is concerned only with legal relations (*i.e.*, with the legal position of two people who are related together in respect of a particular activity or legal ability, and not with the legal position of only one person in respect of a particular activity or legal ability). Because

Situation B

In this situation, X can achieve his end only with the assistance (co-operation) of another person, Y. If Y is under a DUTY not to assist X in achieving the end in question, X will clearly not achieve that end. However, presuming that Y is under no such DUTY, and presuming also that he is presently under no DUTY to assist X, Y's legal position concerning giving assistance to X must accordingly be that he has a LIBERTY to assist or not to assist X as he (Y) chooses.²⁸ If, however, a requirement (more precisely, an expression of a requirement) by X that Y assist him to achieve his end will be recognised by the courts as imposing a DUTY on Y to assist X, Y's present LIBERTY in respect of rendering assistance to X is liable

of this, each of Hohfeld's concepts which connotes the legal position of one person to a relationship of necessity involves a correlative concept which connotes the position of the other party to the same relationship. Thus for Hohfeld the concept of a DUTY always involves a correlative concept of a RIGHT, and the class-complement of the concept of a DUTY (*i.e.*, a LIBERTY) similarly always involves a correlative concept, which he termed a "no-right". However, as will be discussed in more detail later in this article, a DUTY need not involve a correlative RIGHT; and as has already been indicated in this footnote, the concept of a LIBERTY need not involve any correlative concept to connote the position of any other person in respect of the exercise of that LIBERTY. The only LIBERTIES which must involve a correlative concept of the kind just mentioned are those which concern actions which relate to another person (*e.g.*, a LIBERTY to kill in self-defence, a LIBERTY to chastise a child, or a LIBERTY to look at passers-by in the street). As will become apparent later in this article, the only concepts which always connote both the legal position of an individual in respect of a particular activity or ability and a relationship between that same individual and another person in respect of the same activity or ability are the concepts of a RIGHT, a POWER, a LIABILITY, and the class-complements of the latter two concepts, which are traditionally termed a "disability" and an "immunity" respectively. Did Hohfeld in fact believe that the law was concerned only with relationships between two people in respect of a particular activity or legal ability? His article is unclear on this matter (see, *e.g.*, *supra*, f.n.1, 19-20), though it is quite possible that he was so mistaken. If he was, the cause was probably the fact that he started his analysis with the concept of a RIGHT, which always involves a correlative DUTY, rather than with what is here regarded as *the* fundamental legal conception upon which all other legal conceptions depend, namely a DUTY, which need not involve a correlative RIGHT. The present analysis, by being founded on the concept of a DUTY, seeks to avoid this and other deficiencies of Hohfeld's analysis.

²⁸ Note that Y's position is here exactly the same as X's position in Situation A, for so far as he (Y) is concerned he can achieve *his* end, namely assisting or not assisting X, by his own unaided efforts. (The achievement of the end referred to in the text is, of course, X's end only.)

to be displaced by the imposition on him of a DUTY. Y will then be in the position that if he does not comply with X's requirement and help him to achieve his end he (Y), or another person, will be liable to suffer a sanction authorised by the courts.

Three observations may be made regarding situation B:

(a) If, so far as the courts are concerned, Y has a LIBERTY to help X achieve his end, then clearly that end will be achieved only if Y voluntarily²⁹ chooses to assist X.³⁰ If Y does subsequently assist X, their relationship may be said to be one of VOLUNTARY CO-OPERATION.³¹ This will here be described as a NON-LEGAL relationship because the courts are unconcerned whether it does or does not exist.

(b) If, so far as the courts are concerned, Y will be under a DUTY to assist X *if* (but only if) X expressly requires his assistance, X is then said to have a POWER, *i.e.*, an ability recognised by the courts to change Y's legal position from one where he has no immediate DUTY towards X to one where he has such a DUTY;³² X can

²⁹ *I.e.*, without any (actual or threatened) pressure or influence from the courts, (and n.b. the presumption referred to by f.n.20, *supra*).

³⁰ As the act with which Y's LIBERTY is concerned (assisting X) relates to another person (X), this particular LIBERTY must of necessity have a correlative concept to connote the position of the other person (X) in respect of the exercise of this LIBERTY. Because the LIBERTY in question connotes a legal freedom on the part of Y to assist X, or, which is the same thing, the absence of a DUTY on the part of Y that he should assist X, and thus implies that X has no RIGHT that Y should assist him, the correlative concept to connote X's position in relation to Y must be equivalent to the absence of a RIGHT by X that Y should assist him. This correlative concept Hohfeld termed a "no-right" (*cf. supra*, f.n.1, 32-33). It should be stressed, however, that not all LIBERTIES have a correlative "no-right" concept (*cf. supra*, f.n.27).

³¹ Further to the observations made in the previous footnote concerning Hohfeld's analysis, it should be noted that a Hohfeldian LIBERTY-"no-right" (or, as he would have it, a privilege-"no-right") relationship is simply a relationship through the official interest of the courts in its existence. The relationship is, moreover, nothing more than a denial of that (class-complement) relationship which the courts will officially recognise and support, namely a RIGHT-DUTY relationship. Thus it is essentially negative in character. The relationship of VOLUNTARY CO-OPERATION referred to in the text, on the other hand, is a relationship which can legitimately exist (it is in fact the *only* relationship which can so exist) despite the fact that the courts will not officially recognise and support it. It is essentially positive in character.

³² Although a POWER is presented here as an ability to impose a DUTY upon a person, a POWER can also involve the contrary ability to annul a

accordingly secure Y's assistance in order to achieve his (*i.e.*, X's) end by exercising his POWER.³³ In this situation Y is said to be under a (correlative) LIABILITY because he is liable to have a DUTY imposed upon him by X at some time in the future.³⁴

This relationship between X and Y — a POWER-LIABILITY relationship — will here be described as an ANTE-LEGAL relationship because it is antecedent³⁵ to the creation of a DUTY and thus also to the creation of what is regarded in this article as the only LEGAL relationship, namely a RIGHT-DUTY relationship.³⁶ A LEGAL relationship may be defined for present purposes as a relationship with which the courts are *directly* concerned in the execution of

DUTY to which a person is presently subject. A POWER, in sum, may be defined as an ability of a person intentionally to impose a DUTY on another person, or to annul a DUTY to which a person is presently subject, by performing an act which will be regarded by the courts as having the effect of imposing or annulling the DUTY in question. Note that for Hohfeld the concept of a legal power concerned an ability recognised by the courts to change legal relations in general: *cf. supra*, f.n.1, 44ff. Under the analysis in this article, however, the concept of a POWER concerns simply an ability to impose or annul a DUTY, whether or not there is any relationship involved (*i.e.*, whether or not the DUTY in question involves a correlative RIGHT). Moreover, the concept of a POWER does not concern an ability to impose or annul a POWER. Under the analysis in this article, the latter ability is essentially quite different from the former ability. (On an ability, or "power", to impose a POWER, see f.n.49, *infra*.)

³³ It is important to note that since the exercise of a POWER involves a specific act or course of action, any person who can exercise a POWER must be either under a DUTY, or at LIBERTY, so to act. A POWER without more, it should be observed, concerns an *ability* only. Hart's statement that a POWER concerns a choice (*cf. supra*, f.n.22) should thus be accepted only with reservations.

³⁴ Just as a POWER can involve an ability either to impose or to annul a DUTY (see f.n.32, *supra*), so a LIABILITY can indicate either the position of a person who is liable to have a DUTY imposed upon him or the position of a person who is liable to have a DUTY to which he is presently subject annulled. A LIABILITY, in sum, may be defined as the position of a person who is liable to have either a DUTY imposed upon him, or a DUTY to which he is presently subject annulled, by an act of another person which is intended to have this result and which will be regarded by the courts as having the effect of imposing or annulling the DUTY in question.

³⁵ Although, as will be noted in Part III of this article, a POWER-LIABILITY relationship is antecedent only to those DUTIES (and thus RIGHT-DUTY relationships) which can be deliberately created; in such cases a POWER-LIABILITY relationship is, moreover, *necessarily* antecedent to the creation of the DUTY (and thus the RIGHT-DUTY relationship) involved.

³⁶ A RIGHT-DUTY relationship and the concept of a RIGHT are discussed in detail later in the text.

their essential functions of determining the existence of and supporting actual DUTIES.³⁷ Although the courts are never directly concerned with the existence of a POWER-LIABILITY relationship in the execution of their essential functions, they are nonetheless often *indirectly* concerned with this relationship in such situations, for whenever the courts recognise a DUTY which owes its existence to an act that was deliberately intended to create that DUTY,³⁸ they must also recognize (in theory at least) both the prior existence of the appropriate POWER-LIABILITY relationship between the person who created (imposed) the DUTY and the person on whom that DUTY was imposed, and the exercise of that POWER.³⁹

(c) If X exercises his POWER by expressly requiring the assistance of Y, Y is then, so far as the courts are concerned, under a DUTY to assist X. The exercise of a POWER is thus a means of achieving co-operation; more particularly, it is a means by which one person (*viz.* the person with the POWER) can impose a DUTY on another person (*viz.* the person under the correlative LIABILITY) and thus require that other person to act in a particular way or render either himself or another individual liable to the imposition of a sanction authorised by the courts. The precise way in which a person under a DUTY is required to act is formally determined by the content of the requirement that each DUTY involves, and this content is (ultimately) determined by the courts, who by definition alone have the (*de facto*) authority to make determinations of this kind.

An individual may be required by a DUTY to act in relation to a particular person, who may be the person who exercised the antecedent POWER (if any) as in Situation B, or a third person. If an individual under a DUTY is required to act in this way, the person in relation to whom he is required to act is said to have a (correlative) RIGHT.⁴⁰ The relationship between an individual who

³⁷ The fact that the courts can officially and directly concern themselves with determining the existence of POWERS and LIABILITIES (*e.g.*, by making declaratory judgements on these matters) does not detract from the fact that a POWER-LIABILITY relationship is not a LEGAL relationship, for in concerning themselves with these matters the courts do not without more exercise their essential functions according to the definition of the courts contained in Part I of this article.

³⁸ Other ways in which DUTIES can come into existence are discussed in Part III of this article.

³⁹ The relationship between a POWER-LIABILITY relationship and a DUTY (and thus also a RIGHT-DUTY relationship) is further discussed in Part III of this article.

⁴⁰ Whether a DUTY involves a correlative RIGHT is thus always apparent from a comprehensive statement (or definition) of the DUTY concerned. Such

is under a DUTY to act in relation to a particular person and the person in relation to whom he is required by the DUTY to act — a RIGHT-DUTY relationship — is here described as a LEGAL relationship; indeed, as indicated above, it is for the purposes of this article the only LEGAL relationship since it is the only relationship with which the courts are *directly* concerned in the exercise of their essential functions of determining the existence of and supporting actual DUTIES (and thereby determining the existence of and protecting any correlative RIGHTS).

From the above reference to a RIGHT it is apparent that since a RIGHT is by definition the position of an individual in relation to whom another person is required by a DUTY to act, a RIGHT is always passive in character.⁴¹ Thus a person with a RIGHT always

a statement will indicate both whether the individual under the DUTY is thereby required to act in relation to another person, and, if he is, in relation to which particular person he is required to act. On the intimate relationship between a RIGHT and a DUTY, see Radin, *supra*, f.n.1, 1149-50.

A RIGHT is often referred to as being a state of advantage: see, e.g., Salmond, *supra*, f.n.23, 231; Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning (II)*, (1917) 26 Yale L.J. 710, 717. It is true that in many cases, and probably even the majority of cases, particular RIGHTS (e.g., a RIGHT not to be assaulted, a RIGHT not to be defamed and a RIGHT to be paid rents) are advantageous, in the sense of being beneficial, to those whose relationship to a person under a DUTY they indicate. However, some RIGHTS may not be advantageous in the sense specified. For example, if a policeman is under a DUTY to arrest a person, the person whom he is under a DUTY to arrest has a technical RIGHT (*viz.* a RIGHT to be arrested by the policeman) though that RIGHT is unlikely to be regarded as constituting a state of advantage to the person concerned. That said, however, all RIGHTS may at least be regarded as advantageous in the sense that not the person with a RIGHT but rather the person with the correlative DUTY is required to act in relation to the person with the RIGHT.

⁴¹ See also on this point Williams, *supra*, f.n.1, 1145; Finnis, *supra*, f.n.1, 380. Consider a LIABILITY, which is also always passive in character. Because a RIGHT is essentially a passive phenomenon, Hart cannot without more be correct in stating (*supra*, f.n.22) that a RIGHT involves a choice on the part of the individual who has a RIGHT. Note, in this connection, Hohfeld's suggestion that the term "claim" is a suitable synonym for the term "RIGHT" (which he would not capitalize: *supra*, f.n.1, 32); see also at p. 55 where he uses the expression "affirmative claim". This suggestion may be objected to on the ground that the term "claim" implies positive action, if only the act of claiming. Radin's use of the expression "demand-right" to signify a RIGHT (*supra*, f.n.1, 1149) is objectionable for the same reason.

One reason why a RIGHT is sometimes mistakenly thought to have positive features is the fact that under the rules of most, if not all, legal systems a person with a RIGHT is usually able to protect any advantage that might thereby accrue to him by taking or instigating positive action against an

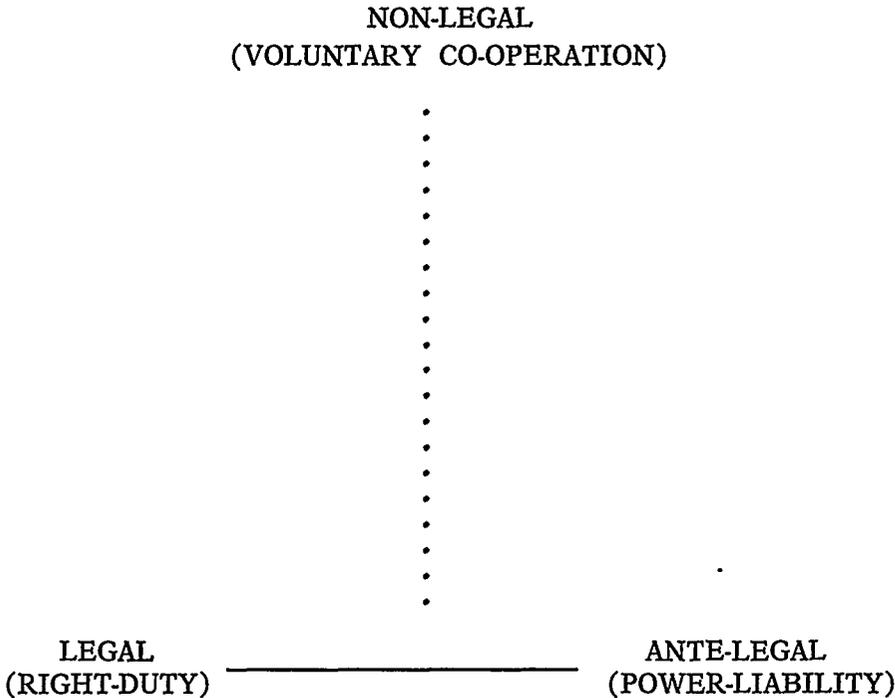
has a RIGHT that another person, (*viz.* the person under the correlative DUTY) act in relation to him in a particular way. One should not say that a person with a RIGHT has a RIGHT to act (or not to act) in any way. Colloquial reference to a right *to do* something cannot thus be a reference to a RIGHT (*i.e.*, the correlative of a DUTY). As such a use of the term "right" signifies that the person with the "right" can perform the act in question (*i.e.*, can act positively) without breaching a DUTY, the "right" concerned must logically be the class-complement of a DUTY, which is a LIBERTY.⁴²

individual (usually the person under the correlative DUTY) if the person under the correlative DUTY does not comply either with the requirement that that DUTY involves or a subsequent order of a court following non-compliance with that requirement. Note, however, that to take action against an individual as a result of non-compliance with a DUTY or an order of the court constitutes an end in itself, with specific DUTIES or LIBERTIES relating to that particular end, and that this end is quite separate from any RIGHT with which it might be associated. See also on this point Finnis, *supra*, f.n.1, 380-82, and note the allied point made in Part I of this article at p. 264. Cf. Goble's definition of a RIGHT as "the [legal] power of a person to initiate that sequential combination of [legal] powers and acts involved in obtaining a judgement against another person" (*supra*, f.n.1, 540).

⁴² As both Salmond and Hohfeld observed, the word "right" can be used not only *strictu sensu* to connote the correlative of a DUTY, but also in a wide sense to comprehend generally RIGHTS, LIBERTIES, POWERS, and also the class-complement of LIABILITIES, which both Salmond and Hohfeld referred to as "immunities" (Salmond, *supra* f.n.23, 231; Hohfeld, *supra*, f.n.1, 30; and see also the more primitive observations of earlier legal theorists on this matter which are outlined in Dickey, *supra*, f.n.1, 59-60). The common feature of all these species of "rights" (in the wide sense) is usually said to be the advantage that appertains to the legal positions that these terms connote (see Salmond, *supra*, f.n.23; and Hohfeld, *supra*, f.n.40). However, as has been seen, certain RIGHTS may not be advantageous, in the sense of beneficial (see f.n.40, *supra*); and whether any POWER is advantageous in the same sense will depend both on the ability that the POWER concerns and whether the person who can exercise the POWER is under a DUTY or at LIBERTY so to act. The reason why the four concepts in question are commonly referred to as "rights" would appear to be not that they always constitute, but rather that they *usually* constitute, advantages in the sense of benefits. Thus when a strict RIGHT or POWER does not constitute an advantage it is not popularly referred to as a "right". For example, although a person whom a policeman is under a DUTY to arrest has a strict RIGHT to be arrested, that RIGHT is not likely to be referred to in common parlance as a "right" as the State concerned is not likely to be considered to be advantageous to the person in question. Cf. Hart's assessment of the common feature of the four species of "rights" in the general sense (*supra*, f.n.22; but note the criticisms of Hart's thesis in f.n.22, 33 and 41, *supra*, and f.n.49, *infra*).

III

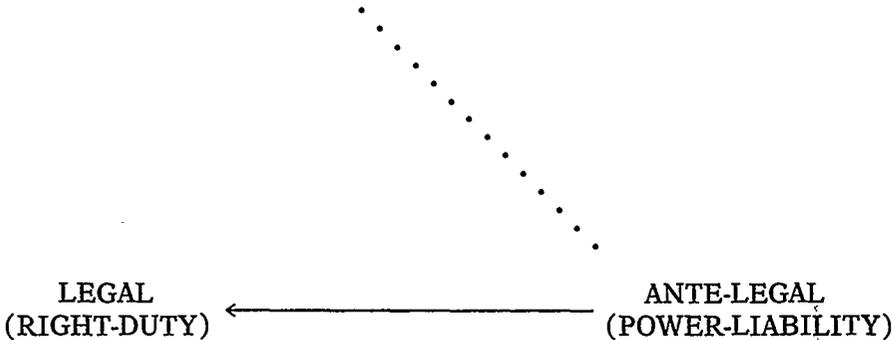
The three relationships outlined in the previous section may be set out diagrammatically as follows:



In this figure the vertical axis represents the opposite poles of interest that the courts have in the three relationships indicated. The courts have no interest at all in relationships of VOLUNTARY CO-OPERATION since it is a matter of no concern to them whether such relationships exist or not. The courts are, however, interested in ANTE-LEGAL and LEGAL relationships, and the horizontal axis of the above figure represents the opposite poles of interest that the courts have in these relationships, namely a *direct* interest in the case of LEGAL (RIGHT-DUTY) relationships and an *indirect* interest in ANTE-LEGAL (POWER-LIABILITY) relationships.

The above figure may be represented in the following revised form to indicate the order of progression from one relationship to another:

NON-LEGAL
(VOLUNTARY CO-OPERATION)



The unbroken, horizontal line indicates that every RIGHT-DUTY relationship which is deliberately created⁴³ by an individual must in theory⁴⁴ be immediately preceded by a POWER-LIABILITY relationship.⁴⁵ One can, indeed, go further and state that every DUTY which is deliberately created by an individual must also in theory be immediately preceded by a POWER-LIABILITY relationship regardless of whether it involves a correlative RIGHT. This latter point may be approached from a more general consideration of the creation of DUTIES and of RIGHT-DUTY relationships. Thus no DUTY is self-creating⁴⁶ but exists only because it has been brought into existence. This may happen either as a result of the immediately

⁴³ Or annulled. References in the text to the creation of DUTIES may also be taken as references to the annulment of DUTIES. N.b. in this respect the definition of a POWER in f.n.32, *supra*.

⁴⁴ *I.e.*, according to the definitions of the legal concepts which have been introduced in Parts I and II of this article. The deliberate creation of DUTIES with retrospective effect is no exception to the statement in the text; the *creation* of such DUTIES must still in theory be immediately preceded by a POWER-LIABILITY relationship even though the *operation* of those DUTIES will be deemed to have commenced at a time prior to their creation.

⁴⁵ Note that what is being referred to here is the creation of an actual RIGHT-DUTY relationship, and not the creation of a situation whereby a RIGHT-DUTY relationship can, or will, come into being at some time in the future. On the creation of the situations just referred to, see f.n. 49, *infra*.

⁴⁶ This point may be better appreciated by remembering that a DUTY is a species of requirement (see the definition in Part I of this article) and that no requirement is a natural phenomenon but is always *ultimately* the result of a deliberate human act, even in situations in which a requirement may be said to apply to a person as a result of an accidental act of an individual or as a result of a natural or physical event. See also f.n.47, 48 and 49, *infra*.

preceding act of an individual, which act may or may not have been intended by that individual to create a DUTY,⁴⁷ or by an immediately preceding natural or physical event.⁴⁸ When a DUTY has been intentionally created by an immediately preceding human act, the relationship between the person who created the DUTY and the person on whom that DUTY has been imposed must by definition have been a POWER-LIABILITY relationship at least at that point of time immediately prior to the imposition of the DUTY.⁴⁹

⁴⁷ The matter of intention is important since only those DUTIES which are intentionally brought into existence by an act of an individual can be said to result from the exercise of a POWER (see the definition of a POWER in f.n.32, *supra*); DUTIES which are unintentionally brought into existence by an act of an individual (e.g., those which require parents to take all reasonable action to rescue any young child of theirs that has placed himself or herself in a dangerous situation) may be regarded for present purposes as in the same category as those which are brought into existence by a natural or physical event. Hohfeld may perhaps have implied this latter point in his statements to the effect that those changes in legal relations which are caused by "facts not under the volitional control of a human being" are not the result of a technical power (*cf. supra*, f.n.1, 44). On the creation of situations whereby an act of an individual will impose a DUTY accidentally, see f.n.49, *infra*.

⁴⁸ For example, the appearance of a particular pest or disease on property (a natural event) may impose a DUTY on the occupier to inform the appropriate public authority or to take certain remedial action, while traffic lights turning red (a physical event) usually imposes a DUTY on motorists not to proceed beyond the lights until they turn green. On the creation of situations whereby a natural or physical event will impose a DUTY, see f.n.49, *infra*.

In the light of the fact that a DUTY can be created by a natural or physical event, Goble's thesis (*supra*, f.n.1) that the basic legal concept is "power", which he defined as "the capacity of a person to alter the legal status of another", and that all other legal concepts are derivatives of a "power", is clearly deficient.

⁴⁹ As the term "POWER" is used in this article solely to connote an ability of a person intentionally to impose (or annul) a DUTY (see f.n.32, *supra*), it cannot properly be used to indicate either the ability of a non-rational phenomenon or thing, or the ability of a person unintentionally, to impose (or annul) a DUTY. One can, however, identify a second kind of power-liability relationship that is akin to a POWER-LIABILITY relationship as defined in that both parties to the relationship are persons, and the person who exercises the power always does so deliberately. This relationship is antecedent to and necessarily connected with those situations in which a person is liable to be made subject to (or to be freed from) a DUTY either as a result of a purely natural or physical event or as a result of an act which is not intended to impose (or annul) a DUTY. This second kind of power-liability relationship results from the fact that situations of the kind just

A POWER-LIABILITY relationship and a resulting RIGHT-DUTY relationship may involve the same two individuals, as would be the case if X exercised his POWER in Situation B above, or they may

noted can exist, and DUTIES can thereby be imposed (or annulled), only if particular acts or natural or physical events are specified as involving the imposition (or annulment) of certain DUTIES on particular persons. The specification of such matters, it should be appreciated, must be the product of, or must at least involve, an act which is intended by the actor to create a situation of the kind under consideration and cannot be the product solely of another casual act or natural or physical event. The second kind of power-liability relationship thus concerns a relationship whereby a person (*i.e.*, the person with the power) is able to specify that a particular act or natural or physical event will impose (or annul) a certain DUTY on a particular individual (*i.e.*, the person who is under the correlative liability). It should be noted that because DUTIES are by definition requirements which the courts will, if necessary, officially recognise and support, the second kind of power can be exercised only by the courts or by a person whom the courts will, if necessary, officially recognise as having the ability to make effective specifications of the kind referred to. All powers of the second kind other than those possessed by the courts themselves thus depend for their existence on (actual or presumed) recognition by the courts.

One can, indeed, go further and state that with only one exception, namely (strict) POWERS possessed by the courts (which POWERS, like powers of the second kind possessed by the courts, are inherent in the very phenomenon or definition of courts), all POWERS must also be created by the exercise of a power of the second kind, for with that one exception all POWERS can exist only by being specifically created, and they must logically be created either by the courts or by a person whom the courts will, if necessary, officially recognise as having the ability to create POWERS (*i.e.*, to confer on others an ability intentionally to impose or annul DUTIES). As has already been stated, the relationship between a person (including by that term the courts) who is able to specify that a particular act or course of action will impose or annul a certain DUTY on a particular individual, and that particular individual, is a power-liability relationship of the second kind (see the definition in the preceding paragraph of this footnote). For present purposes the fact that the act or course of action referred to must be intended by the actor to impose (or annul) the DUTY in question is irrelevant.

Just as a (strict) POWER can either create or annul a DUTY, so too a power of the second kind can either create or annul a POWER. When a power of the second kind annuls a POWER it creates what Hohfeld would call a "disability", that is, an inability to impose or annul a DUTY (though note that for Hohfeld this term connoted an inability to alter legal relations in general: *cf. supra*, f.n.1, 55-56). The correlative of a "disability" is what Hohfeld would call an "immunity", which under the present analysis signifies the position of a person who is not liable to have either a DUTY imposed upon him or a DUTY to which he is presently subject annulled. (For Hohfeld this latter term connoted, in his own terms, a "freedom from the legal power or 'control' of another as regards some legal relation": *cf. supra*, f.n.1, 55.) A "disability" and an "immunity" are thus simply the class-complements of a

involve three individuals, only one of whom is a party to both relationships. For example, if A imposes a DUTY on B that he should act in a certain way towards C, thus giving C a RIGHT, the POWER-LIABILITY relationship involves A and B, but the subsequent RIGHT-DUTY relationship involves B and C. One person must always, of course, be common to every related pair of POWER-LIABILITY and RIGHT-DUTY relationships, and this is the person who is the subject of the DUTY involved in each pair of relationships (*i.e.*, the subject of the potential DUTY in the first relationship and the subject of the actual DUTY in the second).

It is clear that if A has a POWER to impose a DUTY on B, and if that DUTY will confer a correlative RIGHT on C, there must logically be a relationship not only between A and B but also between A and C. This relationship is often referred to also as a POWER-LIABILITY relationship, it being said that in such situations A has a "POWER" to confer a RIGHT on C, and that C is "LIABLE" to have a RIGHT conferred on him by A. This use of the same

POWER and LIABILITY respectively and are of no special importance to the analysis presented in this article. Note that an "immunity", according to both the present analysis and Hohfeld's analysis, is strictly the *state* of being immune from having a DUTY imposed upon oneself or a DUTY to which one is presently subject annulled. Hart's statement (*supra*, f.n.22), to the effect that the concept of an immunity concerns choice cannot without more be accepted as accurate.

For the sake of completion it may be observed that there is in fact a third species of power, which is an ability to confer (or annul) a power of the second kind. The "liability" which is correlative to this species of power is a liability to have a power of the second kind conferred upon one (or to have such a power which one presently possesses annulled). This third species of power is also either inherent in the very phenomenon or definition of courts or depends for its existence on (actual or presumed) recognition by the courts.

Quaere, what specific term, if any, should be used to signify the position of a person who is liable to have a DUTY imposed upon him (or annulled) as a result of either an act of an individual which is not intended to have such an effect or a purely natural or physical event? The term "LIABILITY" is clearly inappropriate (see the definition of this term in f.n.34, *supra*). Perhaps, rather than increase the number of technical terms used in legal analysis, the position in question should be signified by an express use of ordinary words. Alternatively, the correlative terms "POWER" and "LIABILITY" may be re-defined in order to comprehend the situation whereby an individual is liable to have a DUTY imposed upon him by *any* act or event. In this case appropriate distinctions would have nonetheless to be made between those "POWER-LIABILITY" relationships in which an intention to impose a DUTY is an essential element and those in which it is not. Whichever solution is adopted, for a precise analysis of DUTIES and the basic relationships that can derive therefrom, the distinction just referred to must be made.

terms "POWER" and "LIABILITY" to refer both to the relationship between A and B and to the relationship between A and C is, however, objectionable since it does not distinguish between two fundamentally different relationships, namely that which concerns the possible imposition of a DUTY and that which concerns the possible conferment of a RIGHT. It is thus a potential cause of uncertainty and confusion and should be avoided.⁵⁰

This dual use of the terms "POWER" and "LIABILITY" may also lead to a misunderstanding concerning the product of the exercise of any POWER, which is *always* a DUTY but which is not always a RIGHT. The exercise of a POWER must, by definition, create a DUTY. But whereas all RIGHTS have correlative DUTIES, not all DUTIES have correlative RIGHTS. Thus the creation of a DUTY does not necessarily also involve the creation of a RIGHT. As has already been indicated in the previous section of this article, a DUTY exists without a correlative RIGHT whenever it requires an individual to act in a way which does not necessarily involve action in relation to another person (though the action required may incidentally involve or affect another person);⁵¹ a DUTY exists with a correlative RIGHT, on the other hand, whenever it requires an individual to act in relation to another person (*i.e.*, the person who thereby has a correlative RIGHT).

⁵⁰ Probably the best way to avoid the situation in question is to restrict the simple use of the terms "POWER" and "LIABILITY" (whether capitalised or not) to signify only those legal states which concern an ability to impose (or annul) a DUTY, and the possibility of having a DUTY imposed upon oneself (or annulled), respectively. An ability to confer a RIGHT upon a person, and the possibility of having a RIGHT conferred upon oneself, should perhaps best be signified by an express use of ordinary words to this effect rather than by the introduction of new technical terms to denote these concepts.

⁵¹ Examples of DUTIES which exist without correlative RIGHTS include the various DUTIES not to possess certain items (*e.g.*, stolen goods, dangerous drugs, or offensive weapons). It is sometimes said that there are RIGHTS which are correlative to such DUTIES and that these are possessed either by the State, which created them, or by the police, who can prosecute those responsible for their breach. Such a statement is, however, fallacious; these DUTIES cannot involve correlative RIGHTS since they do not require an individual to act in relation either to the State (*qua* the Government or the population at large) or to the police, or, indeed, to any other individual. It is true that a breach of such a DUTY may be regarded as constituting an "offence against the State", and may also give the police or some other individual a POWER to prosecute or otherwise to take action against the person responsible for the breach, but these facts do not give either the State or any other person a RIGHT as defined which is correlative to that DUTY.

It follows from the last point made that although Situation B in the previous section of this article represents the only basic situation in which an individual can (legitimately) coerce⁵² the co-operation of another individual (the situation in question being that in which an individual can exercise a POWER and thereby impose a DUTY on the person with whom he seeks co-operation), it in fact represents only one of the basic situations which concern a DUTY, namely that in which the individual under the DUTY is thereby required to act in relation to another person (who thereby enjoys a RIGHT). In the second, and only other, basic situation involving a DUTY that can exist, the exercise of a POWER creates only a DUTY, *i.e.*, it creates a DUTY which does not involve a correlative RIGHT. The essential difference between these two situations is that in the first (*viz.* that outlined in Situation B), the exercise of the POWER in the POWER-LIABILITY relationship creates not simply a DUTY but a *second relationship* (*i.e.*, a RIGHT-DUTY relationship) in respect of the act with which that DUTY is concerned; in the second situation, however, the exercise of the POWER in the POWER-DUTY relationship creates simply a DUTY and no other relationship in respect of the act with which that DUTY is concerned.

A further objection to the dual use of the terms "POWER" and "LIABILITY" to comprehend both the relationship which concerns the possible imposition of a DUTY and that which concerns the possible conferment of a RIGHT is that such usage may give the impression that the courts are equally as concerned with RIGHTS as they are with DUTIES and it may thus detract attention from the fundamental⁵³ fact that the courts are primarily and essentially concerned with DUTIES and only secondarily and consequently with RIGHTS. A RIGHT exists, as has been seen, only because the courts recognise the existence of, and are prepared to support, a logically anterior DUTY which requires that a certain individual

⁵² "Coerce" in this context means simply require under threat of the legitimate imposition of a sanction on an individual in the event of non-compliance with the requirement in question. Note, in this respect, the assumption referred to by f.n.20, *supra*, that for the purposes of the analysis contained in this article the only sanction that is known and can thus be threatened or applied against an individual is that authorised by the courts.

⁵³ *I.e.*, "fundamental" at least according to the basic definitions (and particularly the definition of the "courts") upon which the analysis contained in this article is founded (see Part I of this article). Note, however, that these basic definitions are intended to represent the elements which are in fact essential to the phenomena concerned according to the common understanding of these phenomena.

(*i.e.*, the person under the DUTY) act in a particular way in relation to another individual (*i.e.*, the person who thereby has a correlative RIGHT). The practical consequence of this relationship between a RIGHT and a DUTY is that the courts can directly protect a RIGHT only by enforcing the correlative DUTY; more specifically, the courts can directly protect the interests of a person who has a RIGHT only by acting against the person who is under the correlative DUTY in such a way as will lead him to comply with it.

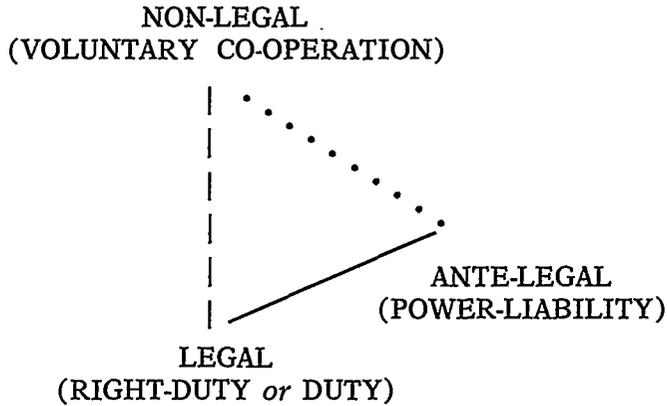
The revised figure set out above also indicates by means of the dotted line that a particular POWER-LIABILITY relationship may sometimes exist only if it is created by a (logically antecedent) relationship of VOLUNTARY CO-OPERATION.⁵⁴ This will be the case whenever the courts permit individuals to create or annul by mutual agreement⁵⁵ their own LEGAL (*i.e.*, RIGHT-DUTY) relationships in respect of any particular activity. In such situations individuals must co-operate together voluntarily in order to agree to, and thus to effect, the variation of their LEGAL relationships; in more formal terms, these individuals must enter into a relationship of VOLUNTARY CO-OPERATION in order to establish the POWER-LIABILITY relationships which the courts will recognize as being able to result in the creation (or abolition) of one or more DUTIES, and thus the creation (or abolition) of the correlative RIGHTS and the abolition (or creation) of the LIBERTIES which are the class-complement of those DUTIES. In probably the majority of cases, however, the courts are prepared to hold a POWER-LIABILITY relationship to exist without the consent of one, or even both, parties that such a relationship should in fact exist between themselves; in such cases a relationship of VOLUNTARY CO-OPERATION need not precede a POWER-LIABILITY relationship.⁵⁶

⁵⁴ Note that, as the definition of a POWER in f.n.32, *supra*, implies, a POWER, and thus a POWER-LIABILITY relationship, can presently exist only if the DUTY concerned can be imposed or annulled without the prior occurrence of either an act of any other person or an event which is outside the control of the individual who can otherwise exercise the POWER; if a DUTY can be imposed or annulled only after the occurrence of such an act or event there can presently exist only a possibility that the relevant POWER, and thus the relevant POWER-LIABILITY relationship, will come into being at some time in the future.

⁵⁵ *E.g.*, in all cases involving legally enforceable contracts which are entered into voluntarily.

⁵⁶ Some power-liability relationships of the second kind (see f.n.49, *supra*) may also be created by mutual agreement (*e.g.*, agency powers); others are, like (strict) POWER-LIABILITY relationships, deemed by the courts to exist regardless of the consent of one or both parties.

The above figure may be further revised as follows:



In this figure the vertical axis indicates the two means permitted by the courts of any legal authority structure (*i.e.*, the two legitimate means within such a structure) by which an individual can get another person to act in a particular way. He may either secure the other's voluntary co-operation; or impose a DUTY on him (if this is possible in the given situation), thus, in theory at least,⁵⁷ securing his involuntary co-operation by the threat of the legitimate application of a sanction (*i.e.*, one authorised by the courts) on either himself or another person in the event of non-compliance with the requirement that the DUTY concerns. This figure also highlights the fact that the imposition of DUTIES is a *means to an end*, *i.e.*, a means of securing the co-operation of an individual with certain requirements in order that a particular end or goal be achieved. It also highlights the fact that the imposition of DUTIES is the only legitimate means within any particular authority structure by which an individual can be coerced into co-operating with the requirements of another. The remaining features of the above figure are the same as those outlined in connection with the first revised figure set out previously.

⁵⁷ See f.n.19 and text, *supra*.