Hohfeld's Arc

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In 1913 Yale Professor Wesley N. Hohfeld published his article, "Some Fundamental Legal Conceptions as Applied in Legal Reasoning."[1] In this examination of basic legal relations, Hohfeld found the earth, air, fire and water of the law. He looked for the relationships that become the source of all others. He found a total of eight and identified two pairs of four within the eight.

This essay argues that the eight jural relations form a single structure; they are the expression of a bell curve, a range of opportunity and risk that extends from the near certainty that an event will occur to the near certainty that it will not.

This article, then, is about Hohfeld's Arc.

Identification and Organization of the Eight Relations

American law has hundreds of labels for legal relationships; each label is a shorthand term for some ratio of opportunity to risk. Hohfeld's arc makes sense of this larger and complex group.[2]

A. The Arc

Hohfeld wrote that the eight relations are the "lowest common denominators of the law".[3] Yale Professor Arthur

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[1] 23 Yale L.J. 16 (1913)(hereinafter, "Fundamental Legal Conceptions").

[2] The author has previously argued that the eight relations form a single unit. Mark Andrews, "Hohfeld's Cube," 16 Akron L.Rev. 471 (1983).
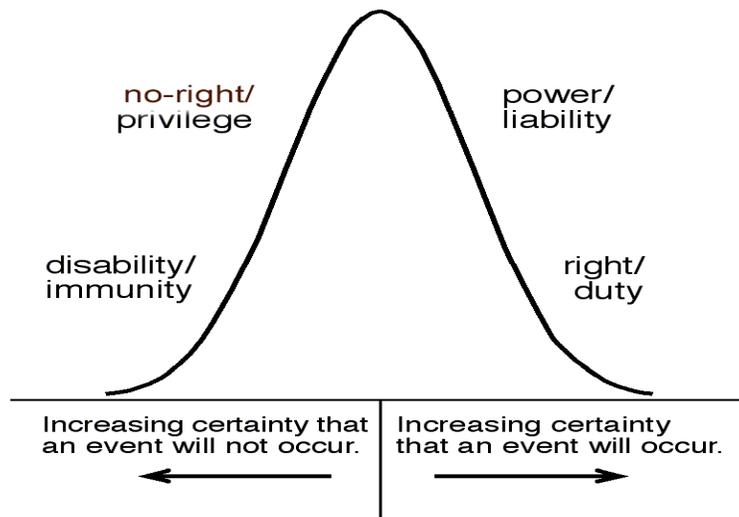
[3] Fundamental Legal Conceptions, *supra* n. 1, at 58. Hohfeld called the relations "the lowest generic conceptions to which any and all 'legal quantities' may be reduced." *Id.* at 59.

Corbin, one of the earliest defenders of Hohfeld's work, called these relations "*constant* elements, into which all of our variable combinations can be analyzed…"[4]

Hohfeld defined none of his new terms; he provided examples from case law. Corbin designed the formal definitions for Hohfeld's concepts.

Hohfeld divided the eight relations into two pairs: those which must always appear together and those which which can never appear together.

Those relations which must appear together are the correlatives. The content of Hohfeld's Arc will be shown by examining the correlatives and placing them on a normal curve.[5]

no-right/
privilege

power/
liability

disability/
immunity

right/
duty

Increasing certainty that an event will not occur. | Increasing certainty that an event will occur.

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[4] Corbin, *Jural Relations and Their Classification,* 30 Yale L.J. 226, 229 (1921) (emphasis in original) [hereinafter, "Jural Relations"].
[5] This essay argues that the eight legal relations correspond to the areas on a normal curve. Hohfeld's Arc is a statistical bell curve. This observation rests on a comparison between the characteristics of a bell curve and those of each of the jural relations. However, the final proof of this observation will require a mathematical analysis which is not offered here.

1. Certainty that an event will occur

The legal spectrum begins at theoretical certainty. At the two ends of a bell curve, the probability that an event will occur never reaches exactly one or exactly zero. The probability approaches, but never reaches, these limits. Here, "certainty" means that the likelihood of success so approaches theoretical certainty that a human decision may be safely made.

Rights and duties are the legal relations most familiar to most people. They are the legal statuses where it is most likely that an event will occur.

Right. "An enforceable claim to performance (action or forbearance) by another. [Right] is the legal relation of A to B when society commands action or forbearance by B."[6]

Duty. "[Duty] is the legal relation of a person, B, who is commanded by society to act or to forbear for the benefit of another person, A, either immediately or in the future, and who will be penalized by society for disobedience."[7]

This area fills the right end of the curve. Note that the ratio of opportunity to risk is not constant. Rather, the Right/Duty area begins where the probability is good, but not overwhelming, that an event will occur; but as the curve extends outward indefinitely, the statistical correlation between what the rights holder wants and what will actually occur as the outcome approaches positive 1.

This fluidity in the likelihood of success reflects the real decisions that people make. A change in risk appears as an adjustment in interest rates, for example.

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[6] Corbin, "Legal Analysis and Terminology," 29 Yale L.J. 163, 167 (1919) (paraphrase)[hereinafter, "Legal Analysis".
[7] *Id.*

The lender might see an opportunity in loaning money to two applicants, but still adjusts the interest rate to account for differences in two credit histories.

2. Potential of an event occurring

Closer to the middle of the spectrum, there is no event happening in the present. But the potential exists.

Power. "The legal relation of A to B when A's own voluntary act will cause new legal relations either between B and A or between B and a third person."[8]

Liability. "The relation of A to B when A may be brought into new legal relations by the voluntary act of B."[9]

Powers and liabilities are often lumped together with rights and duties in everyday speech, but there is a difference. A power signals the absence of the certainty that accompanies a right. A right to performance exists now; a power to cause performance means that performance might or might not happen.

This area begins at the top of the curve and moves toward the right. In this area, there is a lower probability that an event will occur. Some combination of factors cause the probability to fall to a point where it is imprudent or impossible to act to cause that event to happen.

A common example of a power is a "call" in the stock market. A call is the power to buy a certain stock at a certain price, say, ten dollars. The person holding the call does not have to buy the stock when it reaches ten

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8 *Id.*
9 *Id.* at 169.

dollars or any other price. For reasons of his own, the holder might exercise the call when this stock is selling at nine or eleven dollars. The chances of this stock reaching a price of ten dollars are reflected in the price of the call. This price is a function of a comparison of the promises contained in the contract against the current news in the stock market and predictions for its future.

Liabilities always accompany powers. For purposes of legal analysis, "liability" is a neutral term; it does not mean that the person under a liability has done anything wrong. In the example of stock market calls, the person who must sell her stock at ten dollars is under a liability.

Take the example of an aging adult who cannot care for himself and is placed under the care of a relative. The relative, acting as conservator, holds a power for the benefit of the incapacitated adult to handle his legal matters, such as paying utility bills or selling the car; the incapacitated adult is under a liability because he can be brought into new legal relationships without his consent.

3. Absence of both a legal duty and prohibition

What happens when the outcome is not certainly yes or certainly no? This pair of relations attracts less attention. This pair receives such little attention that there is no standard name for one of the relations; Hohfeld had to invent one.

Privilege. "The legal relation of A to B when A … is free or at liberty to conduct himself in a certain manner for the benefit of B by the command of society; and when he

is not threatened with any penalty for disobedience…"[10]

No-Right. "The legal relation of a person (A) in whose behalf society commands nothing of another (B)."[11]

Now the outcome ranges from 50/50 to very unlikely. One person is owed nothing, and the other has no duty to act. However, both remain free to act, and that quality will become an important factor later when distinguishing Privilege/No-right from Disability/ Immunity.

Privilege/No-right occupies the area from the top of the curve to the left. In this area, the probability falls below zero that an event might occur.

In everyday speech, "Privilege" often means a status that grants special benefits. There no such sense here; some commentators have suggested "liberty" as a better term.[12]

Although the Privilege/No-right relationship might seem odd or rare, it is actually quite common. A charity soliciting donations has a No-right in relation to the people being solicited, because potential donors have no legal duty to contribute.

Typically, any two people chosen at random on the street will have almost no legal duties in relation to each other. The duties that might exist, for example, are a

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[10] *Id.* (emphasis in original).

[11] *Id.* at 168. There is no standard legal term for the relationship where one person is owed nothing from another. "No-right" describes the absence of a Right (so a Privilege would be a "No-duty".) The Restatement of Property chose "an absence of right" to indicate the same idea. Restatement of Property at §2, comment. The author suggests the term "alligation" to indicate "absence of a bond".

[12] Comment, "Hohfeldian Analysis of Selected Interests in Immovable under Louisiana Law," 25 Loyola L.R. 283, 284, n. 10 (1979), citing Williams, "The Concept of Legal Liberty," 56 Columbia L.Rev. 1129 (1956).

general duty not to physically interfere with each other.

It is not obvious that this No-right status is a legal relationship. Nonetheless, one of the people in the pair enjoys protection from being forced to do anything despite urgent demands and pleas from the other side. In American law, a bystander who witnesses an accident is generally under no duty to help the victim. However harshly people might judge the bystander as an ethical matter, the victim cannot sue in court. The accident victim has a No-right in relation to the bystander. In this example, the bystander has a Privilege.[13]

4. Certainty that an event will not occur

Legal certainty returns with final pair of correlatives: Disability and Immunity. But now the certainty is that performance will not occur.

Immunity. "The relation of A to B when B has no legal Power… to affect some one or more of the existing legal relations of A."[14] Person A has an Immunity against B's wanting to change something about their legal status.

Disability. "The relation of A to B when by no voluntary act of his own can A extinguish… the existing legal relations of B."[15]

This area is on the left side of the normal curve. The statistical correlation between what one party wants and what that same party can do approaches -1. Because of some

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[13] Corbin: Person B has a Privilege when he is "at liberty to conduct himself for the benefit of B by the command of society, but he is not threatened with any penalty for disobedience." Legal Analysis, *supra* n. 6, at 167 (paraphrase).
[14] *Id.* at 170.
[15] *Id.*

combination of legal restrictions, at this end of the spectrum Person A is unable to demand performance.[16] Person B is absolutely free from any such demand.[17]

Legal disabilities are rarely given that particular name.[18] However, they are very common when society wants to protect some interest that is easily damaged. Examples include people who are too likely to surrender their assets (minors cannot make a binding contract) or who are in a poor bargaining position (borrowers covered by usury laws).

An Immunity always accompanies a Disability. Here, Person B is protected. "When Person A has no legal power to affect the existing legal relations of B, then Person B enjoys an immunity from A."[19] In many states, the rule used to be that an injured person could not sue a charity, such as a nonprofit hospital, and this protection was known as "charitable immunity."

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[16] Corbin: Person A is under a legal Disability when A cannot modify the legal relations of Person B. Legal Analysis, *supra* n. 6, at 170.

[17] I believe, but I cannot prove, that the two points marked Power/Liability and Privilege/No-right are points of inflection on the arc. Such points are where the direction of a curve changes from curving upward to downward, or vice versa. On the normal curve, these points lie one standard deviation above and below the mean.

Starting from the Right/Duty end of the arc, the curve trends upward until it reaches the point of inflection. This point marks the beginning of diminishing returns; the relationship then transforms into Power/Liability.

From the top of the curve and moving toward Disability/Immunity, the corresponding inflection point is where restrictions on behavior so overwhelm the freedom to act that the relationship becomes Privilege/No-right.

[18] As in the case of "liability", "disability" is a neutral term; it does not suggest that someone has done something wrong.

[19] Corbin, Legal Analysis, *supra* n. 6, at 170.

The United States government has sovereign immunity. No one can sue the federal government without its consent, and thus everyone in the world is under a disability from doing so.

The arc of probabilities reflects the problems of daily decisionmaking. A given legal relationship might be correctly labeled, such as Right or Immunity; but there are only eight such labels. Each of the eight areas represents a range of probabilities, and someone's decision of whether to act or not act requires an estimate of where on the normal curve the decision maker is sitting.

B. The Cube

Corbin was the first of several writers to notice the unity of Hohfeld's concepts. Corbin found that by starting from the terms "Duty" and "Power," one may arrive at the remaining six.[20] Several similar analyses each found a part of a general truth about Hohfeld's work:[21] each jural relation can be defined in terms of the others because all are part of a unified whole.

As noted, Hohfeld found that the relations divided into two sets: those which must exist together, called *correlatives*[22]; and those which cannot exist together,

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[20] Jural Relations, n. 4, at 230.

[21] Goble, *A Redefinition of Basic Legal Terms,* 35 Colum. L. Rev. 535, 535 (1935). Morse, *The Hohfeldian Place of Right in Constitutional Cases,* 6 Cap. U. L. Rev. 1, 8 n.32 (1976) (citing G. Christie, Jurisprudence: Text and Readings on the Philosophy Of Law 818, n.83 (1973). *See also* Morse, *The Hohfeldian Place of Power in Constitutional Cases, supra* n. 21, at 40 (relationship of "Privilege" and "Right"). Finan divided them into primary and secondary relations. *Presumptions and Modal Logic: A Hohfeldian Approach,* 13 Akron L. Rev. 19, 26-31 (1979).

[22] Fundamental Legal Conceptions, *supra* n. 1, at 30.

called *opposites*.[23]   Here are the two sets:

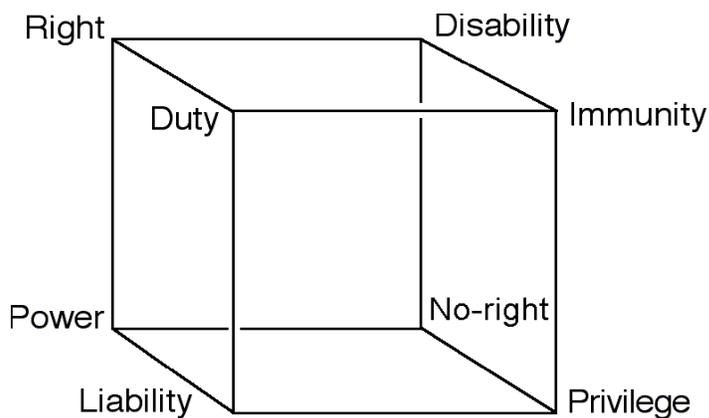   *Jural Correlatives*

      Right; Duty

      Power; Liability

      No-right; Privilege

      Disability; Immunity

   Jural Opposites

      Right; Privilege

      Power; Immunity

      No-right; Duty

      Disability; Liability

The eight terms also form two corresponding squares of opposition; these unite as a single Cube.[24]

The construction of the Cube begins as follows. Right

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[23] *Id.*

[24] Using the correlatives and opposites as a starting point, several authors have arranged Hohfeld's ideas into the traditional Square of Opposition. R.E. Robinson, S.C. Coval, J.C. Smith, The Logic of Rights, 33 U. Toronto L.J. 267 (1983); Phillip Mullock, Holmes on Contractual Duty, 33 U Pittsburgh L.R. 471, 473 (1972); Frederic Fitch, 9 Logique et Analyse 269 (1967); Stephen Hudson and Douglas Husak, "Legal Rights: How Useful is Hohfeldian Analysis?" 37 Philosophical Studies 45 (1980).

and Duty appear on two different squares, indicating correlatives.

The next pair is Privilege/No-right. Privilege is the jural opposite of Duty. In relation to Duty, Privilege lies on a diagonal, to indicate that the two statements that are contradictory. "No-Right" is the correlative of a Privilege. No-right appears on the corresponding corner of the first square.

The Cube begins to show one method of checking its validity; the placement of one jural relation results in an arrangement that is consistent with the position of another. Thus far, No-Right lies on a diagonal from Right. On a square of opposition, this position indicates that the two are contradictory. The two are indeed jural opposites.[25]

That completes the list of correlatives. But the relation of the correlative relations to the opposites is less clear; the two pairs share no terms in common. Fortunately, Hohfeld observed some connections between them.

1. Liability is related to Duty.

Hohfeld writes succinctly, "It is a liability to have a duty created."[26] He cites case law to the effect that a present Duty implies the existence of a past Liability.[27] Liability is thus the corollary of Duty and falls below Duty on the same side of the Cube.

Liability and Power now appear across from each other

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[25] Fundamental Legal Conceptions, *supra* note 1, at 30.
[26] *Id.* at 53.
[27] *Id.* at 52. Similarly, a present Right implies the existence of a past Power that was exercised to create that right. *See also* Mullock, *supra* n. 24, at 478 (noting the same relationship between Power and Right and between Liability and Duty).

on opposite sides of the Cube. This relative position
suggests that these concepts are correlatives; this is in
fact the relation between these two.

2. Power is related to Right.

When discussing the notion of legal Power, Hohfeld
cites court opinions that a Power accompanies a Right and
that Right implies the existence of a Power. He cites case
law to the effect that the notion of property involves both
a right to possession and power of disposition.[28]

The relation between Right and Power suggests that
Power is the logical corollary of Right. Power thus appears
below the term Right, where corollaries traditionally
appear.

3. Power is to Immunity as Right is to Privilege.

Hohfeld identified a third set of jural relations,
which might be called the *jural analogs.* The analogs are
important here, for they show the substantive connection
between the sets of jural correlatives and jural opposites.

The analogy permits the location of the final concept,
Immunity. Hohfeld writes:

> [A] power bears the same general contrast to an
> immunity that a right does to a privilege. A right is
> one's affirmative claim against another, and a
> privilege is one's freedom from the right or claim of
> another. Similarly, a power is one's affirmative
> "control" over a given legal relation as against
> another; whereas an immunity is one's freedom from the
> legal power or "control" of another as regards some
> legal relation.[29]

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[28] *Id.* at 45.

[29] Fundamental Legal Conceptions, *supra* note 1, at 55.
Hohfeld might have continued the analogy to cover the other

Applying the relationship of Right and Privilege, Immunity appears on the Cube above Privilege. This location suggests that Immunity and Disability are correlatives, and this is indeed the case.
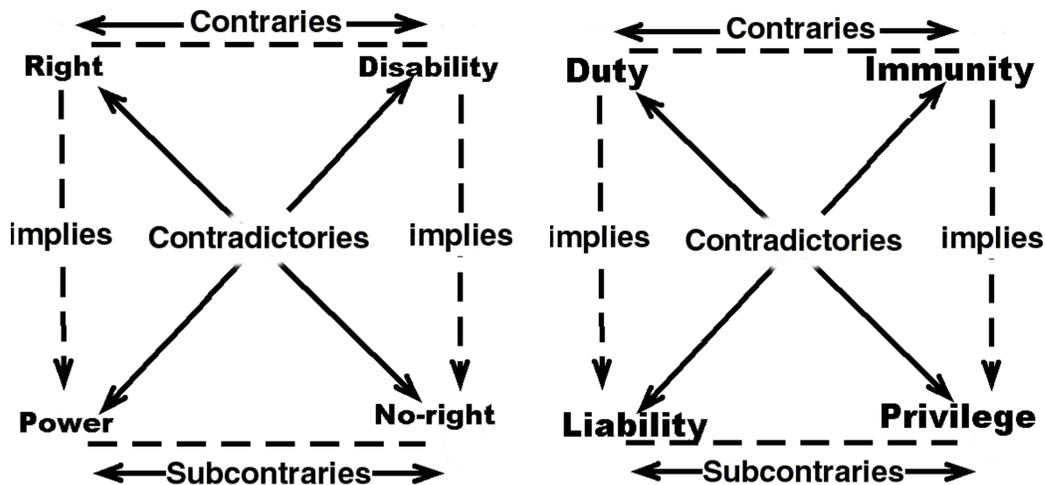
Thus, the jural analogs are:

Power:Immunity   as   Right:Privilege.
Liability:Disability   as   Duty:No-Right.

The analogs contain all eight jural relations and so bind together the two groups of Hohfeld's concepts.

This, then, is Hohfeld's Cube in the form of its two squares of opposition:

Some examples illustrate the validity of the two squares of opposition. The jural opposites appear diagonally as contradictories. The four relations where one implies another are shown on the sides.

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four ideas:

A Liability bears the same general contrast to a Disability as a Duty does to a No-Right. A Duty is one's affirmative obligation to another and one's No-Right is the absence of any obligation from another. Similarly, a Liability is one's affirmative subjection to the "control" of another in a given legal relation; whereas a Disability is the absence of any legal Power or "control" of another as regards some legal relation.

The square holds true for the contraries, which cannot be true at the same time, and the subcontraries, which cannot be false at the same time. One person cannot simultaneously have a Right to something and a Disability from ever asking for the same thing. These concepts cannot be true at the same time (although both can be false); accordingly, they appear as contraries. Disability and Immunity are similar; they cannot exist at the same time.

A person can have a Privilege to do or not do something, and yet be under a Liability to do so in the future. These two concepts can be true at the same time[30]; thus they appear as subcontraries. Power and No-right have a similar relation to each other; a person can have a No-right to demand something from another, and yet hold a Power to do so in the future.

C. The bell curve

Hohfeld's Arc is a normal curve. As such, it expresses the distribution of relations that would occur if human life were a coin toss. The law uses the bell curve to respond to human behavior and to protect or modify it as necessary. The law makes rules so as to skew the bell curve toward desired behavior.

When human behavior, the facts of the case, is compared to the law, the process is usually seen as a straightforward syllogism: (1) A person who touches another without consent is guilty of assault; (2) Person A touched another Person B without B's consent; therefore (3) Person

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[30] Although both relations cannot be false. If both Privilege and Liability were false, that would mean that the same person had a Duty to do something and an Immunity from doing the same thing.

A is guilty of assault.

The traditional square of opposition is indeed sufficient to resolve the issue when the facts are uncontested and the law is clear. Under such circumstances, it is easy to draw a conclusion with a series of simple if-then statements.

But often the relation of facts to the law is unclear. Two witnesses disagree, or an important term in a statute is left undefined. In such circumstances the theoretical certainty of a square of opposition does not exist. The resolution of the legal issue is then expressed in probabilities; thus the Arc becomes the useful tool for analysis.

Closing

Since the appearance of *Fundamental Legal Conceptions* in 1913, Hohfeld's work has attracted both followers[31] and critics;[32] a justice of the United States Supreme Court has

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[31] *E.g.,* Anderson, *The Logic of Hohfeldian Propositions,* 33 U. Pitt. L. Rev. 29 (1971); Corbin, *Jural Relations, supra* n. 4; Corbin, *Legal Analysis, supra* n. 6; Cullison, *A Review of Hohfeld's Fundamental Legal Concepts,* 16 Cleve.-Mar. L. Rev. 559 (1967); Goble, *A Redefinition of Basic Legal Terms, supra* n. 21; Morse, *The Hohfeldian Place of Power in Constitutional Cases, supra* n. 21; Morse, *The Hohfeldian Approach to Constitutional Cases,* 9 Akron L. Rev. 1 (1975); Mullock, *Holmes on Contractual Duty,* 33 U. Pitt. L. Rev. 471 (1972); Williams, *The Concept of Legal Liberty,* 56 Colum. L. Rev. 1129 (1956); Comment, *Hohfeldian Analysis of Selected Interests in Immovables Under Louisiana Law,* 25 Loy. L. Rev. 283 (1979). Hohfeld's ideas became part of the Restatement of Property: Restatement (Second) of Property §§ 1-4 (1977).
[32] *E.g.,* Husick, *Hohfeld's Jurisprudence,* 72 U. Pa. L. Rev. 263 (1924); Kocourek, *Basic Jural Relations,* 17 Ill. L. Rev. 515 (1923); Kocourek, *Tabulae Minores Jurisprudentiae,* 30 Yale L.J. 215 (1921); McMenamin, Book Review, 10 Vill.

referred to these ideas.[33] The eight relations divide and
unite the legal world. They form a coherent structure that
allows us to see each of the concepts in relation to all of
the others.

L. Rev. 407 (1965); Pound, *Fifty Years of Jurisprudence, 50*
Harv. L. Rev. 557, 570 (1937); Stone, *An Analysis of
Hohfeld,* 48 Minn. L. Rev. 313 (1963).
[33] *E.g.,* Flast v. Cohen, 392 U.S. 83, 119 (1968) (Harlan,
J., dissenting).