

Hohfeld, Deontic Logic and the Uncast Role of the Deontic Operator

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1. INTRODUCTION

A sustained interest in deontic logic has occurred relatively recently, with G H von Wright's pioneering work in the latter part of the twentieth century being regarded as the principal factor in its emergence as a serious branch of logic. Nevertheless, it has been widely recognized that precursors of a system of deontic logic can be found in the work of Bentham and Hohfeld.¹ Instructive surveys of the current status of the field can be found in Pablo Navarro and Jorge Rodríguez's book (2014) addressing the application of deontic logic to legal systems; in the wider handbook on deontic logic edited by Dov Gabbay, John Horty *et al* (2013); and in Lennart Åqvist's contribution (2002) on deontic logic within a handbook of philosophical logic. These surveys clearly bring out two features of contemporary deontic logic. The first is that there is not an agreed system of deontic logic but a number of contending systems. This in itself is not so extraordinary. One can find different systems of other logics, which have been introduced to provide further refinements or more specialized applications. However, the second feature is more unnerving. There is controversy accompanying these contending systems, over a number of points that appear fundamental to any deontic logic; a variety of paradoxes and dilemmas emerge and re-emerge as different attempts are made to confront them; to the extent that it can be doubted whether any system of deontic logic can effectively represent the practical working of norms (Åqvist 2002: 149-50; Navarro and Rodríguez 2014: 34; Hilpinen and McNamara 2013: 58-97).²

Apart from the basic issue of whether any system of deontic logic can be found to provide an adequate representation of norms as they are found in practice, the existence of different systems attempting to do so raises another issue. Could we select particular axioms in producing our own favoured system of deontic logic with the aim not of capturing the general practice of norms but of shaping a practice of norms to meet our ideological preferences or metaphysical commitments? This second issue surfaces in the suggestion initially made by Heidi Hurd (1999), which has more recently been elaborated in collaborative work with Michael Moore (2016), that selection of the right sort of axioms could result in a system of deontic logic that avoided moral combat. This suggestion is of particular interest for the present paper as the system whose axioms require

¹ Åqvist (2002:150) points out that suggestions for a deontic logic can be traced back to Aristotle. Hilpinen and McNamara (2013: 5-9) discuss early historical developments.

² The more optimistic outlook is that the problems and "the potential for real application in a variety of fields" enjoy a healthy symbiosis – Gabbay, Horty *et al* 2013: vii.

changing in order to effect an absence of moral combat is portrayed by Hurd and Moore as a Hohfeldian system. That is to say, Hurd and Moore see the Hohfeldian scheme of analysis as involving a deontic logic that permits (if not encourages³) moral combat, and consider the modification brought about by their own deontic logic as superior for denying moral combat.

The existence of moral or other normative conflict is a recurring theme within the paradoxes that beset deontic logic. Typically, an intractable problem is met when the strategy employed to deal with one problem faced in constructing a system of deontic logic yields the contradictory outcome that there exists both an obligation to do p and an obligation not to do p . Without ignoring the importance of considering the possibility of there existing quite different kinds of normative conflict (a topic we shall visit in due course), at least a superficial interest is aroused by Hurd and Moore's approach that something beyond establishing an improvement on Hohfeld might be at stake here, in attempting to create a conflict-free zone through deontic logic. The attainment of that condition would appear to be getting fairly close to what might be regarded as the ultimate goal of deontic logic: representing a system of norms that is both consistent and comprehensive.⁴ The absence of conflict is obviously required for consistency, but incompleteness can also leave conflict in its wake when the gap in normative coverage means that there is no available resource for resolving disputes between competing interests.⁵

The general status of deontic logic, the prospect of normative engineering by imposing a system of deontic logic with carefully selected axioms, the imputation of an inferior deontic logic underlying Hohfeld's analytical scheme, and the possible significance of normative conflict as an obstacle to realizing the full potential of deontic logic amount to a series of topics that might provoke intense discussion individually, and do not obviously fit together to provide appropriate subject matter to be contained in a single paper. At least not one that hopes to achieve coherence and avoid inordinate length.

My optimism in attempting to pull these topics together in the present paper is strengthened by adding another topic. This acts as a thread that ties the other topics together, or, at least, runs through them in a way that reveals some neglected insight by which each topic can be illuminated. My additional topic is the deontic operator and the general thesis that I seek to promote in this paper is that it is its own neglect that has adversely affected discussion of the other topics: the general development of deontic logic, the selective manipulation of the axioms of deontic logic, the standing of a Hohfeldian deontic logic, and dealing with conflict in deontic logic.

At the outset, I should make it clear that the understanding of the deontic operator that I shall advance here is unconventional, but I shall argue that this is a situation in which the limitations of conventional understanding call for the introduction of heterodox forces. I should also make it clear at this point that although in the course of this paper I shall seek to defend Hohfeld against some unwarranted accusations levelled by Hurd and Moore, my primary objective is not to exalt the virtues of the Hohfeldian scheme. Although a number of Hohfeldian insights will be utilized in the course of the following argument, the failure of Hohfeld to recognize a deontic operator (in the sense I shall give to it) will be regarded as a defect of his scheme.

The characterization of heterodoxy for the argument to be employed should not be misunderstood as a claim to originality. The understanding of deontic operator I rely upon is

³ "Hohfeld, by contrast, licenses moral combat." "Hohfeld's system . . . celebrates its possibility." – Hurd and Moore 2016: 41, 30. The pagination is taken from the conference paper, which is a total of 57 pages.

⁴ This includes representing the logical implications of all the authoritatively created norms of the system (Navarro and Rodríguez, 2014: 89).

⁵ Navarro and Rodríguez tend to treat these as distinct concerns (2014: 83, at n 12). It will be suggested below that they amount to two routes to the same problem, requiring the same solution.

supported by Bentham, and draws upon a number of his central observations on the sovereign will, without acceding to the prominence Bentham bestows upon the sovereign. In passing, it might reasonably be suggested that subsequent judgement of Bentham's sovereign as a primitive or unsophisticated device through which to approach the normativity of law has obstructed the reception of the valuable insights concerning normativity and deontic logic that can be found in Bentham's work.⁶

The paper proceeds after this Introduction to consider some basic features of the Hohfeldian scheme (Part 2), emphasizing the important connection between correlatives and opposites (or negations) in the Hohfeldian scheme. With this framework in place, we next examine Hurd and Moore's attempt to construct an alternative deontic logic to Hohfeld (Part 3), revealing an unfounded move at the point of creating their alternative in suggesting that a different deontic analysis can be established through a bifurcation of the relationships between the concepts in the Hohfeldian scheme. Two related issues emerge here for further discussion: the understanding of moral or normative conflict, and the potential significance of the deontic operator in addressing concerns over such conflict.

In order to explore these issues it is first necessary to set out an appropriate understanding of the deontic operator, which is undertaken in Part 4. This involves three key steps. First, I argue that what are conventionally regarded as distinct operators in deontic logic (obligation, prohibition and permission) can more conveniently be treated as a uniform operator. Secondly, I point out the consistency of this approach with the basic features of the Hohfeldian scheme considered in Part 2, but draw on Bentham's "logic of imperation" to fully substantiate a scheme involving a uniform deontic operator. And thirdly, I illustrate the resources provided by a uniform deontic operator to engage with issues of conflict, by drawing attention to two necessarily conflict-free locations under the control of a uniform deontic operator.

The following Part 5 then picks up the subject of moral combat or normative conflict. We commence by looking at its treatment by Hurd and Moore and then expand on this to suggest a rough typology of normative conflict. At this point, it is possible to see the significance of a deontic operator in addressing conflict. However, I shall not suggest here that an appreciation of the role of a deontic operator is sufficient to dispel normative conflict. Rather, I shall point to the expectation of conflict in a working normative system through the different effects of inconsistency and incompleteness. A further important role for the deontic operator then emerges in relation to conflict: a dynamic role in dealing with and resolving conflict within a normative system.

The concluding Part 6 reflects on some of the implications of the understanding of the deontic operator that has been proposed in this paper. Notably, there are implications for an assessment of Hohfeld's scheme. The other implications tentatively discussed here relate to the general aspirations for the field of deontic logic.

⁶ That is not to say that there has been no enthusiasm to regard deontic logic from an imperatorial perspective. See Åqvist (2002:154) for endorsement of "the scarce attempts in the literature to construct logics of commanding". A hostile attitude to imperative logic is displayed in Hansen 2013. I shall attempt to accommodate Hansen's objections in Part 4.

2. BASIC FEATURES OF HOHFELD'S SCHEME

Hohfeld's analytical scheme⁷ is well known for its depiction of eight "fundamental legal conceptions" arranged in pairs of correlatives. Less often remarked upon is the relationship of opposite or negation by which the legal conceptions can be arranged, which was an equally important part of Hohfeld's analytical enterprise. It is worth pausing to obtain a clear grasp of the interaction between these two sets of relationships as they affect the conceptions and the positions of the parties that these conceptions represent.⁸ For Hohfeld, the setting in which the parties were to be found was a legal dispute before the courts.⁹ This too should be regarded as a basic feature of Hohfeld's analytical scheme, and can be taken as being critical in regarding the nature of legal rights from a Hohfeldian perspective (Halpin 2017b). For present purposes, our interest in the setting of a dispute, and representing the opposing positions of the parties, will be limited to showing how the resolution of those conflicting interests bears upon our understanding of deontic logic.

Hohfeld had two very clear aims for his analysis of fundamental legal conceptions and the jural (or legal) relations in which they were established. First, the conceptions were supposed to provide a definitive classification of the four different types of legal rights held by parties, which had been found in a state of muddled confusion created by the indiscriminate use of a single term, "right".¹⁰ So, Hohfeld provides us with:

- (1) *X*'s **claim-right** (or, simply, **right**) to the conduct of *Y*.
- (2) *X*'s **privilege** (or, **liberty**) to engage in his or her own conduct.
- (3) *X*'s **power** to change a legal relation of *Y*.
- (4) *X*'s **immunity** against having a legal relation of his or her own changed by *Y*.

The parenthetical synonyms in (1) and (2) have subsequently gained wider currency in the discussion of Hohfeld's scheme, and we shall follow the commonly preferred usage below.

Secondly, these four types of rights were supposed to assist in clarifying the practical legal positions of the parties to a legal dispute,¹¹ without which there would be no clear understanding of what precisely was at stake between the parties.¹² To further this aim, the four types of rights had to be linked with the subordinate positions of the parties over which they are exercised, within a legal relation. Each legal relation is constituted by the correlative relationship formed from a dominant position (one of the four types of right) together with its subordinate position, so:

⁷ References throughout this paper are to the book version of Hohfeld's work (Hohfeld 1919), a republication after his death of his two seminal articles: Hohfeld 1913 (this article was sufficient to establish Hohfeld's analytical scheme), and his subsequent article, expanding on certain points introduced in the first, Hohfeld 1917.

⁸ This summary is adopted from Halpin 2017b & 2017c.

⁹ The setting of a dispute does not depend on an actual dispute arising before the courts. The common practice of expounding the law in terms of hypothetical disputes suffices.

¹⁰ Hohfeld (1919: 35-36).

¹¹ The setting of "judicial reasoning" presupposes a legal dispute. See also *ibid.* at 26 ("the solution of practical, everyday problems of the law"), 36 ("application in concrete cases"); 63 & 66 ("the solution of concrete problems of litigation").

¹² *Ibid.* at 35-36 ("inadequacy and ambiguity of terms unfortunately reflect, all too often, corresponding paucity and confusion as regards actual legal conceptions"), 43 ("observed by the very indefinite and rapidly shifting meanings with which the term 'right' is used").

- (A) *X* has a **right** to the conduct of *Y* and *Y* is under a **duty** to perform that conduct.
- (B) *X* has a **liberty** to engage in conduct and *Y* has **no-right** that *X* refrain from it.
- (C) *X* has a **power** to change a legal relation of *Y* and *Y* is under a **liability** to have that legal relation changed.
- (D) *X* has an **immunity** against having a legal relation changed by *Y* and *Y* has a **disability** to change it.

The correlativity between dominant and subordinate positions in every case is demonstrated by their interdependence, by the fact that each may be fully explained in terms of the other. *X* has a right against *Y* over specific conduct of *Y* just when *Y* is under a duty to *X* to perform that specific conduct; *Y* has a duty to *X* to perform specific conduct just when *X* has a right against *Y* over that specific conduct of *Y*. And so on, for liberty/no-right, power/liability, and immunity/disability.¹³

However, the full capacity of Hohfeld's scheme to clarify what is at stake in a legal dispute depends also on another relationship he identified between his fundamental legal conceptions (or the legal positions they represent). One of the four correlative relations, (A), (B), (C) or (D), may be used to express precisely what is being claimed by one party in a legal dispute, but if it is a dispute we also need to know what is being denied by the other party. This requirement could have been met by placing simple negations of the first party's claims in the mouth of the opposing party. *X* claims a right over *Y*'s conduct; ie, that *Y* owes *X* a duty. *Y* responds by denying *X*'s claim: *X* has no-right over *Y*'s conduct; ie, *Y* owes no-duty to *X*. Hohfeld's scheme became a little more elaborate at this point in talking of relationships of "opposites" between the legal positions.¹⁴

Considering the precise nature of a Hohfeldian opposite or negation¹⁵ would take us into one of the more technical aspects of Hohfeld's scheme, which happily need not detain us here.¹⁶ The key point being made by Hohfeld is that if one party to a legal dispute is claiming what can be represented by one of the four correlative relations, (A), (B), (C) or (D), then the position of the opposing party can be represented by an alternative from these relations, described as its opposite or negation. Specifically, a claim in the form of (A) will be denied by making a claim in the form of (B), with due adjustment for the party who is now dominant; and similarly for (C) and (D). To take the former case,¹⁷

The denial (or "opposite") of an (A) claim by X –

X has a right to the conduct of Y and Y is under a duty to perform that conduct

is a (B) claim by Y –

Y has a liberty not to engage in that conduct and X has no-right that Y perform it.

And similarly for the latter case,¹⁸

¹³ *Ibid.* at 36, 39.

¹⁴ *Ibid.* at 36.

¹⁵ *Ibid.* at 39, Hohfeld casts his opposite as a "mere negation".

¹⁶ The issue is not pertinent to our present concerns as it does not affect the common understanding that a Hohfeldian liberty involves the negation of a duty, which is enough in order to proceed with the elementary application of his scheme.

¹⁷ More fully, the claim and denial, could also be found the other way round: The denial (or "opposite") of a (B) claim by *X* – *X* has a liberty not to engage in particular conduct and *Y* has no-right that *X* perform it – is an (A) claim by *Y* – *Y* has a right to that conduct of *X* and *X* is under a duty to perform that conduct.

¹⁸ Again more fully, the claim and denial, could also be found the other way round: The denial (or "opposite") of a (D) claim by *X* – *X* has an immunity against having a particular legal relation changed by *Y* and *Y* has a disability

The denial (or “opposite”) of a (C) claim by X –

X has a power to change a legal relation of Y and Y is under a liability to have that legal relation changed

is a (D) claim by Y –

Y has an immunity against having that legal relation changed by X and X has a disability to change it.

Hohfeld (1919: 38-39) himself describes the relationship of opposite as occurring between the fundamental legal conceptions or individual positions (a liberty is the opposite of a duty, etc.), but since these cannot exist outside of their correlative relationships, a fuller representation, as given here in (A)-(D), requires the legal relations to be mentioned.¹⁹

These two core aspirations for Hohfeld’s scheme stand out immediately and unequivocally. His analytical scheme purports to be capable of providing clear distinctions between different legal positions, and then to use the differentiated positions to clarify the specific point of conflict between parties to a legal dispute. It also follows that the resolution of that dispute will necessarily be expressible in terms of a Hohfeldian relation, since judgment will favour the relation proposed by the one party or the opposite relation argued for by the other party.

3. HURD AND MOORE’S ALTERNATIVE SCHEME

The technical basis for the alternative scheme of analysis proposed by Hurd and Moore (2016) is to be found in their early separation of the treatment of a liberty (privilege) from the treatment of a right, within two distinct “quads”, that is, the tables depicting both their correlatives and opposites (negations) (2016: 7). This is shown below as Figure 1. As they themselves comment, at this stage the two quads “look pretty similar”. In fact, it appears that what we have is a simple switch between the left-hand and right-hand sides of a common set of relations to produce the two quads, so as to change the top left-hand side to the position that is being given prominence as the dominant position. This is wholly compatible with the portrayal of the basic features of Hohfeld’s scheme in Part 2.²⁰ It is another way of representing the different positions within a legal dispute when one side claims an (A) relation and the other side a (B) relation.²¹ In this situation, it should be noted that not only the dominant position but also the dominant party changes at the top left-hand corner. The former subordinate duty holder in the first part of the diagram becomes the dominant privilege (liberty) holder in the second part.

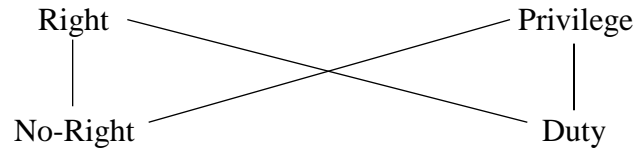
to change it – is a (C) claim by Y – Y has a power to change that legal relation of X and X is under a liability to have that legal relation changed.

¹⁹ Hohfeld referred to the conceptions themselves as “the lowest common denominators” (1919: 63-64) but no single conception could exist for Hohfeld without the presence of its correlative within a legal relation, so that it is the relations and not the conceptions that form the atomic particles of law in the Hohfeldian scheme (to employ another metaphor), with the two correlative conceptions in each relation amounting to subatomic particles (to extend the image further).

²⁰ It is, however, somewhat unusual in using the vertical lines to depict opposites and the diagonal lines to depict correlatives. Usually these are found the other way round in diagrammatic representations of Hohfeld’s scheme.

²¹ Above, text following n 16.

For Claim Rights:



For Privileges:

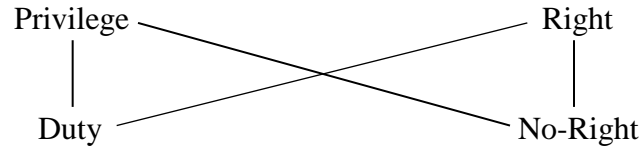


Figure 1: Hurd and Moore's preliminary table for rights and liberties (privileges)

Seen in this light, one can question the need for the two quads in the diagram. One could more concisely say that the left-to-right reading of the upper part of the diagram gives the dominant position to the right, and the right-to-left reading the dominant position to the privilege (liberty).

However, Hurd and Moore are obviously motivated to keep the two dominant positions portrayed quite separately, notwithstanding the point made in Part 2 that they can appear on opposing sides of the same legal dispute. The separation strategy is evident in Hurd and Moore's subsequent discussion (2016: 19) of Hohfeldian correlativity, where they see Hohfeld making "two distinctive claims of correlation": the one between right and duty, and the other between liberty (privilege) and no-right.

It is difficult to see how distinctive claims of correlation fit into the common presence of each correlative in a legal dispute between the same parties. And, moreover, when we grasp that, for Hohfeld, the occurrence of one correlative relationship in a legal dispute is the opposite or negation of the other. That process of producing opposite or negation clearly involves a movement of negation between the positions: right to no-right; duty to absence of duty, which is how Hohfeld regards a liberty (privilege). What room is there then for introducing a difference in the relationship of correlativity that links these positions in each case? That would add something else to the process of simple negation portrayed by Hohfeld. Something else that cannot be found in Hohfeld's own writing on the correlative relationship.

Part of the case for subjecting the correlative relationship to greater scrutiny is to examine its credentials within deontic logic. Hurd and Moore suggest (2016: 19) that whereas the relation of opposition (negation) between duty and privilege (liberty) can fit into standard systems of deontic logic,²² this is not the case for the correlative relationship(s). This does raise a significant point, but one that is capable of being answered without introducing a bifurcation into the relationship of correlativity itself.

The answer consists of two parts. The first is to indicate that the other party to the legal relation connecting right and duty, or liberty and no-right, follows the duty or liberty holder around during the process of negation: as the fortunes of the one change from subordination (duty) to dominance (liberty), the fortunes of the other necessarily change inversely from dominance (right) to subordination (no-right). So, if the duty-liberty change can be reflected in deontic logic, so too

²² Recall that in standard Hohfeldian analysis liberty/privilege is just the negation of duty, and could be referred to as no-duty [strictly, no-duty not]. (Why it wasn't is another story (Halpin: 1985) that need not detain us here.)

can the right-no-right change. This is more than a case of merely mapping the latter onto the deontic logic (Halpin 2003). The presence of the former within the deontic logic opens up space for the latter, which is necessarily connected to it, within the same logic.

The second part is to probe the necessary connection, which is depicted by the relationship of correlativity. Hohfeld famously refused to be drawn on this, being content to illustrate the correlative relationship (Hohfeld 1919: 36) rather than expound it. There is some suggestion that the relationship is derived from the mutually defining qualities of the conceptions found in the relationship, which is linked by Hohfeld to their fundamental status in not being further definable beyond their interdefinability at that fundamental level. *X* has a right against *Y* over specific conduct of *Y* just when *Y* is under a duty to *X* to perform that specific conduct; *Y* has a duty to *X* to perform specific conduct just when *X* has a right against *Y* over that specific conduct of *Y*; and so on (Hohfeld 1919: 36, 39).

Hohfeld's approach is not entirely satisfactory. Consider the analogy of the interdefinability of employer and employee within a relationship of employment between two parties. The parties may be in a relationship of employer-employee, or a relationship of not-employer-not-employee. The logic of employer/not-employer for the one party necessarily implicates the status of employee/not-employee for the other party. Employer and employee are interdefinable. Yet the correlative relationship of employment illustrated here contains something more than the positions of the two parties. It refers to something that makes the two positions possible: the provision of a job (or not).

The job provision (or its absence) is itself not contained within the employment relationship: the status of being given a job differs from the status of working in a job. But it is required to make sense of the employment relationship which connects employer and employee together. However we expound this correlative relationship of employment, it is unlikely that we will be looking for *two* correlatives so as to account for the different statuses found in employer-employee and not-employer-not-employee. Having established the one we can move to the other through a process of simple negation, *and this includes any further element introduced into our understanding of the correlative relationship*. So, if we settle on a further element of being given a job, this element will undergo simple negation in the correlativity found between not-employer-not-employee as opposed to employer-employee.

The corresponding expectation for Hohfeld's relationship of correlativity is to find something in its fuller exposition that actually explains the imposition of right/duty status on the parties (or its negation, no-right/liberty status). We respond to this expectation below in Part 4, where it is suggested that the deontic operator fills out the relationship of correlativity. We also reinforce there the lack of a need for two distinct types of correlation, in examining the workings of a uniform deontic operator.

Hurd and Moore exploit the suggestion of a differentiated correlativity in Hohfeld's scheme as a prelude to proposing an altogether novel relationship of correlativity, so as to replace the liberty-no-right relationship²³ with a liberty-duty relationship. This move, described as "varying the content of correlative relata" (Hurd and Moore 2016: 29, 35), involves correlating *X*'s liberty (privilege) to engage in conduct with *Y*'s duty not to interfere with that conduct. The liberty (privilege) is then renamed as a permission to accommodate this switch in relationship (Hurd and Moore 2016: 38). The process of renaming is accompanied by the dismissal of the prior

²³ The (B) relation in Part 2.

Hohfeldian liberty (privilege) within Hurd and Moore's²⁴ scheme, so as to deliver an alternative analytical scheme professing an alternative deontic logic (Hurd and Moore 2016: 38-40), centred on the new permission-duty relationship.

The prize promised for making this switch is the avoidance of moral combat, as a matter of logic. There is then a further question as to which system of logic is preferable as reflecting the presence of normative conflict or its absence in the reality of the life we live (Hurd and Moore 2016: 41). Hurd and Moore's subsequent discussion is designed to demonstrate that a conflict-free experience can be a reality. The fruit of this extensive discussion is to secure the absence of moral combat and to vindicate the system of deontic logic that rules it out (Hurd and Moore 2016: 55).

An obvious question to press at this point is to ask what has happened to the rest of Hohfeld's scheme: the right-duty correlative that was left behind at the stage of correlative bifurcation. This presumably remains intact and unaffected by the innovation introduced by Hurd and Moore's scheme affecting the liberty-no-right correlative.²⁵ If so, it poses a couple of awkward problems.

The problems arise if we allow that there may be disputes over whether a particular liberty/permission has been recognized with its attendant duty-protection. There is nothing in the Hurd and Moore scheme to disallow this; the scheme provides for the absence of such protection in recognizing the possibility of negation; the basic insistence of the scheme is that where the liberty/permission is present the duty-protection must also be present. Yet this dispute, which can be portrayed as being over the presence or absence of a duty/protection, is capable of being rendered within Hohfeldian logic²⁶ as a dispute involving a right-duty type (A) relation (discussed in Part 2). *X* has a right to the conduct of (non-interference by) *Y* and *Y* is under a duty to perform that conduct (by not interfering).

Of course, if the dispute is lost by the party, *X*, seeking protection, then we need to be able to convey the opposite position that had been argued by *Y* in the dispute, as the outcome of the dispute. Conventionally, this would be conveyed as a type (B) relation: *Y* has a liberty not to engage in that conduct (of non-interference) and *X* has no-right that *Y* perform it (by not interfering). The first problem for Hurd and Moore is that all of this appears to be capable of being captured adequately under the Hohfeldian scheme, so questioning the need for their alternative scheme. The second problem is that if they nevertheless insist on dismissing the Hohfeldian analysis and replacing it with their own, it is not clear that their own analysis does adequately capture what is going on here.

If we adopt the Hurd and Moore liberty/permission to convey the winning position of *Y* in the above dispute then this conveys that *Y* enjoys a permission to not engage in the conduct of non-interference, that is to say, a permission to engage in the conduct of interference, and consequently (according to the Hurd and Moore scheme) *X* has a duty protecting that permission of not interfering with *Y*'s conduct of interference. But imposing this duty on *X* has nothing to do with what the dispute between *X* and *Y* was about: it was about whether *Y* could be prevented from interfering with *X*'s liberty/permission, not whether *X* could be prevented from interfering with *Y*'s liberty/permission. So substituting the Hurd and Moore scheme here provides us with material

²⁴ The scheme is referred to as Hurd's within Hurd and Moore 2016, due to its provenance in Hurd 1999, but by now its exposition is being undertaken as a joint enterprise.

²⁵ In fact, Hurd and Moore (2016: 56-57) leave open a role for Hohfeld's liberty-no-right relation, in dealing with "state of nature cases" and sporting violence.

²⁶ Both in its conventional form and in its residual state after the Hurd and Moore innovation.

that is not relevant to the dispute being analysed, in contrast to the Hohfeldian analysis which is capable of accurately representing the concerns of the dispute.

If we do want to get into that other dispute over whether *X* could be prevented from interfering with *Y*'s liberty/permission that may well involve matters that were not germane to the first dispute where it was being contested (unsuccessfully) that *Y* could be prevented from interfering with *X*'s liberty/permission. If the first dispute involved an unsuccessful claim by *X* to enjoy a right of way (liberty/permission) over *Y*'s land so imposing a duty on *Y* not to interfere with the exercise of that liberty then some degree of interference by *Y* is permitted: the use of reasonable force to eject *X*. This liberty/permission of *Y* to use reasonable force cannot be treated as itself creating a similar duty on *X* not to interfere with that use of reasonable force to eject him. *X* can respond effectively to curtail the use of reasonable force by *Y* by simply agreeing to leave *Y*'s land.

This suggests that a more finely grained analysis of disputes over duties and liberties is required than can be provided by separating out the set of liberties as permissions and insisting on a necessary correlative connection between them and protecting duties. More generally, the suggestion of correlativity or “systematic covariance” (Hurd and Moore 2016: 29) between liberty/permission and duty is vulnerable to an objection in the other direction. The presence of a duty not to interfere in *Y* with *X*'s conduct does not entail that *X*'s conduct is exercised under a liberty/permission. For example, *Y* may be under a duty not to interfere with *X*'s uttering loud defamatory statements about him (no self-help remedy for defamation). That does not provide *X* with a liberty/permission to defame *Y*.²⁷ This is far from being an isolated example. It illustrates a commonly encountered set of cases where the law prevents interference by the aggrieved party with a forbidden activity.²⁸ To provide another example, you wrongfully take occupation of my property in my absence; the law prevents me from entering the property and using reasonable force to eject you (in contrast to the situation where you trespass on the property I am occupying). I am unable to interfere with your occupation but that does not give you a liberty/permission to occupy my property.

To conclude this Part with an assessment of Hurd and Moore's alternative scheme as being technically unconvincing and practically unhelpful would not do justice to the intellectual resources expended on the scheme and the significant challenges to Hohfeld opened up by their alternative perspective. The following two sections aim to engage more fully with these challenges.

4. THE DEONTIC OPERATOR

The conventional way of referring to the basic normative notions of deontic logic (obligation, prohibition and permission²⁹) is as deontic operators or deontic modalities (Navarro and Rodríguez 2014: 24). Yet this suggestion of a plurality of operators is misleading in that the three so-called operators are mutually reducible to each other within standard systems of deontic logic. As

²⁷ Hurd and Moore (2016: 48) discuss this scenario, but duck the issue by treating it as a hypothetical that should not be realized (when it represents actual law), and by deflecting attention to third parties away from the position of the person being defamed. As the continuation of the main text points out, the defamation scenario is far from being an isolated case.

²⁸ That the aggrieved party might have grounds for an action before the courts to terminate the forbidden activity, or to seek compensation, is another matter entirely.

²⁹ This is the general sense of permission, as found in Bentham, rather than the technical sense introduced by Hurd and Moore.

Navarro and Rodríguez (2014: 24) illustrate it, “‘Paying taxes is obligatory’ is equivalent to saying ‘Not paying taxes is prohibited,’ and to saying ‘Not paying taxes is not permitted.’”

The move from this observation to a suggestion for a uniform deontic operator has not been readily made, and perhaps understandably in that each of the three notions captures a quite distinct practical normative outcome and there is no practical advantage in reducing any two of them into the third. Nor is there any obvious basis for elevating one of them in particular over the other two.

The interdefinability of obligation, prohibition and permission is reminiscent of the interdefinability of positions within Hohfeldian correlatives, such as right and duty, encountered in Part 3. Indeed, I want to suggest in the present Part that these two puzzles have a common solution.

Sticking with the main puzzle for the moment, this too can be expressed within Hohfeld’s scheme, where a duty may have a positive or negative content so covering obligation and prohibition, and a liberty in either guise (liberty to, or liberty not to) can cover the two forms of permission and be reduced to the negation of the appropriate duty (Halpin 2003).³⁰ But that is where the material provided by Hohfeld runs out: the puzzle can be found within his scheme of analysis but not solved there.

The key to unlocking the puzzle is to find a further notion that can be linked to the basic normative notions of obligation, prohibition and permission, and which somehow accounts for their mutual interdefinability. Taking law as a paradigm normative system when confronting normative puzzles has advantages due to the greater institutional resources it provides. And even if the solutions found in that richer environment are not directly transferable to other normative domains, the analytical findings from law may prove helpful in approaching manifestations of normative puzzles found elsewhere (Halpin 2017b).

At the heart of the paradoxes and dilemmas of deontic language, lies a perception that logic can only apply to propositions: to statements in a language that can be accounted true or false. So, let us start with the use of language in law. Law’s use of language differs from that found elsewhere, such as in novels or newspapers; the particular quality of legal language (which law has in common with other normative systems) is that it requires conduct (Halpin 2013). Any legal statement can be expressed in terms of a requirement of conduct.³¹

We can then suggest that Requirement of Conduct might serve as a common deontic operator ranging over the three modalities of command [O], prohibition [PH] and permission [P]³². Taking R to represent this operator as “required conduct” and p to represent any conduct, we then obtain:

$$\begin{aligned} O &=_{\text{def}} R p \\ PH &=_{\text{def}} R \neg p \\ P_{\text{full}} &=_{\text{def}} \neg R p \wedge \neg R \neg p \quad \text{comprising} \quad P_{\text{to}} =_{\text{def}} \neg R \neg p \quad \text{and} \quad P_{\text{not to}} =_{\text{def}} \neg R p \end{aligned}$$

³⁰ See also Part 3, text accompanying n 23.

³¹ This includes legal statements that confer powers as well as those that impose duties. In the former case the legal statement sets out what conditions are required to be met in order for a power to be exercised. To simplify matters for present purposes, I do not embark on a full treatment of power conferring laws here.

³² I take the primary case of P to represent a full permission here; ie, a permission to do p and a permission not to do p . I have argued elsewhere (Halpin 2003) that this is a significant normative position, unlike the half-permissions of which it is composed. The argument has not found favour with Luis Duarte D’Almeida (2016), and for those sharing his concerns the representation of P above can be simply taken to cover separately “P to” (as $\neg R \neg p$) and “P not to” (as $\neg R p$).

Note that this leaves the interdefinability of O, PH and P intact, as before, but conjoins them in a common deontic operator R.

The other advantageous feature of adopting R as taking required conduct to be underlying the three modalities is that it points beyond the modalities themselves to an external source for the requirement. To say that conduct is required provokes further investigation of who has required it and for what purpose. A full understanding of the deontic operator, accordingly, opens up where the common source is to be found so as to provide a uniform normativity, expressed in the three modalities, across a particular normative system. This provides an important opportunity to break out of the interdefinability of the modalities themselves in seeking a grounding for their interconnected normativity, so avoiding the confusion arising in promoting rights-based duties or duty-based rights.³³

An early template for R is to be found in Bentham's approach to deontic logic. Significantly, Bentham (2010: 21-22) speaks not of deontic logic but of a "logic of imperation", making the sovereign will the common source for the deontic modalities, which are then viewed as different "aspects" of a single will (Bentham 2010: 139-40). These aspects turn out to be precisely the deontic modalities of command, prohibition and permission.³⁴ To speak of aspects here may be a little confusing if aspects are taken to indicate quite distinct operations of the will. Rather they should be understood as different outcomes (with their implications) of a particular expression of a single will: the sovereign can will on a particular occasion that conduct is required, that the absence of conduct is required, or that neither the conduct nor its absence is required. Whereas different aspects of something can coexist, these different outcomes of the will are incompatible. In this sense it is the logic of imperation that underpins the different modalities of a deontic logic. More will be made of this important point shortly, but first it is necessary to consider an objection raised by Jörg Hansen (2013) to considering a logic of imperatives at all.

The gist of Hansen's objection is that the imperative form is not susceptible to logical treatment. As he puts it in the concluding part of his essay (Hansen 2013: 186), "the idea of a logic of imperatives has been a *fata morgana*, leading us to ever more futile attempts to explain inference relations between imperatives". For Hansen, it is rather the case that deontic logic can sensibly be regarded as a logic about imperatives (Hansen 2013: 185-86), that is to say, normative material may appear in the form of imperatives, but the imperative form does not provide any basis for drawing logical inferences – which must be supplied by a deontic logic.

Hansen's concerns may well be sound in presenting a case against a logic of imperatives, but a logic of imperatives is not the same thing as a logic of imperation. The latter does not seek to draw logical inferences from imperatives, nor to find logical inferences between imperatives (which are the things Hansen objects to). What a logic of imperation does is to reveal the logical differences (what can be inferred to be compatible or incompatible) between different imperatorial states – different aspects of the will, on a particular matter.

As for the relationship between imperatorial logic and deontic logic, when the sovereign will takes the role of the deontic operator, R, that I have suggested here, imperatorial logic fills out the modalities of deontic logic with a common normative source, so providing an external basis for their internal interdefinability. The uniform deontic operator can similarly be called upon to solve the puzzle of the interdefinability found in Hohfeldian correlatives. As the provision of a job

³³ Halpin (2003: 54) considers this confusion in relation to Raz's rights-based and Kelsen's duty-based approaches.

³⁴ Bentham commences with four aspects but given his recognition that the aspects are always found in practice in pairs they produce the three modalities given above. For further discussion, see Halpin 2003: 48-50.

creates the correlative relationship of employer and employee, so too the issuing by a deontic operator of an authoritative requirement of conduct affecting the two parties creates the correlative relationship of right-holder and duty-holder (and so on) between those parties within the normative system over which that deontic operator holds sway. And, given that it is a uniform deontic operator extending over all the deontic modalities found within Hohfeld's correlatives, there is no basis for finding a correlative bifurcation, as proposed by Hurd and Moore.

The ability to identify where a particular deontic operator does hold sway locates the scope of a particular application of deontic logic to the normative system in which the deontic operator in the form of the sovereign will for that system is found, to continue with Bentham's terminology. However, the insights provided by Bentham's early template for a deontic operator do not bind us to his general theory of law, and to the requirement of a sovereign as Bentham understood it. One could still maintain a logic of imperation for a deontic operator, if it were identified not with Bentham's sovereign but with a more sophisticated legal institutional apparatus, such as advanced by Neil MacCormick (2007).

The recognition of a uniform deontic operator also has implications for dealing with normative conflict. It does not follow that there can be no conflicting norms within a normative system in which a uniform deontic operator has been recognized. To start with a simple point, a common normative source does not guarantee that no conflicting norms will be issued from it. And the interactions between norms in a sophisticated legal system raise more complicated points of conflict than that. However, the recognition of a deontic operator, and the relevance of the associated imperatorial logic, does create two conflict-free locations. The one occurs at the point of issuing a norm on a particular matter, where the logic of imperation rules out incompatible imperatorial states that would give rise to normative conflict on that matter at that time.³⁵ The second occurs at a point where the sovereign, or the institutional apparatus of the law, is concerned to rule on the application of all existing normative material (including any conflicting norms) within the normative system to the disposition of a particular matter. There too imperatorial logic renders inconsistent outcomes impossible. How significant these two conflict-free locations might prove to be can only be assessed after some discussion of the nature of normative conflict.

5. MORAL COMBAT AND NORMATIVE CONFLICT

The occasions of moral combat considered in Hurd's earlier book and her subsequent essay with Moore focus on interpersonal conflict between two agents whose permitted actions come into conflict, rather than the more obvious case of normative conflict where one agent is confronted with two conflicting obligations, both an obligation to do *p* and an obligation not to do *p*. Moore and Hurd actually take the line that Hohfeld's scheme (as they understand it³⁶) does not allow for the former case of conflict, but it is apparent from their discussion that the particular case of "moral combat" they are concerned with falls under a general rejection of other cases of normative conflict.

As an effort to prevent moral combat, Hurd introduces "the correspondence thesis", which states quite simply that if one person has a liberty/permission (a positive right) to do something then it is protected by a corresponding (correlative) duty on another party not to interfere with that

³⁵ Sadly, this does not prevent inconsistency and conflict occurring within a number of normative pronouncements issued in quick succession – as in different provisions of the same statute.

³⁶ As opposed to Matt Kramer's (1998) understanding, mentioned by Hurd and Moore (2016: 30 n 39).

liberty. Accordingly, being under a duty not to interfere, the other party cannot assert a liberty to do anything that amounts to an interference, and so cannot maintain a conflicting liberty to do so. Hence no conflict, or “combat” between conflicting liberties.

In order to assess this argument, it is helpful to put it within a wider discussion of cases of normative conflict, which can roughly be said to encompass four paradigm situations:

(1) A system of norms puts one party under conflicting obligations, to do p and not to do p . For example, under X 's contract with Y he is under an obligation to let his house to Y with vacant possession, while under a requisition order subsequently made by a military commander X is under an obligation to allow troops to take possession of his house.

(2) A system of norms empowers a party to undertake conflicting obligations with two or more other parties. For example, X makes a contract to sell his house to Y but also makes a contract to sell his house to Z .

(3) A system of norms permits two parties to engage in attempts to achieve something, where the success of one party will result in the failure of the other party. For example, X and Y are both permitted to hire a famous cook who has recently left his current employment.

(4) A system of norms place a party under an obligation which another system of norms does not require, so creating a duty to do p and a liberty not to do p . For example, morality requires me to provide financially for my impoverished parents but the law does not require me to do so.³⁷

Paradigm (4) can be disregarded from our present concerns (though it makes an appearance in Hurd and Moore's discussions), since it does not illustrate conflict within a normative system and is only a problematic case of conflict for deontic logic on the unwarranted assumption that all normative systems are consistent, which in practice they are clearly not.

Paradigm (2) is open to the argument that the conflict is only apparent, with a favourable view of the relevant legal doctrine, in that the first contract in our example creates a valid obligation but the second attempt at a contract only imposes liability for fraud for purporting to do something that is no longer possible. Nevertheless, one could come up with a scenario to illustrate this paradigm, with a careful selection of behaviour governed by a suitable configuration of legal doctrine. One could accept that legal doctrine holds both of the above contracts to be valid, or, to provide a more elaborate example, a jointly owned asset is simultaneously mortgaged by each of the joint owners, with power to act over the asset independently, to two different parties. I shall also disregard this paradigm from our present concerns, as indeed do Hurd and Moore (2016: 56) as “artificially-created moral combat”. The key point is that it is not the normative system that imposes the normative conflict upon the party but the party's own abuse of the system. Securing an abuse-free system is a different objective to attaining a conflict-free system.

Paradigm (3) strictly construed is not a case of normative conflict, although frequently taken to be one. If each party is understood as having a liberty to attempt to employ the cook, then the liberties of competition are not in conflict. A conflict only arises if we understand the liberty to amount to securing success in the competition, for there can only be one winner. But no competition guarantees winning to every competitor, and so no competitor holds a liberty to compete and win – to employ the cook.³⁸ I accordingly disregard this paradigm as a false paradigm.

Hurd and Moore (2016: 42) provide an example of this false paradigm, when suggesting that attempting to get the last remaining dessert at a buffet operated under the rule of first come, first served illustrates a conflict, when it only illustrates a competition. Hurd and Moore relegate

³⁷ Actually, this may be a conflict between two legal systems: no obligation under English law but an obligation exists under Singaporean and French law. For doubts that multivalent logic can assist here, see Halpin 2017a.

³⁸ For further discussion, see Halpin 1985 and Kramer 1998.

this instance for other reasons, taking it to be representative of a moral state of nature, but it is an error to think that such competitions are not normatively significant, and are not normatively regulated (Halpin 1985). One is not permitted to physically push away the competitor for the dessert who happens to have reached it before you. This amounts to the harmonious regulation of competition, not normative conflict.

Another point to note about paradigm (3) is that it can be a precursor to more involved situations of conflict. So, Hurd and Moore (2016: 32) use variations on the example borrowed from Cicero of two shipwrecked sailors competing for a single plank that can only sustain the weight of one of them. At an initial stage, there is no difference between competing for the solitary plank and competing for the solitary dessert. Things turn more complicated when both reach the plank at the same time and attempt to push each other off it (Hurd and Moore 2016: 32-33). It may be that the competition model is sustained here, albeit with certain restrictions on what force can be employed to obtain sole use of the plank (reasonable force?), but it may be that in such extreme conditions the usual norms of human conduct run out.³⁹

One does not have to imagine extreme situations in order to confront the possibility that the norms of a system do not provide an authoritative answer to a situation of human conflict. Gaps in the system may occur simply because the situation of conflict has not been envisaged and provided for under the system. Incompleteness of a normative system creates another type of normative conflict worthy of its own paradigm:

(5) A system of norms permits each of two parties to otherwise engage in their chosen forms of conduct, and at the point where these two forms of conduct come into conflict provides no normative guidance as to how that conflict should be resolved. For example, a householder is permitted to run a confectionary business on his premises and another householder is permitted to hold a doctor's surgery on his premises, and when the noise of the one activity prevents the conducting of the other activity there is no provision within the system to determine how the dispute should be resolved.

The gap discovered in paradigm (5) allows conflict not as a result of following the norms of the system but due to the system leaving two forms of inconsistent behaviour equally unregulated. One way of representing this is to say that the absence of a duty on either party creates the conflict that a duty one way or the other to restrain one of the forms of conduct would prevent. In a way, it is the inversion of paradigm (1). The problem in paradigm (1) is caused by having too many duties; the problem in paradigm (5) by not having enough. After discounting paradigms (2), (3) and (4), we can take paradigms (1) and (5) as the significant cases of normative conflict for our interests, and refer to them as the central problems of inconsistency and incompleteness in a normative system. Note that both can be repaired by remedial action within the system: (1) by removing a duty; (5) by adding a duty.

Hurd and Moore's discussion of moral combat centres on the problem of conflicting liberties rather than conflicting duties, but paradigm (1) could be adapted⁴⁰ to deal with (1a) conflicting duties between two parties rather than conflicting duties held by one party. For example, two officials are appointed by different agencies to undertake a task that only one can perform. And from a conflict between two duties held by different parties it appears to be a small step to reach (1b) a conflict between two liberties held by different parties. This may even be

³⁹ Hurd and Moore (2016: 31ff) envisage complex scenarios involving two mothers seeking to protect their children on the plank but nevertheless argue towards a resolution of the cases.

⁴⁰ The rough typology of paradigms is not intended to be an exhaustive summary of all cases of conflict but to illustrate the standard cases.

implicit in a case of (1a). For example, each official has a liberty to engage in the conduct necessary to complete the task.

So the three scenarios from our discussion of the paradigms that are particularly relevant to “moral combat” are (1c), (3) and (5). Paradigm (3) is included only by way of dispelling confusion, since it has been treated as a case of spurious conflict. To make the contrast between (1c) and (3) clear, the officials in the example under (1c) each enjoy the liberty to engage in the conduct necessary to complete the task, not merely to engage in a competition to undertake the task as would apply under paradigm (3). Paradigm (5) could be seen as a conflict between default liberties, in that the gap in the system leaves the conduct of both parties unregulated by a duty, and an absence of duty amounts to a *de facto* liberty. Accordingly, a thorough treatment of Hurd and Moore’s cases of moral combat would subject them to classification under (1c), (3) or (5). Cases under (3) would be dismissed as spurious.

One interesting thing to note is that cases of inconsistency under (1c) and cases of incompleteness under (5) cannot arise due to the exercise of a deontic operator subject to the logic of imperation, discussed in Part (4). Evidently not so for (5) since there has been no exercise – we have a gap. Also not so for (1c), since the restrictions under the logic of imperation apply at the point of exercise, but not across different points of exercise. But if we have accepted that the logic of imperation is required to underpin a deontic logic based on a uniform deontic operator, then it follows that these problems of conflict due to inconsistency and incompleteness are not problems of deontic logic, but problems due to a failure to employ deontic logic.

That last point needs amplifying by recalling the two conflict-free locations capable of being produced by a uniform deontic operator. The one occurs at the point of issuing a norm on a particular matter (and so cannot preclude conflict between different norms issued at different times). The other occurs with a ruling on the application of all existing normative material (including any conflicting norms) within the normative system to the disposition of a particular matter.⁴¹ This allows a dynamic role to the deontic operator in dealing with conflict within a system of norms.

The final question to ask of Hurd and Moore’s treatment of moral combat is whether every liberty enunciated in a system of norms is transparent at that point of enunciation to all the points of conflict that may arise from its exercise, points that might otherwise only subsequently emerge from considering conflicting norms of that system, or from confronting a gap in the system. If so, then the liberty could be promoted with an absolute duty on others not to interfere with its exercise at points of conflict. It could be, but even in that assumed state of omniscience, it is more likely that some qualifications would be made to compromise that liberty in the service of conflicting interests. And without the assumed prior omniscience, the likelihood that compromises would occur contrary to the absolute promotion of the liberty only increases.⁴² Grant in either state the occurrence of compromise, and so grant the place for fine-grained Hohfeldian analysis of the precise points at which duties not to interfere are imposed, or not.

⁴¹ The absence of conflict in such a situation appears to be recognized by Hurd and Moore (2016: 31 n 39).

⁴² A number of legal doctrinal illustrations could be cited. A test case for any theory of legal liberty/privilege/permission is how to account for the confectioner’s position in *Sturges v Bridgman* (1878) 11 Ch.D. 852.

6. CONCLUDING REFLECTIONS

The major suggestion of this paper is that recognition of a uniform deontic operator can assist in pulling together a number of fragmented and problematic areas within our study of normative systems. It is beyond the scope of the paper to deliver a compelling account of all the benefits that might accrue from adopting this suggestion. Success at this point will be measured in persuading my audience that further work in examining the deontic operator is worthwhile. To that end, I summarize the key advantages that have been claimed for it. In relation to deontic logic, it provides fresh axiomatic material to permit, on the one hand, coherence between the different deontic modalities, while, on the other hand, restraining the manipulation of its axioms by imposing an interface with the practical source of normative regulation: the requirement of conduct. This practical interface may offer the potential for readdressing the paradoxes that have confounded deontic logic – consider the distinction proposed between imperatorial logic that finds an effective place within a deontic logic, due to the recognition of the deontic operator, with a logic of imperatives that is incapable of providing the basis for a deontic logic.

Consider also the more practical challenges to the axiomatic switch away from a Hohfeldian deontology attempted by Hurd and Moore. These are made more perspicuous by an insistence on the coherence that the role of the deontic operator brings to the workings of a system of norms – in particular, in shedding light on the emergence of conflict and its resolution.

Although Hohfeld has been defended here against Hurd and Moore, there are further lessons to take from the deontic operator in assessing Hohfeld's own scheme. In particular, the inadequacy of Hohfeld's portrayal of the correlative relationship has been addressed by the suggested filling out of that relationship by the deontic operator. More speculatively, Hohfeld's failure to cast the role of the deontic operator, in contrast to Bentham, could be linked to his crypto-formalism linked to an idealist vision of legal analysis unduly dependent on legal relations.⁴³

More broadly, there are other implications relating to the general aspirations for the field of deontic logic. If these encompass filling out the authoritative sources of a normative system to attain the greater reach of that system, through delivering a fuller appreciation of the logical inferences that can be drawn from its authoritative texts (Navarro and Rodríguez, 2014: 89), and even, assisting in moving towards a completed, perfected normative system (Navarro and Rodríguez, 2014: 87), then a less ambitious appraisal of its potential may be called for. This would follow from the dependence of deontic logic when engaging with a normative system on the capacity and practical ability of the particular deontic operator, which has been cast to take the leading role for the normative system in question.

A deeper question of whether there is any value in considering a deontic logic without such a deontic operator might then be pursued. There might, at least, emerge a distinction between a normative system, in which the recognition of a deontic operator lends credibility to a systematic character to the normative environment, and a normative culture, where the absence of a recognized deontic operator might lead to the conclusion that despite the presence of recognized norms a fully systematic representation of them is impossible, in even a dynamic sense. Consider the Talmud, or contemporary instances of legal pluralism. Would the further consequences of following that path lead to the final conclusion that there exists a domain of norms that is unaffected by deontic logic?

⁴³ Explored more fully in Halpin 2017c.

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