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INTRODUCTION

The nature of rights—legal and moral—has long been of interest to philosophers. But within contemporary debates over rights, one can justifiably see *A Debate Over Rights*, as a seminal book which, in 1998, set the agenda and context for subsequent writing on rights, within which this current collection must be situated. In that 1998 book, three leading contributors to the debates (two of whom are contributing to the current volume) spoke forth. Those contributors—Matthew Kramer, Nigel Simmonds and Hillel Steiner—clashed over many matters, but also shared sufficient common ground such that a genuine debate was had. And one can see a continuation of the clashes—including a perceived need to transcend those clashes—and common ground in this current collection. Finally, though it was not the central focus of the 1998 book, extensions of rights’ theorising to, broadly speaking, the political realm were countenanced. And that element extends to the current collection.

I have thus chosen to carve the essays up into three categories: (Hohfeldian) common ground; clashes over theories of rights; and extensions to the political realm. It almost goes without saying that there are other ways one might carve the essays up. And relatedly, as one would expect, there is significant overlap (which I shall, on occasion, note in the context of specific essays) in these three categories.

Common ground, first. Most significantly, in both this and the 1998 book, all contributors adopt the analytical framework of Wesley Hohfeld as a means to bring clarity of exposition to their espoused positions. They use Hohfeld’s logical framework to articulate and defend their theories and also to critique the theories of others.

Given the foundational role of Hohfeld’s schema, it is natural to begin this collection with the essays of Andrew Halpin and Visa Kurki—each of whom devotes sustained attention to Hohfeld. Halpin’s principal (and, to this writer, laudable) aim is to preserve the neutrality of Hohfeld’s analytical scheme—neutral, in the sense of not determining any controversial position in the germane debates—at three levels: legal disputes, legal doctrinal theory and (what he calls) guild ideology. Halpin uses these levels to build up to a fourth locus of Hohfeldian neutrality—the domain of legal rights. And, though the foregoing might be considered the heart of Halpin’s essay it serves as a prolegomenon to his elaboration of his own *Dispute Theory* of rights, and consideration of the political realm. Kurki, meanwhile, while still training his focus on Hohfeld, operates at a less panopticonical level than Halpin. Kurki’s starting—and ending—point is Hohfeld’s operative notion of *power*. Specifically, Kurki, after detailed

consideration of philosophers' objections to the broad notion of power with which Hohfeld operates, seeks to defend preservation of Hohfeld's expansive notion, provided it is supplemented by a notion of *competence*, picking out an important subset of Hohfeldian powers.

Clashes, second. Kramer's 1998 articulation and defence of his *Interest Theory* (IT) of rights is deservedly considered a landmark piece. After a *tour de force* through Hohfeld, Kramer set out, and defended, for the first time, his IT—an IT which he has subsequently refined and modified. Then in the 1998 book, by turn, Simmonds and Steiner (by differing methods), sought to articulate and defend their *Will Theory* (WT) of rights against IT. So, two main 'games in town': IT, on which protection of the interests of the putative right-holder is at the core of a right; and WT, on which *control* of the putative right-holder over another's duty is at the core of a right. Assess their merits and demerits; and then take your pick! Since the 1998 book, two central, and related, dialectical developments can be charted: a continuation of the IT v WT debate, and an effort to transcend the starkly dichotomous choice (IT or WT) which served as a background to the 1998 skirmishes. These two dialectical developments are continued in this collection, though in a novel form.

The next essay in this collection is Kramer's. At its heart, Kramer's essay is an effort to rebut Leif Wenar's recent objections to Kramer's IT (in its capacious, and non-capacious variants) and, in the process of doing so, to contest that Wenar's own theory of (claim-)rights—Wenar's recent efforts to transcend the IT v WT debate—is a promising alternative to Kramer's IT. Predictably, in the course of Kramer's relentless efforts to impugn Wenar, we get a clear state-of-the-art restatement of Kramer's IT.

Given the centrality of rebutting Wenar to Kramer's project, it is natural to follow up Kramer's essay with two others—Simon Căbulea May's and James Penner's—with a similar focus. Moreover, given that May grapples in detail with many of the same Wenarian examples as Kramer, and approaches them in a similar spirit to Kramer, it is natural to take May first. At its core, May's essay is a comparative defence of (a *justificatory*, Razian) IT against Wenar's *Kind-Desire Theory* of claim-rights. Methodologically speaking, May sets up two desiderata for a theory of claim-rights: extensional adequacy; and capability of explaining claim-rights' significance in social life. On each score, May argues IT fares better than Wenar's theory. Penner, meanwhile, whilst also grappling with Wenar, does so in a rather different spirit. Penner's central focus is on whether judges hold the powers of their office as rights. This is an issue over which Wenar and Kramer have clashed: Wenar claiming IT cannot account for the (putative) fact that judges do; Kramer claiming IT can so account. But the shared premise in this debate is the belief that judges *do* hold the powers of their office as rights. And Penner, upon adopting (what he takes to be) a Razian version of IT, contests this fact. What distinguishes Penner's essay is his efforts to bring fine-grained legal doctrinal analysis to bear on this issue, and on associated issues over legal (and moral) powers more generally.

Gopal Sreenivasan's essay is next in this collection. Sreenivasan, in a recent series of carefully worked out papers, has articulated and defended his own novel theory of claim-rights—his own novel means of transcending the IT versus WT debate. That theory is the *Hybrid Theory* of claim-rights (and a subsequent contributor—myself—engages sustainedly with that theory). Sreenivasan's current contribution presupposes, rather than defends afresh, his theory. His platform for theoretical discussion is the (partly political) question whether individuals can hold a claim-right to any pure public good—with his sharpening example being *herd immunity* against contagious infectious disease. This question, and example, provides a springboard for Sreenivasan's main claim: that the *third-party beneficiary* objection to IT is fatal.

The final three essays located in this category are Mark McBride's, Rowan Cruft's, and Siegfried Van Duffel's. It is natural to take McBride's essay first: it builds on Sreenivasan's theory to construct a new theory of rights—the *Tracking Theory* of rights. McBride begins by confronting head-on the most prominent putative counterexample to Sreenivasan's theory—offered by Kramer (and Steiner). In the course of fleshing out a hybrid theorist's response to that counterexample, McBride modifies Sreenivasan's theory, and concludes by formalising what merits being called a new (Nozick-inspired) hybrid theory of rights.

The concluding essays in this part—Cruft's and Van Duffel's—squarely enter the methodological realm. Cruft, the next author in this volume, pursues a theme from his previous work on rights, viz that, while learning lessons from the IT versus WT debate, we must look beyond it for a fully adequate theory of rights. He pursues this theme in a novel direction in this volume, by proposing that the best extant versions of IT and WT cannot avoid a form of circularity (which he pinpoints in his contribution). While being up front that he has not completed the job of finding a fully reductive (non-circular) theory of rights, Cruft concludes by pointing in the direction that any such search must take. It is natural to end this category with Van Duffel's methodologically focused essay. In brief, this essay proposes four (non-exhaustive, extensional and intensional) adequacy constraints on any theory—conceptual analysis—of rights, with the extent to which any theory meets such constraints being a count in its favour. Insofar as Van Duffel's constraints are accepted, it is an interesting question the degree to which the theories of rights espoused by the philosophers in this collection meet said constraints.

The political realm, finally. While, as noted, extensions to the political realm did not take centre stage in the seminal 1998 book on rights, such extensions bubbled under, and occasionally bobbed to, the surface. And this volume concludes with two contributions—from Anna-Karin Andersson and Hillel Steiner—in the realm of politics, respectively, looking at tie-breaking procedures for rights conflicts in the applied realm, and alleging that Kant's *principle of right* (paradigmatically a standard of corrective justice) has distributive implications. In brief, Andersson, arguing from a central commitment to *respect for persons*, proposes that certain rights conflicts (eg, A and B urgently need a new heart, and only one

heart is available) should be adjudicated by considering to what extent individuals involved in the conflict have promoted certain values prior to the occurrence of the conflict. Steiner, meanwhile, prosecutes the above claim through engagement with Ernest Weinrib. Each of Steiner and Weinrib operates with a shared Kantian perspective, but Steiner contests Weinrib's claim that Kant's principle of right is independent of distributive justice.

What next? The hope is that this collection can serve as a point of departure for further jurisprudential debate on all the above dimensions (in much the way that the 1998 book did): Hohfeldian analysis; clashes over theories of rights; and extensions to the political realm. Theorising over the nature of rights is alive and well. Long may it continue.

Mark McBride