1/31/18

1. Recap
2. What does Hohfeld mean by duty?
   1. we concluded that X’s duty to Y does not necessarily entail Y’s claim to compensation if X violates that duty
      1. E.g. when X punches Y, he violates the duty to not punch Y, but does not necessarily create a Y’s claim against X for compensation
         1. NOTE: a claim against Y for compensation is not the same thing as a claim against Y not to be punched
            1. the fact that X has a duty to not to punch Y DOES necessarily entail a Y’s claim against X not to be punched
      2. Creating a claim is a power, and is separate from duties
         1. when you do have a power by violating a duty you have the duty not to exercise the power
3. Criticisms of the Hohfeldian Approach
   1. is the idea of a bare duty make sense – what good is a duty if there is no duty of compensation when the duty is violated – what good is a right without a remedy
      1. If we have the problem of duties being violated, and nothing that comes of it, what does that even mean?
         1. Some people answer that we only have a duty if the violation of that duty creates a claim to a remedy
         2. Problem only pushed off by this: eventually the duties have to end
            1. what if the duty to compensate is violated? That doesn’t create a new duty…
   2. Property
      1. Bundle of Rights Approach
      2. can exercise power to give some instead of all
         1. can give you a privilege to go on my property without giving you a claim against me to non-interference in your going on my property
      3. Hohfeld was insistent that rights *in rem* are against persons
         1. they are Multital rights as opposed to paucital
            1. Multital = many rights against members of an indefinite group of people vs. paucital = rights against a particular individual or against members of a particular defined set of individual
         2. the criticism is that he can’t distinguish between *in rem* rights and *in personam* rights this way
            1. assume I give everyone but X a license to go on my property
            2. the license is actually in personam (created by contract) but H would have to call it in rem because it is many rights against members of an indefinite group of people
            3. X’s duty is actually in rem (it is the rump duty left by the original property right) but H would have to call it in personam because it is a right against a particular individual
         3. also H does not explain why the bundle of property rights hang together the way they do – he apparently just treats them as arbitrary
         4. Green:
            1. H does not try to explain why any set of rights belong together in the law
            2. he is just talking about what follows from the rights and what their individual form is
            3. we can say that property rights hang together for a reason but H does not have to explain that
   3. Does it make sense to define privileges negatively as the absence of a duty?
      1. Green thinks privileges are Positive
      2. Game of chess positive privileges to move your pieces in certain fashions, but a negative privilege in regards to what you may eat for dinner
         1. I.e. has no rules about dinners
   4. Are duties all relational? X having a duty with respect to Y to phi – is there always a Y?
      1. Duty to pay taxes, duty in criminal law?
      2. Is the Y the government?
      3. Another possibility is separating the duties and duties to pay compensation if one violates the duty (which need not be created simply because the duty has been violated)
      4. we could say that we have a duty not to batter under the criminal law that is owed to the person battered but if it is violated that person gets no claim to relief – the action is brought by the government
   5. Conflating two senses of Relationality- D’Almeida’s criticism
      1. X has a duty to Y not to punch Z in the face
         1. H conflates the person to whom the duty is owed (Y) and the person that is the content of the duty (Z)
         2. he speaks generally of X’s duty not to punch Y in the face
      2. Can duties be to not hit anyone in general? Meaning that it’s a single right with an indefinite number of beneficiaries?
      3. D’Almeida thinks that the conflation of the two senses of relationality causes a problem for privileges:
         1. If X has a privilege to punch Y, he has a privilege with respect to Y, and everyone else in the world.
            1. X has no duty to Z not to punch Y
            2. Green says there is nothing wrong with this—if Z sues over X punching Y, Z fails to state a claim.
      4. But his claim of relationality does seem to be a problem with powers
         1. No relationality with respect to powers.
         2. X having a power to change Y’s rights can’t have any Z as a relata