

IN DEFENSE OF CLAIM RIGHTS

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CLAIM RIGHTS are defined in terms of correlative duties such that “S has a claim right against *T* that *T* ϕ iff *T* owes S a duty to ϕ .”¹ The claim right model of rights suggests claim rights so defined mark a distinct phenomenon encompassing paradigmatic moral rights (where moral rights establish distinct entitlements that exist independent of legal recognition).² Claim rights apparently come “closest to capturing the concept of individual rights used in political morality,” creating a “consensus” that claim rights are the “core” instances of rights.³ One can thus use requirements for establishing claim rights, including correlativity, to evaluate philosophical uses of ‘right’. For example, Sreenivasan suggests purported health rights are noncorrelative, and appeals thereto thus violate philosophical strictures on apt usage.⁴

This note defends the claim right model against recent criticisms that suggest any plausible specification thereof will prove (i) extensionally or explanatorily inadequate or (ii) unable to serve a distinct normative purpose intended by those invoking rights.⁵ It argues that an accurate understanding of the model’s purpose and explanatory and extensional targets defuses this purported dilemma. Claim rights can serve their intended taxonomic function, thereby making a distinct contribution to morality, while fulfilling apt explanatory/extensional desiderata.

- 1 Jonker, “Rights, Abstraction, and Correlativity,” 122.
- 2 The phrasing of “entitlement” here is adopted from the basic formulation in Wenar, “Rights.” Valentini discusses rights generally in terms of status (“Rethinking Moral Claim Rights”). I do not do so initially in order to avoid question-begging charges. Hohfeld’s canonical account of correlativity was law specific (“Some Fundamental Legal Conceptions as Applied in Judicial Reasoning”). This work contributes to ongoing conversations about moral rights’ claimed correlativity.
- 3 The former quote is in Waldron, *Theories of Rights*, 8. The latter is in Valentini, “Rethinking Moral Claim Rights,” 433.
- 4 Sreenivasan, “A Human Right to Health?”
- 5 Past critiques focused primarily on extensional adequacy. See, e.g., Raz, “On the Nature of Rights”; MacCormick, “Rights in Legislation”; and Perry, “Correlativity.” This recently proposed dilemma merits a distinct response.

1. THE CHALLENGE

Proponents and critics of the claim right model agree that a justified model should explain the contribution of claim rights to moral ontology, paradigmatic uses of rights language, and intuitions about when rights violations occur. Explanations should maintain a core of meaning that permits the term ‘rights’ to serve its intended normative function(s).⁶ However, recent critics pose an apparent dilemma for proponents of the claim rights model. Any account of claim rights will, they argue, be extensionally or explanatorily inadequate or fail to identify the distinct normative role for claim rights intended by model proponents. Valentini identifies the general dilemma. Kahn’s structurally similar work applies it to a key use case, human rights theory.⁷

The first lemma suggests any distinct articulation of claim rights over- or undergenerates rights or cannot account for paradigmatic invocations of rights. Kahn, for instance, suggests the claim right model cannot account for recognized human rights to education, health care, etc. whose fulfillment requires “coordinated action.”⁸ If they are interpersonal rights, it is difficult to identify who should hold corresponding duties. And appeals to governmental duties cannot establish “universal rights” since many governments lack the capacity to fulfill correlative rights.⁹ This apparent explanatory failing implicates extensional adequacy as these cases purportedly exemplify human rights’ intended purpose. Rights should signify “particularly significant, normative requirements of universal concern that should be met for individuals everywhere, and which should take priority over most other” concerns.¹⁰ However, the claim right model renders education, health care, etc., into lower-priority goods without adequate reason. It cannot explain why correlative rights should

6 Compare, e.g., Valentini’s distinctive moral position and consistency conditions (“Rethinking Moral Claim Rights”), Kahn’s explanatory condition (“Beyond Claim-Rights”), my distinctiveness and action-guidingness conditions (Da Silva, “Correlativity and the Case Against a Common Presumption About the Structure of Rights”), and Jonker’s requirements for an explanatory action-guiding concept that is not “irredeemably fragmented” (“Rights, Abstraction, and Correlativity”). I draw on each recent author, including my own prior work, below.

7 Kahn, “Beyond Claim-Rights” cites earlier Valentini (namely, “In What Sense Are Human Rights Political?”) to highlight explanatory/extensional failings.

8 Kahn, “Beyond Claim-Rights,” 162–63, 167.

9 See also, e.g., O’Neill, “The Dark Side of Human Rights”; and Sreenivasan, “Duties and Their Direction” and “A Human Right to Health?” Compare, e.g., Etinson, “Human Rights, Claimability and the Uses of Abstraction.”

10 Kahn, “Beyond Claim-Rights,” 172.

have priority over other “basic requirements of social justice,” including those requiring collective responses.¹¹

The second lemma suggests *any* explanatorily/extensionally adequate theory cannot maintain a distinctive normative purpose for claim rights. Kahn, for example, rejects correlativity and proposes discussing relevant human rights-related interests in terms of “*pro tanto* collectivization duties” requiring all persons to “make considerable efforts to achieve and maintain a sociopolitical order in which they are socially guaranteed for everyone.”¹² However, those duties alone cannot maintain human rights as a unique moral contribution or explain many acts done in the name of rights. If human rights are equivalent to a broader range of social justice demands, their contribution to morality becomes obscure. There is a risk of a category collapse without clear corresponding explanatory gains that could warrant accepting that risk.

While one could reject Kahn’s explanatory/extensional targets, Valentini contends that the basic dilemma is inevitable, as the claim right model’s failings are structural: the term ‘claim rights’ does not denote a “distinct moral position . . . but a family thereof.”¹³ Per Valentini, no theory can account for the variety in “paradigmatic rights talk” and maintain both correlativity and a distinct moral position for claim rights.¹⁴ One must either accept that claim rights cannot serve their intended normative role(s) or expand the concept until it is no longer distinct. I further detail Valentini’s general version of the critique exemplified by Kahn when evaluating both below.

2. DEFENDING CLAIM RIGHTS

The claim right model can survive this challenge. The apparent dilemma rests on uncharitable or mistaken conceptions of relevant conceptual desiderata and the claim right model. The claim right model addresses the “taxonomical dimension” of rights theory concerning their relationship “to other normative phenomena.”¹⁵ This is distinct from the “explanatory dimension” regarding “what generally explains or grounds particular rights.”¹⁶ The model, then, purports to distinguish rights and claim rights from other moral phenomena like

11 Kahn, “Beyond Claim-Rights,” 163.

12 Kahn, “Beyond Claim-Rights,” 162.

13 Valentini, “Rethinking Moral Claim Rights,” 434.

14 Valentini, “Rethinking Moral Claim Rights,” 435.

15 Jonker, “Rights, Abstraction, and Correlativity,” 122.

16 Jonker, “Rights, Abstraction, and Correlativity,” 122. See also the distinction between the “form” and “function” of rights in Wenar, “Rights.” Hohfeld, “Some Fundamental Legal Conceptions as Applied in Judicial Reasoning,” speaks to form.

justice. A claim right model specification should identify a common structure across use cases without categorically barring many seemingly licit cases if it is to play its intended taxonomic role. Yet arguments that no specification could account for paradigmatic rights talk rely on questionable claims about paradigm cases and, in Valentini's case, on a failure to recognize that a primarily taxonomic model does not aim or need to account for nontaxonomic discourse about rights' justification. Clarifying basic conceptual desiderata diffuses any apparent dilemma, and a standard view on claim rights can meet both the challenges connecting Valentini and Kahn and the critique they exemplify.

Understanding claim rights in light of the distinctive moral standing they provide helps fulfill properly articulated desiderata. Consider a view on which S 's claim right against T entails a (defeasible) duty to S to ϕ such that T wrongs S specifically by failing to ϕ and owes a second-order duty of explanation or compensation β where T fails to ϕ . T 's failure to β wrongs S . The initial duty being owed to the rights holder on the standard claim right model marks it as a *directed* duty. Duty bearers have specific duties to rights claimants *qua* rights claimants. This establishes a relationship between those parties providing the rights holder with a form of moral standing that makes a distinct contribution to moral ontology common to most rights talk. This is so even if accounting for factually apt talk requires calibrating rights for specific contexts. The focus on the correlative relationship between rights and directed duties is common to many accounts of claim rights, including Hohfeld's original specification.¹⁷ The focus on second-order duties may be less standard (and potentially non-Hohfeldian) but maintains the structure of paradigmatic moral rights claims and articulates plausible implications of rights-based moral standing. The combined directed first-order and second-order duties likely identify a moral concept that can fulfill the desiderata above. However, the account is mere proof of concept for a general argumentative strategy. My defense of claim rights succeeds if this specification is implausible.

2.1. Fixing the Explanatory and Extensional Targets

The proposed dilemma fundamentally rests on a misunderstanding of relevant conceptual desiderata. The criticisms first mischaracterize their explanatory/extensional targets. Neither the practice or discourse of rights nor the nature of the claim rights model requires that rights encompass the highest-priority moral goods or explain all justificatory claims. And a well-calibrated model can address concerns with collective rights claims undergirding both critiques.

17 Hohfeld, "Some Fundamental Legal Conceptions as Applied in Judicial Reasoning." On directed duties, see also Sreenivasan, "Duties and Their Direction" and related views in Jonker, "Rights, Abstraction, and Correlativity."

Kahn exemplifies this issue. Kahn believes the Universal Declaration of Human Rights (UDHR) catalogues paradigmatic moral rights and rights discourse for which any theory of rights must account.¹⁸ The UDHR then marks human rights as the highest-priority moral goods and recognizes collective rights that cannot easily fit the claim right model. The claim right model thus cannot account for paradigmatically high-priority human rights and implausibly prioritizes “requirements of justice” that maintain correlativity over others that require collective responses.

With respect, however, Kahn’s account of the intended purposes and paradigmatic instances of human rights is at best undermotivated. Kahn rejects contentions that human rights need not entail highest moral priority because they conflict with human rights practice.¹⁹ Yet this move largely rests on references to the UDHR and individual statements by one United Nations body and by Amnesty International, respectively.²⁰ Kahn offers no independent normative reasons why rights or human rights should denote goods that must be categorically prioritized. Other core elements of human rights practice suggest that human rights do not have this categorical priority.²¹ International legal rights admit many exceptions. Some need not be fulfilled immediately, as Kahn admits. The very social rights Kahn takes as central to her account are subject to a doctrine of “progressive realization” whereby states need to provide access to only a “minimum core” of goods immediately and then “take steps” to improve access over time. While Kahn suggests this problematically creates a two-tier system of rights, it is part of the “practice.”²² A principle requiring that a theory of rights account for the UDHR but not progressive realization is lacking.

While Kahn could alternatively reject appeals to (human) rights practice and simply seek to explain the existence of moral rights requiring a collective response, Kahn cannot account for the particular form of standing that even Valentini recognizes as core to rights talk. Rights typically aim to provide particular persons with distinct claims to the objects of their rights. It remains difficult to see how any individual has distinct standing to state, “The state uniquely wrongs me when it fails to establish a public health program.”²³ Kahn thus risks collapsing relational and broadly structural claims: rights talk seeks

18 Kahn, “Beyond Claim-Rights,” 162–63.

19 Kahn, “Beyond Claim-Rights,” 168.

20 Kahn, “Beyond Claim-Rights,” 162, 164.

21 Da Silva, “Correlativity and the Case Against a Common Presumption About the Structure of Rights.”

22 For the two-tier worry, see Kahn, “Beyond Claim-Rights,” 170.

23 See also Sreenivasan, “A Human Right to Health?”

to establish particular moral relations between specifiable parties, distinct from (admittedly related) claims to justice or just institutions.

A claim right model can, moreover, address many collective concerns motivating Kahn and Valentini while maintaining rights as a distinct moral phenomenon. Collective duty bearers could, for instance, fulfill a right to education.²⁴ Weaker forms of correlativity permitting multiple entities to fulfill the duty-bearer role or multiple options for means of fulfilling rights then specify broader ranges of prospective duty bearers and potential wrongs while maintaining rights holders' distinct individualized grounds for complaint/explanation/compensation. Claim rights so understood can also require structural change. Fulfilling directed duties plausibly correlative to social rights commonly requires collective action. If a right to vaccinations must be effected through governmental public health programs, realizing it necessitates system-level changes. The right remains a particularized claim to a vaccine, distinguishing it from other calls for change. Stating "I am uniquely wronged when I cannot access a vaccine necessary to safeguard basic health" is plausible even when avoiding that wrong would require collective action. Familiar injunctions to attend to the structural conditions of rights fulfillment need not entail direct rights *to that structure*.²⁵ Calls to effect a valid entitlement to a particular good for a specific person still denote a distinct phenomenon.²⁶ 'Claim rights' remains an apt descriptor.

These challenges exemplify a general problem: critics of claim rights often understandably but problematically mischaracterize their analytical target. Valentini further suggests that no characterization of rights can explain the way in which 'rights' refers to both justification statements concerning "moral reasons ... to empower individuals" and status statements concerning the "empowered status individuals enjoy" as rights holders.²⁷ Only concerns with empowerment that are not distinct from claim rights explain both. This undergirds Valentini's

24 Kahn rejects this contention using the arguments about progressive realization that are rejected above/below ("Beyond Claim-Rights," 175).

25 Compare, for example, Ashford, "The Inadequacy of Our Traditional Conception of the Duties Imposed by Human Rights"; Pogge, *World Poverty and Human Rights*; and even the works by Valentini cited above.

26 Ashford's work accordingly may not support Kahn as claimed (*contra* Kahn, "Beyond Claim-Rights," 180n6). An anonymous reviewer suggests that the appeal to the "dynamic" aspect of rights in Raz also helps address this concern (Raz, "On the Nature of Rights," 200, 212). Rights can create new duties on the classic Razian scheme. This could plausibly entail new duties to address structural concerns. Rights should, moreover, be interpreted in particular social contexts. Those contexts can impact what rights bearers must do. The point here is distinct from but related to Raz's position.

27 Valentini, "Rethinking Moral Claim Rights," 438–40.

structural critique of the claim right model. Per Valentini, model proponents falsely assume that status and justification co-occur. For instance, children's claim rights to education aim to empower adults based on children's justificatory interests. If this is so, Valentini further argues, there are two options for how to proceed. One is to recognize that 'claim rights' denotes a family resemblance concept that "is not much more specific . . . than the broader notion of a right," which a distinct concept should disambiguate. Valentini believes that this option undermines the claimed distinct moral role of claim rights and so falls on one horn of the dilemma. The other option is to adopt an ad hoc account of "central" claim rights. Valentini believe this option unduly limits their extension and so falls on the other horn.²⁸

Valentini's critique also mischaracterizes the operative desiderata for a theory of rights. Status and justification claims speak to different elements of rights and play different roles in rights discourse. The status-focused claim right model speaks to the taxonomic element, not to the justification-based explanatory element. Taxonomic and explanatory elements need not submit to a common conceptual explanation or schema. And otherwise distinct components of rights discourse need not be linked via a common interest in concepts like empowerment. A taxonomic theory disconnected from potential justifications would be problematic. But the claim right model lacks that defect. Indeed, the taxonomy/justification distinction further highlights why social rights, like the right to education in Valentini, need not undermine the model. On my proposal, one need explain only why a "child's right to education" would provide a noneducated child with specific standing to claim that a specifiable agent who could have secured access to education wronged them. Interests that would ground that claim are likely to change adults' powers, explaining why many assume a connection between status and justification claims. Yet the nonoccurrence of status and justification is unproblematic. The taxonomic element of rights focuses only on the status conferred upon claim right holders.

2.2. *Maintaining Moral Distinctiveness*

Understanding rights as conferring a particular kind of standing also identifies their distinct moral contribution. Claim rights confer a distinct form of "standing to claim the direct object of the right."²⁹ Rights holders can validly seek further explanatory or compensatory redress when the claim is unfulfilled.³⁰ This

28 Valentini, "Rethinking Moral Claim Rights," 443.

29 Jonker, "Rights, Abstraction, and Correlativity," 125.

30 A reviewer notes that infant human and nonhuman rights holders present challenges. Appeals to proxies/advocates address many challenges, as the reviewer notes, and some

basic concern and its attendant commitment to correlativity between the rights bearer claimant and the duty bearer addressee are common to claims across distinct normative domains, helping explain the diversity of rights claims without also over- or undergenerating rights. Where claim rights can be calibrated for distinct domains, the model retains plausibility.

A status-focused understanding of claim rights underlines the relational nature of characteristic rights claims and the distinct contribution to morality instantiated by such relations. A successful rights claimant must always identify what must be done to avoid wronging the claimant and the moral reasons why at least one of a specifiable set of persons are bound to do it for that claimant specifically. *Contra* Valentini, focus on particularized relations between specified parties and the ability of right holders to make particularized claims on duty bearers distinguishes claim rights from liberties and other Hohfeldian powers, permitting claim rights to serve their intended taxonomic function. Even if all rights confer standing, as Valentini contends, claim rights so defined confer a particular kind of standing with a distinct form. Claim right holders have specific standing to call on particular duty bearers to perform duties owed to them alone—and could have standing to demand explanation/compensation *from that person* for nonperformance.

Claim rights so defined further help differentiate the right and the good. One can, e.g., distinguish universal health care programs as good policies and as potential objects of rights. Policies can be justified (or even required) without being objects of rights. The proposed view acknowledges the right/good distinction without making assumptions about whether good policies can be valid objects of rights. It instead sets burdens for further work. Rights-based claims require explaining how failure to create such programs provides *particularized* grounds for complaint against those who can but do not create them. This is a distinct kind of moral argument made by real persons.³¹ The claim right model permits evaluating it on its own terms.

Claim rights' variety on this model underlines the model's explanatory and extensional value rather than establishing problematic ambiguity. Distinctions between, for example, positive and negative rights or between perfect and imperfect duties, make it difficult to specify a common form of correlativity. If the claim right model cannot explain why many believe positive rights or imperfect duties are characteristic of core moral rights, this could undermine the model. Kahn and Valentini's shared interest in positive social rights to

claimants (e.g., rivers) may not have moral rights. I cannot resolve these problems here but likely need not where they apply to most theories of rights.

31 Compare Hassoun, "The Human Right to Health"; and Rumbold, "The Moral Right to Health."

education and health is thus notable. However, plausible calibrations of the model can and do account for the variety. Even “multifarious” claim rights are not irremediably fragmented, defusing ambiguity-related concerns. They nonetheless present sufficient conditions on valid invocations of rights, avoiding overgeneralization concerns.

While Valentini suggests ‘claim right’ cannot refer to a “family” of concepts if it is to disambiguate ‘rights’ and avoid moral confusion, a multifarious concept can be distinct if its paradigmatic forms share a common structure and implications and differ only in application(s). In previous work, for example, I challenged “strong correlativity” that requires a unique duty bearer who bears a specific duty because it cannot account for social rights.³² However, I further demonstrated that this need not entail that rights lack a common structure. Rights in private and public law each feature a class of specifiable individuals who could be duty bearers and a set of acts from which they can choose to perform their duties. Even positive rights triggering imperfect duties thus maintain a kind of correlativity that is characteristic of the proposed claim rights model. They feature particular persons holding valid claims against others whose non-fulfillment creates second-order duties of explanation or compensation. Correlativity may not be identical across all domains, but it shares a basic form and impacts moral powers in the same ways. There is always a rights bearer, a duty bearer, and the prospect of second-order duties when claims are unfulfilled.

Jonker further suggests claim rights generally share a structure and purpose but vary in application. Per Jonker, claim rights of any kind, legal or moral, public or private, etc., always involve a relationship between rights and directed duties. Putative counterexamples to correlativity fail to recognize the diverse forms that this relationship can take. Rights and duties differ in their specificity and generality, creating “degrees of abstraction when it comes to rights and other entitlements: general (as opposed to particular) entitlements, unspecified (as opposed to specified) entitlements, and indefinite (as opposed to definite) entitlements.”³³ A right at any level of abstraction will have a duty at the same level, maintaining the correlative form. But a general right to health need not entail a specific duty to provide a particular pill. One must “calibrate” the model for particular contexts and understand the level of abstraction applying in each. A claimed “right to insulin” requires one to establish a more specific duty than a right to health, which admits more candidate duty bearers and

32 Da Silva, “Correlativity and the Case Against a Common Presumption About the Structure of Rights.”

33 Jonker, “Rights, Abstraction, and Correlativity,” 147.

duties. The latter may, I add, only require “taking steps” towards an outcome without violating correlativity. Claim rights thus remain distinct.

This defense of claim rights does not beg questions about whether rights confer relevant status. Rather, correlative standing identifies a distinct normative position that explains relevant phenomena and clarifies the taxonomy of normative concepts. It now further provides a framework for debates about apt use. One can judge appeals to a purported right to health care by assessing whether any normative reasons can ground a valid claim fitting the correlative form.

3. CONCLUSION

Clarifying the targets for theoretical adequacy as well as the nature and intended role of claim rights and their constituent correlativity defuses the apparent dilemma for the claim right model. The shared form and function of paradigmatic right/duty pairs remain notable even when correlativity must be calibrated for specific contexts. Standing-focused claim rights can play their intended taxonomic role while fulfilling well-defined explanatory and extensional conceptual desiderata.

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