ASSOCIATION THEORY: AN ARISTOTELIAN DEFENSE OF CLAIM-RIGHTS

A Thesis
submitted to the Faculty of the
Graduate School of Arts and Sciences
of Georgetown University
in partial fulfillment of the requirements for the
degree of
Doctor of Philosophy
in Philosophy

By


Washington, DC
December 7, 2017
ASSOCIATION THEORY: AN ARISTOTELIAN DEFENSE OF CLAIM-RIGHTS


Thesis Advisor: Mark C. Murphy, Ph.D.

ABSTRACT

This thesis addresses the following question: Can, and should, Aristotelian normative theory account for claim-rights? In response, I argue that yes, Aristotelian normative theory can account for claim-rights to a degree, and that yes, Aristotelian normative theory should account for claim-rights. I define two kinds of account of claim-rights that one might give: a thin account is one which explains and defends claim-rights merely as correlated with certain duties, while a thick account is one which explains and defends claim-rights as also standing in a directional relationship with these duties. I argue that Aristotelian normative theory can and should account for claim-rights in both of these senses insofar as they promote the achievement of the aggregative common goods of associations, where “association” is understood roughly as a collection of individuals engaged in common practice, under common norms, for the sake of attaining their common good. An Aristotelian account of an aggregative common good simpliciter explains and justifies claim-rights thinly conceived insofar as such rights define certain shares of the common good due to associational members, and thereby direct associational members to act with respect to these shares. This thin account of claim-rights is then expanded with an account of a deliberative practice of social discourse, which involves the normative power of specifying, generating, and legislating conceptions of the means to and content of the common good. Such social discourse is argued to be authoritative on the basis of
the necessary task that it fulfills – arriving at shared conceptions of the common good and the means to it – and is subsequently argued to be capable of producing directional norms, and therefore directional claim-rights, within associations. Finally, I argue that Aristotelianism ought to accommodate claim-rights thickly conceived for the sake of certain empirical and normative benefits such rights yield for associations.
For Gordon W. Shannon
1950-2014
ACKNOWLEDGEMENTS

The production of an academic work is invariably the consequence of many influences. In this case, I owe a great debt to many individuals, both living and dead, without whose invaluable teaching, criticism, patience, and support this work would not have been completed, much less begun.

In the first place, I would like to thank my wife, Valli, whose presence has been a constant source of strength, advice, and comfort throughout all-but two years of my academic career, and particularly so during the doctoral portion. I would like to give thanks to both of my families for their unique contributions to this work: to my father, now departed, for nurturing my curiosity and always reminding me what is most important; to my mother, for setting the example of pursuing further education; to my father-in-law, Tom, and mother-in-law, Ann, for yearly making their house available to me for needed escapes to the country and for their constant support; and to my grandparents-in-law, Ken and JoAnne, for rushing to my aid and not-least-of-all for the use of their screened porch where the first draft of this thesis was written.

Words cannot describe the gratitude felt by a graduate student toward his or her committee members, but nevertheless I give my thanks to Mark C. Murphy, Jason Brennan, and Henry Richardson for their comments, recommendations, advice, patience, and willingness to participate in the development of this work. I have learned invaluable and lifelong lessons from each of them that will last far longer than the memory of this work.

Numerous other individuals have provided helpful comments and/or support at various stages of this work, and I would like to say a special thanks to Sarah Broadie, David Bronstein, Patrick Deneen, James Harrigan, Colin Hickey, Stephen Hicks, Mark LeBar, Gerald Mara, Neal Mason, Madison Powers, and David Schmidtz. Thanks to the people at The Institute for Humane Studies for their professional and financial support throughout my graduate career and to Strata Policy for the opportunities they have afforded me during the completion of this thesis.

Finally, though they will likely never appreciate it, thanks to Obi and Saucy for being constant sources of amusement and light-hearted simplicity.
TABLE OF CONTENTS

Introduction .............................................................................................................................................. 1

Chapter 1: Claim-Rights .............................................................................................................................. 8
  1.1 Introduction ........................................................................................................................................ 8
  1.2 Claim-Rights as Correlative .................................................................................................................. 10
  1.3 Claim-Rights as Directional .................................................................................................................. 11
  1.4 Claim-Rights as Involving a Normative Power ....................................................................................... 17
  1.5 Accounting for Claim-Rights: Will Theory and Interest Theory ......................................................... 24
  1.6 Directionality in Aristotle’s Ethics: Thompson on Pros Heteron ......................................................... 34
  1.7 Conclusion .......................................................................................................................................... 46

Chapter 2: Associations and Common Goods ............................................................................................. 48
  2.1 Introduction ........................................................................................................................................ 48
  2.2 Why Common Goods? ......................................................................................................................... 49
  2.3 The Teleological Analysis of Social Practice ......................................................................................... 52
  2.4 Political Associations .......................................................................................................................... 61
  2.5 Conceiving the Common Good ............................................................................................................ 69
  2.6 Claim-Rights and Common Goods ...................................................................................................... 82
  2.7 Conclusion .......................................................................................................................................... 89

Chapter 3: Social Discourse and Functional Authority .............................................................................. 90
  3.1 Introduction ........................................................................................................................................ 90
  3.2 Consensus and Social Discourse ........................................................................................................ 91
  3.3 Normative Power and Directionality ................................................................................................... 100
INTRODUCTION

This thesis aims to address the following question: Can, and should, Aristotelian normative theory account for claim-rights? In response, I will argue that yes, Aristotelian normative theory can account for claim-rights to a degree, and that yes, Aristotelian normative theory should account for claim-rights. In short, I will argue that Aristotelian normative theory can and should account for claim-rights as norms that promote the achievement of the common goods of associations, where “association” is understood roughly as a collection of individuals engaged in common practice, under common norms, for the sake of attaining their common good. I will argue that every association of this sort has the (normative) resources to put into place claim-rights, and that at least some of them, particularly political associations, ought to do so. This thesis will not extend to arguing that claim-rights only manifest under these conditions; rather, these conditions provide scope for understanding how Aristotelianism can account for at least some claim-rights, of which at least some are claim-rights that we ought to care about.

This answer entails at least two controversial conclusions: first, that claim-rights so-presented are held not by individuals as such but rather by individuals insofar as they are members of an association; second, that claim-rights do not follow simply from membership in an association, or from the nature and/or institutional structure of an association simpliciter, but rather from the fact that an association “has the resources to put into place claim-rights” and, by engaging in some suitable practice, actually does so. Allow me to immediately allay these concerns to some degree (both will be addressed in more detail in due course).
Regarding the associational nature of claim-rights, again, I do not argue that non-associational claim-rights cannot be defended, even within an Aristotelian framework. My goal is to establish a strong case for at least some claim-rights, and at least some salient claim-rights, within an Aristotelian normative framework. This is a worthwhile task because it is often held that the Aristotelian normative framework lacks the normative resources for an account of claim-rights, at least on some understandings of the term “claim-right.” For reasons to be outlined in Chapters 2 and 4, an associational path provides a particularly effective route to claim-rights within Aristotelianism. Nor is this route counterintuitive, for as I will argue in various places, it is the case that many claim-rights are held in virtue of associational membership rather than in virtue of normative characteristics of individuals.

Regarding the need for associations to engage in some normative act in order to constitute or generate claim-rights, concern with this proposition seems to belie an assumption that such norms ought to, or do, exist independently of human social-constructive acts. That is, that independently of traditions and practices of norm generation and distribution, there are reasons to think that agents possess, or ought to possess, claim-rights. Among these reasons might be certain innate or institutional features of associations and associational practice. Addressing this metaethical assumption would take me far beyond the scope of this thesis, and thus I cannot address it adequately in the space I have. However, it seems to me to be a sufficiently widely held belief among philosophers that certain norms, perhaps including claim-rights, are dependent upon some social-constructive act for their existence and reason-giving significance to lend prima facie warrant to my approach. Furthermore, significant differences regarding not only which norms obtain, but what sorts of norms obtain, both historically and among present cultures and societies ought to at least temper the belief that philosophers are
engaged in a practice of “discovering” norms or reasons somehow present in the world or latent within structures of human practice. I will discuss this issue again with narrowed scope in Chapter 3.

The arguments I present will primarily interest those working on claim-rights, and more so those within the Aristotelian normative tradition. For those not working in these areas, many of the concepts I will deal with constitute “inside baseball.” Yet this is not to say that this project lacks more general relevance: the broad trajectory of my arguments is relevant beyond the specialized topic of claim-rights and beyond the field of Aristotelianism. It offers scope for new perspectives on rights theory generally construed, and elucidates resources inherent in Aristotelianism for tackling questions of present philosophical concern.

Following the tradition of many other rights theorists, I will present my answers with reference to the seminal analysis of rights developed by Wesley Hohfeld. Hohfeld addressed the phenomenon of legal rights from a sociological and positivistic perspective and delineated the conceptual structure of these rights as abstracted from contemporary legal practice. The framework resulting from this analysis – the Hohfeldian schema – has since become the dominant analytical mechanism for the development and discussion of theories of rights generally, and claim-rights specifically. Many if not most of the leading scholars working in rights theory utilize this analysis to some degree, and I will follow suit.

Association Theory aims to explain the function and purpose of such claim-rights with reference to the Aristotelian account of associations and their common goods, which is to say,


with reference to multitudes of individuals working collectively for the achievement of some good they share in common under some system of common norms. Generally, then, Association Theory holds that claim-rights are justified at least partly with reference to the function they perform within associations of common action for the realization of those associations’ respective common goods. Claim-rights are one normative instrument among many which serve as means to the achievement of a common good. Concerning other possible avenues to an account of claim-rights, whether Aristotelian or not, I will remain largely silent, with the exception of some discussion in Chapter 5. My focus is on the narrow defense of claim-rights on the basis of Aristotelian associational normativity and practice.

Throughout this thesis and in order to render my arguments clearer, I will deploy the device of engaging in a running discussion of an imaginary association, called “Politopia.” Politopia, as the name suggests, is a “political place,” an imaginary political association of roughly the liberal democratic form with which we are familiar today. Politopia will serve to illustrate the abstract arguments that I make, and therefore to bring Association Theory “down to Earth.” The structure and nature of Politopia, insofar as they are relevant to my argument, will be adequately explained in the relevant places. Within Politopia we will find Jack and Jill arguing over Jill’s use of Jack’s pail of water, and as the argument progresses the normative features of their dispute, and the impact of their membership in Politopia upon this dispute, will be detailed.

One final introductory note regarding the content of Association Theory. This theory is not a moral theory – I will not defend moral claim-rights in this work. I take this approach because my concern is not to address the question of whether Aristotelianism can support norms of a certain moral significance, but rather whether it can support norms of a certain formal character. So as not to leave the question of the relationship between the claim-rights I defend
and moral claim-rights unaddressed, I will briefly consider the question of moral claim-rights in Chapter 5.

As already remarked, this thesis sits within the Aristotelian normative tradition. I do not presuppose the entirety of Aristotle’s normative framework – the majority of Aristotle’s views are incidental to the conclusion I will defend. There are primarily two ways in which Association Theory may be understood to be Aristotelian. First, Association Theory utilizes the outline of Aristotle’s analysis of associational practice and associational normativity to account for claim-rights. Second, Association Theory utilizes a somewhat altered Aristotelian account of political deliberation, which I dub “social discourse,” to account for certain analytical properties of claim-rights. Fred D. Miller has captured in what manner Association Theory might be called an “Aristotelian” theory:

One method, that of the strict commentator, is to try as far as possible to explicate [Aristotle’s] thought in his own terms and within his own context…A second method, which may be called ‘reconstruction’…is to try to understand the text not only on its own terms but also by applying external concepts, theories, and techniques…A third approach is to philosophize in the tradition, more or less broadly understood, of a given philosopher. One adopts certain distinctive principles or methods and treats them as points of departure, not concerning oneself overly with issues of accurate exegesis or anachronism. Such theorizing is often denoted with the cautionary prefix ‘neo-’.3

Association Theory is a neo-Aristotelian theory which makes a serious effort to express Aristotelianism in Aristotle’s own terms while developing his methods and principles in a manner relevant to contemporary concerns. Yet, the methods and principles cited here are limited: no mention will be found of substantial forms, the unmoved mover, the four basic elements of fire, earth, water, and air, or universal teleology, for instance.

With this reliance on Aristotelianism, the theory presented here stands outside the mainstream of rights theory. My intention will be at all times to focus on the effectiveness of the Aristotelian framework for the justification of claim-rights, that is, on the theory’s capacity to accommodate common language use of the term “claim-right” and the philosophical community’s analysis of that term – to show, that is, that this Aristotelian framework is a fruitful backdrop for rights theory, not an authoritative source to which rights theory must conform. Hence, as a methodological matter, I regard Aristotelianism as revisable in light of contemporary conceptual developments and practical concerns.

In Chapter 1, I situate the reader within the debate concerning claim-rights. I explain the nature of claim-rights and various features of claim-rights that will centrally concern me in this work: correlativity, directionality, and normative power. The dominant rights theories of Will Theory and Interest Theory are then discussed. The remainder of Chapter 1 is devoted to considering the feasibility of an Aristotelian account of claim-rights through unmodified Aristotelianism.

In Chapter 2, I turn to the first stage in my positive account of claim-rights. I motivate an associational approach to claim-rights and explain the Aristotelian account of associations with reference to their end, their structure and functionality, and their membership. I then explore three conceptions of the end of associations, the common good. I conclude the chapter with a consideration of how far associations and common goods simpliciter may go toward an account of claim-rights. For those who hold – as many rights theorists hold – that claim-rights lack directionality (more on this in Chapter 1), this chapter will explain how the Aristotelian can account for a thinner conception of claim-rights as merely correlated with certain duties, and why he or she should do so. For those who do think there is something more to claim-rights,
particularly insofar as they are directional, further arguments will be provided in the following two chapters.

In **Chapter 3**, I provide a more robust account of how Aristotelians can account for claim-rights. I first motivate the claim that associations possess a more or less necessary *task* – attaining shared conceptions of the common good and of the means to it – for which there is a suitable *means* – social discourse. Social discourse is empowered to identify, generate, and legislate norms and actions necessary to the achievement of a common good, thereby working to achieve a measure of consensus regarding the nature and means to a common good. G.E.M. Anscombe’s argument for “functional authority” is referenced to bolster the move from the necessity of a task to the authority of the means necessary to the achievement of that task. The capacity of Aristotelianism to account for *robust* claim-rights – claim-rights embracing all the features listed in Chapter 1 – is then defended insofar as they are a product of this social discursive practice.

In **Chapter 4**, I conclude the positive argument for robust claim-rights by providing empirical and normative reasons for thinking that an Aristotelian theory ought to incorporate them. I provide an account of how social discourse identifies social norms, including claim-rights, and then provide three examples of liberal claim-rights that may be defended on the basis of this positive argument.

In the final chapter, **Chapter 5**, I consider a number of objections to and elaborations of Association Theory. Though various objections and ambiguities are addressed throughout the dissertation, I retain the most salient objections for this final chapter.
CHAPTER 1
CLAIM-RIGHTS

1.1 INTRODUCTION

This chapter aims to establish the conceptual space within which Association Theory will be developed. I will set out the two conceptual features of claim-rights which I take it that a robust theory of claim-rights must offer some account of: *correlativity* and *directionality* (or *directedness*). A third feature, *normative power*, will also be discussed, though its relationship with claim-rights will be left indeterminate in this chapter – I will return to it in Chapter 3. Many rights theorists deny that directionality and normative power are significant features of claim-rights, and therefore an argument for a thinner conception of claim-rights as merely correlative will be offered at the end of Chapter 2. Following my description of these features of claim-rights, I will examine the two most prominent 20th century schools of rights theory – Will Theory and Interest Theory – and how they attempt to account for claim-rights. The chapter will conclude with an examination of whether Aristotelian justice theory can account for these features of claim-rights.

Owing to the nature of the discourse concerning claim-rights in the current literature, it will be necessary to introduce some technical vocabulary in this chapter and spend some time drawing important distinctions between various terminological usages. I am sensitive to the fact that many of the technicalities of Sections 1.2-1.4 constitute “inside baseball.” As such, I will flag the central points I wish the reader to take away from these Sections:
First, from Section 1.2, I simply want the reader to grasp that claims are correlated with duties. For the purposes of my arguments in Chapters 1-4, I will focus on bilateral correlations without assuming that such bilateral correlations exhaust the range of normative structures relevant to this discussion. Whether there might also be, say, trilateral, quadrilateral, or greater correlations will be discussed briefly in Chapter 5.

Second, from Section 1.3, that rights theorists have introduced a new and important consideration into the debate concerning claim-rights over the course of the last decade or two: directionality or directedness. Loosely, directionality is a property that certain norms have, such that they are “owed to” specific individuals (or institutions or groups). Hence, we can distinguish, say, between a general duty and a duty owed to a specific individual (or institution or group). A given norm might require that agent A φ with respect to agent B, but it does not follow that agent A “owes” φ in any meaningful respect to agent B. A directional norm, by contrast, is one which would establish that agent A owes φ to agent B in some meaningful sense (for instance).

Third, from Section 1.4, that claim-rights may involve a (Hohfeldian) normative power on the part of the right-holder and a correlative liability to this normative power on the part of the correlative duty-bearer. What this means and why we might think this will be explained in this section.

If just these three points are gleaned from the first three sections of this chapter, then they have done their work.
1.2 CLAIM-RIGHTS AS CORRELATIVE

Claim-rights stand in a *correlative* relationship with directed duties. To say “A has a claim-right against B to φ” is, *correlatively*, to say “B has a directed duty to A to φ.” Equally, to say “B has a directed duty to A to φ” is, *correlatively*, to say “A has a claim-right against B to φ.” These correlative predicates “...has a claim-right against...” and “...has a directed duty to...” predicate a normative relationship or standing with respect to the doing of a certain action, φ, to each agent imputed in the predication. These diverse descriptions – the poles of the correlation – merely describe diverse normative positions held by those agents standing within the correlative relationship: A is situated *rightfully* to B and B is situated *dutifully* to A. These correlative descriptions locate the agents and the relevant action (φ), we might say, within a certain normative space with respect to one other, distributing normative positions or standings vis-à-vis this action (φ) among them.

Hence, let us say that Jack has a claim with respect to his ownership of a pail of water. Whether his claim in some sense constitutes his ownership of the pail, or whether his claim is related to his ownership in some less robust manner, is incidental to the example. Jill, we would expect, will have a correlative duty with respect to Jack’s ownership of this pail of water. The correlation describes the normative circumstances in which Jack and Jill find themselves and identifies a particular normative relationship obtaining between them. This correlative

---

4. Here I follow Sreenivasan’s terminology: “Let us say that a duty is a *directed duty* if there is someone to whom it is owed; and that it is a *nondirected duty* if there is no one to whom it is owed,” Gopal Sreenivasan, “Duties and Their Direction,” *Ethics*, vol. 120, no. 3 (2010): 467.

5. The possession of a directed duty is sometimes described as “…*owes* a directed duty…,” as “Jill owes a directed duty to Jack.” The use of *owes* seems to have no more semantic significance here than that provided in the use of the verb *has*. Whether we say “Jill has a directed duty to Jack” or “Jill owes a directed duty to Jack,” we imply that Jill stands in a correlative and directional normative relationship with Jack. See Tim Hayward, “On Prepositional Duties,” *Ethics*, vol. 123, no. 2: 269.
relationship will, at the very least, normatively situate Jack and Jill with respect to Jack’s putative ownership of the pail of water by assigning these correlative normative standings, whatever substantive account of these standings happens to obtain.

1.3 CLAIM-RIGHTS AS DIRECTIONAL

Claim-rights, in addition to standing in a correlative relationship with certain duties, are sometimes held to be directional, and their correlative duties are similarly held to be directional. If we refer back to the description of the correlative relationship between a claim-right and a directed duty in the last section, it may be noted that A has a claim-right against B and B has a duty to A. This mutual relationship of normative standings with respect to another agent constitutes what is now called the directionality or directedness of these normative standings. Claim-rights and directed duties seem to involve not merely the correlative subordination of imputed agents to these norms, but also seem to involve the situating of these agents in a certain normative relationship to one another, or, alternatively, the situating of these agents within a mutually directed normative matrix, which is usually captured by the locution “owed to.”

Hence, if Jack possesses a claim-right to his pail of water, it is not merely the case that Jill possesses a correlative duty, but it is also the case that Jack’s claim-right is a claim-right against Jill and that Jill’s duty is a duty owed to Jack. Both Jack’s claim-right and Jill’s duty are, therefore, directed. As Rowan Cruft notes,

For example, my right not to be assaulted, my right to freedom of movement, my property rights, and rights created by promises and contracts all seem to be constituted by others’ duties to me: duties owed to me not to assault me or prevent me traveling, duties not to use what I own, duties to do as you promised to me. These are all directed duties, where this means duties to the right-holder. They
contrast with undirected duties for which there are no correlative claim-rights, such as, perhaps, duties of benevolence or my duty not to destroy an uninhabited forest.⁶

The rights theorist’s task concerning directionality is to provide an explanation and a justification of this concept, to account for practices involving claim-rights and directed duties in terms of not only their correlative, but also their directional relationship.⁷ My explanation of directionality is offered in Section 3.4 and my justification of its inclusion in an Aristotelian account of claim-rights in Section 4.2.

The explicit recognition of this property is a somewhat recent conceptual development within rights theory.⁸ And as Marcus Hedahl notes, “with increasing frequency, failure to capture directionality itself is cited as a drawback of a given theory.”⁹ Nevertheless, it might be asked why this conceptual development is worth acknowledging and incorporating into an account of claim-rights. Recently, Cruft has offered three reasons, which delineate the possible functions that directionality might perform in a normative system.¹⁰ First, the directional owing of a duty

---


7. As Sreenivasan asks, “What does it mean for a duty to be owed to a person? What accounts for the direction in a directed duty – for its existence, as well as for its terminus?”, Sreenivasan, “Duties and Their Direction,” 467.


9. Marcus Hedahl, “The Significance of a Duty’s Direction: Claiming Priority Rather than Prioritizing Claims,” Journal of Ethics & Social Philosophy, vol. 7, no. 3 (2013): 1. As Hedahl notes, the precise relationship between a claim-right and a directed duty is currently the subject of much debate – it is not universally agreed that an account of one is an account of the other. Yet, it is possible to detect the desire for something like directionality in earlier works. For instance, Dworkin voices a salient and pregnant point in his discussion of associational normativity: “the members of a group must by and large hold certain attitudes about the responsibilities they owe one another if these responsibilities are to count as genuine fraternal obligations…they must accept that these responsibilities are personal: that they run directly from each member to each other member, not just to the group as a whole in some collective sense,” Ronald Dworkin, “Obligations of Community,” in Authority, ed Joseph Raz (New York: New York University Press, 1990), 225.

by B to A implies that A is wronged in some special sense by B’s failure to act on his or her duty, in a way that A would not be wronged if B simply failed to act on his or her nondirected duty. Second, where A is wronged through B’s noncompliance with a directed duty, A is owed some form of recompense, such as an apology and/or compensation, and is perhaps even warranted in initiating punitive action. Third, directed duties seem to be “at the heart” of claim-rights.

Tim Hayward, however, has recently voiced reservations about this focus on directionality. His critique is a prominent case of pushback against this focus on directionality, and hence, before proceeding, it would be useful to consider the merits of his objection. Hayward’s concern pertains to the methodology adopted by rights theorists toward the analysis of the correlative or two-place directional relation found in cases of claim-rights and directed duties. He remarks that

The prepositional phrase duty to is widely used, and many who use it appear to assume that it has an intuitively clear sense. The assumption appears to be that the expression is conceptually on a par with other prepositional phrases that link a normative concept with an interpersonal relationship such as having a debt to another person or making a promise to another person. When examined more closely, however, the nature of the connection between the normative concept and the interpersonal relationship is not so clear in the case of a duty to. Attempts to explicate it reveal conflicting intuitions, and the conflict comes into particular focus when a duty to is conceptualized as correlative to a right against... The problem is not simply that the competing theories offer different interpretations but that their accounts of the correlativeity condition are mutually disjunctive... Can any definite and unequivocal sense be explicated for the idea of a duty to prior to or independently of choosing between those competing theories? I shall argue that none so far has been and that we have no reason to suppose one can.11

Hayward questions whether this directional relation can be analyzed independently of the substantive theory of claim-rights and directed duties within which it is embedded and, more

broadly, of the general normative framework within which such relations are constructed. He writes,

We cannot identify cases of directed duties in advance of having a theory of what counts as directedness. To suppose otherwise is to allow an inappropriately essentializing assumption that directed duties in some sense “exist,” independently of the normative constructions in terms of which we conceptualize them, and that we simply need to find a good way of describing them. Such a supposition is illusory. It is a mistake to suppose somehow that there are normative phenomena in the world denoted by the term “duty” which have a property denoted by the term “directionality” that one can examine and characterize more or less accurately. The meanings of such ideas are constituted by the theories we have about them – thus we have the idea of “directionality-as-controlled” which the Will Theory uses in its conceptual analysis of the normative world, and the other quite distinct idea of “directionality-as-benefiting” which the Interest Theory uses.12

This concern is salient for at least two reasons. First, it seems to give reason to doubt that directionality is an intelligible concept outside of particular normative frameworks. Hence, rather than Will Theory and Interest Theory (et al.) debating accounts of a singular normative concept, they are each, properly speaking, defining and defending distinct normative concepts which happen to be called by the same name. Second, if Hayward’s argument is well-founded, an Aristotelian defense of claim-rights becomes not so much a matter of providing a unique defense of, inter alia, the concept of directionality as applied to claim-rights, but merely an interesting and novel theory possessing its own sui generis normative relation, called by the term “directionality.” The sense in which Aristotelianism might then accommodate “directionality” would simply be a matter of understanding the specific concept of directionality utilized by the Aristotelian, rather than a matter of judging the adequacy of Aristotelianism to accommodate a singular or atheoretic concept of directionality.

12. Ibid., 283.
It is fair to grant, I think, that Hayward has correctly diagnosed a belief among many rights theorists that the correlatively directional relation found in cases of claim-rights and directed duties may be identified and analyzed to some extent prior to making substantive commitments. Considering authors whose work is cited in this thesis, each begins his respective paper(s) with a description of Hohfeld’s analysis of claims and duties, and then proceeds to a substantive account within that framework. Each seems to believe, that is, that Hohfeld diagnoses formal features of normative practice which stand independent of substantive commitments. Indeed, I am myself following in this tradition in this work, by first establishing relevant conceptual points in Chapter 1, and then proceeding to my substantive arguments in Chapter 2 and beyond.

The relevant question that must be asked, though, is whether this methodology involves an “essentializing” assumption. Hayward seems to be arguing that we cannot identify cases of directionality – and hence instances of the possession of claim-rights and directed duties – independently of a substantive theory of this kind of normativity, let alone argue intelligibly about diverse accounts of claim-rights or directed duties as though they were disagreements over the proper account of an essential property found in social practice. But this is analogous to saying that we cannot identify cases of wrong-doing prior to possessing a substantive theory of wrong-doing, let alone argue intelligibly about the merits and demerits of different theories of wrong-doing. The latter seems to be false, and by analogy the former seems to be false. Much of our discussion of such questions as the nature of wrong-doing and the merits and demerits of specific accounts centers not on the definition of an essence of wrong-doing, but rather on the

identification of focal cases of wrong-doing and the analysis of our practices on that basis. Even less does our practice of discussing these questions, or our capacity to argue intelligibly about various accounts, seem to require that we assume a specific “essence,” that is, a specific atheoretic definitional meaning shared by all participants in the debate.

Indeed, not even the Aristotelian make such an assumption. As John Finnis notes, “insistence on a flatly univocal meaning of theoretical terms, leading to the search for a lowest common denominator or highest common factor or for the ‘one thing common’, was directly attacked by Aristotle.”\(^{14}\) Aristotle rejected the Socratic and perhaps even Platonic assumption that the analysis of a term presupposes univocal meaning and essential or unitary denotation – terms may be spoken homonomously, and the practice of analysis must not assume that terms denote a single property. On the contrary, Aristotle argued that we must proceed in our analysis by reference to cases of focal meaning derived from experience.\(^{15}\) Certainly in both the cases of “directionality” and “wronging” we seem to possess general or vague concepts that we grasp on the basis of social experience, much as we all possess a general concept of “justice,” “courage,” or “wealth” merely on the basis of experience and without prior possession of a substantive theory. Nor does the possession of general concepts in these three latter cases imply that these terms are used univocally.

My sense in this matter is that it is pretty much irrelevant to the task of defining a substantive theory whether the concept of directionality is prior or posterior to substantive theories. We may examine and discuss and challenge and hypothesize about and attempt to clarify this vague concept through the definition of various conceptions. Perhaps none of these


conceptions get to the heart of the matter. Perhaps there is no heart of the matter to get to. Either way, we can do quite well without committing to essentializing assumptions. Normative practice manifests a property: directionality. Can philosophers provide an account that explains this, and does this account reveal directionality to be a benign manner of speech or a robust normative property? In short, the question of the nature of directionality is not pragmatically prior or posterior to the development of a substantive theory – it arises in the midst of, and is studied concurrently with, that development.

To conclude, Hayward raises a valid question: are rights theorists arguing about the same phenomenon? That they do to some extent believe that they are, in the sense that their practice belies such a belief, does not entail the conclusion Hayward proposes, that rights theorists are committed to the essential independence of this phenomenon from whatever substantive theories they hold. So, setting aside Hayward’s inference, his concern can be taken as a warning not to assume that the debate among different substantive theories of claim-rights is constituted simply by different answers to the same question. And this seems to me to be a valuable warning.

1.4 CLAIM-RIGHTS AS INVOLVING A NORMATIVE POWER

As outlined in the two previous sections, claim-rights are correlated with certain duties and both claim-rights and their correlative duties possess the property of directionality (whether such directionality is benign or normatively significant). The third and by far the most contentious feature of claim-rights that I wish to address is that claim-rights are characterized in some respect by a normative power. What this means and why we ought to think that claim-rights are so characterized is the business of this section.
There has been some work in the rights literature that proposes to characterize claim-rights in terms of a normative power. Joel Feinberg seems to be a foundational proponent of the view. Certainly more well known in this regard is Stephen Darwall. More recently, the position has been defended by Marcus Hedahl and Henry Richardson in their respective work.

What is a “normative power” (hereafter simply “power”)? In the Hohfeldian sense in which I will use the term, a power is a second order normative capacity to alter, in some respect, the first order incidents which are applicable to an agent. Hence, a power might grant to the power-holder the normative capacity to alter the claims held by an agent, or the correlative duties held by an agent, or both. In short, a power grants to the power-holder the normative capacity to alter certain normative conditions under which certain acts are performed by a certain agent or agents. This power is correlated with a liability on the part of another agent or agents to have these normative conditions altered.16

So, consider Jack and Jill. Let us say that Jack possesses a claim regarding a pail of water, and Jill possesses a correlative duty regarding that pail of water. Further, Jack’s claim is directed to Jill and Jill’s duty is directed to Jack. Yet, if claim-rights also involve a power, then Jack will possess more than a directed claim and Jill will possess more than a correlative directed duty – Jack will also possess a power to alter the duty to which Jill is subject and Jill will possess a liability making her in some respect susceptible to whatever (legitimate) normative changes Jack wishes to make to her normative landscape.17

16. For Hohfeld’s description of powers and liabilities, see Hohfeld, “Some Fundamental Legal Conceptions as Applied in Judicial Reasoning,” 44-54. Hohfeld’s original description concerns legal powers and legal rights, but following the practice of rights theorists these descriptions have been imported into the discussion of norms more broadly.

17. The power need not adhere to the claim-holder. Rather, the power might adhere to the duty-bearer, with the claim-holder being in turn liable to the (legitimate) changes the duty-bearer wishes to make to the normative landscape of the claim. Indeed, perhaps a claim-right involves a power on the part of each individual, the right-
I will explain the nature of the power I think is involved in the possession of a claim-right in 3.3 and 3.5. For now, I will consider precedent for this position in the respective work of Feinberg and Darwall. At the same time this will offer a bit more traction on what is meant by the notion that a claim-right involves a power. Looking to Feinberg first, he remarks that “Many philosophical writers have simply identified rights with claims.” Strictly speaking, he holds, this identification is incorrect, even if it has been commonly made by rights theorists. According to Feinberg, claim-rights involve not merely the possession of a claim, but also the possession of the power of claiming.

In the first place, and somewhat pithily, not all rights are claim-rights, and therefore not all rights bear essential or analytical connection to a claim. Perhaps the most conspicuous example of rights that do not obviously involve connection to a claim are human rights. A human right, such as the right to a nationality, is held to be a right in some interesting sense, but is not clearly a right that involves a claim against some particular individual or institution. Certainly some human rights might involve claims, but as Finnis has noted many “human rights” are no more than a specification of certain elements of well-being. More to the point, however, Feinberg contends that it is simply incorrect to identify claim-rights and claims. It is conceptually necessary to distinguish having a claim and making a claim, that is, the grounds for

18. Joel Feinberg, “The Nature and Value of Rights,” in Rights, Justice, and the Bounds of Liberty, (Princeton: Princeton University Press, 1980), 149. An author who appears to conflate rights and claims in this manner, who is of particular relevance to Association Theory, is Fred D. Miller, who in his comparison of classical and modern concepts of rights, remarks that a right “may be defined as a claim of an individual against other members of the same community, a claim justified on the basis of justice, law, or some comparable norm.” See “Origins of Rights in Ancient Political Philosophy,” in The Cambridge Companion to Ancient Greek Political Thought, ed. Stephen Salkever (Cambridge: Cambridge University Press, 2009), 303.

the making of a claim and the act of making a claim. According to Feinberg, analysis of social practice reveals that we ought to distinguish Jack’s claim to the pail of water and his normative capacity – his power – of making a claim to the pail of water. This involves, in part, the alteration of the duties impinging upon Jill’s action through a suitable institutionalized act of demanding. As Feinberg remarks, “having a claim consists in being in a position to claim, that is, to make a claim to or claim that.”\textsuperscript{20} This is analogous to saying that we must distinguish being in the position to exercise one’s privilege and actually exercising one’s privilege. On the face of it, this is an intelligible distinction.

The possession of a claim is unintelligible to Feinberg if it is not accompanied by a power of claiming. Again, we might say that being in the position to exercise one’s privilege is unintelligible if not accompanied by the power of exercising one’s privilege. The practical or functional import of claim-rights within this Feinbergian world resides chiefly in those acts of claiming or demanding that they legitimate or authorize. Claim-rights do not merely entitle one to make a claim, but more particularly are characterized by their justifying such an act. Feinberg remarks that

\begin{quote}
[T]here is no doubt that [claim-rights’] characteristic use and that for which they are distinctively well suited, is to be claimed, demanded, affirmed, insisted upon. They are especially sturdy objects to “stand upon”…Having rights, of course, makes claiming possible; but it is claiming that gives rights their special moral significance.\textsuperscript{21}
\end{quote}

Claim-rights mark out the distribution of this capacity to claim, and hence serve to mark out in normative space the propriety of engaging in such special acts of claiming. Yet Feinberg’s

\begin{footnotes}
\item[21] Ibid.
\end{footnotes}
account is vague. He says little about what makes such an exercise of claiming special. Does claiming, for instance, serve to specify the conditions under which the right-holder wishes the duty to be satisfied? Or does claiming serve to place some sort of additional normative burden upon the duty-bearer, such as imposing a new authoritative reason for action? And what is the precise relationship of Feinberg’s conception of claiming to the Hohfeldian notion of a normative power? There is a resemblance, but the specific sense in which Feinberg’s position is Hohfeldian is unclear. Yet, these and other problems aside, Feinberg has offered a coherent way to understand the relationship of claim-rights and powers.

Stephen Darwall has also presented an account of claim-rights as involving a power. He approaches the question through a consideration of two kinds of apparently second personal act: assertion, which it turns out is not a second personal act at all, and address, which is. Consider two cases. In the first, B has good reason to act in a certain way vis-à-vis A, and A might assert B’s good reason as a reason for action for B. This act of assertion is merely an act of identification, of pointing out to B what his or her good reason is in this case.

If Jill has good reason to abide by Jack’s claim to the pail of water, for example, Jack might “assert” this reason by reminding Jill of its existence, or perhaps even by urging Jill to remember and act on it. At no point, however, is Jack’s act of assertion or capacity to so assert authoritative over the other reasons for action relevant to Jill’s choice. At no point, that is, does Jack serve as more than an incidental source of a reason for action for Jill. In this instance of “reason-asserting,” Jill is under no more practical necessitation than that provided by her good reason. Yet, according to Darwall, our normative landscape is richer than this:

According to [Wesley] Hohfeld, someone has a claim right to another person’s doing something only if that person has an obligation to her to do that thing. And this consists not simply in its being the case that the other ought or has good or
sufficient reasons to do it…but in the claim-holder’s authority to demand compliance and, perhaps, compensation for non-compliance.  

According to Darwall, then, A might, in certain circumstances, do more than merely assert or point to certain reasons for action applicable to B. A might also authoritatively call upon B to act in accordance with the claim. Jack might, that is, do more than point to a reason for action applicable to Jill – he might “address” Jill in such a way as to authoritatively move her to comply with his claim. In the first case, Jack asserts that Jill has a reason to abide by his claim to the pail of water. In the second case, Jack addresses a reason for action to Jill, such that he gives her an authoritative reason for action to comply with his ownership of the pail of water. The precise details of Darwall’s conception of authority need not concern us.

We might say, then, that Jill is subject to two layers of obligation in virtue of Jack’s claim-right on this Darwallian picture: first, insofar as Jack possesses a claim simply, Jill possesses a corresponding duty or reason for action to act accordingly, and in addition Jack may simply assert this fact to remind Jill of her duty; second, insofar as Jack’s possession of a claim-right permits him to demand compliance with that claim, which is to say, permits him to address an authoritative reason for action demanding compliance with that claim-right, Jill possesses a further duty to abide by Jack’s act of claiming. Darwall regards this additional layer as being necessary in order to make good “on the possibility of [a] reason’s being addressed person-to-person,” with the weight on what it means to engage with someone person-to-person, a very


23. “Address” is Darwall’s terminology. It marks out as categorically distinct from assertion the sort of normative performance that occurs when the right-holder exercises his or her power to authoritatively move the duty-bearer to comply with the claim at stake.
thick notion in Darwallian theory.24 I won’t pursue Darwall’s reasoning further, so the details can be left aside.

These are two examples of rights theorists who have argued that normative power is central to an account of claim-rights. What reasons are there to think that this need be the case? Have we learned anything useful from them on this topic? I will offer two reasons to think that claim-rights involve a normative power. These reasons are not free from objection. I don’t offer them as conclusive reasons. These are intended to motivate the notion that a normative power akin to what Feinberg and Darwall have presented ought to be involved in an account of claim-rights. What I take to be the most significant reason to think that a normative power is central to claim-rights, at least in the case of those claim-rights derived from associational practice, will be considered in Chapter 3.

First, social practice seems to confirm that claim-rights involve possession of a power. People certainly do make claims upon one another, rather in the fashion that Feinberg lays out. Yet, it must be asked whether these are benign normative performances – assertions – or a distinct category of normative performance captured by the Hohfeldian normative category “power.” Consider an analogy: A judge possesses the distinct legal power to issue second order reasons for action demanding or claiming compliance by contractors with the terms of a contract. The judge seems to possess this power in order to apply institutional pressure and norms to the contractors, with the aim of achieving compliance with law and with the terms of the contract. It is prima facie reasonable to propose that such a legal power has a general normative analogue, that agents may, under suitable conditions, possess a normative power of demanding or claiming certain acts of other agents in order to achieve certain results. A plausible instance of this is a

24. Ibid., 8.
property right. While a property owner may establish the normative conditions under which agents may use his or her property by setting the privileges they enjoy with respect to that property, one might also think that property owners may, in certain circumstances, exercise their capacity to make a claim in a suitable performance so as to demand or in some way compel compliance with those very privileges as set. Perhaps Feinberg and Darwall are on to something, that everyday practices we take for granted, like claiming and demanding, are more normatively robust than we give them credit for.

Second, Feinberg offers a further intuition: In a world of entitlements and duties, but without *claim*-rights, the practice of *claiming* is absent (i.e. a power to claim or demand compliance with entitlements and duties). “Nowheresvillians, even when they are discriminated against invidiously, or left without the things they need, or otherwise badly treated, do not think to leap to their feet and make righteous demands against one another…”

That is, in a world of correlative claims and duties, but no power of claiming, it is plausible to think that this absence would be significant. From these two arguments, I think we can conclude that there is at least conceptual space for the claim that there might be more to claim-rights than correlativity and directionality. I will return to this issue in Chapter 3.

1.5 ACCOUNTING FOR CLAIM-RIGHTS: WILL THEORY AND INTEREST THEORY

Sections 1.2-1.4 have established the central features of claim-rights with which I will be working. In this section, I will consider how two dominant theories of claim-rights have accounted for these features, to the extent that they have. This will provide a bit more traction on

the abstract features discussed and set up my positive account in the next chapters by providing both context and the delineation of certain issues that I must address. I will focus on the Will Theory of H.L.A. Hart and the Interest Theory of John Finnis. In the former case, I appeal for convenience to a recent analysis of this Will Theory provided by Rowan Cruft; in the latter case, I provide my own analysis of Finnis’ Interest Theory. I engage primarily with Finnis’ account of Interest Theory (as opposed, for instance, to the more frequently cited theories of Kramer or Raz) because Finnis’ account is closer to the Aristotelianism to be presented in later chapters.

Beginning with Will Theory, then, Hart presented an account of claim-rights and directed duties according to which an agent possesses a claim-right as a mechanism for the exertion of normative power over the freedom of another agent. Claim-rights incorporate a power that permits the right-holder to constrain, in appropriately specified ways, another’s free action. Such a power is correlated with a liability on the part of the addressee, normatively subordinating him or her to the right-holder’s power of constraint. Hart defends this account with reference to fairness, but this line of justification need not concern us here.  

Hence

[T]he concept of a right belongs to that branch of morality which is specifically concerned to determine when one person’s freedom may be limited by another’s and so to determine what actions may appropriately be made the subject of coercive legal rules.

Hence

[T]he possessor of [the claim-right] is conceived as having a moral justification for limiting the freedom of another and that he has this justification not because the action he is entitled to require of another has some moral quality but simply because


27. Ibid., 177.
in the circumstances a certain distribution of human freedom will be maintained if he by his choice is allowed to determine how that other shall act.  

Hart therefore disagrees with Feinberg regarding the function of the power attending possession of a claim-right. For Feinberg, claim-rights come packaged with a power so that the right-holder may ensure compliance with the object of his or her claim. For Hart, by contrast, claim-rights involve a power in order to limit the freedom of another agent in the interest of fairness (again, the details are beside the point here).

Now, Hart does not provide an analytic formulation of his theory. Rowan Cruft has recently provided a simplified analysis of this Will Theory that I shall make use of here for convenience:

**WILL THEORY:** Duty DD is owed to anyone who has powers to waive or enforce it.  

If a claim-right consists, as Hart argues, in a power to limit another’s freedom, then the correlative directed duty owed to the right-holder will consist in a liability to that capacity for limitation. Hence, one owes a directed duty to the person, persons, or institution that possesses the power to “waive or enforce” the duties one is under – to waive or enforce limits to one’s normative freedom. Within the scope of a certain distributional scheme, if A receives a distributed portion of power authorizing him or her to waive or enforce action on the part of B, which is to say, to constrain B’s freedom, then A is conceived as possessing an appropriate claim-right against B and B a correlative duty to A. If, then, Jack’s property right grants him a

---


power to modify the scope of Jill’s freedom through waiving or enforcing a duty on her part, then Jill possesses a corresponding duty in virtue of Jack’s power or claim-right.

Sreenivasan outlines what are usually cited as the two central arguments against such a Will Theory. First, in cases of so-called inalienable rights, the right-holder is unable to waive the performance of the correlative duty. This entails that Will Theory’s account of claim-rights is flawed, or at least incomplete, because this inability to waive is equivalent to the denial of the possession of a claim-right. Second, there are many who are thought to possess claim-rights who nevertheless lack the capacity of waive or enforce those rights. Children and the cognitively impaired are typically cited in this regard.\(^\text{30}\) Neither of these are death-knells for Will Theory, for they may be accommodated through ancillary principles, but they do mark out areas of particular concern.

Moving on to Interest Theory, Finnis begins by outlining the general conception of Interest Theory.

\[T\]here is a claim-right correlative to B’s duty if and only if there is some ascertainable person A for whose benefit the duty has been imposed, in the sense that A is to be the recipient of the (presumable) advantage of B’s performance of or compliance with the duty.\(^\text{31}\)

Contrary to Will Theory, which holds that a claim-right is held in cases in which A stands in a certain position of power with respect to B’s freedom, Interest Theory holds that a claim-right is held in cases in which B is constrained to act in A’s interest. Claim-rights specify such interests


\(^{31}\) Finnis, Natural Law & Natural Rights, 202. I take this word “imposed” thinly for my purpose here – that is, it need not be assumed that Interest Theory requires that the duty is imposed by human agency.
and are correlated with those duties that B possesses, requiring appropriate action for the sake of A’s relevant interest.

Finnis highlights two limitations of this general conception of Interest Theory. First, Interest Theory, like the general conception of Will Theory

is constructed primarily on the implicit model of a relationship between two individuals. So, in its primary signification…modern rights-talk most fittingly concerns benefits or advantages to individuals…But public morality and public order…are both diffuse common benefits in which all participate in indistinguishable and unassignable shares.32

Finnis’ contention is that Interest Theories are often developed to assign and distribute rights only in order to secure the interests of individuals and only on assumption of bilateral relationships. Collectives, such as families, are therefore left out of consideration as collectives. Collectives are broken into a series of bilateral relationships and individual interests, and rights and duties are distributed accordingly. A conception of claim-rights that fails to recognize the irreducible social nature of certain values errs in at least two respects, according to Finnis. First, it fails to accord to certain goods of human life appropriate and perhaps necessary normative status. Hence, if friendship and marriage (say) are irreducible social goods, only the separate and distinct interests of the friends and spouses will be addressed within rights theory. Prospective duties and claims pursuant to the irreducible social good(s) shared by relevant individuals will lie outside the scope of normative concern as duties and claims. Moreover, such a conception of goods underlying claim-rights will establish a necessary conflict between the rights and duties of individuals and the demands of the “general welfare.” Finnis draws out a consequence of this in his Maccabaean lecture, remarking

32. Ibid., 216.
the contrast between rights and collective welfare does mischief to rights themselves. While teaching that (all) rights are trumps, it also teaches that (all) rights must give way to so-called collective welfare. Each right’s presumptive priority (it is said) can be rebutted, and is rebutted whenever the threat to this ‘collective welfare’ is sufficiently great.  

I will have more to say about this issue in 5.2.

Finnis is further concerned that this general conception of Interest Theory washes out the distinctiveness of claim-rights as a normative category. A comment Finnis makes in the course of his critique of the UN’s Universal Declaration of Human Rights and other “manifesto” theories of rights illustrates this point. He writes

When we survey this list [of rights contained in the UN’s Universal Declaration] we realize what the modern ‘manifesto’ conception of human rights amounts to. It is simply a way of sketching the outlines of the common good, the various aspects of individual well-being in community. What the reference to rights contributes in this sketch is simply a pointed expression of what is implicit in the term ‘common good’, namely that each and everyone’s well-being, in each of its basic aspects, must be considered and favored at all times by those responsible for co-ordinating the common life.

Such rights – that is, manifesto rights – may certainly exist: human rights are a plausible candidate. However, such rights are certainly not claim-rights in the Hohfeldian sense, nor are they the kind of rights with which rights theorists are interested when speaking of correlative directionality. That an interest right so-conceived is a right as opposed to some other norm is


34. Finnis, Natural Law & Natural Rights, 214.

35. It should be noted that Finnis’ vocabulary in Natural Law & Natural Rights, Chapter VIII is ambiguous between human rights as embracing Hohfeldian claim-rights and human rights in the sense spoken of in relation to international politics and economics. Finnis self-consciously uses the term in this ambiguous sense (198-205), and so it is left for his commentators to draw out the divergent threads of argument.
merely a matter of its function as an *individuated share* of some (divisible) common good. It performs an indicative (assertive) rather than an imperative (addressing) function. It does not serve, as Feinberg said, “to be claimed, demanded, affirmed, [or] insisted upon.”

Finnis’ own analysis of claim-rights develops rather than departs from the general conception of Interest Theory just recounted. As such, although Finnis prefaces his theory of rights with the note that he seeks the common ground between Will Theory and Interest Theory, his theory may be regarded as an Interest Theory, if one once removed from what he takes to be the paradigm of such a theory. As I read it, Finnis’ theory seeks to avoid the two errors noted above: the analysis of claim-rights strictly in terms of the distinct and “individual” goods of particular agents and the restriction of the function of rights to the assertion of interests.

Generally, Finnis’ theory provides that one possesses a claim-right where one possesses a (relevant) interest that other agents *must* respect in order to avoid committing a (relevant) wrong. To the general conception of Interest Theory it therefore adds an account of when an interest *must* be upheld *in order to avoid committing a wrong*, for which Finnis utilizes a generally Thomistic conception of justice. Finnis holds that (1) the common good (2) generates norms of justice which (3) include duties not to wrong in specific ways which (4) are correlated with claim-rights.

Let’s consider this in more detail. According to Finnis, justice involves three elements: duty, other-directedness, and equality. Duties constitute what we might call the building blocks of justice. Duties of justice encompass “not every reasonable relationship or dealing between one


37. See, generally, *Natural Law & Natural Rights*, Chapter VII.

person and another, but only those relations and dealings which are necessary or appropriate for the avoiding of a wrong…a way of avoiding something that in reason must not be or be done in the relevant." Insofar as these duties pertain to social relations and hence to justice, the necessity of their fulfillment falls under the scope of the common good, which is the fulfillment of the various social norms under which human agents operate. The wrongs whose necessary avoidance constitutes the duties of justice are therefore specified with reference to the needs of a common good, and such needs are specified with reference to a substantive account of this common good. For instance, a parent may have a duty of justice to inquire from time to time into how his or her child feels, as an act necessary in order to avoid the wrong of not adequately developing a child’s emotional and communicational, and perhaps sympathetic, capacities. This wrong will in turn be defined relative to the common good of parent-child development. In this situation, we might say that the child possesses a claim-right that his or her parent(s) inquire in this manner.

Granting this account of a duty, we can acknowledge that these duties of justice accommodate the requirement of other-directedness, and hence encompass duties arising between social agents, not private duties held by a private individual of which another agent may take cognizance or act with respect to. The above example of a parent clearly fulfills this

39. Ibid., 162.


41. Finnis, Natural Law & Natural Rights, 155-156.
requirement: the parent’s duty exists relative to the child, it is owed to the child, and it pertains to a good of common significance for both. 42

The “needs” of the common good are therefore specified as so many “requirements” or “duties” of justice. Such duties correlate claim-rights. Hence, Finnis remarks that “the common good is precisely the good of the individuals whose benefit, from fulfillment of duty by others, is their right because required in justice of those others.” 43 Hence, unlike general Interest Theory, Finnis adds an intermediary between common interests and rights, namely, requirements of justice, that normatively shape and direct common interests. Taking all this together, Finnis’ earlier description of Interest Theory can by amended as follows:

There is a claim-right correlative to B’s duty if and only if there is some ascertainable person for whose benefit the duty has been imposed, in the sense that A is to be the recipient of the (presumable) advantage of B’s performance of or compliance with the duty, and B’s non-performance of or non-compliance with the duty is necessary or appropriate for the avoiding of a wrong.

Finnis’ theory thus (prospectively) explains correlative directionality by demonstrating in what way correlative and directional “owing” emerges within the scope of a common good.

Interest Theory has been subjected to criticism for some decades now, and the primary objection in this assault has been the argument from 3rd party beneficiaries. Briefly, this

42. The actual good in question may be specified variously. For instance, in order to retain the irreducible social nature of the good, one might say that the good in question is the excellence of the parent-child relationship. This is a good distinct from the separate goods of the parent and child as such. However, some might reject this description, holding that the good that is (or ought to be) relevant is the good of the child. While it is true that the good of the child is imputed in this situation, the description of the situation notes that what is of normative significance here is the fulfillment by the parent of his or her duty vis-à-vis the parent-child relationship. That this inter-personal dynamic must be noted, as opposed to defaulting simply to the welfare of the child, follows for two reasons: first, that the normative structure of the situation must make reference not merely to the normatively significant features of the child’s welfare, but also of the position of liability held by the parent vis-à-vis that welfare; second, that the parent does in fact have a distinctive interest at stake in the situation, namely, the interest of being a good parent.

43. Ibid., 210.
objection is as follows: If B undertakes a promissory obligation to A to benefit C, we would intuitively say that B, by undertaking this promise to A, now possesses a duty to A, and A possesses a correlative claim-right to B. However, A conceivably has no interest in B’s performance of this duty, and more particularly the promise imputes the primary interest to C, who seems to lack a correlative claim-right. Hence, Interest Theory seems to be unable to explain intuitive cases like this in which claim-rights and interests separate, or, to be unable to adequately account for central cases of obligation associated with promising, contracting, and other acts of willing readily accountable within Will Theory and regularly defended in legal practice.44

Finnis recognizes that neither Will Theory nor Interest Theory is “consistently reflected in legal discourse.” 45 Finnis’ theory, however, is intended to provide an account of the “underlying principle, unifying the various types of relationship that are reasonably said to concern rights’. 46 His development of Interest Theory, then, is intended to account for the use of rights locutions within legal and moral discourse in such a way as to accommodate the two more particular manifestations of claim-rights: will rights and interest rights. This would suggest that Finnis regards his theory as capable of bearing the 3rd party beneficiaries concern. Whether this is true need not concern us.47


45. Finnis, Natural Law & Natural Rights, 203.

46. Ibid., 203.

The account of claim-rights I will develop in Chapters 2-4 is broadly Aristotelian in the ways I outlined in the Introduction: it relies on an Aristotelian analysis of associations and associational practice, and it leverages the Aristotelian concept of political deliberation in a manner capable of generating “robust” claim-rights, which is to say claim-rights manifesting all the normative features outlined in 1.2-1.4. But before I develop this account and expand Aristotle’s theory in the ways I think it needs to be expanded, it would be helpful to pause to consider whether Aristotelian theory as such might provide a ground for claim-rights. The most detailed attempt to integrate Aristotelianism and modern rights talk has been undertaken by Fred D. Miller in his Nature, Justice and Rights in Aristotle’s Politics, but a more recent discussion of the issue has been offered by Michael Thompson. There are two virtues of Thompson’s account that lead me focus on it here. First, Thompson focuses his study on the issue of claim-rights specifically, rather than moral rights generally as does Miller. Second, Thompson integrates his study with the contemporary claim-rights literature while Miller does not.

Thompson notes that three categories of action seem to involve agents in a two-place or “bipolar” normative relational structure, which he dubs dikaiological as distinct from monadic (“dikaiological” after the Greek term for justice, dikaios). Thompson writes, “A merely monadic ‘duty’ is simply the deontic necessity or requirement or ‘must’ that is constituted by the underlying norms or standards, whatever they are.” Bipolar or dikaiological norms, by contrast,

48. This seems to suggest that Thompson regards all dikaiological norms as bipolar or bilateral. Hence, he seems to exclude the possibility of trilateral dikaiological norms. Whatever his opinion, I will return to this in Chapter 5.

are those norms that place agents into normative relationships with one another: Thompson writes, “[W]herever a couple of agents are apt to be represented in true bipolar deontic judgements of one type or other…we will say that they stand together under a particular dikaiological order or a particular order of right – that is, a particular form of dikaion or ius.”

These three categories are as follows (omitting the corollary negative representations):

- B wronged A by φ-ing
- B has a duty to A to φ
- A has a right against B…

The first of these Thompson calls Aristotelian: it represents the form of normative judgment made in cases of Aristotelian social action of the sort B adikei A (B acts unjustly to A). The second two Thompson calls “Hohfeldian,” as representations of Hohfeldian relations of claim and privilege respectively. Such “dikaiological” norms, he holds, involve “a special way of coupling representations of agents…view[ing] a pair of distinct agents as joined and opposed in a formally distinctive type of practical nexus.” These potentially dikaiologically ordered agents include “the whole class of agents apt to be joined pairwise by concrete dikaiological relations of the type that the particular order makes available.”

Licensed in reading this conception of duty as being quite thin. Consequently, it does not seem improper to say that Aristotelian agents, who are under the normative force or direction of various goods are ipso facto under the normative force or direction of various duties. This alignment of terminology is not always applicable, but in this particular case Thompson has defined his terms so as to be able to locate Aristotelian and Hohfeldian normativity within the same broad category.

50. Ibid., 352.

51. Throughout, I have adapted Thompson’s X/Y terminology to my use of B/A, where B (X) is the duty-bearer and A (Y) is the right-holder.

52. Ibid., 335.

53. Ibid., 354.
(“persons”) characteristically “apprehend this order of thought and…view [themselves] as related to others, and as other to others, in this peculiar way.”

Thompson’s task is primarily to adjudicate among three possible explanations of this dikaiological nexus: the Aristotelian, the Humean, and the Kantian. Of these, only the Aristotelian need concern us. For Aristotle, justice ( dikaiosynē) is the distinct virtue embracing social action and hence disposing us to act excellently within dikaiological space. To quote Thompson: “The mark of this special [dikaiological] virtue of human agents, as Aristotle says, is that it is ‘toward another’, pros heteron or pros allon.”

Now, if Aristotle’s own unaugmented justice theory can be read as plausibly offering an account of normativity which explains claim-rights, then the transition from Aristotle to a contemporary theory of claim-rights will be that much less painful. If, however, Aristotle provides no or only some resources for such an account, it will prove that much more necessary to supply additional premises requisite for an Aristotelian account of claim-rights, premises which are, moreover, to some degree compatible with Aristotle’s broader theory and which, perhaps, also offer a plausible development of that theory.

Before addressing the proper interpretation of Aristotelian dikaiological norms and evaluating the prospects for an Aristotelian account of claim-rights, I will set out in summary Aristotle’s account of justice, to the extent that it is relevant both to Thompson’s analysis. In Nicomachean Ethics V.1-2, Aristotle presents a dual theory of justice, dividing the virtue of justice ( dikaiosynē) into two species: complete justice and partial justice. In the complete sense, Aristotle holds “the just person [ ho dikaios] will be both lawful and equal. The just [to dikaion],

54. Ibid., 337.

55. Ibid., 337.
therefore, is what is lawful and what is equal.”  

The corresponding virtue of justice [dikaiosynē], therefore, “is complete virtue, though not unqualifiedly but in relation to another person [pros heteron].”  

Justice in the complete sense, then, involves three primary elements: the just person (ho dikaios) as that person possessing the virtue of complete justice (dikaiosynē) which disposes him or her to do the just thing (to dikaion). Justice (as a virtue) is, in this case, the entirety of the other virtues (courage, moderation, liberality, and so on) in relation to another person (pros heteron).

The other notion of justice is that of partial justice. Partial justice [dikaiosynē kata meros], in contrast to complete justice, is not the entirety of the virtues in relation to another (pros heteron), but is rather one virtue among many that involves acting in a certain way in relation to another (pros heteron).  

Focusing on the primary form of partial justice (distributive justice), Aristotle notes, “One form of partial justice [dikaiosynē kata meros], and of the just thing [to dikaion] that accords with it, is found in the distributions of honor or money or any of the other things divisible among those who share in the regime (for in these things it is possible for one person to have a share that is either unequal or equal to another’s).”  

Like complete justice, partial justice involves three elements: the just person (ho dikaios) as that person possessing the virtue of partial justice (dikaiosynē kata meros) which disposes him or her to do the just thing (to dikaion). The just thing in this case is to distribute goods divisible among members of a regime in accordance with a standard of merit.


57. Ibid., 1129b27.

58. Ibid., 1130b1-2.

59. Ibid., 1130b30-1131a2.
Characteristically, Aristotle is primarily concerned in the *Nicomachean Ethics* with explicating the forms and causes of virtue as so many components and causes of the good life. Hence, Aristotle is primarily concerned in his justice theory with laying out the kinds and causes of the virtue of justice. Contemporary deontological and consequentialist ethical theory, by contrast, is primarily concerned to explicate the forms and conditions of *just action*. Consequently, in what follows I will emphasize Aristotle’s notion of just action (*dikaiopragēma/dikaiōma*60), taking it for granted that it both proceeds from the virtues of justice (*dikaiosynē*) and receives its distinctive normative quality from those virtues, where those virtues are dispositions to do the just thing (*to dikaion*) in either the complete or partial sense. For Aristotle, then, just acts in the complete sense are those acts which appropriately manifest the other virtues in relation to other people, and just acts in the partial sense are those acts which appropriately distribute divisible things, or respect appropriate distributions, in relation to other people.

With this framework of Aristotelian justice theory in place, let us turn to Thompson’s dikaiiological reading of that theory. As remarked above, Thompson identifies Aristotle’s use of the phrase *pros heteron* as indicative of his dikaiiological theory, insofar as it is Aristotle’s justice theory, as a theory of *pros heteron* normativity, which relates agents pairwise within the Aristotelian system. Can we, then, locate anything like correlativeity and directionality within Aristotle’s justice theory, focusing our search on the use Aristotle makes of the phrase *pros heteron*? Can Hohfeldian dikaiiological relationships be found within Aristotelian justice theory, in other words? If *pros heteron* cannot plausibly be interpreted as generating a theory of

---

60. See e.g. *ibid.*, 1135a14.
correlative directionality, then whatever dikaiological system Aristotle establishes is, in that regard, insufficient as-is for my purposes here.

Aristotle holds that just action (in both the complete and partial senses) is “in relation to another” or “toward another”: pros heteron. The Greek pros heteron (or pros allon) is no special piece of philosophical vocabulary – it quite literally means “to/toward another,” and embraces the general meaning of “in relation to another.” The essential contrast here is to pros hauton, “to/toward oneself” or “within respect to oneself.” Plausibly, there are two ways to read Aristotle’s claim that just action (of whichever kind) is pros heteron. The first I call the “practical reading”: this holds that pros heteron marks out action in which the direct object of that action is a person other than the agent. The second I call the “normative reading”: this holds that pros heteron marks out action which is other-directed in some normative sense, such as being for his or her benefit. The distinction between these readings of pros heteron, therefore, rests on whether we should conceive of pros heteron as indicating the practical or normative structure of just action. Let’s consider each reading in more detail.

In the first sense, to say that any (just) act is pros heteron is to say that it is practically directed toward another person. We might schematize this in the following way:

\[
\begin{align*}
A & \varphi B & (Self-regarding\ act\ –\ pros\ hauton) \\
A & \varphi S & (Other-regarding\ act\ –\ pros\ heteron)
\end{align*}
\]

On this reading, action that is pros hauton is any action undertaken without a human object – or, if it takes an object, its object is the subject of the action. For instance, A is walking, A is running quickly, A is fighting courageously, or A restrains himself. Action that is pros heteron, by

---

61. E.g. at ibid., 1130a7-8.
contrast, is action undertaken with a human object where that object is other than the subject. For instance, \(A\) punches \(B\), \(A\) helps \(B\), \(A\) courageously supports \(B\), and \(A\) unjustly punishes \(B\). On this reading of \textit{pros heteron}, we would call all Aristotelian actions of the form \(A\ \phi\ s\ B\ dikaiiological\) insofar as they are acts which are directed \textit{practically} to another person, and to that extent are “social” and hence fall under the norms of justice (\textit{to dikaios}n). Hence, virtuous action of a non-dikaiiological sort would take no human object independent of the actor. We would say that \(A\ \phi\ s\ courageously\) or \textit{piously}, but not \textit{justly}. Just (and unjust) action, by contrast, would necessarily involve another human agent – it is that action which practically impacts other agents. To bring any non-dikaiiological act within the orbit of other agents would be, then, to render it “social” and \textit{therefore} dikaiiological, as subject to norms of justice.

The alternative reading of Aristotle’s \textit{pros heteron} in \textit{NE V} holds it to be incipiently directional, in the sense set out in Section 1.3, as marking a \textit{normative} sense of “…to \(B\).” Acts, thereby, are \textit{pros heteron} insofar as they are \textit{normatively directed} toward another person.

Plausibility for this reading is derived from Aristotle’s remark that “justice [\textit{dikaiosynē}] alone of the virtues is held to be another’s good [\textit{allotrian agathon}], because it relates to another [\textit{pros heteron}]. For it does what is advantageous [\textit{ta sumpheronta}] to another, either to a ruler or to someone who shares in the community.”\textsuperscript{62} The suggestion is that \textit{pros heteron} should be understood as marking a normative relation because actions which are \textit{pros heteron} are “to another” in the sense of contributing to or being another’s good primarily. On this reading of \textit{pros heteron}, we might call certain Aristotelian actions \textit{dikaiiological} insofar as they are acts normatively directed to another person, that is, undertaken for his or her own good. The dikaiiological, therefore, is on this reading a normative category of action, marked by the

\textsuperscript{62} Ibid., 1130a3-6.
structure of benefit accruing from the action. Action that is for the sake of one’s own good would
be self-regarding (pros hauton); action that is for the sake of another’s good (in some sense)
would be other-regarding (pros heteron). 63

Which of these, however, is the proper reading of Aristotle’s use of pros heteron? The
key to answering this question might be thought to lie in Aristotle’s inference. Aristotle’s Greek
for the inference “justice alone of the virtues is held to be another’s good, because it relates to
another” is as follows: “allotrió̂n agathon dokei einaí hē dikaiosynē monē tōn aretōn, hoti pros
heteron estin.” 64 Aristotle tells us that justice is “held to be” another’s good because it is pros
heteron. The key term – hoti – serves in this instance simply as a causal or inferential particle. 65
Aristotle infers from the fact that just actions are toward another that the commonly held belief
that they are for another’s good is warranted. Yet the nature of this inference if unclear –
Aristotle’s Greek is ambiguous. Does he mean that other-regarding action is for another’s good
in virtue of the intrinsic normative structure of other-regarding action as such, or does he mean
that other-regarding action is for another’s good because it incidentally falls under some system
of norms that renders it such? Which kind of causal inference is implied (strictly, in Aristotelian
terms, whether an inference of essence or of accident) is not stated.

63. It must be noted that it is unclear whether Aristotle is committed to the claim that just action, qua being
for the sake of another’s good, is ultimately for the sake of another’s good. It is possible to interpret even this claim
as being ultimately for one’s own good – as being for the sake of one’s own eudaimonia – though in respect of the
distinctively ‘other-regarding’ aspect of that eudaimonia. This question need not concern us, as no aspect of
Association Theory rests on the proper interpretation of this Aristotelian claim.

64. For those not conversant with Greek: “allotrió̂n [another’s] agathon [good] dokei [seems] einaí [to be]
is].”

65. See entry ὅτι (V) in Liddell and Scott, An Intermediate Greek-English Lexicon (London: Oxford
University Press, 1961), 574.
Traction can be gained on this issue if we consider what difference these interpretations make to the question of claim-rights in Aristotle. Let us assume that Aristotle holds that other-regarding action is intrinsically normative, that the designation *pros heteron* marks out a normative structure within which agents act rather than simply locating the acting agent within a practical nexus that can *thereafter* be brought under a system of norms. Let us assume, that is, that *pros heteron* marks a normative rather than practical feature of certain actions. The problem with this reading is that even if we assume that Aristotle intends for this to be a normative relation, we have no reason to think that Aristotle implies anything like correlative directionality by this normative structure. Even if A acts *unjustly* with respect to B, we have no reason to think that he or she does anything more than *act wrongly* simpliciter, as opposed to *wronging B*. There is no evidence, that is, that Aristotle in his discourse on *pros heteron* thinks that B is in a normative position to possess any special *correlative* normative standing vis-à-vis A. Indeed, this conclusion agrees with Thompson’s reading of Aristotle, for, as we have seen, Thompson holds that there are three paradigmatic instances of dikaiiological norms, of which Aristotle adheres to the first, *non*-correlative kind only. And if we are to read *pros heteron* as being only incidentally other-directed in a normative sense, we have even less reason to think there is any intrinsic correlative directionality signified by Aristotle’s term.

Aristotle’s use of *pros heteron* in this passage, then, whether read as having merely practical significance or as having normative significance, does not obviously yield anything like correlative directionality, and does not obviously provide a ground for claim-rights. If *pros heteron* marks an action as merely having a direct object in another agent, as “A helps B,” then *pros heteron* lacks any intrinsic normative significance and does not provide a basis for an account of correlative directionality and claim-rights. If, however, *pros heteron* marks a
normative relationship, as “A acts for B’s benefit,” then we still lack reason to think that such a normative relationship is of the sort requisite for an account of claim-rights, for it does not obviously incorporate any correlative or directional relationship. Therefore, whatever dikaiological nexus Aristotelian agents fall under within the scope of Aristotle’s own justice theory, we have no reason to think that anything like correlative directionality in the Hohfeldian sense is present, and therefore no reason to think that claim-rights in the sense found within the Hohfeldian understanding of rights and duties is or can be present. To restate this without reference to Aristotle, we might conclude that even where agents act for the sake of another’s good, no necessary implication of correlatively directional normative relations is implied.

This conclusion, however, is intuitive. That I can act to benefit another – say, by giving to a charity – without another’s possessing a correlative claim against me is a clear feature of normative practice. If Aristotle were to render all dikaiological or social norms correlative directionally by definition within his justice theory (recalling that Aristotle’s justice theory embraces all social norms), we would be led to the untenable conclusion that all dikaiological or social norms involve correlative directionality. In truth, at most a subset of dikaiological or social norms display correlative directionally directional properties. Summing up, although correlative directionality has not been found in Aristotle’s description of just action (and, indeed, no other comment he makes in the context of the virtue of justice suggests correlative directionality), nothing he has said prevents the inclusion of correlative directionality within his account of dikaiological or social norms.

Miller presents an argument in Nature, Justice, and Rights in Aristotle’s Politics which might be thought to counter my conclusion. Miller first notes that “the expression to dikaion means ‘the just thing’, and refers to a particular application of a virtue of justice, for example a
just act or what is required by justice.”  

He then offers three examples taken from Aristotle’s discussions of legal theory in the *Nicomachean Ethics, Rhetoric, and Politics* to make the case that *to dikaion*, in at least one of its uses, is used “to refer to a right in the sense of a just claim.”

In the first example, two claimants to a piece of property appeal to the judge for *to dikaion* – each makes a *claim* to what is (so they think) *their own*, to their *just share* as they see it. Miller correctly points out that a detractor might argue “that assigning to individuals what is ‘their own’ is different from deciding what they have a ‘right’ to receive. For ‘having’ or ‘getting one’s own’ is a broader notion than having or getting what one’s entitled to.”

The use of the term “right” in this instance would serve no greater task than marking an agent’s *interest*, and this would be to use the term in the sense described by Finnis as a “manifesto right” in 1.5, which greatly waters down the semantics on the term “right,” or more properly, of the term “claim-right.” Miller then argues that in the present context, Aristotle intends “one’s own” to have a narrower scope, to apply not generally to whatever one might deserve, but specifically to what it is just that one have, with the implication that others not interfere with one’s having of it. This is closer to Finnis’ own use of the term. However, even granting this, it doesn’t follow that Aristotle’s use of *to dikaion* here approximates a claim-right, as Miller contends. It denotes that which is just and one’s own, i.e. one’s share by a standard of merit. It does not imply either that others possess a correlative duty in virtue of one’s “right” or that others (including the judge) “owe” one anything in virtue of one’s *to dikaion*. On the contrary, all the act of claiming one’s *to dikaion* seems to imply is that others have a responsibility to uphold *to dikaion* generally, of


67. Ibid., 97.

68. Ibid., 98.
which one’s own *to dikaion* is a part, and this includes the judge who will enforce the “right-holder’s” share of justice. In short, Miller doesn’t give reason to think that *to dikaion* here manifests either correlativity or directionality.

A similar argument applies to Miller’s second example. Briefly, Aristotle argues that political society is not a “contract” designed as a “guarantor of men’s rights against one another.” Miller glosses this by saying “The implication is that individuals have just claims against others that impose duties on them, and that the polis should protect these claims.” However, Miller seems to smuggle this implication into Aristotle’s actual statement. The position Aristotle opposes is that law is a contract which is *egguētē allēlois tōn dikaiōn*, a “guarantor against others of [their] *dikaion*.” Two points should suffice to undermine Miller’s contention that this implies claim-rights. First, no mention is made of these “rights” – of *to dikaion* – imposing a duty on anyone. The whole point of the contract is to guarantee justice or just distributions simply, not to uphold duties imposed on people by these just distributions. Second, if anything the duty that exists in this political society would be a duty deriving from the contract, not from any prior claims of justice that individuals could make. Hence, like the first case, Miller seems to see correlative duties without apparent warrant from the text.

The third case involves the recognition that one’s *to dikaion* is based on a certain measure of merit. Miller argues that if one, within political society, leverages one’s merit as a reason to be given one’s *to politikon dikaion* – one’s political just share – then one is in effect saying that “people who are superior in some respect and thus are more deserving have certain rights against others who are inferior in that respect and have, accordingly, a duty to yield. The right to hold

69. Ibid., 99. The translation is Miller’s.

70. Ibid., 99.
office thus resembles a Hohfeldian claim right." Again, the word “duty,” or any cognate, is entirely absent in Aristotle’s discussion and even if there were a certain kind of responsibility to be found in the passage Miller is here discussing, the previous arguments apply: there is no sign that the responsibility would be correlated with the “right-holder’s” to dikaion or would be directional.

That actions are required of agents in virtue of their to dikaion is not in question. That the Greeks possessed conceptions of correlative norms is also not in question. What is in question is whether Aristotle’s justice theory, and in particular his notions of pros heteron and to dikaion, give rise to something resembling claim-rights. In this section, I have agreed with Thompson’s pessimistic reading of pros heteron – that it offers no clear basis for an account of claim-rights within Aristotle’s own theory – and I have argued that Miller seems to state his case too strongly, that to dikaion does not imply correlative duties owed to the “right-holder.”

1.7 CONCLUSION

In this chapter, I have set forth the central concepts that will concern me through this dissertation: claim-rights, directed duties, correlativity, directionality, and normative powers. Will Theory and Interest Theory were discussed in order to frame the account to follow. Finally, I considered the place of correlative directionality in an unmodified Aristotelian justice theory. My conclusion in this regard has been pessimistic: Aristotelianism does not obviously manifest correlative directionality of the sort found in Hohfeldian “dikaiological” structures, though it

71. Ibid., 100.
does not preclude the possibility of such a structure. Now, I turn in Chapters 2-4 to Association Theory’s positive account of claim-rights.
2.1 INTRODUCTION

In the previous chapter, we saw what claim-rights are, what the most prominent theories of claim-rights have been, and how plausible it is to locate claim-rights within unmodified Aristotelian justice theory. In this chapter, I will move on to the first step in the construction of a new Aristotelian account of claim-rights. This construction will be motivated, generally speaking, by two intuitions.

First, that claim-rights are at least partly significant in virtue of the social function that they perform. That claim-rights do serve a social function – in particular, that they aid in the realization of common goods – seems to me to be intuitive. The question is how much traction the Aristotelian can get on an account of claim-rights on this basis. To that end, I will examine the nature of common goods and their attendant social practices to the extent necessary to defend my claim that Aristotelianism can account for at least some claim-rights. I will argue (1) that associations of shared practice for the sake of aggregative common goods can explain the correlativity of claim-rights and duties, but (2) that they do not obviously explain how claim-rights and duties can be directional. If what is sought is a thin conception of claim-rights and duties as correlative norms, then Association Theory will at least have provided this. Combined with the forthcoming account of normative power in Chapter 3, the Aristotelian can furthermore defend these correlative claim-rights and duties as authoritative, regardless of his or her view of
the property of directionality. To that extent, Association Theory will have demonstrated some of
the potential of Aristotelian theory.

But the really interesting question is whether Association Theory can also account for
robust claim-rights, or claim-rights that are characterized by both correlativity and directionality.
To motivate a positive answer to this question, I will turn to the second intuition in Chapter 3,
that the achievement of common goods by individuals sharing in that task requires a certain kind
of practice for the identification and legislation of common norms.

In Section 2.2, I motivate reliance upon common goods. In Section 2.3, I explain and
defend the Aristotelian methodology of social analysis. Section 2.4 details Aristotle’s account of
associations and association practice as manifested in the focal case of political association. In
Section 2.5, I turn to a closer analysis of the social or common good by applying the analytical
framework developed by Mark C. Murphy. Finally, in Section 2.6, I deploy these analyses of
social practice and the common good both to explain and defend claim-rights thinly conceived
and to lay the foundation for an account of robust claim-rights in the next two chapters.

2.2 WHY COMMON GOODS?

There is no lack of theories out there that take themselves to account for claim-rights and
directed duties. At most, only a handful of the theories I have encountered utilize the notion of
common goods in their defense – for instance, the natural law theories of John Finnis and Mark
C. Murphy. So why bother approaching claim-rights and directed duties via common goods?
What does a common good add to a normative framework such that it might bolster an account
of these norms?
Association Theory relies on common goods for two reasons. First, because common goods are particularly good reasons for action. They are pervasive in human practice and particularly suited to moving rational agents to act out of respect for claim-rights. That common goods are pervasive in human practice is quite obvious, I think. Human beings share social interests, such as friendship, marriage, security, common welfare, education, religion, and so on, and spend a great deal of their time reasoning about, pursuing, and even fighting over these goods. Humans are willing to commit significant quantities of their scarce time, energy, and resources to the achievement of social or common goods. This speaks, I think, to the great value of such reasons as reasons for action. That common goods are also good reasons for action insofar as they are apt to move rational agents to act out of respect for claim-rights must await some further argumentation – I will defend this claim in 2.6 and 3.4. For the moment, it can be noted that insofar as common goods serve as a reason for action for all members of an association, if claim-rights may be defended with reference to such common goods, then such common goods will prospectively serve as a reason for action for all members of that association to act out of respect for claim-rights. Hence, common goods are plausibly also good reasons for action insofar as they are shared ubiquitously by all members of an association. As I said, I will return to this in Chapter 3.

Yet even if common goods may be considered to be good reasons for action, we would perhaps prefer a defense of claim-rights that rests not merely on good reasons, but on good reasons that we have reason to think will motivate typical agents given their typical motivational profile. If we take ourselves, as ethical philosophers, to be concerned not merely with the explication of reasons for action which will motivate fully rational agents, but also with the
explication of reasons for action which will likely motivate typical agents, then we ought to seek to defend claim-rights on the basis of reasons that are apt to motivate such agents.

Empirical evidence suggests that, typically, human beings demonstrate significant in-group, or tribal, bias. “We are biased to form groups, and then identify ourselves strongly with that group…Our commitment to our team can override our commitments to truth or morality.”72 Humans are strongly motivated to identify with, and to act for the sake of, their “tribe.” This is what we might call a “brute fact” of human nature. Can this be changed? Perhaps, but so far the evidence suggests it hasn’t been.73 Hence, if we are motivated strongly by tribal identity and goals, and if a strong account of claim-rights and directed duties will be one which, ceteris paribus, can motivate typical agents, then a common goods account will be a particularly good way to go. For, based on research concerning voting behavior, it can be concluded that

voters do not vote selfishly. Instead, voters tend to be nationalist and sociotropic. That is, they tend to vote for what they perceive to be in the national interest rather than in their self-interest…Voters generally want to promote the common good instead of their own narrow self-interest…[This] tells us they want their elected officials to serve the common good of their country rather than their narrow self-interest or the common good of the entire world.74

Hence, it is not merely the case that typical agents are motivated by tribal identity and goals. It is also the case that such tribal agents are frequently motivated in at least certain salient political behavior by non-selfish concerns, particularly by common goods, which are the goods of these “tribes.” Given this evidence, it can be concluded that in addition to being good reasons for

---

73. Ibid., 39-43.
74. Ibid., 49-50.
action as such, common goods also constitute a good basis for a defense of claim-rights in virtue of the typical motivational profile of human agents.

2.3 THE TELEOLOGICAL ANALYSIS OF SOCIAL PRACTICE

Moving now to the Aristotelian account of associations and associational practice that will underpin my defense of claim-rights, I note first the three takeaways that I wish readers to take from this section: First, what is meant by the term “association” as a translation of Aristotle’s term *koinōnia*. Second, what distinguishes an association from other kinds of social organization. Third, that there are many specific kinds of association, but that for convenience and conceptual clarity I will use the focal case of *political* associations throughout, illustrated by the example of Politopia as remarked in the Introduction.

Aristotle famously opens the *Politics* by remarking that

> Since…every community [*koinōnian*] is constituted for the sake of some good (for everyone does [*prattousi*] everything for the sake of what is held to be good), it is clear that all communities aim at some good.  

Let’s pause to consider how Aristotle uses a certain important term in this passage. The term “community,” commonly used in translations for the term *koinōnia*, is not always especially precise. The strain implicit in any translation of *koinōnia* has long been recognized by Aristotle scholars. As Bernard Yack notes, even as literal a translator as Carnes Lord feels the need to use several terms to translate the Greek - *Problems of a Political Animal* (Berkeley, CA: University of California Press, 1993), 28, fn. 8. Thomas Gilby remarks on the ambiguity of the Aristotelian conception of community or *koinōnia* in his *Between

---


76. As Bernard Yack notes, even as literal a translator as Carnes Lord feels the need to use several terms to translate the Greek - *Problems of a Political Animal* (Berkeley, CA: University of California Press, 1993), 28, fn. 8.
relationship. It does not merely denote the fact of social partnership or affiliation, but also – or more particularly – the strength of that partnership or affiliation: it is a social organization bound by a particularly strong sense of identity, of purpose, of shared experience and activity. As Robert Nisbet describes it, community is “characterized by a high degree of personal intimacy, emotional depth, moral commitment, social cohesion, and continuity in time.”

This linguistic strain matters, because arguably koinōnia does not always convey such a social bond, as evidenced by Aristotle’s broad delineation of examples of koinōniai: marital and household relationships, relationships of slavery and mastery, economic relationships including trade, and political relationships. Koinōnia seemed to be a fairly wide concept and seemed to embrace many of the common types of social relationship that humans find themselves embedded in. As such, undue conflation of “community” and koinōnia may, and indeed seems to frequently, lead readers to misunderstand what Aristotle is trying to achieve in his discussions of koinōniai. Aristotle’s task is to try to find out how social relationships so understood are marked off from mere collections or multitudes of individuals, denoted in Greek and in Aristotle’s Politics by the alternative term plēthos, and subsequently to understand the place of such

Community and Society (London: Longmans Green and Co., 1953), particularly Chapter 1, arguing that “The question [of the nature of community] turns on [the] concept of subordination, which means a relationship closer than co-ordination and tenser than fusion,” 17. Fred D. Miller notes his own attitude to the translation of the term in its verbal form, and thereby the ambiguity inherent in translating the noun, thusly: “I generally translate koinōnein as ‘to have in common’ to preserve the link with koinon and koinōnia... The verb is also frequently translated ‘share’ or ‘participate.’ The participle is also translated ‘partner’ in a business context,” Miller, Nature, Justice, and Rights in Aristotle’s Politics, 54, fn. 70.


78. Aristotle, Politics, Book 1.2 and Aristotle, Nicomachean Ethics, 1132b32. It seems possible to detect the same division of koinōniai in Plato’s Republic, Book II, where it is agreed to readily and without the air of special philosophical insight. Yack notes that the breadth of the concept koinōnia is frequently missed by interpreters of Aristotle, both because it is difficult to track down his disparate remarks concerning the concept and due to their undue conflation of koinōnia and political association, Yack, Problems of a Political Animal, 26.
His task is emphatically not to analyze and defend “community” as denoted by the English term.

What, then, is the most appropriate term to use to translate koinōnia, bearing in mind that it must embrace a fairly wide range of social relationships and, in particular, distinguish them from mere collections of individuals? Liddell and Scott suggest a number of possible terms, including “communion,” “association,” “partnership,” and “fellowship.” Partnership is too small-scale and both “communion” and “fellowship,” to my knowledge, tends to have religious connotations in English that aren’t appropriate in this context. Consequently, I am all but forced to adopt the use of “association” when speaking of koinōnia. This term, in contrast to a “community,” has the advantage of incorporating the weaker forms of social bonding that are marked by Aristotle (e.g. relationships of trade), and can – though does not always – invoke the strong sentiments found in communities.

The wide range of specific kinds denoted by koinōnia – and hereafter by “association” – poses a unique challenge, however. Precisely because Association Theory grounds itself in this wide Aristotelian understanding of social relationships, its conclusions might be thought to be vague, conjectural, and unhelpful. To mitigate this concern, my discussions of associational relationships and their normative structures will focus on the case of political relationships. I envision Jack and Jill as two citizens of a state called Politopia. Politopia resembles a typical 21st

79. Aristotle remarks on the distinction between koinōnia and plēthos throughout the Politics. See especially 1274b38-1275a1 and 1275b19-22.

80. H.G. Liddell, and R. Scott, An Intermediate Greek-English Lexicon, “κοινοποίια” (Oxford: Oxford University Press, 1945), 440-441. Tracing the term to its root verb, we find the meaning “to have or do in common with, have a share of or take part in a thing with another,” ibid., 440. The essential meaning of the term, therefore, seems to be sharing or commonality. This sense is rendered clearer when it is noted that these verbal and nominal forms are both in turn traceable to the adjective koinos from the verb koinoō, meaning “common, shared in common,” ibid., “κοινός,” 440. Koinos, crucially, has an antonym in idios, the term denoting “one’s own, pertaining to oneself…private, personal,” ibid., “ἴδιος,” 375.
century liberal democracy such as America or Great Britain. Focusing my discussions on a political association has the distinct advantage of leveraging a “middle case” of associational strength: political associations involve social bonds that are not quite as strong as “communal” bonds, say those found in tight-knit church congregations, but not quite as weak as loose economic bonds, say those found among coworkers in a grocery store.\(^{81}\)

Though I will focus my discussions on this political example, I want to make two important qualifications. First, I use Politopia as a focal case for the sake of efficiency and clarity. Hence, it should be remembered throughout that what I have to say applies to some extent generally to social relationships that meet the functional criteria outlined by Aristotle (more on those in a moment). Second, my focus on a political association comes at the price of muddying the dialectical waters with the question of political authority, which is often held to involve, among other things, the power of legitimately deploying force and threats of force in order to achieve political goals. I will set this question entirely aside in this work. I do not regard such a power as essential to an Aristotelian conception of political association or political authority, which are marked out primarily by the range of goods they aim to achieve, not by any distinctive means (such as force) that they deploy to achieve those goods.

With this said, let us return to the analysis of the above-quoted passage from the *Politics.* Aristotle’s argument here presents only one of the two premises actually required to establish his conclusion. His amended argument is as follows:

\(^{81}\) In light of this discussion, it may be noted that while I do not assume a particularly close or affective engagement by associational members, I do not utilize a concept of association which is so thin as to attend only historical or geographic aggregations or to unaffected individuals following a mere set of common rules. I understand associations in accordance, that is, with Dworkin’s third model of community, a model of principle, which “insists that people are members of a genuine political community [or association more broadly] only when they accept that their fates are linked in the following strong way: they accept that they are governed by common principles, not just by rules hammered out in political compromise,” Dworkin, “Obligations of Community,” 234. See more broadly *ibid.*, 232-237.
P1. All rational activity (*praxis*) is for the sake of some good.

[P2. Every association (*koinōnia*) is constituted by/through rational activity (*praxis*).]

C. Every association (*koinōnia*) is constituted for the sake of some good (and, by implication, aims at some good).  

The absent premise (marked with brackets) is crucial in this argument, and is far from non-controversial. If associations are *not* constituted by rational action, then Aristotle cannot infer that the normative structure of rational action is applicable to associations, and therefore the extent to which we might apply the evaluative standards of such rational action to associations is at the very least drawn into question. However, it is not necessary to defend the proposition that *all* associations are constituted through rational action. For my present purposes, it is sufficient to defend the proposition that the focal political associations I have in mind are plausibly constituted through rational activity or *praxis*.

This, I take it, is not a particularly controversial proposition. Taking the focal case of political association, it can be observed that political philosophy is committed to the rationality of political activity as such, or, to the rational interpretation and explanation of political activity. Political activities, reasoning, and goods, that is, are intelligible in rational terms. This premise might be opposed in light of, say, behavioral psychology, with the result that political investigation becomes less a question of rational and conceptual analysis than a question of empirical and psychological study.  

Perhaps this conclusion is justified. It cannot be my task

---

82. C does not imply that there is one common good for each association. Any given association might take itself to pursue a variety of common goods. Also, note that the description of P1 as including rational activity, or *praxis*, is legitimate insofar as the word *praxis* is a nominal form of the verb *prattō* which is used in this passage. Cf. Aristotle, *Nicomachean Ethics*, 1094a1.

here, however, to defend philosophical analysis as such. Suffice it to say, then, that insofar as the
philosopher adopts the stance of rational and conceptual analysis, and insofar as the *political*
philosopher has, for millennia, applied such analysis to political practice, reasoning, and goods, I
am warranted in assuming that political association fulfills the relevant criteria of rational
constitution (and if not constitution, then certainly functionality) required as a prerequisite for the
*possible* application of Aristotelian social methodology, and hence that P2 is justified.

Associations, insofar as they are the products of, or are specific kinds of, rational activity,
are directed to the achievement of a good or goods. This is the foundational premise of
Aristotelian political theory. Aristotle then develops and expands this premise throughout his
political works. Rather than spend time on the details, a simple outline of his conclusions is
sufficient to underpin the coming arguments. This outline can be summarized by reference to
Fred D. Miller’s explication of the four central principles of Aristotelian political theory. Miller
notes the following principles:

**The Principle of Teleology:** Certain entities are directed to a natural *end*, which
end defines the *function* of those entities.

**The Principle of Perfection:** The best life or highest good of human life and action
consists in the attainment of the human natural end, *or* the fullest realization of
human nature, *or* the fulfillment of the human function.

**The Principle of Community:** Communities (read “associations”) are groups
cooperating for the sake of some common good shared by participants in that
community.

**The Principle of Rulership:** The order (*taxis*) of a community (read “association”)
is produced by a ruler (*archón*), which may be either an individual or group of
individuals. 84

---

These, generally, are the four principles governing Aristotelian political, or more properly social, analysis. Aristotelians conceive of associational practice in accordance with these four principles, and hence associations are considered primarily with regard to their function, their mode of developing human capacities, the good(s) that their members share in common, and their mode of order or rule.

Beginning with the Principle of Teleology, rational practice itself is regarded as being goal-directed, and accordingly associational practice, as a subset of rational practice, is also taken as being goal-directed and as possessing a certain function relative to its end or good. Claim-rights, if they are to be conceived as norms of such an association, would serve the end of the association and possess a specific function relative to that end.85 None of this need be taken to imply any robust conception of natural teleology or even a realist theory of goods – both are defeasible elements in the general category of teleological analysis.

Distinctive of the Aristotelian perspective is the notion that social practice serves certain perfectivist or eudaimonist ends; that claim-rights, therefore, might serve to promote the fullest realization of whatever such goods and functions are. But the argument for Association Theory does not rely on perfectivism. My focus will be on the role claim-rights play in the realization of a common good generally. Hence, Association Theory will explain how an Aristotelian perfectivist might ground claim-rights, but will also explain how a non-perfectivist might move from a teleological conception of associations to claim-rights. This said, as I will argue in 4.2, perfectivism does render Association Theory stronger than it would otherwise be, for it provides

85. Claim-rights would therefore seem to be functional rather than personal – belonging to agents in virtue of their role or function within an association rather than in virtue of their personhood simply. See Fred D. Miller, “Origins of Rights in Ancient Political Thought,” in The Cambridge Companion to Ancient Greek Political Thought, ed. Stephen Salkever (Cambridge: Cambridge University Press, 2009), 311. However, it need not be concluded that the Aristotelian offers a theory unrelated to the concerns of contemporary rights theory. Whether and how such a functional theory might cover the concerns of contemporary liberal political philosophy will be addressed partly in Chapter 4 and 5.6.
a robust reason for thinking that directionality is an important normative feature of claim-rights that associational norms ought to accommodate. Hence, while the central thesis of Association Theory does not rest on perfectivism, this should not be taken to imply that Association Theory is not compatible with perfectivism. Perfectivism strengthens the general case for Association Theory.

Thirdly, this method of social analysis identifies the distinctive kind of end of associations as a common good. Associations are sets of individuals working together in a particular way, generating and acting in accordance with social norms in order to achieve a good that all members share in common. Claim-rights, therefore, would be understood relative to such common goods, and the associational method must define what such common goods are. If such social analysis can be supplemented with a non-associational theory of claim-rights, and hence can defend claim-rights with reference to goods other than common goods, then the general case for claim-rights is made that much stronger. But my operative question here is whether the Aristotelian can get to a robust notion of claim-rights, and the most promising path to that end seems to me to be via associations and, in particular, common goods.

Fourthly, the Principle of Rulership asserts simply that associational success depends in part on patterns of agential hierarchy, leadership, and responsiveness – on definite individuals working to attain an arrangement of co-ordination and consensus – “order” – among associational members sufficient to achieve the common goal. 86 The question of the identity of

86. Must we understand “ruler” as a person, rather than as, say, the law? Aristotle addresses whether it is more advantageous to be ruled by a person or the law in Politics III.15-17. Yet, as a careful reading of this section will reveal, Aristotle does not, in fact, suggest that “the law will rule” in an unqualified sense. Rather, he is concerned to know whether it is better that people rule with reference to universal principles (laws) or not, that is, whether rulership should take the form of legislation proper or art (Politics, 1286a9-21ff.; cf. Nicomachean Ethics, I.2, VI.8). In fact, Aristotle is clear that people rule, e.g. Aristotle, Politics, 1278b9-11. The question is, therefore, one of how people ought to rule. “That the ruler must necessarily be a legislator, then, and that laws must exist, is clear; but they must not be authoritative insofar as they deviate [from what is right], though in other matters they should be authoritative,” Aristotle, Politics, 1286a22-24. And as Aristotle goes on to discuss, law is apt to deviate
these “rulers” is the question of the arrangement or structure of the regime (politeia) and ruling body (politeuma), and this consumes much of Aristotle’s Politics. This is typically a small group of individuals working in concert – in the focal case, of a government or administration. However, Aristotelian methodology is not committed to any particular account of who should direct the whole. Indeed, Aristotle remarks in Politics IV.1 that the nature and arrangement of such a ruling party is dependent upon contingent factors, such that he devises a political theory which proposes what we might call ideal and non-ideal conceptions of this ruling party. Direction might come from a monarch, a technocrat, a representative parliament, or from the democratic mass in assembly. It might also come from a decentralized network of associational members. Or it might come from a combination of these. In other words, the order or taxis of the directive body in an association can be highly centralized or highly decentralized, partly planned and partly spontaneous (see Section 3.3).87

To provide an account of claim-rights in accordance with Aristotelian social analysis, therefore, is to leverage the principles of teleology, community, and rulership, and perhaps also perfectivism, so as to identify the function, end, and ordering significance of claim-rights, and perhaps also mode of development furthered by claim-rights. To briefly offer a roadmap of what is coming in light of this: Chapter 2 will address claim-rights as they serve the common good, that is as they accord with the principle of community; Chapter 3 will address claim-rights as

---

87. Aristotle remarks that of political animals, which include humans, bees, wasps, ants, and cranes, some submit to a ruler (hegemon) and some are subject to no rule (anarkha) in History of Animals, in The Complete Works of Aristotle, vol. 1, ed. Jonathan Barnes, trans. d’A. W. Thompson (Princeton: Princeton University Press, 1984), 488a9-13. Ants are the paradigm example of an anarchic political order. Humans he regards as naturally fitted to obey a ruler (hegemon) of some sort, of which the Politics provides the defense and analysis of the various kinds. Hence, while Aristotle does acknowledge the possibility of anarchic political order, he does not believe that human beings are apt to achieve their common goals without some hegemonic social order.
they serve social function (“social discourse”) and order (“functional authority”), and thereby as they accord with the principles of teleology and rulership; and Section 4.2 will provide an addendum to this by considering how claim-right might contribute to capacity development, or how they might accord with the principle of perfectivism.

### 2.4 POLITICAL ASSOCIATIONS

In this section, I will expand the account of associations given in the previous section with an examination of the focal case of political association, with an eye to (a) their general characteristics, (b) their criteria of membership, and (c) their functional arrangement with respect to the achievement of their goal, the common good. The defense of claim-rights I will develop throughout the remainder of this thesis leverages the account in this section – claim-rights will be interpreted and normatively situated with reference to the account given here.

Aristotle’s examination of political association begins with the observation that “man is by nature a political animal.”\(^{88}\) In his *History of Animals*, Aristotle remarks that: “political [animals] are among those for whom there is one common function.”\(^{89}\) Political animals are such

---


89. Aristotle, *History of Animals*, 488a8. I am indebted to David Bronstein for his aid translating this passage. The Oxford translation of this passage is woefully inadequate. Aristotle’s Greek has “Politika d’ estin hōn hen ti kai koinon ginetai pantōn to ergon.” The Oxford translation renders this: “Social creatures are such as have some one common object in view.” A few points must be made. First, the Oxford translation *entirely* excises the Greek term *to ergon* (“the function”), or else takes the insupportable step of translating it as “object.” Second, it translates *politika* as “social creatures” rather than “political creatures.” Aristotle’s term for “social creature” is *zōon koinōnikon* (social or associational animal – the grammatical form parallel with this passage in the *History of Animals* would be simply *koinōnika*), e.g. Eudemian Ethics, in The Complete Works of Aristotle, vol. 2, ed. Jonathan Barnes, trans. J. Solomon (Princeton: Princeton University Press, 1984), 1242a25. Third, it reads *hen ti* (lit. “one some(thing)”) as a noun phrase modified by the adjective *koinon* (“common”), resulting in the phrase “some one common object.” This requires ignoring the presence of *kai* (“and”). In fact, *hen ti* here functions as an adjectival phrase (*ti* is an indeterminate pronoun and adjective, serving as either depending on context). Hence, *hen ti* as one adjectival phrase is conjoined by *kai* with the adjective *koinon*, both of which modify the noun *to ergon*. It is quite simply analogous to conjunctive adjectival phrases in English, such as “I have a red and black sweater.” The Oxford
as to flourish (as to achieve their natural end) not merely to the extent that they perform their private or individual functions well, but also and more characteristically to the extent that they perform their common or social functions well in conjunction with other individuals also so performing. Certain social patterns, structures, performances, and relationships conduce to human flourishing, both instrumentally and constitutively, and life absent such patterns, structures, performances, and relationships is to that extent diminished, insofar as humans are “political animals.” Simply put, human flourishing involves the good performance of a common function. This normative claim is a perfectivist claim – it alleges that political associations and political performances are good in virtue of the natural end of human beings. In accordance with my dialectical dismissal of the principle of perfectivism, I will not assume the truth of this normative premise in any of my following arguments.

Yet there is dialectical value in Aristotle’s conception of the common function shared by human beings and how this common function manifests in associational action. Before I consider what value this function might have, I must dispel a common misperception regarding Aristotle’s belief that humans are political animals and that they share a common or political function. Commentators often conflate the terms “political” and “social” in their discussions of Aristotle’s political theory and argue that Aristotle had no social theory, that he unified all social interaction within political association. This is tantamount to saying that the political and social functions of Aristotelian agents are identical. Whether this is true or not matters, because if he did conflate the political with the social, then his political theory is to that extent dubious and a poor translation would have it that political animals are marked out by sharing a single common end. Rather, political animals are marked out by their common function.

foundation on which to build an account of claim-rights. For I take it that one would be wrong to so conflate the political with the social.

However, Aristotle did draw this distinction, and did speak of human beings as social beings as distinct from political beings. In the *Eudemian Ethics*, for instance, he notes that man is not merely a political animal (*zōon politikon*), but is also a social or common animal (*zōon koinōnikon).*91 We are marked by various political and social functions the fulfilment of which contribute to and/or partly constitute a good human life. Social and not merely political engagement is valuable to Aristotle, not merely for instrumental purposes (e.g. insofar as they conduce to peace, prosperity, information flow, education, or so on), but also insofar as such engagement intrinsically realizes or manifests functional dimensions of human flourishing.

Moving on then, Aristotle describes this political function variously. His two primary descriptions of the function are as follows:

(A) The citizen in an unqualified sense is defined by no other thing so much as by partaking in decision [*krisis*] and office [*archē*].92

(B) Whoever is entitled to share in an office [*archē*] involving deliberation [*bouleutikē*] or decision [*kritikē*] is, we can now say, a citizen in this city.93

The political function is defined primarily in terms of an office, or *archē*, constituted by deliberative and adjudicatory capacities (decision or *krisis* is the term used by Aristotle to mark the function of adjudication94). I will switch out the term “office” for the more general and less archaic term “standing,” and thus the political function consists in action in accordance with such

---

deliberative and adjudicatory *standing*. Membership or participatory status in a political association – citizenship – is defined precisely in terms of the possession of such standing.

Now, Aristotle holds that a political association is the multitude of such citizens and that this multitude may be conceived as a certain “arrangement”:

[T]he regime [*politeia*] is a certain arrangement [*taxis*] of those who inhabit the city. But since the city belongs among composite things, and like other composite wholes is made up of many parts, it is clear that the first thing that must be sought is the citizen; for the city is a certain multitude [*plēthos*] of citizens.95

Properly speaking, the “arrangement” here is not of the associational members *simpliciter* but rather of these members as possessing political standing.

The regime [*politeia*] is an arrangement [*taxis*] of a city with respect to its offices [*archai*], particularly the one that has authority [*kurios*] over all matters. For what has authority [*kurios*] in the city is everywhere the governing body [*politeuma*], and the governing body [*politeuma*] is the regime [*politeia*].96

Hence, to speak of the arrangement most properly, it is not simply those who possess standing, but those who possess authoritative standing. It is a mark of democratic arrangements, including modern liberal democratic arrangements, that at least some authoritative standing is distributed widely to all citizens.

To speak of citizens as being arranged in accordance with their standing is a valuable concept, for as particular political associations differ in the particular kinds and degrees of deliberative and adjudicatory standing they distribute to citizens, so the arrangement of those

---

95. *Ibid.*, 1274b38-1275a1. Hence, the Aristotelian regards, or ought to regard, the arrangement of political associations as reducing fundamentally to the *individuals* who serve as the constituent members of those associations.

associations will differ. Hence, in a democratic association such standing will be distributed in one manner, in an oligarchic association in another, and so on. Liberal democratic associations such as Politopia similarly possess a unique pattern of distribution, a unique arrangement of the standings assigned to associational members.

As Aristotle remarked in the previous quotation, the arrangement of political standing is particularly relevant in the case of those who possess authority “over all matters” in the association. What Aristotle means by authority need not concern us, but it is of course the matter of rulership that was discussed in the previous section. The principle of rulership holds that a ruler or archōn serves to determine the arrangement of standing in an association. In the paradigmatic case of liberal democratic society, this is primarily the state or government as the agent of the people at large. This government, or politeuma, distributes various deliberative and adjudicatory, and even authoritative standings to the various members of the association. Hence, to the deliberative and adjudicatory features of political standing we may add authority. What marks off the ruler’s authority as against the authority distributed to members at large is primarily its scope: governing authority pertains to “all matters,” while distributed authority does not.

If, then, citizenship – or participatory status – is to be located primarily in the capacity to deliberate and adjudicate, and the possession of some authority, along with the various derivative capacities such as standing for office, voting for representatives, and such, then the Aristotelian will regard the good citizen as the person functioning well in these respects. “[T]he good citizen should know and have the capacity both to be ruled and to rule, and this very thing is the virtue of a citizen – knowledge of rule over free persons from both points of view.”97 This is a

97. Ibid., 1277b14-17.
teleological rather than perfectivist claim. The person with knowledge and capacity concerning ruling others and being ruled – the person with the knowledge and capacity appropriate to participation in associational practice, and consequently to achievement of common goods – is that person serving excellently as a citizen.

In accordance with the principles of teleology and community, the associational arrangement of standings is analyzed primarily as a functional arrangement directed toward an end, and a common end. Hence, as there are various possible goods that might constitute the end of a political association, so there are various arrangements of standings which might serve to attain these ends. Accordingly, within an association, certain determinate standings ought to be identified that distribute among members various deliberative, adjudicatory, and authoritative capacities. Such standings mark out various legitimate modes of functioning for the sake of the end of the association. Analytically, associations can take many forms with regard to many ends. Normatively, perhaps there is one form that political associations ought to take and one end that political associations ought to pursue. As noted in the Introduction, I will take as my standard the roughly liberal democratic form and end of Politopia.

In the next section I will consider the nature of the common good and in the section afterward I will examine whether an associational practice of the sort discussed thus far, combined with the forthcoming account of the common good, warrants a social practice involving claim-rights in the thin (correlative) or thick (correlative and directional) senses. For now, I will briefly describe the role of the common good in general terms in order to complete

98. See e.g. ibid., 1275b2-9, 1296b13-14, and Book VI generally.

99. See generally ibid., Books VII-VIII.
this survey of Aristotle’s account of political association. A common good serves to, among other things, act as a standard against which common action can be measured. It is the yardstick by which we can determine whether associational members are acting well or poorly in the performance of their associational actions. Successful associations require that members perform well, and thereby attain a measure of the common good. Furthermore, as noted, the common good will also serve as the yardstick by which we can measure which standings ought to be distributed among members of the association. Moreover, Aristotle notes that

[A]lthough citizens are dissimilar, preservation of the community [koinônia] is their task [ergon], and the regime [politeia] is this community [koinônia]; hence the virtue of the citizen must necessarily be with a view to the regime [politeia].

A political association is the arrangement of citizens functionally directed through a distribution of social standings to the common good. The task or function of citizens qua citizen is, in addition to the achievement of the common good, the preservation or salvation of the association as such, which is to say, of the functional arrangement of citizens as possessing certain social standings. Hence, good citizens ought not merely act so at to attain the common good, but must ought also act so as to preserve and protect the functional arrangement established for the sake of attaining the common good. This includes, one might speculate, the institutional structures,

100. Aristotle himself conceives the common good in the following way: “The political good [to politikon agathon] is justice [to dikaion], and this is the common advantage [to koinêi sumpheron, lit. “the advantage in common”]. Justice is held by all to be a certain equality,” ibid., 1282b17-18. This raises a problem, however. For Aristotle holds that the end of political association is a self-sufficient life in Politics I.2. Hence, Aristotle seems to offer two accounts of the common good of political associations. This apparent ambivalence perhaps mirrors Aristotle’s division of eudaimonia into two parts in Nicomachean Ethics X.9, the political and the philosophical lives, and the uneasy relationship of the two. For an overview of this second issue, see especially Richard Kraut, Aristotle on the Human Good (Princeton: Princeton University Press, 1991), Ch. 1 and Sarah Broadie, Ethics With Aristotle (Oxford: Oxford University Press, 1991), Ch. 7. It seems to me that no satisfactory Aristotelian answer to the problem of conflicting accounts of the political common good can be expected to be forthcoming, and I will not take a stand on the issue, for Aristotle’s own conception does not underpin any of my arguments here.

foundational social norms, distributions of deliberative, adjudicatory, and authoritative standings, and other core elements of the association as a normative phenomenon. Furthermore, if claim-rights can be found to have purpose within the context of Aristotelian political association so understood, then the requirement, qua citizen, to preserve and protect the arrangement of the regime for the sake of the common good extends to the preservation of claim-rights as a particular element in that broader arrangement. None of this entails, of course, any particularly strong tendency toward conservatism – the capacity to deliberate about the future of the association, including about its distribution of standings and the alteration of those standings, is after all partially definitive of membership as such.

My goal in this section has been to explain how Aristotle conceives the focal case of political association. Political associations are those in which individual agents possess membership status, which status is defined by the possession of deliberative, adjudicatory, and authoritative standing of some kind and degree. The distribution of such standings to individual members is understood to be the order or arrangement of the association, and particular associations are defined primarily in terms of such an order or arrangement. In a pervasive (though not necessarily exclusive) sense, this order or arrangement of standings is the product of the actions and decisions of the rulers of the association, whoever they are, in accordance with the principle of rulership described in the previous section. These arrangements may also be conceived to be functional distributions of standings serving the common good of the association, and where participating members perform the actions consonant with their standing

102. Amartya Sen provides an interesting discussion of how the fulfillment and protection of claim-rights might be considered to be part of the goal of a practice in “Rights and Agency,” *Philosophy & Public Affairs*, vol. 11, no. 1 (1982): 3-39. Generally, it is not too difficult to consider them to be such on Aristotelian grounds, for the means to attaining a common good may be either strictly instrumental, as separate from though a means to an end, or as constitutive, as part of though a means to that end. This distinction will be discussed in more detail in 3.2.
well, the likelihood that the association will attain its common good increases. This general conception of political association serves as the framework within which I will develop my account of both the thin and thick conceptions of claim-rights.

2.5 CONCEIVING THE COMMON GOOD

The question of the nature of the common good that associations aim at requires its own section. The concept of a common good is opaque, and has been used variously for centuries. Some find in it the basis for communism and totalitarianism, others the genesis of liberalism. The content of common goods need not concern us though – what is of interest is its formal nature, and its significance for an account of claim-rights.

Aristotle does not provide a comprehensive analysis of the common good anywhere in his works. That he was capable of providing such analysis is evident from the various analyses he does provide, such as of eudaimonia, of the four causes, of the syllogism, and so forth. Hence, we must conclude either that he provided such an analysis in a work or works now lost to us, or that he could rely upon an analysis of this concept “floating around” in the philosophical air, or that he simply did not provide such an analysis for reasons now unknown. Whatever the explanation, we are now in the position of lacking a coherent and systematic Aristotelian analysis of the common good. Utilizing Aristotle’s concept, therefore, involves some conceptual reconstruction. In order to do this, I adopt the following methodology. First, I summarize Mark C. Murphy’s analysis of the common good into the “distinctive good,” “instrumentalist,” and “aggregative” conceptions. Murphy’s analysis has the advantage of being the product of many decades of debate concerning the nature of possible common goods by natural law and neo-
Aristotelian scholars, and as such it provides something of a synoptic survey of the realms of possibility so far as analyses of common goods go. Second, I present Murphy’s argument for the aggregative conception and his arguments against the instrumentalist and distinctive good conceptions. Third and finally, I will argue that Murphy’s aggregative conception adequately captures Aristotle’s disparate remarks regarding the nature of the common good.

In his *Natural Law in Jurisprudence and Politics*, Murphy remarks that “The common good is…some state of affairs…that is *good*, something that there is reason to promote, honor, respect, and so on, and is *common*, having this value for all members of the political community.”¹⁰³ There are, then, two important desiderata that arise for any potential common good: first, the sense in which is *good*, which is to say, the manner in which it serves as a reason for action; second, the sense in which it is *common*, which is to say, the sense in which it is a good or end shared among members of association. Murphy argues that there are three candidate conceptions of such a common good arising from this basic analysis and which are evidenced in the historical arc of neo-Aristotelianism: the instrumentalist conception, the distinctive good conception, and the aggregative conception. These conceptions are as follows:

**Instrumentalist Conception:** “the common good consists in the presence of those conditions that are necessary or helpful means for members of that community to realize their own worthwhile ends.”¹⁰⁴

**Distinctive Good Conception:** “the common good consists in the obtaining of some intrinsically good state of affairs that is literally the good of the community as a whole (as opposed to simply the goods of the members of that community).”¹⁰⁵

---

¹⁰³ Mark C. Murphy, *Natural Law in Jurisprudence and Politics* (Cambridge: Cambridge University Press, 2009), 61.


**Aggregative Conception:** “the common good consists in the realization of some set of individual intrinsic goods, characteristically the goods of all (and only) those persons that are members of the political community in question.”

Take a prospective common good such as peace. According to the *instrumentalist conception,* peace is a common good in the sense that it is necessary or helpful as a means for the achievement by members of an association in common of some good or goods (that, strictly, they may or may not share in common). Hence, one might imagine a liberal society in which peace is held as a common good by all citizens strictly as a means to their private and diverse ends.

According to the *distinctive good conception,* peace would be pursued by members of the association as an intrinsic good of the community conceived as a single subject. That is, peace is not conceived as a good composed “of the various goods of the members of that community,” as so many “parts” of peace, but rather is conceived as “the good of the community as a whole, what perfects the political community as such.”

According to the *aggregative conception,* peace is conceived as the intrinsically valuable aggregation of so many goods of the members of the association. The aggregative conception therefore differs from the instrumentalist conception as an intrinsically valuable end of the association, rather than a mere instrument, and differs from the distinctive good conception by rejecting the separation of the good of the association and the good of the individuals who compose that association.

Common goods, then, are to be classified according to two desiderata: their goodness and their commonness. Following Murphy’s schematization of common goods, common goods are good either *intrinsically* or *instrumentally,* which is to say, either as an end or as a means. Ends,


107. *Ibid.*, 73. In line with eschewing of perfectivism generally, we need not read “perfects” here in a robust sense. The essential point is that the good is conceived as the good of the association as a singular whole.
of course, may be ordered hierarchically, and therefore “intrinsic” goods may also be conceived as instrumental goods, though in a different respect than that under which they are conceived to be “intrinsic” goods. Friendship, for instance, is plausibly an “intrinsic” good, a state-of-affairs valued in itself. Friendship may also, however, plausibly be valued as a means to some further end, such as pleasure, or security, or political stability.

As to the respect in which a common good is *common*, there are, Murphy thinks, two legitimate and one illegitimate senses in which a good may be considered “common.” In the legitimate senses, a common good is either the good of a “common” entity, i.e. of a social entity, such as an institution, community, race, gender, or such; or it is the good of a collection of individuals considered in a certain respect. The distinctive good conception embraces the first of these and the aggregative embraces the second, where the respect in which individuals are considered to be common and share a common good is precisely that they are considered aggregatively.

In the illegitimate sense, we might, like Hobbes, hold that peace is a good for each member of an association. A peaceful state of affairs for A is a good for A, and the prospective common good is a conjunction of such goods. However, in such a case, each individual within an association holds peace *for him or herself* as a good, rather than peace as such. In the deviant or Hobbesian case, the peace which A holds as a good in this association, as *peace for A*, includes essential self-reference. In such a scenario, peace can be considered “common” only in the sense that every individual within that association uses the same term to denote their distinct object. It is not the peace of the community or of every member of that community which constitutes a common good. It is rather peace for each individual considered in isolation. Hence,

---

this “Hobbesian” conception of common goods holds that commonality consists in the identity of some desired state-of-affairs among numerous agents. In the specifically Hobbesian case, for instance, what is considered to be a good “in common” for Hobbesian agents in a state of nature “is not peace as such, or peace for all of us in the state of nature, but rather peace for him or her...At no point does the Hobbesian agent have a reason to promote the condition in which all agents are in a state of peace.” A Hobbesian common good, then, fails to satisfy the commonality requirement, and must be discounted.

With these desiderata defined, we can return to Murphy’s three conceptions of the common good and present them in the following analytical manner:

**Instrumentalist Conception**: some state of affairs instrumentally good for a community conceived as the ordered sum of various individual agents.

**Distinctive Good Conception**: some state of affairs intrinsically good for a community as such.

**Aggregative Conception**: some state of affairs intrinsically good for a community conceived as the ordered sum of various individual agents.

---


110. B.J. Diggs raises a related objection to the quasi-Hobbesian common good: “In a cooperative enterprise all the participants may appear to be willing to accept certain duties and burdens, and thus restrictions on the pursuit of their self-interest, in return for common benefits to be distributed to all. But, so the objection goes, the rational course of action for any individual is to promote his own interest to the greatest degree...Consequently, there is no “common good” or “common interest” that all participants in a cooperative enterprise can, together, rationally try to promote; there is no “common good” properly speaking...[T]his “common good” or “common interest,” spoken of as if it were a goal, is only a name for whatever compromise of individual self-interests is finally worked out. It does not refer to some goal that all participants have good reason to seek and try to promote together, except perhaps incidentally; it simply indicates that all or most get some benefits,” B.J. Diggs, “The Common Good as Reason for Political Action,” *Ethics*, vol. 83, no. 4 (1973): 286-287.

Diggs’ point seems to be that although we often speak of pursuing “common goods” or “common interests,” the analysis of such goods as reasons for action reveals that they are no more than names for the spontaneous consequences of the push and shove of individual self-interest. They do not, in such a quasi-Hobbesian sense, mark out a distinct good or distinct reason for action that members of the cooperative or association act for the sake of. See also Yves Simon, “Common Good and Common Action,” *Review of Politics*, vol. 22 (1960): 207-208.
Note that a certain state-of-affairs might at the same time fall under two or three of these descriptions, in different respects. To recall the example of friendship above, friendship might at the same time aggregative, for the particular individuals involved, and instrumentalist for these individuals insofar as their friendship promotes some further goal of theirs.

Having considered Murphy’s analysis of the common good, I now turn to Murphy’s argument in favor of the aggregative conception of the common good. The argument for the aggregative conception proceeds in essentially three steps. First, Murphy establishes that the aggregative conception is an independently intelligible account of the common good. Second, the instrumentalist and distinctive good conceptions are shown to be inadequate conceptions in certain regards. Third, the aggregative conception is shown to be superior to these conceptions in the precise regard that they are inadequate.

Regarding the first dimension of the argument, I will merely point to Murphy’s general statement of the position: “Consider any individual A within a political community, and consider the state of affairs in which A is flourishing…That state of affairs is a reason for action that members of the political community should acknowledge.”\footnote{Murphy, Natural Law in Jurisprudence and Politics, 63.} The independent intelligibility of the aggregative conception of the common good therefore reduces to the intelligibility of the proposition that members of the political community have reason to promote the flourishing of members of that community (to some extent). I grant this proposition provisionally, with the following important qualification: I take up no commitment to the claim that it is the flourishing of other participating agents that concern the actor, in accordance with my avoidance of any specific determination of the content of the common good. The account of claim-rights developed in Chapter 3 is neutral on the question of whether there is complete community in the
Aristotelian sense – a community directed to the realization of the *flourishing* of participating agents – and is neutral on the question of whether the common good does or could constitute such flourishing at all. That human beings are capable of taking themselves as having reason to act in such a way requires little motivation: that human beings act in this manner with respect to other human beings with whom they are associationally bound is intuitive and widely evident.\(^{112}\)

Murphy argues that “the instrumentalist conception is parasitic upon the aggregative conception.”\(^{113}\) That an instrumental good, such as peace, might rely upon a further aggregative good to explain why associationally embedded agents have common reason to pursue it is not a proposition which Murphy thinks instrumentalists need to reject. The question, as Murphy sees it, is rather whether associationally embedded agents have reason to promote an instrumental common good without relying on a further aggregative common good.\(^{114}\)

John Finnis has provided perhaps the strongest neo-Aristotelian defense of an instrumentalist conception of the common good. There are two arguments that Finnis offers in defense of instrumentalism: first, that the aggregative common good is not a realizable end (he does not address what Murphy calls the distinctive good account); second, that a defense of limited government rests upon the instrumentalist conception (and that a defense of limited government is a desirable project). Only the first of these is immediately relevant.\(^{115}\) We can first note that Finnis’ argument in fact achieves two ends: first, that it (allegedly) makes the

---

112. See Brennan, *Against Democracy*, 49-51 for the disposition to altruistic (viz. common good oriented) behavior in political associations. This at least motivates the notion that agents are capable of acting for common goods. I do not think it is much of a leap to think they are capable of so acting in the particular manner necessary to motivate an aggregative conception of a common good.

113. Murphy, *Natural Law in Jurisprudence and Politics*, 66.

114. Ibid., 69.

independent pursuit of an instrumental common good an intelligible effort, and second that it
denies that the instrumental good can be parasitic upon an aggregative good, for it denies that an
aggregative good is an intelligible end. Finnis’ first argument, essentially, is that an aggregative
common good is not a realizable end, for if the common good is, as Aristotle argues, a life
complete in every respect and absent nothing, then no association could ever achieve this end,
for we cannot achieve a complete or self-sufficient existence.\(^{116}\) As Murphy rightly points out,
this argument applies equally to Finnis’ own conception of the common good, and indeed to
many conceptions of any good. I refer the reader to Murphy’s text for the full details of his
counter.

I wish to add another layer to this counter, however. Quite simply, Finnis’ argument is
not an argument against the aggregative conception of the common good as such, but is rather an
argument against a specific kind of aggregative conception, namely that conception which holds
the common good to be a self-sufficient and complete life. Let us say that Finnis succeeds in
giving us reason to question Aristotle’s conception of the common good as a self-sufficient and
complete life, on the grounds that such a good is not realizable. Yet, even if I grant this, Finnis’
argument remains an argument against Aristotle’s particular conception of a possible aggregative
common good, which I have explicitly stated that I am not committed to here. What is needed,
rather, is an argument against the concept of an aggregative common good as such, and the
unrealizability argument is not such an argument. The argument from limited government is such
an argument, but since my focus at present is on the concept of an aggregative common good for
any kind of association, not just for a political association, we may dispense with Finnis’

\(^{116}\) John Finnis, “Is Natural Law Theory Compatible with Limited Government?”, in Natural Law,
Law in Jurisprudence and Politics, 69.
argument in this regard.\textsuperscript{117} In short, insofar as the instrumentalist conception involves the pursuit of some other goods, where these other goods are themselves common, it must itself be regarded as drawing its normative force from an aggregative or distinctive good common good. Hence, the instrumentalist conception is not independently defensible on the basis of the arguments mentioned.

The objection to the distinctive good conception rests on the following observation: “it is unclear why we should treat the distinctive good of the political community as an object of rational allegiance.”\textsuperscript{118} We must grant that Murphy’s arguments are intended to persuade Aristotelians, and in this respect I will not extend my comments beyond this audience. A fair hearing of this issue from outside the scope of Aristotelianism would require clarifying what conception of practical rationality and goods one is bringing to bear on the question. So I grant that the defense of the aggregative conception of the common good against the distinctive good conception offered here will not convince everyone.

Turning then to Murphy’s argument: Murphy offers two possible explanations of the political agent’s allegiance to the distinctive good common good. First, allegiance derives from the contribution the common good makes to the individual’s own good. Second, allegiance derives from the contribution the common good makes to other individuals’ goods. In the first case, the distinctive good account reduces to the Hobbesian conception. Namely, the normative force of the distinctive common good in this instance derives from the reason for action given to the agent by his or her own good, rather than from the alleged reason for action intrinsic to the

\textsuperscript{117} One might press me to answer Finnis’ argument in virtue of my use of political association as a focal case. Briefly, it is not the case that the defense of limited government rests upon the instrumentality of a common good. For freedom of certain sorts, and various other aspects of limited government such as checks and balances, constitutional limitations, due process, and so forth, may be regarded as constituents of an aggregative common good. That this is possible will be seen in Chapter 4.

\textsuperscript{118} Murphy, \textit{Natural Law in Jurisprudence and Politics}, 73.
distinctive common good as such. Hence, for A, A pursues the distinctive common good (say, of peace) for A. In the second case, the distinctive good account offers no conception of allegiance distinct from that of the aggregative conception, for rather than citing the agent’s own good as the reason to pursue the distinctive common good, an actor cites some good or goods of individuals other than himself or herself, though perhaps including his or her own as a part.\textsuperscript{119}

Taking these objections together, then, we must dispense with the instrumentalist conception because it appears to be parasitic upon the aggregative conception, and we must dispense with the distinctive good conception because it is unfit to serve as an object of rational allegiance. By contrast, the aggregative common good suffers neither of these drawbacks. It is not parasitic upon another good and can serve as an object of rational allegiance regardless of any relationship it might have to any further good, such as the good life.

Having settled on the aggregative conception, what is left is to consider how well it captures the disparate Aristotelian remarks on the common good. Examining first the manner in which Aristotle thinks the common good is a good, Aristotle remarks

But all communities are like parts of the political community, for people come together for a certain advantage, namely, \textit{to provide some of the things conducive to life}. And the political community seems to come together from the outset, and to continue to exist, for the sake of \textit{what is advantageous}; lawgivers aim at this and claim that the advantage held in common is what is just. The other communities, then, aim at a partial advantage – for example, sailors aim at the advantage of making money from sailing or some such thing; soldiers at the advantage bound up with war, since they long for either money, victory, or a city; and similarly too in the case of members of the same tribe or district...But all these seem to fall under the political community; for the political community aims not at the present advantage but at that pertaining to life as a whole.\textsuperscript{120}

\begin{itemize}
\item \textsuperscript{119} \textit{Ibid.}, 75-6.
\item \textsuperscript{120} Aristotle, \textit{Nicomachean Ethics}, 1160a9-23, italics added. Aristotle remarks on this aim of law at 1129b15-17.
\end{itemize}
On its face, this passage seems to make the case for an instrumentalist conception, in particular by remarking that “people come together for a certain advantage, namely, *to provide some of the things conducive to life.*” However, we must recall that Aristotle believes that something can be conducive to an end either as a strictly instrumental means or as a constitutive means (more on this in 3.2). For instance, study is an instrumental means to education. Education, by contrast, is arguably a constituent means to a good life, insofar as education is (ideally speaking) the realization of the human capacity for knowledge, and knowledge is a constituent of a good life. Yet this passage is ambiguous between these two senses of “things conducive to life,” and so is inconclusive so far as interpreting Aristotle’s account of the common good goes.

Furthermore, we read the following:

First, then, we must lay down by way of a basic premise what it is for the sake of which the city is established, and how many kinds of rule are connected with man and the community in life. It was said in our initial discourses, where household management and mastery were discussed, that man is by nature a political animal. Hence even when they have no need of assistance from one another, they no less yearn to live together – *not but that the common advantage too brings them together, to the extent that it falls to each to live finely.* It is this above all, then, which is the end for all both in common and separately; but they also join together, and maintain the political community, for the sake of living itself.121

We learn here that the common good appears to have both intrinsic and instrumental characteristics. It appears, that is, to be a good in its own right, an end worthy of pursuit as such, insofar as it constitutes a particular mode of life suited to humanity. Human beings, as we have seen, are political animals, and this entails that they possess certain characteristics that can only be realized through engagement in political association. By contrast, the above quotation also appears to indicate an instrumental role for political association, for the sake of living finely as

such. This is confirmed elsewhere in the *Nicomachean Ethics*, where Aristotle remarks that “the political community aims not at the present advantage but at that pertaining to life as a whole.”\(^{122}\) Life as a whole extends beyond the political capacity to, among other things, the contemplative capacity\(^{123}\); it follows that political association is valued not merely as an intrinsic good, but also as an instrumental good.

On the matter of the sense in which the Aristotelian political common good is *common*, it must be asked *whose* good it is supposed to be? Should we conceive of it as being common to the association as such, or distributed among the various individuals? Aristotle actually seems to argue in favor of both. In favor of the distinctive good conception is Aristotle’s remark that “the city is both by nature and prior to each individual…For if the individual when separated from [the city] is not self-sufficient, he will be in a condition similar to that of the other parts in relation to the whole.”\(^{124}\) Furthermore, we find that human beings are indeed not self-sufficient outside of political associations.\(^{125}\) Hence, insofar as human life is completed only within a political associations, and insofar, therefore, as *social* existence is “higher” than individual existence, it can be concluded that the common good is the common good of that social entity, the political association, and thereby, derivatively, of the individual members. By contrast, recall that the political association *is* the arrangement of individuals (as possessing social standing – see 2.4). Regardless of to what end the association is directed, therefore, the substance or matter of the association is a set of ordered individuals. This speaks in favor of the instrumentalist or aggregative conceptions, not the distinctive good conception.


We see, then, that Aristotle is apparently committed to various interpretations of the common good: the instrumentalist, distinctive good, and aggregative conceptions all find a home in his various comments. Perhaps there might be scope for determining some sort of priority among these perspectives. It may be, for instance, that Aristotelian metaphysics speaks in favor of the primacy of one of these conceptions. Whether this is can’t concern me here, however, because I am setting aside Aristotelian metaphysics in toto. Perhaps there is a pragmatic consideration that might serve as a means to choose between the three conceptions. For instance, we might select between these conceptions by considering how the common good fits more broadly into an agent’s hierarchy of values. Yet, as has already been seen, even this is unclear: the common good is variously stated to be an instrument to, constitutive component of, and perhaps even primary constituent of a good human life.

Hence, with metaphysical and pragmatic Aristotelianism apparently offering no clear answer to the question of which conception is primary, I am left with a common good conceivable in three distinct senses with no clear Aristotelian argument in favor of either. For my purposes going forward, I will adopt the aggregative conception. I do this for two reasons. First, the aggregative conception seems to me to best capture the features of Aristotelian socio-normative theory that interest me, i.e. the features that I have outlined in this chapter. In particular, by not conceiving of the common good as being the good of an irreducible social entity, the aggregative conception seems to best capture my liberal commitment to individualism. Though certain passages of Aristotle’s on the nature of the common good may seem to speak in favor of anti-liberal communitarianism (his individualistic comments regarding the composition of associations notwithstanding), I adopt a liberal individualistic stance as an assumption of this work, and hence such passages must be rejected as incompatible with liberal individualism or
interpreted in such a way as to be compatible with liberal individualism. I hasten to add that, as noted in the previous two sections, such individualism, which holds (a) that associations are composed fundamentally of individual human beings and (b) that associations serve the ends of such individual human beings, does not necessarily collapse into stereotypical atomism. Such individuals can and do reason about and act for common goods and even irreducibly social goods of the sort that were seen to concern Finnis in 1.5, and these agents can and are responsive to one another as goods and reasons for action.

Second, the aggregative conception seems to me to be the most fruitful of the three options. As I will argue in Chapter 4, an aggregative conception especially allows for the delineation and distribution of claim-rights to associational members. The instrumentalist and distinctive good conceptions are less fruitful in this regard. If I want a plausible theory of claim-rights based on a plausible Aristotelianism, then a conception of the common good that both acknowledges socio-normative individualism and is fruitful in the production of claim-rights is the way to go. This is the aggregative conception. Granted, this implies that Aristotelianism must be interpreted in a given manner in order yield claim-rights of the liberal sort I seek to defend in this thesis. Yet, I draw the reader’s attention back to the Introduction, where I stated that I do not refer to Aristotle as an authority, but rather as an interesting but revisable source of ideas.

2.6 CLAIM-RIGHTS AND COMMON GOODS

Thus far, I have unfolded an account of associations, associational practice, and common goods. I have not yet addressed the question of how a common good and its subordinate association and
associational practices may provide an account of claim-rights. To that task I turn in this last section.

A common good will be capable of accounting for claim-rights if norms manifesting the analytical features of claim-rights outlined in Chapter 1 can be explicated with reference to a common good. If claim-rights so explicated can then be justified with reference to such a common good, then we may take it that associations pursuing such a common good have reason to implement claim-rights within their social practice. To cut to the chase, I will argue that the account of associations, associational practice, and common goods provided in this chapter explain and justify claim-rights in a thin sense, as correlated with duties, but do not yet explain or justify claim-rights in a thick sense, as both correlated with duties and as directional. Chapter 3 will remedy this situation by explaining how a common goods account can explain both correlativity and directionality by means of an account of a suitable normative power.

In 2.5, I outlined a series of arguments in favor of the aggregative conception of the common good, according to which the common good is conceived as an aggregation of certain goods of those individuals who compose the relevant association, constituting a single reason for action for every member of that association. That such a good can be divided into subparts and parcelled out to members of an association, and then correlated in specific ways, isn’t so far-fetched. If we take this analysis and consider it in relation to the arguments of 2.3 and 2.4, we can note that an aggregative common good may be conceived as being composed of so many parts which are to be realized (achieved, produced) by and distributed to the various members of an association. These parts constitute the “shares” of the common good that ought to be apportioned to the various members of the association in virtue of the principles of distribution.
operative within that association.\textsuperscript{126} Insofar as these “shares” are “properly” to be distributed in virtue of such principles of distribution, we may generally refer to them as “rightful shares” or “just shares,” which is to say, as that to which Aristotle gave the name \textit{to dikaios} (1.6).

An aggregative common good can therefore be conceived as a composite of shares divided and to be divided between all the members of the respective association. These shares properly or justly or rightfully belong to these members, and constitute their \textit{to dikaios}.

Moreover, the aggregative common good serves as a reason for action for all members of the association. Insofar as the aggregative common good gives share owners a reason to act in specific ways for the sake of their share (to achieve it, protect it, or whatever), the aggregative common good \textit{also} gives all other members of the association reason to act in specific ways with respect to these shares (to respect that they properly belong to others, to leave them alone, or whatever). Hence, if agent A properly possesses or ought to possess share R, then insofar as share R is a subpart of the aggregative common good it gives reason to both agent A and agent B to act in specific ways with respect to it as agent A’s share.

Hence, we may say that agent A and agent B stand in a \textit{correlative} normative relationship to one another with respect to share R in virtue of their common good. Agent A may have reason to protect his share R, and agent B may have reason to leave share R alone. It does not seem too far-fetched to me that we can call agent A’s normative standing with respect to share R his \textit{claim} and agent B’s correlative normative standing with respect to share R her \textit{duty}. “Claim” here denotes some normative standing agent A possesses with respect to share R under the description of the common good and its principles of distribution, while “duty” here denotes some correlative normative standing agent B possesses with respect to share R under that same

\textsuperscript{126} Cf. Aristotle, \textit{Nicomachean Ethics}, V.1-2 and Section 6 of Chapter 1 above.
description. What these correlative standings are – what these standings mean as reasons for action, what normative function(s) they serve – may very well depend upon the needs and traditions of particular associations and common goods. They might, for instance, mark out these shares as authoritative reasons for action on some suitable description of “authoritative.”

Consider Jack and Jill. At stake in their dispute is the status of the pail of water as an item of property. A common goods defense of Jack’s property (claim-)right in the pail of water will cite a common good. It might cite property as a common good generally speaking, of which Jack’s specific ownership is a part, or it might cite some other purported common good to which Jack’s specific property right is a means. For simplicity, let us say that Jack defends his property by noting that property, generally speaking, has the status of a common good for him and for Jill, and that his specific share of property falls under the general value and protections consequent of property generally conceived.

One might question the propriety of utilizing property as an example here. For aren’t all property rights claim-rights, and surely such property claim-rights have significance beyond the scope of associations? Let me allow that they do. Even allowing this, however, one might think that property claim-rights play a particularly significant role within associational normativity and that, within that scope, an appropriately associational account of that normative role ought to be forthcoming. For as a brute fact of social practice, property rights do mean different things in different societies, and so the meaning of their associational role is not trivial (see Section 3.3). So the question is, how far toward an account of thick claim-rights might we get if we attend merely to the associational significance of property? Can Jack defend his property merely by citing the common good, and if he can, can he do so insofar as his property right correlates a duty in Jill (insofar as he possesses a claim-right thinly construed), or can he also do so insofar as
his property right involves him and Jill in a correlatively directional relationship (insofar as he possesses a claim-right thickly construed)?

I am not insensitive to the fact that there is no necessary transitive relationship from genus to species in this instance. Even if property, generally conceived, has a certain value and place in Politopia, it does not follow in a necessary transitive manner that Jack’s property enjoys such general value and place. There are perhaps additional circumstances altering the value and place of Jack’s property, such as other common goods moderating the strength of his ownership. Perhaps, for instance, Jill is in an emergency situation, and such an emergency situation modifies Jack’s ownership right. However, such circumstances will be set aside in order to capture the essential point of interest: if Jack and Jill share a common good of property, Jack’s purported ownership of the pail of water is a non-trivial normative circumstance plausibly impacting what constitutes proper behavior by Jill concerning this pail.

Jill, then, seizes the pail of water. Jack cites their common good of property as a reason for her to respect his property ownership of the pail of water, viz. his standing with respect to the pail. He expects that this grants him certain privileges concerning the pail, such as to determine when Jill may or may not pick it up and use it. Certainly, Jack has given Jill a reason and a good reason in this scenario. He has cited a good that she is in some respect governed by, and hence she is under at least some sort of rational requirement to respect this good. The good is common to both Jack and Jill, and hence falls within Jill’s hierarchy of goods, and hence gives her some sort of reason for action. So, at the very least, Jill has an intelligible reason for action, insofar as property is for her a good she shares in common with Jack.

What of correlativity? Jack has ownership of the pail of water. This is, for our purposes, good with reference to the general good of property, which he and Jill share in common. Is the
normative status attending Jack’s ownership of the pail, which I will call a “claim,” correlated with a normative status in Jill? For this normative status to be correlated with another in Jill seems a not-too-difficult proposition to accept. As Jack possesses a specific normative status (property owner) in virtue of the general normative status he and Jill share in common (the common good of property), so Jill possesses a specific normative status (to take Jack’s property ownership as a reason for action) in virtue of the general normative status she and Jack share in common (the common good of property). Both are bound to some degree by the general norm of property (qua common good), and hence possess respective and reciprocal normative statuses with reference to that. Not only do both Jack and Jill possess specific normative statuses in virtue of the general norm of property, but their normative statuses appear to be correlative. In virtue of Jack’s ownership of the pail, which I have called a “claim” following my earlier description, Jill possesses a correlative normative status, which I will call a “duty.” Jack has a claim to his property, and Jill has a duty which exists correlative to his claim, both in virtue of the common good shared by Jack and Jill.

If this is all there is to claims and duties, then so be it. To this extent, Aristotelianism has been found capable of accounting for correlative “claims” and “duties,” and to be able to do so, moreover, without reliance upon Aristotelian metaphysics or perfectivism. That is, Aristotelianism is intelligibly capable of explaining claims and duties as correlative norms, and thus explaining claim-rights in the thin sense. Furthermore, I take it that this argument has made clear why an Aristotelian ought to care about claim-rights so-conceived. Claim-rights in this thin sense are no more than markers of proper shares – which is indeed how Finnis was seen to describe them in 1.5 and Miller in 1.6. Markers of proper shares, and of correlative standing to act with respect to such proper shares, serve an identificatory role in associational practice. The
capacity to know who is owed what, and how we should act in light of this so as to achieve the common good, is beneficial because it renders social action more perspicuous. In this regard, such norms make it more likely that we might attain our common goods – we would “like archers in possession of a target, better hit on what is needed.”\textsuperscript{127}

Yet, the arguments thus far do not capture thick claim-rights in the sense outlined in Chapter 1. Specifically, they do not yet capture directionality. Jack and Jill possess correlative normative statuses in virtue of their shared common good, but these normative statuses are not obviously held \textit{to one another}. That is, Jack possesses a claim, but it is not a claim against Jill. Jill possesses a duty, but it is not a duty owed to Jack. Rather, both hold their normative status \textit{simply}, in virtue of the common good of property. Actions are owed to the common good, as it were, not to the members of the association. Consider an analogous case, in which there is an institution of charitable giving in Politopia that is \textit{(arguendo)} for the sake of the common good, the justification of which is that it develops the habitual virtues of the givers. Here we have a set of givers and a set of beneficiaries standing in a correlative relationship to one another under the common good: the common good mandates that some give and some benefit. It is not clear that there is any directionality here, that the prospective givers \textit{owe} anything \textit{to prospective beneficiaries} or that prospective beneficiaries \textit{are owed} anything \textit{by prospective givers}. The beneficiaries are \textit{simply} beneficiaries, and the givers are \textit{simply} givers, though they are certainly situated in a correlative relationship. (Hence, whatever one might think of the inherent directionality of property rights, it is \textit{at least} the case that not all correlative normative standings resulting from a common good generate directionality.) There needs to be something more to explain directionality, and \textit{ipso facto} robust claim-rights.

\textsuperscript{127} Aristotle, \textit{Nicomachean Ethics}, 1094a24-25.
At present, it is not clear how a common good, whether aggregative or otherwise, might account for directionality. The aggregative conception of the common good, as against the distinctive good conception, at least has the advantage of clearly demarcating the agents who are to be the subjects of specific parts of the common good. That is, insofar as the reason for action attending an aggregative common good takes the form, basically, of a large conjunction, it is readily apparent that the common good is a collective good for the many individuals composing an association. Yet, even an aggregative common good does not obviously lead to reciprocal directional norms. To achieve this, an additional component is required, I believe, and to that I turn in Chapter 3.

2.7 CONCLUSION

In this chapter, I have motivated a common goods account of claim-rights, unfolded an Aristotelian account of socio-political methodology and associations, tackled the question of the nature of a common good, and argued that a common goods account *simpliciter*, while getting us correlativity, doesn’t get us the directionality required for a robust account of claim-rights. In Chapter 3, I will build on the core message of this chapter: I will argue (1) that the possession of deliberative, adjudicatory, and authoritative standing should be conceived as participation in a practice of *social discourse* which involves the normative power to specify and legislate the actions and norms necessary for the achievement of the common good; (2) that standing in such a social discourse is authoritative in roughly the sense described by G.E.M. Anscombe, that is it is *functionally authoritative*; and (3) that this functionally authoritative normative power is capable of producing *directional* claim-rights.
CHAPTER 3
SOCIAL DISCOURSE AND FUNCTIONAL AUTHORITY

3.1 INTRODUCTION

This chapter will explore how we can get correlative and directional claim-rights by developing the Aristotelian account of associational practice given in the last chapter. Beginning with an understanding of a necessary task that functional associations possess, and adding an account of a necessary and authoritative means to the achievement of this task, which I call “social discourse,” I will explain how functional associations can generate correlative and directional norms such as claim-rights. By the end of the chapter, I will have provided an account of how Association Theory can generate claim-rights, but not why functional associations should generate claim-rights. That argument will come in Chapter 4, Section 2.

In order to achieve my goal in this chapter, I first outline the necessary task facing all functional associations and how social discourse fulfills that task (Section 3.2). Next, I explain how social discourse can be understood to be a Hohfeldian normative power that establishes correlative and directional norms (Section 3.3). Third, I utilize G.E.M. Anscombe’s work on task-based or functional authority to explain how social discourse and the norms it generates can be authoritative within an association (Sections 3.4). Finally, I tie these threads together and explain how Association Theory can account for claim-rights (Section 3.5).
3.2. CONSENSUS AND SOCIAL DISCOURSE

Functional associations face a number of pressing practical and conceptual tasks. Many of these are now staples of political philosophy: solving coordination problems, determining how to respect the autonomy and equality of associational members, defining various decision-making institutions, and so on. A particularly important task, upon which the successful resolution of many other associational tasks depends to some degree, is to identify and establish shared conceptions among participants of their goal and the means by which that goal is to be achieved.

Consider Politopia. As a functional association, it is directed toward the achievement of some more-or-less well-defined aggregative common good. This common good might be, as Aristotle held it ought to be, a measure of flourishing for all participants. Alternatively, it might be something less weighty, such as security, education, and a system of conflict-resolution. Whatever the content of this common good happens to be, it is supposed to serve as a guide to action and a measuring stick by which members (and subordinate institutions) can evaluate their actions and plans. Hence, if the conception of the common good held by members is vague, or if members are guided by radically different conceptions of the common good, then it is intuitively plausible to hold that the likelihood that they will “hit the mark” drops measurably. What is needed is a moderately shared account of their common goal. A high degree would be nice, but I will take as my dialectical case a moderate degree of agreement. (I will take “moderate” to mean that quantum of agreement below which the problems associated with a lack of agreement begin to overwhelm the capacities of an association.)

---

128. The account of social discourse presented in this chapter is pervasively influenced by MacIntyre’s account of traditions and their development in Whose Justice? Which Rationality? (South Bend: Notre Dame University Press, 1988), esp. 349-367.
Let’s break down in more detail why a moderately shared account of a common good is necessary for associational success. It should first be noted that associations can neither expect, nor are likely to achieve, a very high degree of agreement on the matter of their common good. As Gill notes, “From the outset, we need to recognize that an individual is inevitably going to participate in multiple cultures…Variations in individual group membership patterns will likely prevent a uniform “culture” from developing that is shared by everyone within a group.”

That is, individuals are likely to belong to several different associations. They are therefore likely to be pervasively influenced by radically different sets of beliefs, procedures, attitudes, and so on. The differences in character that these diverse sets of influences engender in individuals will likely make it difficult to arrive at a uniform culture, including a uniform set of beliefs, shared to a very high degree by all members of any given association. Furthermore, the strength of “cultural” agreement within an association varies temporally on a roughly cyclical model, due to the influence of various factors.

Hence, even if a very high degree of agreement were established, it is unlikely to remain so for long, and so would serve as a poor foundation on which to build a model of long-term associational success. With these qualifications, why is a moderate degree of agreement concerning the conception of the common good and the means to it necessary for associational agents? If agreement does not exist to at least a moderate degree, two consequences are likely:

First, members are likely to fail to achieve their common good. Ceteris paribus, poor conceptualization of the end and means can lead to cross purposes, wasted effort and resources,

129. T. Grandon Gill, “Culture, Complexity, and Informing: How Shared Beliefs Can Enhance Our Search for Fitness,” Informing Science, vol. 16 (2013): 73-74. Here, “culture” is defined in such a manner as to embrace the matter of shared conceptions of the common good: “Culture is a system of shared knowledge, beliefs, procedures, attitudes and artifacts that exists among a group of humans,” ibid., 73.

weak motivation, unclear chains of command and authority, inter alia. Sufficient strength of agreement is necessary to ensure associational proficiency, and generally and ceteris paribus greater agreement leads to a greater measure of success.\textsuperscript{131}

Second, I argued in 2.4 that Aristotle holds an association to be, most fundamentally, an “order” or taxis, which is the (functional) arrangement of social standings and norms which bind members together. To be a member of an association is not merely to act for the common good within such an order, but is more precisely to take oneself and others to be bound together in that order.\textsuperscript{132} Therefore, it can be inferred that where members lack moderate agreement concerning the conception of the common good and the means to it, they consequently lack moderate agreement concerning the nature of the order they share and the statuses and roles assignable and assigned to members within that order. In this scenario, it is difficult to speak of agents sharing self-identification as associationally bound members of an association.\textsuperscript{133} Hence, shared conceptions of at least a moderate degree is a definitional feature of a functional association. If

\begin{itemize}
\item\textsuperscript{131} (Moderate) agreement is a necessary but not sufficient condition for operational proficiency, as noted by Gill, “Culture, Complexity, and Informing: How Shared Beliefs Can Enhance Our Search for Fitness,” 79. At the very least, theoretical and practical adaptability is also required. It does not follow from this argument that greater measures of agreement are always better for an association, for greater measures of agreement may come at the cost of adaptability and intellectual openness, which measurably reduces the proficiency of an association.

In this vein, it is also worth noting that, as Brennan remarks, exposure to contrary perspectives “tends to lesson one’s enthusiasm for one’s own political views. Deliberation with others who hold contrary views tends to make one ambivalent and apathetic about politics, and less likely to participate,” Brennan, Against Democracy, 41. Evidence suggests that the weakening of one’s political views reduces the motivation one feels to participate in politics, which is to say, to guide one’s actions by the conceptions one previously held, which is to say, to function to a lesser extent in accordance with political principles.

\item\textsuperscript{132} Aristotle expresses this requirement in terms of friendship, or fellow-feeling. Friends must recognize one another as being suitably emotively affected with respect to each other, Aristotle, Nicomachean Ethics, 1155b32-1156a1-5; cf. ibid., IX.5. There is a unique political manifestation of this, ibid., 1159b25-1160a30. Such political friendship (involving mutual recognition) “holds cities together,” ibid., 1155a23-26. See Yack, Problems of a Political Animal, 34-38 and Fred Guyette, “Friendship and the Common Good in Aristotle,” Agathos: An International Review of the Humanities & Social Science, vol. 3, no 2 (2012): 107-121.

\item\textsuperscript{133} Though following Yack we must resist the temptation to confuse the need for identification as a member of an association with the conflation of one’s identity generally with one’s specific identity as a member of the association, ibid., 31-33.
\end{itemize}
moderately shared conceptions are not achieved, it is difficult to speak of a functional association existing at all.

I will refer to these arguments as, respectively, the *Proficiency Argument for Shared Conceptions* and the *Self-Identification Argument for Shared Conceptions*. The former is both intuitive and empirical, the latter is conceptual. The former does not establish that shared conceptions are *categorically* or *absolutely* necessary to achieve a common good; rather, it establishes that, *ceteris paribus*, a greater measure of agreement promotes greater success. The latter establishes that self-identification as a member of an association, and thus the practical constitution by agents of the association, rests by definition on a measure of agreement, and that functional associations are at least partly defined by such agreement. Even if this conceptual argument is thought suspect, it is at least the case that agreement has been established as *beneficial* for a functional association by the *Proficiency Argument*. Hence, a sub-moderate measure of agreement concerning end and means imperils both the proficiency (*ceteris paribus*) of an association and the existence of an association as a normative phenomenon as such.

Aristotle, roughly speaking, recognized the significance of these practical and normative requirements of associations, writing

There are two things that living well consists in for all: one of these is in correct positing of the aim and end of actions; the other, discovering the actions that bear on that end. These things can be consonant with one another or dissonant, for sometimes the aim is finely posited but in acting they miss achieving it, and sometimes they achieve everything with a view to the end, but the end they posited was bad. And sometimes they miss both.\(^{134}\)

And

It seems too that friendship holds cities together and that lawgivers are more serious about it than about justice. For like-mindedness seems to resemble friendship, and lawgivers aim at this especially and drive out discord because it especially produces hatred.\textsuperscript{135}

Aristotle calls such agreement concerning ends and means \textit{like-mindedness}, or \textit{homonoia}. He remarks that

\textquote{Cities are like-minded \textit{homonoia} whenever people are of the same judgment concerning what is advantageous, choose the same things, and do what has been resolved in common. It is about matters of action, therefore, that people agree, and in particular about what is of great import and admits of belonging to both parties or to all involved…Like-mindedness, therefore, appears to be political friendship.}\textsuperscript{136}

Summing up the foregoing conclusion: Associations must work to achieve at least moderate agreement concerning the conceptions of end and means. If they do not, the proficiency of the association will likely suffer (\textit{ceteris paribus}) and the members of the association will likely identify themselves as members to a lesser degree, which imperils the existence of the association as a normative phenomenon. To capture the need for work to arrive at shared conceptions – at what Aristotle calls \textquote{like-mindedness} – I will formulate the \textit{Shared Conceptions Principle}: members of an association ought to work to achieve and promote shared conceptions of their mutual end and means.\textsuperscript{137}

\textsuperscript{135} Aristotle, \textit{Nicomachean Ethics}, 1155a23-26. This is a conceptual as well as empirical argument for Aristotle given the context of this quote, which is provided by the citations in fn. 132 above.

\textsuperscript{136} \textit{Ibid.}, 1167a27-1167b3. Aristotle further emphasizes the importance of like-mindedness by noting the special deficiency of those people who, through deep unethical character, cannot attain it: \textquote{But it is impossible for base people to be like-minded, except to a small degree…their aim is to grasp for more of what is beneficial to them; but when it comes to performing labors and public services, they are deficient…For when people do not keep watch over the commons, it is destroyed. It results, then, that they fall into civil faction, compelling one another by force and not wishing to do what is just themselves,” \textit{ibid.}, 1167b9-16.

\textsuperscript{137} Do associations need to persuade members that they \textit{actually} possess certain rights and duties, or need members merely \textit{believe} that they have certain rights and duties? Perhaps all that’s necessary for achieving
Association Theory holds that to this need for shared conceptions there exists a corresponding mechanism through which associational members can generate, distribute, and come to consensus regarding conceptions of the common good and the means to it. I call this mechanism “social discourse.” Further, it is through authoritative mechanism that Association Theory can account for robust claim-rights, as will be argued later.

Social discourse is a concept derived from the Aristotelian notion of political deliberation. Generally, Aristotle holds that deliberation concerning the means to the attainment of one’s ends, individual or common, is the salient practical source of conceptions of how to attain one’s individual and common goals.

It seems, then, as has been said, that a human being is an origin of his actions. Deliberation [boule] is concerned with actions that happen through one’s own doing, and the actions are for the sake of something else. For not the end, but rather the things conducive to the end, would be the object of deliberation...

Generally, this proposition does not seem too far-fetched. Conceptions are generated through the socio-linguistic engagement of agents, and it is through socio-linguistic practices, such as conversation, debate, argumentation, logical analysis, teaching, reporting, and so forth that conceptions are analyzed, synthesized, distributed, promoted, and directed to the achievement of goals (through commands, imperatives, and similar forms of speech). Complex institutional consensus and the benefits of consensus is that people believe that certain rights and duties have been created. If that belief were shared, why would it further have to be the case that this belief was true?

I agree that belief is likely sufficient, or moderately sufficient, to achieve certain benefits accruing from the simple fact of unanimity. That is, insofar as a moderate degree of unanimity is practically beneficial for the reasons cited, mere belief is plausibly practically efficacious in this regard. However, it is also the case that reality sometimes pushes back – despite sharing beliefs, we can, through mutual delusion, go very wrong, and suffer actual harms through our error. So there is, plausibly, an imperative not merely to arrive at shared beliefs, but also to make the effort to arrive at shared beliefs that are also true. How strong this imperative is and precisely how it relates to the imperative to simply arrive at shared beliefs is far beyond my topic, however.

138. Ibid., 1112b32-1113a13. See also ibid., VI.12 on the usefulness of and need for excellent deliberation, or prudence.
forms are ordered and implemented through socio-linguistic forms, such as through the text of a code of conduct or of a legal system and through spoken instructions to members of these institutions. Revision of social norms occurs primarily through socio-linguistic investigation and discussion, being disseminated through educational, legislative, and adjudicative institutions. Certainly, other factors influence the generation, distribution, and adaptation of norms: genetic predispositions, non-linguistic cues, biases, psychological drives, and so on. Language, however, and more crucially the deliberative practical forms that language takes, plausibly serves as the primary mechanism for generating, distributing and correcting conceptions.\footnote{MacIntyre offers a pertinent discussion of the social significance of this composite linguistic-rational faculty: “The very young child from the moment of birth and indeed even before that is engaged in and defined by a set of social relationships which are not at all of her or his own making. The passage that the child has to make is to a condition in which her or his social relationships are those of one independent practical reasoner to other independent practical reasoners as well as to those who in turn at some later stage become dependent on her or him. Independent practical reasoners contribute to the formation and sustaining of their social relationships, as infants do not, and to learn how to become an independent practical reasoner is to learn how to cooperate with others in forming and sustaining those same relationships and to make possible the achievement of common goods by independent practical reasoners. Such cooperative activities presuppose some degree of shared understanding of present and future possibilities…This…is an ability that requires both the possession of language and the capacity to put language to a wide range of different uses,” Alasdair MacIntyre, \textit{Dependent Rational Animals} (Chicago and La Salle: Open Court, 1999), 74; see also 30-31, 54, 59, 71.}

Now, social discourse ought to pertain not merely to the generation of conceptions of the means to an end, but also to the conception of the end as such, for what is sought is agreement concerning the conception of the end as well as conceptions of the means to the end. However, Aristotle tells us explicitly that deliberation does not concern the end, but rather what is conducive to the end (\textit{ta pros ta telē} – literally “the things [\textit{ta}] toward [\textit{pros}] ends [\textit{ta telē}]”). Hence, reliance on Aristotle’s conception of political deliberation seems to be problematic, for it does not seem to account for a salient feature of social discourse as I conceive of it – and need to conceive of it – if social discourse is to explain how associations can arrive at shared conceptions of their end.
One might try to get around this concern by noting that a common good can be conceived of and deliberated about insofar as it is a means to some further end. Perhaps we pursue security within Politopia as an instrument toward the attainment of our discrete and private ends. However, this argument will not work in cases of aggregative common goods, for an aggregative common good is supposed to be a good about which we argue and deliberate insofar as it is an intrinsic good, not an instrumental good. To adopt this solution would be to reduce an aggregative common good to an instrumental good in practice.

However, there is a line of interpretation of Aristotelian deliberation which holds that Aristotelian deliberation, properly understood, can concern ends as well as means. As Reeve argues on the basis of evidence in the Metaphysics, Aristotelian deliberation can concern the “constituents or components” of an end. Recall that Aristotle remarks merely that deliberation concerns “those things toward ends.” Aristotle appears to have intended the specification of the “constituents or components” of an end also to count as one of those things which are toward an end. Hence, Aristotle holds that the term “means” [ta pros] embraces both instrumental and constitutive means, and deliberation therefore pertains to both, and may therefore take a hand in the specification of an end, including an aggregative common good.

Political deliberation therefore serves as a suitable model for social discourse. To move from Aristotelian deliberation strictly to social discourse, then, social discourse is a deliberative


practice aiming at the specification of conceptions of the common good and the means to it, and at the dissemination and legislation of these specified conceptions among associational members for the sake (in part) of promoting consensus and thereby the achievement of the common good. That social discourse may legitimately legislate conceptions as well as identify and disseminate conceptions – that is, that it may legitimately produce authoritative conceptions – will be defended in Sections 3.4 and 5.4. For the remainder of this and the next sections, I will simply assume that it may legitimately do so. Furthermore, that social discourse so-conceived must be or ought to be the mechanism utilized to yield authoritative conceptions will be addressed in 5.4.

Social discourse therefore promotes both the proficiency and unity of its corresponding association, in accordance with the Shared Conceptions Principle. Social discourse, as a deliberative mechanism that issues conceptions of the common good and, furthermore, legislates as to which of several possible conceptions is to be enacted, is precisely the deliberative process that associational members properly speaking are held to participate in. It is, in other words, the deliberative, adjudicatory, and authoritative standing that was discussed in Section 2.4, which marks out associational members in the strict sense. To have such standing in an association is to be a member of the social discursive practice of that association. And the arrangement or taxis of an association is understood fundamentally as the arrangement of standing in such a social discourse, however centralized or decentralized, institutionalized or customary.

To conclude this section, I will consider what form this deliberative practice of social discourse takes, generally speaking. Within any given association, social discourse is distributed among the members of the association. Social discursive standing can be variously distributed – some members may possess deliberative standing that others do not. The members of an association may be institutionally divided so as to specialize in different areas of deliberation, for
instance. This is consistent with the argument of Chapter 2. In the focal case of political
deliberation, Aristotle remarks that

The deliberative element \([to \ bouleuomenon]\) has authority \([kurion]\) concerning war
and peace, alliances and their dissolution, laws, \([judicial\ cases\ carrying\ penalties\ of]\) death or exile or confiscation, and the choosing and auditing of officials. It is
necessary either that all these sorts of decision be assigned to all the citizens, that
all be assigned to some of the citizens…or that some of them be assigned to all of
the citizens and others to some.\(^{142}\)

Political social discourse is marked by, among other things, authority and (though not stated
clearly here) the power to specify and legislate the norms that will govern the association. In
political associations, social discourse is usually centralized in a legislature whose members
specify and legislate the (legal) norms governing a nation. Yet even in political associations a
substantial quantity of social discursive standing is not centralized in government, nor is it even
apportioned in accordance with a clear plan – its distribution is spontaneous and influenced by a
multitude of factors. Such “cultural” social discursive standing is efficacious within political
association, and forms a highly ambiguous and vague “cloud” of social authority and power. I
will have more to say on this distributional matter in the next section.

3.3 NORMATIVE POWER AND DIRECTIONALITY

In this section, my goal is to explain how social discourse as described above can be understood
to involve a normative power (hereafter “power”) in the Hohfeldian sense and how, in virtue of
this, social discourse can produce directional norms. This section is therefore naturally paired

\(^{142}\) Aristotle, \textit{Politics}, 1298a4-9. For Aristotle’s take on what sorts of subdivisions of social discursive
standing are appropriate in political associations, see especially \textit{ibid.}, IV.14-16.
with my discussion of Hohfeldian normative powers in Section 1.4. This account will not yet produce an account of claim-rights and correlative directed duties; for that, I must also explain in what way this power is authoritative in the requisite sense (that is, explain how the possession of the relevant power can yield *rights* and *duties* as opposed to reasons simply – see 3.4 and 5.4). With this section, Association Theory marks an explicit advance upon Aristotelian philosophy. This is a move Aristotelians can make in order to generate claim-rights and directed duties at very low cost. In Section 1.4, I noted that the Feinbergian and Darwallian conceptions of power can be roughly understood in terms of the Hohfeldian schema of “incidents.” There are independent reasons not to be satisfied with either Feinberg’s or Darwall’s respective positions, which need not concern us, but the general notion of a power that exercises itself on certain kinds of normative features of agents’ associational landscape seems to me to be a fruitful one.

First, let’s consider how Hohfeld describes the relevant power

A legal power (as distinguished, of course, from a mental or physical power) is the opposite of legal disability, and the correlative of legal liability...A change in a given legal relation may result (1) from some superadded fact or group of facts not under the volitional control of a human being (or human beings); or (2) from some superadded fact or group of facts which are under the volitional control of one or more human beings. As regards the second class of cases, the person (or persons) whose volitional control is paramount may be said to have the (legal) power to effect the particular change of legal relations that is involved in the problem.\(^{143}\)

A power in the Hohfeldian sense is marked by at least three features:

1. Ordered. A normative power is a second order capacity to effect a change in (certain) first order incidents and (hence) normative relations.

2. Voluntary. A normative power is voluntary mechanism to effect such a change.

3. Correlative. A normative power is correlated with a normative liability.

\(^{143}\) Hohfeld, “Some Fundamental Legal Conceptions as Applied in Judicial Reasoning,” 44.
Hence, taking these together, I understand a Hohfeldian power to be a voluntary second order capacity to effect a change in (certain) first order incidents (rights, duties, privileges, no-rights), correlated with a liability to such change.

In what sense, then, does social discourse involve a Hohfeldian power? Social discourse is a deliberative practice in which members of an association undertake to specify and legislate conceptions of the common good and the means to it, including the norms and actions which will, whether instrumentally or constitutively, aid in the realization of the common good. Taking this conception of social discourse and comparing it with the description of Hohfeldian powers just outlined, I think it will become quite clear that it can interpreted as involving, in some sense, a power.

First, social discourse involves the capacity to alter the first order incidents (rights, duties, privileges, and no-rights) and thereby the normative relations of members of an association. Social discourse is the capacity to define the norms requisite for the realization of the common good of an association as well as the conception of the common good itself which will guide members. This constitutes the capacity to define and legislate the various norms under which associational members will operate (being first order norms, applicable directly to action) and to determine the terms of associational membership and the practical and normative demands placed upon members. Social discourse therefore fulfills the first condition of a Hohfeldian power.

Second, social discourse is a voluntary capacity. It effects changes in the first order incidents and normative relations of an association in virtue of the voluntary choices and deliberative/legislative activities of associational members. Precisely how social discourse may voluntarily effect change depends upon its distributional scheme. Subdivisions of social
discourse, such as a legislature, will possess the voluntary capacity to alter certain norms within an association. Yet, a subdivision such as a legislature does not possess comprehensive power over all norms within an association that pertain to the achievement of that association’s common good. For instance, in a typical liberal democratic association such as Politopia, certain adjudicatory standing, and thus the power to voluntarily alter certain associated norms, is reserved for the judicial branch of government. Similarly, certain power is reserved for the executive branch, and hence the voluntary power to alter associated norms is reserved for the chief executive, as when a US President alters norms applicable to government executive bureaucracies through executive order. Indeed, social discursive standing may be apportioned to individual citizens, thereby granting to them the power to voluntarily modify associational norms of a certain nature and scope. The example of the individual alteration of privileges to use property discussed in the previous chapter is an example of this: Jack possesses a measure of social discursive standing which grants to him the voluntary power to determine whether and how others may use his property. This is limited only to a degree by other voluntary powers within Politopia, such as if the government may exercise eminent domain to seize his property, overriding his social discursive standing. Again, this example sets aside the case of the non-associational good of property ownership and any (claim-)rights or normative standing that may accrue to an owner from that, and considers property ownership only insofar as it pertains to the realization of an associational common good.

If we take orthodox Aristotelianism as a test case, an example of a non-voluntary set of facts determining social norms and the means to the achievement of the common good can be found in Aristotle’s treatment of gender and mental capacity.\textsuperscript{144} The alleged non-

\textsuperscript{144} See especially Aristotle, \textit{Politics}, I.2, 5.
authoritativeness of female rationality and the alleged absence of rationality in those Aristotle calls natural slaves *involuntarily* determine certain norms governing action by these classes of people and the action of free adult males toward these classes. By contrast, the deliberative actions of free adult males – social discourse – *voluntarily* modifies, determines, and legislates certain norms applicable to associational members. Hence, social discourse fulfills the second condition of a Hohfeldian power.

Third, membership in a social discourse taken to involve a power plausibly entails liability on the part of all members to abide by (in some sense) the decisions and legislations of the social discourse. If social discourse yields determinations and legislations derived, ultimately, in accordance with the rational force of the common good, and if associational member are bound (to some degree) by the Shared Conceptions Principle to form and act on common norms (per 3.2), then associational members plausibly stand in a position of (correlative) liability to those determinations and legislations insofar as their collective action is bound to a certain degree by the rational force of the common good. Associational members are therefore liable to social discourse in virtue of, roughly, the *coordinative* function that social discourse serves (and the value of such a function for the realization of a common good) within an association through the exercise of its power. I refer the reader to Section 5.4 where I discuss concerns regarding this claim. Hence, social discourse plausibly fulfills the third condition of a Hohfeldian power.

Taking all this together, social discourse plausibly involves a power to specify and legislate conceptions of the common good and the means to it, which alter the first order incidents applicable to members of the association. Such first order incidents (including the rights and duties held by members) constitute the normative space within which associational members act in the pursuit of their common good. Social discourse is voluntary in the requisite
sense and plausibly is correlated with a liability on the part of the members of the association to its determinations and legislations.

Social discourse, then, appears to involve a power in the relevant sense. It functions by 
*leveraging* the existing normative framework binding together associational members – the common good – and both specifying and legislating the normative means to the common good and the conception of the common good that will be operative. Social discourse as involving a power is required to a greater or lesser degree in every association matching the definition in Chapter 2, because every such association requires a deliberative mechanism for the clarification and legislation of common norms, however formal or informal, distributed or centralized, as a means to arrive at shared conceptions. Whether this claim is accepted or not in the case of many social forms matching Aristotle’s definition of a functional association (marriages, games, etc.), I think it is at least the case that some such practice is plausibly required in the focal case of political associations. Again, this will be taken up again in 5.4.

One might object to the claim that social discourse involves a normative power. The account of social discourse in 3.2 might be thought to be interesting, and it is a plausible claim that associations benefit from such a practice. However, one might say that social discourse really seems to be no more than a verbal practice of clarifying norms that already exist within an association, or at best a practice for “unfolding” the implicit content of a common good. That is, social discourse seems to contribute no additional normative “shape” to associational practice. It seems to generate no new reasons for action or kinds of reason for action. Yet, that social discourse plausibly involves a power for the reasons given above, and that it operates by leveraging the normative force of the common good in order to specify and *legislate* norms, assures us that social discourse is more than a benign discursive practice. That is, social
discourse is not a mere form of speech or normatively vacuous practice humans engage in. Social discourse is, rather, a normatively efficacious practice, and a normative force in an association.

What remains to be done in this section is to explain how social discourse as a power yields directionality, and thus how every association of the sort under discussion is capable of producing directional norms in the pursuit of their common good. To begin, it would be helpful to recall what the issue is. Claim-rights and directed duties are norms which arguably stand in a correlative and directional relationship with one another. If Jack possesses a claim-right, it is not merely the case that Jill possesses a correlative duty, but it is also the case that Jack’s claim-right is (in some sense) directed to Jill and Jill’s duty is (in some sense) directed to Jack. As Hayward has cautioned us, there is no non-controversial analysis of such directionality. The concept of directionality is hazy, and as such so are the necessary and sufficient conditions of a suitable account of this concept.

In Section 1.5, I considered the possibility that Aristotelian justice theory might provide an account of directionality insofar as Aristotelian norms of justice are other-directed. In that section, I drew a distinction between two kinds of directionality: practical and normative. Practical directionality is simply a feature of action. If Jack shouts at Jill, Jack’s act of shouting is trivially directed (physically) toward Jill. By contrast, normative directedness, a feature of a norm rather than of an action, is neither trivial nor easy to grasp, and it is the kind of directionality that rights theorists are interested in. I argued that while Aristotelian justice theory unambiguously involves practical directionality, it does not obviously involve normative directionality, and so does not obviously serve as an Aristotelian base for directional norms.

How, then, might a power to specify and legislate social norms produce directional norms? Social discourse involves a second order power to modify and generate first order norms
for members of an association. It thereby has the capacity to modify the normative relations obtaining between these members. This plausibly includes, not just which norms obtain, but also the manner and circumstances in which they obtain. Generally, then, social discourse can modify the what, how, and when of social norms within an association. That certain norms are held directionally would constitute a feature of the manner, or how that a norm is held. Such a norm establishes two or more agents within a relationship of directional normative standing. This standing need not be mutual: social discourse might establish that a norm applicable to a given member (or institution) is directed unilaterally, such that, say, agent A owes something to agent B but that agent B has no reciprocal or correlative directional standing with respect to agent A. Alternatively, the standing might be mutual, in that agent A owes something to agent B and agent B is in the reciprocal or correlative position of being able (for instance) to expect or demand that something of agent A. (I will defer to the focal case of bilateral directional norms here and in Chapter 4, but will consider alternatives in 5.2.)

It is quite plausible that social discourse involves the capacity to establish norms of this manner. Social discourse is capable of altering the manner in which norms are held, not merely which norms are held, and this plausibly extends to directionality indexed to particular agents and/or institutions. What might be suspect in this suggestion is not that norms can have some normative directionality – for as was argued in Section 1.3, it is plausible that some sort of normative directionality exists – but rather than norms can have such normative directionality imposed voluntarily. Yet, agents can voluntarily establish directional norms among themselves in virtue of the voluntary exercise of a normative power. When two agents contract among themselves, they establish a directional norm. Agent A owes performance R to agent B in virtue of the contractual agreement, and agent B may expect and demand compliance with the contract
of agent A. If agent A does not fulfill the terms of the directional norm established by contract, agent B may undertake certain kinds of action: legal proceedings, the exercise of physical force, and so on.

What sort of directionality is established by contract doesn’t concern me. I merely intend to indicate that the voluntary creation of directional norms is a well-established feature of normative theory and practice. By extension, there is no a priori reason to think that a voluntary power of social discourse could not establish directional norms within an association. Social discourse, then, insofar as it is a voluntary second order power to modify and generate first order norms within an association, can plausibly modify or generate norms that are held in a directional manner and are held correlatively with certain reciprocal normative standing. I intend by this only to establish that social discourse can establish directional and correlative norms, not that it should establish such norms. I will explain why I think establishing directional and correlative norms is beneficial in Section 4.2, after I have completed my account of claim-rights in this chapter.

What does such normative directionality actually establish, such that agents subject to directional norms might alter their practical reasoning to accord with its existence? That is, what function does such normative directionality perform? In answer to this, I think that it should be noted that there are many plausible kinds of directionality that might be established by a social discourse – or other suitable practice – each of which might serve unique goals within or without an association. In the case of associationally embedded normative directionality of the sort that interests me here, I think that Rowan Cruft’s delineation of the functions of directionality in Section 1.3 is an adequate account, precisely because his account is abstracted from actual social practice. To remind the reader, Cruft’s synoptic analysis of social directional practice reveals that
normative directionality seems to serve a practically rational function by explaining (and establishing) certain kinds of wrong, certain kinds of recompense, and certain kinds of reciprocal standing. Norms held in such a directional manner, including claim-rights and directed duties, serve to explain empirically observable instances of directional wrong, directional recompense, and directional standing. Thompson, as was seen in 1.6, holds a similar view. Again, this delineation of possible functions of directional norms does not explain why social discourse ought to establish such norms or care about these functions.

If this constructive power of social discourse is applied to the case of Jack and Jill, the argument might come more clearly into focus. Social discourse, I have said, involves a power to alter not merely which norms obtain in an association, but also how and when these norms apply. Among the many ways in which social discourse can plausibly alter how a norm is held, it may alter the directionality of the norm, which involves the indexing of that norm to particular agents (either arithmetically, as when a contract is indexed to particular named individuals, or algebraically, when the norm establishes a relationship between variables which are to be filled in on particular occasions with suitable individuals). This is perhaps undertaken to establish certain kinds of directional wronging, directional recompense, and directional standing which effect particular benefits in an association. Let us say, then, that Politopia has established that property rights are directional norms, and furthermore that they are correlative directionally, in that the right-holder stands in a directional relationship with (algebraically variable) other agents and that these other agents stand in a directional relationship with any (arithmetically specific) property holder. Jack, then, as a property holder, stands in a particular directional normative relationship with Jill, and Jill stands in a particular correlative directionally directional relationship with Jack. Jack, indeed, stands in such a relation with any person who fulfills the conditions of the
algebraic variable to which his right is directed. That is, to essentially any citizen of Politopia—
ev
eyone qualifies as directionally subject to Jack’s property right.

Is this intended as a statement of a necessary or a sufficient description of normative directionality? I intend this as a statement of a sufficient condition. As noted above, the disagreement in the literature as to the barest notion of what directionality is makes it difficult to say what are the necessary conditions of normative directionality. This is the thrust of Hayward’s critique. The distinction I have drawn between practical and normative directionality is an attempt to gain some clarity as to what is meant—to wall off as irrelevant certain applications of the term “directionality.” Given this lack of conceptual clarity, I can’t rule out other sufficient conceptions of directionality, and cannot say whether the account given here is necessary to an account of normative directionality or not. And presently, I do not have to say whether it is necessary, for my goal is to show merely how Aristotelianism can get some notion of correlative and directional norms, not what the correct conception of normative directionality is. Yet this argument does explain how at least those sorts of directionality delineated by Cruft, which seem to me to be pervasive both in practice and theory, may find a home in Aristotelianism.

This argument for the directionality of a norm is relatively thin—it rests on the nature of the normative power of social discourse to alter and generate social norms for the sake of the common good, which is neither counter-intuitive nor empirically or conceptually suspect as a theory. Yet, this argument is quite robust and effective in spite of this thinness. For it establishes a firm base on which directional (and correlative) norms might be established, and a wide capacity to produce social norms of many kinds. Further, this argument does not require the abandonment of any core Aristotelian premises, and as such is available to Aristotelians of many orders, from fairly orthodox Aristotelians to neo-Thomists. It is also an argument available to
non-Aristotelians, for though I have defended – and will continue to defend – such social discourse on associational grounds, and though I will argue in 4.2 that Aristotelian perfectivism bolsters this argument, the general notion that a social discursive practice may alter the what, how, and when of norms for the sake of achieving ends is clearly not uniquely Aristotelian.

Before concluding this section, it would be worthwhile to consider how such a power might be distributed among members of an association, at least in outline. For, what I have said seems to suggest that I intend by “social discourse” a single collective and institutionalized deliberative practice, centralized in some such institution as a legislature, with the implication that only such a centralized practice can produce directional norms. This is certainly one manner in which social discourse might be manifested. Actual political associations tend to adopt this model, for instance. Yet, as discussed earlier in this section, even in highly centralized associations of that sort, a measure of normative power is distributed throughout the association to institutions and individuals, and as a contingent matter these distributions may arise for spontaneous and historical, rather than planned and rational reasons.

Consider the case of property rights. Whether or not there is such a thing as a non-associational right to property, property rights are certainly held with respect to particular legal systems under the sufferance of the legislature of that legal system. The operative conception of an associational property right may change according to the actions of a legislature. For instance, *Kelo v. New London* ruled that “the government can take property from one private owner and give it to another for “economic development”.”

Property owners possess a certain power to

---

determine whether and how other agents may use their property by setting permissions to the use of their property. That they can set such permissions, and what permissions they can set, are in significant respects powers held relative to particular legal systems, that is, particular social discourses. Yet, generally speaking, what permissions they set at any given moment need not first be approved by a court. Property owners, that is, possess a certain power in virtue of the legally recognized conception of property rights within a political association, and may exercise this power relatively independently of the centralized institutions of those associations.

This example provides but one instance of a decentralized social discursive arrangement in which social discursive power is distributed widely in various institutionalized forms (e.g. associational property rights), as so many concrete instances of deliberative, adjudicatory, and authoritative social standing of the sort discussed by Aristotle. Jack is a member of the social discourse of Politopia. Yet, Politopia, like modern liberal democratic societies, has established a roughly liberal democratic conception of property rights. This grants to Jack a certain standing with respect to his property – it constitutes him as a (legally recognized) property owner possessed of certain power – and permits him to exercise this power without approval from any central institution (though subject to the adjudicatory review of the court system if necessary). This power permits him to establish when and how, if at all, other agents may use his property. There are a multitude of analogous cases in which particular standings are recognized and upheld by various institutions of social discourse, the exercise of which need not be approved by that institution. For instance, in America a man may propose to any woman he wishes (indeed, now also to any man, the result of a constructive act of social discourse). A woman may similarly propose to whomever she wishes. There are societies in which this is not and has not been permitted.
None of this is to say that decentralized deliberative standing need be open to the sanction and/or review of a centralized institution, as many decentralized social discursive powers in liberal democratic societies are subject to the sanction and/or review of the legislature and courts. This just happens to be how matters tend to be arranged in liberal democratic systems. Furthermore, none of this is to say that these particular powers require a social discursive act in order to exist. Property ownership and marriage proposals could conceivably occur outside a social discursive system. The key point I wish to convey is merely that social discourse should not be conflated with a central institution or a unitary collective practice. It may, and often is, a decentralized and composite practice.

3.4 FUNCTIONAL AUTHORITY

In 3.2 and 3.3, I argued that functional associations must attain at least moderately shared conceptions of the common good and the means to it for the sake of proficiency and the normative constitution of the association as such. In order to achieve this, associations plausibly require a deliberative practice called social discourse, which involves the normative power of specifying and legislating such conceptions of the common good. Participatory status as a member of this social discourse is apportioned out variously as deliberative, adjudicatory, and authoritative social standing to members of the association. As I remarked toward the end of 3.2, I would assume for my purposes in those sections that social discourse could make good on its pretension to legislate these shared conceptions, which is to say, that social discourse is capable producing authoritative conceptions of the common good to which associational members are legitimately liable. I explained neither why social discourse is authoritative nor in what sense it is
authoritative, and hence did not explain why it legitimately legislates. Citing the need for shared conceptions does not by itself explain why social discourse ought to be the authoritative mechanism to provide such conceptions nor what conditions must be fulfilled such that a potentially authoritative social discourse may be considered actually authoritative.

This is not a trivial question. Some account of authority is needed because claim-rights and their correlative directed duties are held to be in some sense authoritative. That they are so was discussed in Section 1.4 in connection with Darwall’s theory of claim-rights. Though I do not adopt his theory here, he is correct to say that claim-rights are authoritative norms. What I take this to mean is that they are not merely reasons for action, but are authoritative reasons for action – they hold, or ought to hold, a particular place of prominence in our practical reasoning. Some explanation of the authoritativeness of claim-rights as reasons for action must be forthcoming from the account I have developed. In the context of that account, the authoritativeness of claim-rights as reasons for action is to be explained by reference to the legislative capacity of the normative power that produces them (i.e. social discourse), and this legislative capacity is to be understood specifically as the capacity to generate norms which serve as authoritative reasons for action. Hence, social discourse is to be (potentially) authoritative insofar as it is capable of producing norms that can serve as authoritative reasons for action.

How then can Association Theory account for this? This section will be the first part of a two-part examination of the authoritativeness of social discourse and the norms it produces. In this section, my intention is to explain how social discourse is such as to be capable of becoming authoritative, and also in what this authoritativeness consists. In the second part of this examination, Section 5.4, I will consider what specific conditions plausibly have to be fulfilled such that a particular social discourse might actually attain authoritativeness. I will proceed in
the following steps in this section. First, I will discuss in more detail what it is for a reason to be authoritative. Second, I will explore G.E.M. Anscombe’s argument for the claim that, suitably qualified, the necessity of a task suffices to explain how a person, institution, or practice that will fulfill that task is capable of becoming authoritative. Third, I will define what sort of authority I think social discourse and the norms it produces are plausibly capable of possessing in light of the preceding discussions.

First, then, how are we to understand the authority of a reason for action (in what follows, all references to “reasons” pertain to reasons for action)? To answer this, I will refer to Joseph Raz’s well-known account of reasons for action. Following Raz, we might say that the authoritativeness of a reason can be understood as being of one of two sorts of what I will call the “normative force” of that reason. Normative force consists in the manner in which a reason impinges upon an agent’s practical deliberations. This is to be understood in logical rather than psychological terms.

When choosing whether to undertake action A or action B, say, there are presumably reasons behind each option. One might approach this choice, argues Raz, by weighing the “strength” of these reasons. Hence, normative force and authoritativeness may be understood firstly in terms of the strength of a reason. Raz analyzes “strength” roughly as follows: The strength of a reason is to be understood relative to the conflicting reasons that it overrides. A reason to \( \phi \) stands in a position of conflict with any reason not to \( \phi \). A reason which overrides a conflicting reason is *ipso facto* stronger than that overridden reason. A reason to \( \phi \) overrides a

---

146. NB. Anscombe’s is *not* the claim that the necessity of a task (suitably qualified) is necessary for a person, institution, or practice to be capable of becoming authoritative, G.E.M. Anscombe, “On the Source of the Authority of the State,” in *Authority*, ed. Joseph Raz (New York: New York University Press, 1990), 147.

reason not to φ if and only if one would still have reason to φ, on balance, where and when both reasons apply. 148

Let us consider the well-worn example of a student choosing whether to spend her night drinking with friends or studying for her final exam. This student faces a choice between two options, A and B. Behind choice A, drinking, is reason C, pleasure. Behind choice B, study, is reason D, good grades. I will assume for the sake of argument that this student has reason, and good reason, to think that drinking will promote pleasure and studying will promote good grades in this exam. In these circumstances, C and D are conflicting reasons, because owing to scarce time they cannot both be realized. C is a reason to do A and not to do B (given scarce time), while D is a reason to do B and not to do A (given scarce time). In this case, C and D are both reasons applicable to the student. Hence, if in this scenario reason C overrides reason D and the student thereby has, on balance, reason to choose option A, drinking, then we would say that reason C is stronger than reason D. This provides an intuitive and tangible analysis of the notion of logical strength: logical strength is to be analyzed in terms of the capacity of a reason to override conflicting reasons.

There is, however, another kind of normative force discussed by Raz. This is the kind of force that attends a pre-emptive reason. Pre-emptive reasons are second order reasons which “pre-empt” certain first order reasons. Regardless of the strength of a given first order reason, a given pre-emptive reason may render reference to such a reason in a given practical context void. Such a first order reason, in a given context, is not to constitute a reason for action at all, in

virtue of the pre-empting exclusionary work of the pre-emptive reason – the first order reason is excluded from practical deliberation.\textsuperscript{149}

So let us return to our ambivalent student. Two reasons for action impinge upon her choice situation: pleasure and good grades. Let us say, for the sake of argument, that there is a general prudential norm such that, during study week, pleasure is to be excluded as a reason. (Since my purpose here is merely to illustrate what is meant by a pre-emptive reason, that this norm is non-associational need not concern us – one might equally well say that this is not a general prudential norm, but a norm applicable to students of a particular university as students of that university.) And let us say that her choice situation occurs during study week. This prudential norm excludes pleasure as a reason, and hence the reason to go out to drink with friends has been excluded from her practical deliberation. Now, the only operative reason conflicting with her reason to study has been excluded, and her reason to study – attaining good grades – may move her to action (logically speaking) without contest.

Such a pre-emptive reason need not be absolute.\textsuperscript{150} That is, a pre-emptive reason for action may, per Raz’s analysis, be considered defeasible. In certain circumstances, the exclusionary force of a pre-emptive reason may itself cease to apply. The conditions for defeasibly removing the exclusionary force of such a reason may vary. For instance, it may be overridden by a stronger conflicting second order reason. Alternatively, it may be excluded by a pre-emptive third order reason.

Summing up, Raz offers two accounts of how we might understand the authoritativeness of a reason. A reason might be authoritative insofar as it is stronger than another reason or it

\textsuperscript{149} Ibid., 39.

\textsuperscript{150} Ibid., 27.
might be authoritative insofar as it is a *pre-emptive* reason that *excludes* certain other reasons as reasons for action. Claim-rights and directed duties are held to be authoritative in some sense, and Raz provides two ways of understanding what it is for a reason to be authoritative. I will return to this toward the end of this section.

For now, I will consider how social discourse might become authoritative, and yield authoritative norms. To do this, I will turn to the concept of “functional authority” described by G.E.M. Anscombe. Anscombe’s position, generally, is that where there is a task that *must* be performed, which is to be performed *for the sake of* some set of people; and where the completion of that task *requires* obedience by that set of people to the person, institution, or practice fulfilling the task (the “task-holder”); then that task-holder possesses authority over that set of people pursuant to the completion of the task and correlative of that obedience if suitable conditions for the conferral of that authority are also met. As noted at the outset of this section, it is plausible that additional conditions must be fulfilled such that the task-holder *actually* possesses authority, and these conditions will be discussed in Section 5.4. Hence, we may call the justification provided by Anscombe’s argument, as I will utilize it, a *pro tanto* justification for authority, insofar as it provides an account of how authority *might* be achieved, but not of

---

151. Anscombe’s account of authority is focused on political or “civil” authority, which according to her is distinguished from non-political authority in two respects: first, political authority involves “an unconditional demand of obedience” – there is no allowance to “pull out” from the relationship governed by such authority; second, political authority involves “the exercise, actual or threatened, of institutional violent coercive power,” Anscombe, “On the Source of the Authority of the State,” 143-144. In my use of Anscombe’s argument, I make no presupposition that one cannot withdraw from an authoritative associational relationship nor do I assume that the authority discussed in this chapter, or the claim-rights and directed duties defended by Association Theory more broadly, may be coercively imposed or defended. This difference of focus will not adversely affect my consideration of Anscombe’s theory, for what interests me particularly is her formal move from necessity to authority, not her view of the scope or subject of this authority.

152. Anscombe herself holds that there are various conditions that must be fulfilled such that authority actually be held by the task-holder. See *ibid.*, 160-161, 164 and 168-170.
what conditions must be fulfilled such that functional authority is actually held by any particular task-holder.

Turning now to Anscombe’s argument, on the meaning of the foundational concept of a “task,” Anscombe writes

A task, as it is sometimes spoken of, is work which it is in some sense necessary should be done. It may for example be necessary in the sense of being imposed. Or it may be necessary because of a general or particular human need that it should be done. Such a task may not be anyone’s task. Someone’s task is work which it is necessary that he should do or work which it is necessary that someone should do and which it is his right to do. Someone might perform a task which was not his task, which he had even no right to do. Therefore the mere fact that someone is performing a task does not suffice to prove that he has a right to what is needed for the performance of the task. It must either be necessary that he should perform the task or be his right to do it, before he can derive a right to certain things from the fact that they are necessary for the performance of the task.153

Simply put, then, a task in Anscombe’s sense is a certain kind of necessary work. Since any work might be deemed necessary from a suitable point of view or from a suitable practical standpoint, any work is potentially a task.

Approaching the matter of the authoritativeness of reasons for action from the perspective of the necessity of a task seems to me to be plausible, prima facie. For what makes us care about tasks, and what makes them particularly interesting for an ethicist, seem to be their putative necessity. They are not simply performances or goals, but are rather necessary performances or goals, in some sense and to some degree. And as such, it is prima facie reasonable to ask whether such necessary tasks might not serve as or yield reasons of particular significance, even of authoritative significance, or otherwise be involved in some salient respect in an account of authority. Intuitively, we might think that the task of achieving at least a moderate degree of

shared conceptions, being necessary, holds some special or even authoritative significance as reasons for action for associational members. Let’s see how much traction can be gotten on the basis of this intuition.

Anscombe argues that “[a]uthority arises from the necessity of a task whose performance requires a certain sort and extent of obedience on the part of those for whom the task is supposed to be done.” Anscombe proposes that where some necessary task requires for its (successful) performance obedience to the task-holder on the part of those for whom the task is undertaken, the necessity of that task carries over in some respect to the normative relationship between the task-holder and those for whom the task is to be performed. That is, the normative subordination of the beneficiaries of (the successful completion of) the task to that task plausibly entails the normative subordination of these beneficiaries to the conditions necessary to fulfill that task, and where among these conditions there is a need for obedience to a person, institution, or practice that will undertake the completion of that task, the normative subordination of the beneficiaries to the conditions necessary to complete the task carries over in some respect to their relationship with this task-holder. If, for instance, it is necessary that a child be cared for, and if the successful caring for that child requires obedience on the part of the child to the task-holder, and if the child’s parents are deemed properly to be this task-holder, then that child plausibly stands in a position of obedience to its parents and those parents plausibly stand in a position of authority over the child. Or, more properly, the child stands in a position of possible obedience to its parents, who correlatively stand in a position of possible authority, pending the fulfillment of other conditions of actual obligation and authority.

154. Ibid., 147.

155. This example is Anscombe’s: see ibid., 148.
First, allow me to clear up some confusions about this argument. Anscombe’s argument is not that from the necessity of some performance some kind or extent of authority on the part of the task-holder is implied simply. One might conclude this, for instance, from her later remark that “If something is necessary, if it is for example a necessary task in human life, then a right arises in those whose task it is, to have what belongs to the performance of the task.” One might say, for instance, that a child must be cared for, and that the parents bear this task, therefore the child owes obedience to its parents and the parents possess authority over the child. Or, one might even say that a child must be cared for, that the parents bear this task, and that the child will benefit from the parents’ performance of this task, therefore the child owes obedience to its parents and the parents possess authority over the child. Yet these interpretations miss Anscombe’s crucial qualification that authority can arise in this functional manner only where the performance of the task requires a certain sort and extent of obedience on the part of the beneficiary, that is, where a relationship of authority and obligation is a precondition of the fulfillment of the task for the benefit of the beneficiary. If we refer back to Anscombe’s description of a task, she noted that it is not sufficient for the possible granting of authority that a person, institution, or practice merely be fulfilling the task, and thus merely be benefitting the person(s) for whom the task is performed. It must also be the case that obedience is owed to the task-holder as a necessary condition of the fulfillment of the task. For if obedience were not a requirement of possible authority in this instance, then we would face the untenable conclusion that Mary, a 7-year-old child who must be cared for, is subject to the authority of Alice, her mother, merely because Alice possesses the task of caring for Mary and happens to benefit Mary.

156. Ibid., 160.
This is untenable because it is not clear that merely holding a task and/or merely benefitting someone are sufficient grounds for the possible holding of authority and obedience.

Furthermore, Anscombe’s is not the position that the prospective authority held by a task-holder is correlated merely with requirement of non-interference from those for whom the task is performed. This interpretation might be based on Anscombe’s description of the intuition driving her theory: “[i]f someone has a role or function which he ‘must’ perform, or anything that he ‘has’ to do, then you ‘cannot’ impede him.”\(^{157}\) Granted, this intuition drives Anscombe’s thesis, but it is not the form that her eventual argument takes. Anscombe is explicit that functional authority arises as a correlate of necessary obedience. In an extended but important discussion, she remarks that

Authority stemming from a task does not indeed relate only to obedience. I mean that obedience and disobedience are not the only correlative response to it. We see this where we speak of parental authority in relations other than the obedience of their children. A small baby does not obey, but we may acknowledge the authority of the parent in decisions about what should be done with it. So authority might be thought to be a right to decide in some domain, and its correlate not obedience but respect…Nevertheless this is secondary. We would not speak of someone’s authority in every case where we admit his right to decide for example, in matters of his own dress. Here “authority” would be a redundant notion. So obedience/disobedience are the (logically) primary correlates of authority, i.e. the correlates without which there would be no such distinctive thing as authority (in our present sense); and, following upon this, there are also the correlative responses of respect, non-impediment, and their opposites.\(^{158}\)

Hence, to speak of “functional authority” is to speak of an authority grounded in a necessary task the performance of which requires, as a condition of successful performance, a certain kind and degree of obedience to the task-holder on the part of those for whom the task is done, and such

\(^{157}\) *Ibid.*, 159.

obedience might extend beyond the requirement of noninterference with the completion of the task.

It does not seem to me plausible that such functional authority ought to be considered absolute. Both in its source and its extent it is limited and contingent. With respect to its source, it rests ultimately upon the necessity of the task for which it is a condition of fulfillment. Therefore, if the necessity of this task is undermined in some sense, the authority of the task-holder if *ipso facto* undermined. Anscombe notes, for instance, that once children mature and no longer need the guardianship of their parents, the parents’ authority dissolves.\(^{159}\) Similarly, such functional authority is limited with respect to its scope. It is not an absolute authority over the actions of the beneficiaries, but is rather a limited authority to benefit them in accordance with the fulfillment of the necessary task. To the limited source and scope of such authority may also be added a third limitation, insofar as the manner in which such authority impinges upon the beneficiary’s practical reasoning – the normative force of the reason given by such authority – may be defeasible, whether that normative force is interpreted in accordance with Raz’s two options as one of strength or exclusion.

That a task may be considered necessary from any suitable point of view need not be taken as license for thinking, for instance, that any task may be held to be necessary simply because some set of individuals happen to regard it as necessary. For instance, the Nazis likely thought that their task of eliminating the Jews was a necessary task, necessary if Aryan ascendancy was to be achieved. In pursuance of this, the Nazis, as the presumable task-holders, might claim authority over the Aryans for whose benefit the genocide was to be conducted. Yet the Anscombian position permits a robust understanding of what constitutes a “suitable” point of

\(^{159}\) *Ibid.*, 148
view. Presumably, for instance, the putative necessity of a task would be ruled out if it conflicts with norms of morality. For that reason, genocide is ruled out (I take it). Yet more to the point, that a task is taken to be necessary does not logically constitute good reason for thinking that the task is necessary, or is properly held to be necessary. Norms governing the determination of when a task is necessary are compatible with Anscombe’s view. Indeed, Anscombe remarks on this concern, stating that “Nor is the ground of necessity an unsafe one in that there are no limits to what can be ‘justified’ by necessity…For the necessity of the arrangement was not the whole justification.”  

Necessity (of the task and of obedience to the performance of the task) is the ground of justification, but as noted at the outset of this section necessity is not the entirety of the justification for authority in the Anscombian picture.

Having clarified the meaning of Anscombe’s argument, I turn now to the question of how satisfying it is as an account of the authority of social discourse, and ultimately of the authoritativeness of the reasons for action given by the norms social discourse generates. To recap, Anscombe holds that a person, institution, or practice (a “task-holder”) is functionally authoritative if, and only if, (a) there is a necessary task to be fulfilled, (b) which requires for its successful fulfillment obedience on the part of the beneficiaries of that task (c) to the task-holder as correlatively authoritative, (d) who will (aim to) fulfill the task for these beneficiaries, (e) and who is suitably established as the task-holder. This account is incomplete in three salient respects. These are:

1. What conditions must be fulfilled such that a prospective task-holder actually possesses authority over the fulfillment of a task?

2. In what respect are the putative beneficiaries of social discourse to be benefitted such that they must owe obedience to the task-holder?

160. Ibid., 164.
3. In what sense do the norms produced by social discourse constitute authoritative reasons for action in virtue of this argument?

I will answer (1) in Section 5.4 and will consider (2) and (3) here sequentially. But first, I will briefly explain how we might interpret social discourse and its authoritativeness in light of this argument. Per my analysis above, social discourse will be functionally authoritative as a practice if the five conditions listed are met. First, is there a necessary task to be fulfilled? Yes, attaining at least moderately shared conceptions. Second, does the fulfillment of this task require obedience on the part of those for whom the task is to be fulfilled to the task-holder? Yes, for social discourse is to be not merely a specificatory practice, but a legislative practice which issues norms that are to serve as authoritative reasons for action for associational members. Concerns with this function will be addressed in 5.4. Third, is this obedience to be correlated with an authority on the part of social discourse as the task-holder? Yes, for the same reason as before, that social discourse is to serve as a legislative practice issuing authoritative norms. Fourth, does social discourse aim to benefit those for whom it acts? Yes, insofar as, by achieving shared conceptions, it will promote the proficiency and normative constitution of the association, and thereby promote a greater measure of the common good for associational members. Fifth, is social discourse suitably established as the task-holder? This awaits my argument in 5.4. Taking these together, then, social discourse meets the criteria, so far as it goes, for a functionally authoritative practice.

Turning now to the two remaining questions, and with an eye to the particular case of social discourse, in what respect are the putative beneficiaries of social discourse to be benefitted such that they must owe obedience to the task-holder? Though I have outlined the answer, I will consider it in more detail. Agents embedded within an association share a common good. This
common good gives reason for action to all agents. If that common good is *aggregative* – which in the present context it is – then the aggregative shares of the common good which accrue to any particular member of the association serve not merely to benefit those whose shares they are, but in an extended sense serve to benefit all in the association insofar as the achievement of these shares of the common good constitutes a reason for action for all members of the association. Any tasks pursuant to the achievement of this common good and any of its aggregative shares therefore give reason for action of some sort to all members of an association. For instance, task R plausibly gives reason to agent B as well as to agent A because agents B and A are both members of the association, and assuming that task R serves the achievement of the aggregative common good of that association in some respect, task R serves as a reason for action for both agents insofar as, in an extended sense, its achievement of any given aggregative shares of the common good may be said to serve the interest of both agents. Their common commitment to their common task implies, generally, a commitment to the diverse roles and practices that fall under that common task, and to the conditions of the completion of these diverse tasks, including to the condition of obedience, where such obedience is necessary, because both are benefitted through the achievement of aggregative shares of the common good. Hence, both A and B can be understood as benefitting from the achievement of the common good and taking this to be a reason for action generally, and a reason to take all subordinate roles, tasks, and authority/obedience relations as reasons for action.

Lastly, the question of which kind of authority social discourse acquires through this Anscombian argument must be addressed. The answer, I believe, is best determined by considering what sort of authority would be necessary such that social discourse can achieve the (legislative) task it has, in accordance with what has been said above. For Anscombe’s argument
was that a practice is authoritative if a kind of obedience and correlative authority is a necessary condition of the fulfillment of the task.

It does not seem to me plausible that social discourse merely strengthens the reason given by a first order incident, in the sense of providing a reason that overrides a great number of other reasons. There are two arguments for this: first, that a conjunction of first order reasons might always overcome even a very strong first order reason; second, that it isn’t clear how much social discourse might strengthen a first order reason. On the first point, consider the example of greed in Aristotle’s treatment of justice. The greedy person takes more than he or she is allotted in justice in an association.\(^\text{161}\) So, for Aristotle greed is a matter of taking more than one’s share, whatever that share is. One has reason to take more than one’s share by cause of private interest. This is an intelligible rational act: private interest serves as a normative reason for action which might, in many circumstances, override the normative reason(s) one possesses on the basis of associational considerations. If social discourse strengthens the normative force of the reason(s) one has to act for the common good, then certainly in some cases it might override conflicting private interests, and perhaps in more cases than would be the case without the strengthening effect of social discursive authority. However, this seems insufficient to adequately ensure that social discourse will fulfill its task. In principle, private interest may remain a normative obstacle. And crucially, this result can often be expected not in violation of reason, but precisely because agents are rational in their deliberations of how to pursue their interests.

Furthermore, it is unclear how we know that the (strengthening) authority of social discourse will or won’t counter the cumulative normative strength of private interests. To know that, we must have some idea of how much social discourse strengthens the reasons one

possesses to act for the common good. But so far, I haven’t stated how much it strengthens a reason. Indeed, it is unclear how one might measure such a strengthening. For any given measure of strengthening, it seems entirely plausibly that some set of private reasons will rationally move some or even many agents from action in accordance with those strengthened reasons, unless one establishes that social discourse’s legislated norms give very and almost insurmountably strong reasons, which seems unlikely. I can think of no precedent for the notion that all norms produced by a social discursive practice may be in principle of such strength as to all-but absolutely override any set of conflicting reasons for action.

It is implausible, then, that social discourse strengthens the first order reasons for action possessed by associational members through its legislation of social norms. It is quite plausible, however, that social discourse’s authority consists in the pre-emptive exclusion of certain first order reasons for action. Social discourse works to specify and legislate social norms, and thereby direct agents to the achievement of the common good. Hence, social discourse is plausibly thought to be authoritative insofar as it involves a power to, among other things, established pre-emptory reasons for action that exclude from practical deliberation certain reasons that might divert action from the achievement of the common good. Unlike the former conception of authority, an authority to pre-empt certain first order reasons will dissolve the problem of conjunctions of contrary private reasons. Furthermore, one need not measure its impact.

Why ought we think that such authority is necessary for social discourse to achieve its purpose? First, because human beings do not always or even typically act on the right reasons, such authority plausibly serves as an additional factor disposing humans to act this way rather than that. Such a reason is certainly not a sufficient condition for consensus in a psychological
sense. Indeed, in certain cases the existence of such a reason may actually serve as a disincentive to do the right thing, given the particularities of individual psychological types. Second, that in the face of multiple reasonable yet mutually exclusive possible specifications of the actions and principles necessary to achieve a common good, some mechanism of deciding and implementing one of these specifications must be in place. The need to attain shared conceptions is not eliminated merely by the fact that all conceptions held in an association are reasonable.

This pre-emptive authority must be defeasible in the sense discussed earlier. For social discourse itself can err and, as the example above suggested, can itself be an obstacle in particular instances to the achievement of the common good. Hence, the authority of social discourse must be capable of being defeated in particular cases. I am ambivalent as to whether this is by a stronger second order reason or pre-emptive third order reasons. We also do not want it to be the case that social discourse can always eradicate the rational force of private considerations in cases in which private interest may contravene the normative force of collective norms. The argument for the authoritativeness of social discourse is not intended to be an argument for the categorical subordination of private to collective interest.

To sum up, I have argued that social discourse is potentially authoritative because the existence of such a practice as authoritative, to which associational members owe obedience, works for the achievement of shared conceptions of the common good, and thereby for the benefit of the members of the association. To make good on such a claim to authority, additional conditions must be fulfilled by any particular social discourse, to which I will turn in Section 5.4, where I will also consider concerns about the necessity of social discourse as a means to

162 For a recent and interesting discussion of the psychology of authority, see Michael Huemer, The Problem of Political Authority (Basingstoke: Palgrave Macmillan, 2013), Ch. 6. The underlying question is not entirely congruent, for Huemer is interested in political authority, and is therefore bound up with the question of coercion, but there is some overlap, and in particular a clarity of analysis.
attaining shared conceptions. Moreover, I have argued that an authority of *strengthening* the reasons given by the norms created by social discourse is not a plausible account of the authority of social discourse. However, a defeasible pre-emptive exclusionary authority is plausibly sufficient.

### 3.5 SOCIAL DISCOURSE AND CLAIM-RIGHTS

It is now time to wrap up my arguments and synthesize my conclusions into an Aristotelian account of claim-rights. Firstly, let’s recount the key steps through which we have come.

In Chapter 1, I set out the three analytic features of claim-rights with which I would be concerned. These were: correlativity, directionality, and normative power. The first, correlativity, is the property by which a claim-right is *correlated with a directed duty*. This is pretty much universally agreed among rights theorists to be a property of claim-rights. The second, directionality, is more contentious. It is, roughly, the property by which a claim-right is understood to be not simply held, but *held with reference to or “against” a certain person, group, or institution*. Not all rights theorists agree that directionality is a property of claim-rights, or even that it is an intelligible concept. I provided some motivation for thinking that an account of claim-rights ought to incorporate an account of directionality in Section 1.4 with reference to Cruft’s sociological claim that social practice involves directional norms, and this will be supplement with a theoretic defense of directionality in 4.2. The third property, normative power, is the most contentious. I chose to address it in Chapter 1 as a prospective analytic property of claim-rights because Association Theory holds that it is through a distinctive normative power found in a practice which I dub “social discourse” that the Aristotelian may arrive at an account
of claim-rights and directed duties. I cited some examples of theorists which incorporate an account of normative powers into their explanation of claim-rights and then left the matter aside. I concluded Chapter 1 with a consideration of whether or not Aristotelian justice theory – the most intuitive place to seek something like claim-rights in Aristotle – gives us reason to think that anything incorporating these analytic features exists in Aristotle’s own works. I answered in the negative.

In Chapter 2, I developed an account of associational practice and common goods, the first part of my positive account of claim-rights. I argued that associations of shared practice for a shared, aggregative common good can explain and justify correlative norms, and to that extent might satisfy anyone who thinks that correlativity is all there is to claim-rights. Hence, if one rejects the notion that claim-rights involve directionality and normative powers, then one path to claim-rights might be through the kinds of associations that centrally interest Aristotle in this Nicomachean Ethics and Politics. Yet, I ultimately found this account unsatisfying by itself precisely for the reasons outlined in Chapter 1 – that it seems as though, at the very least, an account of claim-rights must also explain the apparent directionality of claim-rights manifested in social practice, if not also some normative power or capacity attending claim-rights.

Turning to Chapter 3, I have developed an account of social discourse as a means of achieving the necessary goal of moderately shared conceptions, modeled on Aristotle’s own account of social deliberation in the Nicomachean Ethics, possessed of the functional authority to specify and legislate conceptions of the common good and the means to it. Such social discourse permits us to arrive at an account of correlative and directional social norms governing associational members, which are furthermore authoritative as defeasible pre-emptive reasons for action within associations. With this addition, the correlative norms that we were left with at the
conclusion of Chapter 2 come to have directional and authoritative force through the second order capacity of social discourse to establish the manner in which first order norms are held within associations.

Hence, taking these three segments together, we now have a picture in which associational agents engage in a practice, however centralized or decentralized, institutionalized or non-institutionalized, of authoritatively specifying and legislating conceptions of the common good and the means to it. This power allows for the creation of a space of agent-indexed correlative, directed, and authoritative norms. It is my contention that at least some such norms match the analytical requirements of an account of claim-rights. Moreover, they do so in a way that Aristotelian justice theory and a common goods account of social norms simpliciter could not. It is precisely social discourse as involving a normative power that makes such norms possible (within such associational normative space). Association Theory therefore marks an advance upon Aristotelianism by explaining how we can arrive at correlative, directional, and authoritative norms through the mechanism of the normative power of social discourse.

That such norms might include claim-rights is clear. Members of an association possess and/or are entitled to certain “shares” of the aggregative common good per my argument in 2.6. For any given share, we may apply the term “claim” to that share, and the correlative term “duty” to the normative standing of “responsibility” other associational agents have to respect this share as belonging to a given individual – as being that individual’s aggregative share. If such correlative shares and responsibilities are all there is to claims and duties, then to that extent Aristotelianism has provided an account of claim-rights and correlative duties, and moreover one which does not depend upon voluntary acts of normative creation. Furthermore, if this mere correlation is combined with the account of social discourse given in this chapter, then the
Aristotelian can both make sense of the intuition voiced by Feinberg and Darwall that normative powers play a role in claim-rights, as well as the authoritativeness of these shares and responsibilities, or claim-rights and duties. Hence, a social discursive theory such as this marks an advance upon Aristotelianism by explaining how we can attribute to claim-rights and duties not merely correlativity, but also normative power and authoritativeness.

Yet, Association Theory goes further. Social discourse also explains how such claims and duties might be directed to one another, and hence how directionality might arise. Social discourse is possessed of the power to alter the manner in which a norm is held, and thereby may institute directional norms within an association. Hence, to the correlative shares and responsibilities existing within an association in virtue of the aggregative common good, social discourse may add authoritativeness and directionality, thereby accounting for correlative, directional, and authoritative claim-rights and directed duties as products of social discourse applied to an aggregative common good.

3.6 CONCLUSION

This Chapter has built on the positive arguments of Chapter 2 to defend claim-rights not merely as correlative of duties, but in the fullest sense as directional, authoritative, and as involving a normative power in some respect. It has been my contention that the Aristotelian might account for claim-rights in the fullest sense as a product of the normative power of social discourse leveraging the normative force of a common good. Claim-rights are a particular class of social norm specified and legislated by social discourse for the purpose of further realizing the common good. They are among the many classes of means which associations deploy in order to achieve
their respective common goods. How they do this will be the subject of Section 4.2. More generally, in Chapter 4 I will expand upon what I have argued here and, importantly, provide an account of the process by which specific rights might be generated and an account of some specific claim-rights which I think are generated in most such associations.
CHAPTER 4
ARRIVING AT CLAIM-RIGHTS

4.1 INTRODUCTION

In Chapter 3, I argued for three central claims: (1) that associational members participate to varying degrees in a practice of social discourse, which inter alia involves the normative power to specify and legislate the actions and norms necessary for the achievement of the common good; (2) that this social discourse is functionally authoritative over the actions and norms to be enacted within the association for the sake of the common good; and (3) that this functionally authoritative normative power to specify and legislate is capable of producing correlative, directional, and authoritative norms, and as such is capable of producing robust claim-rights. On the issue of directionality and directional norms, though I argued that social discourse can explain these normative properties, I did not explain why the realization of an aggregative common good is furthered by the generation and distribution of such directional norms. Nor did I explain how specific kinds of (directional) claim-rights might and should be generated within an association, nor what some of the specific kinds of claim-rights that might and should be generated are. In this chapter, I turn to these three tasks.

My goal is not merely to explain what sorts of claim-rights Association Theory is capable of identifying. I will also argue that Association Theory can identify the right kind of claim-rights. Hence, rather than being merely a novel neo-Aristotelian theory that yields content that looks like claim-rights, Association Theory will be found to be capable of explaining some of the
claim-rights that are held to be central to modern liberal democratic society. Are the claim-rights central to modern liberal democratic society the “right” kind of claim-right? Perhaps not. But I shall assume that something like modern liberal democratic rights are sufficiently “right” to serve as the measuring rod for my purposes here. It is of course impossible in the space I have to develop a full liberal theory within the context of Association Theory, so I will focus on three important liberal claim-rights: the right to life, the right to freedom of expression, and the right to participate in social discourse (that is to say, the right to democratic participation).

Association Theory, therefore, leads to the conclusion that Aristotelianism is capable, with some elaboration, of accommodating not only claim-rights, but claim-rights that we care about. Yet this conclusion is controversial for at least the two reasons, which were given in the Introduction: It holds that the existence of (certain) claim-rights is dependent upon associational membership and a constructive act of social discourse. I remind the reader of what I said there: I do not assume that claim-rights can be defended only on such an associational ground, even within Aristotelianism; and further there is philosophical and sociological precedent to think that certain norms, even norms of such importance as claim-rights, depend for their existence on some social-constructive act. In Chapter 5, I will suggest how an Aristotelian might step beyond associations to an account of claim-rights. And in Chapter 2 I spoke to the existence of claim-rights in a thin sense as not being dependent for their existence upon a social constructive act.

In this chapter, Section 4.2 considers how directional norms such as claim-rights benefit associations. Sections 4.3 and 4.4 cover the identification and classification of claim-rights respectively. Sections 4.5-4.7 defend three liberal democratic claim-rights on the basis of the arguments developed in Chapters 2 and 3, and Sections 4.2-4.4.
4.2 THE VALUE OF DIRECTIONAL CLAIM-RIGHTS

In the preceding arguments, I have put significant weight on one particular feature of claim-rights which I believe a robust theory of claim-rights must account for: directionality. In the conclusion of Chapter 2, I argued that the account of the aggregative common good that I had presented plausibly accounts for claim-rights and their correlative duties, but does not plausibly account for the directional property of those rights and duties. In the conclusion of Chapter 3, I argued that I had shown how Association Theory, by reliance on the practice of social discourse, can account for the directionality of claim-rights and directed duties. Hence, by this point, I have tried to show that Aristotelianism, with a bit of a tweak, can get us both correlative and directional rights and duties. Yet, I have not argued why I think that an association ought to provide such an account of directionality and directional rights and duties.

Consider the following: In Politopia, Jill violates Jack’s property right. Jack remonstrates with her, and perhaps turns to the authorities for assistance. Jill is punished, and Jack recovers his pail. Jill has acted badly, and has been punished. Jack has his pail back. Even if we use the locution “Jill has acted badly toward Jack,” in this case we assume that “toward Jack” signifies nothing directional about Jill’s duty regarding Jack’s pail. The locution is simply a benign figure of speech. In this case, the general, non-directional norms under which they act have served to assign normative statuses and rectify the situation. Yet, a theory committed to directional claim-rights wants to say that Jill’s bad action was somewhat more fine-grained than this description allows. Jill did not merely act badly, she acted badly toward Jack. The qualification “toward Jack” is here taken to be a richer normative concept than was assumed in the above description. The intuition driving the commitment to a thicker reading of “toward Jack” – to a thicker reading
of directionality – seems to be, essentially, that the claim-rights and correlative duties that we have are not held in a merely third-personal sense, but involve second-personal directionality, and that this is normatively significant. One might say that we are not merely subject to norms, but are rather embedded in a normative nexus with respect to one another.

In Section 1.3, Rowan Cruft gave us three reasons to think that such a set of directional norms – directional claim-rights and duties – was worthy of inclusion in a normative theory. To recap:

1. The directional owing of a duty by B to A implies that A is wronged in some special sense by B’s failure to act on his or her duty. B’s failure to act on his or her duty is not merely bad or wrong, but wrongs A in some distinctive manner because the performance of that act was owed to A.

2. Someone who is wronged in the manner specified in (1) is owed some form of recompense. This recompense may differ greatly from that owed to a person who has been wronged, but not directionally wronged.

3. Directed duties are “at the heart” of claim-rights. Part of why we care about claim-rights is precisely that they mark a distribution of directed duties, and hence help us to understand and mark who owes what to whom.

Hence, Cruft holds that we ought to care about directionality because this concept allows us to explain (in part): directional wronging, directional recompense, and our place and status in a directional normative nexus (viz. helps us to understand our respective claim-rights and directed duties). These delineate three functions that directionality might perform with respect to claim-rights and duties. These do not delineate, however, why we should care about the performance of such functions. Why care about directional wronging, directional recompense, and our place and status in a directional normative nexus?

Here, I wish to offer two arguments to bolster Cruft’s suggestions and explain why associations pursuing aggregative common goods ought to incorporate directional claim-rights
and duties. The two arguments I offer are, respectively, the Efficiency Argument for Directionality and the Eudaimonic Argument for Directionality. The first is an empirical argument, the second a normative argument.

First, the Efficiency Argument for Directionality. 163 Agents are generally motivated to pursue their interests. Sometimes these are selfish interests, sometimes they are altruistic interests. Generally, agents apply their rationality to the achievement of their interests according to the limitations of time and resources that they are under. Agents have a time-bias whereby “[w]hen considering trade-offs between two future moments, present-biased preferences give stronger relative weight to the earlier moment as it gets closer.”164 Often, this results in the phenomenon of rational ignorance, which, in the context of social deliberation, entails that agents will forgo deliberation concerning social interests generally in favor of deliberation concerning their particular or local interests, whether those interests are selfish or altruistic. They do this because they can more effectively achieve these local interests than they can social interests. In short, agents are subject to three important biases: local interest, local rationality, and time-bias.

Now, a more rational social deliberative system is one which, among other things, aims at efficiency in deliberation and in the production of outcomes. Given the facts of local interest, local rationality, and time-bias, such a system will empower members to specify and legislate to some extent regarding local matters. Such a relatively decentralized system of specification and legislation can be expected to empower associational members more, ceteris paribus, than a

163. Evidence for the empirical claims I make in this paragraph can, except where otherwise noted, be found in Brennan, Against Democracy, Ch. 2.

relatively centralized social deliberative system. A rational social deliberative system will so empower associational members in order to efficiently capitalize on the facts of local interest, local rationality, and time-bias. Decentralized or local specification and legislation is more efficient with respect to local interest because agents are more likely to care about specifying and legislating concerning local matters than about general matters; with respect to local rationality because agents are more likely to apply their rational power to specify and legislate concerning local matters than about general matters; with respect to time-bias because agents are more likely to care about matters they can resolve or address in the shorter term than the longer term (and general (non-local) deliberation can be expected to take longer than local deliberation).

Furthermore, and crucially, it is plausible to suppose that such local specifying and legislating will be more effective if the associational members take themselves to be specifying and legislating to one another primarily, rather than simply. This seems plausible because, by engaging in directional address and holding one another directionally accountable, agents gain a significant personal investment in how and when they are held accountable and may hold others accountable. The functions of directional wronging, directional recompense, and directional standing that Cruft proposed come to have value as a mechanism to encourage personal investment in the (decentralized) social deliberative system as a means to the achievement of their aggregative common good. We can expect this by the facts of local interest, local rationality, and time-bias – whether, and how and when, agents are held personally accountable is more a matter of personal concern than whether or not they are adhering to an abstract ideal of the common good. An association that doesn't so empower its members to specify and legislate to one another in directional terms will not optimally adapt to the facts of human psychology, and will therefore, generally speaking and ceteris paribus, be less efficient.
To recap the *Efficiency Argument*: agents are, generally speaking, subject to a set of cognitive biases which dispose them to act in their own interests (whether selfish or altruistic), reason with respect to local rather than universal matters, and prefer present-time preference satisfaction. A rational social deliberative system will be one which, among other things, adapts the structure of social deliberation to the empirical facts of agential psychology, including the cognitive biases listed, in the interest of efficiency. Hence, a rational social deliberative system will be one which will adapt the structure of social deliberation to the facts of local interest, local rationality, and time-bias. In other words, such a system will prefer local or decentralized rather than centralized specificatory and legislative mechanisms. Furthermore, it will establish a system of *directional* norms, including directional claim-rights, precisely because by linking local deliberators together in a network of personally indexed norms, the rational deliberative system gives them personal (local) interest in the satisfaction of those norms – they become *personally invested* to a greater degree. Such a set of directional norms can be expected to motivate associational members more strongly than would a set of non-directional norms in which they lack as robust a personal investment.

Moving now to the *Eudaimonic Argument for Directionality*. Unlike the previous argument, the key desideratum here is normative rather than empirical. In Section 2.3, I remarked that while I think the case for directionality can be made without reliance on perfectivism, or eudaimonism, it does bolster that case. The arguments I have provided thus far, including the *Efficiency Argument for Directionality*, have not relied on eudaimonism in any regard. Here I return to eudaimonism in order to provide another and normative argument for directionality.
The core premise of eudaimonism is simply that agents ought to act primarily for the sake of their good life, and that this good life consists at least in part in the development and manifestation of their natural capacities. In such a eudaimonist context, an aggregative common good is conceived as being a part of this good life, either as a strictly instrumental or constitutive means. The aggregative common good is composed, therefore, of certain goods of its members, which are good as so many parts of their respective good lives. Among the kinds of eudaimonist goods which plausibly form parts of any aggregative common good are the goods of self-direction, self-help, and being active with respect to the protection of one’s own good life. These are plausibly part of any aggregative common good because they are plausibly features of agency which must exist in some degree if the good life is to be achieved insofar as it manifests in associations (or, indeed, at all). Associational agents must be capable of directing themselves in accordance with the conceptions generated by social discourse; associational agents must be capable of helping themselves to some degree in the sense of working to achieve their various aggregative shares of the common good; associational agents must be active as members of the association in the protection of their aggregative shares of the common good, and more generally of the aggregative common good as such. For recall, per 2.4, that associational success depends on associational agents performing their various tasks well, and this consists in both the furtherance and protection of the common good and the association’s normative and institutional structure.

Therefore, these eudaimonist goods can be taken to be reasons for associational action as so many parts of an aggregative common good, reasons, moreover, that justify the distribution of all social standings and powers useful or even necessary for their attainment. A distribution of

---

directional norms which establish patterns of directional wronging, directional recompense, and directional standing plausibly serves to further these eudaimonist goods. Such directional norms establish that associational members owe one another at least non-interference with their respective self-direction, furtherance, and protection of their good lives as manifested in the association, and empowers members to act in their eudaimonic interest within an association by authorizing them to undertake certain actions, such as claiming compliance, demanding recompense, and so on, in order to secure these goods. If this directional power were absent, as it was seen to be absent in base Aristotelian theory, associational members will, as Feinberg was seen to remark in Ch. 1 concerning Nowheresvillians, "even when they are discriminated against invidiously, or left without the things they need, or otherwise badly treated...not think to leap to their feet and make righteous demands against one another..." This is not an empirical claim, but rather a claim regarding the kinds of normative performances agents could take themselves to be undertaking in the absence of a certain class of norms. Hence, a distribution of directional claim-rights promotes the achievement of at least the eudaimonic goods of self-direction, self-help, and self-protection by establishing that associational agents can hold one another accountable and undertake certain normative acts to secure their aggregative share of the common good as so many parts of their good life.

To summarize the Eudaimonic Argument for Directionality: Eudaimonism holds that agents ought to act for the sake of their good life. Common goods are a part of that good life, and among the aggregative parts of a common good are plausibly the eudaimonist goods of self-direction, self-help, and activity in the defense of one’s good life. Associations ought to distribute social standings and powers useful or necessary to the furtherance of these eudaimonist goods, and this plausibly includes a distribution of directional claim-rights permitting agents to
undertake acts of claiming consistent with the account of social discourse in 3.3 in order to secure these goods in an association. Such a directional power is plausibly useful because by establishing patterns of directional wronging, directional recompense, and directional standing that may be claimed (to some extent), it empowers right-holders with a further and important measure of normative control over the achievement of their aggregative share of the common good, and thereby of a portion of their good life.

This section has tried to show why directionality has value in the pursuit of an aggregative common good, and hence why an association lacking directionality is less able, normatively speaking, to achieve its aggregative common good. Both empirically and normatively, a system of directional claim-rights arising from a social discursive practice promotes the achievement of the common good. Hence, it is not merely the case that Association Theory demonstrates how the Aristotelian can get directional norms – it is moreover the case that Association Theory explains why the Aristotelian should want directional norms.

4.3 IDENTIFYING CLAIM-RIGHTS

In this section, my task is to consider how claim-rights may be identified within an association. It is a methodological question, and my aim is to delineate the contours of a possible account of the identification of claim-rights in the context of Association Theory. It is a virtue of Association Theory that, as I will argue, these contours – and the resulting methodology – pretty closely line up with our actual deliberative practices.

The question of how claim-rights may be identified within Association Theory must be answered with reference to how social norms are identified within Association Theory generally.
Social norms are identified, of course, by social discourse. Since it is part of the function of social discourse to identify social norms, and since (at least some) claim-rights are a kind of social norm generated and propagated by associations (per the last chapter), the question of how social discourse identifies claim-rights can be answered by examining in more detail how social discourse actually functions.

In seeking to understand how social discourse functions so as to specify social norms, the overriding factor that we must attend to is its teleological directedness toward the common good. The social norms and social practices an association will deploy toward the realization of a common good are selected according to a teleological methodology in virtue of which they are analyzed precisely as means. The methodology of social discourse is therefore to be understood relative to this end, and social norms are to be understood as so many products of this teleological methodology. For any particular social norm, an outline of the process that led to the identification of that norm as a norm of the association, by reference to the end and proper functionality of social discourse, can be – or at least ought to be – provided.

Given this teleological functionality, an analytical method suited to understanding teleological practices would most effectively enable us to approach the question of how social norms are identified by social discourse. Therefore, I opt here to approach the question through the Aristotelian “four causes” analytical perspective. In short, for any subject viewed through the lens of this analytical perspective, we seek to identify four factors which explain its behavior or function: the end it serves (its “final cause”), its unique or definitive trait (its “formal cause”), its particularizing elements or “matter” (its “material cause”), and what triggers or catalyzes its behavior or function (its “agential cause”).^{166} Hence, if we take a somewhat simple example, that

---

of a knife being thrown at a target, we can understand and explain this event in the following manner: the final cause is the hitting of the target; the formal cause is the definitive property of the knife (a metal object shaped thus and so, etc.); the material cause is the composition of the knife (stainless steel, say); the agential cause is the human thrower.

Let me allay any concerns with this method by noting that the Aristotelian system of analysis can be deployed quite effectively without presupposing that the features it identifies – end, form, matter, and agent – are in any sense metaphysically “thick.”\textsuperscript{167} As has been my method thus far, I am not importing Aristotelian metaphysical categories into Association Theory. Nor need this causal analysis be taken to imply that it is in any way a privileged or more “metaphysically pure” system of analysis (that it is “closer” to metaphysical reality than other methods of analysis). The Aristotelian system of analysis is simply \textit{useful} – it is an effective mechanism for the analysis of teleological processes. It is also particularly \textit{apt} in this case for the simple reason that Association Theory has been developed along broadly Aristotelian lines thus far. It permits us to break apart the causally salient features of an event or process. Thereby, in the case of the identification of social norms, we may explain what factors are at play in the process of identification by means of this method.

Applying this analytical method to the identification of social norms, then: The “end” of social discourse is the common good. Social discourse identifies social norms in order to achieve (a part or feature of) a common good. The “form” of social discourse’s identification of social norms – what marks it out from other generative processes that may exist in an association, such as a casual chat or a philosophical discussion – is its authoritative nature. One might argue, perhaps with some justification, that philosophers can be far more effective than other citizens at

\textsuperscript{167} See e.g. Aristotle, \textit{Metaphysics}, Bk. VII generally.
the task of identifying appropriate social norms. Yet their deliverances are not authoritative over action in the way in which the deliverances of social discourse are. The “matter” of social discourse, the particularizing elements, are those institutionalized forms and those particular actions it is interested in identifying (and legislating) social norms with reference to. The “agent” of social discourse is the member(s) of social discourse engaging in an actual process of social discursive identification and specification. Taking all this together, social discourse is an authoritative deliberative mechanism (form) for the identification by associational members (agent) of particular social norms concerning particular institutions and acts (matter) to achieve a part or feature of a common good (end).

To bring this esotericism down to Earth for a moment: Consider again Jack and Jill’s predicament, particularly Jack’s act of specifying the conditions under which Jill may use his pail of water consistent with his distributed power as possessing social discursive standing: Jack’s social discursive end is to achieve a part of the common good; Jack does this in reference to particular institutional structures with reference to a particular act – this is the “matter” of social discourse; Jack does this in an authoritative manner – this is the “form” of social discourse; Jack does this by means of a specific process – this is the “agent” of social discourse.

Why is this analysis useful? Because, for any prospective social norm, we can understand why it is, or even has to be, the way it is by reference to these factors, and because in explaining this why, in four parts, we are able to explain why this social norm is, prospectively (if not absolutely¹⁶⁸), good and right. Deploying the Aristotelian causal analysis to social discourse

¹⁶⁸. To say that a particular social norm serves an end in a matter congruent with the functionality of social discourse is to say, prospectively, that it is good and right. However, it doesn’t follow that it is absolutely good and right, either with a view to moral principles as such or with a view to the broader set of norms governing an association. At the very least, prospectively good and right norms should be shown to be better than alternatives, congruent with the fundamental set of determinations of the common good and congruent with the institutionalized procedural principles governing the social discourse of the association, among other things.
gives us a breakdown of the boundaries of the mechanism of norm identification that, at the same
time, allows us to go part of the way to explaining and justifying any particular social norm or
class of social norms.

This won’t get us all the way though. To fully explain and justify a particular social norm
or class of social norms, we must do more than analyze the norm with reference to the
functionality of social discourse. We must also explain why the institution or act specified by the
norm must fall under that class of norms. So, if it is argued that refraining from taking
someone’s life is a directed duty to which there is a correlative claim-right, we must first show
how such an act could be identified as a social norm with reference to the functionality of social
discourse. But we must then show why this act must be identified as a directed duty to which
there is a correlative directional claim-right.

Next, I will examine what the actual process of identifying or specifying social norms in
accordance with this analytical perspective looks like. For that, I must discuss the concept of
“determination.” The concept of “determination” plays little, if any, role in Aristotle’s practical
philosophy. It was for Aquinas and those he influenced to provide a clear definition of the
mechanism by which general principles and goods are specified or “determined” for the purpose
of theoretical understanding and, more importantly, practical realization.

Take a prospective good, like “welfare.” Let us say that this good is understood quite
clearly, to the extent that there is a settled definition that is reasonably widely accepted. In such a
case, we may assert two statements concerning this good that are true. First, that we are no closer
or at best not much closer to knowing how to realize or achieve this good than we were when we
lacked a clear definition. Second, that there are several ways in which we could act so as to
achieve this good (in whole or in part), all right and beneficial. We face, that is, two problems
even when we possess clear definitions of general goods: *The Vagueness Problem* and the *Multiple Realizations Problems.*

*The Vagueness Problem* is this: Since general goods lack *specific* or even *particular* content – since they are by their very nature *abstractions* – the possession and understanding of such a general concept brings us not much closer to understanding how to realize, or manifest, such a good in reality. In the case of some concepts, say the concept of a table, the problem is less worrisome. An understanding of the definition of “table” brings us pretty close to knowing how to bring a table into existence. But the reason for this is simple: a concept such as this is fairly “close” to the particular objects it is an abstraction from. In the case of a concept such as “welfare,” however, there is a great “distance” between the idea and the real-world particulars it is an abstraction from. Yet even in the case of “table,” the problem persists. For as anyone who has ever built a table knows, weight-bearing capability, the strength of the legs, the strength of the joints, precise angles of the legs, and many other factors matter, not just for making a “good” table, but even for making a table that will do the job at all. How much more, then, are such problems of realization magnified for concepts which, unlike “table,” lack any clear reference to tangible components or purposes in their definition?

*The Multiple Realizations Problems* is this: For any given general good, there are many ways in which that good can be effectively and properly realized. The problematic feature of this which will be relevant here is not so much choosing between these options, but the problem of accounting for such multiplicity. Again, this is evident even in the case of the concept “table.”

169. I speak here of “concepts” because the two problems which I discuss in this section are true of general goods insofar as such goods are concepts. General goods do not exist in the manner that, say, a particular table exists. The two problems I discuss here do not apply to a particular table, precisely because it is not a concept.

170. Within Association Theory, it is the authoritative nature of social discourse’s decisions, that is its legislative function, that solve the problem of choosing between various possible realizations. But since I am concerned here only with the identificatory and specificatory functions of social discourse, this can be left aside.
“Table” can be manifested in many ways: there are wooden coffee tables, metal desks, ornate dining tables, and so on. Even more so in the case of highly abstract concepts is this true. “Welfare” can evidently be realized in many acts, in many contexts, by many individuals of many different capacities.

In the case of claim-rights, as in the case of any other goods, both of these problems exist. The example of Jack and Jill, coupled with my references to a roughly liberal democratic society, Politopia, have thus far served the task of “realizing in imagination” something of what claim-rights look like or can look like when realized. These examples have made the abstraction somewhat more “tangible,” and have therefore permitted me to discuss the analytic features of claim-rights, and how to account for them, in a far more tangible way than would be possible otherwise. But now that I move to the question of generating claim-rights, claim-rights cannot remain merely “realized in thought” – I must explain how actual agents in actual associations are supposed to go about identifying and specifying actual (kinds of) claim-rights. Hence, while The Vagueness Problem and The Multiple Realizations Problem could be eschewed in previous chapters, they now come to the fore. A method for generating claim-rights must explain how abstract goods can be particularized or specified and must at the very least account for the existence of several such particularized or specified instances for any given abstract good.

As remarked, “determination” plays little role in Aristotle, but is given crucial prominence by Aquinas. What is determination, why is it useful, and how may it be useful in the generation of claim-rights? Aquinas’ brief account of determination is as follows:

But it must be noted that something may be derived from the natural law in two ways: first, as a conclusion from premises, secondly, by way of determination of certain generalities. The first way is like to that by which, in sciences, demonstrated conclusions are drawn from the principles: while the second mode is likened to that whereby, in the arts, general forms are particularized as to details:
thus the craftsman needs to determine the general form of a house to some particular shape. Some things are therefore derived from the general principles of the natural law, by way of conclusions; e.g. that "one must not kill" may be derived as a conclusion from the principle that "one should do harm to no man": while some are derived therefrom by way of determination; e.g. the law of nature has it that the evil-doer should be punished; but that he be punished in this or that way, is a determination of the law of nature.171

Aquinas here distinguishes two modes of derivation. In the first place, one might derive a principle from premises by means of a deduction. Hence, one might, for instance, derive the realization of “table” directly from the concept “table” and certain particulars directly by deduction. E.g.

(a) A table is a piece of furniture with a flat top and one or more legs, providing a level surface on which objects may be placed, and that can be used for such purposes as eating, writing, working, or playing games.

(b) This object, which I have made, has a flat top and one leg, providing a level surface for chess pieces.

(c) By (a) and (b), this object is a (chess) table.

Further, as a guide to action, one might formulate this syllogism with a small change of verb tense, switching the past perfect verb “have made” to the future “will make” (and appropriately changing the tense of (c) as well). (In Aquinas’ own example, premise (a) would serve to state the general or conceptual definition of “kill” (major premise) while premise (b) would serve to state the premise he lists, “one should do harm to no man” (minor premise). From their

171. Aquinas, Summa Theologica, IaIa Q.95, a.2. Though his concern is determination from the natural law, we may abstract from this and consider the implications of the comments for the determination of principles and goods generally. It must also be noted that for Aquinas, determination is not simply an inferential mechanism, but is also a selective mechanism. Determination serves not only to infer specifications, but also to makes those inferred specifications the “determinations” that will serve as the guide for associational members. I am interested only in the specificatory power of social discourse here, not the legislative. Hence, I will not address the selective function of determination.
conjunction we could derive the deductive conclusion “one must [should] not kill.” Hence, Aquinas’ example, confusingly, is an enthymeme.)

This serves as an example of deductive derivation. But in the second place, Aquinas introduces the notion of determination as a fruitful source of human law. Determination is a non-deductive mode of inference or derivation that involves not the movement from some premises which are given to something new, but rather the particularization or specification of something given generally. Hence, from the concept “table” I might “determine” a series of particular or specific kinds of table, without any process of deduction. This process is intuitive: we have simply to imagine ourselves with a piece of paper and a pencil, responding to our 2nd grade teacher asking us to draw five different kinds of table. That is determination.

But we are looking for something a touch more analytic than 2nd grade drawing hour. For this, let us turn to Murphy’s analysis of the Thomistic doctrine of determination. Murphy describes the notion of determination in the following way:

As I will use the expression, a ‘determination’ of some objective O is some objective O* that stands to O either as a realizable approximation to an unrealizable ideal or as a more precise specification of a vague objective…In both cases, an objective the adequate realization of which is indeterminate becomes more determinate through truncation or ‘precisification.’ Not only objectives can be the objects of determinations; principles as well can be.

---

172. This is of course a logical rather than psychological claim. The psychological mechanism by which agents determine particular/specific kinds isn’t subject to discussion here, just as the psychological mechanism by which agents deduce conclusions from given premises isn’t subject to discussion. Whether either takes place through imagination, or reason, or any other psychical faculty, if such even exist, is therefore not a question I am interested in.

173. John Finnis provides a useful discussion of this issue in *Natural Law & Natural Rights*, VIII.5.

174. Murphy, M.C., *Natural Law in Jurisprudence and Politics*, p. 88. We may read “goods” here in place of “objectives.”
The value of determination as against, say, deduction resides in its unique capacity to effectively respond to the two problems raised earlier, *The Vagueness Problem* and *The Multiple Realizations Problem*. The first, recall, is the problem of generating *realizable specifications*; the second is the problem of generating *sufficient* realizable specifications, that is, of identifying a generative methodology that accounts for the multiplicity of specifications manifested in actual practice.

Deduction seems to have some capacity to generate realizable specifications. Taking the analysis of a deductive example given above, we see that from the conjunction of an abstraction with a set of material arranged in the right manner, we may conclude that that arrangement of material is an instance of that general kind. Yet that seems to be all we can do. So, for instance, if a society already incorporates certain practices, and the definition of welfare is then given, deduction permits us to conclude whether or not such practices approximate welfare as defined. Or, if we take certain practices and the definition of claim-rights, deduction will permit us to conclude whether or not such practices approximate claim-rights.

But deduction is clearly quite constrained in its capacity. While deduction respond to a degree to *The Vagueness Problem* by deducing that a given, but so far unrecognized, realizable option is indeed a realizable option, it can do little more. Its capacity to respond to *The Multiple Realizations Problem* is limited, in other words. Deduction’s limited capacity to do so assures us that human beings must be doing something other than engaging in deductive syllogistic when generating such possible realizations – for we are certainly capable of generating many possible realizations of a general good.

Determination, by contrast, is relatively unconstrained in its capacity to generate specificatory content. Take any given principle or good. That principle or good can be relatively
easily specified in thought, or determined, into a more realizable form. We must set aside the issue of specifying “proper” determinations – the additional restrictions necessary to ensure such determinations need not concern us yet. Whether the good is a table or welfare, we may quite easily and non-deductively generate specific realizable instances (that may or may not, on reflection, be good instances). And if we press the method of determination to its boundaries, through complex and careful thought we may generate additional, though non-obvious, determinations.

Indeed, reflection will reveal, I think, that much of what passes within actual political discourse is less deductive than it is determinative or specificatory. That is, human beings seem to rely far more on determination than they do on deduction when pressed to generate particular or specific instances. Much political and legal discourse takes the form of the determination of values already held, rather than the generation of mechanisms or values for the political community through deduction. Similarly, “lay” political and moral discourse seems to be less a matter of deduction from first principles as much as it is a process of concretization of whatever values are held by the participants. Per what I have argued above, this is likely the case because there are kinds of specifications that can be reached only through the nondeductive inferential method of determination.

For instance, much of what passes as discussion of equality in modern America is not so much a matter of deducing the value of equality or of deducing conclusions from the value of equality. Rather, it is a matter of specifying or determining the particular manifestations of equality within civil society. Why is this? Plausibly, it is because deduction’s capacity as an inferential mechanism is limited. Deduction is capable, as noted, of specifying our vague but present concepts to a degree, but its capacity to generate new specifications is quite limited. As
the social problems we face press upon our existing conceptions of equality, we must generate new conceptions of equality that are unanticipated by our existing premises or conceptions of these problems and their context. Hence, to reach right answers on certain questions of equality, we plausibly have to approach the matter from a determinative rather than deductive perspective.

Next, I will integrate this discussion with the general contours of a methodology for generating claim-rights defined in the previous section. As remarked above, we are to understand the identification of claim-rights with reference to the general functionality of social discourse. In order to do this, I will take what was said concerning the causal analysis of social discourse’s functionality, elaborate it with reference to determination, and particularize with reference to the aim and function of claim-rights. All this will yield a synoptic account of the method of claim-right generation. I will then be able to utilize this methodology in 4.5-7 in the case of three liberal claim-rights.

Claim-rights are identified within social discourse much as other social norms are, but are marked out from such other norms by their particular instrumental role within associations.\textsuperscript{175} Claim-rights, unlike other social norms generated by social discourse, serve to distribute claims and correlative directed duties; they serve to explain particular kinds of (directional) wronging; they serve to explain particular kinds of (directional) recompense. Social norms are identified within social discourse subject to the follow constraints:

1. Social norms are identified by associational members participating in a social discourse (agental cause). Therefore, norms not so identified - say norms identified by philosophers - are not classified as social norms in the practical sense of serving to govern and direct the actions of some or all associational members.

\textsuperscript{175} And, perhaps, by the procedural rules applicable to their identification, specification, and legislation, and subsequent adjudication. It is reasonable to suppose that different classes of social norms may be subject to different rules of generation and verification within an institutionalized social discourse.
2. Social norms as identified by social discourse share in some measure of the authority of social discourse (formal cause). Hence, norms identified by a means other than social discourse, even if they would be more effective at realizing the common good, lack the relevant authority.

3. Social norms are differentiated according to the particularities of their generative process (methodological and institutional), function (what they do), referents (e.g. to whom they apply, when, where, and so on), and end (what aspect(s) of the common good they achieve) (material cause).

4. Social norms serve as means (whether strictly instrumentally or constitutively) to realize some measure of the common good (final cause).

Let us now particularize this in the case of claim-rights:

1. Claim-rights are identified by associational members participating in a social discourse (agential cause). How this is distributed is an institutional question. And, as we have seen, further determinations of claim-rights may, and often are, indexed to particular individuals, as Jack is entitled to determine his claim-right over the pail of water and thereby determine Jill’s duty vis-à-vis this pail.

2. Claim-rights as identified by social discourse share in the authority of social discourse, particularly in distributing a defeasible pre-emptive authority to demand dutiful compliance with the act or state of affairs specified in the description of the claim-right (formal cause).

3. Claim-rights are differentiated according to their generative process (the particular procedural principles adopted by particular associations for their identification, evaluation, and acceptance), function (what particular act or state of affairs they render claimable), referents (e.g. who the right-holder is, who the correlative duty-bearer(s) is(are), when they may be claimed, when dutiful compliance is and is not required, and so on), and end (what aspect of the common good they achieve) (material cause).

4. Claim-rights serve as means (whether strictly instrumentally or constitutively) to realize some measure of the common good, specifically to distribute claims and correlative direct duties, to explain particular kinds of (directional) wronging, to explain particular kinds of (directional) recompense (final cause).

This serves as a suitable specification of the analysis of social norms given above for the particular case of claim-rights. Any identificatory process adopted by an association ought to
reference these analytical factors when identifying, evaluating, and accepting any and all prospective claim-rights. The judicial review of any putative claim-right in adjudicative proceedings (e.g. when determining the legitimacy of a property claim) ought to determine whether or not such analytic factors obtain. Hence, perhaps Jack sues Jill. Perhaps Jill alleges that Jack lacks a claim-right in the pail of water (let us set aside the fact that, even if Jack lacks ownership of the pail, it doesn’t follow that Jill is entitled to use it, and let us also set aside the possibility that Jack possesses a non-associational property right in the pail). Jill’s claim would be, of course, that Jack lacks ground to demand dutiful compliance with his determination of the proper use of his pail for the sake, ultimately, of the common good. Jack, in defending his right, could cite suitable evidentiary material (a certificate of ownership for example) to demonstrate that he does have a (property) claim-right in the pail. This evidence, in conjunction with the broader institutional understanding of the nature, end, and content of a property right, would justify his claim to ownership, and therefore his demand was proper.

This suffices, I think, for an outline of the (logical) process by which claim-rights may be identified. It is not the only possible analysis that could be given – I have simply chosen to approach the matter through the useful and apt method of Aristotelian causal analysis. In practice, associational organs devoted to the identification of social norms – such as legislatures or courts – will likely rely upon their own canons of analysis.

4.4 CATEGORIZING CLAIM-RIGHTS

Having explained how I think social norms generally, and claim-rights specifically, may be identified in social discourse, I want to pause briefly to discuss a useful categorization of
resulting claim-rights. Some claim-rights, I hold, can be considered *universally desirable* and some can be considered *non-universally desirable*. By “universally desirable,” I mean that such claim-rights are necessary and/or useful for all associations as such. By “non-universally desirable,” I mean that such claim-rights are necessary and/or useful for particular associations given the particular, contingent ends, circumstances, members, and so forth of those associations. Hence, there are, I hold, some claim-rights suitable to members of both marriages and political associations given that these are both forms of association, and some other claim-rights suitable only to members of marriages in light of the contingent particularities of marriages.

In a sense, *all* (robust) claim-rights are contingent if generated in the manner outlined here. Their existence as social norms operating within social practice is contingent upon a generative act by human agents. Hence, when I speak of some claim-rights as being contingent and others (universally desirable claim-rights) as being non-contingent, I do not mean to deny such an *existential* claim. Rather, I mean that the *value* of non-universally desirable claim-rights as means to the end of an association is contingent upon the particularities of a given association. Universally desirable claim-rights are those claim-rights that have universal value for all associations.

Universally desirable claim-rights are not so contingent: their necessity and/or usefulness is categorically derivative of the nature of associational practice as such. This is of course a strong claim. I am not entirely wedded to it – I make it because I believe that there are reasons to accept such a class of claim-rights. There are, generally, two reasons that drive me to think that such universally desirable claim-rights might exist. First, that moral and political philosophers have for many centuries sought out such claim-rights adhering to agents embedded within associational practice as such. And these philosophers have, each in his or her own way,
presented arguments defending such claim-rights.\textsuperscript{176} Second, for the reasons I will explain below, I believe the argument can be made that there are claim-rights which can be defended as universally desirable given the principles of Association Theory.

The three claim-rights that I will defend below – the right to life, the right to freedom of expression, and the right to participate in social discourse – are examples of universally desirable claim-rights. I will explain and defend each with reference to structural principles of associations and associational practice as such. Hence, they may be considered to be formal or analytic in their origin. Their existence is not contingent upon any substantive aspects of associations or their common goods. They are intended to be shared by members of any association as such.

A brief word on why I care to draw this distinction: The three claim-rights I will defend below are suitable either to all associations or to some associations. If I can show that Association Theory can intelligibly defend them as suitable for all associations, my claim that Association Theory can account for certain liberal claim-rights will be all the stronger. If, however, the universal claim fails, at least it will have been shown that Association Theory, and thereby Aristotelianism, can account for liberal claim-rights in the focal case of political associations. Given that my emphasis in this work is to account for claim-rights in the focal case of political association, not much hinges on whether I can defend these three claim-rights as

\textsuperscript{176} Strictly speaking, to say that such philosophers were seeking universal claim-rights is anachronistic. I recognize this. However, I import this modern term back into the past following standard philosophical practice: the existence of phenomena that we now call by the term “claim-right” warrants the use of this term in an anachronistic fashion, so long as the author’s original terminology, when important to recollect, is recollected. An analogous example is the use of such a term as “reason” when speaking of an “Aristotelian theory of reason.” Aristotle lacks a strictly corresponding term: our term “reason” (i.e. the faculty of reason) overlaps in various ways with at least his terms logos, nous, and theoria. Yet we frequently recite the formula “man is a rational animal” when speaking of Aristotle. Man is not a rational animal – he is an animal λόγον ἐχον. But the shorthand “rational animal” is appropriate if this original terminology and its broader sense is recalled. A similar case occurs in the New Testament when Jesus, in the Gospel of John, is called the logos. The shorthand “Jesus is the Word” is useful, but not entirely accurate if taken literally.
universally desirable. It does point the way, I think, toward the more general use of claim-rights in functional associations as such, beyond the focal case, but I will not make much of the matter.

4.5 RIGHT TO LIFE

Before considering how, and whether, Association Theory can account for a claim-right to life, let’s get some clarity as to what this right might be. Rather than refer to philosophical doctrines, I will refer to an actual legal conception of the right, which is the product of the sort of social discourse that interest me. In the UK, the right to life was defined by The Human Rights Act of 1998, which incorporated the European Convention on Human Rights into domestic British law.\textsuperscript{177} The Article states:

1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defense of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.

\textsuperscript{177} Details for all that I will say concerning The Human Rights Act can be found here: https://www.equalityhumanrights.com/en/human-rights/human-rights-act. The Act itself can be found here: http://www.legislation.gov.uk/ukpga/1998/42/contents

I focus on the British conception, rather than the American, for two reasons. First, I am more familiar with British law than with American law. Second, Britain, unlike America, has adopted a convenient general statement of this right into law.
This will satisfy as a general statement of the content of a prospective claim-right to life. In order to analyze and defend such a claim-right within Association Theory, I must do two things: first, I must delineate the end, form, matter, and agent of the prospective claim-right, following the methodology I have adopted; second, I must explain why it is necessary that such content fall under the normative category a directional claim-right. In each of these three cases, the fulfillment of the first of these tasks will constitute the defense of the right in the thin sense of a claim-right given in Chapter 2. For by citing the end of the norm and the value it adds to an association, I establish it as a norm giving reason to undertake certain action within an association. In Chapter 2, a thin claim-right was understood to be a norm marking out some aggregative share of the common good as belonging to some agent, to which other associational agents had a correlative duty in virtue of their normative subordinate to the aggregative common good. Hence, but establishing the value of the norm in each of these three cases, I establish the value of holding certain aggregative shares as belonging to the agents of the association, and therefore the value of holding other associational members dutifully situated to that standing. Hence, in then defending of each of these as a directional claim-right, I specifically defend the claim that the norm ought to be held to be a claim-right in the robust sense of the term.

Turning first to the agent of the prospective claim-right to life: The agent, generally, is social discourse, which in Britain is centralized in Parliament (and currently, though not for much longer, to a degree in the European Parliament). There is some distribution of the agential function in Britain in the sense that individuals may initiate adjudicatory proceedings in order to enforce their claim to life if they believe their life has been threatened. There is little scope for individuals to determine their right to life (e.g. to determine whether their right to life has in fact been violated). Individuals may demand compliance with their right if they are in the process of
being threatened. And individuals may, per Section 2(a) of the Article, engage in defensive action if their or anyone else’s life is immediately under threat.

As for the form of a prospective claim-right to life, Association Theory holds that there is a measure of authority apportioned to the relevant agents in order to ensure compliance with this right. I have argued that the proper authority is to pre-emptively legislate the possible actions of correlative duty bearers. The British legal system, of course, renders this authority more robust by authorizing retributive and preventive action on the part of the institutional agents of social discourse (the courts, the police, the armed forces) and physical defensive action on the part of individual right-holders. Coupled with the duty on the part of those individuals correlated with these authority distributions, the form of the right to life embraces the network of authority and duty distributed variously throughout an association for the sake of preventing and responding to intentional acts of killing, or attempts or threats to so kill.

The matter, or substance or content, of this right is specified in Section 1 of the Article. It is encapsulated by the following: “No one shall be deprived of his life intentionally save in execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.” The right to life is, therefore, a negative right. The act or state of affairs which it pertains to is refraining from intentionally taking life (except under certain circumstances as specified in the Article). Hence, for any right-holder, they may make claims, and expect that others hold suitable correlative duties, concerning their not being intentionally killed, or threatened with being killed. The particulars of this content are then further specified throughout the legal code of Britain and would be so specified in Polotopia or any other association.

Next, in what way does refraining from intentional killing promote an aggregative common good? Returning to Chapter 2, an aggregative common good exists and has value as an
end derivatively of the existence and value of the ends which compose it. If the ends which compose it aggregatively cease to exist, it ceases to exist. Or more precisely, if all ends which compose it aggregatively cease to exist, it ceases to exist. If all members of an association are intentionally killed, the common good that they held will cease to exist. If some ends which compose it aggregatively cease to exist, the common good will have been diminished.

To intentionally kill a member of an association is ipso facto to harm the realization of an aggregative common good. To intentionally deprive the individuals whose ends existentially compose an aggregative common good of life is to cause those ends which existentially compose an aggregative common good to cease to exist. It is therefore, to that extent, to eliminate a portion of the aggregative common good. Plausibly, this constitutes harm to the common good. Intentional threats to the lives of those who compose an association particularly threaten the realization of an aggregative common good, and indeed the very possibility of the existence of the common good (if the threats are pervasive enough, as in cases of genocide). This follows from the aggregative nature of common goods. This explains why norms which demand refraining from killing a member of the association aid in the realization of any common good, aggregatively conceived. But it does not yet explain why such restraint must fall under the category of a claim-right. To answer this, I must refer back to the arguments of Section 4.2, the Efficiency Argument for Directionality and the Eudaimonic Argument for Directionality.

According to the Efficiency Argument, directional norms such as are established by claim-right leverage the facts of local interest, local rationality, and time-bias of agents in order to more greatly motivate compliance with those norms. Hence, by rendering refraining from intentional killing a directed duty, and by assigning to all associational members a claim-right to such restraint, one might expect that agents will be particularly motivated to avoid killing one
another. Certainly they will possess motivation not to be killed in the absence of such norms, and certainly they will possess some motivation not to kill insofar as they fear retribution and such. The claim here is that the directionality of norms concerning intentional killing plausibly bolsters such motivation given the facts of local interest, local rationality, and time-bias, and that directional norms concerning intentional killing are therefore desirable for all associations.

Empirically verifying that the distribution of such a claim-right will take advantage of these cognitive biases in such a way as to lower rates of intentional killing and thereby foster the realization of a common good is difficult. It would require a test case, or preferably several test cases, in which such a directional right (and correlative directional duty) was removed, and all relevant confounding variables removed. It would not be sufficient to cite, say, an anarchic test case, for even anarchies can possess such norms. Hence, in the absence of such studies, the empirical case for the value of such a directional norm rests the general value of directional norms as taking advantage of certain cognitive biases, coupled with the particularly strong desire to prevent intentional killing.

The *Eudaimonic Argument* holds that a distribution of directional claim-rights furthers the achievement by associational members of certain eudaimonic goods, including but not limited to self-direction, self-help, and activity in defense of their good life, by granting them additional normative control over their associational interactions. It grants to them a normative capacity to further their eudaimonic interests as manifested in an aggregative common good. Associations have reason to grant agents directional claim-rights concerning various aspects of a common good in the interest of promoting these three eudaimonic values. Holding that agents have a claim-right not to be intentionally killed plausibly furthers these normative considerations. For, by granting to agents such a claim-right, it gives them a measure of
normative control (self-direction, self-help, self-protection) not simply over a portion of their
eudaimonic good, but over a particularly important part of their eudaimonic good. Some
aggregative interests that agents may have within an association are relatively superficial, in the
sense of underpinning no further interests. Jack’s possession of a pail of water, for instance,
while his right, is probably fairly superficial in that not much rides on it. Contrast that with
Jack’s life, which is both a general eudaimonic interest and a eudaimonic interest of very high
significance for any association he might participate in. If Jack is deprived of his life, then he
cannot attain any other values, whether strictly personal or aggregative portions of a common
good. A claim-right to life grants him additional capacity to self-direct, self-help, and protect his
eudaimonic interest of life as it is involved in associational activities, which normative control is
eudaimonically worthwhile. Hence, if the *Eudaimonic Argument* goes through generally, there is
a strong case that it ought to apply in the case of not being intentionally killed.

**4.6 RIGHT TO FREEDOM OF EXPRESSION**

Returning to The Human Rights Act for an initial description of this right:

1. Everyone has the right to freedom of expression. This right shall include freedom
to hold opinions and to receive and impart information and ideas without
interference by public authority and regardless of frontiers. This Article shall not
prevent States from requiring the licensing of broadcasting, television or cinema
enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities,
may be subject to formalities, conditions, restrictions or penalties as are prescribed
by law and are necessary in a democratic society, in the interests of national security,
territorial integrity or public safety, for the prevention of disorder or crime, for the
protection of health or morals, for the protection of the reputation or rights of others,
for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.¹⁷⁸

In this case, I want to abstract entirely from the particular restrictions to freedom of expression permissible in British law. Furthermore, the form and agent of this right may also largely be set aside, for they do not differ greatly from those of the right to life. What does differ is the content of this right – what act it pertains to – and the justification for this right.

Concerning the content of this right, as noted it pertains to the holding and communicating of opinions without (certain types of) interference. Hence, a claim-right to freedom of expression imparts a claim to, and correlative duty to, freely hold and communicate opinions. The correlative duty requires refraining from impeding the holding and communicating of opinions. It is, like the right to life, a negative right.

As to the end of this right, a significant worry consistently directed against Aristotelian moral and political philosophies concerns the apparent need, for the achievement of a common good, to coordinate and legislate not merely the actions of individuals participating in an association, but also the expression of their beliefs and values, whatever they may be. Since the beliefs and values that agents hold (partially) motivate them, these beliefs and values contribute in a profound sense to the realization of or hindrance to the realization of the common good, and so it is plausible to think that failure to legislate on such matters makes it somewhat less likely that a common good will be achieved.¹⁷⁹


¹⁷⁹. Aristotle, Politics, Book VIII.
Aristotle claims that law must function as a tool for the development of habits necessary for the achievement of the common good and the good life.\textsuperscript{180} Aristotle writes within a Greek tradition which recognizes that habits and dispositions are necessarily impacted by social norms, social conceptions, and social legislations.\textsuperscript{181} Aristotle’s claim that law must be utilized to alter the beliefs and values of citizens, or at least to restrict the possible expressions of these beliefs and values, is not, therefore, the claim of an illiberal totalitarian, but rather (to his mind) a necessary consequence of the observation that law intrinsically impacts belief- and value-formation, and consequently the habits that we form. Aristotle, like Plato, simply recognizes that since law significantly and pervasively alters an individual’s habits, and since one task of the moral and political philosopher is to clarify which conceptions of law ought to guide our institutions, a rational moral and political society, one which fosters human flourishing within the scope of possibility and circumstance, must take control of law in order to appropriately impact habits. Indeed, the Platonic and Aristotelian critique of democracy involves the critique of democracy’s surrender of this control to the vicissitudes of chance and whim. One of democracy’s greatest faults is its abdication of responsibility to rationally manage the social nexus governing belief- and value-formation, and thereby the development of individual and collective habits.\textsuperscript{182}

While Aristotle’s defense of censorship is based on a premise which I tend to agree with (that law, and more generally social norms and social environment, pervasively and deeply impact belief- and value-formation), I do not think it follows that censorship is an apt way to


\textsuperscript{181} See, for instance, Protagoras’ mythological account of the role of culture and law in altering and shaping our dispositions in Plato, \textit{Protagoras}, 322c-d.

\textsuperscript{182} E.g. Plato, \textit{Republic}, 557a-d.
address concerns regarding which beliefs and values are expressed. I think that, by recognizing the value of free deliberation for the achievement of aggregative common goods, we can recognize the seed of a liberal defense of freedom of expression within Association Theory. I will then be in a position to explain why such a valuable freedom ought to be held to be a claim-right.

Simply put, successful deliberation involves, necessarily, freedom of expression within that deliberation as well as a freedom to learn for the sake of excellent deliberation, which implies a freedom to produce representations of reality as one sees it in the form of texts, art, and so on. If agents are unfree with respect to expression (including representational expression), then the possibility of successful deliberation – that is deliberation producing true and valuable conclusions in the pursuit of a common good – diminishes significantly. And I believe that the reason that this is so is much the same as that offered by John Milton in the 17th century. Though Milton’s argument concerns freedom of the press specifically, it can be generalized to embrace freedom of expression. Milton writes,

Well knows he who uses to consider, that our faith and knowledge thrives by exercise, as well as our limbs and complexion. Truth is compar’d in Scripture to a streaming fountain; if her waters flow not in a perpetuall progression, they sick’n into a muddy pool of conformity and tradition. A man may be a heretick in the truth; and if he beleeve things only because his Pastor sayes so, or the Assembly so determins, without knowing other reason, though his belief be true, yet the very truth he holds, becomes his heresie. 183

And again, with respect specifically to the expression of this,

For if we be sure we are in the right, and doe not hold the truth guiltily, which becomes not, if we our selves condemn not our own weak and frivolous teaching, and the people for an untaught and irreligious gadding rout, what can be more fair,

183. John Milton, Areopagitica and Other Political Writings of John Milton (Indianapolis: Liberty Fund, 1999), 34.
then when a man judicious, learned, and of a conscience, for ought we know, as
good as theirs that taught us what we know, shall not privily from house to house,
which is more dangerous, but openly by writing publish to the world what his
opinion is, what his reasons, and wherefore that which is now thought cannot be
sound. Christ urg’d it as wherewith to justifie himself, that he preacht in publick;
yet writing is more publick then preaching; and more easie to refutation, if need be,
there being so many whose businesse and profession meerly it is, to be the
champions of Truth; which if they neglect, what can be imputed by their sloth, or
unability?  

We can discern, I think, two layers of argument in Milton’s comments here. First, in the second
quotation, Milton leverages the social utility of free expression. When an individual honestly
holds the beliefs he or she holds, and wishes to communicate these to others, it is to the benefit
of both. For the public distribution of one’s conception of truth both “justifie[s]” oneself and
resolves to the benefit of those who are ignorant of the truth. Milton observes that freedom of
expression permits those who disagree to raise their objections, leaving them in a position in
which they are held back from speaking only by “sloth, or inability.” Censorship in such a
context, therefore, results in the denial of truth-seekers their justification or the pursuit of their
purpose, the denial of a greater measure of truth to those who are without truth presently, and the
encouragement of intellectual sloth and inability. Freedom of expression, within the context of
Association Theory, therefore serves to promote the common good by permitting agents to
conscientiously pursue their conception of truth, to spread truth, and to pursue the truth together
with industry and ever-growing ability.

Yet Milton adds an additional layer of defense. In the first quote, he notes the
repercussions of denying freedom of expression. By denying freedom of expression, we
undermine agents’ capacity to function as rational beings. The “Pastor” and “Assembly” replace
the “perpetuall progression” of the “fountain” of truth. Law may enforce “heretical” beliefs upon

184. Ibid., 37.
us – we may honestly believe as true what is taught to us, and be condemned thereby, yet utterly unable to function as rational agents who may challenge these beliefs, or indeed even question them. This last danger – that law may enforce erroneous beliefs (and similarly, disvalues), is particularly relevant to the evaluation of the Aristotelian case for censorship. For while it is true that social context pervasively impacts belief- and value-formation, it does not follow that law, or any prohibitory institution of censorship or belief/value imposition is effective as a means of rendering belief- and value-formation more rational and beneficial than that allowed by the absence of such censorship. Per Milton’s argument, freedom of expression, while not perfect, has the advantage of distributing conceptions of belief and value while at the same time permitting challenges and corrections to these, and permitting agents to function more fully as rational agents. In short, freedom of expression is valuable to any association because it fosters truth, which is beneficial, provides scope for the fuller expression of our rational nature, and prevents the danger that erroneous beliefs and dangerous values are imposed upon associational members.

Indeed, there is empirical evidence that freedom of expression, at least in the particular case of the freedom of the press, is beneficial in these ways. Tandoc and Takahashi, for instance, find a positive correlation between freedom of the press and both happiness and (certain) positive social outcomes.¹⁸⁵ They note that

A country with a free press is expected to be more open about what is wrong in their societies and with their environments. A free press is likely to report about poor human conditions and environmental degradation, bringing problems to the attention of decision makers (Anderson 1997). It should not come as a surprise therefore that press freedom is positively related to both environmental quality and human development. Of course, the press can sometimes be aligned with dominant private interests (see Antilla 2005 for a discussion about climate change; Anderson 2009). Still, private and public forces attempting to launch lucrative businesses that

might have a negative impact on the environment (e.g. mining operations, oil extraction) usually become more cautious knowing that a free and aggressive press is on the lookout.\textsuperscript{186}

Why, then, ought we to think that freedom of expression ought to be classified as a directional claim-right? On the empirical side, the \textit{Efficiency Argument for Directionality} holds that the granting of a directional claim-right over some sphere of action leverages the cognitive biases of local interest, local rationality, and time-bias in order to motivate a greater degree of compliance with that norm on the part of both the right-holder and the duty bearer, and thus promote a greater degree of realization of the common good. One would therefore take it that the granting of a directional claim-right to freedom of expression on this basis would achieve, \textit{inter alia}, a greater measure of the social benefits that accrue from the exercise of expressive acts, such as art, and more to the point a greater measure of action in pursuit of truth, including science, practical deliberation, and so on, with the various social benefits that accrue from this, as outlined above. In particular, by establishing a network of personally indexed norms concerning freedom of expression, whereby violators of the directional right are held to directionally wrong the right-holder and to owe directional recompense to that right-holder, we would expect a corresponding decrease in the incentive to violate rights to undertake expressive and truth-seeking acts. Hence, per the evidence supporting the general \textit{Efficiency Argument}, combined with the argument for the social utility of freedom of expression above, we may conclude that directional claim-rights concerning freedom of expression will serve to disincentivize the dismissal and depreciation of expressive acts, which acts are likely, on balance, to yield beneficial consequences with respect to the achievement of the common good.

\textsuperscript{186} \textit{Ibid.}, 546.
On the normative side, the *Eudaimonic Argument* holds that directional claim-rights should be distributed to agents in cases where such claim-rights would secure or further agential self-direction, self-help, and self-protection, as so many associationally relevant features of the good life. Freedom of expression seems to be relevant particularly to the first of these values, self-direction. As Shannon Oltmann writes in summarizing individual utility and autonomy arguments for a right to freedom of speech, there is a tradition of jurisprudential reasoning which holds that freedom of speech is an essential component in self-fulfillment and self-realization. This general notion captures various lines of reasoning, such that freedom of speech is necessary because a self-fulfilled and self-realized – and therefore self-directed – person must have the mental freedom to form, challenge, and express opinions and beliefs; that the suppression of such a right negates a human being’s essential nature as a rational being; that such a right promotes the formation and realization by the agent of his or her self-identity; and that such a right permits the fullest manifestation of certain natural rational capacities. This accords, generally speaking, with Milton’s claim that free expression fosters and encourages the development of rational nature, and thereby all the individual and social benefits that accrue from the development and implementation of rational nature. Given this tradition of jurisprudential and philosophical argument, which seems to me to be entirely in keeping with a generally Aristotelian conception of the realization of one’s nature as a rational being, it does not seem incorrect to say that there is eudaimonist reason to assign to associational agents a measure of normative control over such a freedom, in the interest of permitting them to secure, as fully as possible, their self-direction as agents so-construed. Taking these together, then, both the

---

Efficiency and Eudaimonic Arguments for Directionality plausibly apply in the case of directional rights concerning free expression.

4.7 RIGHT TO PARTICIPATE IN SOCIAL DISCOURSE

There is in Britain no blanket right “to participate in social discourse,” or any analogous wording. Rather, The Human Rights Act treats the practices associated with such a right under the rubric of other rights. Article 9 of the Act guarantees the right to freedom of thought and conscience, including political thought and conscience, and of religion. Article 10 on freedom of expression permits the holding and communicating of opinions, which includes political opinions, subject to certain limitations of law. Article 11 guarantees the right to freedom of assembly and association, including for political purposes. Article 14 excludes discrimination on the basis of “political or other opinion.” Article 3 of The First Protocol of the Act guarantees the right to free elections, which includes the guarantee that such elections be “under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

Taking these rights together, British citizens enjoy a composite right to participate in social discourse: they can form, communicate, challenge, propose, agitate in favor of or against, and vote to elect public officials who promise (at least nominally) to try to enact particular determinations of the common good and the means to achieve it. Citizens may do this at the personal, local, and national levels, and hence may engage in social discursive acts with their colleagues in their personal associations, with respect to their local authorities (e.g. the City of

Edinburgh), and with respect to their national government (e.g. in General Elections and national referendums).

This synopsis of the composite right to participate in social discourse gives a reasonable picture of what such a right might look like in practice. As I have composed it, it is moderately indexed to the particular institutional structure of Britain. In particular, the right to vote for officials in free and open elections at the local and national levels is an institutionalized manifestation of a more general claim-right to participate in social discourse. Such a right to vote would be quite ineffective in a typical two-person marriage (though might be effective if extended broadly within a nuclear family). Yet, the description provides sufficient material to outline an analysis of the right to participate in social discourse in the focal case of political association.

The agent and form of the claim-right remain the same as those above. The matter or content of this claim-right is less clear, but as I said above the British composite right gives a sufficient account to get the argument rolling. It gets us in the ballpark, enough for my needs here. Participation in social discourse may involve, but is not limited to, forming, communicating, challenging, proposing, agitating in favor of or against, and voting for legislators (and perhaps enforcers) of social norms.

As before, the really interesting question is how Association Theory can justify such a claim-right, why participation in social discourse would be necessary for the achievement of any aggregative common good as such. As before, I begin with the question of how the content of such a right promotes the achievement of an aggregative common good, and then move to the question of why this content should fall under the normative category of a directional claim-right.
There are many examples of associations in which members are excluded from participating in social discourse to various degrees, indeed even in the name of the common good. For instance, think of the scandal that would ensue if a woman were to enter the Athenian ecclesia in the 5th century and (perish the thought) participate in a democratic vote. Or imagine the nerve of a wife in 19th century London who thought her opinion on the matter of the family finances deserved consideration. Or the impropriety of an American black man voting in South Carolina in 1850. I could go on. The common theme, of course, is that associational history provides ample evidence of unequal distributions of participatory rights, and even for the outright denial of participatory rights to whole segments of political populations. What makes this all the more significant is the fact that such denials of right came not on the basis of corruption or a failure to manifest structural conditions of the common good, but rather on behalf of the common good, as it was conceived. It is my contention, however, that there is something about associational practice as such that makes it valuable to assign participatory status to all associational members.\(^{189}\) (It is therefore my contention that many historical associations have been less than perfect in this regard.) In short, it is my contention that a democratic distribution of participatory status is a good for any association.

At the offing, I must be clear what I mean by a democratic distribution of participatory status. In his recent book *Against Democracy*, Jason Brennan marks off democracy from epistocracy (and, so I think it is fair to say, from other conceivable political structures) by its distribution of “an equal right to vote or run for office.”\(^{190}\) Democracy is, roughly speaking, a

\(^{189}\) I will not tackle the difficult and important, but subsidiary question of whether children, resident foreigners, and the mentally disabled, among others, should possess participatory rights. I address myself only to the focal case of an adult citizen who is mentally capable.

\(^{190}\) Brennan, *Against Democracy*, 208.
political system in which all members have equal right to vote or run for office, *inter alia*. This is a quite prevalent conception of democracy, but is *not* the conception that interests me here. In the context of social discourse, *democratic* participatory status is the distribution of participatory status to *all* associational members. In the case of a political association, that will involve the right to vote and to run for office, per the accepted and strict definition of democracy. But voting does not exhaust the possible manifestations of democratic participatory status in social discourse, *even in political associations*, as the case of the composite British right outlined above makes clear.

Aristotle gives us reason to focus on this broader conception of democracy. He writes:

> Now that all decide concerning all is characteristically popular [democratic]; for the people seek this sort of equality. But there are several modes in which all decide…All these modes, then, are democratic, while having some decide in all matters is oligarchic…When all do not take part in deliberation but only those elected to do so, and they rule in accordance with law, it is oligarchic as before.\(^{191}\)

Aristotle contends that if we take the characteristic traits of democracies and oligarchies at face value – that we are interested in who *decides*, i.e. who identifies and legislates social norms – then *representative* democracies are properly called oligarchic. For while the right to vote is equally distributed, the right to vote means little compared to the right to decide, that is, to participate more fully in social discourse. Hence, representative democracies actually *restrict* participatory rights in a significant respect – robust right to participate in social discourse is accorded only to those elected to serve as public representatives. Representative democracies defend *unequal* participatory status from this Aristotelian perspective.\(^{192}\) This matters because it


\(^{192}\) This is not to say that robust democratic distributions of voting rights are not correlated with robust democratic distributions of certain other components of the composite right to participate in social discourse. My
reduces the burden upon Association Theory if what I am interested in doing in this chapter is (partly) making good on Association Theory’s liberal credentials. It is not necessary to defend equal participatory status in order to make good on its liberal credentials. It is sufficient to defend some distribution of participatory status to all

The argument that I believe most effectively establishes why such democratic participatory status is good for any association is a version of a famous Hayekian argument concerning the use of knowledge in society. Let’s first consider what Hayek says:

The peculiar character of the problem of a rational economic order is determined precisely by the fact that the knowledge of the circumstances of which we must make use never exists in concentrated or integrated form, but solely as the dispersed bits of incomplete and frequently contradictory knowledge which all the separate individuals possess...It is rather a problem of how to secure the best use of resources known to any of the members of society, for ends whose relative importance only these individuals know. Or, to put it briefly, it is a problem of the utilization of knowledge not given to anyone in its totality.\footnote{F.A. Hayek, “The Use of Knowledge in Society,” The American Economic Review, vol. 35, issue 4 (1945): 519-520.}

In economic decision-making, those making decisions face a problem: they lack all knowledge relevant to determining the proper action to take. Moreover, they cannot access all relevant information. Hayek later provides more detail on this second point:

\ldots a little reflection will show that there is beyond question a body of very important but unorganized knowledge which cannot possibly be called scientific in the sense of knowledge of general rules: the knowledge of the particular circumstances of time and place. It is with respect to this that practically every individual has some advantage over all others in that he possesses unique information of which beneficial use might be made, but of which use can be made only if the decisions depending on it are left to him or are made with his active cooperation.\footnote{Ibid., 521.}
Those making economic decisions frequently lack relevant knowledge necessary to achieving an optimal result. Furthermore, they cannot possibly possess all relevant knowledge because certain knowledge – knowledge of the particular circumstances of time and place, to which may be added first-personal knowledge of one’s own preferences – cannot be accessed except by means of the participation of the relevant individuals.

This problem can be extended to politics and society generally. If we read “political” or “social” where Hayek has “economic,” I think it is clear that his point stands more broadly. Governments, even if basing their every decision on general and scientific knowledge, cannot achieve optimal results if they cannot access particular and first-personal knowledge of those in the political association. Similarly, parents cannot achieve optimal results in raising their teenage child if they do not access the particular and first-personal knowledge of that child.

Now, as Hayek remarks,

Which of these systems [centralized planning, decentralized planning, or monopolistic planning] is likely to be more efficient depends mainly on the question of which of them we can expect that fuller use will be made of the existing knowledge.¹⁹⁵

For Hayek, there are three paradigmatic forms of economic decision-making. Which of them achieves the most efficient results is a matter of which makes fuller use of all relevant kinds of existing knowledge, including knowledge of particulars (and first-personal knowledge of preferences).

The case is analogous in the associational context. Associations issue determinations and legislations as to how to achieve the common good and as to what the common good is. Social discourse is the associational analogue to Hayek’s economic decision-making, to what he calls

¹⁹⁵ Ibid., 521.
economic “planning.” Social discourse makes its determinations based on knowledge. As with economic planning, the question “is not a dispute about whether planning is to be done or not.” Planning happens. Social discursive decisions are made. The question is: how is it to be done? The Hayekian argument is that it ought to be done in a way that most efficiently affords for the distribution of knowledge relevant to the making of optimal decisions.

Indeed, Hayek himself argues that the structure of information flow has political consequences. He remarks that

Most of the advantages of social life, especially in its more advanced forms which we call “civilization,” rest on the fact that the individual benefits from more knowledge than he is aware of. It might be said that civilization begins when the individual in the pursuit of his ends can make use of more knowledge than he has himself acquired and when he can transcend the boundaries of his ignorance by profiting from knowledge he does not himself possess.197

Furthermore,

When we spoke of the transmission and communication of knowledge, we meant to refer to the two aspects of the process of civilization which we have already distinguished: the transmission in time of our accumulated stock of knowledge and the communication among contemporaries of information on which they base their action. They cannot be sharply separated because the tools of communication between contemporaries are part of the cultural heritage which man constantly uses in the pursuit of his ends…These “tools” which man has evolved and which constitute such an important part of his adaptation to his environment include much more than material implements. They consist in a large measure of forms of conduct

196. Ibid., 520.

197. F.A. Hayek, The Constitution of Liberty (Chicago: The University of Chicago Press, 2011), 73. Hayek goes on to write: “There are two important respects in which the conscious knowledge which guides the individual’s actions constitutes only part of the conditions which enable him to achieve his ends. There is the fact that man’s mind is itself a product of the civilization in which he has grown up and that it is unaware of much of the experience which has shaped it—experience that assists it by being embodied in the habits, conventions, language, and moral beliefs which are part of its makeup. Then there is the further consideration that the knowledge which any individual mind consciously manipulates is only a small part of the knowledge which at any one time contributes to the success of his action. When we reflect how much knowledge possessed by other people is an essential condition for the successful pursuit of our individual aims, the magnitude of our ignorance of the circumstances on which the results of our action depend appears simply staggering.” Ibid., 75.
which he habitually follows without knowing why; they consist of what we call “traditions” and “institutions,” which he uses because they are available to him as a product of cumulative growth without ever having been designed by any one mind.\textsuperscript{198}

What is the upshot of all this? Hayek gives us reason to think that there are salient political and associational implications of distributed knowledge. Many kinds of knowledge are required if the common good is to be realized. Social structures evolve which permit the transmission of such knowledge. Some of these structures are more effective than others, and such effective structure may be categorized into spontaneous and planned according to the criterion of whether or not they intentionally aim at the positive social results they attain.\textsuperscript{199} Of course, Hayek proceeds to use this argument to defend individual liberty. That is not my goal. Rather, I use this to defend democratic participation in social discourse.

The particular institutional structures that are most effective seems to me to be entirely an empirical matter. Whether political associations should adopt strict democracy – equal voting for representatives – or direct democratic voting; whether a gold-based or fiat or crypto-currency system should be adopted to manifest the economic price mechanism; whether parents should have weekly meetings with their children to discuss key issues or chat about such issues informally at the dinner table – the effectiveness of these forms are all dependent upon particular circumstances and are subject to empirical evaluation.

But what I do not take to be an empirical question is whether it is good that all members of an association should be in position to partake in social discourse so as to communicate relevant information in some institutional manner, where planned institutions are necessary to

\textsuperscript{198} Ibid., 78

attain a common good. If a social discourse lacks information relevant to the realization of an aggregative common good, social discourse will not be unable to intentionally harmonize social norms and social practice. Perhaps, if the association is lucky, it will stumble across an optimal result and life will be great for all. Indeed, that “felicitous accidents” can occur is proven beyond doubt by the research that has been done on “spontaneous order,” of which Hayek himself is a pioneering example. But I take it (a) that we do not think that spontaneous social structures are sufficient to achieving all aspects of our various aggregative common goods and (b) that we think intentional social practices and intentional institutions of determinate social norms and structures are necessary to the achievement of certain aspects of our various aggregative common goods. In virtue of these considerations, even in circumstances in which spontaneous order is an empirically useful arrangement, there is conceptual reason to desire that participants possess participatory standing relative to those social discursive functions that are not fulfilled through unplanned, spontaneous mechanisms. Generally, let us call this the Information Argument for Participatory Status.

Per what I have said, it is a somewhat empirical matter which associational functions relative to the achievement of an aggregative common good may be left to the mechanisms of spontaneous order. It is therefore a somewhat empirical matter which associational functions need be planned, and therefore in what contexts a democratic distribution of participatory rights would be valuable. Yet, for those functions which we have conceptual reason to think must be fulfilled through non-spontaneous mechanisms, there is reason to think that democratic social standing is of universal value, per the Information Argument. What these conceptually defensible mechanisms ought to be is not a substantive claim I will extend this argument to making. If it

200. Indeed, Aristotle is himself committed to “felicitous accidents,” for the move from collections of villages to cities that I discussed in Chapter 2 is an example of a spontaneous yet beneficial social development.
turns out on the basis of further investigation that there are no conceptually defensible mechanisms – that spontaneous order is entirely sufficient and efficient for attaining our aggregative common goods – then the claim that a right to democratic participatory status is universally desirable will dissolve. Pending such an argument, I will simply grant this, and should such an argument be forthcoming, then I am willing to grant that such a right is contingent. This is compatible with my assertion in 4.4 that I am not entirely wedded to the claim, nor be wedded to the claim, that the three liberal rights I am dealing with here are universally desirable.

I have argued, first, that information matters to the achievement of a common good; second, that much of this relevant information is held only by individual associational agents; and third, that some mechanism must exist to get such relevant information out into the open so that it can impact social discourse and thereby the achievement of the common good, where, conceptually speaking, spontaneous order is not an empirically defensible mechanism to provide for the realization of the common good. Democratic participatory status in social discourse grants to each the role of, inter alia, forming, communicating, challenging, proposing, and agitating in favor of or against particular determinations of social norms on the basis of the unique circumstantial and first-personal information they possess, and perhaps also voting capacity, inter alia. This status serves to permit the communication of relevant information to other members (and planned institutions) of an association, information that cannot be accessed unless such status is distributed.

Democratic participatory status (of some degree) facilitates the flow of relevant information within an association. Against this, consider an argument made by Brennan. Voters
tend to be not merely uninformed regarding political (associational) matters, but rationally uninformed. They are predisposed, moreover, to certain kinds of irrationality concerning political (associational) matters. Their lack of information extends not simply to facts concerning the structure and truth of their association, but even to themselves. And all this lack of knowledge matters because it changes policy preferences. In particular, and perhaps most damning for my argument, “Voters remain ignorant and irrational because democracy incentivizes them to remain ignorant and irrational.” Hence, it can be argued that the Information Argument for Participatory Status rests on a false assumption, namely, that prospective participants have or will have information valuable for the optimal (intentional) achievement of the common good.

In response, I propose that Brennan’s argument isn’t as damning as it appears. As noted, Brennan’s argument is concerned with the need for or propriety of equal voting. His conclusion is that most voters are uninformed voters and that this has negative effects on policy. Yet, he accepts that many citizens may be entitled to participate in politics – in social discourse – in a non-voting capacity. Nor does he deny that some citizens have relevant information. It does not follow from the (apparent) empirical inefficiency of voting that agents’ participation in social discourse more generally is necessarily (conceptually) inefficient. Imagine that in Politopia, only

201. Brennan, J., Against Democracy, 24-30
202. Ibid., 30-32
203. Ibid., 36-49
204. Ibid., 49-51 and 24-49 generally.
205. Ibid., 33-34.
206. Ibid., 53. See also 36-49 and Chapter 3 generally.
207. E.g. Ibid., 66-67.
an epistemic aristocracy may determine what social norms will be legislated for the entire association (i.e. an aristocracy of those who know what general information they need to know to achieve optimal social outcomes, *ceteris paribus*). It is entirely feasible that every member of Politopia nonetheless possesses equal basic participatory rights and that their participation is efficient. For instance, they might enjoy the right to have their opinion voiced by means of polls or referendums; they might enjoy the right to hold and communicate opinions; they might enjoy the right to agitate for political change; they might enjoy the right to file letters of no confidence with the epistemic aristocracy; they might enjoy the right to issue a non-binding call for a change of leadership. In fact, there are a whole host of ways in which they could conceivably and valuably participate in the social discourse of Politopia that doesn’t extend to making the authoritative call on matters of determination and legislation.\(^{208}\) Certainly they may not be capable of voting, but as discussed above what particularly matters in an associational system is the capacity to decide what conceptions will govern the association, not whether or not one may vote for those who will make the call. Brennan has provided extensive justification to doubt the efficacy, empirically speaking, of voting for those who will decide.

Indeed, Brennan notes that in spite of the pervasive lack of information on the part of voters, other reasons may exist which prompt us to assign participatory status.\(^{209}\) I have proposed such a reason: that there is information relevant to achieving an optimal realization of a common

\(^{208}\) Such more limited kinds of participation are, in fact, quite common. Consider the manner in which some parents ask for and consider the opinions of their children prior to a radical change of abode. Consider the manner in which some academic departments solicit the opinions of graduate students, or even undergraduate students, before changing departmental policy or even hiring new faculty members. Consider the manner in which police departments put out calls for public advice or opinions concerning their performance. There are many actual associations that involve members in limited or restricted participation that don’t extend to making actual decisions. And, as noted, liberal-democratic representative systems permit citizens to vote, but not much else. They have no hand in crafting legislation or voting to enact legislation.

\(^{209}\) Brennan, *Against Democracy*, 73.
good that can be accessed only by means of general participation. Perhaps some of the
information that is being communicated if false, or otherwise flawed in some respect. And
perhaps, moreover, certain forms of democratic participation foster a series of inefficient
cognitive biases and corrupt the character of political agents in various ways. Nevertheless,
conceptually speaking, a mechanism that permits the maximal flow of relevant information is
good. This argument is akin to that given above for freedom of expression: though there are
empirical reasons to think that wide freedom encourages certain social disvalues, it does not
follow that the restriction of freedom will promote, on balance, better results.

I have presented a conceptual argument for the claim that participation in social discourse
serves the end of supplying information necessary to most effectively realize the common good,
and that this if valuable in any association for which we have conceptual reason to think that
planned institutions for attaining the common good are valuable. But on the empirical side, the
evidence has been a mixed bag. Empirically, many associations benefit from spontaneous
mechanisms which will not benefit from this right. Empirically, even where this right is
implemented, it may lead to undesirable consequences. Given all this, what are we to make of a
possible empirical argument for assigning to participation the status of a directional claim-right?
According to the Efficiency Argument, such a directional claim-right ought to serve to motivate a
greater degree of personal investment in compliance with that norm on the part of both the right-

210. Ibid., 61-62.

211. Ibid., 62-66. In addition, it is unclear that there is a strong or even moderate positive correlation
between democracy and happiness. Ronald F. Inglehart and Eduard D. Ponarin, citing Freedom House data, note
that “[w]e find consistently strong correlations [between democracy and happiness] from the early 1970s until about
1986 - followed by a sharp decline that persists through the end of the time series [2008],” “Happiness and
from about .68 to .27. Regarding these findings, see also Eric Weiner, “Will Democracy Make You Happy?”
Foreign Policy, 8 Oct 2009: http://foreignpolicy.com/2009/10/08/will-democracy-make-you-happy/
holder and the duty bearer, and thus promote a greater degree of realization of the common good.

If an association has conceptual reason to implement a planned social discursive institution (some as representative in a legislature), then we have conceptual reason to think that an assignment of democratic participatory rights will facilitate the flow of relevant information, intermixed with a flow of irrelevant and potentially hazardous information. Combining this with the Efficiency Argument, we can conclude that agents holding such conceptually valuable rights to democratic participation will, empirically speaking, abide by these rights more than they otherwise would if these rights are distributed as a system of directional claim-rights. Hence, if the general argument for these rights goes through, there is empirical reason to make them directional rights. If the argument does not go through, the argument for making them directional rights dissolves.

The Eudaimonic Argument holds that agents should be assigned directional claim-rights in those cases where such claim-rights will assign to them a greater measure of normative control over an object of associational significance that is also of eudaimonic interest, in particular where such an object pertains to the relevant values of self-direction, self-help, or self-protection. A directional claim-right in the case of democratic participation establishes a measure of normative control with reference to all three of these associationally significance eudaimonic interests. Normative control of some degree regarding the generation, communication, and action in accordance with information relevant to the achievement of an aggregative common good furthers an agent’s self-direction, capacity to help himself or herself, and provides scope for activities to defend his or her good life. Voting, for instance, provides scope both for holding public representatives accountable and for the alteration of which rights and duties are assigned by the centralized social discursive legislature.
of participatory status given above, it seems plausible that assigning directional claim-rights to ensure that right-holders can claim such participation is eudaimonically good.

4.8 CONCLUSION

With the conclusion of the arguments of this chapter, my positive account of Association Theory comes to an end. I have here considered the specificatory aspect of social discourse in more detail, defended robust claim-rights on empirical and normative grounds, and defended three examples of liberal claim-rights of universal significance for associational practice. What remains for the next chapter is to defend Association Theory as it has been explained on certain key points.
5.1 INTRODUCTION

This final chapter will address a number of objections to the account of claim-rights which I have presented. This will serve both to defend Association Theory against several salient concerns and to clarify both the meaning and scope of Association Theory. Six topics will concern me:

1. **Focus on bilateral norms.** The account of claim-rights that has been presented has been developed on the model of bilateral directional relationships between agents and/or associations. However, are there not also trilateral, quadrilateral, and larger normative structures? How does Association Theory handle such cases, if at all?

2. **Unusual valuers.** A. John Simmons presents the case of associational members who value in odd ways or who value odd things. Such unusual valuers pose a problem for an account such as Association Theory for, on the one hand, they must be persuaded or induced to share the values of the association, but, on the other hand, their odd values make it nigh impossible to so persuade them on rational grounds. This seems to undermine the account of functional authority that has been presented in Section 3.4.
3. **Functional authority.** The argument for functional authority provides an account of how social discourse is capable of becoming authoritative: it fulfills a necessary task that is to the benefit of those for whom it is performed, and requires as a condition of its success obedience on their part, and correlative authority on the part of those fulfilling its task. Two questions were left unanswered: (1) why must social discourse possess *legislative* capacity in the first place, and (2) what conditions must be fulfilled such that a particular social discourse attains authoritativeness?

4. **Morality.** The arguments of Chapters 2-4 claims to demonstrate that, in certain circumstances, certain norms are useful, if not necessary, to the achievement by agents of their common good. However, no argument has been given to the effect that such norms should hold universally as *moral* norms for all agents. How does Association Theory address the desire for moral content in addition to prudential content? In particular, due to its reliance upon Aristotelianism, *can* Association Theory provide an account of moral claim-rights and moral directed duties?

5. **Liberalism.** This objection charges that Association Theory is incompatible with a salient requirement of liberal political theories derived from the work of John Rawls. Drawing upon the Rawlsian argument for a *political* conception of justice and associated norms (including claim-rights), it charges Association Theory with presenting a framework for understanding claim-rights which is *comprehensive* in nature and therefore unsuitable for providing *overlapping consent.*
6. **Non-associational rights.** This objection targets the very notion of an associational theory of claim-rights as such. It argues that claim-rights as contemporarily conceived are not the sort of things to be indexed to associational participation.

I will motivate the relevance of each objection at the opening of each respective section. I will endeavor to respond to each and to acknowledge where appropriate both the shortcomings of Association Theory and those areas in which further development is required.

5.2 **WHAT OF TRILATERAL (QUADRILATERAL, N-LATERAL) NORMS?**

Association Theory has presented an account of claim-rights and directed duties modeled on a conception of normative relations obtaining between only two agents, institutions, or other suitable subjects of these norms. This follows both standard practice in the literature and the practice of particular scholars whose work I have cited herein. However, such bilaterial relations do not necessarily exhaust the kinds of structured norms governing human relationships and interactions. Plausibly, in addition to bilateral norms, there are also trilateral, quadrilateral, and larger normative structures.

Wesley Hohfeld, citing a Professor Gray, gives an example in which an agent is eating a shrimp salad. Here is the situation:

> The eating of shrimp salad is an interest of mine, and, if I can pay for it, the law will protect that interest, and it is therefore a right of mine to eat shrimp salad which I have paid for, although I know that shrimp salad always gives me the colic.\(^\text{212}\)

\(^{212}\) Hohfeld, “Some Fundamental Legal Conceptions as Applied in Judicial Reasoning,” 34.
Hohfeld glosses this passage as follows: “This passage seems to suggest primarily two classes of relations: first, the party's respective privileges, as against A, B, C. [sic] D and others in relation to eating the salad…” Hohfeld regards this case as involving several *bilateral* privileges between the right-holder and the various individuals at the table. That is, Hohfeld analyzes this case as a composite of several bilateral relationships, rather than as a 5-term relationship.

If we recall my discussion of Finnis’ theory of rights in Section 1.5, it will be noted that Finnis gave reason to be concerned with an exclusive focus on bilateral normative structures. To repeat, briefly, what he said in this regard: Moderns rights-talk

is constructed primarily on the implicit model of a relationship between two individuals. So, in its primary signification…modern rights-talk most fittingly concerns benefits or advantages to individuals…But public morality and public order…are both diffuse common benefits in which all participate in indistinguishable and unassignable shares.214

And

the contrast between rights and collective welfare does mischief to rights themselves. While teaching that (all) rights are trumps, it also teaches that (all) rights must give way to so-called collective welfare. Each right’s presumptive priority (it is said) can be rebutted, and is rebutted whenever the threat to this ‘collective welfare’ is sufficiently great.215

As I remarked there, Finnis raises two salient concerns: collectives, such as families, are left out of consideration as collectives, which (1) fails to accord to certain goods of human life appropriate and perhaps necessary normative status, and thus prospective duties and claims


pursuant to these social goods will lie outside the scope of normative concern as duties and claims; (2) such a conception of goods underlying claim-rights will establish a necessary conflict between the rights and duties of individuals and the demands of the “general welfare.”

These concerns strike me as important and salient. In particular, the failure to accord to collective goods normative status as claimable entails that such goods do not receive the benefits outlined in 4.2: these goods, as not protected by directional claim-rights, will not warrant protection under the categories of directional wronging and directional recompense, and thus will not enjoy the general benefits accruing to associations under the Efficiency Argument and the Eudaimonic Argument.

How, if at all, can Association Theory accommodate such non-bilateral relationships? Ought it to? Association Theory is modeled on the basis of aggregative common goods. An aggregative common good, per Section 2.5, is composed of so many individual goods. Hence, if family is an aggregative common good, it is understood to be composed of certain individual goods of the family members considered as so many aggregative shares of the common good. Similarly, friendship is conceived to be so composed, as is the good of political association, and so on. Such an aggregative common good constitutes a singular reason for action for all members of the association. Given this, Association Theory understands the irreducibly social goods which are of concern to Finnis to be irreducibly social as reasons for action, but composed of so many individuated shares.

That common goods are conceived thus, and that associational norms are justified by common goods so-conceived, resolves Finnis’ worry that a system of bilateral norms will not accord suitable normative status to common goods. Family and so forth are accorded robust normative status within Association Theory as common goods – though composed of
aggregative shares bound by so many bilateral normative relations, the common good is promoted by correlative and directional claim-rights and duties. Finnis’ worry cannot be that such a position individuates a common good, for as we have seen in Section 2.5 Finnis rejects a distinctive good conception of the common good in favor of an instrumentalist conception (which, it will be recalled, individuates the common good). Hence, the capacity of Association Theory to accord robust normative protection to social goods in spite of its reliance on a bilateral normative model resolves Finnis’ concern. Furthermore, Association Theory’s integration of bilateral norms and irreducibly social goods resolves Finnis’ concern that there is a necessary conflict between individual rights and duties and the general welfare: in their genesis, associational rights and duties are intrinsically compatible with the attainment of the general welfare, or any other common good, per Section 4.3. Hence, despite being modeled on bilateral norms, Association Theory answers the concerns voiced by Finnis regarding such a structure.

This does not answer a general analytic concern to know whether Association Theory can or ought to accommodate larger than 2-term normative structures. I have opted to instead ameliorate concerns with my use of 2-term normative structures throughout. In the interest of space, I will not address this general analytic concern in detail. I will say, however, that it does not strike me as implausible that something like the shrimp case be analyzed as so many bilateral relationships. What might strike the reader as odd is that it is merely analyzed as so many bilateral relationships. We might want to say, that is, that it is not simply the case that the purchaser of the shrimp salad stands in a bilateral relationship with each of the four individuals A, B, C, and D, but that there ought to be some sort of necessary connection between these bilateral relationships such that if the purchaser stands in a bilateral normative relationship with A, then it must be the case that he or she also stands in a bilateral normative relationship with B,
C, and D. In other words, the concern might be not so much with the analysis of the normative structure, but rather with the necessity or lack thereof attending the conjunction of these bilateral relationships. Association Theory provides an answer to this worry, for by rendering associational norms relative to aggregative common goods it explains why it must be the case that the purchaser, by standing in a bilateral relationship with A, must also stand in a similar bilateral relationship with B, C, and D, for the conditions which make it necessary that the purchaser stand in a given bilateral relationship with A also obtain in the cases of B, C, and D.

5.3 A. JOHN SIMMONS AND THE CASE OF UNUSUAL VALUERS

In his *Is There a Duty to Obey the Law?*, A. John Simmons presents a series of arguments against what he calls “necessity accounts” of authority, which are simply what I have called accounts of “functional authority.” As he remarks,

> The guiding idea of necessity accounts is that certain kinds of needs ground moral duties on suitable persons to perform the needed tasks and moral duties on others to permit and facilitate such performance.\(^{216}\)

Generally, this captures Anscombe’s account of authority. What interests me, however, is not whether he accurately captures Anscombe’s – or my amended – account of authority, but rather one particular case that he raises. Simmons raises the case of two classes of individuals who seem to pose a *formal* problem for an account which relies on functional authority: “unusual valuers” and “self-providers.” He remarks

\(^{216}\) Christopher Wellman and A. John Simmons, *Is There a Duty to Obey the Law?* (Cambridge: Cambridge University Press, 2005), 128. It is worth noting that Simmons agrees with my assessment that Anscombe developed the best-known account of such a theory; see *ibid.*, p. 129.
What shall we say, though, of those who simply disagree with the necessity claim, not sharing the preferences of values...of the majority...And what shall we say of persons or groups that strongly prefer to provide for themselves...?  

The first point leverages the general observation that there are those who, in virtue of their subjective preferences, do not share the end served by authority, and therefore do not regard the relevant task as necessary. The second point leverages the general observation that there are those who, despite being members of an association, prefer to provide for themselves either in the pursuit of their aggregative share of the common good simply, or in the pursuit of the common good generally. In both cases, I will stipulate that the relevant individuals are members of their association both formally and substantively, that is, that they have been granted social discursive standing and that they hold the common good as a reason for action to some degree. How does Association Theory handle such cases?

In the case of unusual valuers, we may subdivide the concern into two parts: on the basis of what principle(s) ought associations to treat unusual values (a) in virtue of their rejection of the authority of social discourse as such, and (b) in virtue of their practical noncompliance with legislated norms? With respect to the rejection of authority as such, it seems to me that the right to freedom of expression and dimensions of the right to democratic participation preclude measures against such individuals, and preclude treating such individuals in any way other than that in which other, compliant citizens are treated. For the general freedoms of expression and participation, which include the freedom to form opinions that may not concur with the mainstream, or which may be directly contrary to those underpinning the association as such, includes the freedom to form opinions such as to reject or question the authority of social discourse. As such, Association Theory’s commitment to a liberal tolerance at least with respect

217. Ibid., pp. 140-141
to opinion, belief, and value formation extends to protecting unusual valuers who only go so far as to reject the necessity of social discursive authority in thought and in certain expressive acts. Social discourse cannot, therefore, undertake illiberal action against such individuals on such a basis. It must operate with respect to such individuals on the basis of precisely the same principles it would apply to compliant citizens.

The matter is perhaps not quite so sanguine in the case of those unusual valuers who both value unusually and act upon those values in certain ways. Indeed, it seems that cases of practical noncompliance with authoritative norms serve as the genesis of the need of punishment, or if not punishment, then certain other kinds of practice that are justified or warranted only in such cases. This, indeed, is not contrary to liberal political philosophy – there is not a liberal democracy I am aware of that does not engage in punitive action against those who reject the authority of the liberal democratic system and put that into practice in certain ways. For instance, it is one thing to write articles, blog posts, and books in which the authority of the state to tax income is roundly rejected, but quite another to refuse to pay one’s taxes. But whether and how such practical noncompliance with the authority of social discourse may justify punitive action, whether violent or nonviolent, is far beyond the scope of this essay. If it were deemed justifiable, this would certainly not be cause for regarding Association Theory as illiberal.

On the matter of those who prefer to provide for themselves, but do not hold unusual values, it strikes me that the general contours of my above response apply as well. The mere fact of self-provision need not obviously constitute a threat to an association as such. A person who doggedly prefers to provide his or her own electricity, for instance, rather than relying upon public utilities, might be thought to benefit to an association, on balance, for he or she relieves the public institutions to that extent of the need to provide services. This might also be said, for
instance, of the case of those parents who wish to homeschool their children or who wish to contract with a private school for the education of their children, which relieves public educational institutions of that burden.

Perhaps there is cause to be concerned with such individuals in cases in which their self-provision does plausibly imperil public institutions. For instance, individuals who doggedly wish to provide for their own healthcare and not contribute at all to public healthcare provision might be regarded as impeding public health provision by taking their capital resources out of the public supply. Speaking generally, this seems to be a fair argument. And perhaps in such cases, the authority of a social discourse and its various institutions is sufficient to justify various sorts of intervention that curtail or restrict self-provision. Again, to permit authoritative intervention in such cases is not intrinsically illiberal, whether or not it is immoral, if liberal democratic practice is to serve as a guide. Every restriction of a market, which removes options from consumers (e.g. the restriction upon interstate healthcare purchases in the US), every nationalization of an industry, and every imposition of professional licensing requirements, to cite just three examples, constitutes a restriction of self-provision.

5.4 FUNCTIONAL AUTHORITY

In virtue of various promissory notes I have issued thus far, there are two tasks before me in this section. First, I must explain why social discourse ought to possess, or needs to possess, legislative capacity in the first place. Second, I must consider what conditions must be fulfilled by a particular social discourse such that it attains authoritativeness. I will take these issues sequentially.
In Section 3.2, I argued that associations need to arrive at shared conceptions for reasons of proficiency and associational constitution. I then argued that social discourse plausibly serves as a mechanism for attaining shared conceptions (3.2); that social discourse may be understood to involve a normative power if it is to fulfill this task (3.3); and that social discourse is potentially authoritative as a mechanism for the fulfillment of this task (3.4). I explained, in short, that social discourse *can* fulfill the task set forth in 3.2, and that if it is to do so we have reason to interpret it as a normative power and to regard it as authoritative. But I did not explain why social discourse *must* be the mechanism to achieve shared conceptions, or, if not why it *must* be the mechanism, why it is the *best* mechanism available for attaining shared conceptions. What is required, then, is some account of why authoritative conceptions and norms must or best come from a social discursive practice.

As Murphy remarks, law is sometimes held to be a *coordinative* capacity, providing authoritative conceptions and norms which coordinate social action. Murphy describes law (or social discourse) thus conceived as a *salient coordinator*. Where coordination problems arise in an association, law serves as the salient coordinator which determines which social norms, or conception of social norms, will constitute the authoritative determination that will govern social action.218 This accords with my description of the function of social discourse in Sections 3.2-3.4. Why is law (social discourse) to serve as the salient coordinator? “The presence of such an authority would give members of that community reasons to act on a common determination, and not to act on their own determinations, or what they would render as their own determinations. And law is the best thing that can be made to be practically authoritative.”219

---


This points a way forward. If what is sought is some account of why social discourse must or ought to be the salient coordinator that fulfills the need for moderately shared conceptions, then we may defend it as such on the basis of the claim that, of all the various options on the table, social discourse is the best option we have that may be made practically authoritative. The claim, then, is not that social discourse is necessarily the best mechanism for the attainment of shared conceptions. It might be, but that’s beside the point. Rather, the claim is that of the various options, it is the best practice which we are most able to render practically authoritative in the requisite sense, and therefore, alternatives notwithstanding, it is the best option we have overall.

There are a number of considerations that lead, I think, to this conclusion within the context of the arguments I have set forth thus far. First, it might be said, following Aristotle, that social discourse, as political deliberation, *is* the mechanism by which humans as social entities determine the common means to their common ends. That this is so was suggested in Section 3.2. We are entities for which it is natural in some sense that we engage in collective reasoning for the sake of our common end. That this is so is intuitive – it is observable in every dimension of our social practice. When given the opportunity, humans expend a great deal of time and effort engaging in social discursive practices, including argumentation, the development and presentation of ideas, debate, investigation, clarification and specification, and even putative legislation. I do not mean by this to suggest that social discourse is eudaimonically suited to us – that may be the case, but that is not what I am asserting here. I am suggesting, rather, that pervasive human social discursive practice is “natural” to us simply as an observable fact – we pervasively engage in this practice, and try to engage in this practice, and this gives us reason to
think that it is a practice of some significant value to human beings, and to treat it as practically authoritative.

Second, I argued in Section 3.2 on the basis of various comments made by Aristotle that engagement in social discourse is the mechanism by which agents constitute themselves as members of a common practice most fundamentally. It is through socio-linguistic and socio-rational engagement with one another that agents generate social norms and social conceptions, and therefore identify themselves in their practice as socially responsive and engaged agents.

I think these are, generally, important considerations which suggest that, of the good options we have for arriving at shared conceptions, social discourse is the mechanism that we have particularly good reason to hold as practically authoritative: the prevalence of social discursive practice and the self-identificatory role of this practice within associations point to the high regard in which associational agents hold social discourse as a mechanism for the resolution of their coordination problems and as a mechanism for binding themselves together as mutually reasoning social beings.

These arguments might be bolstered by the Hayekian *Information Argument* of Section 4.7. This argument provides conceptual reason to think that participation in a social discursive practice is the most effective mechanism for the fulfilment of the task of attaining shared conceptions, insofar as efficient associational outcomes depend upon access to relevant information, and participatory status in a social discourse is plausibly necessary for the achievement of this task. One might argue that other methods are potentially more effective than the slow and uncertain processes of democratic participation, such as the widespread use of propaganda to direct members’ actions, or even, at some point in the future, direct neurological manipulation of members’ beliefs and values. To these options, the response might be made that
while such mechanisms for achieving social consensus are certainly possible, and are perhaps even more practically efficient than social discourse, they are not proper to humanity’s rational nature. That is, that by circumventing the rational and deliberative nature of associational agents, the proponents of such mechanisms are circumventing the essential humanity of these agents. Consequently, while such means might be effective, they achieve their result only by denying the essential humanity of their subjects. In short, there are normative considerations – indeed, not necessarily eudaimonist considerations, but liberal considerations – which preclude such options, however efficient. There is furthermore reason to doubt whether such practices might be efficient in the requisite sense. For, while it is certainly feasible that such practices of mass control attain coordination, it is not clear that they attain the right kind of coordination. For, such practices not only fail to allow for the transmission of relevant information, they actively suppress relevant information. Hence, it is not clear that mechanisms of mass control (as they currently exist) can coordinate associational action in a manner that reflects the full range of relevant facts, and thus that they can attain optimal or even nearly optimal social results.

Hence, so far as the argument has gone, there is reason to think that social discourse is the best means to attaining social coordination, and therefore there is good reason to think that it ought to be practically authoritative. Yet, even where social discourse may be thus considered, it does not follow that we have an account of the particular conditions that must be fulfilled such that any particular social discourse may be held to be authoritative. From what has been said, one could just as well infer, not that social discourse is authoritative, but that agents have good reason to make it such that social discourse is authoritative: “[the need for authority and the
aptness of law as a social coordinator] might show that practical reasonableness requires one to submit to a political authority by performing some relevant obligation-generating act."  

Moving then to the second question of this section, what conditions must be fulfilled that render a potentially authoritative actually authoritative? Murphy proposes consent as a suitable candidate. Murphy’s view, generally, is the following:

That citizens are bound to adhere to the demands of law arises from the common good principle, the requirement to do one’s share with respect to the common good of the political community. The common good principle admits of a variety of determinations…and there are very good reasons for adopting some particular determination of that principle…When one reasonably adopts a determination of a practical principle, then one ought to adhere to that determination. And so one who reasonably adopts a reasonable determination of the common good principle is bound to adhere to that determination. But in a decent political community, at least one reasonable determination of the common good principle includes acting in those ways that the law in that community prescribes. So one whose determination of the common good principle includes ‘doing what the law prescribes’ is bound to act in accordance with its prescriptions…[This] is a consent account because it is due only to the consent of the citizenry – their acceptance of the law as determiner of the common good principle – that the law’s determination of the common good principle becomes privileged, the way to carry out the demands of the common good principle.  

This all seems entirely reasonable to me. And this accords, moreover, with Anscombe’s candidate.  

The need for an authoritative practice and the aptness of social discourse as a candidate for an authoritative social coordinator gives very good reason to agents to consent to social discourse as the authoritative social coordinator. Hence, in Murphy’s view, “that it would be a good thing for the law to be authoritative does not mean that the law is in fact

220. Ibid., 111.

221. Ibid., 113.

authoritative.” But it certainly means that agents have good reason to consent to social discourse as authoritative. Hence, agents who recognize, per the Anscombian argument for functional authority, that they must be obedient to social discourse in order that social discourse may fulfill its task, and that such obedience is correlated with an authority on the part of those who will participate in social discourse, and that social discourse is plausibly the best mechanism that may be held to be practically authoritative, have good reason to consent to social discourse as authoritative.

Moreover, the possible requirement for an intermediary step does not alter the general form of the functional authority argument – it merely refines it. For, consider the following: let us agree with Murphy that consent of the appropriate sort is the intermediary step required to make a particular social discourse authoritative in practical reason. In such a case, would consent be capable of generating authority without the prior recognition that authority arises as a condition of the satisfaction of a need? It is not clear that it would. Consent may plausibly function as a mechanism of subordination to or acceptance of the facts at hand, notably the fact that a task is necessary and that the completion of this task requires a set of authoritative relations to be in place, but it is not clear how consent can simply generate authority a nihilo.

Whatever the precise mechanism is that renders a particular institution of social discourse authoritative, I do not take my purpose here to be to lay out what that mechanism is. Murphy’s theory of consent seems to be generally correct and on the right track, at least for the focal case of political associations. But my goal is limited to showing how, where conditions are sufficient such that a particular institution of social discourse might be authoritative, an authoritative social discourse might yield claim-rights and directed duties. A further work of

223. Murphy, *Natural Law in Jurisprudence and Politics*, 110.
political or social authority could devote itself to the specification of the sufficiency conditions required for the attainment of actual authority.

5.5 MORALITY AND MORAL NORMS

In this section, my goal is to consider somewhat briefly to what extent the Aristotelian might account for moral claim-rights and duties. I emphasize the word “briefly,” because this is a substantial question touching on issues, literatures, and conceptual puzzles orthogonal to those that have concerned me thus far. My immediate and practical goal is to give the reader reason to think that the normative relationships I have argued for thus far do not exhaust the range of possible normative relationships with reference to which the Aristotelian might account for claim-rights and directed duties. In order to achieve this, I will first state very roughly what I understand by the term “moral,” then whether such a concept might be found in Aristotle’s work, and lastly sketch how such moral norms as claim-rights might arise within Aristotelian theory.

Roughly, then, a moral reason is a reason for action which is universal and objective, and perhaps even authoritative in some sense. Let us set aside the question of whether moral reasons are authoritative reasons. Moral reasons are universal in the sense that they apply to all human beings in all practical situations in which they find themselves. Moral reasons are objective in the sense that they hold as reasons regardless of an agent’s subjective preferences, or more generally as they hold without dependence upon subjective factors. Hence, if there is to be a claim-right which gives a moral reason for action, it is a claim-right which gives a reason for action which applies regardless of associational membership and regardless of the subjective preferences of
both the right-holder and the duty-bearer (including, therefore, their subjective preferences to be part of this or that association).

Are there anything like moral reasons in Aristotelian normative theory? In what follows, my aim will be to motivate two possible foundations of an account of moral reasons within Aristotelian theory, and how such reasons might include claim-rights. The first seems to me to be the most promising if what is sought is a robust Aristotelian account of moral reasons, for it is, within the context of Aristotelian normative theory generally, the matter that has received the greatest attention. This is the concept of to kalon, or the “beautiful,” the “noble.” The second, though less promising to my mind as an Aristotelian account of moral reasons, is for my purposes here the most plausible path to moral reasons, for it is compatible with my response to the Liberalism Objection in the next section. The account of moral reasons as grounded in to kalon is not compatible with my later answer. This second foundation for moral reasons is to consider a certain comment made by Aristotle to be the basis for a possible account of moral community, and the norms of this community to be the basis for a possible account of moral reasons. I will take these sequentially.

On the first possible path to an account of moral reasons, the Aristotelian may leverage the concept to kalon, a concept pervasive in Aristotelian practical theory. In what follows, my object is not to defend Aristotle’s account of to kalon or even to suggest that non-Aristotelians ought to adopt it. I aim simply to gesture that the Aristotelian has at his or her disposal a concept that parallels the universal and objective character of moral reasons, and thereby that the Aristotelian might transcend the associational account I have given.

In the Ethics, Aristotle tells us that there are three kinds of object of choice, which is to say, three types of object at which one can aim – three kinds of “good”: “the noble [to kalon], the
advantageous, and the pleasant together with their three contraries, the shameful, the harmful, and the painful.” Aristotle presents us here with three kinds of norm for judging choices (and avoidances), three standards of evaluation. If we are seeking a category of normativity, a kind of standard, that might parallel what we call “the moral,” and which might ground “moral reasons,” the only plausible candidate is to kalon, the noble. Pleasure and advantage are intelligible concepts to us, and indeed neither the Greek language nor the distance of time obscure the meaning of these concepts in such a way as to render them unintelligible to us. The pleasant is perhaps universal, in that there may be contingent facts of human nature which render certain objects pleasant for all human beings as such, but the pleasant is not intelligibly objective, for whether a particular pleasure does or does not give good reason on particular occasions is dependent upon subjective factors, including in particular the motivational tendencies of the acting subject. We are therefore left to attend to the standard we use to determine the propriety of a particular pleasure in order to determine what is our objective path forward, and hence we should look there for our moral reason, not to pleasure. The useful is perhaps objective, in that if human beings possess some objective end, then that which is useful as a means to this end will be useful objectively. Yet it is an assumption to think that human beings indeed possess an objective end which is moreover held universally by all human beings. Furthermore, even where the useful could attain to objectivity, its objectivity and universality would be derivative of the objectivity and universality of the end it serves. Hence, neither pleasure nor advantage are intelligibly “moral” in the requisite sense, for in both cases we must refer to the standards or ends

224. Aristotle, *Nicomachean Ethics*, 1104b30-34. Aristotle uses the word “good” (agathon) to embrace all three categories, for “a good [is defined as] whatever is chosen for itself and that for the sake of which we choose something else…” *Rhetoric*, 1362a15-16; cf. *Nicomachean Ethics*, 1094a1-2. Leo Ward sets out many of the core questions and issues that must be addressed by any attempt to define criteria of moral norms in an Aristotelian context in “Aristotle on Criteria of Moral Good,” *The Review of Politics*, vol. 30, no. 4 (1968): 476-498.
to judge their propriety. Nor, of course, is the “good” – *agathon* – intelligibly moral, for this is a general category that embraces both the pleasant and the advantageous. The question before us, then, is: Does *to kalon* as Aristotle uses it overlap conceptually with “the moral” in such a way as to provide us with a path toward addressing the question of morality in Aristotle, and thence in Association Theory?

The answer, I believe, is firmly “Yes.” In order to see why, let us consider what *to kalon* means. As used in Aristotelian normative theory, *to kalon* serves to mark out anything that is “physically beautiful…that which is beautiful in a moral sense…and that which is in a more general sense “fine”.”

Aristotle defines the concept as follows: “Now *kalon* describes whatever, through being chosen itself, is praiseworthy or whatever, through being good [*agathon*], is pleasant because it is good.” *To kalon* is choiceworthy in itself and is praised for the sense in which it is good. With respect to the sense in which *to kalon* is good, Aristotle’s answer is, essentially, that *to kalon* is the normative category tying together the entirety of his aretaic and political project. It is the term that captures the sense in which the good life is choiceworthy and held in the regard that it is, because it is the human natural end. Things that are *kalon*, unlike things that are pleasant or useful, are marked out as being always praiseworthy because these alone are the choiceworthy manners in which human nature is perfected. Hence, only things that are *kalon* are always valuable, good, and praiseworthy, or we might say, are

---

225. See the entry for *kalon* in the glossary of Aristotle, *Nicomachean Ethics*, 312.


227. Happiness or *eudaimonia* is the best, noblest, and most pleasant of ends, *ibid.*, 1099a25. What accords with nature, and thus happiness as the perfection of human nature, is noblest, *ibid.*, 1099b22-23, *Politics*, 1325b10. Truth, as the counterpart of nature, is also noble, *Nicomachean Ethics* 1127a29-30. Politics aims to make human beings noble, *ibid.*, 1099b30-31. Such nobility comes about through the possession of virtue (ethical and intellectual), which disposes us and guides us to feel, be motivated, think, act, and choose in the proper manner, *ibid.*, 1101b32-33, 1104b9-13, 1120a24; *Rhetoric* 1366b23-27.
always such as to give good reason to all human agents, in precisely the way that the pleasant and the useful are not. *To kalon* provides to agents *universal* and *objective* reason for action, for as expressing the manner in which perfected human nature is choiceworthy and praiseworthy, it applies to all human beings and reflects considerations independent of subjective human perceptive or preferential considerations. The *general* parallel between *to kalon* and what we call “moral” is marked. *To kalon*, like the moral, is a distinct species of normativity broadly construed. *To kalon* often conflicts with other normative considerations, and the most praiseworthy human will select *to kalon* in favor of these alternatives.\(^{228}\) The best things in human life are valued and praised as *kalon* above all other considerations. Therefore, *to kalon* constitutes a distinctive kind of practical consideration that offers a distinctive kind of reason for action, quite analogous to the general notion of a moral reason for action as against a reason for action based on considerations of pleasure or advantage.

Aristotle, then, does utilize a concept that *functionally* operates much as our notion of the moral does. Aristotelians, then, might approximate the concept “moral” via the concept “*to kalon*.” How might one think that the Aristotelian could get something like claim-rights and directed duties from this concept? The path to *moral* claim-rights would be, I suspect, to develop the account of justice as given in Section 1.6 in such a way as to demonstrate that some correlative and directional set of goods ought to be upheld as a matter of justice in all human dealings, as so many implications of or parts of a life that is *to kalon*. As related to such a life, particular claim-rights and directed duties of justice would be considered *kalon*, and hence moral, and as giving moral reason for action. However, such moral claim-rights and directed

\(^{228}\) The paragon of virtue, the “serious man” (*spoudaios*), is defined particularly as the one who sees the truth of the noble and the pleasant, *Nicomachean Ethics*, 1113a31-33. The prudent man (*phronimos*) – the man possessing the core virtue of prudence (*phronesis*) – is said to deliberate nobly with respect to the whole of his life, inclusive of its individual, domestic, and political dimensions, *ibid.*, 1140a25-29.
duties would be grounded within a thick structure of Aristotelian philosophy, and therefore, while certainly demonstrating that Aristotelianism, suitably adapted, can accommodate norms, one would have to buy in to a quite hefty Aristotelianism.

Alternatively, one might eschew this path and any substantive agreement with Aristotle’s conception of *to kalon* by developing an account of “moral community” on roughly Aristotelian grounds. This, like Association Theory, would utilize only a thin reading of Aristotelianism, which is far more acceptable to those who balk at the thicker Aristotelian concepts such as *to kalon* and perfectivism. To understand how Aristotelianism thinly construed might arrive at an account of moral community, let us first consider, roughly, what this concept means. As David Shoemaker remarks, “The consensus of most contemporary theorists is that what those outside the moral community lack is the capacity to understand, apply, and/or respond to moral reasons.” The moral community is that abstract collection of beings that can “understand, apply, and/or respond to moral reasons.” “Moral community” and “association,” therefore, denote two categorically different kinds of social arrangement. The former is a mere aggregation (*plêthos*) of beings possessing a certain capacity. The latter is a unity united by an end and function.

There is perhaps an analogue of moral community within Aristotle’s work. Insofar as the moral community embraces those who, to generalize, may function in accordance with (moral) reasons, we can note that Aristotle reserves this faculty to human beings insofar as human beings possess *logos*. Aristotle writes

> [M]an alone among the animals has speech [*logos*]…speech serves the reveal the advantageous and the harmful, and hence also the just and the unjust. For it is peculiar to man as compared to the other animals that he alone has a perception of

---

good and bad and just and unjust and the other things of this sort; and community in these things is what makes a household and a city.  

So-called moral community, as that abstraction embracing beings capable of acting for and responding to (moral) reasons, is therefore coextensive with the human species insofar as human beings uniquely possess rationality or logos. To say that human beings within this community can understand and act on moral reasons specifically would simply be to say that human beings, as possessing logos, or rationality, can understand and act on reasons for action which are both universal and objective. That this might be possible is defended, for instance, by Douglas Rasmussen and Douglas Den Uyl in a somewhat thick perfectivist sense, and by David Schmidtz in only the thinnest of Aristotelian senses, though the details of their theories are not of present concern.  

This account, by relying only on a thin conception of Aristotelianism, has the advantage of being compatible with my answer to the Liberalism Objection in the next section. How far it takes us from a theory that is intelligibly Aristotelian is difficult to say without any substantive engagement with the position. As noted at the outset of this section, my intent is merely to sketch a path, not to provide a substantive argument for an Aristotelian theory of moral norms. The former, to kalon-based account has the distinct advantage of providing a ready place to look for correlative and directional norms: justice theory. To what extent the Aristotelian might wish to pursue this path toward moral norms as opposed to the path of moral community seems to me to


be a matter of to what extent the Aristotelian regards the Rawlsian concern for overlapping consensus to be a pressing practical consideration. To that, I turn now.

5.6 LIBERALISM OBJECTION

Generally, the Liberalism Objection claims that the account of claim-rights provided here is incompatible with liberal political philosophy. In one respect, I have already met this objection: I have shown that Aristotelianism can accommodate both claim-rights and a particular set of claim-rights central to liberal political philosophy. Yet, there is an important strand of liberal political thought that must be addressed: the Rawlsian distinction between political and comprehensive defenses of (conceptions of) claim-rights. The Liberalism Objection addressed here asserts that Association Theory may provide a comprehensive argument for claim-rights, but it fails to provide a political argument and therefore cannot serve as the basis for the overlapping consensus necessary for a liberal democratic society.²³² It is important that Association Theory address the Liberalism Objection, for the contemporary political scene worldwide is largely liberal, and a sizable share of the academic discourse concerning this liberalism is Rawlsian or roughly Rawlsian. Hence, how and whether Association Theory can address the concerns of such Rawlsian liberalism is worthy of consideration.

Rawlsian liberalism (hereafter “liberalism”) is a political philosophy devised in order to (inter alia) solve a pressing political question: “How is it possible that there may exist over time

²³² It must be recognized that what I am here calling the “Liberalism Objection” arises strictly from within the Rawlsian tradition. The term “Liberalism” denotes a far broader range of doctrines than the Rawlsian. Hence, this section serves primarily to orient Association Theory in the context of a popular Rawlsianism, rather than to offer a necessary defense of Association Theory as a “liberal” theory. Association Theory is liberal – liberal because the central values and concepts of the broadly liberal tradition find a home within its scope. In what sense it is related to Rawlsian liberalism is the question before me now.
a stable and just society of free and equal citizens profoundly divided by reasonable though incompatible religious, philosophical, and moral doctrines?**233** Liberalism takes as a given the existence of diverse and irreconcilable views, and attempts to find a way for the people holding these views to live stably and safely, the principles of this stable and safe life being the principles of justice. This necessitates a core set of values and principles about which “overlapping consensus” is possible and upon which diversely situated agents can act and guide their social and political institutions with reference to. Rawls called this set of values and principles a “political” conception of justice, and contrasted it with a broader “comprehensive” conception. He remarked that “the idea is that in a constitutional democracy the public conception of justice should be, so far as possible, independent of controversial philosophical and religious doctrines... [T]he political conception of justice is to be political, not metaphysical.”234

I tangentially addressed this matter in Section 3.2, where I remarked that while moderate consensus is necessary for the achievement of a common good, it is unlikely that participants will attain a very high degree of agreement for a variety of reasons. The Rawlsian claim can be considered as a more refined version of this, defining which kinds of conceptions are and are not appropriate to seek moderate consensus concerning.

On the nature of the political conception, Rawls wrote

[T]he features of a political conception of justice are, first, that it is a moral conception worked out for a specific subject, namely, the basic structure of a constitutional democratic regime; second, that accepting the political conception does not presuppose accepting any particular comprehensive...doctrine; rather, the political conception presents itself as a reasonable conception for the basic structure alone; and third, that it is not formulated in terms of any comprehensive doctrine


but in terms of certain fundamental ideas viewed as latent in the public political culture of a democratic society.\(^{235}\)

By contrast,

A doctrine is fully comprehensive when it covers all recognized values and virtues within one rather precisely articulated scheme of thought; whereas a doctrine is only partially comprehensive when it comprises certain (but not all) nonpolitical values and virtues and is rather loosely articulated.\(^{236}\)

Generally, then, a conception of justice may be political or comprehensive. One might think that Association Theory offers a comprehensive theory because it is Aristotelian, and Aristotelianism is a paradigm of a comprehensive theory. Association Theory, if indeed a comprehensive theory, would be incompatible with the requirements of liberal democratic society as Rawls conceives it.

Given what Rawls was seen to say above, the required structure of liberal democratic society rests on three premises: (1) there is a diversity of reasonable comprehensive religious, philosophical, and moral doctrines; (2) the dominance of one comprehensive doctrine necessarily involves the exertion of state power against all other comprehensive doctrines; (3) an “enduring and secure” liberal democratic regime must be supported by at least a majority of “politically active citizens.”\(^{237}\) A comprehensive theory cannot support liberal democratic society, therefore, because “it cannot gain the support of reasonable citizens who affirm [contrary] reasonable comprehensive doctrines.”\(^{238}\) Majority support is required to ground liberal democratic society, and no comprehensive doctrine is sufficiently widespread (as a contingent matter) as to allow for


\(^{236}\) Rawls, *Political Liberalism*, 175.

\(^{237}\) Ibid., 36-38.

\(^{238}\) Ibid., 36.
this. Hence, even if Association Theory is an interesting philosophical doctrine, an intellectual exercise of sorts, it is necessarily impracticable from the liberal point of view if it is comprehensive.

There are a number of methods one might deploy to reply to this objection. One might, for instance, attempt to undermine the premise that the political and the comprehensive are intelligible alternatives. Communitarians have argued in this vein, noting either that the political conception itself presupposes veiled comprehensive premises, such as individualism, or that its implementation necessarily involves accepting certain comprehensive premises. Perhaps the clearest summation of the communitarian position that I have found, in this vein, is the following by MacIntyre:

The conclusion to which the argument so far has led is not only that it is out of the debates, conflicts, and enquiry of socially embodied, historically contingent traditions that contentions regarding practical rationality and justice are advanced, modified, abandoned, or replaced, but that there is no other way to engage in the formulation, elaboration, rational justification, and criticism of accounts of practical rationality and justice except from within some one particular tradition in conversation, cooperation, and conflict with those who inhabit the same tradition. There is no standing ground, no place for enquiry, no way to engage in the practices of advancing, evaluating, accepting, and rejecting reasoned argument apart from that which is provided by some particular tradition or other.239

In short, the nature of practical rationality and human reasoning generally renders the Rawlsian hope of a political rather than comprehensive conception of justice moot, for there is no universal and suitably non-comprehensive conception of practical rationality and human reasoning as such which might serve as the basis for such a political account.

Alternatively, one might reject the claim that a specific comprehensive doctrine cannot ground a political conception. One might do this by rejecting the second of the three features of

liberal democracy as conceived by Rawls, and thus denying the claim that the success of a 
comprehensive doctrine necessarily involves the imposition of itself through state power. For 
instance, one might hold that liberalism itself is a comprehensive doctrine, one which might 
suitably attain the results Rawls hopes for without relying upon state power.

I will not pursue either of these options here. Rather, I will argue that Association Theory 
can plausibly be interpreted as a political rather than comprehensive theory. To begin, I will first 
lay out in a clearer manner what are the core features of each conception of justice. For the sake 
of accuracy, I will retain in the following analyses Rawls’ description of these respective theories 
as moral. It must be allowed then that Association Theory does not take itself to be a moral 
theory. It does, however, take itself to be potentially moral when combined with a suitable 
conception of morality and moral reasons. Hence, though the Rawlsian objection does not apply 
immediately to Association Theory, it potentially applies, and is moreover immediately relevant 
insofar as Association Theory, though not a moral theory, already appears to be a comprehensive 
theory, and therefore one that we might expect to present a comprehensive moral theory when 
suitably embellished.

**Political Justice**

(1) A moral structure worked out for the basis of a liberal democratic institutional 
regime.

(2) This moral structure represents itself as reasonable for the basis of this 
institutional regime as such, not for any further value.

(3) This moral structure is developed not with reference to conceptions external to 
the institutional regime, but to conceptions within the public consciousness of 
those populating the institutional regime.

**Comprehensive Justice**

(1) A moral structure worked out with an eye to all values and virtues.
(2) This moral structure represents itself as rational absolutely.

(3) This moral structure is developed with reference to conceptions external to the institutional regime.

Association Theory appears to be comprehensive in the following way:

**Association Theory**

(1) A theory of claim-rights worked out with an eye to the values and virtues of a well-lived life.

(2) This theory of claim-rights represents itself as rational absolutely, viz. as efficient, not as fair and acceptable from the perspective of overlapping consensus.

(3) This theory of claim-rights is developed with reference to conceptions drawn from a broader account of perfectivist associational practice.

I will address each of these in turn, and argue that, contrary to appearances, Association Theory manifests all the relevant qualities of a political theory in this Rawlsian sense.

With respect to the first feature of a political conception, Association Theory is directed not to devising an account of claim-rights serving a good life as such, but rather to devising an account of claim-rights proper to the achievement of specific common goods. Granted, in Chapter 4 I argued that there are perfectivist reasons to care about directionality, and thereby about directional claim-rights and directed duties. However, I also argued that such norms can also be defended on empirical grounds. Hence, it seems to me plausible that the account of claim-rights developed here is political in the Rawlsian sense as making no pretension to developing norms for any other purpose than the structure and activities proper to a functional assemblage of human beings aiming at common goods. This set of norms can be defended on comprehensive grounds, but need not be.
With respect to the second feature of a political conception, we find something of a vague resemblance to Rawlsian political liberalism. Association Theory – and Aristotelianism – may be understood as aiming at a reasonable conclusion rather than at a conclusion absolutely rational. Certainly it is the case that Association Theory has incorporated what Rawls calls the rational process of norm creation. Claim-rights were devised with reference to the end-means relation arising from action for a common good. We may note, however, that the reasonable also entered the discussions at various points. Consider, for instance, that Association Theory does not take as an analytical presupposition a very high degree of agreement concerning conceptions of the common good due to empirical facts concerning the influences upon belief and value formation (3.2). This may be considered a reasonable constraint upon a possible account of political deliberative practice – a reasonable account is one which accommodates empirical facts concerning the extent of possible social consensus, the contours of an optimal means-end deduction notwithstanding. Hence, social discourse, as the practice of determining how associations ought to function and what norms they ought to utilize and authoritatively implement, embraces both the reasonable and the rational as Rawls conceives them.

Finally is the requirement that political justice must make reference to conceptions found within the public sphere, rather than to conceptions drawn from a particular comprehensive theory. In response, I wish to emphasize two points. First, Association Theory might be thought to rely upon comprehensive premises insofar as it relies upon an Aristotelian conception of associations and associational practice, as outlined in Chapter 2. Yet, I think this overstates the case. The associational analysis delineated in Chapter 2 may be Aristotelian, but it does not follow that it is comprehensive in the pejorative sense. The Aristotelian analysis is offered precisely on the basis of commonly held opinions – endoxa – and empirical evidence, which may
be considered analogous to the public sphere of ideas utilized by Rawls. The Aristotelian analysis I have provided is intuitive and demonstrable, not doctrinaire and metaphysical. Second, of the four principles of Aristotelian social analysis that I set out, as derived from Miller, the correctly termed comprehensive proposition that human ends are (or ought to be) perfectivist was explicitly set aside. The argument for Association Theory’s account of claim-rights was explicitly made without reliance upon this comprehensive premise.

In sum, Association Theory may be conceived roughly as political in Rawls’ sense. Hence,

**Association Theory***

(1) A theory of claim-rights worked out to devise an account of claim-rights proper to the achievement of common goods.

(2) This theory of claim-rights represents itself as reasonable and rational on the basis of the broad requirements of the associational achievement of a particular common good.

(3) This theory of claim-rights is developed not with reference to conceptions external to the association, but to conceptions within the public consciousness of those populating the association.

In (1), Association Theory pertains to the norms and structures of particular associations and particular common goods. In (2), Association Theory embraces both the reasonable and rational. In (3), Association Theory utilizes analyses and conceptions accessible from within the associational practice of participants, arising from their practical involvement with and intellectual reflection on their common goal and practice. Association Theory, therefore, may be considering to be political in the Rawlsian sense.
5.7 NON-ASSOCIATIONAL CLAIM-RIGHTS

Association Theory holds that claim-rights may be accounted for with reference to the normativity emerging within associational practice. However, aren’t there many claim-rights that depend, not on associational participation, but on non-associational factors? Indeed, isn’t the dependence of claim-rights on non-associational factors, e.g. on one’s individual identity, a cornerstone of modernity? I will address this concern in this section in a number of steps.

First, we must note that I am speaking here of claim-rights. Association Theory has had nothing to say about other kinds of right. Hence, we must carefully mark off the present concern from the broader question of locating rights other than claim-rights in non-associational contexts. In particular, human rights and many traditional natural rights must be marked off. Many human rights are merely interest (or welfare) rights. Recall Finnis’ argument in Section 1.5 that much of the content of the UN’s Declaration is constituted by interest rights with no clear claimable status, that it is a manifesto of various components of human welfare. Interests rights need not be claimable, and if they are to be claimable they must be conjoined with a suitable claim to compose a composite claim-right. Therefore, there is nothing to stop (some) interests becoming claimable through the mechanism of social discourse, for instance. An association might legislate norms and their related secondary claim-rights specifying interests of members that must be upheld, such as health interests or education interests.

Many human rights are claimable, however. For instance, it seems that the right to nationality imposes a duty on national institutions to respect the claims of those without nationality. This seems to pose a problem for Association Theory. Yet, on reflection, I do not think this particular case need be considered a concern. For note that these rights are developed
and legislated as claim-rights by an associational partnership: the UN. It is plausibly in virtue of the social-constructive determination of the UN that the mere interest in nationality comes to possess the force of a claim, in virtue of the obligations nations take upon themselves to establish themselves as members of the UN through treaty and to accord to the UN certain social discursive power and authority. Granted, the agents of the UN are national governments rather than individual agents, yet the structure of the argument remains. This speaks, indeed, to the flexibility of the associational argument: it can accommodate cases of institutional agents partnering together to achieve particular common goods.

In addition to human rights, natural rights are a prominent case of non-associational rights. Are there claim-rights adhering to individuals in virtue of their nature, apart from any associational membership? Consider Locke. For Locke, rights are those freedoms agents possess within the scope of the natural law. Where the natural law does not specify duties, these agents are free. Agents, therefore, possess a set of duties and derivative freedoms in consequence of natural law. Agents may claim such freedoms of other agents and other agents possess a distinct duty to respect these freedoms. Hence, it can at least be said that within the Lockean scheme there is a system of correlative claims and duties. Furthermore, it might plausibly be argued that God’s imposition of these duties and claims upon agents involves these agents in a system of directional or proto-directional norms. Yet, whichever the case is, these norms are not derived from associational factors.

One need not retire to natural rights theories to find examples of non-associational claim-rights. There are a host of rights which are plausibly claim-rights which are plausibly derived from no associational cause. For instance, throughout this thesis I have cited the example of Jack

and Jill and Jack’s property. I have argued that property rights pervasively depend in actual practice upon legislation by some suitable associational body, such as a government legislature. Yet, property rights are often regarded as a ubiquitous moral right, and I permitted as such on several occasions. Hence, perhaps Jack can claim his property right regardless of his associational relationship with Jill.

It is plausible that there are non-associational claim-rights. I have argued that while at least some of these – some human rights – can be explained with reference to previously unnoticed associational factors, others – plausibly natural and moral rights – cannot be so explained. In the former case, trade, for instance, involves mutual legislation of norms on the basis of common goods. Aristotle himself argues this, as was noted in Section 2.3. That this is often implicit due to the cultural diffusion of such norms, which obscures the process by which they come to be, does not undermine the point. Mutual demanding and duty is implicit or latent within the trading partnerships. Trade is a common good providing for the mutual benefit of all trading partners, and determinate institutional structures and norms arise to facilitate this common good. Hence, even trade between an American service provider and a Senegalian oil producer plausibly falls within the scope of Association Theory: they trade, and thus engage in a social good. This requires mutual recognition of associational membership, the development of suitable norms, the apportionment of standing, and hence the distribution of claim-rights. This bottoms out not on individual goods, but rather on the common good they seek to promote in common: trade. Hence, claim-rights of trade may be analyzed with the principles of Association Theory.  

Further, one might account for certain categories of claim-rights in a less robust associational manner than that outlined in the arc of Chapters 2-4. For, as the argument of Section 2.6 demonstrated, the Aristotelian may account for claim-rights in a thin sense where agents merely share an aggregative common good. In such cases, though there may be normative basis for associational relationships and forms to come into existence, it may be the case that owing to the relative shortness of the existence of the common good, or its relative superficiality, agents do not form associational bonds or institutional structures. Consider, for instance, two individuals rushing through a supermarket to collect their respective goods. As one turns around a corner, he bumps into the other. Now, here, these agents plausibly share an aggregative common good: not to bump into one another, or more generally, not getting hurt. That they do not yet know one another need not be taken as a reason to doubt this, for it may be said that any agent has an aggregative good in common with other agents not to bump into each other in supermarkets. Given the existence of such a thin common good, agents may be taken to possess thin claims and duties with respect to one another – lacking directionality and authoritativeness certainly, but claims and correlative duties none the less. This is compatible with my account of Section 2.6, though involves the diminishment of my previous emphasis on associational bonds. It must be recalled that I opted for the term “association” precisely because it may be taken to apply in quite thin cases of interpersonal relationship. Hence, Association Theory might account for norms such as this by citing common goods simpliciter.

Yet, I think it implausible to think that all practices of claiming and correlative duties can be accounted for by reference to associational practice or common goods simpliciter. Take the

Aristotle holds exchange, including in the form of investment, as associational, pace his remarks following on the role that contract can play in establishing associations of the relevant sort – Simon, “Common Good and Common Action,” 208-209. Contrast Finley, who remarks “koinōnia is as integral to the analysis as the act of exchanging,” ibid. 8.
case of an individual in possession of a button. This button, if pressed, will wipe out a
civilization of aliens living in the Pleiades. Further, this will bring the individual a great deal of
pleasure. No retribution can be expected. We want to say that this individual has a duty not to
kill this civilization, that the aliens in question possess claim-rights that the individual not kill
them.

Association Theory cannot accommodate this objection, in any respect. Association
Theory has shown that claim-rights and directed duties in the thick sense may be derived from
associational practice, and that claims and duties in the thin sense may be derived from common
goods simpliciter. But such a situation as given in the example involves no intelligible
associational bonds or common goods. Yet, my comments in my discussion of a possible account
of moral claim-rights do point a way forward. There, I discussed the possibility of developing an
account of moral community on an Aristotelian foundation. Perhaps, therefore, relevant claim-
rights of an Aristotelian variety might be developed on this base. However, I will not argue to
that effect here, and will take it merely that this points a plausible and perhaps powerful path
forward.

5.8 CONCLUSION

This Chapter has addressed six salient objections to Association Theory. Each has been answered
or, where an answer is not forthcoming, the path toward an answer has been provided. As noted
at the outset, my intent in this chapter has been only to indicate the outlines of answers,
sometimes more robustly than others. In particular, the account of a moral elaboration of
Association Theory was cursory, and by implication my answer to the worry concerning non-associational claim-rights was cursory. These serve as plausible areas of further research.
CONCLUSION

In my Introduction, I stated that my question was to determine whether Aristotelian normative theory can and should account for claim-rights. I remarked that my answer would be yes, Aristotelian normative theory can account for claim-rights to a degree, and that yes, Aristotelian normative theory should account for claim-rights.

To make good on this, I defined two kinds of account of claim-rights that one might give: thin and thick (or robust). A thin account of claim-rights is one which explains and defends claim-rights merely as correlated with certain duties. A thick account of claim-rights is one which explains and defends claim-rights not only as correlated with certain duties, but also as standing in a directional relationship with these duties, where “directional” is understood not as a benign manner of speech, but rather as a meaningful normative concept.

In Chapter 2, I defended the proposition that Aristotelian normative theory can and should account for claim-rights in a thin sense. An Aristotelian account of an aggregative common good simpliciter explains how correlative normative standings can arise, and justifies such correlative standings insofar as they define certain shares of the common good due to associational members, and thereby direct associational members to act with respect to these shares. In short, such correlative standings of claim and duty orient associational members to what Aristotle calls associational members’ to dikaios, or just share, or entitlement.

In Chapter 3, I bolstered this thin account of claim-rights by developing an account of the deliberative practice of social discourse, which involves the normative power of specifying, generating, and legislating conceptions of the means to and content of the common good. Such
social discourse potentially possesses the authority to so specify, generate, and legislate because it requires for its success obedience on the part of those associational members who will be benefitted by its enactments in the fulfillment of its task, pending the fulfillment of suitable further conditions of possible authoritativeness as discussed in Chapter 5. I noted that social discourse should not be conflated with a centralized deliberative institution, such as a legislature, because it can in fact be highly decentralized and distributed among associational members. In sum, this social discursive practice explained how thin claim-rights of the sort defended in Chapter 2 might become (defeasibly) authoritative insofar as they are products of this practice, and how we might understand claim-rights as involving a normative power – social discourse might distribute to claim-right holders a measure of power over other associational agents, as when a legal system recognizes certain privileges of property holders to decide how and whether others may use their property.

Chapter 3 also served to explain, though not defend, claim-rights in the thick sense. I argued that not only can social discourse yield (defeasibly) authoritative norms, but it may also yield directional norms, and indeed correlatively directional norms. Social discourse involves the power to decide not only which norms obtain in an association, but also how or in what manner those norms obtain. This extends to deciding whether or not norms are held by associational agents against other associational agents. This argument explains how directionality might become attached to a claim-right, and thus how an Aristotelian might account for thick claim-rights (and correlative directed duties). I argued that directionality plausibly fulfills the functions delineated by Rowan Cruft, that is, marking sui generis directional wronging, directional recompense, and directed duties.
This did not yet explain why an Aristotelian should care about claim-rights so-conceived. In Chapter 4, I provided an empirical and a normative argument to answer this question.

Empirically, directionality likely increases associational agents’ “investment” in the normative structure of their association and in particular in their compliance with that normative structure. Normatively, directionality furthers the achievement by associational agents of their aggregative share of the common good as a perfectivist element in their broader good life through its promotion of the eudaimonic goods of self-direction, self-help, and self-protection. Taking these arguments together, the Aristotelian was found to have reason not only to account for claim-rights thinly construed, but also thickly construed. Chapter 4 then set forth a defense of three liberal claim-rights in order to demonstrate that Association Theory can defend the kinds of claim-rights that interest rights theorists working in the liberal tradition. In Chapter 5, I canvassed a series of salient objections to Association Theory that had each been anticipated in various ways throughout the preceding chapters.

Hence, Association Theory has explained how the Aristotelian can account for claim-rights thinly and thickly construed, and why he or she should do so. For those who still have doubts regarding the nature and value of claim-rights in a thick sense, the argument for the thin conception of claim-rights ought to serve as an indication that Aristotelianism can, with some tweaking, speak to contemporary concerns in rights theory.

I noted that I would defend Association Theory’s capacity to defend claim-rights (of either a thin or thick sense) “to a degree.” I have not provided a non-associational argument for claim-rights in this thesis, and for many this will seem to be a significant drawback of this theory. I have done this for two reasons. First, because it seems to me that the Aristotelian case for claim-rights can be made more effectively by leveraging the two intuitions mentioned at the
start of Chapter 2, that claim-rights are valuable at least partly for their social impact and that claim-rights are in some sense the product of social constructive acts. Setting these two intuitions aside, the second reason to so-defend claim-rights is what I take to be the relative limitation of Aristotelian theory in the area of defining and developing non-associational norms that might bind human agents together in the requisite sense. It is simply the case that Aristotelian theory as it has survived expresses and defends interpersonal obligations and standings primarily in terms of associational relationships. Hence, leveraging such associational relationships offers a path of least resistance to an Aristotelian account of claim-rights. Yet, work might be done that could bolster the non-associational Aristotelian norms that ought to govern human interpersonal interactions, and it seems to me that developing some of the lessons of this thesis on this alternative path may be a fruitful next step, and thus eliminate the “to a degree” qualification.
BIBLIOGRAPHY


Shoemaker, David. “Moral Address, Moral Responsibility, and the Boundaries of the Moral


