

This article was downloaded by: [University College Cork]

On: 11 December 2008

Access details: Access Details: [subscription number 785045793]

Publisher Routledge

Informa Ltd Registered in England and Wales Registered Number: 1072954 Registered office: Mortimer House, 37-41 Mortimer Street, London W1T 3JH, UK



Journal of Human Rights

Publication details, including instructions for authors and subscription information:

<http://www.informaworld.com/smpp/title~content=t713431618>

The Truth About Rights

Vittorio Bufacchi ^a

^a Department of Philosophy, University College Cork, Ireland

Online Publication Date: 01 October 2008

To cite this Article Bufacchi, Vittorio(2008)'The Truth About Rights',Journal of Human Rights,7:4,311 — 326

To link to this Article: DOI: 10.1080/14754830802476787

URL: <http://dx.doi.org/10.1080/14754830802476787>

PLEASE SCROLL DOWN FOR ARTICLE

Full terms and conditions of use: <http://www.informaworld.com/terms-and-conditions-of-access.pdf>

This article may be used for research, teaching and private study purposes. Any substantial or systematic reproduction, re-distribution, re-selling, loan or sub-licensing, systematic supply or distribution in any form to anyone is expressly forbidden.

The publisher does not give any warranty express or implied or make any representation that the contents will be complete or accurate or up to date. The accuracy of any instructions, formulae and drug doses should be independently verified with primary sources. The publisher shall not be liable for any loss, actions, claims, proceedings, demand or costs or damages whatsoever or howsoever caused arising directly or indirectly in connection with or arising out of the use of this material.

The Truth About Rights

VITTORIO BUFACCHI

Arguably the biggest challenge facing theories of rights today comes from moral sceptics of all persuasions who are constantly singing the praises of anti-foundationalism, and in so-doing undermining the validity of human rights. This article has two principle aims: to show how different theories of rights tend to presuppose related theories of truth and to argue how Pragmatism, as a theory of truth and a theory of rights, can provide human rights with the foundations it desperately needs.

Parts I and II will show how the two major schools of thought on the nature of rights, the Interest (or Benefit) Theory of Rights, and the Choice (or Will) Theory of Rights, correlate with two dominant theories of truth: the Correspondence and the Coherence Theory of Truth. Part III will explore the Pragmatist conception of truth and how it correlated with a Pragmatist Theory of Rights. Finally, Part IV will argue that in terms of human rights, the choice we face is not between foundationalism and anti-foundationalism. There is a third-way that deserves closer analysis called “quasi-foundationalism.”

It is often said that truth is a central philosophical notion, perhaps *the* central one. Similarly, it can be said that rights are a central issue in political philosophy, perhaps *the* central issue.¹ To do justice to any one central problem in philosophy is extremely arduous; to deal with two central problems simultaneously verges on folly. This article has two principle aims: first, to show how different theories of rights tend to presuppose related theories of truth, which suggests that it may be possible to establish a potentially revealing parallel between theories of rights and theories of truth. Second, this article argues how Pragmatism, as a theory of truth and a theory of rights, can provide us with a defense of the foundations of human rights from the continuing attacks coming from moral sceptics of all persuasions who are constantly singing the praises of anti-foundationalism.

Establishing a correlation between theories of rights and theories of truth is a valuable exercise for at least one reason; namely, because this correlation challenges the increasingly popular radical anti-foundationalism in moral and political philosophy. Arguably the biggest problem that faces theories of rights today is defending its presumed foundationalism: we want to believe that human rights provide the foundation of moral and political thinking, but the nature of such foundations remains elusive. Where do human rights come from? Why should we assume that human rights exist at all? What special property do human rights have that makes them universal, inviolable, and inalienable? Because these questions are

Vittorio Bufacchi teaches moral and political philosophy in the Department of Philosophy at University College Cork, Ireland. He is the author of *Violence and Social Justice* (Palgrave, 2007).

The author is extremely grateful to Lilian O'Brien and Joel Walmsley for detailed comments on an earlier draft of this paper. He would also like to thank Richard Hiskes and two anonymous referees for their valuable and incisive critical responses.

Address correspondence to Vittorio Bufacchi, Department of Philosophy, University College Cork, Cork, Ireland. E-mail: v.bufacchi@ucc.ie

notoriously difficult to answer, many contemporary philosophers argue that foundationalist claims about human rights are doomed to fail, or as Alistair MacIntyre (1985: 69) famously proclaimed:

For the truth is plain: there are no such rights, and belief in them is one with belief in witches and in unicorns. The best reason for asserting so bluntly that there are no such rights is indeed of precisely the same type as the best reason which we possess for asserting that there are no witches and the best reason which we possess for asserting that there are no unicorns: every attempt to give good reasons for believing that there are such rights has failed.

An important precursor to MacIntyre's scepticism about moral rights was Jeremy Bentham (1987: 69), who famously dismissed the idea of moral rights as imaginary and therefore unintelligible:

Right . . . is the child of law: from *real* laws come *real* rights; but from *imaginary* laws, from laws of nature, fancied and invented by poets, rhetoricians, and dealers in moral and intellectual poisons, come *imaginary* rights, a bastard brood of monsters.²

Rebutting the anti-foundationalist challenge is undoubtedly a serious issue for any advocate of human rights, or as James Nickel (2007: 53) succinctly put it, "human rights need strong grounds." Establishing a correlation between theories of rights and theories of truth may go some way toward rebutting Bentham's and MacIntyre's dismissive attitudes toward rights.

This article is divided in four parts. The first two parts deal with the ontology of rights. There are two major schools of thought on the nature of rights: the Interest (or Benefit) Theory of Rights and the Choice (or Will) Theory of Rights. In Parts I and II below, it will be shown that these two theories of rights correlate with two dominant theories of truth, the Correspondence and the Coherence Theory of Truth, respectively.

Moving the discourse on rights to a higher metaphysical level helps us to appreciate the justificatory grounds behind the discourse of rights, even though establishing this correlation may not solve the foundationalist problem that faces theories of rights *tout court*, since the Interest and Choice Theories of Rights and the correlated Correspondence and Coherence Theories of Truth are not devoid of their own internal problems.

Thus, in Part III, a different approach to this correlation between theories of rights and truth will be put forward that starts from an alternative view about truth and works backwards to a specific theory of rights. This alternative is Pragmatism. By starting from a Pragmatist conception of truth, we can revise our understanding of rights along pragmatist lines. This exercise has one major advantage: while pragmatist conceptions of truth are not persuasive on a number of different levels, a Pragmatist Theory of Rights is a serious contender as a foundationalist (or as, I shall call it, quasi-foundationalist) account of rights, especially because it is not susceptible to some of the problems that inflict the Interest and Choice Theories of Rights.³

In Part IV, the discussion will switch back to the anti-foundational challenge posed by the likes of Bentham and MacIntyre against theories of rights. Here it will be argued that contrary to what may appear by reading the literature, the choice we face is not between foundationalism and anti-foundationalism. There is, in fact, a third way that ought to be explored. I will call this quasi-foundationalism. This alternative approach, which is inspired by Simon

Blackburn's theory of quasi-realism, is compatible with pragmatism. Furthermore it has the advantage of retaining the belief in foundationalism without having to provide the sort of evidence as solid grounds for human rights that anti-foundationalists denounce as illusory.

I. Interests and Corresponding Facts

The Interest or Benefit Theory of right is arguably the dominant and best-known theory of rights. Therefore, it is perhaps not surprising to find that it correlates with what is arguably the most popular conception about truth; namely, the Correspondence Theory of Truth. Yet, before any attempt to establish a correlation between these two theories is undertaken, it will be necessary to give a brief account of both the Interest Theory of Rights and the Correspondence Theory of Truth.

The fundamental intuition behind the Interest Theory of Rights is that people have rights because they have certain basic interests that need to be protected or promoted; in other words, if you scratch a right you will find a basic interest lurking beneath the surface. This way of thinking about rights has found favor with many influential contemporary legal philosophers, including Neil MacCormick (1977: 192) who argued, "the essential features of rules which confer rights is that they have as their specific aim the protection or advancement of individual interests or goods," and Joseph Raz (1986: 166) who held that an individual, X, has a right "if and only if X can have rights, and other things being equal, an aspect of X's well-being (his interests) is a sufficient reason for holding some other person(s) to be under a duty."⁴

There are many variants of such a theory, but as Matthew Kramer (2000: 62) pointed out, virtually any doctrine classifiable as an Interest Theory of Rights would subscribe to the following two principles:

1. Necessary but insufficient for the actual holding of a right by a person X is that the right, when actual, preserves one or more of X's interests.
2. X's being competent and authorized to demand or waive the enforcement of a right is neither sufficient nor necessary for X to be endowed with that right.

It is worth elaborating briefly on certain key aspects of these two principles. Regarding the first point, the fact that X has certain interests makes it *necessary but insufficient* for X to hold a right because not every interest deserves to be protected or promoted. The fact that it is in my interest to be promoted at work does not give me a right to be promoted (although perhaps I have a right to be considered for promotion). In other words, the fact that I am not given a promotion does not automatically suggest that my rights have been infringed (as long as I was allowed to apply for promotion and my application was duly considered). It is the more substantive category of basic interests that informs the Interest Theory of Rights.⁵

Regarding the second point, X's being competent and authorized to demand or waive the enforcement of a right is neither *sufficient nor necessary* for X to be endowed with that right, because otherwise children and mentally incapacitated people would be stripped of their rights. The basic idea behind children's rights is that children's interests and welfare need to be protected and promoted, even if (indeed especially as) they are both factually and legally incompetent to choose between enforcing and waiving their claims against others.

Needless to say, those who subscribe to the Interest Theory of Rights still disagree on a number of issues regarding the nature of rights; for example, whether rights correlate to duties. Yet it is not the correlation between rights and duties that will be discussed here.⁶ Instead, it is another correlation between the nature of rights and the nature of truth that

will be the focus of our analysis. In other words, on the basis of the above account of the Interest Theory of Rights, it will be argued that the Interest Theory of Rights correlates with a specific theory of truth; namely, the Correspondence Theory of Truth.

The idea of truth can be analyzed in terms of a relationship between a truth-bearer (some item to which the predicate “true” is attributed) and a truth-maker (some other item which makes true the first item). According to the most common and influential account of truth, the truth-bearers relate to the truth-makers in a specific way, which is captured by a correspondence between our thoughts (propositions, judgements, and beliefs), and reality (facts or a state of affairs). In its most basic form, the Correspondence Theory of Truth can be expressed in the following terms.

X is true if and only if X corresponds to the facts.

The Correspondence Theory of Truth reflects a realist conception to the extent that the truth-maker (what our judgements and beliefs correspond with) is distinct from our judgements and beliefs. That is to say, the Correspondence Theory of Truth assumes that there is a world that is independent of our thoughts. It is this commitment to realism that is what is intuitively most attractive about the Correspondence Theory of Truth and what makes it most problematic. The appeal comes from the objectivity of facts independent of our thoughts that underpin our propositions, judgements, and beliefs, and removing truth from the clutches of relativism and nihilism. Yet it is the vary nature of these facts that remains most elusive since any attempt to define such facts independently of our true statements runs the risk of embarking on an infinite regress.

As in the case of the Interest Theory of Rights, there are many aspects of the Correspondence Theory of Truth that will not be discussed here.⁷ Instead, it is to the direct parallel between these two theories that requires closer inspection. The Interest Theory of Rights shares with the Correspondence Theory of Rights a commitment to realism. In fact, the correlation between these two theories is made possible by their respective realist outlooks. Those who defend the Interest Theory of Rights speak of interests in the same way that those who champion the Correspondence Theory of Truth speak of facts. The right-bearer becomes the truth-bearer, while the concept of interest becomes the truth-maker; that is to say, the fact that people have basic interests underpins their rights. The category of interests in the Interest Theory of Rights is considered to be an objective criterion, just as facts are considered objective entities in the Correspondence Theory of Truth.

Although it is being suggested here that there is a correlation between the Interest Theory of Rights and the Correspondence Theory of Truth, these two sets of theories do not enjoy an exclusive relationship. There are at least two other theories of rights that can be correlated with the Correspondence Theory of Rights: Utilitarian Theory of Rights and Natural Rights theories. The former finds in Richard Hare (1981) its strongest advocate, while the latter is skilfully defended by John Finnis (1982).⁸ But we can overlook those other theories of right, because for the purposes of this article our only concern will be on the way the Correspondence Theory of Truth provides the Interest Theory of Rights with a credible meta-ethical foundation.

That interests in the Interest Theory of Rights are designated the status of objective facts can be seen more clearly by looking at the literature on the closely related concept of well-being. It is both necessary and beneficial to switch our attention from interests to well-being partly because the concept of interests has not received as much in-depth analysis in recent years as the concept of well-being, but also because well-being is a term that is often

used as synonymous to interests, as Joseph Raz's definition of rights previously mentioned clearly indicates.⁹ In the last analysis, our most basic interest is to promote our well-being.

The idea that well-being represents an objective criterion has now become orthodox. Joseph Raz (1994: 6) defined well-being in terms of the whole-hearted and successful pursuit of valuable activities, in which activity is the key to well-being: "It is an objectivist account of well-being, but it includes a strong subjectivist component." It is this objectivist account of well-being that informs Raz's (1994: 46) Interest Theory of Rights.

A person's interest will be understood to mean that which is good for him, i.e. that which makes his life intrinsically a better life, better not for others or for a cause but in itself as a human life. This familiar notion of personal well-being is the one that people use in deliberating about their own life, or aspects of it. The notion of the good life for a person is closely connected to the notion of the life that a person would (logically) desire for himself, be proud of or content with, etc. By and large it consists of the successful pursuit of and engagement in worthwhile pursuits, activities, and relationships, and in the absence of factors which impede such success. Once the notion of individual well-being is so understood we can remove the qualification and assert that rights are always to what is in the interest of the right-holder.

According to the Interest Theory of Rights, the category of interests and well-being are objective in the same way that substantive theories of welfare recognize certain things as intrinsically good or as D. Hausman and M.S. McPherson (1996: 81) explained, "Substantive views are 'objective' in the sense that what is good for people is not determined by whether people believe it is good for them." Rawls's index of primary social goods is arguably the best-known attempt to ground well-being on objective foundations.

Being independent of personal tastes and preferences, the concepts of well-being and interests stand to right-bearers as facts stand to truth-bearers. The Interest Theory of Rights works on the assumption that interest is an objective category that is independent of our preferences. Similarly, in the Correspondence Theory of Truth, facts are independent of our thoughts. It would appear that the Corresponding Theory of Truth is doing important work in the background of the Interest Theory of Rights. This seems to be the message we get from Ronald Dworkin (1996), who advocated an Interest Theory of Rights while defending a form of moral realism from the threat of "Archimedean scepticism," including post-modernism, anti-foundationalism, and neo-pragmatism.¹⁰ In Dworkin's work the correlation between the Interest Theory of Rights and the Correspondence Theory of Truth is starkly palpable.

II. Choice and Coherence

The Interest Theory of Rights may be the most popular theory of rights, but as its detractors are quick to point out, it also has serious defects that cannot be ignored.¹¹ Perhaps the most damaging aspect of the Interest Theory of Rights regards the notion of conflicting rights (and conflicting duties): if there are conflicts of interests and rights are meant to protect and promote our interests then inevitably there will also be conflicts between rights. For example, it may be in the interest of a person to have a right to privacy, but it may also be in the interest of another person to have a right to freedom of press. These two interests and the corresponding rights and duties may be in direct conflict, which points to a fundamental contradiction at the heart of the Interest Theory of Rights.¹²

Concerns of this nature have led some philosophers to look for an alternative to the Interest Theory of Rights. The strongest contender, which can be extrapolated from the works of Jeremy Bentham and H.L.A. Hart, is the Choice or Will Theory of Rights. Roughly stated, the Choice Theory of Rights maintains that a rights-holder is invested with the freedom to make choices. What is important to emphasize here is that the reason why people are invested by rights is not necessarily because it is in their interest to have the freedom to have choices, although that may well be the case. Such interest does not justify the right itself. Instead, to have a right is to have control over one's situation and to be in a position to make a choice about the fulfilment of someone else's duty. In other words, someone has a right when and only when someone else has a duty and the right-holder can discharge the other person from this duty.

There are numerous variants of the Choice Theory of Rights, but once again as Kramer (2000: 62) pointed out, all or most of them subscribe to the following three principles.

1. Sufficient and necessary for X's holding of a right is that X is competent and authorized to demand or waive the enforcement of the right.
2. X's holding of a right does not necessarily involve the protection of one or more of X's interests.
3. A right's potential to protect one or more of X's interests is not sufficient per se for X's actual possession of that right.

The Choice Theory of Rights deals primarily with two different but related types of right: the right to self-ownership and contractual rights. The former protects a basic space of freedom that must not be subjected to interference. As Hillel Steiner (2000: 238) pointed out, rights perform the task of demarcating domains of freedom; in other words, rights amount to "normative allocations of freedom." While a predilection for the negative conception of freedom in general and the principle of self-ownership in particular is behind much of what the Choice Theory of Rights stands for, this aspect of the theory will not be pursued here.¹³ Suffice it to say that the freedom granted to us by the right to self-ownership includes the freedom to be a party to an agreement with all the contractual rights and duties that this involves.

Contractual rights constitute the majority of our legal rights. The law of contract is a social institution based on consent and agreement. In order for a contract to be valid, certain conditions must be met, including the fact that the parties must act voluntarily, they must have full knowledge of the terms of agreement, and they must have the capacity for autonomous decision-making. Whenever these conditions are met and an agreement between the contracting parties is reached, the relationship between the contracting parties changes because they have now acquired certain rights and certain duties vis-à-vis one another. For example, if we agree that I should give you my car in exchange for \$2000, the moment I take your money I'm automatically under a duty to give you my car.

In the above example, the Choice Theory of Rights says that you have a right to the extent that you have the power to demand or waive the enforcement of the agreement. This has nothing to do with your interests but has everything to do with our agreement. The same would hold if I were selling you heroin instead of a car. The point being that our contractual rights are not based on an objective criterion of interest or well-being; instead they are grounded on the actions of other persons operating under the social institution of agreement and contract-making. This suggests that the Choice Theory of Right does not reflect a moral realist position. Unlike the Interest Theory of Rights, the Choice Theory of Rights does not correlate with the Correspondence Theory of Truth. Instead, it correlates with the Coherence Theory of Truth.

Perhaps the easiest way to capture the distinctive feature of the Coherence Theory of Truth is by comparing it with the Correspondence Theory of Truth. In Part I it was suggested that the Correspondence Theory of Truth is based on a particular relationship between a truth-bearer and a truth-maker. The Coherence Theory of Truth in contrast accounts for the truth of a proposition exclusively in terms of the relationship between truth-bearers. As Pascal Engel (2002: 26) explained, “A thought, belief, or statement is true if and only if it appropriately belongs to a coherent set of propositions, beliefs and statements.” In other words, the idea of truth-makers as prior and independent of truth-bearers falls out of the equation.

X is true if and only if X appropriately belongs to a coherent set S.

There is a deep-seated misunderstanding about the Coherence Theory of Truth that needs to be cleared. The literature suggests that there is a tendency to equate the Correspondence Theory of Truth with a defense of objectivity and the Coherence Theory of Truth with subjectivity, but this is simply wrong. The Coherence Theory of Truth stands up for objectivity against subjectivity, although in a different way, compared with the Correspondence Theory of Truth. To adopt Susan Hurley’s (1989: 13–14) terminology, we can say that the Correspondence Theory of Truth endorses centralism whereas the Coherence Theory of Truth endorses non-centralism: “The crucial difference between centralism and non-centralism, then, is over the priority and independence of the general: whereas the centralist takes the general evaluative concepts to be prior to and independent of familiar specific reason-giving concepts, and explains the reason-giving status of the latter in terms of the general concepts, the non-centralist rejects this claim of priority and independence and as a result must give an account of the conceptual relationships between familiar reason-giving concepts and the general concepts.”

The Coherence Theory of Truth has its well-known problems, including some ambiguity surrounding the notion of coherence, as well as knowing exactly with what a true proposition is expected to cohere. Once again these issues will not be pursued here to focus on the correlation between the Choice Theory of Rights and the Coherence Theory of Truth. We have seen that according to the Coherence Theory of Truth a statement is true not because it corresponds with some external objective fact but because it coheres with a system of beliefs.¹⁴ It is therefore in the relationship between truth-bearers that the coherence is sought. Similarly, the Choice Theory of Rights is grounded on the relationship between rights-bearers.

Regarding contractual rights in particular, the Choice Theory of Rights suggests that what is behind the rights of any person is the actions of the parties taking part in a contract or agreement. For such actions to generate rights, or, in other words, for the outcome of any agreement to be binding, the contracting parties must first share a set of beliefs regarding their rights and obligations resulting from the contract. This suggests that there must be coherence between the set of beliefs of the right-bearers entering an agreement as well as the set of beliefs between the right-bearer and all those who are duty-bound to the right-bearer. The relationship between contracting parties in the Choice Theory of Rights echoes the relationship between truth-bearers in the Coherence Theory of Truth. The contracting parties are truth-bearers and their rights and duties are the result of the way the set of beliefs of one coheres with the set of beliefs of the other truth-bearers.

III. Rights, Truth, and Pragmatism

Apart from being robust, the correspondence and the coherence theories of truth have one other important thing in common. They give an account of truth by setting out to answer the question: What is truth? But there is another way of approaching the question of truth that has the advantage of sidestepping the many metaphysical pitfalls encountered by the correspondence and coherence theories. This approach reflects on the point of truth by attempting to answer the question: Why truth? This is of course the Pragmatist Approach to Truth.¹⁵

There are many varieties of Pragmatism. In this article, I will endorse a specific interpretation of Pragmatism that is closer to the views of C.S. Peirce rather than William James. According to this reading of Pragmatism, a proposition is true if, as Cheryl Misak (2000: 1) wrote, it is “what is best for the community of inquirers to believe, ‘best’ here amounting to that which best fits with the evidence and argument.” Thus:

X is true if and only if X is the best belief we can offer.

This formulation of Pragmatism should not be confused with the idea often associated with Peirce’s work that a true belief is one which would be agreed on at the hypothetical end of inquiry. Cheryl Misak called this the “unhelpful formulation” of pragmatism. Instead, her account of Pragmatism suggests that a true belief is one on which inquiry could not improve, a belief that would forever meet the challenges of reasons, argument, and evidence.

It would be tempting but ultimately erroneous to associate the idea of what is best for the community of enquirers to believe with what is most useful for them to believe. The latter, of course, comes very close to capturing the widely criticized views of William James, whose pragmatist position is almost universally rejected, if not derided. Of course, William James is in part to be blamed for presenting pragmatism in this light, and his claim that truth is to be pursued precisely because it pays to pursue the truth did not help.¹⁶ James may have objected to being represented as defending the view that the truth of a belief is its mere “cash value,” emphasizing instead the fact that what is true may be influenced by what we want to believe to be the truth. Nevertheless, it is not surprising to find that his pragmatism came under attack from many angles, including from fellow pragmatists.¹⁷

First, James’s version of Pragmatism violates the law of non-contradiction, since it may be useful for one person to believe a proposition although it may not be useful for another person to believe the same proposition. For example, in the South in the United States, until recently, it may have been useful for white supremacists to believe that white people are superior to other races, although it was not useful for African-Americans to believe the proposition that white people are superior beings. Second, what is useful is not necessarily what is true. It may be useful for a husband to believe that his wife is faithful, even though that may not be factually true. Finally, there is a fundamental problem with the way pragmatism represents knowledge, since knowledge refers to what is true, not what is useful. Knowledge of weapons of mass destruction (WMD) in Iraq refers to the truth about WMD in Iraq, not the usefulness of believing that there are WMD in Iraq.

For all these reasons, to associate Pragmatism with mere utility does not enjoy much credence as a theory of truth. This is why it is best to think of truth in terms of what is best for the community of inquirers to believe, in which what is best cannot be reduced to what is merely useful for the community of inquirers to believe. As Misak (2000: 54–55) rightly stated, the central insight of Pragmatism is that there is a connection between truth and the practical business of inquiry. What is best for a community of inquirers is the best

that inquiry can do, and in the political domain, this practical business of inquiry takes the form of deliberation, agreement, debate, and reflection.

Understood in this light, Pragmatism has significant merits. One reason for taking Pragmatism seriously is that it can solve many of the problems that are presently dogging theories of rights. To be precise, I want to suggest that the Pragmatist Approach to Truth corresponds with a specific theory of rights—the Pragmatist Theory of Rights—that has some distinctive advantages when compared with the Interest and Choice Theories of Rights discussed in Parts I and II. The Pragmatist Theory of Rights would subscribe to the following two principles:

1. Necessary and sufficient for the actual holding of a right by a person X is that the right belongs to a set of rights which is best for the community of inquirers to believe and act upon.
2. The community of inquirers on rights is the political community deliberating, agreeing, debating, and reflecting on their evidence and experience.

These two principles find resonance with a number of contemporary authors writing on human rights, even though not all of them will be comfortable with having their views associated with Pragmatism. In what follows, by way of an illustration of what the Pragmatist Theory of Rights looks like in practice, the theories of three well-known and influential political theorists will come under some scrutiny: Susan Mendus, Michael Ignatieff, and Attracta Ingram.¹⁸ To reiterate, my intention is to borrow their theories simply for the purpose of shedding light on a theory of rights defined along pragmatist lines. Whether these authors are happy to endorse this Pragmatist Theory of Rights is for them to say, not for us to speculate. For the purposes of this article, it will be sufficient to show that it is possible to underwrite the two principles that I have identified with the Pragmatist Theory of Rights, which suggests that something along the Pragmatist Theory of Rights is germane, already on the agenda, and therefore deserving to be taken seriously.

Susan Mendus (1995: 11) recommended a rapprochement between theory and practice to counteract the current state of affairs whereby a great deal of contemporary political theory persists in rejecting as indefensible precisely those concepts which political practice endorses as indispensable: “What is needed, therefore, is a clearer understanding of what rights claims actually imply in practice, together with a clearer understanding of the proper role of political theory in informing political practice.” There is a pragmatist dimension to Mendus’s account of rights that is reflected in her suggestion that human rights should be approached from the perspective of the political world, not from a set of assumptions about the task of philosophy. That is to say, the philosophy should be derived from the politics and not the other way around.

We may do better if we begin not with an account of how human rights may be justified, but rather with an account of what we stand to lose both politically and philosophically if we renounce the language of human rights. We should begin, not with a theoretical anxiety about the nature and origin of Rights, but rather with a political question about what protection rights afford us. Additionally, this strategy of beginning with the political itself makes a statement about what political theory can and should aspire to. (Mendus 1995: 17)

This begs the question, what exactly do we stand to lose if we give up on human rights? What exactly do rights protect us from? Mendus’s (1995: 23) answer is that rights protect us from evil. In fact, the political impetus for human rights comes from the recognition of

evil as a permanent threat in the world: “Human rights are bulwarks against evil, borne of an acknowledgement of difference, not harbingers of goods consequent upon a commitment to similarity, whether created or discovered.”

We get a similar message from Michael Ignatieff’s *Human Rights as Politics and Idolatry*. Here, Ignatieff (2001: 4) made the case for a “political” conception of human rights. In his view, the argument for human rights should be made on pragmatic and historical grounds. Because they protect people’s ability to function as free agents, human rights principles are the most effective defence against the suffering caused by abuse and oppression: “Our grounds for believing that the spread of human rights represents moral progress, in other words, are pragmatic and historical. We know from historical experience that when human beings have defensible rights—when their agency as individuals is protected and enhanced—they are less likely to be abused and oppressed.”

Both Mendus and Ignatieff endorse a distinctively political view of rights that deliberately cuts through the foundational debate and replaces it with a pragmatic notion of human rights with which to bring about progressive political change. Mendus’s suggestion that we should think of human rights as protecting us from a great evil can be articulated along Pragmatist lines, in which “us” relates to what was earlier referred to as “the community of inquirers,” and the great “evil” is the annihilation of the community itself, which would bring our inquiry to a premature end. Similarly, Ignatieff’s reliance on “human experience” as a sufficient condition to justify human rights could also be reinterpreted along Pragmatist lines to mean the evidence and experience central to inquiry.

One could possibly fault Mendus and Ignatieff for embracing Pragmatism in the manner of William James, in which the emphasis is emphatically on the utility or cash value of rights. Perhaps the clearest account of what I have called a Pragmatist Theory of Rights among contemporary theorists of rights can be found in Attracta Ingram’s defense of a strictly political understanding of rights. Ingram suggested that a constructivist account of rights, characterized by a concern to find agreement with others, makes the metaphysical understanding of rights unnecessary. Furthermore, Ingram’s (1994: 201 emphasis added) constructivism shares the same vision, and often the same terminology, that can be found in Misak’s account of Pragmatism.

My present argument is not that there is a shared basis for a universalism of liberal rights. Instead it is the argument that the *shared practice* of human rights *evaluation* makes universalistic evaluations in terms of our theory of rights intelligible to others even if they disagree with us. This shared practice is then the basis for another—a practice of intersocietal *debate* about rights in which various theories are pitted against each other. This latter practice is an aspect of one of the central practices of our tradition—the practice of debating and *contesting* theories of justice.

Even though in the book from which the above quotation is taken Ingram never refers to Pragmatism, the language she uses is strikingly similar to Misak’s account of Pragmatism: while Ingram talks about “shared practice,” “evaluation,” “debate,” and “contestation,” Misak refers to “community of inquiry,” “deliberation,” “agreement,” “debate,” and “reflection”. In the final analysis, their common trust in deliberation and agreement suggests a close affinity of ideas, even if Ingram never refers to Pragmatism while Misak does not discuss rights.

So far I have argued that one major advantage of the a Pragmatist Theory of Rights over the Interest and Choice theories of rights is that the Pragmatist theory avoids getting stuck

in the metaphysical mire weighing on the interest and choice theories by disassociating itself from robust theories of truth, or to put it in Rawlsian terms, the Pragmatist slogan becomes “rights: political not metaphysical.” Having said that, this article started out by taking seriously the anti-foundationalist challenge posed by Bentham and MacIntyre on the nature, justification, and authority of human rights. In order to bring our analysis full circle, what remains is to show exactly what a Pragmatist Theory of Rights has to say about the critical question of foundationalism.

IV. Pragmatism as Quasi-Foundationalism

Those who reject foundationalism in epistemology often assume that the only alternative is anti-foundationalism. This is the case of Richard Rorty, for example. The same is true of those who embrace moral relativism by virtue of rejecting the claim that ethics can have sound foundations. This, of course, includes any attempt to ground the validity of human rights on epistemic foundations.¹⁹ The problem with moral relativists and anti-foundationalists is their inability to consider alternatives outside a strict binary framework.²⁰ This is where Pragmatism comes into its own; for one possible reading of Pragmatism is that this tradition carves out and occupies an intermediary space between foundationalism and anti-foundationalism.²¹

Pragmatism’s relationship to foundationalism is, as often the case with Pragmatism, complex and open to a myriad of interpretations. Pragmatists do not seem to be committed to the discovery of fixed foundations of knowledge, and yet Pragmatism is not anti-foundationalist either. Instead, Pragmatism (at least as I’m interpreting it here) suggests a way out of the dichotomy between foundationalism and anti-foundationalism. I’m going to refer to Pragmatism’s third way²² as quasi-foundationalism.

The term quasi-foundationalism emulates Simon Blackburn’s idea of quasi-realism, and deliberately so. In fact, notwithstanding some important differences, Blackburn’s idea of quasi-realism is the direct inspiration behind what I’m calling quasi-foundationalism. First of all, quasi-realism and quasi-foundationalism both capture ethical positions, the only difference being that whereas Blackburn is more interested in meta-ethical issues in general, quasi-foundationalism is specifically concerned only with human rights. Second, quasi-realism and quasi-foundationalism accept anti-realism and anti-foundationalism respectively as their starting points but refute relativism in favor of a position that for all means and purposes mimics a realist or foundationalist position. Thus, Blackburn (1993: 15) stated that a quasi-realist is “a person who, starting from a recognizably anti-realist-position, finds himself progressively able to mimic the intellectual practices supposedly definitive of realism.” Similarly, we could say that a quasi-foundationalism is a person who, starting from an anti-foundationalism position, finds herself progressively able to mimic the intellectual practices supposedly definitive of foundationalism.

Why adopt anti-foundationalism as its starting point? Because if anti-foundationalists are telling us that it is not possible to defend human rights on the basis of the existence of distinct states of affairs corresponding with our beliefs, then anti-foundationalists have a point. But this is at best a trivial point that does not pose any serious threats. As Blackburn said, there is no reason why we can’t continue to behave as though there were such facts. This stance takes us closer to foundationalism (or realism) than to anti-foundationalism (or anti-realism). In other words, just because we accept that the world is not independent of us and that human rights are indeed our construction, it does not follow that moral truths

don't exist. They do exist, just as human rights exist, and it is meaningful to say that it is wrong to refute human rights. This, in any way, is what quasi-foundationalism amounts to.

In a rare array in the field of human rights, Blackburn's views on quasi-realism are virtually identical to what I'm calling quasi-foundationalism. The key, according to Blackburn, is to distinguish TRUTH from truth. Blackburn (1998: 318) says that TRUTH is "an identifiable 'robust' property, belonging for example to physical or scientific descriptions of the world," whereas truth is a more deflationary theory of truth, which "simply acknowledges that in many areas we signal our own commitments, and our endorsements of those of others, using the word 'truth'." In terms of human right, this distinction between TRUTH and truth becomes crucial. As Blackburn (1998: 319) noted, "even if we sorted truth into TRUTH and truth and decided that there was no moral TRUTH, this would only mean that you don't walk into rights and duties, or that they can't be cubic or solid or seen under a microscope." Blackburn's views on the truth (but not the TRUTH) of human rights are fully endorsed by quasi-foundationalism. Like quasi-realism, quasi-foundationalism accepts anti-foundationalism as its starting point to the extent that human rights do not have the kind of robust properties we expect to find in the physical world. But beyond that, we behave as if human rights are real entities, to such an extent that we come to truly believe in human rights, their validity, and authority.

Where quasi-foundationalism departs from Blackburn's quasi-realism is concerning the role of Pragmatism. Blackburn seems reluctant to embrace Pragmatism, whereas I'm suggesting that quasi-foundationalism comes out from under the wing of Pragmatism. In a recent interview, when asked whether he saw himself as a "pragmatist" Blackburn replied as follows:

I'm certainly not a follower of William James, or Charles Sanders Peirce either although his position is difficult to identify. However I do have great sympathies with one strand of pragmatism, which is the view that our whole belief system, our whole system of concepts, is in some sense a Darwinian adaptation. So our thought-processes are devices for enabling us to survive in the world. Now if that makes one a pragmatist then I suppose I am a pragmatist but I think a better term would be a naturalist. I want a natural story of judgement and truth.²³

Contrary to Blackburn, I see quasi-foundationalism as indebted to Pragmatism not in the Darwinian sense that believing in human rights enables us to survive in the world, but in the sense suggested by Mendus, Ignatieff, and Ingram that from a political point of view we stand to lose more by refuting human rights than by endorsing human rights. It may come down to a question of survival, and often it does, but that's not necessarily the only instance.

Earlier I stated that Pragmatism represents a third way between foundationalism and anti-foundationalism; it is now opportune to explain what this means. The third way is an alternative to the dichotomy objectivity/subjectivity. The idea of Pragmatism as a third way finds in Jeffrey Stout and Cheryl Misak two authoritative allies. For his part Stout (2004: 274) sees Pragmatism as rejecting both an objectivist account of moral objectivity and subjectivity: "What I am calling pragmatism here is not to be interpreted as a form of subjectivism, but as a third way. It offers a *social* theory of moral objectivity—according to which both objective ethical norms and the subjectivity of those who apply them are made possible in part by social interactions among individuals." Instead, Stout wants to defend the idea of ethical norms as creatures of a social practice, an idea that he argues originates in Hegel but is reformulated in the tradition of American pragmatism. Stout explained that

the essence of such social practice rests is shared discourse, deliberation, and agreement, without degenerating into conventionalism or the tyranny of the majority. As Stout stated, while the conception of ethics as social practice does not go all the way, stopping short of the objectivist picture of norms as wholly independent of human activity, it still generates legitimate truth-claims.

Although she doesn't refer to it as a third way, Misak also seems to promote her own brand of pragmatism along similar lines, in which pragmatism is to be understood as stemming from an initial anti-foundationalist move, but follows it by showing that our judgements, theories, and principles are objectively justified and therefore likely to be true. Perhaps it is opportune to give Misak (2000: 2) the last word on the correct way to interpret the relationship between pragmatism and truth: "My suggestion is that truth is not at the mercy of the vagaries of individuals, as some suppose it to be, nor is it a matter of getting right the believer-independent world, as others suppose. It has, I shall argue, enough marks of the objective to be deserving of that label, suitably qualified. I shall try, that is, to present a view of truth and objectivity which undermines the usual all-or-nothing dichotomies and which gives us everything we could reasonably want."

V. Conclusion

It is said that truth is a central philosophical notion, perhaps *the* central one. Equally it is said that rights are a central issue in political morality, perhaps *the* central one. This article suggests that the foundational problems often associated with theories of rights can be solved by way of establishing a correlation between theories of right and theories of truth. Thus, the Interest Theory of Rights correlates with the Correspondence Theory of Truth, the Choice Theory of Rights correlates with the Coherence Theory of Truth, and the Pragmatist Approach to Truth correlates with the Pragmatist Theory of Rights. It is this last correlation that is arguably the most promising one in terms of easing the foundational problems inflicting contemporary theories of rights.

I have argued that pragmatism provides a quasi-foundationalist solution to our problems. Quasi-foundationalism accepts as its starting point the anti-foundationalist critique, but only to the extent that it is absurd and misguided to expect to find world-independent objects or artifacts corresponding with rights. Rights are human constructions, hence by definition not mind-independent, and we are as likely to get a bloody nose from bumping into a right as we are to trip on the Greenwich Prime Meridian line. But this does not make rights or the Greenwich Prime Meridian line any less real. Quasi-foundationalism invites us to behave as though there were such facts, yet without being wedded to metaphysical realism. This is as close to the truth about rights as we are ever likely to get, but it is more than sufficient to ground our beliefs in human rights.

Notes

1. For the view that truth is perhaps the central philosophical notion, see Pascal Engel (2002). On the central role of rights in moral philosophy see Ronald Dworkin (1978) and J.L. Mackie (1984).
2. For a sharp, critical analysis of MacIntyre and Bentham, see Attracta Ingram (1994: 202–208).
3. This article will deal for the most part with what may be called robust theories of truth, largely leaving aside the debates surrounding deflationary theories of truth, although something like a minimalist conception of truth will make an appearance in Part IV. This is not meant to deny the philosophical impact of the deflationary approach. In fact, Simon Blackburn and Keith Simmons (1999: 3) are probably right when they claimed that the issue of deflationism "is amongst the most

baffling and the most important in contemporary philosophy.” Yet as this article is fundamentally about suggesting ways to solve the foundational problems facing theories of rights, the issue of deflationism in truth is beyond the scope of this essay.

4. See also Joel Feinberg (1980).
5. For a powerful account of basic interests, see Henry Shue (1980).
6. See Peter Jones (1994); M.H. Kramer et al. (2000).
7. The literature has for the most part focused on two issues that pose problems for the Correspondence Theory of Truth: the notions of correspondence and facts. See Pascal Engel (2002); Simon Blackburn and Keith Simmons (1999).
8. Both theories have their critics; see for example David Lyons (1984) and Margaret Macdonald (1984). For a comprehensive analysis of the relationship between utility and rights, see R.G. Frey (Ed.) (1984). Richard Tuck (1979) provided an historically informed account of natural rights theories.
9. Thomas Scanlon (2003: 72) also suggested that the criteria of well-being that we actually employ in making moral judgements are objective, although it is interesting to note that he distinguished a person’s well-being from their personal interests: “By an *objective criterion* I mean a criterion that provides a basis for appraisal of a person’s level of well-being which is independent of that person’s tastes and interests, thus allowing for the possibility that such an appraisal could be correct even though it conflicted with the preferences of the individual in question.” This piece was first published in 1975, although Scanlon has since revised his views on well-being. For his current views on the concept of well-being, see T.M. Scanlon (1998).
10. According to Dworkin (1996: 88) their position is Archimedean because such sceptics “purport to stand outside a whole body of belief, and to judge it as a whole from premises or attitudes that owe nothing to it.” While Dworkin clearly believes in objective truth, he does not defend his position by providing arguments in favour of it. Instead he seems to be more comfortable attacking the position of his adversaries.
11. Hillel Steiner (2000) argued that the Interest Theory of Rights suffers from five shortcomings: (1) rights do not always match with and person who stands to benefit, as in the case of contractual third-party beneficiaries; (2) the Interest Theory of Rights comes out on the side of paternalism; (3) the Interest Theory of Rights is simply incapable of finding rights correlative to certain public-law duties; (4) the Interest Theory of Rights unavoidably relies on discretionary judicial interpretation; (5) the Interest Theory of Rights unavoidably embraces a conception of “the good,” hence, it takes an evaluative stance.
12. Hillel Steiner (2000: 271–274), argued that duty-conflicts entail contradictions, while Matthew Kramer (2000: 17–19), sustained that there may be a conflict without there necessarily being a contradiction. A number of different solutions have been put forward to solve the problem of conflicting rights. Richard Hare (1981) famously argued that a conflict of rights can be resolved only by reference to a principle more fundamental than rights themselves; namely the principle of utility. Jeremy Waldron (1989) suggested that rights must be weighted against one another and be allowed to override one another.
13. Following in the footsteps of Locke, it appears that according to Robert Nozick (1974), the right to self-ownership belongs to the realm of Natural Rights theories, something that his critics have been quick to point out; see for example Thomas Nagel (1982). For a defence of self-ownership and its relation to the Choice Theory of Rights, see Hillel Steiner (1994).
14. In recent years, David Wiggins, John McDowell, and Susan Hurley have endorsed coherence accounts, among others. There is a debate on whether Rawls’s idea of reflective equilibrium means that he also endorses some form of coherentism.
15. I will refer to it as an approach rather than a theory precisely to distinguish it from the aims and aspirations of the Correspondence and Coherence theories of truth.
16. As William James (1999: 61) stated: “Truth for us is simply a collective name for verification-processes, just as health, wealth, strength, etc., are names for other processes connected with life, and also pursued because it pays to pursue them.”
17. See for example Bernard Williams (1999).

18. Two other authors whose work would fall under this heading are Richard A. Falk (2000) and Beth J. Singer (1999).
19. As Jonathan Gorman (2003: 19) pointed out, "Questioning the independent eternal existence of human rights is just one way of expressing the more general philosophical issue of whether any moral ideals or standards can have an independent eternal existence."
20. Joseph Margolis (1986: 165) pointed out that Rorty's mistake was to assume too readily a full rejection of foundationalism: "Rorty correctly observes that the strongest contemporary currents of epistemology have undermined foundationalism; he wrongly concludes that the question of epistemic foundations has therefore lost its conceptual relevance."
21. See Sandra Rosenthal (1992).
22. I will return to this idea of Pragmatism as a third way.
23. "An Interview with Simon Blackburn," *Philosophy Now*, Issue 35, March–April 2002. Perhaps Blackburn is reluctant to embrace pragmatism because he associates this school of thought with relativism. At least, this is the way he depicts William James; see Simon Blackburn (2006: 49–52).

References

- BENTHAM, Jeremy. (1987) *Anarchical Fallacies*, in J. Waldron (ed.) *Nonsense upon Stilts: Bentham, Burke and Marx on the Rights of Man* (London: Methuen).
- BLACKBURN, Simon. (1993) *Essays in Quasi-Realism* (Oxford: Oxford University Press).
- BLACKBURN, Simon. (1998) *Ruling Passions* (Oxford: Oxford University Press).
- BLACKBURN, Simon. (2006) *Truth: A Guide for the Perplexed* (London: Penguin).
- BLACKBURN, Simon, and SIMMONS, Keith. (1999), Introduction, in S. Blackburn and K. Simmons (eds.) *Truth* (Oxford: Oxford University Press).
- DWORKIN, Ronald. (1978) *Taking Rights Seriously* (London: Duckworth).
- DWORKIN, Ronald. (1996) Objectivity and Truth: You'd Better Believe It, *Philosophy and Public Affairs*, Vol. 25, No. 2.
- ENGEL, Pascal. (2002) *Truth* (Chesham: Acumen).
- FALK, Richard A. (2000) *Human Rights Horizons* (London: Routledge).
- FEINBERG, Joel. (1980) *Rights, Justice, and the Bounds of Liberty* (Princeton: Princeton University Press).
- FINNIS, John. (1982) *Natural Law and Natural Rights* (Oxford: Oxford University Press).
- FREY, R. G. (ed.). (1984) *Utility and Rights* (Minnesota: Minnesota University Press).
- GORMAN, Jonathan. (2003) *Rights and Reason: An Introduction to the Philosophy of Rights* (Chesham: Acumen).
- HARE, Richard. (1981) *Moral Thinking* (Oxford: Oxford University Press).
- HAUSMAN, Daniel M., and McPHERSON, Michael S. (1996), *Economic Analysis and Moral Philosophy* (Cambridge: Cambridge University Press).
- HURLEY, Susan. (1989) *Natural Reasons* (Oxford: Oxford University Press).
- IGNATIEFF, Michael. (2001) *Human Rights as Politics and Idolatry* (Princeton: Princeton University Press).
- INGRAM, Attracta. (1994) *A Political Theory of Rights* (Oxford: Oxford University Press).
- JAMES, William. (1999) Pragmatism's Conception of Truth, in S. Blackburn and K. Simmons (eds.) *Truth* (Oxford: Oxford University Press).
- JONES, Peter. (1994) *Rights* (Basingstoke: Macmillan).
- KRAMER, Matthew. (2000) Rights without Trimmings, in M. H. Kramer, et al. (eds.) *A Debate Over Rights* (Oxford: Oxford University Press).
- KRAMER, M. H. et al. (2000) *A Debate Over Rights* (Oxford: Oxford University Press).
- LYONS, David. (1984) Utility and Rights, in J. Waldron (ed.) *Theories of Rights* (Oxford: Oxford University Press).

- MARGOLIS, Joseph. (1986) *Pragmatism Without Foundations: Reconciling Realism and Relativism* (Oxford: Blackwell).
- MacCORMICK, Neil. (1977) Rights in Legislation, in P.M.S. Hacker and J. Raz (eds.) *Law, Morality and Society* (Oxford: Oxford University Press).
- MACDONALD, Margaret. (1984) Natural Rights, in J. Waldron (ed.) *Theories of Rights* (Oxford: Oxford University Press).
- MACINTYRE, Alisdair. (1985) *After Virtue* (London: Duckworth).
- MACKIE, J.L. (1984) Can There Be a Right-Based Moral Theory? in J. Waldron (Ed.) *Theories of Rights* (Oxford: Oxford University Press).
- MENDUS, Susan. (1995) Human Rights in Political Theory, *Political Studies*, Vol. 43, Special Issue on Politics and Human Rights.
- MISAK, Cheryl. (2000) *Truth, Politics, Morality: Pragmatism and Deliberation* (London: Routledge).
- NAGEL, Thomas. (1982) Libertarianism without Foundations, in J. Paul (ed.) *Reading Nozick* (Oxford: Blackwell).
- NICKEL, James. (2007) *Making Sense of Human Rights* (Oxford: Blackwell).
- NOZICK, Robert. (1974) *Anarchy, State, Utopia* (Oxford: Blackwell).
- RAZ, Joseph. (1986) *The Morality of Freedom* (Oxford: Oxford University Press).
- RAZ, Joseph. (1994) *Ethics in the Public Domain* (Oxford: Oxford University Press).
- ROSENTHAL, Sandra. (1992) Pragmatism and the Reconstruction of Metaphysics: Toward a New Understanding of Foundations, in T. Rockmore and B. Singer (eds.) *Antifoundationalism Old and New* (Philadelphia: Temple University Press).
- SCANLON, T. M. (1998) *What We Owe to Each Other* (Cambridge, Mass.: Harvard University Press).
- SCANLON, T. M. (2003) Preference and Urgency, in T.M. Scanlon (ed.), *The Difficulty of Tolerance* (Cambridge: Cambridge University Press).
- SHUE, Henry. (1980), *Basic Rights* (Princeton: Princeton University Press).
- SINGER, Beth J. (1999) *Pragmatism, Rights and Democracy* (New York: Fordham University Press).
- STEINER, Hillel. (1994) *An Essay on Rights* (Oxford: Blackwell).
- STEINER, Hillel. (2000) Working Rights, in M.H. Kramer et al. (ed.) *A Debate Over Rights* (Oxford: Oxford University Press).
- STOUT, Jeffrey. (2004) *Democracy and Tradition* (Princeton: Princeton University Press).
- TUCK, Richard. (1979) *Natural Rights Theories* (Cambridge: Cambridge University Press).
- WALDRON, Jeremy. (1989) Rights in Conflict, *Ethics*, Vol. 99, No. 3.
- WILLIAMS, Bernard. (1999) William James's Conception of Truth, in S. Blackburn and K. Simmons (eds.) *Truth* (Oxford: Oxford University Press).