

Human Rights: Problems with the Foundationless Approach

1. Introduction

A recent line of thought in the human rights literature claims that we need not, even should not, attempt to ground human rights in substantive philosophical foundations. I will call this approach to human rights the foundationless one,¹ and focus on Michael Ignatieff and Richard Rorty as its representative members.² This foundationless camp supports the widespread implementation of rights such as those outlined in the U.N. Declaration, but believes that talk of the foundations of those rights is unhelpful and even counterproductive. While I agree with this camp that detailing and implementing a doctrine of universal human rights is a worthwhile moral and political project, I think that the Ignatieff and Rorty approaches fail to be the genuinely foundationless accounts they purport to be, and that their covert appeals to foundations are unsurprising, given that there are serious problems with any truly foundationless account of human rights. My argument in support of this claim will be made in several steps. After making some conceptual clarifications and reviewing the Ignatieff and Rorty accounts, I will argue that these are not the foundationless views they claim to be. I will then consider what a genuinely foundationless view of human rights would look like and argue that there is an important sense in which it is inadequate. Lastly, I will consider a few objections to my argument against foundationless accounts. This will lead to the conclusion that, contra Ignatieff and Rorty, a foundational account of human rights cannot be dismissed as outmoded, useless, or pernicious, and is a worthy and relevant project to

¹It could equally be called the “antifoundational” approach. I do not mean for anything to turn on this terminological difference.

²See Michael Ignatieff, “Human Rights as Idolatry,” in Ignatieff, *Human Rights as Politics and Idolatry*, ed. Amy Gutmann (Princeton: Princeton University Press, 2001), pp. 53-98; Richard Rorty, “Human Rights, Rationality, and Sentimentality,” in Stephen Shute and Susan Hurley (eds.), *On Human Rights* (New York: Basic Books, 1993), pp. 111-34. The later Rawls might also be understood to be in this camp, though his view is sufficiently complex to merit a separate treatment. See Rawls, “The Law of Peoples,” in Shute and Hurley (eds.), *On Human Rights*, pp. 41-82.

pursue.³

The argument, then, will be quite general. I will not be defending a particular list of rights, nor a particular foundation or set of foundations for those rights, nor even arguing in favor of why human rights are advantageous at all. The argument is a conditional one: if the concept of human rights has merit, and such rights are worth promoting, then those rights are best understood to be justified by reference to the sort of philosophical foundations that Ignatieff and Rorty wish to eschew. While the argument may appear esoteric to some who are concerned with the more hands-on elements of human rights work, I will try to show how the issues I discuss have important implications for the practical matter of rights implementation.

It is best to clarify at the outset what I mean by "human rights," because this understanding will play an important role in my critique of foundationless accounts. The need for clarification is made all the more apparent when we consider the fact that the varied uses to which the term "human rights" has been put in recent times has strained its conceptual coherence. By human rights I mean valid claims on others possessed by everyone, irrespective of such factors as government, geographical location, culture, or religion.⁴ The point to emphasize for present purposes is that human rights are *universal* human rights: they are rights held by everyone.⁵ This understanding of human rights as universal is the same as that employed by the most important political and legal documents concerning human rights, such as the U.N. Declaration itself. It is also convenient for our purposes, because it is the same understanding that Ignatieff and Rorty employ, and thus has the benefit of allowing for debate on their own terms.

³As such, my argument can be seen at least partly as an elaboration on a remark made by David A. Hollinger in a commentary on Ignatieff: "As we develop awareness, thanks partly to Ignatieff's writings here and elsewhere, of how frustrating human rights activities become, of how complex are the politics of human rights, of how truly difficult it is to get anything done right, the more we may need the confidence in the human rights endeavor that thick theories can provide." Hollinger, "Debates with the PTA and Others" in Ignatieff, *Human Rights*, pp. 117-26, esp. p. 125.

⁴My view of rights as valid claims follows that of Joel Feinberg, though little in this paper will hinge on this particular understanding of rights. See Feinberg, "The Nature and Value of Rights," *Journal of Value Inquiry* 4 (1970): 263-67.

⁵There is of course a further issue of who "everyone" is. Some candidate answers might be all persons, all humans, and all humans plus some animals, though the latter may require us to change the label "human rights" to a more species-neutral term, such as "universal moral rights." I think my argument would have force on any of these understandings of "universal." Ignatieff and Rorty both speak of "human beings" in general as the holders of human rights, and I am willing to adopt this scope here for the sake of consistency and simplicity. See Ignatieff, "Human Rights as Idolatry," p. 55; Rorty, "Human Rights, Rationality, and Sentimentality," p. 120.

There is admittedly a challenge to face concerning the claim that human rights are universal by definition. This challenge is that there are some rights that are often called human rights that appear not to apply to everyone because they purport to apply only to a special class of people. For example, women's rights apply only to women, and the rights of refugees only to refugees. Does the fact that such rights are often classified as human rights pose a threat to our understanding of the scope of human rights? I think it does not pose a serious one. The spirit of universality is still present in such rights, for women's rights are understood to apply to all women, and the rights of refugees to all refugees. Furthermore, the most plausible understanding of these special-class rights indicates that they are derived from rights that truly are held universally, such as a right to respect from others, for the source of their moral force would otherwise be mysterious. If this is so, then these special-class rights might be understood to enjoy the status of something like honorary human rights, since they are not universal in the strongest sense of being held by everyone, but are derivative of rights that are. Calling these rights "human rights" would then be at worst a slight indulgence, an indulgence that may be justified if the use of this label bestows upon these important rights the heuristic advantage of being taken more seriously.

A second conceptual issue to be clarified concerns our discussion of philosophical foundations. What exactly is to count as a foundation in the relevant sense? A brief analysis of the Ignatieff and Rorty accounts, combined with an observation of what they have in common, yields an answer sufficient for present purposes. Ignatieff claims that it is a mistake to view human rights as a secular religion, a creed, or a metaphysics.⁶ It is a mistake to ground human rights in claims about the innate dignity, intrinsic self-worth, or sacred nature of human beings.⁷ Indeed it is a mistake to ground human rights in any particular view of human nature, or any particular idea of the human good at all.⁸ Ignatieff thinks that there are several reasons why grounding human rights in such claims is doomed to failure. First, at least some of the claims are false when applied to all humans, for we know that, for example, some humans lack even the capacity to display dignity. Next, the claims are inherently contestable, or are based on inherently contestable claims, and trying to resolve the irresolvable is both a waste of time and a threat to our ability to compromise with each other.⁹ Finally, and perhaps most provocatively, Ignatieff suggests that the inflexibility and dogmatism displayed by a foundational approach makes for a dangerous parallel to the authoritari-

⁶See Ignatieff, "Human Rights as Idolatry," p. 53.

⁷Ibid., p. 54.

⁸Ibid., p. 55.

⁹Ibid., p. 54.

anism displayed by some of the very people human rights advocates most oppose (e.g., political dictators). As he says,

the belief that you possess unassailable grounds of faith and that God commands you to spread the faith have provided powerful justifications for torture, forced conversion, the condemnation of heresy, and the burning of heretics. *Foundational beliefs of all kinds have been a long-standing menace to the human rights of ordinary individuals.*¹⁰

The sum of Ignatieff's arguments seems to be that a foundational approach is not only useless but is in fact pernicious to the advancement of human rights because it is antithetical to the spirit of tolerance and compromise that underlies the very notion of human rights. Little wonder, then, that he is hostile to rights foundations.

Rorty agrees that human rights cannot be grounded in claims about human nature because he thinks that there simply is no such human nature aside from our malleability.¹¹ His support for this claim is that Darwin succeeded in showing us that humans contain no "special added ingredient" that we might take as morally significant, but are rather animals "clever enough to take charge of our own future evolution."¹² The persuasiveness of Darwin's writings, by increasing our awareness of the spectacular diversity of life and the evolutionary processes responsible for it, made us less inclined to speak of a common human nature, aside from the very malleability that makes evolution possible. Rorty thinks this is relevant to the grounding of human rights in the following way: if human rights are to be grounded in morally relevant transcultural facts, there must of course exist such facts. But there cannot be any such facts, because if there were they would be based upon human nature, which does not exist.¹³ So if we are to have a concept of human rights, we cannot base those rights upon morally relevant transcultural facts. Rorty tries to further support his claim that there are no morally relevant transcultural facts by appealing to pragmatist premises. He says that the causal efficacy of such facts to the project of promoting human rights is dubious anyway, and that on his pragmatist view, which sees causal efficacy as an important existential criterion, this counts as an argument that there probably are no such facts to be found. This latter argument, of course, depends on the acceptance of controversial pragmatist premises. But, in fairness, its rejection would still leave Rorty in a position of advancing

¹⁰Ibid., p. 86 (my emphasis).

¹¹See Rorty, "Human Rights, Rationality, and Sentimentality," pp. 115, 120-21. This does appear to raise the possibility that malleability could serve as the "special added ingredient" upon which at least some human rights could be based. But I will leave this possibility aside.

¹²Ibid., p. 120.

¹³Ibid., p. 116.

an argument worthy of consideration.

Now to the conceptual clarification related to these summaries. The label of “foundationless” to describe the views of Ignatieff and Rorty, and the indication that my own preference is for a foundational view, has raised the question of what exactly is meant by a foundation. What do the Ignatieff and Rorty accounts have in common, in the respect that they both wish to avoid the same issue or issues? I think it is clear from the above summaries that both thinkers wish to avoid appeals to morally relevant transcultural facts, and it is in just this respect that their accounts are foundationless. As we have seen, Rorty is explicit about this. For his part, Ignatieff wishes to avoid appeals to matters such as a shared dignity, a shared concept of the human good, a shared property of sacredness, and so on. It seems that all of these appeals would be, in one way or another, either appeals to morally relevant transcultural facts, or appeals to claims deriving from such facts. I will have more to say about the nature of a rights foundation later, as further elaboration becomes relevant. But for now, a human rights foundation can be understood to be a morally relevant fact whose authority is transcultural and from which human rights can be derived. With this in mind, we can turn to an evaluation of the Ignatieff and Rorty accounts.

2. The Ignatieff and Rorty Accounts: Not Truly Foundationless

Neither Ignatieff nor Rorty provide accounts of human rights that succeed in avoiding the kind of foundation I have characterized above. In their attempts to explain why the project of promoting human rights is worth undertaking, both make claims that can be fully explained, or justified, only by reference to the sort of foundation they explicitly warn us to avoid. Let us see in each case how this problem arises.

Begin with Ignatieff and consider the following passage, which is intended to set out his rationale for supporting human rights:

Such grounding as modern human rights requires, I would argue, is based on what history tells us: that human beings are at risk of their lives if they lack a basic measure of free agency; that agency itself requires protection through internationally agreed standards; that these standards should entitle individuals to oppose and resist unjust laws and orders within their own states; and, finally, that when all other remedies have been exhausted, these individuals have the right to appeal to other peoples, nations, and international organizations for assistance in defending their rights.¹⁴

Ignatieff has laid out a chain of valuable phenomena here, most of which are said to have value in virtue of leading to or preserving something else

¹⁴Ignatieff, “Human Rights as Idolatry,” p. 55.

(i.e., instrumental value). Thus the relevant internationally agreed standards are valuable because they are necessary to protect human agency, and human agency is valuable because only through its protection can we adequately protect human life. But why is human life valuable? Apparently not in virtue of any other good. It appears that, for Ignatieff, human life has essential value, not (or at least not merely) instrumental value.¹⁵ This is perhaps not a surprising claim for a human rights advocate to make, and indeed I have no quarrel with its substance. The difficulty, rather, comes in trying to reconcile this claim with Ignatieff's antifoundationalism. Its justification appears to require an appeal to just the sort of foundational claims to which Ignatieff is explicitly hostile, such as a concept of the human good that is sufficiently individualistic.¹⁶ It is difficult enough to establish that any human life is valuable, but the mystery increases incrementally if we read Ignatieff (as I think we should) as suggesting that *each* human life is worthy of protection, and even that each human life is *equally* worthy of protection. The first claim does not entail the second, nor does the second claim entail the third. An establishment of the third claim would surely require a foundational discussion of considerable complexity and depth. But, as I have said, even an establishment of the first claim requires some kind of foundational discussion of the sort Ignatieff explicitly dismisses and even denigrates. Nor can this problem be dismissed as unimportant, for the passage quoted above represents Ignatieff's most comprehensive attempt to justify his support of human rights.

It is admittedly difficult to make an airtight positive case for the claim that Ignatieff's contention about the value of human life requires the foundational discussion I have indicated, but this is perhaps not an insurmountable obstacle, because it is easier to show the inadequacies of foundationless attempts to justify it. First, consider the possibility that the claim that human life has essential value is intuitively obvious and requires no further justification. This move might be a non-starter for an antifoundationalist, because it appears to be suggesting that "human life has essential value" is a morally relevant transcultural fact, just one that is known intuitively.¹⁷ If so, then foundations cannot be evaded by such appeals to intuition. Some might think that the authority of the intuition

¹⁵I prefer the term "essential value" to the term "intrinsic value." It seems that the important consideration is whether or not the phenomenon in question could exist without being valuable, i.e., whether value is an essential property of it.

¹⁶Ignatieff seems to go some way toward conceding this point elsewhere in his piece, for example in the comment, "It remains true, therefore, that the core of the Universal Declaration is the moral individualism for which it is so much reproached by non-Western societies." Ignatieff, "Human Rights as Idolatry," p. 66.

¹⁷I thank an anonymous referee for pressing this point.

could derive not from the existence of any moral facts, but rather from the fact that the intuition is widely shared. But even if this were so, the intuition in question does not seem to be shared as widely as it would need to be. For if it were truly obvious that human lives have such value, it seems unlikely that human life would be disrespected to the extent that it currently is in the world. The very need for a right to life is suggestive of the lack of the widespread intuitive force of the claim that human lives are valuable, for such a right is a protection against the brutality of others. Admittedly, this leaves open the possibility that the intuition is widely recognized as true, but is not motivationally efficacious for some, perhaps due to the lack of a certain desire (on moral belief externalism), or perhaps due to some kind of irrationality (on moral belief internalism).¹⁸ But we will see later that Ignatieff and Rorty themselves doubt that this is so. They admit that many people in the world simply do not appear to hold the belief that human life is valuable, at least when the belief is applied to those outside their immediate circle of concern.

Though Ignatieff does not explicitly reply to the kind of objection I have raised, resources in his piece suggest at least two other possible responses. The first is contained in the passage I quoted above. Ignatieff, a historian by training, claims that the grounding required by human rights is based on “what history tells us.” Taken in conjunction with his comments against philosophical foundations, perhaps Ignatieff is trying to draw an important distinction between philosophy and history. He appears to be suggesting that there can be such a thing as a sufficient and distinctive historical justification of human rights that avoids appealing to philosophical foundations. If this is true, it would serve as an effective reply to the criticism I have leveled.

But it does not appear that Ignatieff’s distinction can do the work that he requires of it. To be sure, an examination of history can reveal many important facts that are relevant to our understanding of human rights and related issues, for example, who was subjected to cruelty, genocide, or humiliation, and under what circumstances. But of course the question also arises about what normative lessons we can learn from these facts. If we conceive of the study of history as including a discussion of these normative issues, then a “historical justification” of human rights might well be successful, but will overlap with, or include, the sort of foundational discussion to which Ignatieff has opposed himself, and will thus fail to serve as a viable alternative to it (e.g., “the murder of six million Jews by the Nazis was horrible *because each human life is valuable*”). If

¹⁸I take the terms “moral belief externalism” and “moral belief internalism” from Derek Parfit. See his “Reasons and Motivation,” *Proceedings of the Aristotelian Society* Supplementary Volume 71 (1997): 99-130.

we conceive of the study of history as merely an establishment of facts, and causal relations that connect those facts, then it seems that there cannot be any adequate (merely) historical justification of human rights, for the justification of a moral phenomenon like human rights is itself unavoidably normative in nature. As Ignatieff himself seems to realize, we must talk about, for example, not only the fact that six million Jews were killed in the Holocaust, but also why this was a bad thing. And even if our explanation for its badness involves a claim that sounds uncontroversial to many of us, such as the one that each human life is valuable, the justification of this claim will take us straight into foundational philosophical issues.

Another possible route of reply to our initial criticism is suggested by a later passage in Ignatieff. Near the end of his piece he claims that “the ground we share may actually be quite limited: not much more than the basic intuition that what is pain and humiliation for you is bound to be pain and humiliation for me.”¹⁹ If this intuition could serve as a sufficient grounding for human rights, it would constitute an adequate reply to our criticism. What conditions would have to be met if this alleged intuition is to serve as such a justification? First, the content of the intuition must connect closely with the content of human rights. Human rights must have something to do with addressing the issues of pain and humiliation. Second, the intuition must be held by everyone, or nearly everyone.²⁰ This condition arises because we are trying to ground human rights that are universal in nature, necessitating a grounding that has a similar scope. Third, the intuition must be thought by all of its holders to hold with respect to not just some of their fellow human beings, but to everyone, or nearly everyone. For example, it does little good to say that there is a human right to a fair trial if it is understood to hold only with respect to each right-holder’s family. Correspondingly, if we are to use Ignatieff’s intuition to ground human rights, it will not be sufficient to say that everyone holds the intuition if most people understand it to apply only to their own family or tribe. It must be an empirical fact that a Palestinian holds the intuition not only about a fellow Palestinian but also about a Jew. These three conditions appear to be jointly sufficient for establishing the validity of Ignatieff’s Golden Rule-style intuition as a basis for human rights, so it is useful to consider the extent to which the intuition can meet each condition in turn.

The intuition appears to meet the first condition adequately. Issues of pain and humiliation are clearly relevant to many of the rights most

¹⁹Ignatieff, “Human Rights as Idolatry,” p. 95.

²⁰Why is “nearly everyone” a possibility? Perhaps a story could be devised to show how some exceptions could exist. I give an example below with the psychopath.

commonly considered to be human rights, perhaps most obviously the right to life, and the right not to be tortured. Issues of pain and humiliation may not have as obvious a connection to some other rights often considered human rights, but perhaps the connection can be shown to exist less directly, or perhaps those rights could be grounded in some other way. The intuition also arguably goes some way toward meeting the second condition. Again, this condition is simply that everyone (or nearly everyone) *holds* the intuition in question, without yet considering the scope of persons with which the intuition is said to hold *with respect to*. The second condition is met if everyone holds the intuition about at least some persons, or even one person, and this is quite plausibly true. It would be difficult to find someone who did not hold the intuition about members of her own country, her own tribe, or at least her own friends or family. Admittedly, there may be problematic exceptions, for example masochists and psychopaths, but there may be ways of dealing with such cases. The masochist, for example, might not turn out to be an exception, because although he may not feel the intuition toward non-masochists, he may feel it toward (at least some of) his fellow masochists. The psychopath might be dismissed as a philosophically insignificant exception because he does not qualify as a moral agent. Perhaps other exceptions can be found, but I am willing to cautiously grant that Ignatieff's intuition meets the second condition.

It is the third condition that the intuition fails to meet, and it fails clearly. Again, this condition is that the intuition is not only held *by* everyone (or nearly everyone), but is also held *with respect to* everyone (or nearly everyone), and it is required because human rights are conceptually understood not only to be held by everyone, but to be held with respect to everyone. To put the matter another way, in the intuition "what is pain and humiliation for you is bound to be pain and humiliation for me," not only must the word "me" range over everyone, but the word "you" must also do so. Is it empirically true that the intuition is so understood? Both Ignatieff and Rorty admit that it is not. Thus we have Ignatieff stating:

the specific tendency we are seeking to counteract is that while we may be naturally disposed, by genetics and history, to care for those close to us—our children, our family, our immediate relations, and possibly those who share our ethnic or religious origins—we may be naturally indifferent to all others outside this circle.²¹

For his part, Rorty agrees, pointing out the fact that many people are actually hostile to those not within their circle of concern:

²¹Ignatieff, "Human Rights as Idolatry," p. 79.

the problem is the gallant and honorable Serb who sees Muslims as circumcised dogs. It is the brave soldier and good comrade who loves and is loved by his mates, but who thinks of women as dangerous, malevolent whores and bitches.²²

Many Palestinians clearly do not feel that the Golden Rule-style intuition they hold applies to Jews, and many Jews clearly feel the same toward Palestinians. So although Ignatieff's intuition arguably meets the first two conditions, it fails to meet the third. Since the three conditions are jointly, not independently, sufficient for the establishment of the intuition as a grounding for human rights, the intuition fails to provide such a grounding. It is difficult to see how a similar appeal to any other intuition could do a sufficient job of grounding human rights, because other intuitions seem prone to the same problems. It appears, then, that the replies I have generated by looking to resources present in Ignatieff's account have been unsatisfactory. The point stands that his account makes a covert appeal to foundations, and fails without that appeal.

The problem encountered by Rorty is broadly similar: his explanation of why the human rights project is worthwhile also involves the assertion of a crucial claim that can be justified only by an appeal to foundations. As we have seen, Rorty is explicitly hostile to rights foundations. He thinks that there is essentially no human nature, and that no morally relevant transcultural facts can exist in the absence of a shared human nature. If there are no such facts, then clearly human rights cannot be grounded in them. But why, then, does Rorty favor human rights at all? His reasoning is curious, at least for an avowed antifoundationalist. He thinks that the human rights culture (e.g., that of North America and Western Europe) is morally superior to cultures that fail to respect human rights, because it comes closer to realizing an "Enlightenment utopia."²³ Though Rorty does not delineate the content of this utopia as such, two of its elements appear to be a widespread sympathy for others, and a respect for one another's security.²⁴ We in our human rights culture have come closest to achieving this utopia according to Rorty because, unlike people elsewhere, we have been "manipulating each other's sentiments" to favor phenomena like sympathy and security for the past two hundred years.²⁵ Human rights are valuable because they facilitate and codify this benign manipulation. Rorty's support for human rights, then, reduces to a sup-

²²Rorty, "Human Rights, Rationality, and Sentimentality," p. 124.

²³The idea of an Enlightenment utopia is first introduced in Rorty (*ibid.*) on p. 118.

²⁴I am admittedly inferring that these are elements of the Enlightenment utopia, since Rorty is not explicit about any of the utopia's constituent elements. What he explicitly says is that we should think of those in non-rights-respecting cultures as deprived of sympathy and security, and he clearly regards this deprivation as an important one. See *ibid.*, p. 128.

²⁵*Ibid.*, p. 125.

port for the norms associated with human rights. One implication of his support for human rights-related norms is that we in our human rights culture would do well to work on changing the sentiments of people in other cultures such that those people join us in coming to realize the Enlightenment utopia. At least one course of action that would help them to do this is to adopt human rights in a sincere and committed way.

In order to understand why Rorty ultimately needs an appeal to foundations, we must examine his appeal to sentiments. He thinks that it is mostly by appealing to one another's sentiments that we get each other to change our moral opinions (this appears to be largely why he thinks that morally relevant transcultural facts would be causally inefficacious even if they did exist).²⁶ When we combine this thought with Rorty's endorsement of the Enlightenment utopia that features sympathy and security, we are led to the thought that the sentiments prevalent in the Enlightenment utopia (and to some extent in our human rights culture) are simply superior to those that tend to prevail in non-rights-respecting cultures. It is better to have the sentiments of, for example, widespread sympathy, and respect for one another's security, than it is to have some other sentiments, such as unsympathetic and disrespectful ones. Rorty confirms this when he explicitly endorses the existence of "a progress of sentiments."²⁷ He appears to think that this endorsement is compatible with his dismissal of rights foundations because he associates foundations with morally relevant transcultural *facts*, while he is himself talking about transculturally valuable moral sentiments, not facts.

Which of Rorty's claims, then, requires foundational justification? We might think that it is the claim that there is such a thing as an Enlightenment utopia, for such a utopia is portrayed as being valuable across cultures. Rorty might reply by saying that he has adequately accounted for the value of the Enlightenment utopia by endorsing a progress of sentiments and implying that it is only in such a utopia that valuable sentiments are realized to the greatest extent. But of course this would just move the problem without solving it, for we would now wonder how a progress of sentiments could be justified without reference to foundations. Indeed, this appears to be the point at which Rorty is stuck. Rorty appears to believe he can avoid talk of foundations by appealing to sentiments instead of facts but this seems implausible. If it is true that some sentiments are (transculturally) more valuable than others, it is surely true in virtue of some (transcultural) *fact* or set of facts. It is difficult to see how we could justify a progress of moral sentiments without making an appeal to facts about human beings, facts that would appeal to

²⁶Ibid., pp. 118-19, 122.

²⁷As Rorty notes (p. 129), he borrows the phrase from Annette Baier.

the very sort of human nature whose existence Rorty denies. Thus it might be that we should have sympathy for those very different from us because, for example, each individual has an innate dignity or self-worth. A suggestive point in favor of this argument is that the existence of a progress of sentiments is associated most closely with Hume, and Hume himself realized that such a picture of sentiments must be supported by an account of human nature.²⁸ Hume believed that, contra Rorty, we cannot simply sidestep foundational discussions by emphasizing the role of sentiments over facts in morality. If Hume is correct, then Rorty is faced with a difficult and serious problem. For Rorty has, as we have seen, denied the existence of a shared human nature. And his endorsement of a progress of sentiments could be jettisoned only at the cost of his endorsement of the human rights program, for his endorsement of a progress of sentiments is needed to justify his account of an Enlightenment utopia, and the concept of the Enlightenment utopia plays an essential role in explaining his support for human rights.

Rorty might reply by claiming that it is intuitively obvious that there exists a progress of sentiments like the one to which he refers, but we have already seen in our consideration of Ignatieff that an appeal to the intuitively obvious would encounter two significant hurdles. First, it is not clear that such an appeal actually manages to escape the foundationalism Rorty wishes to avoid, for reasons along the lines that I have discussed regarding Ignatieff. Second, we might try to explain the obviousness of the intuition purely by reference to how widely it is shared, but it seems doubtful that the relevant intuitions about sympathy and security are so widely shared. If they were, then we would probably not need a universal concept like rights to protect goods relating to sympathy and security. Even Rorty and Ignatieff are inclined to argue that many people are indifferent, and even hostile, to those outside their relatively narrow circle of concern. Unfortunately, many of these tribal-minded persons seem to simply lack anything like the intuitions in question. So, parallel to my treatment of Ignatieff, my quarrel is not with the substance of Rorty's claim that there exists a progress of sentiments. The point is that such a claim must be justified, and its justification appears to require the sort of appeal to morally relevant transcultural facts that Rorty wishes to avoid.

An examination of the Ignatieff and Rorty accounts is worth undertaking in its own right, largely because both thinkers are justly regarded with esteem. But our critique also points us to a more general project,

²⁸See David Hume, *A Treatise of Human Nature*, ed. Ernest C. Mossner (London: Penguin Books, 1969), especially Book II; see also *An Enquiry Concerning the Principles of Morals*, ed. J.B. Schneewind (Indianapolis: Hackett, 1983), esp. Sections II and V-VII.

namely, the project of examining the merits of a genuinely foundationless account of human rights. If the Ignatieff and Rorty accounts do make covert appeals to foundations, might they do so because a genuinely foundationless approach is inherently limited and/or problematic? I will argue in the next section that this appears to be the case. I will first detail what a truly foundationless approach looks like and then evaluate its merits.

3. Problems with a Genuinely Foundationless Approach

In order to discuss what a truly foundationless account would look like, it would help to remind ourselves what is to count as a foundation in the relevant sense. We saw that Ignatieff and Rorty can be understood to regard a foundation as a morally relevant transcultural fact or set of facts. This was the characterization I adopted, and it is a characterization that holds for this section as well, with a small caveat. I prefer to characterize a rights foundation as consisting of a transcultural moral fact or set of facts rather than a morally relevant transcultural fact or set of facts. The two terms may appear equivalent but they are not.²⁹ All transcultural moral facts are morally relevant transcultural facts but the converse is not true. Transcultural moral facts have irreducibly normative content. For example, the fact that “causing premature death in humans is wrong” is, provided it has transcultural authority, a transcultural moral fact. By definition this makes it a morally relevant transcultural fact. But while the fact that “all humans die” may well be a morally relevant fact, perhaps even one that is morally relevant across cultures, it is not a moral fact but a natural one. It seems to me that what is essential in characterizing a foundationless account of human rights is that it makes no appeal to any transcultural moral facts or universal moral truths.³⁰ But this shift does not harm the previous characterization of Ignatieff or Rorty as foundationless thinkers. Ignatieff can be understood to be speaking of transcultural moral facts when he details the considerations he wishes to avoid.³¹ Rorty’s claim that there are no morally relevant transcultural facts entails the claim that there are no transcultural moral facts, so al-

²⁹I am grateful to an anonymous referee for bringing the importance of the distinction to my attention.

³⁰I use the terms “transcultural moral facts” and “universal moral truths” synonymously. That is to say both that I am using the terms “transcultural” and “universal” synonymously, and also that I am using the terms “moral facts” and “moral truths” synonymously. The word “transcultural” might be used with a narrower scope than “universal,” but neither Rorty nor I use it this way. As for “facts” and “truths,” their differentiation may be important in some contexts but I do not think it is important here.

³¹See Ignatieff, “Human Rights as Idolatry,” p. 55.

though on my view Rorty's claim is not the most precise characterization of what counts as a foundationless account, it nonetheless *makes* his account foundationless.

A further elaboration of this characterization of rights foundations is needed, for there are at least two ways in which transcultural moral facts might be understood to be established, and the distinction between the two ways is relevant to the argument I will make against the (genuinely) foundationless account.³² First, a transcultural moral fact might be understood to be established by mere empirical means (I will call this the "empirical view"). On this picture, if everyone, or at least a critical threshold of people, believes that torture is wrong, then torture is therefore (transculturally) wrong. Empirical agreement is both necessary and sufficient to establish the authority of the moral fact. No further justification is needed to establish the truth of moral facts, and in this case no other justification is possible. On the second understanding, a transcultural moral fact is established by means independent of empirical agreement (I will call this the "non-empirical view"). On this picture, the truth of moral facts is established by reference to the ontological existence of values, and/or what an impartial observer would decide, and/or what reasons bind on rational agents, independent of their awareness of those reasons. The non-empirical view considers empirical agreement about moral facts to be neither necessary nor sufficient to establish their truth. In fact, it is possible that a genuine moral fact could fail to be recognized by anyone, though this is highly unlikely if we hold that moral belief enjoys some correspondence with moral truth (however imperfect).

For reasons already alluded to in the previous section, I think that the empirical view of foundations is unpromising. If there were sufficient empirical agreement about rights or related norms, this view might be sufficient to establish the transcultural truth or validity or value of such concepts. But the variety and depth of moral disagreement in the world, even about quite basic matters, suggests that this sort of foundation cannot currently be established. Now, this would not be a knockdown argument against the empirical view, provided that a reasonable projection suggested that agreement could be had in the future. Such a projection requires some guesswork: it is not the sort of claim that can be made with certainty. Will empirical agreement about human rights reach a point in the foreseeable future to serve as a sufficient ground for those rights? It seems to me that the answer is probably "no." The threshold level of agreement would have to be very high, and historical trends do not suggest that such a high level of agreement will be reached. Though the no-

³²One could also hold that there are moral facts that require no further justification, but since this strikes me as less promising than the other strategies I will leave it aside.

tion of human rights has generally gained popularity in the last several decades, it has also become more controversial in that time among many people and even entire cultures. Resistance to rights among some political figures, and even among significant parts of cultures, seems sufficiently intransigent to remain fixed in the foreseeable future, absent coercive measures.

For these reasons, the view of rights foundations that I will focus on will be the non-empirical one. Admittedly, the jury is out on the success of this strategy, or group of strategies, for establishing the (transcultural) truth of moral claims, and it is not my present project to offer an argument in favor of any particular one. But contra postmodernism, moral objectivism is very much a live issue in contemporary philosophy. Furthermore, its influence seems to have stretched far beyond the ivory towers of academia, for documents such as the U.N. Declaration and institutions such as the International Criminal Court are generally understood to receive their ultimate justification from something like the natural law tradition, which postulates the existence of objective moral facts or universal moral truths. So it is that rights-advocating persons are regarded as justified in apprehending Milosevic and trying him at The Hague for crimes against humanity, despite the fact that some decry this as an exercise in Western imperialism. The extent of agreement on the wrongness of Milosevic's actions is at least (though also at most) suggestive of the existence of moral facts concerning, for example, the wrongness of murder and torture.

We now have a more detailed picture of what counts as a foundational view of the relevant kind, and conversely what counts as a foundationless one. A foundational view of human rights is one that derives those rights from moral facts whose justification is non-empirical. A foundationless view is one that makes no appeal to moral facts of any kind. I contend that the foundationless view is flawed to the point of inadequacy. My argument in support of this claim is as follows:

- (1) An adequate view of human rights allows for an adequate implementation of those rights.
- (2) An adequate implementation of human rights requires that two necessary and jointly sufficient conditions be met: that those rights are implemented universally, and that their implementation does not necessitate a thoroughgoing violation of the values associated with them.
- (3) A significant number of rights-resistant persons do exist and will continue to exist in the foreseeable future.
- (4) In order to implement human rights universally, we must implement them against the resistance of the persons and cultures described in (3).

- (5) A foundational view of human rights is the only kind that can accomplish (4) while avoiding a thoroughgoing violation of the values associated with those rights.
- (6) A foundational view of human rights is the only adequate kind.

(1) shows a recognition of the essentially practical nature of human rights and of ethical thought generally. A theory of human rights, like a normative theory generally, is of little value if it cannot be put into practice. Putting human rights into practice means implementing them, that is, getting real people to recognize and respect them. This is a practical political point, not necessarily a conceptual one. As a conceptual matter it could be that the appropriate bundles of entitlements, powers, duties, and so on that comprise human rights exist even if those rights are not adequately implemented or recognized in the world. But as a practical matter the significance and value of human rights increase in proportion to the extent that those rights are widely recognized and respected. (1) asks us to take this practical point seriously, and to regard as seriously deficient any theory of human rights that cannot allow for the possibility of adequate implementation of those rights.

(2) details the necessary and jointly sufficient conditions that must be met for adequate implementation of human rights. The first condition says that adequate implementation is universal implementation. The justification for this is straightforward: human rights are by their nature understood to be universal, so the scope of their implementation should mirror their conceptual scope as closely as possible. It may be possible that rights could be implemented in a less than universal manner and still be properly understood to be human rights, but an implementation that does not (and more so one that cannot) come sufficiently close to universality would call into question the practical value of referring to the rights in question as human rights. The second condition says that human rights must be implemented in a way that avoids a thoroughgoing violation of the values associated with them. The term "thoroughgoing" is being used in a somewhat technical sense here, a sense to be contrasted with "initial" or "prima facie." According to this distinction, an initial or prima facie violation of the values associated with human rights would be one that initially appears to be a violation, one that could be overridden by other considerations. A thoroughgoing violation is one that can rightly be deemed illegitimate even after various competing considerations are considered. When considering alleged violations of the values associated with human rights, we first see if the violation is an initial violation, then test by some method of critical scrutiny whether it rises to the level of a thoroughgoing violation. Thus, foreign intervention to prevent female genital mutilation in Sudan might constitute an initial violation of

the values associated with human rights insofar as it infringes upon a culture's autonomy, but would not be a thoroughgoing violation of those values so long as it is justified in an overall sense. It is easy enough to see why (2) should be concerned with thoroughgoing violations rather than mere initial ones. It is generally true that values should be promoted, upheld, and enforced in ways that do not violate those values themselves, for such a violation would appear to constitute a sort of hypocrisy on the part of those who favor those values. But the degree of violation is important. If the violation is only an initial one then it might sometimes be justified in an overall sense. As I will argue, it may be that some coercion is needed in order to uphold certain rights even if the values associated with those rights (e.g., autonomy, mutual respect) seem antithetical to coercion.³³ Here, even though coercion may be an initial violation of the values associated with human rights, it is ultimately justified because it is needed to uphold those very values. A thoroughgoing violation, however, seems a different matter. Here we would have a violation of the values associated with rights that could not be ultimately justified. Here the charge of hypocrisy sticks, and rights advocates would be caught in a sort of contradiction. So the need to avoid thoroughgoing violations is clear.

I have already argued for (3) above. There seems little doubt that persons stubbornly resistant to the adoption of human rights do exist in significant numbers and that many of them are not isolated in their thinking but are significant parts of whole cultures or subcultures. Ignatieff discusses three such groups: Asians who favor collectivist values, Islamists who think Western individualism is sacrilegious, and Western relativists, many of whom have been influenced by postmodernism.³⁴ Of course, a yet more obvious source of rights resistance is that of desire for the retention of power on the part of those who rule by fear, and the (often disingenuous) support they receive from those whose fear they elicit.³⁵ Our best guess appears to be that due to the variety and depth of present resistance to human rights, such resistance can be expected to exist in the foreseeable future.

This brings us to (4), which adds the thought that the resistance I have been describing will be strong enough to require some coercion on the part of those who wish to implement human rights universally. If human

³³I am talking here about the values associated with human rights in our world. Human rights could be associated with many other values in other possible worlds, some of which may be incompatible with the values associated with human rights in our world. But variation even in other possible worlds may have its limits, for it seems that human rights are by their nature instruments of egalitarianism and individual autonomy.

³⁴See Ignatieff, "Human Rights as Idolatry," pp. 58-77.

³⁵This group might include some of those in Ignatieff's categories, though it need not.

rights are to be implemented in anything like a universal manner, they will have to be implemented over the continued objections of individuals and perhaps even large swaths of cultures. Many human rights advocates are squeamish about this fact, and indeed some people who would otherwise endorse human rights stop short of doing so because of just this concern. Clearly the issue deserves a close examination, and this leads us to the next step of the argument.

(5) is the heart of the argument. It states essentially that a foundational approach to human rights is the only kind that can fulfill the conditions presented in (2). It can be defended by considering first how a foundational approach can fulfill those conditions, and then why a foundationless approach cannot. Consider the conditions one at a time, beginning with the condition that human rights must be implemented on a universal scale. On a foundational view, the justification for implementing human rights universally makes reference to an objective moral fact or set of facts, such as the claim that humans have an inherent dignity. The truth of this sort of fact derives from considerations independent of mere empirical agreement. As I have said, my present project is to point to the fact that this strategy is very much a live possibility but not to offer anything like a detailed defense of it. It is sufficient for our purposes to claim that if there are objective moral facts of the relevant kind—for example, facts relating to the value of human life and the dignity of individuals—such facts might plausibly serve as grounds for the existence of human rights. Furthermore, they might do so over the objections of some persons and even cultures, for their validity does not depend on empirical agreement.

A foundational view would also fulfill the second condition of (2), even in light of (3) and (4), avoiding a thoroughgoing violation of the values associated with human rights. It seems that rights advocates will have to admit that coercion is an initial or *prima facie* wrong, or has initial disvalue, for coercion does at first glance appear to conflict with values commonly associated with human rights, such as the value of mutual respect, and the value of autonomy. To say that coercion has initial disvalue is to say that, all other things being equal, it is better not to coerce someone (or a group, culture, or state) than it is to coerce him. But what if all other things are not equal? Specifically, what if the best way to uphold the values associated with human rights is to impose them on rights-resistant people by measured coercion? In such cases, when the values in question are justified, then coercion has initial disvalue, but not thoroughgoing disvalue in our technical sense. Coercion in these cases entails an initial violation of the values associated with human rights, but not a thoroughgoing one, because its initial wrongness is outweighed by the value of considerations in its favor. The considerations in favor of (at

least some forms of) coercion win out (at least some of the time) because the values associated with human rights have justification.³⁶ Furthermore, they win out even in the face of empirical resistance, because the justification of the values in question is non-empirical. Obviously this puts a great deal of weight on our ability to precisely articulate and justify a moral fact or set of moral facts, not to mention the further project of showing how rights can be derived from those facts. But the upshot of this view is that it offers the blueprint for an account of human rights that can be justifiably imposed on rights-resistant peoples under certain conditions. If I am correct about the extent and depth of disagreement about rights, and about the need for universal implementation, such coercion will be necessary in order to meet the conditions of (2).

I have discussed (5) in terms of the ability of a foundational account to fulfill both conditions presented in (2). The problem with a foundationless account with regard to (5) is that it can fulfill either one of the conditions of (2), but only on pain of being unable to fulfill the other. Consider first how it might try to implement human rights universally, despite the truth of (3) and (4). Unlike a foundational account, a foundationless account cannot appeal to the existence of objective moral facts in doing so. Nor can it appeal to the existence of universal (or near-universal) agreement on rights or associated norms because there is no such agreement. In the absence of these justifications, it seems that the only way a foundationless account could implement rights on anything like a universal scale is by sheer coercion, that is, a coercion that does not rely upon any justification. If advocates of human rights were sufficiently powerful this would be a practical possibility, but practical possibility does not entail moral permissibility. Such implementation would include the disvalue of coercion without offering any justification to outweigh this disvalue. As such, it would feature a thoroughgoing violation of values associated with human rights, such as those of mutual respect and autonomy. As supporters of these values, rights advocates would be caught in a sort of hypocrisy.

The situation seems only marginally better for a foundationless account if it concentrates first on being true to the values associated with human rights, that is, if it prioritizes the second condition of (2) over the first one. On this picture, unjustified coercion is out of the question. But since there is no source for justified coercion, coercion itself must be dismissed. If (3) and (4) are correct, this means that there simply will not be any means to implement human rights in anything like a universal

³⁶A separate argument is needed to outline a concept of just coercion, e.g., the conditions under which it is acceptable to coerce, and the acceptable means. But the argument can and should enjoy an important connection with the values associated with human rights.

manner. The implementation of human rights will fall far short of the scale suggested by the conceptual nature of those rights. While this scenario does not involve a contradiction or a hypocrisy, it is nonetheless a serious shortcoming. For, at the very least, the practical realization of human rights will seem seriously inadequate. And if the practical realization is sufficiently inadequate, this might call into question the practical value of referring to these rights as human rights at all, for human rights are understood to be universal. If the rights being implemented have no hope of being implemented on anything like a universal scale, then there is a sense in which calling them human rights seems grandiose and misleading. So the telling point against the foundationless approach to human rights is that, unlike a foundational approach, it fails (5) because it cannot meet the necessary and jointly sufficient conditions presented in (2). It can meet either one of the conditions of (2) but only at the expense of being unable to meet the other. If this is correct, then we arrive at the conclusion of (6), that a foundational account of human rights is the only adequate kind.

4. Objections

An antifoundationalist might pose any of several objections to a foundational approach to human rights, and to the argument I have presented in particular. First, consider an objection that might be made against the foundational project generally. It might be said that a foundational approach to human rights (or any other moral matter) cannot work because such foundations simply cannot be established. Those influenced by postmodernism are especially likely to be attracted to this objection, but one need not be a postmodernist to think it has merit. As we have seen, Ignatieff and Rorty each offer versions of it. Ignatieff says that foundational issues are irresolvable by nature, while Rorty says that foundational claims (e.g., about human nature) are probably false.³⁷ As I have indicated already, I cannot answer this objection here in anything like a complete manner. My present project is to point out some philosophical presuppositions that lie behind human rights as they are most widely understood. As a supporter of human rights, I hope that those presuppositions are true or at least realizable, but an attempt to demonstrate that they are is a separate project. The best I can do here is to make optimistic gestures on behalf of the realizability of the human rights project as I conceive it.

One such gesture is to point out that no conclusive arguments exist

³⁷See Ignatieff, "Human Rights as Idolatry," p. 54; Rorty, "Human Rights, Rationality, and Sentimentality," p. 118.

against the existence of rights (or other moral) foundations. This includes the arguments offered by Ignatieff and Rorty. Ignatieff appears to assume that empirical disagreement is sufficient to establish the intrinsic contestability of what he calls metaphysical claims. But this is not the only possible explanation for such disagreement, for perhaps moral facts exist but are difficult to discover. As we have seen, Rorty relies on a substantive pragmatist view in his claim that facts about human nature are false, that is, the claim that since such facts would be causally inefficacious, they probably do not exist. But it is not clear that such facts are (or would be) causally inefficacious, as there are conceptions of both moral belief internalism and moral belief externalism that would deny this.³⁸

The second gesture that can be made on behalf of the objectivist project I have outlined is to point to encouraging developments within moral philosophy over the last few decades. The issue of moral objectivism is one that has received enormous attention in recent times, and the variety and sophistication of objectivist accounts must be considered an encouraging development for anyone who cares about the establishment of universal moral and political notions such as human rights. And, as I have mentioned, the very existence of, and support for, documents like the U.N. Declaration is evidence of widespread popular acceptance of some kind of objectivist moral foundation.

Even if we accept the possibility of rights foundations, objections might be made to the particular argument I have presented in favor of foundationalism, and I will briefly consider two. Some may say that the argument makes too much of the need for coercion in the implementation of human rights, which seems especially of concern given my admission that coercion has initial disvalue. They might say that coercion is not needed to satisfactorily implement human rights because rational discourse and compromise can convince previously rights-resistant cultures to adopt human rights, and enable us to implement human rights universally, or at least nearly so. They might continue that without the need for coercion, the need for a foundational view disappears as well, because each culture can be convinced (indeed, may need to be convinced) of the value of human rights on its own terms, without reference to shared foundational beliefs. If this argument is sound, it would certainly constitute a formidable objection to our discussion in the previous section.

The objection has two problems. First, its picture of universal adherence to rational deliberation is surely too optimistic. It seems that some

³⁸Regarding moral belief internalism, see, for example, T.M. Scanlon, *What We Owe to Each Other* (Cambridge, Mass: Harvard University Press, 1998), chap. 1, esp. pp. 64-77; Jonathan Dancy, *Practical Rationality* (Oxford: Oxford University Press, 2000); and Derek Parfit, "Reasons and Motivation." For a moral belief externalist view of the relevant kind see Michael Smith, *The Moral Problem* (Oxford: Blackwell, 1994).

individuals and groups simply reject the currency of rational deliberation. Significantly, these tend to be the persons and cultures responsible for the worst kinds of human rights violations. Repeatedly trying to rationally convince Saddam Hussein or Kim Jong-il of the value of adopting human rights is very probably a methodological error. The error does not hinge on what arguments are made: it hinges on the fact that (any) argument is repeatedly attempted. Sadly, there are people who are not receptive to rational argument, and some of these people hold considerable power and influence. Argument should always be initially attempted, of course, for we may be surprised at who will be open to it. We simply should not expect to meet with universal success in this regard. If this is correct, then the first condition of (2) in the previous section will not be met without selective coercion.

The deeper problem with the objection is that it assumes that a foundationless view can do the necessary work even in the absence of the need for coercion in the implementation of human rights. The picture presented is of human rights advocates convincing rights-resistant cultures to adopt human rights while making no reference to shared foundations upon which those rights are based. This might be appealing as a view that tries to accomplish a humanitarian goal while avoiding theoretical complications. But, even assuming that everyone can be persuaded by rational argument, how exactly will a rights-resistant culture be convinced to adopt rights if no reference is made to rights foundations? Admittedly, there is a possibility that a rights-resistant culture could be so convinced if certain conditions hold. Such a culture might share a foundational belief (or set of beliefs) with human rights advocates, such as the belief that humans have an intrinsic self-worth, but be resistant to rights because it misunderstands or undervalues the role that rights can play in expressing and/or reinforcing this conviction. This culture might be convinced of the value of adopting human rights without any reference made to foundational issues because they already hold the needed foundational premise or premises. For example, perhaps the culture engages in many practices that uphold the relevant foundational belief, and we could point this fact out to them, and point out the fact that that their resistance to rights is inconsistent with these practices. In this way, the human rights culture might be able to win over some rights-resistant cultures to its side, as long as those rights-resistant cultures hold foundational beliefs amenable to human rights. But the implementation of human rights is unlikely to work this way everywhere. Moral disagreement in the world is radical and profound. Even assuming that members of the Taliban are open to rational argument, trying to convince them of the value of adopting human rights stands no chance of success whatsoever if we do not address foundational issues such as the value of

each individual life. We must address the source of disagreement if we are to have any chance of resolving the disagreement, and in a case of such radical difference in moral outlook as that between human rights advocates and the Taliban, the source of the disagreement goes to the deepest of foundational concerns. I have of course expressed pessimism about the chance of success in deliberation of any kind with such stubbornly rights-resistant people, but the present point is simply that if there is to be a deliberation, it surely must address the roots of the moral disagreement. A foundationless deliberation seems particularly fruitless.

The third and final objection to be considered concerns the alleged efficiency of a foundationless view. Ignatieff and Rorty are both clearly attracted to the idea of a foundationless view as an efficient one, and see this as an important advantage that it has over a foundational alternative.³⁹ They think that a foundationless view avoids the problematic entanglements of theoretical considerations and cuts right to the pragmatic concern of helping real people address real problems. Certainly there is some appeal to this thought: anyone who cares about human rights wishes to see those rights implemented and working, helping to improve people's lives. Furthermore, by circumventing deep theoretical considerations, a foundationless view does seem to allow us to focus on these pragmatic concerns more quickly than a foundational one. Could it be that by emphasizing theoretical considerations, an argument like mine has the unhappy effect of postponing the helping of people by delaying the implementation of human rights?

I have no objection to the implementation of human rights without reference to foundations, when and where it is possible to do so. As mentioned above, there may be some people who can be convinced of the value of adopting human rights without foundational argument. In such cases, there is no obvious need to engage in foundational discussions. But consider for a moment the criterion of efficiency: what is it exactly that efficiency requires? Clearly it requires that we do the job at hand in a maximally, or at least relatively, expedited manner. But this characterization entails that we *do the job at hand*, specifically that we do it competently. We cannot do efficiently what we cannot do. And I have argued that a foundationless view of human rights cannot implement human rights competently, if competence is understood to include the necessary and jointly sufficient conditions of universal implementation, and im-

³⁹For example, Ignatieff says that it is best "to forgo these kinds of foundational arguments altogether and seek to build support for human rights on the basis of what such rights actually *do* for human beings" ("Human Rights as Idolatry," p. 54). Rorty says that "the best, and probably the only, argument for putting foundationalism behind us is the one I have already suggested: it would be more efficient to do so" ("Human Rights, Rationality, and Sentimentality," p. 122).

plementation consistent in an overall sense with the values associated with human rights. If that argument had merit, and efficiency entails competence, then the present objection to my argument presents little that is new. It seems that a foundationless view of human rights will not efficiently implement those rights, because it will not competently implement them. It can fulfill either of two criteria for competence, but only at the expense of being unable to fulfill the other. A foundational account will be more efficient than a foundationless one, even if its justification requires painstaking investigation and debate, because only a foundational account can implement rights competently.

Some human rights advocates with foundationless sympathies might think that my demand for universal implementation of rights is asking too much. They might argue that human rights are a worthy moral and political endeavor, even if they stand no chance of being implemented on anything like a universal scale. In reply I would agree that given the choice, some implementation of the rights we call human rights might well be better than none. But if we settle for much less than universal implementation of those rights, and admit that universal implementation is not even a realistic aspiration, then we should be clear that for all practical purposes we are no longer talking about human rights, for human rights are understood to be universal in scope. It is disingenuous to describe the rights in question as universal, only to settle for implementation that does not and cannot approach universality. If we retreat from the goal of universality, the clearest course of action would be to seek a more modest label for the rights in question. If this is correct, then we reach the strong conclusion that a foundational account of human rights is the only one possible. Perhaps it is an agreement with this conclusion that leads some allegedly foundationless thinkers to covertly appeal to foundations themselves.⁴⁰

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