Pragmatism—The Unfinished Revolution: Doctrinaire and Reflective Pragmatism in Rorty's Social Thought

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I. INTRODUCTION ..................................... 1561
II. RORTY’S SOCIAL THEORY ........................ 1568
   A. Social Theory, Cultural Theory, and Contemporary Pragmatism 1568
   B. The Heart of the Distinction Between Doctrinaire and Reflective Pragmatism 1576
III. PRAGMATISM AND CONTEMPORARY ANALYTIC PHILOSOPHY ................................ 1582
   A. Pragmatism and the Language of Agency .......................... 1582
   B. Pragmatism and the Language of Objectivity ...................... 1588
IV. PRAGMATISM AND MORAL PROGRESS .................. 1595
   A. The Problem of Moral Progress ................................ 1595
   B. Pragmatism, Prophecy, and Evil .................................. 1605
V. PRAGMATISM, POLITICS, AND LAW ................. 1619
   A. The Public-Private Dichotomy .................................. 1619
   B. Pragmatism and Community ...................................... 1623
   C. Pragmatism and the Theory of Adjudication .................... 1625
VI. CONCLUSION ....................................... 1628

You can no more be sure of your own usefulness to future generations than could the first fish who crawled up on land; but you just might, in time, deserve the same gratitude.

—Richard Rorty

Modest pragmatism . . . confronts us with the contingency of our location in society and history while pointing out that selective retrieval and creative bricolage have long been the lot of conservative and revolutionary alike. It deprives us, to be

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sure, of metaphysical comforts and epistemological guarantees but not of the need to judge moral propositions true or false, justified or unjustified, and to act accordingly. Its doubts about philosophical theories leave the notions of moral truth and justified moral belief intact, ready for use, just as always. No such doubts, properly construed, are likely to endanger the moral inheritance of Western civilization . . . . What you make of what you find in the moral traditions at hand will depend upon what those traditions are like as well as the extent to which you possess the virtues needed to judge them wisely and justly. If you lack those virtues or if the conceptual resources within your reach have disintegrated beyond repair, . . . no invention of value, will make things better.

—Jeffrey Stout

[A]ll living organisms interpret . . . the signs about them. A trout, having snatched at a hook but having had the good luck to escape with a rip in his jaw, may even show by his willingness [sic] thereafter that he can revise his critical appraisals. His experience has led him to form a new judgment, which we should verbalize as a nicer discrimination between food and bait. . . .

Our great advantage over this sophisticated trout would seem to be that we can greatly extend this scope of the critical process. . . . Though all organisms are critics in the sense that they interpret the signs about them, the experimental, speculative technique made available by speech would seem to single out the human species as the only one possessing an equipment for going beyond the criticism of experience to a criticism of criticism. We not only interpret the character of events— . . . we may also interpret our interpretations.

—Kenneth Burke

I. Introduction

A revolution presently sweeping intellectual inquiry promises to revise our conception of how we think and act. This revolution “promises to mark a sea change in contempo-

4. See, e.g., Clifford Geertz, Blurred Genre: The Refiguration of Social Thought, in Local Knowledge: Further Essays in Interpretive Anthropology 19, 21 (1983). The revolutionary zeal in contemporary intellectual inquiry promises to tear down the barriers invidiously distinguishing one field from another. Id. at 20-21.
rary philosophical thought—a change so profound that we may not recognize that it is occurring.” In legal theory, this revolution is gaining a noticeable foothold. Many legal theorists have dropped the mantle of formalism and other rationalistic approaches to law and have flocked to the side of the revolutionaries. Under the banner of “pragmatism,” these revolutionaries are creating a renaissance in legal theory and scholarship that will, by the dawn of the twenty-first century, transform the very meaning of the law. Intoxicated as pragmatists are about their success, now is the time to decide what pragmatism’s next revolutionary moment should be. This Article’s goal is to help make that decision.

More than any other single writer, Richard Rorty is responsible for the pragmatic revolution in legal theory. Rorty’s maverick stance in contemporary philosophy has sparked pragmatist fires throughout Anglo-American culture. Indeed, Rorty’s visionary prominence in this pragmatic revolution warrants calling it “Rorty’s revolution.” Rorty’s revolution is the resurrection of a new American pragmatism that rejects concepts like knowledge, truth, justice, reason, and the moral law as deeply misconceived and pragmatically pointless abstractions.

Nowhere have the fires of Rorty’s revolution raged more constantly than in legal theory, where the new pragmatism has supplied disgruntled and demoralized legal scholars with the ammunition necessary to begin a radical reassessment of traditional legal theory. Rorty’s revolution has revivified the language of pragmatism by providing rich new directions for legal thought. Our task is to decide whether to continue Rorty’s revolution or whether it is time to modify the new pragmatism’s present course.

This Article argues that Rorty’s revolution should now be reassessed and modified. In a nutshell, I argue that Rorty’s

6. Some legal theorists associated with the pragmatic revolution are Richard Posner, Thomas Grey, Margaret Radin, Joan Williams, Martha Minow, Catherine Wells, Daniel Farber, and Dennis Patterson.
8. In two earlier articles, I examined Rorty’s pragmatism with an eye to its modifica-
revolution founders because it fails to distinguish between two distinct types of pragmatism: doctrinaire pragmatism and reflective pragmatism.⁹ Distinguishing between these two types of pragmatism casts the entire controversy over knowledge, truth, justice, reason, and the moral law in a different light.¹⁰ In Rorty’s hands, doctrinaire pragmatism beckons the end of philosophy. For Rorty, philosophical questions are pointless mumbo jumbo and should be abandoned. Reflective pragmatism avoids committing us to such a precipitous result.

Unlike doctrinaire pragmatism, reflective pragmatism tells us that traditional philosophical questions are best understood as questions about the basic terms of our culture. Reflective pragmatism, in taking seriously such questions as “What is truth?” and “Does reason compel our theoretical and practical judgments?” seeks to identify those cultural and rhetorical devices that explain and validate our beliefs and values. Philosophical investigations should then be understood as a particularly deep form of cultural criticism. Foundational doctrines concerning truth, knowledge, and morality are interpretations of the deepest, most general, structural features of our cultural framework.

⁹. One word about terminology. I use the terms “doctrinaire” and “reflective” largely for stylistic reasons, and I do not intend any pejorative or honorific implications. Arguably, other characterizations are more accurate. For example, doctrinaire pragmatism may be more accurately described as unmodified or unrestricted pragmatism, while reflective pragmatism may be more accurately described as modified or restricted pragmatism. Unmodified or unrestricted pragmatism signifies applying pragmatism directly to any critical issue. It insists that pragmatism be used at both the level of description and the level of justification. Modified or restricted pragmatism signifies applying pragmatism indirectly to any critical issue. It permits the use of vocabularies that describe events in non-pragmatic terms just as long as they are justified pragmatically. In fact, reflective pragmatism is more eclectic than doctrinaire pragmatism, permitting the use of a wider range of vocabularies.

¹⁰. Rorty’s revolution will nonetheless remain a potent weapon in a reflective pragmatist’s arsenal. One reason for modifying Rorty’s revolution is to prevent it from burning itself out. Even now, rumblings from the pragmatic camp have been heard insisting that pragmatism is of no use to anyone, is banal, leaves everything as before, or has few if any implications for reflective social change. See generally Steven D. Smith, The Pursuit of Pragmatism, 100 YALE L.J. 409 (1990). Reflective pragmatism liberates pragmatists from formalism, as does doctrinaire pragmatism, but it further liberates pragmatists from having to tow a doctrinaire pragmatic line. Reflective pragmatism enables pragmatists to adopt foundationalist discourse when doing so has pragmatic benefits.
They are interpretations that faithfully attempt to characterize our culture in normatively attractive terms.

Interpretations of our cultural legacy should have pragmatic utility. They must illuminate and explain the basic features of this legacy. Rorty's objections to foundationalism are best understood as condemning foundationalism as a pragmatically failed attempt to provide illuminating interpretations of our culture. Remember, if foundationalism is pragmatically impossible, and pragmatism is the only effective form of intellectual inquiry, then attempts to provide foundations can be nothing other than failed pragmatic attempts. If pragmatism is the only game in town, foundationalism can only be a particular form of pragmatism, if it is anything at all.

Reflective pragmatism enables us to take nonpragmatic vocabularies more seriously than does doctrinaire pragmatism. Instead of abandoning whole systems of descriptions, we can be more selective, picking and choosing particular descriptions and phrases for particular purposes on different occasions. Only doctrinaire pragmatism compels us to abandon traditional epistemological and metaphysical descriptions of our experience sans phrase. Reflective pragmatism regards these descriptions as being on par with any other type of description, and, therefore, they must be evaluated in terms of their pragmatic benefit, not by some a priori conception of the essence of language.

Reflective pragmatism recognizes a more expansive conception of the term “pragmatic benefit” than does doctrinaire pragmatism. Reflective pragmatism urges us to find both direct and indirect or collateral pragmatic benefits. A metaphor or description, for instance, has direct benefits when used as a tool to achieve a particular purpose. It derives indirect or collateral benefits from its connection with other vocabularies that exist throughout culture and common experience. Indirect benefits, in general, are tied to how the vocabulary connects with past and future vocabularies and with what these vocabularies permit us to say in alien contexts.

Rorty’s approach focuses exclusively on a vocabulary’s direct use as a tool, ignoring its interpenetration with other vocabularies. Rorty gives traditional philosophical discourse such short shrift because his pragmatism is monolithic; it takes a

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foundationalist conception of language too seriously. Rorty appears to embrace the dichotomy between foundationalism and antifoundationalism. A vocabulary must either be one or the other. Rorty appears to embrace the dichotomy between foundationalism and antifoundationalism. A vocabulary must either be one or the other. But in fact, vocabularies have both foundationalist and nonfoundationalist functions.

A description has pragmatic value when it enables us to cope with our problems. Equally important is the description’s impact on other discourses. Ultimately, we evaluate vocabulary according to how well it helps us deal with the aspirational, critical, and motivational problems of human life. Among these problems is the dark side of humanity, those ubiquitous, self-interested, narcissistic inclinations that either cause us to do evil or simply prevent us from doing the right thing. Pragmatism must consider these obstacles along the road to pragmatic perfection or utopia. Rorty’s pragmatism fails to consider these problems in his choice of pragmatic strategies; therefore, doctrinaire pragmatism can cause more problems than it solves. We can, on the contrary, reject Rorty’s doctrinaire pragmatism while preserving a rich and comprehensive form of pragmatic intellectual inquiry. In short, we can reject doctrinaire pragmatism and embrace reflective pragmatism.

Rorty’s doctrinaire approach applies pragmatism directly to individual questions in epistemology, politics, and law. A doctrinaire pragmatist, for instance, rejects knowledge, truth, and justice on antifoundationalist, pragmatic grounds. Doctrinaire pragmatism argues that because conspicuous foundationalist metaphors fail in their own terms, the entire language of foundationalism should be considered suspect and ultimately abandoned. Doctrinaire pragmatism is a vulgar form of pragmatism; if a metaphor clashes with pragmatism in a given instance, it should be dropped from our vocabulary. No inquiry into its long term or collateral pragmatic benefits is permitted.

Reflective pragmatism, on the other hand, takes pragmatism seriously in a way that doctrinaire pragmatism cannot. It recognizes that sometimes the best pragmatic approach in the

12. See generally Rorty, Philosophy, supra note 7.
14. See generally Rorty, Philosophy, supra note 7.
15. Among the collateral benefits are the connections a particular vocabulary has with the language of altruism. At this stage of human history, foundationalism might be necessary to move the language of altruism in the right direction.
long run is to ignore pragmatic considerations or to appeal to them only indirectly. Reflective pragmatism looks to both the short-term and long-term consequences of using a particular vocabulary. It applies pragmatic considerations indirectly to particular contexts and has a higher threshold than doctrinaire pragmatism for abandoning a form of description or vocabulary. Reflective pragmatism seeks an historical and sociological understanding of a particular vocabulary’s etiology. It looks to the vocabulary’s present benefits, as well as the effect its abandonment will have on the aspirational, critical, motivational, and darker sides of humanity.

Reflective pragmatism also takes more seriously language’s role as a tool for achieving various purposes. More importantly, it better understands the contingent nature of a tool: a tool works when it helps us achieve what we want, even if we are unable to explain why or how it works. Understood as tools, foundationalist descriptions cannot be rejected simply because we cannot understand them in their own terms. Instead, these descriptions must be evaluated in terms of their long-range, collateral benefits, if any. Among the questions to be considered are: How difficult will the transition be from one vocabulary to another? Does the present vocabulary connect with other vocabularies that have direct, beneficial pragmatic results? Can we simply reinterpret the old vocabulary pragmatically? Most importantly, what role do these descriptions play in ordinary cultural affairs, politics, morality, and law? Reflective pragmatism insists that these and other questions be asked before a vocabulary, especially one with proven pragmatic benefits, is jettisoned.

The reflective pragmatist sees an ambiguity throughout Rorty’s pragmatism. Should we understand Rorty as saying that foundationalism is bad, so don’t do it? Or is he telling us, as does Stanley Fish, that foundationalism is impossible, so don’t worry? If Rorty is telling us that foundationalism is possible but bad, he should indicate why foundationalist descriptions have failed. He should, in other words, show why foundationalist descriptions have no collateral pragmatic benefits. In particu-

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16. Language functions as a tool when it enables us to achieve an antecedent purpose. Language is equally a tool, however, when it defines those purposes and is constitutive of the person having those purposes.

17. Stanley Fish, Rhetoric, in Critical Terms of Literary Study 203, 221 (Frank Lentricchia & Thomas McLaughlin eds., 1990).
lar, he must show how we can maintain the same degree of cultural cohesion without foundationalist discourse. If Rorty is telling us, on the contrary, that foundationalism is impossible, then no one was ever a pragmatist. In that case, all philosophical positions, including foundationalism, realism, and transcendentalism, are simply different versions of pragmatism.

This Article advocates expanding the conversation in pragmatic theory by embracing the distinction between doctrinaire and reflective pragmatism. Part II critically examines Rorty’s doctrinaire pragmatism and concludes by explaining in greater detail the distinction between doctrinaire and reflective pragmatism. Part III demonstrates how the distinction illuminates controversies between pragmatism and two versions of intuitive realism. Parts IV and V then explain the substantive differences between doctrinaire pragmatism and reflective pragmatism in morals, politics, and law. The Article concludes with the admonition that pragmatists embrace doctrinaire pragmatism at their peril. Embracing reflective pragmatism instead promises to fulfill the spirit of the pragmatic revolution.

II. RORTY’S SOCIAL THEORY

A. Social Theory, Cultural Theory, and Contemporary Pragmatism

Social theory and cultural theory are integrally related. A cultural theory is an attempt to see how science, art, ethics, politics, and law are integrated into a synoptic vision of human society. Such a theory of culture seeks to “gain[ ] a critical perspective on the deepest problems and conflicts in society and culture.” Cultural theory includes a social theory. A social theory contains a critical narrative about the basic structure, values, and conflicts of social life. A social theory includes an ethical theory, a theory of politics, and a legal theory. Contrary to the received view, Rorty’s pragmatism includes a social theory.

18. I am not suggesting that this is impossible. My point is that Rorty’s pragmatism does not consider the question of cultural cohesion at all, and no self-respecting pragmatist can avoid this question.


20. By “theory” I mean an explanatory and justificatory story that helps us cope with our experience. A theory can be as elementary as a reason why your bus stops on a particular corner or as complex as a theory of human behavior. On this view, everyone
For his ethics Rorty adopts a Nietzschean conception of self-actualization, whereas his politics embrace a Millian liberalism, and his conception of law is instrumentalist. The central feature of Rorty’s ethics is achieving semantic authority over oneself, or, put in more familiar terms, aspiring toward human freedom. The centerpiece of his politics is reducing cruelty and suffering. Rorty’s legal theory appears simply to be an endorsement of legal realism.  

Rorty deploys his pragmatic cultural theory in the service of one central goal: the eradication of pragmatically pointless discourses from our cultural scheme. In particular, Rorty wages a battle against foundationalist conceptions of human inquiry that have reached, he contends, a dead end in Western culture.

Rorty’s cultural theory opposes everything philosophical. For Rorty, philosophy, conceived as a first discipline and a meta discourse legitimizing all other cultural domains, is nothing more than a myth. It is a particularly dangerous myth, however, that should be set aside. No discourse is privileged to sit in judgment over all others while underwriting their claim to legitimacy. No discourse is privileged to tell us what knowledge, truth, or justice really mean, because these conceptions have no essences and no intrinsic characteristics. Philosophy, as first discourse, is a myth because it assigns itself the impossible task of describing a neutral, ahistorical foundation or validation of knowledge and value.

Human beings are historically situated animals whose judgments can only be assessed in comparison with judgments made by other such animals. A first philosophy’s attempt to create a neutral “courtroom of impartial judgment” through which one can determine what to believe and value is nothing more than an

always has a theory, even those writers, or perhaps especially those writers, who reject axiomatic or formal theories.


22. Richard Rorty, Pragmatism, Relativism, and Irrationalism, in CONSEQUENCES, supra note 7, at 160, 162.

23. Foundationalism conceives of itself as a neutral theory of intellectual inquiry that can settle controversial issues in nonneutral discourses without begging the question against any of its opponents. For example, “Foundationalist political theories attempt to justify political institutions without presupposing any political considerations.” Arthur Ripstein, FOUNDATIONALISM IN POLITICAL THEORY, 16 PHIL. & PUB. AFF. 115, 115 (1987). The hope, of course, is to reach a vantage point that is neutral, ahistorical, and capable of settling all controversies in a rational manner.
age-old predilection to rely on patriarchy.\textsuperscript{24} Mature inquirers implicitly recognize that there are no independent guarantors of that for which we might live or die. Rorty’s cultural theory sees all justification as holistic, contextual, and transient\textsuperscript{25}; it denies that there is anything beyond what we experience or anything in us that guarantees truth.\textsuperscript{26} Any term, phrase, judgment, or vocabulary has value in helping us to cope with our environment. The value of a discourse is determined by how well it assists us in realizing our goals and purposes. No neutral, Archimedean standpoints exist.\textsuperscript{27}

Rather than seek such a standpoint, a doctrinaire pragmatist wants to describe and redescribe human conflicts with the goal of revealing the myriad forms of suffering and humiliation existing on this planet.\textsuperscript{28} Hopefully, these descriptions will in turn generate ways to ameliorate suffering. For Rorty, reflective social action is therefore nothing more or less than the reduction of suffering. Under this view, since the sole form of ameliorating suffering is linguistic redescription, foundational philosophy is no more likely than another discourse to produce reflective social change.

Rorty offers several reasons why such a foundationalist view is pragmatically futile. First, it is unclear how knowledge, truth, and justice can ever be neutral and ahistorical. Second, no philosopher has ever successfully described such a first philosophy.\textsuperscript{29} Ahistorical explications of these concepts are no more likely than a God’s eye view of the world, which is a view from

\textsuperscript{24} RORTY, CONTINGENCY, supra note 7, at 51 (arguing against neutrality and absolute validity).

\textsuperscript{25} 1 RICHARD RORTY, Texts and Lumps, in PHILOSOPHICAL PAPERS, supra note 7, at 78, 84. But see RICHARD D. WINFIELD, OVERCOMING FOUNDATIONS: STUDIES IN SYSTEMATIC PHILOSOPHY 20 (1989) (arguing that Rorty’s holistic conversationalism reinstates foundationalism).

\textsuperscript{26} Consequently, it is a mistake to suppose that “intellectual and political progress is rational in any sense of ‘rational’ which is neutral between vocabularies.” RORTY, CONTINGENCY, supra note 7, at 48.

\textsuperscript{27} “[T]he Conception of Philosophy,” as Cornel West puts it, “is no longer that of a tribunal of pure reason which defends or debunks claims to knowledge made by science, morality, art, or religion. Rather the voice of the philosopher is but one voice—that of the informed dilettante or polypragmatic, Socratic thinker—among others in a grand Conversation.” CORNEL WEST, THE AMERICAN EVASION OF PHILOSOPHY: A GENEALOGY OF PRAGMATISM 203 (1989). For the role conversation plays in replacing reason, see generally Lipkin, Kibitzers, supra note 8.

\textsuperscript{28} See generally RORTY, CONTINGENCY, supra note 7.

\textsuperscript{29} The history of Western philosophy is replete with failed attempts to provide the foundations of knowledge.
everywhere and from nowhere simultaneously. Everything exists in a particular historical setting, just as every point of view is a view from somewhere.

Rorty’s great contribution to intellectual inquiry is his integration of the concept of linguistic redescription and social change. Social change occurs when new descriptions replace old ones. The new descriptions either solve old problems or replace them with a set of new problems and solutions. Rorty’s social theory contends that our most important political and moral obligation is to reduce suffering and humiliation. Curiously, Rorty never explains why this does not represent a criterion based on human nature by which we resolve political and moral questions. Indeed, utilitarian ethical theory involves just such an account. Yet Rorty’s argument is saddled with still greater problems.

First, reducing suffering is not always considered to be our primary political and moral obligation. The history of Western civilization is replete with attempts to denigrate the importance of eradicating suffering. Foundationalist philosophy has played an important role in rebutting such attempts. Consequently, from a pragmatic perspective, abandonment at this point is foolhardy. By abandoning philosophy, we give up an important tool for helping us to protect the Rortyan goal of beneficence.

Second and more importantly, linguistic redescription conspicuously fails to explain how to generate and identify new descriptions. What do such redescriptions look like? What we need here and what Rorty conspicuously fails to supply are instructions for generating ameliorative redescriptions and how to recognize such redescriptions when they occur. Where do these redescriptions come from, what validates them, and why do we not already possess them?

The distinction between normal and abnormal descriptions is relevant to social change. Normal descriptions are descriptions that ordinary members of society consider to be true. These descriptions are well entrenched in our political frame-

30. See Rorty, Contingency, supra note 7, at xv.
32. Rorty likes to compare philosophical investigations to a ladder that we have climbed and no longer need. Reflective pragmatism prudently retains apparently useless ladders for the future; you never know when you will need an old ladder to replace a light bulb or rescue a victim of fire.
work and often support the status quo; for example, “Human beings are often motivated exclusively by self-interested reasons” or “Human beings need and express love for other human beings.” Normal descriptions are descriptions that reasonable observers accept. Typically, a consensus exists concerning normal descriptions.

No consensus exists about abnormal descriptions. In some cases abnormal descriptions fail because they are unintelligible. For example, the description “Human beings prosper when triangulated” has no currency, not even a controversial one, in our political arguments. Unless made intelligible, these descriptions never become a part of our intellectual experience.

An abnormal description might be intelligible but hopelessly romantic. Romantic descriptions typically appeal to the inherent goodness embedded deeply in human nature but distorted by society. Romantic descriptions typically exhort people to behave as angels and saints. Romantics might, for instance, decide public policy on the basis of a description stating: “Abolishing private property alone will reveal that human beings are basically unselfish and kind” or “In order to express love fully and completely, human beings should be bisexual.” Romantic descriptions fly in the face of our common knowledge about people.33

An abnormal description might be neither unintelligible nor hopelessly romantic but instead have a utopian dimension. For example, “Homosexuals and lesbians need and express love in ways similar to heterosexuals.” Descriptions of this sort encourage social progress by extending a normal description to a novel context.34 Alternatively stated, a utopian description is normal in form but utopian in content because it expands the scope of the “in crowd.” In short, it tells outsiders that they will no longer be excluded. Utopian descriptions are coherentist in

33. Not all romantic descriptions suffer from this defeat. When romantic descriptions do work, however, it is because they are based solidly on what we know about human interactions.

34. One type of moral community compels itself to change by extending its morality to outsiders. For example, a community of this sort is embodied in Justice Blackmun’s dissent in Bowers v. Hardwick, 478 U.S. 186, 199-214 (1986) (Blackmun, J., dissenting); see also Kenneth L. Karst, The Freedom of Intimate Association, 89 Yale L.J. 624 (1980). In such a case, we make moral progress by extending our cherished notion of privacy to an unpopular form of behavior: consensual homosexual relations. A second type of moral community compels the outsider to accept our morality even if that involves denying a central part of himself. For example, this is the type of community Reverend Jerry Falwell has in mind when he says that he loves homosexuals but hates their homosexual conduct.
that they attempt to reduce suffering by redefining a category which is already well entrenched in our political conception. Yet utopian descriptions need not be exclusively coherentist. Imaginative reasoning often integrates the new with the old. Consequently, utopian reasoning can exhibit a romantic dimension. Still, utopian descriptions differ from purely romantic descriptions by retaining a connection with our system of normal descriptions.

Rorty’s problem here is that normal and utopian descriptions do not arise from thin air. Rorty has no general account of how normal and utopian descriptions are generated. Although he does not believe we can have an a priori general account of this process, it is a non sequitur to conclude that no contingent, general account of this process is possible and desirable. Indeed, John Dewey, one of Rorty’s heroes, believes that our reflective intelligence is our guide to linguistic redescription. For Dewey, philosophical reconstruction determines

the conditions under which the funded experience of the past and the contriving intelligence which looks to the future can effectually interact with each other. It would enable men to glorify the claims of reason without at the same time falling into a paralyzing worship of super-empirical authority or into an offensive “rationalization” of things as they are.  

We should follow Dewey here, not Rorty. Intelligence and our cultural and linguistic heritage provide the basis for redescription. We can appeal to this heritage when trying to persuade a colleague or neighbor concerning the permissibility (or impermissibility) of abortion, affirmative action, capital punishment, hate speech ordinances, and so on. Of course, there is neither a transcendent nor a contingent guarantee that the position you back will win.

Normal and utopian descriptions are derived through interpretive reasoning from our store of knowledge about the world and humanity’s place in it. Political and moral arguments appeal to this store of knowledge, which I will characterize as “the collective natural and cultural history of humanity.” This collective history itself explains why certain descriptions become normalized in our culture.

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36. The collective natural and cultural history of humanity includes common sense and science, as well as any other discourse relevant to understanding our experience and to resolving conflicts.
Rorty’s mistake is his slavish adherence to contextualism.\textsuperscript{37} His rejection of a priori principles for validating human culture does not entail denying the possibility of general and deep truths about human society. Rorty is unable to appreciate the force of the collective natural and cultural history of humanity in moral and political argument, because he rejects the notion of deep explanations in social theory.\textsuperscript{38} Human society is contingent, to be sure, but contingency does not preclude deep explanations of human, normative behavior. Contextualism itself is not the enemy. Rather, the enemy is the notion that contextualism is possible without a deep, contingent understanding of human society.\textsuperscript{39}

After all, we are norm-seeking and norm-creating animals. We create norms with which to order our lives, and more importantly, we create norms for creating norms.\textsuperscript{40} This latter activity is the pragmatic equivalent of philosophy. Any pragmatism worth its salt must both explain and rely on this norm-creating conduct. Rorty’s pragmatism appears to obscure these features of human conduct. Does any form of pragmatism make these features clearer?

Reflective pragmatism can explain the behavior that Rorty’s pragmatism obscures. To further explain the distinction between doctrinaire pragmatism and reflective pragmatism, let us borrow a distinction from ethical theory. Ethical theorists distinguish between theories that take individual acts, instead of rules, as the unit of evaluation.\textsuperscript{41} For example, utilitarian ethics often rely on this distinction to explain away certain counterintuitive implications.\textsuperscript{42} Utilitarianism has counterintuitive implications when formulated as an act-teleological theory, but not when formulated as a rule-teleological theory. Breaking a prom-

\textsuperscript{37} To be fair, sometimes Dewey seems to support this approach. See, e.g., \textsc{Dewey}, supra note 35, at 188-91. The better view understands that contextual inquiry cannot even get off the ground without a background of general presuppositions about human natural and cultural evolution.

\textsuperscript{38} See \textsc{Lipkin, Kibitzers}, supra note 8, at 95-98.

\textsuperscript{39} In order to characterize a context appropriately so that contextual inquiry can be deployed, you must appeal to general presuppositions about human interaction.

\textsuperscript{40} See \textsc{Burke}, supra note 3, at 6 (asserting that through language human beings can go “beyond the criticism of experience to a criticism of criticism”). More impressively, human beings not only interpret the world, but they also interpret that part of the world that constitutes their interpretations.

\textsuperscript{41} See, e.g., \textsc{William K. Frankena, Ethics} 16-17, 23-28 (2d ed. 1937) (distinguishing between ethical theories that are act-based and those that are rule-based).

\textsuperscript{42} See \textsc{Paul W. Taylor, Principles of Ethics} 64 (1975).
ise might have good consequences in a given instance, giving the impression that utilitarianism sanctions promise-breaking. Yet if we generalize such instances by permitting everyone to break promises, the point of a promise or the good effects of the institution of promise-keeping is defeated. Promise-keeping is therefore sanctioned by rule utilitarianism but not by act utilitarianism. Consequently, generalized utilitarian considerations preclude the direct application of utilitarianism to individual decisions. In formulating a utilitarian theory, we are advised to switch from act utilitarianism to rule utilitarianism in order to remedy the counterintuitive implications once the switch is made. A rule utilitarian often eschews direct utilitarian factors in order to achieve, in her estimation, a deeper, more defensible form of utilitarianism.

Rule-utilitarian theories, though utilitarian, preclude direct application of utilitarianism to individual cases. The central question of utilitarianism is not which act has the best consequences, but rather which rule, once adopted by the community, is most beneficial. Rule utilitarianism counsels us not to apply utilitarian theory directly to our individual decisions to act. Instead, practical reasoning should focus on rules from which the right act follows.

Rule utilitarianism permits us, as act utilitarianism does not, to incorporate ethical prescriptions first deployed by nonutilitarian ethical theories, including theological theories. On act-utilitarian grounds these prescriptions fail because the individual acts they entail do not maximize happiness. For example, chastity is not justified on act-utilitarian grounds but it might be justified on rule-utilitarian grounds. Once we switch from act utilitarianism to rule utilitarianism, “nonutilitarian” acts, such as chastity, might follow from rules that satisfy the utilitarian standard. Another example is instructive. Permitting the execution of an innocent person might be right from an act-utilitarian perspective because it quells social unrest, but wrong from a rule-utilitarian perspective because to adopt a rule permitting such executions might cause a failure of confidence in legal institutions.

43. Actually, the issue is more complicated than this. Some philosophers have argued that there is an extensional equivalence between act-utilitarian and rule-utilitarian ethical theories that renders the distinction between these two formulations otiose. See generally DAVID LYONS, FORMS AND LIMITS OF UTILITARIANISM (1965).

44. The distinction between reflective and doctrinaire pragmatism also gains support
The distinction between reflective and doctrinaire pragmatism has the same point as the distinction between rule and act utilitarianism. Doctrinaire pragmatism applies pragmatism directly to critical phrases of a particular vocabulary. The doctrinaire pragmatist seems to be saying that if these phrases do not pass pragmatic muster in their own terms, the entire vocabulary is condemned. Reflective pragmatism, on the other hand, is more circumspect and more searching. It regards the direct pragmatic benefits of particular phrases or metaphors as only one of the indicia of their overall pragmatic utility. Reflective pragmatism tells us that a vocabulary’s effect on other discourses throughout our culture can often save a vocabulary that is pragmatically deficient in its own terms. For example, the metaphors “the sun rises” and “the sun sets” fail if taken in their own terms. Yet this does not affect the question of whether these metaphors have pragmatic value. Let us examine this distinction in greater detail.

B. The Heart of the Distinction Between Doctrinaire and Reflective Pragmatism

Doctrinaire pragmatism presupposes that once we identify a series of metaphors or an entire vocabulary as foundationalist, the metaphor or vocabulary is damned. Reflective pragmatism’s response is more complex. When evaluating a vocabulary or a series of metaphors, reflective pragmatism first seeks to determine the philosophical type of language involved. A vocabulary’s philosophical type is determined by its surface content, by the kind of phrases and metaphors it employs, and by the kind of questions it examines and is designed to answer.

A vocabulary has a foundationalist or realist surface content, for instance, when it is devoted to examining questions about reference or when it conceives of truth as tying the human mind to mind- or language-independent facts through a relation of “correspondence,” “picturing,” “mirroring,” “reflecting,” or from the resolution of the “hedonic paradox.” According to this paradox, a person typically becomes very unhappy when making pleasure the sole criterion for action. In self-consciously seeking pleasure, we somehow push it away. Instead, individuals should seek a plurality of life’s irreducibly valuable goods, for example, knowledge, friendship, art, play, and so forth. To be happy, one should forego seeking a single criterion—for instance, the pleasure principle—to motivate conduct. By approaching pleasure indirectly, we are more likely not to push it away. Thus, on hedonistic grounds, eschewing a direct appeal to pleasure and making other factors determinative of one’s conduct is hedonically superior to applying the pleasure principle directly.
“representing.” The surface content of a realist discourse employs these phrases in search of ultimate reality or objective truth. Similarly, a moral vocabulary has a realist surface content if it suggests that moral judgments are true only if they reflect transcendental facts or would be adopted by all rational individuals.

Once a vocabulary’s philosophical type is identified, the reflective pragmatist asks whether the vocabulary is justified in its own terms. A vocabulary is justified in its own terms when it is justified by the same type of philosophical theory that explains its surface content, for example, when a realist surface content is justified by realism. Additionally, a philosophical vocabulary is unified when it is justified in its own terms. The realization that language need not be unified is the source of reflective pragmatism. Since reflective pragmatism recognizes the contingency of language, it also recognizes that the relationship between the surface content and the justification of a vocabulary is contingent; in short, it takes the contingency of language more seriously than does doctrinaire pragmatism. Reflective pragmatism is therefore more likely than doctrinaire pragmatism to find pragmatic benefits in bits and pieces, in the nooks and crannies of vocabularies that doctrinaire pragmatism abandons. Consequently, reflective pragmatism is a more comprehensive form of pragmatism than its doctrinaire counterpart.

Reflective pragmatism, like rule utilitarianism, is predicated on the supposition that often the best way to satisfy the demands of a theory is by indirection. Pragmatism, understood in this fashion, appreciates the plurality of languages in any sophisticated culture and the multifarious types of pragmatic benefits a given language possesses. Reflective pragmatism helps reinterpret traditional philosophical “isms” in a different light. Should she so desire, the reflective pragmatist may embrace foundationalism or realism, just in case doing so has pragmatic benefits. It keeps these possibilities open, reflective pragmatism emphasizes pragmatism’s pluralistic dimension; it eschews the one-dimensional straightjacket that doctrinaire pragmatism puts around language.

Reflective pragmatism keeps communication with non-

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45. Of course, the reflective pragmatist may not adopt foundationalism for anything beyond its pragmatic benefits. Still, the distinction between the two forms of pragmatism is critical. If we rely only on doctrinaire pragmatism, we will abandon vocabularies before their usefulness is exhausted.
pragmatists open in a way that doctrinaire pragmatism cannot. The reflective pragmatist transliterates foundationalist discourse into a reflective pragmatic discourse. A reflective pragmatist might value realism, because in positing the existence of physical objects, for instance, it better explains and predicts the behavior of middle-sized objects like tables and chairs.\textsuperscript{46} Alternatively, a reflective pragmatist might adopt rationalism because positing mental structures best explains and predicts human behavior. In this case, adopting rationalistic discourse, although unjustifiable in its own terms, has greater utility than applying pragmatism directly. Thus, the distinction between reflective and doctrinaire pragmatism enables us to retain familiar philosophical doctrines devoid of their metaphysical and epistemological trappings, and it allows us to redeploy them in pragmatic terms.\textsuperscript{47}

In principle, reflective pragmatism permits, but does not require, the use of foundationalist discourse. The difference between reflective pragmatism and foundationalist discourse is that reflective pragmatism adopts all the standard objections to foundationalism but insists that a foundationalist discourse, despite itself, can have pragmatic benefits. In particular, reflective pragmatism rejects the foundationalist conception of justification, namely that reality, truth, and reason operate as ultimate, independent constraints on beliefs and values. Instead for the reflective pragmatist, justification must reflect actual social practices, though these practices can be refined and perfected in novel, illuminating ways. Although reflective pragmatic inquiry rejects a priori reasoning, nothing stops the reflective pragmatist from honoring the collective natural and cultural history of humanity, just so long as this wisdom is perpetually subjected to challenge and reconfirmation.

The major difference between reflective and doctrinaire pragmatism is that the former stresses the tendency of shared experience to become expressed in common sense.\textsuperscript{48} Everyone shares accumulated experience that “sustains a culture and assumes the form of a wisdom that can be passed on from one

\textsuperscript{46} This argument takes no position on the issue of which realism, naive or scientific, is the superior realism. The reflective pragmatist co-opts the winner of this controversy for her pragmatic purposes.

\textsuperscript{47} \textit{See} Michael Brint, \textsc{Tragedy and Denial: The Politics of Difference in Western Political Thought} 146 (1991).

\textsuperscript{48} John E. Smith, \textsc{Purpose and Thought: The Meaning of Pragmatism} 94 (1978).
generation to another.” Reflective pragmatism contends that this wisdom, though contingent and contestable, replaces the foundationalist’s longing for an underwriter of human culture. We cannot have an independent validation of culture. But within our cultural perspective, we can appeal to human wisdom to provide persuasive, defeasible arguments concerning knowledge and value.

The collective natural and cultural history of the species alerts us to the intrinsic importance of liberty, equality, community, and fraternity and their role as reasons for reducing cruelty and humiliation. The wisdom of humanity provides “detailed accounts of the emergence, development, sustenance, and decline of vocabularies, discourses, and (non-discursive) practices in the natural and human sciences against the background of dynamic changes in specific . . . modes of production, political conflicts, cultural configurations, and personal turmoil.” Reflective pragmatism critically integrates this collective natural and cultural history and relies on it in political and moral argument.

Reflective pragmatism, unlike doctrinaire pragmatism, is not theory-phobic. Though skeptical of axiomatic, algorithmic, or formalistic theories, reflective pragmatism’s overarching goal “is to think genealogically about specific practices in light of the best available social theories, cultural critiques, and historiographical insights.” Moreover, reflective pragmatism insists on a comprehensive account of “the multileveled operations of power” and requires an assessment of the pragmatic benefits in retaining particular discourses by evaluating their relationship to the distribution of power and social control.

49. Id.
50. This does not necessarily have conservative political implications. If our culture contains pragmatic, critical, and utopian elements, the political implications can then be progressive and even radical.
51. Id.; see also FRANK LENTRICCHIA, CRITICISM AND SOCIAL CHANGE 12-13 (1983) (characterizing theory as a form of rhetoric concerned with power, social change, and the formation of genuine community).
52. Id. at 209 (emphasis omitted).
53. Id.; see also FRANK LENTRICCHIA, CRITICISM AND SOCIAL CHANGE 12-13 (1983) (characterizing theory as a form of rhetoric concerned with power, social change, and the formation of genuine community).
54. Reflective pragmatism functions as a half-way house for those foundationalists who cannot or will not take the pragmatic cure. Sticking with a foundationalist temperament is a highly personal decision that says more about the kind of person one is than it does about your reasoning and argument. An honest foundationalist joining the reflective pragmatist camp can never keep her foundationalist temperament unaltered. And do not forget that if foundationalism is impossible or incoherent, a foundationalist temperament,
Whether one endorses reflective pragmatism or doctrinaire pragmatism can be determined by how one approaches the “vocabulary of isomorphism, picturing, and mapping.” Rorty believes that “[t]he natural approach to such sentences,” which tell us what true beliefs picture, “is not do they get it right?, but more like what would it be like to believe that? What would happen if I did? What would I be committing myself to?”

Ultimately, although both reflective and doctrinaire pragmatism are unconcerned with “getting it right,” reflective pragmatism also eschews individualism. The reflective pragmatist asks: How would we fare in adopting those locutions? How would we get along with others in our community? What would be the prospects for interaction with other communities once we adopt a particular form of speech? By eschewing individualism, the reflective pragmatist more explicitly endorses the social dimension of justification and pragmatic reasoning.

This is not a trivial distinction. Once we take foundationalism’s demise seriously, every form of discourse is a possible candidate for adoption, even the pragmatic use of foundationalism. Questions we denigrated as irrelevant during the reign of reason take on a new import. Even religion takes on new life. Once we abandon foundationalism, we realize that religious discourse is not about the furniture of the universe. Instead, religious discourse advocates a certain way of life and must be evaluated pragmatically. Accordingly, the questions of social control and social nihilism in the absence of God become legitimate questions again. Thus, reflective pragmatism is more comprehensive, more circumspect, than doctrinaire pragmatism in deciding whether to abandon a vocabulary.

What steps do reflective pragmatists take before abandoning a vocabulary? First, the reflective pragmatist is concerned with the difficulty of dropping the old vocabulary. In contrast, Rorty assumes we can discard old descriptions like old

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55. RORTY, supra note 22, at 163.
56. Id.
57. See, e.g., JOHN HICK, AN INTERPRETATION OF RELIGION: HUMAN RESPONSES TO THE TRANSCENDENT 190-208 (1989) (describing various nonrealist conceptions of religious discourse). Of course, this does not mean that reflective pragmatism necessarily justifies religion; it only means that religion, like everything else, must be evaluated pragmatically.
neckties. What conception of language suggests this possibility? Second, the reflective pragmatist considers whether dropping the old vocabulary has a comparative benefit. Reflective pragmatists believe we should drop a vocabulary only when we have some idea how to replace it. Third, the reflective pragmatist attempts to determine whether dropping foundationalist discourse will effectively excise the foundationalist temperament and, if not, whether this temperament will be surreptitiously expressed in the new vocabulary. Fourth, the reflective pragmatist focuses on the implications that abandoning foundationalist discourse will have on other vocabularies, and indeed, on the effects of this abandonment throughout the culture. A corollary of this point is that retaining at least some of the old vocabulary enables the reflective pragmatist to keep the conversation going between pragmatists and mainstream philosophers, a conversation that presently appears to be withering if it exists at all. Fifth, the reflective pragmatist tries to assess how difficult it might be for the old vocabulary to be reinterpreted in pragmatic terms. Sixth, the reflective pragmatist is concerned with how well the new vocabulary will play; that is, foundationalism might be an important motivational support for actors who know nothing about the philosophical debate between foundationalism and pragmatism. In this event, it might be pragmatically unwise to jettison the old vocabulary. Instead, one might want to keep the old vocabulary with its foundationalist surface content and let the foundationalists and pragmatists use it for their idiosyncratic purposes. Similarly, the reflective pragmatist looks at the historical record of the old vocabulary. If it has a good record, that is, a reason to retain it, with all its blemishes. Seventh, the reflective pragmatist is concerned with linguistic pluralism. The reflective pragmatist believes that it is better not to place all one’s pragmatic eggs in one basket. Allowing a number of vocabularies to flourish will give us several different approaches

59. Just pick up the latest copies of the Journal of Philosophy, Philosophical Review, Mind, Synthese, American Philosophical Quarterly, or any of the better analytic philosophical journals. Mainstream analytic philosophers carry on as if Rorty, Feyerabend, MacIntyre, and others have never existed. Reflective pragmatists seek to build bridges to the vocabularies of these maverick philosophers. Consequently, they want the capacity to transliterate automatically mainstream writings into reflective pragmatic discourse.

60. If we seek a pluralism of discourses for the future, we must be careful not to restrict artificially the present. See Kenneth L. Schmitz, Neither with nor Without Foundations, 42 REV. METAPHYSICS 3, 5 (1988).
to the perennial problems of human experience. ⁶¹ Lastly, the reflective pragmatist, unlike her doctrinaire counterpart, tries to avoid completely eliminating any discourse that has historical currency. Under this approach, linguistic evolution is much like evolution generally and centers around one great imperative: Let dysfunctional discourses die of their own accord. Do not recommend the elimination of a discourse, for that is almost always an arbitrary and dangerous decision. ⁶² Human linguistic behavior should follow its own course, for one never knows when a particular form of discourse might be beneficial or even absolutely essential to a particular historical purpose or historical period. ⁶³

The distinction between doctrinaire and reflective pragmatism permits us to redescribe several if not all controversies between pragmatism and foundationalism. It thus provides an alternative to both doctrinaire pragmatism and orthodox foundationalist discourse. Let us now turn to this issue.

III. PRAGMATISM AND CONTEMPORARY ANALYTIC PHILOSOPHY

A. Pragmatism and the Language of Agency

The distinction between doctrinaire pragmatism and reflective pragmatism illuminates several controversies between Rorty and mainstream philosophers in the philosophy of mind, epistemology, and metaphysics. For example, Rorty’s view of the self is likely to raise eyebrows. In his view, the self has no center; it

⁶¹ In an early article, I expressed a similar point by asking rhetorically whether Rorty and Nagel were better than two Rortys. Lipkin, Beyond Skepticism, supra note 8, at 862 n.217. More generally, are not Rorty, Nagel, Taylor, MacIntyre, Unger, Dworkin, and Williams better than seven Rortys?

⁶² This does not mean, of course, that everyone should use every current vocabulary. Use the vocabularies that you believe have the most pragmatic value. Reflective pragmatism, unlike doctrinaire pragmatism, tolerates the use of vocabularies that cannot be made good in their own terms.

⁶³ Recently, a plant in the Brazilian rain forest, which was almost extinct two decades ago, has proven to have a remarkable remedial effect in treating ovarian cancer. Let us preserve our linguistic heritage as we would the rain forest.
is merely a network of beliefs and desires, a network of sentential attitudes that is perpetually in the process of weaving and reweaving itself. This contrasts with the common-sense view that the self is independent of one's beliefs and desires and, therefore, is able to criticize and correct them. Rorty's view appears to give up the notion of an independent self.

It is difficult to imagine, as Martin Hollis argues, how we could give up this common-sense view of the self that, like the language of agency, "makes apparent sense of how we experience the world, our place in it and its other inhabitants." Hollis's argument is compelling; it certainly appears that we either abandon the language of the self or reject pragmatism. Is there any way to avoid this dilemma?

The distinction between reflective and doctrinaire pragmatism enables us to reconcile these opposing positions. Hollis's view prevails concerning the surface content of our language of mind and agency and permits us to speak of the self existing independently of our network of beliefs and desires. The justification for adopting or retaining this language, however, does not entail an ontological commitment to "selves," or even to "beliefs" or "desires." Rather, the justification for retaining this "nonpragmatic" language lies in its pragmatic benefits. Talking about the self as an independent entity is useful because it permits us to say things about our psychology, politics, and morals that would be difficult or impossible to say otherwise. For example, most human beings experience the world as autonomous, rational individuals interacting with other individuals. But autonomy requires an independent self, and rationality requires a self that criticizes and corrects its own beliefs and desires. Consequently, reflective pragmatism permits us to talk with the realists while justifying with the pragmatists.

Another example is instructive here. Charles Taylor argues that we cannot retain a viable conception of self-knowledge without a notion of truth and a notion of the true self. Self-

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64. RORTY, CONTINGENCY, supra note 7, at 83-84.
66. For a more detailed account of the relationship between autonomy, rationality, the self, and criticism, see generally Robert J. Lipkin, Free Will, Responsibility, and the Promise of Forensic Psychiatry, 13 INT'L J.L. & PSYCHIATRY 331 (1990).
knowledge often involves replacing one particular conception of yourself with a new description. In this situation, “one of these views can be truer, more insightful, less self-deluding than the other.”68 This process requires “approaching or departing from one’s true self,”69 while the true self constrains one’s self-descriptions and guides one toward self-understanding.

Although Rorty does not deny personal growth, he doubtlessly rejects Taylor’s analysis of the matter. In Rorty’s view, there is no antecedent reality, no true self that constrains, guides, or directs personal growth. Consequently, in these circumstances we should just stop talking about an essential core self that everyone has if they can only find it. In talking about the self we should drop the language of truth, the language of getting it right, and the language of penetrating to a more fundamental level of reality. In short, we should drop the notion of a true self, together with the notion that we can make choices that approach or depart from the true self.

Taylor denies that we can just drop such notions as truth in these circumstances, even if there is reason to do so. In coming to understand self-knowledge “we cannot but operate with a notion of truth.”70 According to Taylor, “[T]he way we live our transitions, and struggle with potential redescriptions, unfailingly makes use of these notions of overcoming distortion, seeing through error, coming to reality, and their opposites.”71 Our notion of agency and self-knowledge inevitably refers to “some such language, however much we may want to deny it in the name of some general ex ante view.”72 Should there be “a conflict between these two readings, there is no doubt in my mind which ought to be given precedence; for I cannot see where any ex ante view can draw its credibility, if it is not in making sense of how we actually lead our lives.”73

There are two general objections to Taylor’s argument. The first confronts his argument directly. According to this objection, Taylor’s argument begs the question against those who deny the existence of the true self. Taylor’s argument asserts that the language of self-knowledge must operate according to a

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68. Id.
69. Id.
70. Id.
71. Id.
72. Id.
73. Id.
familiar notion of truth, implying that this language is fixed and determinate and that it entails the existence of one true self. However, that is precisely the question in dispute: does our ordinary notion of agency and self-knowledge require the notion of a true self? The simple assertion that it does establishes nothing.

The second objection points out that the language of self-knowledge is itself contingent and can be abandoned if doing so is pragmatically beneficial. Even if the notion of a true self is integrally related to this language, the relation is also contingent. The concept of the true self is not required to describe agency and self-knowledge. For example, in realizing that my rudeness to a colleague is caused by my envy of her Rolls Royce, I need not make any claims about either an empirical or a trans-empirical self. I need not embrace the notion of a true self at all. All I need is the notion that envy motivates my rudeness; this does not commit me to any further claims about whether or not envy is part of my true self or, indeed, whether I have a true self. Such an explanation is still useful because it provides me with additional knowledge that I can incorporate into future action. I can, in other words, continue to be rude to her or not, depending on whether I believe my envy is justified.

More importantly, even if Taylor can overcome these objections, he does not necessarily defeat a pragmatic account of agency and self-knowledge. Contrary to what both Taylor and Rorty appear to believe, the language of agency is compatible with pragmatism, if that pragmatism is reflective pragmatism. A reflective pragmatist can use Taylor’s conception of the language of agency and self-knowledge because doing so has a greater pragmatic payload than the doctrinaire approach of dropping this language and applying pragmatic considerations directly to the questions of agency and self-knowledge. The distinction between a vocabulary’s surface content and its justification is relevant here. The first concern we face is which type of language should we adopt to describe a range of intellectually compelling issues about self-knowledge and agency. Should it be the conventional language of agency and self-knowledge, a logical language, an empirical language, an essentialist language, a language of objectivity, or a (directly) pragmatic language? This inquiry pertains to the surface content of the vocabulary. Our concern here presupposes that there are different types of languages that can be used in different circumstances. Our second
concern focuses on the justification of whichever language we choose for describing self-knowledge and agency. This second concern asks why we should choose the particular language under consideration. In other words, two questions are relevant to adopting a vocabulary. First, what should be the content or character of the language? Second, what is the justification of the particular language chosen?

A reflective pragmatist can concede that Taylor is right concerning which language to use in describing agency and self-knowledge. The critical difference between an intuitive realist and a reflective pragmatist is that the former believes the conventional language of agency and self-knowledge accurately describes the world. Thus, each person actually has a core or true self. The reflective pragmatist, on the other hand, uses this language because it has a greater pragmatic payload than alternative languages. Taylor is right about which language to use, while Rorty is right about the reason why this language is appropriate.

The conventional language of agency and self-knowledge enables us to describe our motivational system and our system of reasons in a much richer way than does Rorty's doctrinaire pragmatism. Rorty's pragmatism insists on describing people as consisting of "a network of linguistic attitudes," a system of beliefs and desires that we continually weave and reweave. Such a conception is hardly illuminating. It fails to capture the dynamic operations underlying the weaving and reweaving of our network of beliefs and desires. It tells us nothing about different kinds of beliefs and desires, different levels of beliefs and desires, and most importantly it does not begin to explain the capacity these networks have for criticism, self-criticism, and self-correction. Moreover, it fails to distinguish "between an 'I' who is the web [or network] and an 'I' who reweaves and recreates the web."74 Whatever the drawbacks, positing a self, a structured, self-critical, self-correcting mechanism that develops its beliefs and desires with an eye to action, is pragmatically superior to doctrinaire pragmatic alternatives.

Jonathan Culler describes the reflective pragmatist's position as committed to a constructive self. The constructive self

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“is not something given; it comes to exist.”75 Some of the pragmatic benefits associated with the self are illustrated by the pragmatic needs to think of oneself as a subject of thought and action and to be the focus of attention, something “which is seen and addressed by others.”76 Under this view, the use of the self has pragmatic value despite the fact that it is a construct or an emergent property.

Suppose you challenge the reflective pragmatist to show why an essentialist or objectivist language will always be pragmatically superior. The reflective pragmatist must reply that it will not always be superior. Here, she will appeal to Rorty’s view of language as a set of tools for coping with our environment and for helping us to formulate and satisfy various purposes, goals, and aspirations.77 Language has no deeper meaning; it does not refer to anything that gives it meaning or makes it true. Neither does a particular vocabulary have a determinate structure that will guarantee its pragmatic superiority. Language consists of sounds and marks that stimulate various forms of behavior, including cognitive and verbal behavior. By using a realist vocabulary as part of my self-understanding, I might be better able to run a system of self-descriptions and redescriptions of what I am than if I directly applied a pragmatic vocabulary to these circumstances.

This claim is contingent and revisable. If realism is arguably the appropriate language now for agency and self-knowledge, this does not mean that it will always be so in the future. With the development of psychology and the cognitive sciences as well as developments in art and literature, one day a realist language may fail to have pragmatic benefits. But the promise of realism should be thoroughly exhausted before it is abandoned. Reflective pragmatism is better than doctrinaire pragmatism at exhausting the vitality of aging languages.

Reflective pragmatism does not compel us to abandon old vocabularies even when they cannot be made good in their own terms. Instead, reflective pragmatism only insists that the ultimate justification for adopting a vocabulary is pragmatic, thus allowing the retention of vocabularies whose content is non-pragmatic. In other words, reflective pragmatism permits non-

76. Id.
77. RORTY, CONTINGENCY, supra note 7, at 11-13.
pragmatic descriptions to be adopted for pragmatic reasons. The distinction between descriptions and justifications means that we need not apply pragmatism directly to problems of human inquiry. We might adopt descriptions that under other circumstances would have been adopted by foundationalists, essentialists, naturalists, conventionalists, empiricists, rationalists, and so forth. If we are pragmatists, however, we cannot use any of these languages as the ultimate justification for the adoption of a vocabulary. And that is the only constraint reflective pragmatism places on adopting a language.

B. Pragmatism and the Language of Objectivity

The pluralistic dimension of reflective pragmatism helps illuminate the controversy between Rorty’s pragmatism and Thomas Nagel’s intuitive realism. Both the pragmatist and the intuitive realist seek the best explanation of human experience. The question is which strategy will most effectively produce this conception.\(^78\) The pragmatist seeks the explanation that has withstood the strongest fallibilistic challenges, while the realist insists on “[t]he pursuit of a more objective view, by which we place ourselves in the world and try to understand our relation to it.”\(^79\) The realist’s conception of “the best explanation” is the explanation that is true, where truth signifies correspondence with reality. In a nutshell, the intuitive realist is wedded to the language of objectivity, while the reflective pragmatist can take this language or leave it.

Rorty insists that an objectivist vocabulary is pragmatically defective.\(^80\) The realist, however, contends that an objectivist vocabulary is preferable to a pragmatic vocabulary because an objective reality exists beyond language. For the realist, this reality has the capacity to validate our vocabulary. If you resist the notion of a nonlinguistic reality that validates our vocabu-

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78. Foundationalism and realism will always be concerned with completion, that is, with getting it all right. The quest for completion has valuable pragmatic benefits and therefore the language that best exhibits this virtue is, in that regard, the pragmatically superior one. See Lipkin, Beyond Skepticism, supra note 8, at 862 n.217.


80. Specifically, Rorty recommends dropping the objective-subjective dichotomy because it is pragmatically unproductive. RORTY, PHILOSOPHY, supra note 7, at 333-42. The distinction between reflective and doctrinaire pragmatism is designed to show that more is involved in dropping a vocabulary than showing that it incorporates a dichotomy which has been unsuccessful in its own terms.
lary, you will side with the pragmatist. If you believe in a knowable linguistic reality, you will side with the realist.

Only reflective pragmatism, which distinguishes between the surface content of a vocabulary and its justification, can reconcile these differences. The reflective pragmatist agrees with the doctrinaire pragmatist that no linguistically neutral reality epistemically validates our vocabularies. On the other hand, the reflective pragmatist agrees with the realist that adopting an objectivist vocabulary is a possibility. For the reflective pragmatist, an objectivist vocabulary can have greater instrumental efficacy than directly appealing to pragmatic factors. Reflective pragmatism permits us to talk with realists, but justify with pragmatists. Pragmatists disenchanted with doctrinaire pragmatism's all-or-nothing approach can find a hospitable welcome in the reflective pragmatist camp.

Does not reflective pragmatism have the burden of explaining how a nonpragmatic vocabulary can be pragmatically justifiable? Let us recall that a nonpragmatic or realist description is a description whose concepts and structure imply a particular ontological commitment. A description of this sort can be justified by a justification having the same ontological commitment or not. When this justification is pragmatic, we have an instance of reflective pragmatism. Instrumentalism, in part, also helps to explain how a nonpragmatic description can have a pragmatic justification. Instrumentalism contends that pragmatic benefits explain and justify a vocabulary that posits the existence of objects such as tables, chairs, electrons, as well as Homer's gods. If the pragmatic benefits are sufficient, the pragmatist can then adopt an objectivist vocabulary. Instrumentalism can be generalized throughout a linguistic system illustrating how a nonpragmatic language can have pragmatic benefits including simplicity, explanatory and predictive value, and coherence. Similarly, a nonpragmatic vocabulary in politics or law can have greater pragmatic benefits than alternative vocabularies.

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81. Cf. Robert Kraut, Varieties of Pragmatism, 99 MIND 157, 182-83 (1990) (arguing that the concepts of analytic philosophy can be understood in this instrumentalist sense to entail no ontological commitments).

82. In short, the instrumentalist approach says that reason, physical objects, the self, human nature, moral law, Western culture, and so forth are all cultural posits and must be judged pragmatically. See Willard V.O. Quine, Two Dogmas of Empiricism, in From A Logical Point of View 20, 44 (1953). Indeed, deciding whether to retain a particular concept that cannot make good in its own terms may be understood as the hallmark of pragmatic rationality. See id. at 46.
Beyond instrumentalism, what we might call “irrationalism” simply rejects the burden of explaining why a non-pragmatic language should have pragmatic benefits. Irrationalism challenges us to think of “human languages as just devices which evolution had recently cobbled together.”\textsuperscript{83} Under this view pragmatic benefits simply reflect the use of language as a tool and conclude that no further explanation is necessary or possible. The acquisition and development of language is a result of the collective natural and cultural history of humanity. Language explains or creates rationality, if language has any rationality at all. “Language d[oes] not emerge from some kind of ratiocination.”\textsuperscript{84} No nonlinguistic rationality exists that creates rationality in language. Consequently, rationality is a function of language and cannot justify the adoption of a language.

Of course, reflective pragmatism does not entail a commitment to an objectivist vocabulary. It is always an open question whether such a language has sufficient pragmatic benefits for the reflective pragmatist. If, for example, Thomas Nagel’s conception of objectivity is useful in describing our world, there is no reason then not to adopt it. The reflective pragmatist need not provide elaborate explanations of why the language of objectivity works, just as long as it does. A reflective pragmatist might adopt an objectivist language because she believes that in so doing we are more likely to test our judgments rigorously against contrary evidence than if we use a more directly pragmatic language. Moreover, a reflective pragmatist might argue that an objectivist vocabulary is closer than alternative vocabularies to the languages of science, ethics, and even common sense. Cultural factors such as these can, in the appropriate circumstances, justify the adoption of an objectivist language.

Reflective pragmatism appreciates the benefits engendered by the quest for objectivity, for example, circumspection, comprehensiveness, and attention to detail. More importantly, an objectivist vocabulary may more readily encourage fallibilism, pragmatism’s chief virtue. Fallibilism insists that the most reliable beliefs and values are the ones surviving the criticism of all reasonable challenges. Adopting an objectivist vocabulary


\textsuperscript{84} \textsc{Ludwig Wittgenstein}, \textit{On Certainty} § 475, at 62e (G.E.M. Anscombe et al. eds., 2d prtg. 1974).
might better achieve this goal than applying pragmatism directly.

The dispute between Nagel and Rorty also involves the concept of philosophical progress. Nagel believes that “conceptual progress can be squeezed out of perennial philosophical problems.” Rorty, on the other hand, believes that “the pursuit of traditional philosophical problems is pointless.” But if pragmatism is right, “then everyone has always been a pragmatist anyway.” The traditional disputes in philosophy are therefore really disputes between different kinds of pragmatist languages. The traditional philosopher, now a reflective pragmatist, sees pragmatic benefits where the doctrinaire pragmatist does not.

In his diagnosis of his controversy with Nagel, Rorty maintains that “the only thing wrong with Nagel’s intuitions is that they are being used to legitimize a vocabulary . . . which the pragmatist thinks should be eradicated rather than reinforced.” What is Rorty’s criteria for this judgment? For Rorty, the “only argument for thinking that these intuitions and vocabularies should be eradicated is that the intellectual tradition to which they belong has not paid off, is more trouble than it is worth, has become an incubus.”

What does this rhetorical flourish mean? Which tradition has not paid off, paid off to whom, and concerning which purposes? How does this tradition, whatever it is, relate to other

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86. Id.
88. RORTY, CONSEQUENCES, supra note 7, at xxxvii.
89. Id.
90. If Rorty replies that it has not paid off in its own terms, that is, it has not shown us what is true, then Rorty is criticizing foundationalism for failing to do what in his own terms is impossible.
91. If the vocabulary can have only pragmatic benefits, then Rorty must specify which goals have not been satisfied in using the failed vocabulary. Additionally, a truly failed vocabulary will atrophy, wither, and die of its own weight. Thus, if an objectivist vocabulary is still used, it is likely to serve some purpose. Rorty must identify this purpose and show why it does not justify the continued use of the vocabulary in question. The point here is that when philosophical vocabularies, like theoretical terms generally, “cease being useful, . . . they tend to stop being used and are . . . abandoned. If they continue being useful, . . . they are further elaborated and go on being used.” CLIFFORD GEERTZ, Thick Description: Toward an Interpretative Theory of Culture, in THE INTERPRETATION OF CULTURES 3, 27 (1973).
cultural domains, to science, to ethics, and to art? What is the relationship between “the tradition” and common sense? What do we lose in abandoning the tradition? Are there things that we will no longer be able to say but still want to say? Rorty’s seductive dismissal is no substitute for a thorough examination of these and other issues. 92 Reflective pragmatism makes this examination possible in pragmatic terms.

Although reflective pragmatism permits the use of foundational discourse, let us not overlook the fact that there remains a crucial difference between reflective pragmatism and foundationalism. Unlike realists, pragmatists cannot embrace the view that in the final analysis our best conception of the world is somehow defective. She cannot countenance just what Nagel, in a Kantian spirit, insists must remain a distinct possibility concerning the definition of “objectivity.”

The pragmatist need not insist on the intelligibility of the notion of “the end of inquiry.” She merely needs to challenge the intelligibility of the nonconvergence thesis. The thesis, of course, is perfectly intelligible if it merely restates fallibilism, that is, the view that further evidence might correct our present conception of the world. However, she “can make no sense of the notion that the view which can survive all objections might be false.” 94 The reason why pragmatism rejects the nonconvergence thesis is that it has no relevance for any of our cultural pursuits. It could only be relevant to a pointless form of language, one that is abstract and remote—a way of thinking beyond all thinking. According to Nagel, “There are limits of objectivity as a form of understanding that follow from the fact that it leaves the subjective behind. These are inner limits.” 95 But Nagel continues:

There are also outer limits of objectivity that fall at different

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92. Rorty’s examination of these issues appears limited to the question whether foundationalism can be good in its own terms. Reflective pragmatism insists that there are other equally important questions.

93. NAGEL, supra note 79, at 98.

94. RORTY, supra note 22, at 165.

95. NAGEL, supra note 79, at 99.
points for different types of beings, and that depend not on the
nature of objectivity but on how far it can be pursued by a
given individual. Objectivity is only a way of extending one's
grasp of the world, and besides leaving certain aspects of reality
behind, it may fail to reach others, even if more powerful forms
of objectivity could encompass them.96

For the pragmatist, this supposition has no normative value.
Unless we could understand what it means to talk about an inac­
cessible and more powerful form of objectivity,97 we have no way
of tying such a notion to our normative judgments and norma­
tive conduct. It remains a form of language that cannot be nor­
malized, and it cannot be made to help solve our pressing
political and legal problems or any of the enormously difficult
problems facing human culture. Objectivity represents a way of
escaping, by a form of diversion, from the problems we face as
human beings. For pragmatists, nothing beyond the world of
human culture can save us from the perils of human existence.

As a final note, the distinction between reflective and doc­
trinaire pragmatism also illuminates the issues of justification
and objectivity. Rorty insists that justification occurs only in the
context of shared practices and only from the perspective of our
beliefs and desires.98 No vantage point exists outside of these
practices or independent of these beliefs and desires. Indeed, the
supposition that such an external perspective exists is unintel­
ligible. It would compel us to imagine a perspective that simul­
taneously combines and is independent of all perspectives.
Rorty's conclusion, however, that all practices and all beliefs
and desires are equally provincial is a non sequitur.

While all practices and all beliefs and desires must reside
within our perspective, there can be important distinctions
between practices and between beliefs and desires within that
perspective. Some practices we embrace might be so central to
our conception of social experience that we cannot imagine
abandoning them. These practices are likely to have counter­
parts in other social systems, though this is not just a factual

96. Id.
97. In some highly specialized circumstances, this view might be relevant to our
investigations. See generally Derek Parfit, The Puzzle of Reality: Why Does the Universe
pragmatists are always open to argument; indeed, they continually seek disconfirming evi­
dence because doing so has pragmatic benefits.
98. See 1 RICHARD RORTY, The Priority of Democracy to Philosophy, in PHILOSOPHI­
CAL PAPERS, supra note 7, at 175, 176-77.
assertion. For example, if we cannot imagine a social system without a conception of fairness, no description of an actual social system will be complete without some characterization of the role of fairness within that social system. Our inability to imagine abandoning a social practice does not entail that the practice is socially or morally necessary. Instead, it tells us which sorts of practices are now possible. A social practice that now seems inevitable may one day disappear. Still, the more central a practice is to other practices, the deeper is its hold on our reasoning.

At this juncture, a brief summary is warranted. I have argued that Rorty fails to appreciate the distinction between reflective and doctrinaire pragmatism. Rorty’s rejection of foundationalism is justified on pragmatic grounds only if doctrinaire pragmatism is the only pragmatism worthy of the name. It is not. Reflective pragmatism requires a more comprehensive examination of the ties between the vocabulary in question and other vocabularies. These include scientific, aesthetic, moral, political, and legal vocabularies, not to mention the vocabulary of common sense. Rejection of a vocabulary requires more than its failure in its own terms. My argument is therefore not that reflective pragmatism requires retaining foundationalist discourse. A thorough examination of foundationalism’s role in our culture might conclude otherwise. My argument, instead, is that the pragmatic revolution will ultimately fail if we embrace doctrinaire pragmatism over reflective pragmatism.99 For pragmatists, doctrinaire pragmatism presently holds controversies in politics, ethics, law, and literary theory hostage, as it is the only game in town.100 Instead, these controversies can be seen in a new light by recognizing reflective pragmatism as a

99. In short, reflective pragmatism is needed to save the pragmatic revolution.

100. In literary theory, Rorty insists on deconstructing the distinction between interpreting a text and using it. Instead, he seeks “a thoroughly pragmatic account of interpretation, one which no longer contrasts interpretation with use.” Richard Rorty, The Pragmatist’s Progress, in Interpretation and Overinterpretation 89, 100-01 (Stefan Collini ed., 1992). Rorty’s use of the word “thoroughly” reveals his doctrinaire pragmatism; it refers only to direct results. When indirect pragmatic results are relevant, the reflective pragmatist can find a use for this distinction. An interpretation is a central or normal understanding of the text, whereas a use is a peripheral or revolutionary understanding. Indeed, the reflective pragmatist may have important political or literary reasons for retaining this distinction. The text then becomes a constructive place holder whose pragmatic utility permits us to talk with realists while remaining loyal to pragmatism. For an interesting pragmatic conception of interpretation supporting Rorty, see generally Jeffrey Stout, What Is the Meaning of a Text?, 14 New Literary Hist. 1 (1982).
bona fide alternative to foundationalism and doctrinaire pragmatism. Nowhere is this problem more conspicuous than in discussions of moral progress.

IV. PRAGMATISM AND MORAL PROGRESS

A. The Problem of Moral Progress

Ethical realism, the standard conception of moral progress, presupposes the possibility of moral knowledge. This presupposition opens a Pandora's box of metaphysical and epistemological constraints on moral reasoning. Ethical realism refers to a constellation of theories that vary widely. The weakest form simply asserts that moral judgments are either true or false. This should be contrasted with the much stronger claim that moral reality consists of external facts and events or that it refers to an internal element common to all human beings. According to the stronger conception, without an independent moral reality, morality has no more authority than astrology or wine tasting. Ethical realism is attractive because it gives a univocal answer to two central questions in ethical theory: what justifies moral judgments and what motivates ethical conduct? Ethical realism contends that moral reality both motivates ethical conduct and justifies moral judgments.

A strong conception of ethical realism contends that society is continually coming closer to moral reality and to the ultimate moral ideal. In this view, the conception of moral reality explains moral development and justifies wholesale revisions or defenses of our ethical conceptual scheme. An ethical realist, who is also a feminist, might argue that sexual equality is required by an element common to both men and women. The problem with contemporary society, on this account, is the existence of invidious distinctions between genders. The solution to this problem of sexism is simply to alter our ethical conception scheme so that it more accurately reflects moral reality. To do this, we must eradicate invidious gender distinctions. According to this form of realism, sexual justice is therefore just one instance of political justice generally; all the conceptual and

101. For a useful discussion of the problems of ethical realism, see generally EssaYS ON MORAL REALISM (Geoffrey Sayre-McCord ed., 1988).
moral resources necessary for condemning sexism are already at hand. The problem of feminist realism, for pragmatists, is its reliance on the very foundationalist constraints that pragmatism repudiates.

Rorty insists that feminist realism should go the way of all realism, namely, to the junk heap of intellectual and moral history. Rorty’s solution to the problem of feminist realism is to accept the feminists’ conclusions while denying them a realist justification.¹⁰³ No appeals to independent facts or to a common nature will justify the sexual revolution. Moral suasion cannot appeal to an antecedent reality to justify the sexual revolution, because no such reality exists. Even if it did exist, our conception of it would be too general, too diffuse, to settle important moral controversies. Consequently, we should give up the notion that an independent, antecedent reality constrains our moral choices and directs moral progress.

Along with Rorty, some feminists reject the realist approach. In their view, men and women are different;¹⁰⁴ they do not share a common human nature. Differences should be recognized and incorporated into a pluralist society that will respect and care about both genders equally. Eradicating sexism is the right thing to do, but not because doing so satisfies reason, the moral law, or human nature. Instead, eradicating sexism involves, as does every moral revolution, a period of intense moral anxiety and uncertainty when neither the old nor the new view is justified.¹⁰⁵ Only when the paradigm of personhood changes to include women equally and fully within its scope will the sexual revolution be complete.

Curiously, Rorty thinks that “women are only now coming into existence, rather than having been deprived of the ability to express what was deep within them all the time.”¹⁰⁶ A person is someone who has “semantic authority” over herself, but presently, men still determine the self-descriptions women use. Until women break away from this linguistic mold and imaginatively

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¹⁰⁶. Rorty, supra note 103, at 243.
and courageously devise their own self-descriptions, which ultimately become incorporated in normal linguistic practice, women will not have a moral identity as women. The feminist realist, according to Rorty, distorts this picture by insisting that women’s identity, their personhood, is already deep within them and just waiting to emerge.107

The sexual revolution will not succeed by appealing to an antecedent moral reality or a universal element in human nature. Instead, women need to devise new descriptions of themselves and their relations with one another, with society, and with men. These new descriptions are new ways of conceiving the social dimension of gender, and if they catch on they will generate new moral judgments praising sexual equality and rendering it more desirable than sexism. These new moral judgments are not true; now, rather, they become true when the language expressing them becomes current.

Moral progress occurs, according to Rorty, when one network of descriptions replaces another, and when the new network permits us to describe the replacement as moral progress.108 Moral progress takes its first step, for instance, when a society’s paradigmatic reference to homosexuals as “queers” is replaced with a description of homosexuals as lovers. When additional novel descriptions enable us to characterize society’s transition as moving from the insensitive treatment of homosexuals to expanding the group of individuals deserving respect and compassion, the process of moral progress is completed.

Do not think that such a process means that the second description is closer to the truth or a better approximation of reality than the first description. Rather, different descriptions serve different purposes, and no external perspective exists by which we can determine which purposes are superior. If we had such a perspective, it would merely be another description, and you cannot adjudicate between descriptions by appealing to a further description.

By Rorty’s account, these new descriptions are not getting closer “to undistorted perception of moral reality.”109 Rorty insists that we should drop this notion of moral progress “and

107. See id.
108. Id. at 247.
109. Id. at 234.
instead talk about the need to modify our practices so as to take account of new descriptions of what has been going on.”\textsuperscript{110} For Rorty, “[I]t is useless to ask whether one vocabulary rather than another is closer to reality. For different vocabularies serve different purposes, and there is no such thing as a purpose that is closer to reality than another purpose.”\textsuperscript{111} Consequently, no vocabulary is more privileged than any other.

Rorty’s view is rhetorically powerful and intriguing, but it is equally confusing and troubling. First, if women are only potentially people, why should they, let alone we, care if this potentiality is realized?\textsuperscript{112} The most plausible answer is that realizing this potentiality is good for beings of a certain kind. This argument makes reference to traits women possess now that, when realized, will make them happy. And wherein lies our knowledge of women’s nature? The collective natural and cultural history of humanity tells us that human beings generally do not flourish when oppressed. Why is this not just the sort of “realist” argument a pragmatist should want to retain?

Rorty’s talk about potentiality is troubling for yet another reason. Why should anyone initiate a moral revolution unless the revolution is justified by our present lights?\textsuperscript{113} If potentiality makes intelligible the desire for liberation, why does it not equally justify liberation? The answer cannot be simply that justification must be explicated in terms of social practice and that social practice requires normal discourse. Any revolutionary must depend on social practice, to wit: the social practice of revolution. Moreover, the feminist revolutionary can appeal to the social practice of her revolutionary group. What Rorty seems to say is that the revolutionary’s social practice is not part of the dominant social practice. But why should that matter?

\textsuperscript{110} Id.

\textsuperscript{111} Richard Rorty, Introduction to John P. Murphy, Pragmatism 1, 3 (1990).

\textsuperscript{112} Rorty himself says that “[i]t was of course true in earlier times that women should not have been oppressed.” Rorty, supra note 103, at 249-50. But then why not say that a woman’s moral identity forbids her oppression? If a realist or universalist language permits us to say this, then on pragmatic grounds it is a superior vocabulary. As Rorty argues, “[T]he great advantage of realism and universalism over pragmatism is that it permits one to say that women were everything they are now and therefore, were entitled to everything they are now trying to get—even when they did not know, and might even have explicitly denied, that they were entitled to it.” Id. at 243. This is quite right! The great advantage of reflective pragmatism over doctrinaire pragmatism is that it can use realism or universality to generate redescriptions in order to encourage moral revolutions.

\textsuperscript{113} One answer here is that sexual inequality hurts. But so does giving up prerogatives your culture granted to you, even if these prerogatives were granted to you wrongly.
What drives the revolutionary’s imagination, courage, and quest for semantic authority is the desire to be a free and equal member of the human community. If this desire motivates her conduct, why is it insufficient to provide a moral justification, undoubtedly from her perspective, for sexual liberation?

Second, Rorty fails to appreciate the importance of the language of human nature, a language that in fact does contain universal descriptions. The language of human nature is a pragmatic language that registers the central values of the culture at a given time. This language presumes a set of general human features the possession of which best characterizes people at that stage of human development. Indeed, Rorty’s own language of suffering and cruelty is just such a language; and it is one of the very special “tools with which we cope with ‘our’ world”?\footnote{114} This special tool is conceptually tied in Western intellectual circles to the vocabulary of freedom, equality, community, and fraternity. And this vocabulary is one that describes universal features of human beings. All things being equal, human beings value well-being, freedom, equality, community, and fraternity.

Our desire for freedom, equality, community, and fraternity is contingent. But contingency is no disgrace, if that is all there is. Vocabularies, of course, exist that exclude or give little prominence to these descriptions.\footnote{115} But for the moment, these alternative vocabularies, at least in Western circles, are losing out to the vocabulary of exalting freedom, equality, and well-being.

A vocabulary of freedom, equality, and well-being gives us a mechanism for pragmatically making good on the ethical realist’s discourse. Human goals and purposes are different in both kind and degree. Nevertheless, some goals are so universal, so central, and so pivotal to all other goals that we are entitled to adopt a vocabulary that describes them as closer to moral reality than other vocabularies. Reflective pragmatism permits us to adopt a realist vocabulary when we cannot imagine now giving up our central goals. Additionally, sometimes one language is so central to another one that we view the relation between the two with realist zeal. In criminal law, for example, the language of intentionality is so well entrenched that we could not make sense of criminal behavior without it. Similarly, without the language

\footnote{114} West, supra note 27, at 201.  
\footnote{115} I have in mind totalitarian, authoritarian, and religious-fundamentalist vocabularies.
of property, Anglo-American commercial law becomes unintelligible. The reflective pragmatist contends that the language of ethical realism, shorn of such commitments, might be pragmatically superior to a language of moral progress that is directly pragmatic. In short, reflective pragmatism insists that the surface content of the language of moral progress can be realist, while its justification remains pragmatic.

A realist vocabulary of moral progress has several pragmatic benefits. First, by formulating an ideal, it guides and motivates human conduct. On the contrary, the application of doctrinaire pragmatism to ethics yields an ad hoc balancing that is merely as effective as the person performing it. With good people, ad hoc balancing will probably yield good results; in a world of imperfection, ad hoc balancing is a recipe for disaster. Second, the language of moral progress provides a critical standard that explains and justifies conduct. A critical standard provides a focus for further ethical conversation. It tells us what is important and necessary to our ethical conceptions. A critical standard enables us to define the questions and delimit the field of possible answers. Reflective pragmatists embrace a critical standard that provides a revisable beacon for future conduct. Third, this vocabulary provides systematic methods for trying to settle moral controversies. The reflective pragmatist seeks to settle moral controversies or, failing that, explain why irreconcilable moral differences exist. The realist accounts for irreconcilable differences by concluding that one or both parties hold false ethical beliefs. Some theories of moral disagreement reveal that moral controversies exist because fundamentally different kinds of moral people exist who have incommensurable values and purposes. Finally, the language of moral progress explains the inescapability of our moral convictions. A conspicuous feature of moral convictions is their hold on us. Institutionalizing this inescapability through language reaps considerable pragmatic benefits in terms of stability and predict-

116. The reflective pragmatist contends that our present inability to give up a vocabulary in no way entails the permanent impossibility of abandoning it. Reflective pragmatism embraces the notion that human inquiry is rational “not because it has a foundation but because it is a self-correcting enterprise which can put any claim in jeopardy, though not all at once.” Wilfrid Sellars, *Empiricism and the Philosophy of Mind*, in *Science, Perception and Reality* 127, 170 (1963).

117. See Lipkin, *Beyond Skepticism*, supra note 8, at 872-74.
ability. No commitments to ultimate reality or necessary moral truths need be involved.

From a pragmatic standpoint, this language of moral progress is preferable to a language that jettisons moral notions and speaks directly to pragmatic concerns. Indeed, in Rorty's hands doctrinaire pragmatism strikes many as being more skeptical or nihilistic than pragmatic. This is not because we are still unconsciously wedded to full-blown foundationalism. Rather, the explanation lies in our status as historically situated beings who carry in ethics, perhaps more than any other discipline, an historical and cultural legacy of trying to resolve controversies. Ordinary folks typically are realists, skeptics, or nihilists. Yet almost no one is skeptical or nihilistic when the ox to be gored is her own.

Consequently, realism in ethics has a formidable hold over our reasoning, our imagination, and our motivation. As pragmatists, we regard this as nothing more than a contingent fact. But it is a contingency that goes all the way down. What Rorty consistently fails to recognize is that contingency can be just as constraining as foundationalism aspires to be. Given the inescapability of certain contingent facts, reflective pragmatists ask which vocabulary expresses this deep contingency better. Our quest here is to determine which type of vocabulary, which surface content, has the greatest pragmatic benefits. The reflective pragmatist insists that we give a fair hearing to a realist discourse in this regard. She accepts the possibility that appealing indirectly to pragmatism through realist discourse is pragmatically better than appealing directly to pragmatic considerations.

The reflective pragmatist finds Rorty's description of this process terribly troubling. Rorty's conception of "moral progress" is consistent with intuitive conceptions of moral stagnation and moral regression. In his view, there are "as many

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118. In insisting on contextualism, Rorty appears to be saying that we cannot have moral answers in advance. But has our collective history not told us anything about these matters? Moreover, contextualism fails if we cannot know in advance what kind of a problem counts as a moral, social, or legal problem. What kinds of solutions are possible? More importantly, we must have an acceptable procedure for determining when a new description is relevant to the problem at hand. Without some explicit or implicit conception tying descriptions to situations—or new descriptions to old descriptions if you like—Rorty's talismanic appeal to redescriptions is worse than empty; it is meaningless. Rorty's proposal here is plausible only after knowing how moral progress occurs. And antifoundationalists can insist that a deeper conception of moral progress is possible without giving up pragmatism.

119. Why should anyone ever accept a new description? Why not say that the new
descriptions as there are uses to which the pragmatist might be put, by his or her self or by others."\textsuperscript{120} In fact, "all descriptions (including one's self-description as a pragmatist) are evaluated according to their efficacy as instruments for purposes, rather than by their fidelity to the object described."\textsuperscript{121}

A new description, therefore, is acceptable only when it serves certain purposes. But whose purposes?\textsuperscript{122} And which purposes? Moreover, does this merely mean that all descriptions are equally valuable, and that different descriptions serve different purposes? If so, Rorty's view seems to entail the very vantage point he decries—a God's eye view of existence. Rorty's doctrinaire pragmatism overlooks the obvious element for distinguishing between different purposes and, therefore, for distinguishing between different descriptions: the practical wisdom contained in the collective natural and cultural history of humanity. This wisdom provides a device for explicating moral progress that simultaneously avoids both foundationalism and Rorty's radical valve egalitarianism. What we have learned about humanity enables us to pick out certain descriptions as having greater moral import than others. Moral progress can then be described as how well we approximate the current ideal of a human flourishing, as revealed by human history. No doubt the correct interpretation of this ideal is contestable. But if there are no Archimedean perspectives, contestability should be the welcome order of the day. With no Archimedean perspectives, contestability vanishes only when differences are suppressed.

Rorty's insistence that all vocabularies are equal commits the very mistake against which he is so careful to warn. To say that vocabularies are equal is to view them from some neutral vantage point. If no such perspective exists, all vocabularies will not be equal. Those descriptions more closely connected to the vocabulary of those doing the viewing will be more important description is irrelevant, for example, to the question of the appropriateness of homosexuality? Unless we can show how the new description follows from some store of moral wisdom or knowledge, new descriptions are unlikely to be efficacious. In other words, we need something to explain systematically why new descriptions persuade. The collective natural and cultural history of humanity functions as the basis on which such persuasion rests. We should not have to reinvent the moral wheel every time we seek to advance morally.

\begin{itemize}
\item \textsuperscript{120} Rorty, \textit{supra} note 100, at 92.
\item \textsuperscript{121} Id.
\item \textsuperscript{122} It is difficult to see why this bottom line does not inevitably lead to an irresolvable clash of values. For "efficiency is, of course, relative to what you want." Rorty, \textit{supra} note 83, at 5. When two individuals want different things, there is no way "we can get beyond this clash of values." \textit{Id}.
\end{itemize}
than others. So, giving up the notion that there are privileged vocabularies—neutral perspectives from which we can evaluate all other perspectives—entails giving up the idea that all vocabularies are equal. What shows one vocabulary to be better than another is just the sort of contingent, collective, natural, and cultural history that has evolved on this planet.

Vocabularies cannot all be equal, because a vocabulary must be evaluated from someone’s perspective, and every perspective includes a vocabulary. Giving up the quest for neutrality entails recognizing that: (1) many different perspectives exist with their attendant vocabularies, and there are no a priori privileged perspectives from which all other vocabularies can be compared and evaluated; and (2) most novel vocabularies are rejected because they conflict with a contingently privileged vocabulary. For reflective pragmatists, this contingently privileged vocabulary is the vocabulary reflecting the collective natural and cultural history of humanity.

No doubt Rorty would tell us that the collective natural and cultural history of humanity is just another description. Consequently, nothing gives it a privileged status. But nothing prevents us from viewing the vocabulary expressing the collective natural and cultural history of humanity as a contingently privileged language just as long as we are willing to modify this language when confronted with reason for doing so. Admittedly, this vocabulary is contestable; no one description of it will necessarily prevail. In Western democracies, however, it would be bizarre if some conceptions of liberty, equality, community, and fraternity were not on everyone’s list of virtues bequeathed to us by our ancestors. These virtues permit us to agree on many political and moral issues. Further, they restrict the range of possibly correct answers on a host of other controversial issues. What perhaps remains are controversies that we will never settle to everyone’s satisfaction.123

Unlike Rorty’s pragmatism, a reflective pragmatist can see utility in the conception of moral progress as an undistorted per-

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123. Even mainstream philosophers concede that there might be “questions about which we shall never agree. There may be no true answers to these questions. Since objectivity need not be all-or-nothing, moral sceptics may be partly right.” Derek Parfit, Reasons and Persons 453 (1984); see also Lipkin, Beyond Skepticism, supra note 8, at 877 (arguing that modified skepticism is an irreducible fact of practical reasoning). Disagreement, like consensus, is a contingent fact. What explains it, in part, is the collective natural and cultural history of humanity.
ception of moral reality. The utility derives from the fact that this locution has a hold on moral imagination. Shorn of metaphysical and ontological commitments, this conception prompts us to remember that moral judgments, like other judgments, are defeasible, and that our conduct is morally corrigible. Thus, our moral imagination prompts us to correct our moral failings. Reflective pragmatism therefore insists on a more thorough examination of the language of moral progress before repudiating it.

Rorty, who argues stridently that language is a tool, fails to recognize that no tool fails completely. Rather, a tool fails for certain purposes only. Hammers are still good for banging nails into wood even if they cannot make it rain. It is pragmatically pointless to discard hammers solely because they have failed as rainmakers. Rather than discard the hammer, just stop trying to use it this way. Let us not throw out the pragmatic baby with the foundationalist bath water. The terms “moral reality” and “moral progress” are rhetorical abstractions that must be evaluated in terms of their pragmatic utility. These abstractions have important value throughout our culture despite their metaphysical or ontological implausibility.

Additionally, the traditional language of moral progress seems infinitely superior to Rorty’s talk of new descriptions. Tying moral progress to the creation of new descriptions says nothing about the content of these descriptions. What should these descriptions look like? Should the content of these descriptions concern suffering, cruelty, liberty, equality, compassion, or something else? How specific or general should these descriptions be? And more importantly, what does it mean to abandon a vocabulary? Rorty says just stop using it. But what does that mean? How do you just stop using the notion of truth, reason, justification, knowledge, and so forth? Do you just stop using the words? Is anything left over? What should you do

124. See Fish, supra note 87, at 74.
125. Rorty might reply that these abstractions only have value relative to failed foundationalist theories. But this begs the question against reflective pragmatism and, more importantly, reveals a rationalistic strain in Rorty’s argument. Reflective pragmatists do not care why something has pragmatic value, just as long as it does.
126. Without noticing, Rorty reifies the distinction between old ways of talking and new ways of talking. Genuinely new descriptions are rare. As far as ordinary language is concerned, probably everything worth saying has already been said. New descriptions do not come out of whole cloth, nor do they lack precedents. Typically, a new description is simply an abnormal description that will become normalized over time.
about the social practices that depend on these words, for example, the practices of arguing, proving, inquiring, and a host of others? Rorty’s exhortation to replace these epistemic terms with “conversation” is too ill-defined to be capable of preserving these social practices.127

The force of Rorty’s argument survives only against a vocabulary whose surface content and justification are foundationalist. Discarding its metaphysical and ontological commitments, foundationalist vocabulary, like some versions of reflective pragmatism, seeks to understand human beings and their place in the world, or rather, “how things hang together in the broadest possible sense.” Its basic presupposition is that reflection, criticism, and self-correction are human virtues that should flourish. Reflective pragmatist discourse can choose to adopt a foundationalist vocabulary if the pragmatic benefits warrant doing so.

B. Pragmatism, Prophecy, and Evil

Foundationalist prophecy treats prophecy in almost mystical terms. A moral prophet’s insight reveals truths of ultimate moral reality. This reality legitimizes prophecy and authorizes conduct necessary to achieve the truth. Foundationalist prophecy pervades the spirit of the great American liberation movements: abolitionism, civil rights, and sexual liberation. For instance, we are told that abolitionism was morally required by God, truth, and reason. The authority to abolish slavery was not a function of human deliberation, for if human deliberation authorizes social institutions, then why was slavery not justified? As with any well-entrenched institution, slavery was authorized by years of human deliberation.

Prophecy and reflective social change form the subject matter of an exchange between Rorty and Professor Lynn Baker.128 Baker points out the processual and prophetic elements in Rorty’s social theory and insists that “Rorty does not convincingly establish that a cultural shift to anti-foundationalism would be advantageous for realizing even his own utopian vision.”129 Applying pragmatism to social change, specifically feminist social change, does not appear to Baker to advance the

In particular, Baker criticizes Rorty’s social theory on the grounds that “an anti-foundationalist conception of social change as evolution may dilute both the prophet’s belief in her own vision and her motivation to effect social change.”

Rorty counters that Baker’s prophet is the wrong kind of prophet. For the pragmatist, nothing beyond human society can authorize prophecy. The wrong type of prophet views herself as a privileged voice speaking for an authority from beyond. Rorty ridicules bad prophets who view themselves as messengers from somebody (God) or something (Truth, Reason, History, Human Nature, Science, Philosophy, the Spirit of the Laws, The Working Class, the Blood and Soil of Germany, The Consciousness of the Oppressed, Woman’s Experience, Negritude, the Overman who is to come, the New Socialist Man who is to come)—somebody in whose name, or something in the name of which, they speak.

Right-thinking prophets, according to Rorty, seek new descriptions of political and moral conflict. Prophets are no more legitimate and speak with no greater authority than anyone else. Good prophets do not think in terms of legitimacy or authority. Instead, they try to shake old notions loose and replace them with new descriptions that dissipate or resolve moral and political conflict. For the pragmatist, only human society can authorize prophecy. The wrong type of prophet views herself as a privileged voice speaking for an authority from beyond.

A good prophet “thinks of herself as just someone who has a better idea, on an epistemological par with the people who claim to have a new gimmick for retreading tires, or programming computers, or redrawing the company’s table of organization.” For Rorty, good prophets are just like good engineers or city planners. They are technocrats who “say that if we all got together and did such and such, we would probably like the results.” Good prophets also resemble good artists or poets,
for “[t]hey paint pictures of what this brighter future would look like, and write scenarios about how it might be brought about. When they’ve finished doing that, they have nothing more to offer, except to say ‘Let’s try it!’ . . . .”

Rorty appears to forge a dichotomy between foundationalist discourse and artistic or poetic projects. But how is poetry or any other intellectual domain free from foundationalist proclivities? Indeed, why not argue that Rorty’s argument against foundationalism, if sound, has even broader implications? In arguing for social engineering, Rorty’s argument generally tends to vitiate all intellectual inquiry. If new descriptions are needed, why not interpret Rorty’s argument as recommending that intellectuals leave the academy’s protective aegis and walk abroad in the world in order to generate new descriptions through personal commitment? In short, why not “live the life one wants to change”?\textsuperscript{140} Surely this is preferable to an abstract, sequestered examination of possible lives and an anemic pursuit of new descriptions.\textsuperscript{141} Rorty’s stance forces him into a corner. Without some pragmatic counterpart to reason, objectivity, or truth, inquiry becomes mere engineering and balancing. But that is a totally unexciting form of inquiry. Hence, is not Rorty’s argument really a complete rejection of intellectual inquiry? Why not just be curious about better mouse traps? Rorty faces this dilemma: he must either abandon intellectual inquiry altogether or join the ranks of reflective pragmatism.

Rorty’s conception of the language of prophecy does not correspond to the language of actual prophets.\textsuperscript{142} In short, the kinds of prophets we admire use very different descriptions than

\textsuperscript{139} Id. Who are these good prophets to whom Rorty alludes? Who are the individuals who say “Let us get rid of slavery, since we would probably like the results,” or “Why not try letting blacks sit at the counter alongside of whites.” Who says “Perhaps we should not try to kill European Jewry. Let us try letting them live, and we will see if we like it.” And who says “Why not see if sexual equality is a good thing. If not, we will drop it.” Rorty’s insouciant, “prophetic” attitude seems at best the attitude of inventors of cock fighting, mule diving and so forth, and at worst the attitude of moral monsters. After all, why should we not solve the Jewish problem, the Palestinian problem, and the Bosnian problem once and for all? “Try ethnic cleansing, you’ll like it!” Rorty’s characterization of good prophecy is both historically inaccurate and morally repugnant.

\textsuperscript{140} PAUL FEYERABEND, FAREWELL TO REASON 305 (1987) (emphasis omitted).

\textsuperscript{141} Id.

\textsuperscript{142} Rorty himself approvingly insists that the language of reason “was very useful in creating modern democratic societies.” RORTY, CONTINGENCY, supra note 7, at 194. Despite this remarkable feat, Rorty believes that this language should be abandoned. But rather than abandon the language of reason, we should reinterpret its significance pragmatically.
the ones that seem to follow from Rorty’s conception of antifoundationalist, prophetic language.\textsuperscript{143} If doctrinaire pragmatism cannot accommodate the actual language of prophecy, then arguably it cannot be used for reflective social change even in the way Rorty endorses. Rorty’s conception of good prophecy distorts moral language and moral psychology, the same language and psychology that have permitted Western intellectuals to seek to eradicate suffering and render society free and just. Unlike doctrinaire pragmatism, reflective pragmatism can support and extend the language of prophecy as the only nonviolent means of reform and revolution.

All prophets, good and bad, must, \textit{pace} Rorty, “think of themselves as not just one more voice in the conversation, but as the representative of something that is somehow \textit{more} than another such voice.”\textsuperscript{144} Prophets must believe that something warrants their insight into the solution they propose. It may not be God, truth, or reason, but it must be something. For an abolitionist to insist that her conviction is just one more voice alongside the slaveowner’s would be absurd. Indeed, the abolitionist prophet says that her voice is the correct voice; something warrants it and condemns the voice of the slaveowner. But what provides this justification if no external justifications are possible? The obvious answer is an internal justification,\textsuperscript{145} one that is better supported by the collective natural and cultural history of humanity than are the alternatives.\textsuperscript{146}

The collective natural and cultural history of humanity integrates scientific, artistic, and ethical convictions into a general interpretation of culture. Though contestable, a general interpretation of culture must have widespread support for the

\textsuperscript{143} Indeed, actual prophets appear to use just the sort of “philosophical mumbo jumbo” that Rorty disparages. 1 Richard Rorty, \textit{The Priority of Democracy to Philosophy}, \textit{in Philosophical Papers, supra note 7, at 175, 184}. Of course, every vocabulary is mumbo jumbo of one sort or another until it acquires a pragmatic use. If foundationalism is central to the language of prophecy, then foundationalist discourse, whether or not it is philosophical mumbo jumbo, is justified on pragmatic grounds.

\textsuperscript{144} Rorty, \textit{supra} note 1, at 719.

\textsuperscript{145} Justification and criticism of human society cannot appeal to external factors. But justification and criticism are real, so they should refer to internal principles of human society that we identify by interpreting the collective natural and cultural history of the species. Cf. Michael Walzer, \textit{Interpretation and Social Criticism} 21 (1987) (noting that we interpret actually existing morality when we engage in moral argument).

\textsuperscript{146} Rorty appears to reject the justificatory role that the collective natural and cultural history of humanity plays in picking out some voices over others. Such a justificatory strategy will certainly not satisfy the foundationalist. It is not entirely clear, however, why Rorty rejects it.
culture to flourish. This is not just one more guarantor of culture—nothing does that. Rather, it is ultimately the cultural glue that keeps society cohesive. It is ultimately what foundationalists mean when they refer to reason, truth, or the moral law. If foundationalism, according to reflective pragmatists, is just one pragmatic language among many, metaphysical and epistemistic attempts to underwrite culture must be understood in pragmatic terms. If we ever have reason to believe that a particular moral revolution is imperative, our vision for the future as derived from the collective natural and cultural history of humanity is what will make it imperative. If this history explains why freedom, equality, community, fraternity, and human flourishing are generally desirable human goals, then prophecy will be warranted on the basis of that history. Reflective pragmatism tells us that the collective natural and cultural history of humanity provides a contingent and contestable justification for reflective social and moral change.

In fact, Rorty implicitly relies on the notion of the collective natural and cultural history of humanity. For example, his distinction between public and private does not come out of whole cloth. Rather, “Rorty is convinced . . . that more than twenty centuries’ worth of attempts to reconcile the language of personal fulfillment and the language of social obligation have ended in the sand.”

Likewise, Rorty’s insistence that cruelty is the worst thing we can do and solidarity is the best must be based on this collective understanding. Rorty cannot argue that the moral value of cruelty and solidarity can be known a priori, for that would defeat his pragmatic, antifoundationalist, anti-essentialist strategy. Simply because cruelty and solidarity have no a priori essential special role in human affairs does not mean that they have no special role at all. And that special role is contingently derived from the collective natural and cultural history of humanity.

Reflective pragmatists and prophets implicitly appeal to his-

147. GUNN, supra note 13, at 104.
148. Certainly, Dewey emphasized the role of the collective natural and cultural history in moral inquiry and in reforming social relations. 14 JOHN DEWEY, Morals Are Human, in JOHN DEWEY: THE MIDDLE WORKS, 1899-1924, at 204, 204 (Jo Ann Boydston ed., 1983) [hereinafter MIDDLE WORKS] (“Since it directly concerns human nature, everything that can be known of the human mind and body in physiology, medicine, anthropology, and psychology is pertinent to moral inquiry.”).
torically situated moments for reflection and reconsideration. After trying middle-sized theoretical devices like the reversibility argument—"How would you like to be a slave?"—the abolitionist exhorts the slaveowner to "trust me, and soon we will agree that slavery is unjust." Such agreement may not be immediate, but it usually occurs before either Peirce’s or Habermas’s "end of inquiry." During these moments of social reflection, people assess the consequences of social revolution and change. The prophet’s presupposition is that these periods of reflection will vindicate her convictions.

Without such vindication, prophecy is indistinguishable from idiosyncratic visions of the future. In fact, most prophets do not merely offer idiosyncratic visions of the future; and when they do, it is often disastrous. Consider, for instance, Hitler, Stalin, Pol Pot, and Idi Amin. Instead, good prophets, such as Ghandi, Lincoln, and Martin Luther King, Jr., implicitly contend that once we as a society reflect on the matter, we will endorse their vision of the future. Thus, individuals who follow good prophets have, pace Rorty, more reason to "be sure of [their] own usefulness to future generations than could the first fish who crawled up on land." According to reflective pragmatism their certainty derives from the collective natural and cultural history of our species.

Rorty does not appreciate the different sorts of narratives that lie between prophecy and philosophical disquisitions into truth, knowledge, and reality—the sort of cultural criticism performed in different fashions in different eras by Socrates, J.S. Mill, Dewey, Rawls, Sartre, Russell, Michael Walzer, Paul Goodman, Christopher Lasch, and Cornel West. These narratives illuminate abstract features of actual social institutions and circumstances. Narratives of this type provide the contingent support for social reform. Instead, Rorty criticizes the American left for its "theory hope" while simultaneously failing to recognize his own theory-phobia. Nowhere does Rorty show that cultural criticism can permanently do without theory. Pragmatic theories are rhetorical devices that must be evaluated by assessing their consequences. Theories, even if not philosophical theories, do contribute greatly to the reconstruction of social institutions. Rorty can entirely avoid this problem by embracing

149. Rorty, supra note 1, at 721.
Reflective pragmatism regards culture as an intricately designed tapestry or web of different vocabularies integrating philosophy, science, art, politics, ethics, law, and common sense. Dropping one strand of this web has implications throughout our cultural system. The legitimacy of and authority for moral change come in part from this integrated cultural web. Although reflective pragmatism cannot countenance questions about the legitimacy or authority of the web itself, it embraces questions about the propriety of social practices within the web. Consequently, dropping vocabularies without this web should be conducted with great care and caution.

Rorty tells us that prophecy is all that nonviolent movements can fall back on when argument fails. But why should one be nonviolent? There are two plausible replies. The first maintains that violence should be rejected because it is the most damaging option possible. However, what substantiates this view? Mere empirical evidence confutes it. After all, revolutions of one sort or another can explain Western history. Foundationalism typically defends against violence and revolution by appealing to reason, realism, or universalism. But if reason is inefficacious, then revolution cannot be rejected tout court.

The second approach makes no such appeal. Instead, it persuades us by kibitzing and exhortation. It says, “C’mom, let’s not start shooting, because violence is worse than the disease it is designed to cure.” But then why not use such kibitzing to show that slavery is an intrinsic evil, an evil even before a contemporaneous choice is made to reject it? Except by a wild turn of imagination, such kibitzing denies a context in which slavery is good in itself; that is, good if nothing else were morally relevant. Slavery could not be so conceived, because it is conceptually and morally tied to oppression, which generally vitiates whatever benefit the slaveowner receives. That, for the reflective pragma-

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152. Rorty contends that philosophy “is auxiliary to more central areas of cultural activity.” Richard Rorty, The Professor and the Prophet, 52 TRANSITION 70, 72 (1992). But Rorty never provides more than a rough description of the effect this will have on other languages in the cultural web. Certainly, a healthy pragmatist would insist on describing a worst case scenario before abandoning foundationalist vocabulary.
tist, is a strong enough account of what “intrinsically wrong” means.\textsuperscript{153} An act is intrinsically wrong if the best interpretation of our collective natural and cultural history tells a contemporary agent that no present evidence is available that validates the act. As long as such a judgment passes the fallibilist’s test, pragmatists can embrace it.

Rorty’s reply here is that there is no noncircular justification for describing something as intrinsically wrong. This apparently means that if you start out with very different ideas on the matter, for instance if you are a Nazi, no justification from the other camp will persuade you. But why is that relevant? If we have sincerely given up foundationalism, of course, justifying our position to a Nazi may not be possible. That does not mean, however, that justification is impossible. From our ethnocentric vantage point, slavery is intrinsically wrong. Since only ethnocentric standpoints exist, neither calling our perspective “an ethnocentric standpoint” nor characterizing our argument as from “an ethnocentric point of view” can count against us.\textsuperscript{154}

As Rorty himself writes:

We are bound to treat our present views on nature and morals as true, for we know no better. But the invidious distinctions we draw between ourselves and the Trobrianders, or between our chemists and those who believed in phlogiston, are to be backed up in the detailed and humdrum ways in which we explain the advantages of the rule of law, or of thermodynamics, over any alternatives so far canvassed. There is nothing particularly philosophical to be said.\textsuperscript{155}

Rorty concedes the existence of humdrum justifications for social policy, even perhaps to condemn Nazism. However, one person’s humdrum justification is another person’s passionate

\textsuperscript{153} As a pragmatist, my use of “intrinsic” is part of my moral ideal, and I am entitled to use the term if the moral ideal is justified. See Afterword to Symposium, The Renaissance of Pragmatism in American Legal Thought, 63 S. CAL. L. REV. 1911, 1915 (1990) (comments of Hilary Putnam).

\textsuperscript{154} This argument cannot guarantee consensus. But if consensus is impossible, this argument may explain the existence of an irreducible, incommensurable number of world views.

\textsuperscript{155} Richard Rorty, Realism and Reference, 59 MONIST 321, 323 (1976). Rorty’s nemesis, of course, is “word-world relationships between small linguistic or mental items and other bits of the world, or relations of ‘greater adequacy of picturing’ between global schemes and Reality.” Id. But, of course, there are all sorts of things that we can say about moral and political values without invoking this conception of realism; for example, Nazism is an abomination, or in traditional philosophical vocabulary, Nazism is intrinsically wrong.
commitment. I take Rorty to mean that only justifications derived from the collective natural and cultural history of humanity, not philosophical justifications, are relevant here. No doubt this locution, “the collective natural and cultural history of humanity,” is pretentious, vague, and too reminiscent of foundationalism for Rorty’s taste. Okay then, let’s call it “collective humdrum.” Nevertheless, an internal accumulation of scientific, aesthetic, political, and moral information provides the best sort of justification known to humanity. Reflective pragmatism incorporates our collective humdrum, telling us “what human beings are like, what has transpired in history, and what the likely consequences of tyranny will be.”156 This collective humdrum permits reflective pragmatists to include Aristotelian, Kantian, Hobbessian, or Humean theories of human nature “and appeal to [them] in their moral reasoning.”157

Rorty insists that nothing beyond the human condition can save us. Consider his statement:

[W]e are as friendless, as much on our own, as the panda, the honeybee or the octopus—just one more species doing its best, with no hope of outside assistance, and consequently no use for humility. The best we can do is to take full advantage of our ability to use language by becoming ever more social animals, banding together in ever more complex ways for mutual support.158

But using language to become more and more social generates and is generated by a form of discourse that reflects our collective natural and cultural history. This discourse gives rise to competing theories of the best interpretation of our history. Only theory-phobia explains why pragmatists should not embrace such pragmatically supportable theories.

Once we abandon foundationalism, no difference remains between philosophy and, to wax oxymoronic, inspired collective humdrum. Indeed, philosophy will survive in one form or another just as long as there exist deep humdrum explanations and justifications of human experience. Deep humdrum explanations and justifications are illuminating interpretations of our collective natural and cultural history, interpretations prompted by our hunger to understand those creatures who bequeathed us our cultural legacy. This collective natural and cultural history

156. Stout, supra note 2, at 257.
157. Id.
is the alternative both to foundationalism’s dogmatism and to Rorty’s doctrinaire pragmatism. It is this alternative that reflective pragmatism embraces.

Relying on the collective natural and cultural history of humanity is sufficient support for the notion that Nazism is intrinsically evil. Even if we were to concede *arguendo* that Nazism, from a God’s eye standpoint (whatever that means), is just one description among many, it hardly follows that we can not describe Nazism as intrinsically evil. Arguably, the best interpretation of our collective natural and cultural history precludes genocide. Reflective pragmatism insists that no coherent interpretation of our history would conclude that Nazism is morally appropriate. No plausible interpretation of Western culture, Eastern culture, and so forth would include a principle permitting genocide as the considered judgment of members of these different cultures. Such evaluation is performed from the perspective of each culture, not from some external standpoint. Why should we be surprised if there exist some contingent, historical, antifoundationalist, universal moral truths? As long as we consider these “truths” to be defeasible and the individuals who utter them fallible, why should this shock the doctrinaire pragmatist’s sensibility? All I need is sufficient evidence in support of my position and the fallibilistic guts to stand behind both.¹⁵⁹

As a Jew, for example, I can assert easily and with great confidence that the Aryan’s argument is, was, and will be always false without renouncing my pragmatic credentials, if what I mean is that I cannot imagine giving up the claim that genocide is intrinsically wrong. This does not mean that I reject Nazism a priori, that I insist it is necessarily false, or that my view reflects some hidden reality. Rather, it means that I cannot imagine—or fill with personal, moral, and intellectual content—what it would be like to embrace genocide. In Rorty’s lexicon, no

¹⁵⁹. A pragmatic evaluator is committed to fallibilism. Fallibilism maintains that every judgment can conceivably be falsified and, therefore, to have any confidence in one’s judgment, one should seek all possible contrary evidence. Consequently, if I believe that the Aryan’s position is false, that it is wrong to kill Jews, I should seek contrary evidence. If the arguments against my judgment fail, I am entitled to endorse the judgment that the Aryan’s argument is wrong. I do not need to seek some “larger entity which stands behind [me] and makes [my] claim true.” Rorty, *supra* note 103, at 235. What I need is a defeasibly true statement asserting that genocide is intrinsically wrong. Here, I can refer to the collective natural and cultural history of humanity. Understood pragmatically, this history supplies me with abundant evidence that genocide is intrinsically wrong.
vocabulary endorsing genocide would attract me, nor do I see any reason for searching for one that might. With this in mind, feminists need not drop “the notion that the subordination of women is intrinsically abominable” and drop “the claim that there is something called ‘right’ or ‘justice’ or ‘humanity’ which has always been on their side, making their claims true.”\textsuperscript{160} A reflective pragmatist should regard this notion as pragmatically beneficial or harmful depending on the circumstances. She would agree with Rorty that if such a claim is designed to create or fortify “the fantasy of escape from an historical situation into an ahistoricist empyrean—one in which moral theory can be pursued, like Euclidean geometry, within an unalterable, unextendable, logical space, it is pointless.”\textsuperscript{161} But without escaping history, we can use it to validate our present judgments.

Pragmatic benefits accrue in inviting other perspectives to concur in or confute your judgments. Such judgments permit us to understand and to criticize the past in ways precluded by doctrinaire pragmatism. Surely some people in the past believed that the oppression of women was unjustifiable. If so, what conditions existed at the time to render this only a minority judgment? Although giving up foundationalism and universalism does not prevent us from insisting that sexism was always wrong, the abandonment of such discourse may allow us to understand the conditions existing in the past that prevented others from realizing sexism’s moral status. We need not endorse some metaphysical or ontological view regarding the essential nature of good and evil or of humanity or the moral law to assert this. All we need say is that the judgment—sexism is wrong, was wrong, and will continue to be wrong—is presently the most defensible judgment available.\textsuperscript{162} Reflective pragmatism can make this point, while Rorty’s doctrinaire pragmatism cannot.

There is one final note. Dewey’s pragmatism is a brand of reflective pragmatism. He never denies what Rorty appears to deny, namely that “common experience is capable of developing from within itself methods which will secure direction for itself

\textsuperscript{160} \textit{Id.} at 237.

\textsuperscript{161} \textit{Id.}

\textsuperscript{162} Making such claims in the present about past and future circumstances will involve knotty conceptual problems, which normal theorizing should address. Despite these problems, the pragmatic benefits of making these judgments override the burdens.
and will create inherent standards of judgment and value.”\textsuperscript{163} It is therefore difficult to understand why Rorty thinks that Dewey could not judge sexism a wrong, even intrinsically wrong, based on our “inherent standards of judgment and value” to which common experience or our collective natural and cultural history gives rise. Indeed, as Giles Gunn observes, “Dewey argued that when philosophy relinquishes the attempt to transcend experience, it becomes instead a form of criticism whose purpose is to clarify the nature and implications of our attachment to the cultural constituents of our experience.”\textsuperscript{164} Consequently, when devoid of foundationalism and transcendentalism, philosophy or cultural criticism permits us to rely on our collective natural and cultural history of humanity, that is, our common experience, to generate judgments about the intrinsic evil of slavery, racism, and sexism. What intrinsic means here is simply that given our heritage and our collective natural and cultural history of humanity, we cannot imagine the circumstances in which we would abandon this judgment.\textsuperscript{165}

Rorty’s world contains no unconditional evil. Since the moral law has no intrinsic nature,\textsuperscript{166} no timeless, ahistorical force constrains and directs moral judgment.\textsuperscript{167} Accordingly, “the moral world does not divide into the intrinsically decent and the intrinsically abominable, but rather into the goods of different groups and different epochs.”\textsuperscript{168} Instead, attributions of evil are relational. Nothing originates as evil. Initially evil is merely a rejected good that becomes an evil only after deliberation, choice, and rejection.

Rorty enlists Dewey’s assistance in establishing his doctrine of “original virtue.” Dewey sees no pure evil anywhere, because “[g]oodness is not remoteness from badness. In one sense, goodness is based upon badness; that is, good action is always based upon action good once, but bad if persisted in under changing

\begin{itemize}
  \item[163.] JOHN DEWEY, \textit{Experience andPhilosophic Method}, in \textit{Experience and Nature} 1, 35 (2d ed. 1929).
  \item[164.] GILES GUNN, \textit{The Culture of Criticism and the Criticism of Culture} 73 (1987).
  \item[165.] Quine has shown us that “[a]ny statement can be held true come what may, if we make drastic enough adjustments elsewhere in the system.” QUINE, \textit{supra} note 82, at 43. “Conversely, . . . no statement is immune to revision.” \textit{Id}.
  \item[166.] Rorty, \textit{supra} note 103, at 233-34.
  \item[167.] \textit{Id}. at 234-35.
  \item[168.] \textit{Id}. at 235.
\end{itemize}
Evil then connects with moderation, with too much good being a bad thing. Judgments ascribing evil to someone or something are also comparative judgments. Evil means coming in last. For Dewey, “The worse or evil is a rejected good. In deliberation and before choice no evil presents itself as evil. Until it is rejected, it is a competing good. After rejection, it figures not as a lesser good, but as the bad of that situation.”170 According to Rorty’s gloss on Dewey, good and bad have no intrinsic nature and derive their status only after comparing the consequences of each proposed course of action.

On a Deweyan view, . . . the enslavement of one human tribe or race by another, or of the human females by the human males, is not an intrinsic evil. The latter is a rejected good, rejected on the basis of the greater good which feminism is presently making imaginable. The claim that this good is greater is like the claim that mammals are preferable to reptiles, or Aryans to Jews; it is an ethnocentric claim made from the point of view of a given [human being]. There is no larger entity which stands behind that [human being] and makes its claim true . . . .171

Does Rorty appreciate how radically skeptical these provocative claims are? Prophetic, pragmatic redescription of human conflicts making new social arrangements imaginable “is all that non-violent political movements can fall back on when argument fails.”172 Further, enslaving blacks, women, or Jews “is not an intrinsic evil”; it is just “a rejected good, rejected on the basis of the greater good which [abolition, feminism, or Holocaust studies] is presently making imaginable.”173

What can this mean? Does Rorty appreciate how intimidating these remarks can be for a black person, or a Jew, or a woman? How do we separate the slaveowner’s “good” of enslavement and the slave’s “good” of freedom? Do we say that enslaving oppressed groups is good for the slaveowners, but not for the slaves? From our vantage point, might it turn out in some circumstances that a balancing of the opposed goods will tip in favor of the slaveowner’s? Would it still be called enslavement then? Do we say, “If not for those damn slaves, enslav-

171. Rorty, supra note 103, at 235.
172. Id.
173. Id.
ment would be a good thing?” Is it that we must now, at this stage in history, deliberate over whether enslavement or persecution of blacks, women, or Jews is contextually good or bad? The term “intrinsic” makes these questions at best rhetorical and at worst silly. Hence, if we cannot adopt the notion of “intrinsic wrong,” we must take these questions seriously.

Rorty’s doctrinaire pragmatism interprets “intrinsic” as an ahistorical, timeless property. An intrinsic good for Rorty has a fixed and permanent inherent nature. Similarly, an intrinsic wrong has essential properties by virtue of which it is wrong. An independent, timeless underwriter stands behind human history to guarantee that certain acts are always right, while other acts are always wrong. If this is the only way to understand “intrinsic,” surely Rorty is right in dismissing it. But is it the only way?

Intrinsic wrong is better understood as a pragmatic assertion that the collective natural and cultural history of humanity has taught us that certain human inclinations and activities are never right; for example, slavery is wrong in all practically conceivable contexts. Can a pragmatist support this claim? To do so, a pragmatist must be prepared to commit herself to some universal judgments. Can a pragmatist do that? Rorty thinks not. A doctrinaire pragmatist cannot, but a reflective pragmatist can.¹⁷⁴

A reflective pragmatist believes that the collective natural and cultural history of humanity informs us that slavery is always wrong. Reflective pragmatists inspect the history of civilization and conclude that slavery leads to one or more terrible human disasters for both the slave and the slaveowner. This judgment is made from our perspective and avoids Archimedean standpoints. The fact that it does not necessarily convince the slaveowner does not speak to the judgment’s truth so long as a reflective consensus exists within our culture.

Based on everything we know, reflective pragmatism permits universal moral truths. Its antifoundationalism remains intact. These truths are historically derived and do not pretend to represent any reality save our historical heritage. The reflect-

¹⁷⁴. Remember that this Article’s goal is to show that two kinds of pragmatism exist: doctrinaire and reflective pragmatism. Typically these pragmatic strategies yield different results, but no particular vocabularies are conceptually wedded to reflective pragmatism. Consequently, a reflective pragmatist might still reject objectivity, intrinsic evil, universality, and so forth.
tive pragmatist does not believe for a minute that these truths are anything more than deep, contingent generalizations.

For the reflective pragmatist, permitting universal judgments saves us from the straightjacket of doctrinaire pragmatism. The language of universality permits us to say more of what we want to say about good and evil, our understanding of the moral past, and our utopian aspirations for the future. So, despite the contingent imperfection associated with universal moral judgments, adopting a judicious use of such judgments is better than abandoning them entirely. Reflective pragmatism, unlike its doctrinaire counterpart, contends that more pragmatic benefits accrue by permitting some universal judgments than by proscribing their use entirely.

What benefits accrue to the reflective pragmatist in adopting ethical realism? First, by adopting a universalist ethic, the reflective pragmatist asserts that slavery, sexism, and antisemitism are intrinsically wrong. These judgments are defeasible, universal judgments that contend, for example, that slavery is a "rejected good" in all practically conceivable contexts. Defeasible, universal judgments satisfy pragmatism's central fallibilist goal. The commitment to universalism challenges us, in this example, to come up with practically conceivable contexts in which slavery would be right. Of course, these judgments are ethnocentric, but then again so are all other judgments. Second, a universalist ethic provides a greater motivational component for acting on ethical prescriptions. Finally, such an ethic contributes more than doctrinaire pragmatism to the resolution of moral conflicts.

A doctrinaire pragmatist will not, in all probability, find the arguments in favor of retaining the concepts of moral progress, intrinsic evil, and the ideal of universal ethics persuasive. Rorty certainly would not; foundational discourse relies too heavily on abstractions and dualism for his taste. It is all the more difficult, then, to understand why Rorty embraces dualism in politics. Let us now turn to an examination of this issue.

175. Rorty fails to distinguish between universality in application and universality in justification. A moral code might apply to everyone within and without your culture; an example is the maxim "treat others as you would be treated." However, its justification might involve only ethnocentric considerations.
V. PRAGMATISM, POLITICS, AND LAW

A. The Public-Private Dichotomy

One primary question of liberal political theory concerns the legitimacy of coercive state power. The public-private dichotomy is designed to justify a particular answer to this question. Traditional liberal political theory insists that human experience may be neatly divided into two mutually exclusive spheres: the public and the private. The public sphere consists of those acts that affect other people besides the agent. The private sphere consists of those acts that only affect the agent. The government may coerce only public acts; purely private acts must be left to the individual's choice. Doubtlessly, the public-private dichotomy is controversial. My aim here is neither to embrace nor reject it. Instead, I want to ascertain its role in the debate over doctrinaire and reflective pragmatism. Which type of pragmatism is more likely to embrace the public-private dichotomy?

This issue is crucial in understanding Rorty's social thought. When moving from epistemology and metaphysics to politics, Rorty switches from doctrinaire pragmatism to reflective pragmatism without noticing the switch. His doctrinaire pragmatism in epistemology and metaphysics tolerates none of the traditional dualisms between reason and desire, objectivity and subjectivity, truth and justification, realism and idealism, interpretation and use, meaning and significance, and creation and discovery. Yet Rorty's devastating arguments for doctrinaire pragmatism in epistemology and metaphysics become

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176. This statement's oversimplification is a direct result of the difficulties involved in maintaining the public and private dualism in the first place. As Ian Shapiro observes, "Almost a century of debate... on Mill's harm principle has established that the boundary between public and private spheres... is exceedingly difficult to draw and is invariably charged ideologically." IAN SHAPIRO, POLITICAL CRITICISM 40 (1990). How do we distinguish between self- and other-regarding acts when almost all acts have both kinds of consequences? We might say that self-regarding acts harm the agent directly but others only indirectly, and other-regarding acts directly harm others. But the distinction between direct and indirect harm is conclusory, already presupposing an answer to the question of when government can coercively control individual acts.

177. Ultimately, Rorty's version of the public-private dichotomy cannot be assessed without knowing what counts as cruelty and humiliation. If poverty, racism, sexism, environmental decay, cultural dogmatism, specism, economic inequality, and so forth are instances of cruelty and humiliation, then in Rorty's own terms they occupy the public sphere and ought to be eradicated. See Joan C. Williams, Rorty, Radicalism, and Romanticism: The Politics of the Gaze, in PRAGMATISM IN LAW AND SOCIETY, supra note 21, at 155, 173.
blunted in the political arena. Here, he embraces such dualisms as reform and revolution, private hope and public responsibility, self-creation and human solidarity, irony and common sense, coercion and persuasion, and love and justice. Indeed, these distinctions “tend to assume the status of quasi-absolutes” for Rorty; he never once points out that these oppositions are contingent and should be retained or abandoned only if doing so serves a certain purpose. 178 We are not compelled to construct the social order with these distinctions as constraints. Neither must we embrace the thoroughly contingent distinction between the private and public spheres of human experience.

Rorty fails to appreciate the distinction between doctrinaire and reflective pragmatism and therefore does not recognize that pragmatists have a choice of two very different pragmatic strategies. Only by recognizing these two distinct brands of pragmatism can we then examine the issue of whether pragmatism exhorts us to choose the same brand of pragmatism consistently in all areas of human inquiry. Rorty must, in short, tell us why doctrinaire pragmatism is appropriate in epistemology, metaphysics, and ethics, but not in politics. 179 Finally, and most importantly, anyone adopting doctrinaire pragmatism for some inquiries and reflective pragmatism for others is, in effect, a reflective pragmatist. For reflective pragmatism maintains that when pragmatic factors justify the adoption of a vocabulary, reflective pragmatism and doctrinaire pragmatism are extensionally equivalent, that is, they yield the same result.

This issue is nicely illustrated by the dispute between Rorty and Professor Joseph Singer, an early supporter of Rorty’s doctrinaire pragmatism as applied to epistemology, metaphysics, and politics. 180 Professor Singer concluded, rightly in my estimation, that Rorty’s doctrinaire pragmatism precluded acceptance of the public-private dichotomy. 181 Yet when Rorty finally spoke on this issue, it turned out that his liberal ironism is grounded in this distinction. 182 Who is right? Does doctrinaire pragmatism

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178. GUNN, supra note 13, at 111.
179. We can imagine a reflective pragmatist who believes just the opposite. For this pragmatist, reflective pragmatism should be adopted in epistemically laden areas, such as science and ethics, while doctrinaire pragmatism should apply to politics in order to replace the prevailing liberal, political, and theoretic paradigm with a more radical one.
181. Id.
182. Recently, Rorty has labelled his pragmatism, “liberal ironism,” an antifounda-
pragmatism extend to politics and law by embracing the public and private split? The doctrinaire pragmatist eschews abstract dualistic categories derived by reason. In fact, a doctrinaire pragmatist’s contextualism precludes embracing such dualistic abstractions. A doctrinaire pragmatist evaluates particular descriptions in order to determine their pragmatic consequences without asking the questions a reflective pragmatist would insist on asking, which include: Is the distinction viable? What does it permit one to say? What does it proscribe one from saying? What untoward political consequences result from retaining the distinction? How does the distinction connect with other important values of my society? Would a theory of American politics be better or worse off with the distinction? Most importantly, does supporting the dichotomy support or resist oppression? Only after a reflective pragmatist asks and answers questions of this sort does she consider embracing the public-private dichotomy.

On the other hand, a doctrinaire pragmatist looks to the surface content of the dichotomy. If a dichotomy is abstract and dualistic, it should be abandoned. Doctrinaire pragmatism is unconcerned with questions of a vocabulary’s role in motivation and criticism and its connection with other cultural discourses. Moreover, doctrinaire pragmatism is theory-phobic and deathly averse to abstractions, dualisms, and formalistic methods of deciding political legitimacy.

A reflective pragmatist, on the contrary, has no problem in

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184. Rorty’s radical critics contend that Rorty does not take pragmatism seriously enough. They contend that if he did his politics would be as equally antidualistic as his epistemology and metaphysics. Lipkin, Kibitzers, supra note 8, at 99-100; see Allan C. Hutchinson, The Three “Rs”: Reading/Rorty/Radically, 103 Harv. L. Rev. 555, 584 (1989) (reviewing Richard Rorty, Contingency, Irony, and Solidarity (1989)); see also Tom Sorell, The World from Its Own Point of View, in Reading Rorty, supra note 65, at 11, 24.

185. Consider Rorty’s own statement on this point: “My holistic strategy, characteristic of pragmatism (and in particular of Dewey), is to reinterpret every such dualism as a momentarily convenient blocking-out of regions along a spectrum, rather than as recognition of an ontological, or methodological, or epistemological divide.” 1 Rorty, supra note 25, at 84; see also Lipkin, Kibitzers, supra note 8, at 99 n.119.
endorsing abstractions, dualisms, and mechanical methods for deciding political legitimacy so long as doing so reaps sufficient pragmatic benefits. If Rorty's liberal ironism embraces the public-private dichotomy, it is because abstractions, dualisms, and mechanical methods for deciding political legitimacy do not always disqualify a perspective. Consequently, in politics, Rorty is really a closet reflective pragmatist and should explain in greater detail why foundationalist vocabularies have insufficient reflective pragmatic benefits in epistemology and metaphysics but not in politics.

Nowhere is Rorty's adherence to the very sort of dualism and abstractionism he repudiates in epistemology and metaphysical inquiry more obvious than in his discussion of the role of community in justifying a political perspective. Let us now examine this issue.

B. Pragmatism and Community

The standard conception of justification is tied to knowledge, truth, and reason. Under this view, reason and truth are independent of human communities and can be used to criticize the community's development in many divergent domains of inquiry. On the contrary, Rorty insists that we justify our beliefs and values according to the shared practices of our community. But which one is our community? Rorty answers that our community consists of Western liberal democracies. Hence, political justification is ethnocentric; we can justify social change only in terms of Western values.

Rorty's views are perplexing here. His doctrinaire pragmatism has led us to believe that his holism and contextualism eschew such grand abstractions as "Western," "liberal," and "democratic." By glossing over these terms, he conceals an enormous controversy concerning the correct way to understand them. Does "liberal" refer to the classical liberalism of John Locke and Adam Smith, the moderate liberalism of John Rawls and Ronald Dworkin, or the egalitarian liberalism of Michael Harrington and Kai Nielsen? Justification is a tall order if "Western liberal democracy" is its only benchmark.

Additionally, Rorty's ethnocentrism reifies a weak, abstract, dualistic dichotomy between "us" and "them." How

186. Richard Rorty, Solidarity or Objectivity?, in POST-ANALYTIC PHILOSOPHY, supra note 19, at 3, 16.
do we draw this distinction? Is the judgment a geographical or political one, or is it based on race, religion, class, or gender? Rorty does not answer these questions.

Moreover, why is an Afro-American lesbian more closely related to a white male in our society than either to an African in Nigeria or a lesbian in Qatar? Rorty’s political pragmatism “fails to take into account that societies consist of (and are parts of) a great many cross-cutting communities whose needs and interests frequently differ and conflict.” 187 To say that our community is a Western liberal democracy as opposed to urban, rural, black, white, latino, male, female, heterosexual, homosexual, bisexual, authoritarian, Jewish, Catholic, Protestant, Muslim, and so forth is to say that there is a common element in all our subcultures that warrants characterizing us, despite our differences, as “Western.” Initially, such generalizations are bound to be trivial. However, these generalizations can be refined and interpreted as significant information about people derived from our collective natural and cultural history. As such, they form the basis of moral reasoning.

One would think that Rorty’s contextualism would prevent him from conceiving of justification in this manner. Rorty’s doctrinaire pragmatism embraces foundationalist abstractions and dualisms, such as “Western liberal democracy,” and by doing so “refuses to give birth to the offspring [doctrinaire pragmatism] conceives.” 188 Further, the notion of equating our community with “Western liberal democracy” artificially splits us from the rest of humanity. It also flies in the face of pragmatic justification, which should be open to any challenge from “our” community or outside. 189 Finally, there are pragmatic benefits in viewing ourselves as part of a heterogeneous culture that lives among equally valid cultures: most conspicuous are tolerance and understanding of others, as well as a greater degree of self-critical attention to our own prejudices. 190

The most complex theoretical and practical issues arise in politics, in which ultimate values—life, liberty, and the pursuit of survival—abound. This complexity and the importance of the

187. SHAPIRO, supra note 176, at 50.
188. WEST, supra note 27, at 207.
values involved render discourse on abstractions, dualism, and foundationalism especially inappropriate. Yet it is here that Rorty grows much more tolerant of abstraction and dualism. If one were a doctrinaire pragmatist, politics would be the best application of this pragmatic spirit. It is therefore puzzling why Rorty abandons his doctrinaire pragmatism and embraces dualistic abstractions in a domain specially made for the doctrinaire pragmatic scalpel.

C. Pragmatism and the Theory of Adjudication

The distinction between doctrinaire pragmatism and reflective pragmatism illuminates important issues in the theory of adjudication. One such issue devolves around whether Dworkin’s theory of law’s integrity represents a distinct conception of law, or whether it is a disguised form of pragmatism.191

Let us approach this issue by examining the controversy between Rorty and Dworkin.192 Rorty chastises Dworkin for endorsing the one-right-answer thesis.193 Rorty is willing, however, to accept reasonableness in place of truth. Because reasonableness is agent-relative in a way that truth is not, Rorty considers this move sufficient for excising any antipragmatist components from Dworkin’s theory of law. Whether something is reasonable depends on one’s context, beliefs, and desires, whereas the truth of a proposition depends on other factors. Consequently, Rorty assures us that once we replace truth with reasonableness Dworkin’s theory is legitimately pragmatic.

In essence, Dworkin replies by saying, “Thanks, but no thanks.” Dworkin has no interest in having his theory saved by a pragmatist. Pragmatism, for Dworkin, is one of the enemies of the one true legal theory: law as integrity.194 Consequently, Dworkin rejects Rorty’s distinction and contends that the one-right-answer thesis is equivalent to the one-reasonable-answer thesis. According to Dworkin, “[t]here is no pertinent difference between the two formulations of the one-right-answer view. The

191. Dworkin contends that law’s integrity is a unique and independent legal virtue and therefore adds to the jurisprudential firmament, just as Neptune adds to the heavens. RONALD DWORKIN, LAW’S EMPIRE 183-84 (1986).

192. See generally Ronald Dworkin, Pragmatism, Right Answers, and True Banality, in PRAGMATISM IN LAW AND SOCIETY, supra note 21, at 359; Richard Rorty, The Banality of Pragmatism and the Poetry of Justice, in PRAGMATISM IN LAW AND SOCIETY, supra note 21, at 89.

193. Rorty, supra note 192, at 89.

194. See generally DWORKIN, supra note 191.
apparently less threatening talk about ‘most reasonable’ answers assumes, after all, that there is a single true answer to the question of which decision is the most reasonable.”

Consequently, Dworkin insists that his view is antipragmatic through and through. Dworkin insists that if the one-right-answer thesis is antipragmatic, then “it is equally antipragmatist when it claims only one most reasonable answer.”

Dworkin embraces the one-right-answer thesis despite dissensus, because he does not appreciate the implications dissensus has for legal argument. Dworkin argues that the existence of weighty arguments on both sides of a legal issue “is no more an argument that there is not [a] right answer than the argument that there are considerations for and against the right to subsidized medicine is an argument that there can be no right answer to the question whether people are entitled to it.”

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195. Dworkin, supra note 192, at 367.
196. Dworkin fails to appreciate that the one-right-answer thesis is incompatible with moral and legal reality. Consider Gert’s view on moral theories that attempt to provide uniquely correct moral solutions:

[A] moral theory that attempts to come up with the unique correct answer to every moral question must be mistaken, for not all moral problems have unique correct answers. . . . [Thomson] does not seem to realize that it is a task of a moral theory to distinguish those problems which do have unique correct answers from those that do not. A moral theory should explain why certain issues, e.g., abortion, are controversial, whereas most of our moral judgments are made concerning matters on which there is virtually no disagreement. A moral theory not only can allow for unresolvable moral disagreement, it must do so if it is to provide an accurate account of morality.

Bernard Gert, Book Review, 101 MIND 609, 611 (1992) (reviewing JUDITH J. THOMSON, THE REALM OF RIGHTS (1990)). Morality and law are languages or systems of reasoning driven by disputes over fundamental values, and since it is unlikely that anyone will ever formulate a conception of a system that is rationally compelling, what applies to morality a fortiori applies to law.

197. Id.


199. Ronald Dworkin, A Reply [to MacCormick] by Ronald Dworkin, in RONALD DWORKIN AND CONTEMPORARY JURISPRUDENCE, supra note 198, at 247, 279. It is unclear how there can be one right answer to a controversial legal conflict. If legal conclusions depend on beliefs and values about fit and normative attractiveness, then there will be one right answer to a legal conflict only if there is one right answer about the values of fit and normative attractiveness. Moreover, if these values depend on more ultimate political values, the one-right-answer thesis depends on there being one right answer to questions regarding these correct ultimate political values. However, no method, not even Dworkin’s, has yet established the existence of one set of ultimate values. Therefore, even after correctly assessing the relevant evidence and reasoning from premises to conclusions, judicial judgments are therefore bound to differ. Moreover, if we could determine one correct set of ultimate values, we would not need the law’s integrity to settle hard cases. Dworkin’s
Dworkin's position can be understood in three senses. First, Dworkin might mean that there exists a superperspective from which we can evaluate all competing positions concerning their reasonableness. Such a view is clearly antipragmatic, but it is also implausible, and it is one that Dworkin rejects. Alternatively, Dworkin's argument can also be understood as implying that judging includes "the phenomenological experience of feeling oneself to have achieved the uniquely correct solution even to a hard case." But phenomenology is irrelevant to the question of whether there are uniquely correct solutions, unless one argues that this phenomenological experience is necessary and entails the unique correctness of one's answer. But these are wildly implausible claims. The simple fact is that the feeling that one has the uniquely correct answer is compatible with there being none. And the only way to avoid this conclusion is to prove that one's answer is the only correct one possible. However, Dworkin insists that there is a distinction between there being a uniquely correct answer and proving the existence of that answer. Indeed, for Dworkin, the truth of an answer does not entail proof for convincing others, not even in principle. This radical separation of truth and proof is highly suspect. But even if it can be sustained, Dworkin's argument that truth does not entail proof makes truth almost entirely irrelevant to legal reasoning. If no guarantee exists that we can prove the existence of a uniquely correct answer, then actual judicial reasoning is in the same situation it would be in were there no uniquely correct answer.

A third possibility is that Dworkin believes that each of several answers should be viewed by its advocates as the most reasonable, judged according to the advocates' perspectives. Each advocate is entitled to say that her answer is the most reasonable as long as she recognizes her claim to be defeasible. Understood in this fashion, Dworkin's position is a form of reflective pragmatism.

A reflective pragmatist's theory of adjudication exhorts judges to provide the best available interpretation of legal practice, while keeping in mind that each judge, as a pragmatist, reply, that the absence of a method for establishing the one true set of values does not entail the nonexistence of such values, although logically true, is pragmatically tiresome.

might come up with different, defeasible right answers. What counts as the one-right-answer thesis here is each judge’s belief that either she is right or one of the other judges is right, although both such claims are defeasible. A reflective pragmatist may also believe that some incompatible answers simply reflect different views of the world.

Dworkin insists that neither truth nor reasonableness entails proof. One right answer exists despite the inability to prove this to the other judges. The one-right-answer thesis rejects both vulgar forms of subjectivism and relativism as well as refined conceptions of pluralism. Reflective pragmatic jurisprudence can endorse the one-right-answer thesis because it believes that doing so will achieve more pragmatic benefits, especially the reinforcement of the rule of law, than other alternatives. Consequently, both Dworkin and Rorty are wrong about the status of Dworkin’s theory. Dworkin is wrong in denying that his theory is pragmatic. Rorty is wrong in insisting that Dworkin’s theory is pragmatic like his, that is, that law’s integrity is a version of doctrinaire pragmatism. Both writers are wrong because they fail to recognize the existence of reflective pragmatism. Law’s integrity is a paradigmatic version of reflective pragmatism, a theory that allows us, if we choose, to talk as foundationalists—one right answer—while appealing to pragmatic justification.

VI. CONCLUSION

The pragmatic revolution in law is now ready for its next revolutionary moment. The choice is clear. Pragmatism can retain its pure doctrinaire dimension, and lose its revolutionary influence in law and throughout our cultural discourse, or, instead, pragmatism can modify its doctrinaire dimension and find a home in every cultural discourse known to humanity.

Several reasons exist for the failure of doctrinaire pragmatism. First, its doctrinaire dimension derives from a foundationalist temperament that perceives the world in stark contrasts. Why should we bother with the precise nature of various metaphors within our cultural discourses? “Mirroring,” “picturing,” and “reflecting” are perfectly legitimate descriptions as long as they achieve pragmatic benefits, even if we cannot make them good in their own terms. Pragmatic benefits must be measured in part by how a change affects the entire culture and the diverse people within that culture, not just Western intellectuals.
Second, once we abandon the notion that language has to be made good in its own terms, we can reject the foundationalist’s epistemological and metaphysical commitments yet still talk foundationalism just to be sociable. Because no reasonable pragmatist presently believes that the antifoundationalist will prevail over all cultural discourses, it is madness to advocate changing one’s language and, as a result, be unable to speak with ninety-nine percent of the members of your culture. This is true even if there are otherwise good reasons for abandoning foundational discourse.

Third, the questions of justification, motivation, criticism, and connection with other intellectual discourses in our culture augur in favor of reflective over doctrinaire pragmatism. Reflective pragmatism better enables us to justify, motivate, and criticize moral conduct than does doctrinaire pragmatism.

Fourth, in reflective pragmatism we can have two pragmatisms for the price of one. Reflective pragmatism can embrace the results of doctrinaire pragmatism if it answers reflective pragmatic questions negatively, that is, when retaining a particular vocabulary is not pragmatically justified. Hence, Rorty’s powerful conclusions can win out in any given instance. As a pragmatist, however, one need not feel committed to doctrinaire pragmatism alone. In effect, this expands the pragmatic conversation by permitting many different antifoundationalist conceptions to coexist legitimately in the pragmatic camp. Finally and most importantly, reflective pragmatism better achieves pragmatism’s primary virtue, fallibilism, than does its doctrinaire counterpart.

Reflective pragmatism promises to continue the pragmatic revolution, a revolution that should always remain unfinished. The unfinished pragmatic revolution indicates that pragmatism is a process that can exploit any other type of discourse when

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201. This means that Habermas, Lyotard, Nielsen, and others can be bona fide pragmatists while endorsing antifoundationalist theories of rational inquiry. For an interesting discussion of these possibilities, see Kai Nielsen, *After the Demise of the Tradition: Rorty, Critical Theory and the Fate of Philosophy* 125-61 (1991).

202. Because reflective pragmatism countenances nonpragmatic vocabularies, some might insist that it is counterrevolutionary. However, as a more resilient and more inclusive pragmatism, reflective pragmatism is a better pragmatism than its doctrinaire counterpart. It simply gives the pragmatist a greater choice of vocabularies without insisting on one right vocabulary. Doctrinaire pragmatism is doctrinaire because it insists that we use only pragmatic vocabularies. Pragmatism’s goal should be perennially revolutionary. In continuing the pragmatic revolution, reflective pragmatism leaves open the question of which vocabulary to adopt.
that discourse has pragmatic benefits. As long as we recognize this, a pragmatist can adopt foundationalist, realist, objectivist, or universalist discourses shorn of their epistemological and metaphysical commitments when the pragmatic price is right. Reflective pragmatism frees the pragmatist from both foundationalism and doctrinaire pragmatism. Reflective pragmatism, in short, renders the pragmatist free from foundationalism as well as free to adopt foundationalist discourse, thereby expanding the pragmatic conversation. Given reflective pragmatism’s superiority over doctrinaire pragmatism, nothing should prevent us from viewing the transition to reflective pragmatism as pragmatism’s next revolutionary moment.