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OUTLINE OF A SOCIAL THEORY OF RIGHTS A NEO-PRAGMATIST APPROACH

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Abstract

In this article I articulate a neo-pragmatist theory of human rights by drawing and expanding upon the American classical pragmatism of G.H. Mead. I characterize this neo-pragmatist theory of rights by its anti-foundationalist, relational, fictive, and constitutive nature. I begin by providing a reconstruction of Mead's social pragmatist approach to rights, a contribution systematically ignored by contemporary sociologists of rights. Next I detail the cost of this disciplinary oblivion by examining how much neo-pragmatism, critical theory, and legal consciousness studies have meanwhile gained by engaging with Mead's work on rights. Finally, I discuss the contributions of this historical-theoretical exercise to the rapidly growing sociology of rights. I show that by supplementing my neo-Meadian approach with a recent interpretation of Hobbes's fictional theory of politics, there appear substantive gains in the empirical study of the origins, consequences, meaning, and denial of rights.

Keywords

Rights, pragmatism, G.H. Mead, legal consciousness

Introduction

Human rights and sociology make strange bedfellows. The universal and individualistic way human rights are typically defined – as entitlements, guarantees and liberties that all individual human beings possess by virtue of being human – sits uncomfortably with the broadly shared sensitivity to historical contingency and social constructionism exhibited by most contemporary sociologists. Yet sociologists have never been so challenged to theorize human rights as in our time. Ours is the "age of rights" (Bobbio 1995, Fine 2009), an historical period in whose Zeitgeist human rights perform important social functions, from supporting critical positions vis-à-vis capitalism to providing the basis for claims to recognition of neglected particularities (e.g. Taylor 1994).[1] This confronts sociologists with a dilemma. How to study rights, an object of inquiry whose growing social relevance is only matched by its unremitting elusiveness to sociology's conventional analytical lenses? This is the central question I seek to answer in this paper.

This paper is about a social theory of rights.[2] It aims to provide sociologists with an alternative to liberal political theory, which conceives of rights as individualistic, a priori, adversarial, and as having an essence.[3] As a result, the theory proposed here

[1] Specifically, the postwar Zeitgeist refers to the institutionalization of human rights through the UN Charter as a central aspect of globalization; contest over rights claims as a major feature of social and political life; the expanding framework of international human rights conventions; the emergence of regional systems of human rights protection, and the strengthening of human rights remedies at the domestic level.

[2] The understanding of theory here proposed follows closely that of Jeffrey C. Alexander in *The Theoretical Logic in Sociology*. As Hans Joas and Wolfgang Knobl explain: "Theoretical issues thus range from empirical generalizations to comprehensive interpretive systems which link basic philosophical, metaphysical, political and moral attitudes to the world. Anyone wishing to be part of the social scientific world cannot, therefore, avoid engaging in critical debate on all these levels" (2010: 17-8). This idea that empirical observations are bound up with methodological assumptions, models and even general presuppositions is very much in accord with the social theory proposed here.

[3] For an excellent critical review of liberal political theory's conception of rights, see Singer 1999: 1-21.

questions the dichotomy between natural and citizenship rights, closely associated with liberal political thinking. Also, the social theory I develop in this paper is intended to provide an alternative to the dominant sociological approaches to rights, whose foundationalism, I argue, impairs their heuristic value. My strategy to destabilize both liberal and foundationalist accounts of rights draws on resources from a widely ignored social theoretical tradition in this regard – classical American pragmatism, especially as formulated by George Herbert Mead (1863-1931). My aim is to develop a pragmatist social theoretical explanation of how rights were imagined, conquered, implemented, and sometimes denied in concrete historical situations – and how, as emergents of these social processes, they simultaneously enable and constrain, i.e., they help *constitute* human action.

Explanation, of course, is but one of the functions of social theory (e.g. Baert and Silva 2010: 285 ff.). Other functions include prediction of individual and collective behaviour, understanding of the meaning-making processes through which individuals make sense of the world, and self-edification, which refers to the ways in which social knowledge can help individuals re-conceive themselves, thus gaining a critical distance from their former beliefs and preferences. Besides explanation, my theory aims particularly at these last two functions. Such orientation towards symbolic processes and sensitivity to the humanist potential of social knowledge are closely related to the way I propose to define what a right is.

A right is *not* individualistic and adversarial. Neither is it something a priori. Rather, a right is a mutual relation, an institution made of political claims involving at least two individuals. As in any other social institution, a right is not simply a social construction of omnipotent agents.[4] To have a right socially constitutes individuals into citizens and, as such, enables as much as it constrains action. But a right is a special sort of social institution. It refers to entitlements, liberties, powers or immunities[5] that have been codified in international covenants and declarations, as well as in national constitutions. Instead of proposing a foundational principle

[4] For example, as social practices and collective claims: see, e.g., Nash 2012, 3.
[5] Primus 1999: 37.

common to all human rights struggles that empirical analyses should then try to uncover, my approach to rights aims at the reconstruction of the iterative processes of meaning-production and institutionalization within which rights were imagined, conquered, implemented and sometimes denied. I thus endorse the criticism of the liberal notion that rights and identities are formed prior to political struggles in the public sphere.[6] One important aim of a social theory of rights is thus to help explain the ways in which the social institution of rights came about in particular societies and historical epochs. "Rights" need then to be conceived of as historically contingent, whose meanings emerge and evolve in the context of the political struggles regarding their institutionalization.

My understanding of rights includes civil, political, social and cultural rights. By using the term "rights" in a broad sense to include "human" as well as "citizenship" rights, I am departing from a long-standing tradition in sociology[7] that subscribes to the liberal dichotomy of natural vs. citizenship rights.[8] Not only is this dichotomy ideologically charged, and as such conveys one particular understanding of political modernity, but it is also increasingly anachronistic.[9] Yet this dichotomy is still very much the dominant understanding in sociology departments across the world today. Its institutional consequences include a clear-cut division of intellectual labour between research on citizenship rights (nation-state based, often with a focus on specific policy areas) and research on human rights (cosmopolitan-oriented, usually concentrating in issues such as transnationalism and global justice). This is far from

[6] See, e.g. Engel and Munger (2003). This postliberal approach treats rights not as empirical entities that are found in presocial nature, but as political and social creations with the causal powers to constitute personhood and identity. See Sarat and Kearns 1995, 1996; see also Calhoun 1992, 1994; Somers and Gibson 1994. In Somers and Roberts 2008: 407-8.

[7] For example, Turner (1993); Morris (2006); Nash (2012). Exceptions include: e.g. Blau and Moncada (2005); Somers and Roberts (2008); Soysal (2012). For examples of scholars operating with this dichotomy outside sociology, see King and Waldron (1988), Sen (1999), Sunstein (2004); Gutmann (2001).

[8] "Natural law doctrines have in common the idea that universally valid legal and moral principles can be inferred from nature." (Schwarz 2001), cited in Somers and Roberts 2008: 411.

[9] Even among scholars of constitutional law and legal history, there is a growing tendency to equate both kinds of rights protection regimes. See, e.g., Tushnet (1992).

being a balanced division of labour, however. Whilst there is a significant body of sociological literature in citizenship, the project of a sociology of rights[10] is still very much in its infancy.[11] I wish to help correct this analytical and institutional imbalance by questioning the citizenship-human rights dichotomy from which it originates Instead of being constrained to operate within either pole, I suggest sociology refocuses its attention in the category of "right" itself, thus undercutting that dichotomy. This exercise of conceptual refocusing draws extensively upon a sociological intellectual tradition that has been systematically overlooked in this area of research – American philosophical pragmatism and, in particular, Mead's original variety of pragmatism.

Addressing the systematic neglect of Mead's work involves overcoming the current narrow, "canonical" conception of the history of social thought prevalent among rights scholars.[12] Of course, most rights scholars do not even show an interest in the contributions classical sociology might retain. Those who do, however, tend to associate contemporary sociology's difficulties in dealing with human rights to the epistemological constraints faced by sociology's trio of founding fathers: Marx, Weber, and Durkheim.[13] Bryan S. Turner, the author of arguably the most influential

[10] Contemporary examples of sociology of rights include Sjoberg, Gill and Williams (2001), Woodiwiss (2003, 2005), Morris (2006), Kurasawa (2007), and Turner (1993, 1995, 2006). On the distinct yet related sociology of constitutions, see Thornhill (2008; 2011). On a social theoretical analysis of the origins of human rights, see Joas (2005).

[11] Consider, for instance, the current situation in professional associations. As Somers and Roberts point out (2008: 386), there is still no section on "rights or human rights" in the American Sociological Association (ASA). Other professional associations, however, do have research sections on rights. In the International Sociological Association (ISA), there has been a Thematic Group on Human Rights and Global Justice since 2006. There is also a similar research section in the "Association Internationale des Sociologues de Langue Française" (AISLF), the GT 13 "Société globale, cosmopolitisme et droits humains."

[12] On the problematic of canon-formation in sociology, see Baehr and O'Brien 1994.

[13] Examples abound: Kim Lane Scheppele begins her analysis of the relationship between jurisprudence and sociology with the observation that "Marx, Durkheim, and Weber had strong and deep ties to the law" (1994: 384); R.W. Connell decries that none "of the turn-of-the-century sociologists produced a robust theory of rights", a claim with an emphasis on "Weber's nationalism and celebration of state-power, through Durkheim's ethical collectivism" (1995: 26); Margaret Somers and

contemporary social theory of rights, is no exception. He too focuses on the post-war trio of founding fathers. Sociology's reductionist view of rights stems, in his view, from Weber's reduction of rights merely to claims for services or for privileges by social groups involved in competitive struggles, which serve as an instrument of class rule and expression of individualistic, possessive and egoistic society (Marx). This reductionist view couples with the strong Durkheimian notion of sociology's separation from natural right theory (Turner 1993: 500). The alternative to classical sociology's reductionism, Turner suggests, is a new sociology of rights founded upon four basic assumptions, which he derives from the philosophical anthropology of Arnold Gehlen: the vulnerability of the human body; the dependency of humans; the general reciprocity of social life; and the precariousness of social institutions (Turner 2006: 23). Turner merges this "minimally foundationalist ontology" (2006: 23) with the social constructionist view according to which rights are "constructed in a contingent and variable way according to the specific characteristics of the societies in which they are developed and as a particular outcome of political struggles over interest" (1997: 566).

Turner's strategy of reconciling foundationalism (albeit in a minimalist version) with constructionism in order to build a new sociology of rights, however, does not strike me as particularly convincing for two main reasons. First, I find Turner's claim that there was "skepticism towards the idea of human and natural rights in classical sociology" (1993: 176) unwarranted. Classical sociology's scepticism towards "natural rights theory" was not directed at rights as such, but against one specific understanding of rights, namely that articulated by the liberal individualist tradition. But rights can, and have always been, conceived differently. A case in point is G.H. Mead, whose social pragmatism led him to conceive of rights in radically different terms from the individualistic, a priori and adversarial way liberal thinking suggests. The suggestion here is that Mead's conception of rights can be construed as a "buried treasure" (Skinner 2002: 126), a "fruit" of intellectual history available to those willing to "excavate" sociology's past beyond the conventional canonical view.

Christopher Roberts discuss the "spirited engagements with law and jurisprudence" of "Marx, Durkheim, and Weber" (2008: 396-7).

Second, it is not clear the extent to which Turner's foundationalism can be of help to empirical research on rights.[14] Human frailty may be one argument used by historical actors when arguing for rights, but it is certainly not the only one and it is conceivable that it was not present in many processes of institutionalization of rights. Social theory and empirical research cannot be based upon ontological claims that ignore historical circumstances. Rights are political claims made by concrete actors, who, in order to advance their causes, mobilize available resources within specific structures of opportunity. As such, their "foundation" is historically contingent, varying according to the multiple contexts of their institutionalization and implementation. To emphasize the historically contingent character of normative foundations, however, is not to endorse relativism. There is nothing in principle that prevents universal validity claims from being advanced by agents aware of their historicity.[15] The question of the genesis, scope, and limits of such universal validity claims is not metaphysical, but sociological. It lies in the normative structure of concrete social formations and is, as such, amenable to social-scientific empirical research.

A more promising line of inquiry, I suggest, lies in critically re-examining G.H. Mead's legacy. That is the aim of the first section of this article. This section begins with an analysis of Mead's theory of meaning, moves on to a brief discussion of his concept of object, to arrive at Mead's approach to rights. In the second section, I assess the impact of Mead's ideas in contemporary rights research. I focus on three strands of research: neo-pragmatism, critical theory, and legal consciousness theory. In the third section, I contrast the significant impact of Mead's ideas in these three areas with its relative neglect within sociology, in particular the sociology of rights. My claim is that there are good reasons to change this situation. My solution to this problem is a neo-Meadian pragmatist theory of rights. Given its unique focus on the constitutive, fictive, and disruptive character of social action, a pragmatist theory of rights offers significant advantages vis-à-vis existing theories, namely symbolic

[14] For a criticism of Turner's foundationalism see e.g. Nash (2012), and Gearty (2006).
[15] A similar point has been made by Joas ([1997] 2000, 2005).

interactionism, rational choice, functionalism, institutionalism, and practice theories. The article concludes with an overview of the paper's main contributions.

1. G.H. MEAD RE-EXAMINED

As one of the great modern process philosophies, American philosophical pragmatism is fundamentally non-dualistic (e.g. Browning and Meyers 1998; Rescher 2000). Dualisms such as "body versus mind" or "materialism versus idealism" were systematically rebutted and deconstructed by classic pragmatist authors including William James, John Dewey, and W.I. Thomas. One finds this anti-Cartesian orientation throughout Mead's system of thinking too, from his well-known social psychological theories to his seldom discussed epistemological and political writings (Silva 2008). Mead's variety of pragmatism blended left-wing Hegelianism and Darwinian evolutionary theory, and, especially in the 1920s, drew from the "emergence philosophies" of Henri Bergson and Alfred North Whitehead to produce an approach that could capture meaning-making processes without ignoring the physical environment within which those processes take place. To distinguish it from symbolic interactionism, which often dilutes itself into social constructionism (or "idealism", the deficiencies of which Mead never tired of pointing out), and to emphasize its thoroughly intersubjective character, I describe Mead's approach as "social pragmatism".[16]

A key element of Mead's social pragmatism is his theory of meaning.[17] For Mead, meaning is neither a subjective phenomenon lodged in the individual mind, nor something external to it. Instead, meaning emerges and develops between social organisms through gestural interaction. Mead explains the intersubjective

[16] I am not alone in making this choice. Gary A. Cook, for instance, uses this same designation to refer to Mead's approach (1993: 161 ff.).

[17] Primary sources on Mead's theory of meaning include several journal articles (2011: 15-20; 47-52; 53-57; see also Mead 1910). See also Mead ([1934] 1967: 75-82). Secondary sources include, e.g., Joas ([1980] 1985: 98-106), Cook (1993: 48-66), Puddephatt (2009); Silva (2007a: 28-42).

emergence of meaning with a "three-fold" logical structure. This includes 1) the gesture of one individual ("organism", in Mead's terminology); 2) the responding gesture of the second organism; and 3) the "resultant" of the social act. The response of the second organism to the gesture of the first organism is the interpretation of that gesture – this response brings out the meaning (Mead [1934] 1967: 80). Meaning is thus implicit in the structure of the social act and can be studied by analyzing patterns of action resulting from social interaction.[18]

The value of this "three-fold" theory of meaning for the sociology of rights is readily apparent. Liberal political theory conceives of the meaning of rights as an *a priori* reality to be discovered through reason. Within social theory, the meaning of rights is typically conceived of either as an outcome of concrete interest-motivated political struggles oriented to protect vulnerable bodies (e.g. Turner 1997), or as an effect of a political actor's discursive performances (e.g. Zivi 2011; see also Butler 1990: 142). If we are to follow Mead, however, meaning is neither external to social actors, nor is it a mere social construction. Instead, it is objectively located in patterns of social interaction. Mead's theory of meaning is not limited to social interaction (i.e. between selves), however.[19] If it was, as a symbolic interactionist reading of Mead would assume, its exclusive focus would be on communicative action at the expense of instrumental action. Mead, however, refuses to privilege one type of experience over another. Instead, his aim is to undercut the social/communicative versus physical/instrumental dichotomy by including the creation of meaning between selves and all "social objects" that compose their environments. "Social objects"

[18] Symbolic interactionists have long explored the macro-sociological implications of Mead's approach. The intersection of these meanings, expressed through the negotiation of lines of action, is what constitutes a community (e.g. Blumer 1969; Fine 2010: 368).

[19] Although it does give historical priority to "social consciousness" over "physical consciousness"; Mead writes: "experience in its original form became reflective in the recognition of selves, and only gradually was there differentiated a reflective experience of things which were purely physical" (2011: 52). Mead sees in this "self-objectifying" attitude a condition of human rationality – one is rational to the extent to which one is able to take an impersonal, objective attitude towards oneself.

include whatever has a common meaning to the participants in the social act,[20] from physical objects, to oneself and other selves, to scientific, religious, or political objects. Crucially, Mead conceives of the process of meaning creation between individuals and social objects as being dialectically generative. From the continuous tension between individuals and objects there is the constant emergence of *new individuals* as well as *new objects*.[21] Mead illustrates his claims with the societal shift toward modernity.[22] Modern individuals have emerged as new scientific, political and social objects gradually came into being – chief among these new political objects were modern individual rights.

Rights are conceived by Mead as part and parcel of political modernity, and specifically, as a constitutive part of the normative structure of modern political communities.[23] Understood as "social objects", rights are both an aspiration and a defining feature of processes of political modernization. As such, rights help constitute individuals into modern citizens. Mead's great achievement has been to render this idea, which could have remained a political philosophical insight, into a post-metaphysical working hypothesis. Testing this hypothesis involves as much solving a scientific problem, involving epistemology, social psychology, and political science, as it requires solving an ethical-practical problem, which requires a democratic political solution. To seek a combined solution to these problems is as urgent today as it was in Mead's time.

[20] "The social object will then be in the gestures, i.e., the early indications of an ongoing social act in another plus the imagery of our own response to that stimulation" (Mead 2011: 55).
[21] Mead writes that, from this dialectical relation arises a "coordination in the structure of the organism of the individual which is also new – as new as the object" (2011: 38).
[22] Illustrating this thesis with the Copernican revolution – the "earlier objects were the earth at the center of the world" whereas the "later objects were the sun at the center of a system of planets" (2011: 41) – Mead argues that from the standpoint of "religion, politics, education, and art there was a new world and a new society that had not existed before" (2011: 40-41).
[23] Primary sources on Mead's theory of rights include 2011: 221-232; 264-279; 310-323. See also [1934] 1967: 260-273. Secondary sources include, e.g., Betz 1974; Singer 1999: 128-141; Silva 2008: 193-198.

Today's sociological empirical research and theoretical reflection on rights has much to gain from Mead's thinking for it fundamentally destabilizes current dichotomies and assumptions, including the idea that human rights are essentially different from citizenship rights or the belief that sociology can only study human rights if it conceives of them as resting upon some sort of (metaphysical) foundation. Destabilizing these mistaken yet pervasive ways of thinking, however, is easier said than done. I suggest that completing the genealogical exercise of retrieving from collective oblivion one of sociology's "lost treasures", Mead's approach to rights, is a crucial first step in that direction.

At the heart of Mead's approach to rights is the idea that to claim a right is also to attribute it to others: "the individual in asserting his own right is also asserting that of all other members of the community" (2011: 228).[24] Behind this claim is Mead's notion of social institution. To better appreciate Mead's concept of social institution one needs to realize that in his view there are two poles for the general process of social differentiation. One pole is constituted by social impulses, which Mead conceives of as the physiological basis upon which social interactions take place. The other pole is constituted "by the responses of individuals to the identical responses of others, that is, to class or social responses" (Mead [1967] 1934: 229). For Mead, these socially common responses are the defining component of the institutional pole of the process of social differentiation. In this sense, to see rights as social institutions is to conceive of them, contrary to natural rights theory, not as *a priori* attributes of individuals nor as pre-social entities, but as a mutual relation involving a triadic relation between an entitlement, the obligation to respect it, and the attitude of the "generalized other".[25]

[24] Mead, of course, was not alone in reviving the Rousseaunian understanding of rights as mutual, non-adversarial. Also in the 1920s, L.T. Hobhouse wrote: the "individual man is an element in a social whole, and in general his rights impose obligations on other men. Thus, the rights of man involve social relations." (1922: 37) cited in Somers and Roberts (2008: 413).
[25] See Singer (1999: 27).

There are two implications I would like to emphasize regarding Mead's concept of social institution. The first implication is that social institutions do not necessarily oppress, nor do they exist in opposition to, individual agents. On the contrary, like rights, social institutions, can be "flexible and progressive, fostering individuality rather than discouraging it". More important than the oppressive or progressive character of institutions, however, is the fact that "without social institutions of some sort (…) there could be no fully mature individual selves or personalities at all" (Mead [1967] 1934: 262). Mead's important insight that social institutions can both constrain and enable one's assertion of one's own distinctiveness, distinct from the conception of social institution of 1980s theories of practice as both structured and structuring, given the evolutionary and emergent character of Mead's conception,[26] takes us directly to my second observation. I refer to the centrality of the concept of the "generalized other" in Mead's thinking generally and, in particular, in his approach to rights.

The attitude of the "generalized other" is Mead's post-metaphysical rendering of Jean-Jacques Rousseau's general will.[27] Through this concept Mead wishes to convey the idea of an internalized set of social attitudes, namely the principles and rules in the light of which individuals coordinate their own behaviour and interpret one another. It has been widely noted that this is a central notion of Mead's social psychology, on a par with his highly influential conception of the structure of the self – the phases or perspectives of the "I" and the "me". What has been less appreciated is the importance of the generalized other with regard to rights. Yet a substantial part

[26] As exemplars of social theories of practice, see, e.g., Giddens (1986), Bourdieu [1980] (1990), and Sewell (1992). Frank Parkin is certainly correct when he writes: "the theoretical appeal of practice theory from this point of view, is precisely due to the fact that it does away with the separation (on conceptual and empirical grounds) between subject and object, observer and observed, action and perception, which has been a durable and pervasive set of dualisms in the history of Western thought and Western social theory" (1996: 71-72). What Parkin fails to acknowledge, however, is that this anti-dualistic orientation came at a price: practice theories tend to focus more upon the reproduction of existing structures than in the creation of new ones (something to which, despite their flaws, rational choice and functionalist models arguably devote more attention).

[27] Mead discussed Rousseau's concept of "general will" on various occasions, both in journal articles and in lecture notes. See, e.g., Mead (2011: 225; 1936: 13).

of the appeal of Mead's approach to rights resides exactly here. First, Mead's generalized other enables one to appreciate the extent to which rights are a common attitude shared by members of a political community. Mead's point is straightforward. Any given society's "generalized other" encompasses common attitudes, i.e. what we would today call "social norms". Rules are one kind of social norm. Very much like the rules of a game, social norms help define the institutional framework upon which social cooperation is possible, rights-norms among them. As such, rights are an objective component of the normative structure of modern societies. Second, the internalization of the attitude of the generalized other is to have a general attitude towards all members of the community, including oneself. Mead's point is that rights are as much a part of the normative structure of a society as they are a part of the political identity of each individual citizen. But Mead has a very specific understanding of what this entails. To have a right is not the same as having a physical object, something that can be accumulated, measured, quantified. As a social object, to have a right is to enter a political relation, to belong to a community whose norms include that right as something anybody can assert and that everybody can recognize.[28] Mead sees the social relationships rights refer to as intrinsically reflexive. They require every member of the political community to take both roles or positions involved in a rights relation, that of entitlement and that of the obligation to respect it – this is how rights help constitute individual political identities. Third, for Mead, to conceive of rights as relational and reflexive is also to assert their contested nature. The contested nature of rights stems from the tension within the social self between the "I" and the "me", the former being a source of unpredictable creativity, the latter ensuring the internalization of social conventions through the attitude of the generalized other. The dialectical nature of the relation between the two phases of the self means that social norms, rights-norms included, are being continuously internalized and reproduced (through the "me") while being contested and questioned (through the "I"). For Mead, then, rights are contested not only within oneself (i.e., one's legal consciousness is a dialectical process, responsive

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The political theorist Iris Marion Young expressed this same idea when she wrote: "Rights are relationships, not things; (…) Rights refer to doing more than having; to social relationships that enable or constrain action" (1990: 25).

to concrete action-problems in real world situations, and which potentially evolves over time in contradictory ways), but between different selves as well (politicians, judges, and ordinary citizens, for example, often disagree about the interpretation and application of rights).[29] In this sense, to affirm the contested nature of rights is to affirm the political nature of the processes of identity-formation that sustain the claim to rights. Socialization is as much about social reproduction as it is about social transformation. The "I" is constantly questioning the norms integrated by the self via the "me" and does this by appealing to an ideal future community (see, e.g., Deranty and Renault 2007: 104).

Contested, reflexive, relational; this is how Mead conceives of rights, whose meaning lies in concrete patterns of political interaction, whose institutionalization is as much a symbolic as it is a material process – bills of rights, constitutions, and the state derive much of their power and legitimacy from their fictional character, a power that, for that very reason, often makes itself felt all too tangibly in peoples' lives.[30]

2. MEAD'S IMPACT DISCUSSED

The heuristic value of these insights did not pass unnoticed for many in the social sciences and the humanities throughout the twentieth century, both in the United States and elsewhere. Like philosophical pragmatism as a whole, Mead's social theory was often appropriated, interpreted and used as a powerful conceptual tool with which to subvert and criticize dominant models.[31] In sociology, Herbert Blumer's symbolic interactionism, envisaged to a large extent as an alternative to Talcott

[29]This insight is the starting point of the so-called "political" (as opposed to "legal") approaches to rights and constitutionalism in political theory, which operate within a civic-republican paradigm. See e.g. Skinner (1998), Pettit (1997), and especially Bellamy (2007: 16). On the history of the conceptual linkages between civic republicanism and American pragmatism, see e.g. Silva (2009). See also Ansell (2011) for a similarly "political", pragmatist approach to governance.
[30] On a neo-Hobbesian fictional theory of politics, see Vieira (2008), Skinner (2010).
[31] On the potential for social criticism of American philosophical pragmatism, see e.g. Bernstein (1971), Habermas ([1981] 1986), Antonio (1989), Aboulafia (2001).

Parsons's structural-functionalism, is the most glaring example of this sort of strategy of appropriation.[32] Yet the symbolic interactionist reading of Mead has not been without consequences. In particular, it has been partly responsible for a narrow understanding of the extent of Mead's contributions to contemporary sociology, focused almost exclusively on his social theory of the self.[33] If in sociology Mead's ideas have for most of the twentieth century been confined to symbolic interactionist circles, or within the interpretive scope suggested by them, the same cannot be said of other disciplinary domains. In this section, I discuss three examples of productive encounters with Mead's work that, while acknowledging Mead's social theory of the self, have tried to go beyond it and explore his approach to rights - neo-pragmatist social theory, critical theory, and legal consciousness theory.

Neo-pragmatist social theory is the most recent attempt to make use of pragmatist philosophical insights to promote social and political empirical research and theoretical innovation.[34] Past attempts include, besides symbolic interactionism, the work of authors such as C. Wright Mills (1966), Lewis and Smith (1980), Dmitri Shalin (1986), and Steven Seidman (1996).[35] Neo-pragmatist social theory distinguishes itself from these earlier appropriations by either drawing upon Richard Rorty's (and to a lesser extent, Hilary Putnam's) philosophical insights (e.g. Festenstein 1997, Baert 2005), by resting upon historically minded strategies of theory-building (e.g., Joas [1980] 1985, [1992] 1996), as well as by distinguishing itself vis-à-vis alternative contemporary approaches, including post-structuralism or the theories of practice as developed for instance by Pierre Bourdieu (e.g. Gross 2009).[36] It is from these last

[32] E.g., Blumer (1969).
[33] For examples of critiques of Blumer's narrow reading of Mead, see Mills (1942), MacPhail and Rexroat (1979).
[34] I distinguish between "pragmatist" and "neo-pragmatist" work and their authors exclusively in light of their historical location, the former pertaining to the generation of thinkers that worked between the 1880s and 1930s, the latter including post-1970s practitioners. A good overview of neo-pragmatism is provided in Joas and Knobl (2009: 500-528). For an excellent extended discussion, see Bernstein (2010).
[35] On the impact of pragmatist philosophy on Herbert Blumer, see Tucker (1988). For a general discussion of these appropriations, see Gross (2007).
[36] On the relationship between pragmatism and post-structuralism, see e.g. Dunn (1997); on pragmatism and Bourdieu's sociology, see e.g. Aboulafia (1999),

two strategies that one should expect a more fruitful encounter with Mead's approach to rights as they either explicitly deal with the classical pragmatist legacy, which includes it, or they are more directly concerned with providing conceptual tools to empirical research (also because Rorty never addressed Mead in systematic fashion). Surprisingly, however, there has been relatively little use of Mead's ideas in neo-pragmatist research on human rights. Consider, for instance, Hans Joas's genealogy of human rights (2005, 2011), David Hiley's approach to human rights (2011),[37] or Martijn Konings' analysis of modern political institutions (2010) Joas's neo-pragmatist take on the origins of rights focuses more on Nietzsche and Weber than it does on Mead. Hiley's Rortian approach ignores Mead altogether. Only Konings addresses Mead's work alongside other pragmatist classics, namely Dewey, and even though Konings' approach is laudable on various counts, it does not refer to the specific case of the institution of rights *per se*.[38]

This relative absence of appreciation of Mead's contributions to the problematic of rights among neo-pragmatists, the group of social theorists who have explored Mead the most beyond the conventional symbolic interactionist reading,[39] raises an obvious question. Are neo-pragmatists missing something important, or is Mead's thinking of little value to contemporary rights research? In order to show why I think

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Emirbayer and Goldberg (2005). On post-Bourdieu, neo-pragmatist French sociology, see e.g. Boltanski and Thèvenot ([1991] 2006).

[37] Drawing upon Rorty's scattered writings on this topic (e.g. Rorty 1993), Hiley sets out to develop a "political" (as opposed to "metaphysical") conception of rights according to which their justification cannot be "determined apart from the work of human rights, against concrete cruelties and in terms of projects on the ground" (2011: 59). This interesting understanding of rights debates as "cultural politics" is no doubt in line with central pragmatist tenets, but one wonders how much it would benefit from a more elaborate conception of the normative structure and the concrete social psychological mechanisms it operates with. This is something that Mead's theory of rights might provide, but its neglect by Hiley's Rortian neo-pragmatism, prevents it.

[38] Another neo-pragmatist theory whose aim is to help promote empirical research is Gross's neo-pragmatist theory of social mechanisms (2009). Unlike Konings, however, Gross fails to address Mead's contributions.

[39] Joas's theory of creative action is without doubt the most consistent effort to build upon Mead's work. See Joas ([1992] 1996). Within symbolic interactionist theory, Norbert Wiley's work on the semiotic self, which primarily draws upon Peirce and Mead, is among the most accomplished (1994).

the former is true, allow me to turn to the reception of Mead's ideas by Axel Honneth, the current leader of the so-called Frankfurt School whose project is to develop a normative social theory that recovers and updates the original project of critical theory (Adorno and Horkheimer [1947] 2002).[40]

Honneth's project of constructing a renewed critical theory of society unfolded in two successive stages. The first stage, published as *The Critique of Power* in 1985, is negative in nature. It consists of an historical reconstruction of the perceived aporias of the contributions of two key critical modern theorists, Michel Foucault and Jürgen Habermas. This negative-reconstructive journey took Honneth seven years later to a second, positive and programmatic stage of his project in *The Struggle for Recognition* (1992). This major constructive work proposes an original model for an ethics of recognition. The central figures of this second stage are G.W.F. Hegel and G.H. Mead. While Hegel provides Honneth with the basic blueprint of the process of ethical formation of the human species, as consisting in specific forms of reciprocal recognition (love, law, and ethical life), Mead's notion of the "generalized other" is said to "represent not only a theoretical amendment but also a substantive deepening" of Hegel's second form of recognition, legal recognition (Honneth 1995: 80).[41] I take this to be an important indication of the relative heuristic value of Mead's approach to rights. Indeed, of all possible contributions by Mead, it is this all too often ignored dimension of his work that takes central stage in *The Struggle for Recognition*, a book that has provided Honneth with the basis of his intervention alongside Nancy Fraser and a host of other critically oriented thinkers in the so-called

[40] The appropriation of pragmatist ideas by contemporary critical theorists is, of course, not limited to members of the Frankfurt School. For a discussion, see Shalin (1992).

[41] This is because the "generalized other" provides Mead with an explanation of how rights constitute the basis for self-respect. As the bearer of rights, I feel recognized with regard to characteristics I share with everyone else in my political community; but I can only come to understand myself as the bearer of rights when I know, in turn, what normative obligations I must keep regarding others – and it is only when I take the attitude of the "'generalized other", which allows me to see the other members of the community as the bearer of rights, that I can also understand myself to be a legal person.

"recognition vs redistribution" debate, the central controversy on matters of social justice in the global era.[42]

Honneth's intervention in this debate can be construed as a systematic exploration of Mead's insight that recognition is an indispensable condition for personal and group self-realization.[43] *Pace* Fraser's dualistic model according to which social rights claims are be conceived as primarily economic claims (i.e. fundamentally as a redistribution issue), for Honneth, social rights claims are not confined to the material sphere of redistribution. Rather, distributive issues are to be subsumed within claims to recognition. Honneth designates this position as a "normative" or "moral-theoretical monism" of recognition (2003: 3, 157). It consists of a tripartite conception of justice, involving three spheres of recognition – love, law, and achievement – within which self-consciousness about the legitimacy of one's needs, the right to equal legal autonomy, and the possession of valuable talents is formed. From this perspective, questions of distribution can be evaluated via the principles of legal equality and social achievement insofar as distribution-as-recognition takes the form of calls for the "application of social rights that guarantee every member of society a minimum of essential goods regardless of achievement" (2003: 152). Honneth's neo-Meadian argument is that the organization of economic life is already bound up with moral claims about rights and entitlements. Hence public provisions of welfare such as unemployment benefits, housing subsidies, pensions, and the like exist (also and fundamentally) as forms of recognition. Redistributive claims, as moral claims involving questions of justice or injustice, irredeemably have the character of recognition claims (Yar 2001: 295).

[42] On Fraser's work, see e.g., Fraser (1997, 1999, 2000). For critiques, see Yar (2001), Fowler (2009), Armstrong (2008). On the debate between Fraser and Honneth, see Fraser and Honneth (2003).

[43] In rigor, Honneth's research project begins with the historical work on the workers movement by E.P. Thompson and Barrington Moore, which suggested that social protest the lower classes was primarily motivated not for economic reasons but for goals of recognition. See Honneth 1995: 166-167; 2003: 131. Honneth eventually turns to Mead's work in order to generalize these claims beyond oppressed social groups into widespread experiential patterns.

Honneth's original way of conceiving of rights claims as recognition claims has attracted a number of important criticisms over the years, from those suggesting the politics of recognition should be replaced by a "politics of acknowledgement",[44] to those concerned with its Eurocentric character, to those who accuse him of "ethical sectarianism".[45] From the point of view of the argument I develop in this paper, however, I cannot simply enlarge this list of criticisms for there are positive contributions to be found in Honneth's work. The most obvious example is perhaps his willingness to avoid a foundationalist strategy.[46] There are problems, however, with Honneth's proposals. The main problem is its relative sociological deficit. This flaw, I claim, is directly related to Honneth's limited and partial appropriation of Mead's legacy. Many would read this as a plea to increase the interpretive-hermeneutic orientation of Honneth's model, but the sociological deficit I have in mind is quite different. It refers to a relative lack of consideration of the institutional framework within which recognition claims are made, which in no way precludes sensitivity to the meanings agents attribute to their actions. One way to compensate this sociological deficit involves exploring the full sociological potential of Mead's social pragmatism. Such a move, however, presupposes going beyond the symbolic interactionist reading that has dominated the reception of Mead's ideas for most of the twentieth century and to which Honneth, too, fell prey. Curiously enough, this involves looking beyond sociology and into the dominant trend in socio-legal studies in the United States today, the so-called "legal consciousness" perspective.[47]

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[44] Such a politics of acknowledgement "involves coming to terms with, rather than vainly attempting to overcome, the risk of conflict, hostility, misunderstanding, opacity, and alienation that characterizes life among others" (Markell 2003: 38).

[45] On the Eurocentric character of Honneth's model, see e.g. Thompson (2009); on the criticism of its "ethical sectarianism", see Fraser 2003: 228.

[46] Instead of aspiring to uncover general principles upon which human conflict is founded, Honneth (rightly) aims at reconstructing the inner logic of the concrete forms that human conflict assumes in different social spheres (Honneth [2000] 2007; see also Markell 2007).

[47] Exemplars of legal consciousness studies include Ewick and Silbey (1992), Merry (1990), Sarat (1990), White (1990). A different yet related perspective is the constitutive theory of law: see e.g. Fraser (1978), Thompson (1978), Hunt (1993), Habermas ([1992] 1996). Another related strand of literature studies rights as political resources for progressive social mobilization. In this case, see e.g. McCann (1994), Goldberg-Hiller (2002), Herman (1996), Silverstein (1996).

It is ironic that the most fruitful neo-Meadian empirical research programme on rights has been developed not in sociology but in law. Whereas the sociology of rights has been developed mostly around the post-war trio Marx/Weber/Durkheim, thus ignoring Mead's contributions, one of the earliest articulations of what would later be termed the "constitutive theory of law and politics" (Ewick and Sarat 2004: 439) is Murray Edelman's 1964 *The Symbolic Uses of Politics*, in which Mead figures as a central intellectual source.[48] Edelman's ideas proved immensely influential. They exerted a significant influence on Stuart Scheingold,[49] whose work differs from Edelman for its focus on rights, both as a myth and as a resource. Yet Scheingold shares with Edelman the neo-Meadian emphasis on the symbolic nature of politics. Consider, for instance, the opening sentence of Scheingold's landmark study *The Politics of Rights* (1974): "This is a book about the law. The law is real, but it is also a figment of our imaginations" ([1974] 2007: 3). From this pragmatist insight that the reality of law is to be found as much in legal institutions as in social attitudes toward them, Scheingold develops a sophisticated critique of the idea according to which legal rights are directly empowering – the so-called "myth of rights". Yet Scheingold resisted making the facile opposite argument, according to which if rights are a myth then they are not worthy of social scientific analysis. Taking civil rights as a case in point, Scheingold argues that what is not available directly through rights may be available indirectly. The American belief in rights – i.e. the myth of rights – is itself available as a significant political resource, which can be deployed indirectly through the political process whenever legal channels are not available. In a significant parallel with Honneth's ethics of recognition, Scheingold writes: "More concretely, I argued that indignation generated by television reports of "massive resistance" to the civil rights decisions of the US Supreme Court fueled a civil rights movement" ([1974] 2007: xix). Uniting these otherwise independent projects on rights as powerful symbolic political resources, from which concrete experiences of

[48] See Edelman 1964: 26, 34-35, 49-51; see also 1971: 53-57; 1988: 96-97.
[49] Other influences include political psychology, post-war social science of mass society, and the cultural studies of Durkheim and Clifford Geertz. See Feeley (2007: xiv).

indignation can draw so as to criticize and transcend the existing social and political order, one finds a common source – Mead's conception of rights.

Edelman and Scheingold, however, were only among the first to explore Mead's approach to rights empirically. The legal consciousness or constitutive perspective (I use these terms interchangeably) which they inaugurated has meanwhile become the main alternative to instrumentalist views of law, itself differentiated among various strands.[50] A major contribution of the constitutive perspective, one that addresses the sociological deficit of proposals such as Honneth's, is its conception of legal institution. Joining the "neo-institutionalist" wave that has swept the social sciences in the 1980s and early-1990s,[51] the constitutive theory of law set itself the task of reformulating the traditional concept of legal institution. The result has been a radical expansion of what counts as law, or legal. A good illustration of this expanded conception of legal institutions is the work by Patricia Ewick and Susan Silbey on patterns of legal consciousness (Ewick and Silbey 1998).[52] Legal consciousness is participation in the process of constructing "legality", the wide range of "meanings, sources of authority, and cultural practices that are commonly recognized as legal, regardless of who employs them or for what ends" (1998: 22), and that operates both as an interpretive framework and a set of resources. As such, legal consciousness "is produced and revealed in what people *do* as well as what they *say*" (1998: 46). In their empirical work, Ewick and Silbey find three different forms of legal consciousness among their respondents, each invoking a particular set of cultural schemas and resources that enable individuals to position themselves vis-à-vis the law. Some individuals conceive of their relationships with the law as something *before* which they stand, *with* which they engage, and *against* which they

[50] Robert Brigham's *The Constitution of Interests*, which problematizes Scheingold's relatively unqualified claims about rights as political resources, is perhaps the major new addition to this literature (Brigham 1996). For a criticism, according to which rights do not, either directly or indirectly, promote social change, see Rosenberg (1991). As a research topic located at the intersection of law and sociology, there is some work on legal consciousness by sociologists. The most recent examples include Hoffmann (2003), Larson (2004), and Marshall (2006).
[51] See e.g. Sckopol (1979), March and Olson (1984), DiMaggio and Powell (1991).
[52] For complementary analysis of how individuals conceive of their multiple communities of belonging (geographical, national, and racial), see e.g. Wong (2010).

struggle. A crucial component of all these different forms of legal consciousness is rights consciousness, i.e. the ways in which people act towards and think about rights. Rights emerge from this line of work as discursive resources with multiple and varying meanings, as well as institutional resources. They are defined as "practices", a concept that captures cultural representations and brings in social relations.

This understanding of rights-as-practices shows not only the impact of the social theories of Giddens and Bourdieu and especially of William Sewell's version of practice theory upon the constitutive approach to law, but its limitations as well.[53] One major problem of this relationship refers to the issue of institutional origins, i.e. how to explain the historical emergence of the institution of rights. The main strength of social theories of practice lies in analyzing the reproduction of existing structures or institutions, in which they constitute an obvious advance vis-à-vis approaches such as Honneth's. Yet if one is interested in studying the origins or causes of institutional arrangements, practice theory is more limited than alternative approaches such as functionalism or rational choice theory, despite their own well-known limitations.[54] Moreover, such alternatives rest upon incompatible "theoretical presuppositions" from those upon which the (constructionist, interpretive) legal consciousness studies are founded, which renders them hopelessly inadequate. The alternative envisaged here, which destabilizes and moves beyond conventional understandings of the history of sociology of law,[55] is to look for the theoretical solution to this problem in the history of the legal consciousness perspective. Among the various fruits of this sort of historical exercise, the social pragmatism of G.H. Mead seems to be the most promising. Mead's social evolutionary orientation to the issues of emergence, creativity, and novelty goes hand-in-hand with its hermeneutic

[53] On Sewell's influence (1992), see Ewick and Silbey (1998: 40 ff).
[54] On the limitations of functionalist approaches to institutional origins and change, see Pierson (2000). For a critique of the difficulties of providing causal accounts of social institutions associated with practice theory, see Chapter 2 of Turner (1994).
[55] See e.g. Mathieu Deflem, who uncritically subscribes to the Blumerian version of the past in his recounting of the intellectual predecessors of legal consciousness studies (2008: 132-135).

sensitivity. Mead, however, cannot "do our thinking for ourselves,"[56] in the sense of providing us with a social theory of rights relevant to our time and circumstances. That is what I propose to do next.

3. HOW TO STUDY RIGHTS:

A NEO-PRAGMATIST PROPOSAL

By definition, a neo-Meadian theory of rights is not Mead's theory but a latter day exercise. There are two reasons why this exercise in theory construction is justified. The first is that Mead did not himself formulate a consistent "theory of rights" as such.[57] The second reason is that, even if this is the case, Mead's work nonetheless contains the necessary conceptual elements to formulate such a theory. An initial indication that this is true has already been provided in the last section, in the form of several productive encounters with Mead. Now I go a step further and show how I believe a neo-pragmatist theory, particularly a neo-Meadian one, can help sociologists studying the origins, consequences, meaning, and denial of rights.

This exercise in theory building is founded upon a historical reconstruction of Mead's thinking that questions the conventional symbolic interactionist interpretation to suggest that his contributions extend well beyond his social theory of the self. In particular, it is suggested that Mead's social psychological writings are but one of the three pillars that form his intellectual edifice, alongside epistemology and democratic politics. As a result, criticisms of Mead accusing him of not addressing systematically the processes of "material reproduction of societies" (as opposed to the "symbolic reproduction of societies"), which include processes of warfare, economic

[56] While in the late-1960s, Quentin Skinner was of the view that in order to seek "answers" to philosophical questions, "we must learn to do our own thinking for ourselves" (Skinner 1969: 52), in his more recent work he has indicated ways in which historical work can help one to think about politics. I am broadly in agreement with this later position. For a discussion, see Lane (2012).

[57] That is why in this paper I speak not of Mead's "theory of rights", but of Mead's "approach to rights." For a similar understanding, see Cook (1993: 209).

development, or state building, are shown to miss the mark.[58] The case of rights is exemplary. Mead's seminal contribution to the study of rights consists not merely in emphasizing the symbolic dimension of politics (as Edelman and his followers have long noticed), but in undercutting the very "idealism versus materialism" dichotomy. Mead has called our attention time and again to the fact that a considerable part of the material power of institutions such as rights resides in their symbolic character. From a pragmatist viewpoint, one needs to appreciate not only the constraining and reproductive effects of institutions over human agency but also their distinctively enabling qualities.[59] To better explore this particular Meadian contribution to the study of rights, however, one needs to supplement his theory of meaning and symbolization with a more nuanced appreciation of the generative character of fictions.

Fictions tend to be looked at with discomfort by sociologists, a discomfort that in the case of rights can be traced back to Jeremy Bentham's liberal utilitarian scepticism as well as to the materialism of Karl Marx.[60] One way of overcoming this discomfort involves turning to Thomas Hobbes's fictional theory of the state.[61] Recent research suggests that Hobbes has a far more transversal understanding of the nature and implications of representation than previously thought.[62] For Hobbes, representation is a multivalent phenomenon that expresses itself in different ways in different domains of action, without losing its distinctive inner logic and properties. Political representation, from this perspective, emerges as the political-juridical expression of a more general phenomenon with ramifications for the realms of theatre and theology.[63] The state, from this perspective, is a legal fiction with no existence except

[58] See, e.g., Silva (2007b, 2008), Silva and Vieira (2012), Mead (2011). For a criticism of Mead as an "idealist", see the second volume of Habermas ([1981] 1986).
[59] See Silva 2007a: 62-63; Konings (2010: 64).
[60] On the troubled history of the relation between legal fictions and sociology, see Mohr (2006).
[61] On Hobbes's fictional theory of the state, see, e.g., Vieira (2008) and Skinner (2010).
[62] See e.g. Pitkin (1967), Manin (1997).
[63] Hobbes is said to have made a "transition from the theatrical stage, where actions are done in mere sport, and not expected to have life consequences, to the high-powered world of the Leviathan state, where actions such as the momentous decision

through its being represented. Its origins lie in a metaphorical covenant of representation. The "Leviathan is at once the cause and the effect of its foundation: it must be first imag(in)ed, so that it is brought into being" (Vieira 2008: 177).

There is a striking contrast between this conception of the state as a fiction and Bourdieu's influential sociology of the state. For Bourdieu, some three centuries ago, a specific group of social agents that he designates the "state nobility",[64] "were led to produce a discourse of state which, by providing justifications for their own positions, constituted the state – this *fictio juris* which slowly stopped being a mere fiction of jurists to become an autonomous order capable of imposing ever more widely the submission to its functions and its functioning and the recognition of its principles" (1994: 16). For Bourdieu, then, as for most sociologists,[65] the state first emerges as a legal fiction only to gain effective existence as an autonomous, non-fictional order. For Hobbes, at least in the Vieira-Skinner reading, the state not only emerges as a fiction but can only subsist over time as "the Greatest of humane Powers". These different understandings bear important implications for empirical research. According to Bourdieu, research is to be conducted on the constraints of the state over social agents to the level of the most profound corporeal dispositions, both at the phylogenetic and ontogenetic level (1994: 13-14).[66] By superseding the dichotomy separating processes of "symbolic versus material" social reproduction, the fictional theory of the state, very much like pragmatism,[67] suggests that research should adopt an integrated view of both the reproductive and constraining effects as well as the enabling qualities of fictions. It is not that the state, the law, and rights

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to wage a foreign war involve us collectively as well as personally" (Vieira 2008: 146).

[64] See Bourdieu ([1989] 1998: 371-389).

[65] For a survey of the materialist sociological theories of the state, see Abrams (1988).

[66] On the law's power to create new social groups, identities, and subjectivity, see Bourdieu ([1986] 1987: 838).

[67] A word is needed as to the "theoretical presuppositions" upon which Hobbes and Mead ground their work. Even though they are antithetical – Hobbes's are individualistic, Mead's are relational – this does not affect their common sensitivity to the generative character of fictions and symbols. It is this common orientation, despite their different groundings, that render Hobbes's fictional theory of the state and Mead's theory of meaning and symbolization compatible.

should be studied *despite* being fictions, as if they are real; rather, they are real *because* they are fictions, and they should matter for sociologists exactly because it is only by acknowledging their fictive character that one can hope to grasp their actual power.

The fictive, mythical character of rights assumes particular importance when one wishes to address their origins. Current dominant approaches to rights formation explore the motivational impact of interests,[68] the effect of structural factors,[69] and the causal power of the moral qualities of rights.[70] I see all these considerations as integral to a social scientific inquiry into the origins of rights provided they are re-conceived from the point of view of their constraining, reproductive, and enabling impact on human action. More than estimates of the impact of these external forces acting on the back of agents, sociology should provide explanations of how and why actors are able to make legitimate claims to rights they do not yet possess. Imagining rights-to-be is a collective socio-legal practice of world-making (rights-bearing individuals are never a *datum*, always a *constructum*), a process that is only reinforced when these are institutionalized. Rights institutionalization is of central importance to a neo-pragmatist analysis of rights as the idea or belief in human rights is radically expanded when codified. As social objects, rights gain added meaning when translated into printing. Hence the singularly powerful symbolism for political communities that written documents such as the *Magna Carta*, the Universal Declarations of Rights, Bills of Rights, and national constitutions

[68] Charles Tilly, for example, argues that citizenship rights "exist when one party can effectively insist that another deliver goods, services or protections and third parties will act to reinforce (or at least not hinder) their delivery" (1998: 56). For a rational choice analysis of the formation of rights, see Coleman (1990).

[69] These include socio-economic factors such as poverty and unemployment, cultural factors such as ethnic, religious or linguistic cleavages, or institutional features such as political regime types.

[70] Michael McCann writes: "the symbolic manifestations of law, as both a source of moral right and threat of potential outside intervention, invest rights discourse with its most fundamental social power" (2006: 30). See also Alexander (2006), Balibar (2004), Benhabib (2004), Dershowitz (2004), and Turner (2006).

command.[71] The identification of the mechanisms through which rights were institutionalized and the strategies mobilized by actors with that end in view are best reconstituted through legal or constitutional ethnographies.[72]

Constitutional ethnographies, as legal consciousness studies have shown, are as important to the study of rights institutionalization as is the analysis of ways in which rights constitute individuals into right-bearing citizens. Yet there are no good reasons why the analysis of the consequences of rights institutionalization, a process closely associated with state-building, is to be limited to informal settings. On the contrary, from a neo-pragmatist perspective, rights are to be studied both as figments of people's imaginations outside formal arenas such as courts and legislatures, as well as inside them.[73] Likewise, legal ethnographies such as Silbey and Ewick's aforementioned study of New Jersey residents's forms of legal consciousness can be supplemented by deliberative focus groups, and even by national and cross-national surveys. What all these methodologies need to share is a common orientation towards the reconstruction of the processes through which rights constrain and/or empower individual citizens and social groups.

These are also the processes within which the meaning of rights is formed. From a neo-pragmatist perspective, this is a key question that the nascent sociology of rights needs to address. By conceiving the meaning of rights as intrinsically contested and socially constituted (as opposed to fixed and stable), I see the sociological study of its origins and effects as an inquiry into collective mobilization. In particular, it should focus on the legal and non-legal spaces in which the meaning of rights is produced

[71] On the importance of the written word in modern conditions, see Luhmann (1992). On how the symbolic power of constitutions helps collectivities mythically come into being, see Wolin (1989).

[72] See Scheppele (2003, 2004). For a constitutional ethnography of the origins of social and economic rights in 1970s Portugal, see Vieira and Silva (forthcoming). On pragmatism and legal ethnographic methods, see Morales (2003).

[73] An obvious predecessor is *The Making of Law*, Bruno Latour's neo-pragmatist study of the French Supreme Administrative Court (*Conseil d'Etat*). See Latour ([2002] 2010). Latour, of course, is not so much interested in developing a sociology of rights as he is in putting forth a sociological reconstruction of law itself (namely as a regime of truth production). For a discussion, see e.g. Cotterrell (2011).

and fought over, the strategies and resources employed by actors in these meaning-making practices, as well as the constraining and enabling effects exerted by institutions and structural conditions. In this regard the most obvious predecessor is legal consciousness literature. The examination of the ways in which feminism, civil rights, and pay equity activists have made use of legal indeterminacy "to construct expansively egalitarian readings of rights" is particularly consonant with the kind of approach advocated here (Scheingold [1974] 2007: xxviii).[74]

Yet as political actors are able to (partly) constitute the rights they enjoy, they are also always faced with the possibility of being deprived of them. Far from being a progressive expansionary tale, the history of human rights is as much a history of creation and implementation as it is a history of retrenchment and denial. From a neo-pragmatist point of view, sociologists should focus more on how the relational and reflexive character of rights is affected by political processes of rights retrenchment and, especially, rights violations as these entail profound consequences for citizen identity. A similar point, of course, has already been made by Honneth, who suggests that the "denial of rights" can be conceived of as a type of "social pathology" amenable to empirical analysis through "group discussions" and "deep interviews", on the premise that these have a "consciousness-raising effect" (interviewed in Petersen and Willig 2002: 268-269). Perhaps even more interesting is the growing literature on cultural trauma (see e.g. Alexander et al. 2004), whose strong constructivist bent is very much in line with neo-Meadian sociology.

4. Conclusion

There are three main contributions I wish to make in this paper. The first contribution is to place G.H. Mead among the precursors of the modern day sociology of rights. This involved reconstructing Mead's (admittedly sketchy) approach to rights as a

[74] Of particular relevance is the literature on rights and progressive legal mobilization. This strand in the literature sees legal language as "indeterminate and malleable" (Silverstein 1996: 7), as a contested discursive arena in which legal meanings take shape. See also Brigham (1998: 16).

coherent social theory of rights. This was only possible due to the combination of a historical reconstruction of Mead's thinking, in which several aspects of his work were brought together to build a systematic account of rights, and theory-building. This second task involved a critical review of the appropriations of Mead's work on rights, including socio-legal studies. The paper's second major contribution has been to shed more light on this little known historical episode of intellectual diffusion. The third, more general, contribution of the paper has been to show how productive an encounter between American philosophical pragmatism and contemporary social sciences can be. In particular, I have tried to show the extent to which sociological empirical research on the origins, meaning, implementation and denial of rights can benefit from a neo-Meadian approach.

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