UIC Law Review

Volume 51 | Issue 3 Article 1

2018

The Meaning of Rights, 51 J. Marshall L. Rev. 503 (2018)

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THE MEANING OF RIGHTS

ANUJ PURI[*]

"Attempts to find meaning in life seek to transcend the limits of an individual life. The narrower the limits of a life, the less meaningful it is."

~Robert Nozick, Philosophical Explanations[1]

Abstract

In an increasingly inward-looking world governed by populist governments, existing theories of rights are struggling to protect and expand individual rights. This failure can be attributed both to the present conception of rights as well as the absence of a unifying theme to address the existence and conflict of rights. In the present paper I argue that this unifying theme, which is necessary for protection and expansion of individual rights, is provided by "meaning" in an existential and linguistic sense. I assert that the greatest challenge faced by individual rights is in form of a faceless

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1. ROBERT NOZICK, PHILOSOPHICAL EXPLANATIONS 594 (1981).

populist doctrine called "public interest." As long as the issue of conflict of rights will be addressed in a numerical manner, individual rights will stand defeated. We need to come up with a new model for resolution of conflict of rights, which does not examine right holders as integers but as human beings. This paper, which is a continuation of my previous effort on the subject,[2] elaborates upon the existential role of rights and seeks to construct an inviolable nucleus of rights by examining the essence and core meaning of rights. The paper's final contribution lies in developing a semantical framework for resolution of conflict of rights.

INTRODUCTION

In a previous paper titled *The Meaning of Law*,[3] I argued that the defeat of individual rights at the hands of public interest should be treated as semantical, and not numerical or demographical. The central premise of the paper was that the term "public interest" is inherently without meaning and its amorphous nature allows construction and deconstruction of meaning more readily as opposed to concretized individual rights. The key hypothesis I constructed in the aforesaid paper was that in a conflict between majoritarian interest, which passes off as public interest, and individual rights, text capable of vague or pluralistic meaning (public interest)[4] triumphs over concrete, singular meaning (individual rights). In other words, the right, which is considered to be "more meaningful" prevails over the "less meaningful" right. In response to *The Meaning of Law*, I have received three broad queries, which I hope to address by way of the present paper:

1. Why do I claim that existing conceptions of rights and methods of resolution of conflict of rights are ineffective?

2. How can "meaning" be a parameter for resolving conflict of rights?

3. How do we decide which right is "more meaningful?"[5]

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2. Anuj Puri, *The Meaning of Law*, 49 J. MARSHALL L. REV. 1077 (2016).

3. *Id.*

4. The Supreme Court of India in the case of T.M.A. Pai Foundation and Ors. v. State of Karnataka, (2002) 8 S.C.C. 481 (India) held, "The expression 'public interest' is not capable of precise definition and has not a rigid meaning and is elastic and takes its colours from the statute in which it occurs, the concept varying with the time and state for society and its needs. Thus what is 'public interest' today may not be so considered a decade later."

5. What do we mean by 'more meaningful'? Robert Nozick in his book *Philosophical Explanations*, while addressing the question of meaning of life, identified eight modes of meaning:

In order to effectively address these queries, this paper is divided into five parts. The first part provides the context for the debate. In the second part, I address the failure of existing conceptions of rights as well as the failure of existing methods for resolution of conflict of rights. In the third part, I seek to make a case for acceptance of "meaning" as a parameter for resolution of conflict of rights. My endeavor in this section is to arrive at an inviolable nucleus of rights through various folds of analysis of externalism, essentialism, and open texture of law. In the fourth part, I share my thoughts on how to decide which right is more meaningful. The paper finds its conclusion in the fifth and last part.

I. PART I

A. Context

Before I address the three specific queries, a bit of context might be useful. In my previous paper, I had used individual rights and public interest as proxies for the perennial conflict between liberalism[6] and utilitarianism.[7] The debate has attracted seminal

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Meaning as external causal relationship

Meaning as external referential or semantic relation

Meaning as intention or purpose

Meaning as lesson

Meaning as personal significance, importance, value, mattering

Meaning as objective meaningfulness

Meaning as intrinsic meaningfulness

Meaning as total resultant meaning

Nozick, *supra* note 1, at 574-75. I shall address the 'more meaningful' query from an existential and linguistic perspective.

6. "At its core, Liberalism is a particular conception of human nature, based on beliefs in the moral primacy of the individual as the starting point for thinking about politics and society; the equal moral worth of every individual, regardless of class, nation, gender or race; and the possibility of improving social conditions and reforming political institutions. Individuals are conceived as the bearers of rights which exist independently of government and which it is the task of government to protect. The legitimacy of any system of government depends on how well it protects the liberty of its citizens." GEORGE RITZER & J. MICHAEL RYAN, THE CONCISE ENCYCLOPEDIA OF SOCIOLOGY 355 (2011).

7. MICHAEL FREEMAN, LLOYD'S INTRODUCTION TO JURISPRUDENCE 196 (2014). "Utilitarianism is the idea that the moral worth of an action is solely determined by its contribution to overall utility in maximizing happiness or pleasure as summed among all people. It is, then, the total utility of individuals, which is important here, the greatest happiness for the greatest number of people." Luke Mastin, *The Basics of Philosophy*, www.philosophybasics.com/branch_utilitarianism.html (last visited Aug. 1, 2017).

contributions from liberals[8] and utilitarians[9] alike, but a lasting solution has proven elusive.[10] However, never before have individual rights faced such a global onslaught, with inward looking governments seeking to curb basic freedoms of refugees, immigrants, and citizens—all alike.[11] Populist leaders across the

8. "As per John Locke, men have rights to 'life, liberty, and estate' in a pre-political state of nature, and these natural rights put limits on the legitimate authority of the state." Leif Wenar, *Rights*, STAN. ENCYCLOPEDIA PHIL. (Edward N. Zalta ed., Fall 2015), www.plato.stanford.edu/entries/rights.

9. The term 'public interest' can be etymologically traced back to Jeremy Bentham. As per Bentham, "'The interest of the community' is one of the most general expressions in the terminology of morals; no wonder its meaning is often lost. When it has a meaning, it is this. The community is a fictitious body composed of the individuals who are thought of as being as it were its members. Then what is the interest of the community? It is the sum of the interests of the members who compose it." JEREMY BENTHAM, AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATIONS 3 (Forgotten Books, 2012).

10. *See* Steven Strasnick, *Individual Rights and the Social Good: A Choice-Theoretic Analysis*, 10 HOFSTRA L. REV. 415, 415-17 (1982) (highlighting the approaches adopted by various philosophers to resolve the conflict between individual rights and utilitarianism).

11. One has to look no further than the two largest and strongest democracies of the world - United States of America and India to stake this claim. The changes to immigration policies by the United States Government, barring certain nationals from eight countries from entering United States of America are a flagrant violation of individual rights. However, these changes were sought to be justified by the U.S. Government in the name of public interest and were finally upheld by the United States Supreme Court. Trump v. Hawaii, 138 S. Ct. 2392 (2018).

As far as India is concerned, in the past few years the country has embarked on an ambitious biometric identification program titled *'Aadhaar'* (literally meaning 'foundation'). This project has railroaded all concerns for privacy, individual autonomy and safety of sensitive data such as fingerprints, personal details. During the course of a hearing in the Supreme Court of India, challenging the constitutional validity of making Aadhar mandatory under various Government schemes, the Attorney General went on to claim that individuals have no absolute rights over their bodies. HINDUSTAN TIMES, *Aadhaar case: Mukul Rohatgi is wrong. 'Bodily integrity' is sacrosanct*, (May 5, 2017, 11:48 AM), www.hindustantimes.com/editorials/aadhaar-case-mukul-rohatgi-is-wrong-bodily-integrity-is-sacrosanct/story-EghyEtXCUDkaw3RQ9TJ9qO.html; Sunil Abraham ET AL., *Is Aadhaar a Breach of Privacy?*, THE HINDU (Mar. 31, 2017, 12:15 AM), www.thehindu.com/opinion/op-ed/is-aadhaar-a-breach-of-privacy/article17745615.ece; Jean Drèze, *Hello Aadhaar, Goobye Privacy*, THE WIRE (Mar. 24, 2017), www.thewire.in/118655/hello-aadhaar-goodbye-privacy/. Full text of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 is available at www.uidai.gov.in/images/the_aadhaar_act_2016.pdf (last visited Nov. 14, 2017). The *Aadhaar* Act and its implementation sidesteps all the concerns highlighted in the aforesaid news reports in the name of familiar keywords like 'economic efficiency,' 'stopping corruption,' 'ensuring accountability in governance' or, as we know it, 'public interest.' A five-judge bench of the Supreme Court of India by a 4:1 majority verdict recently upheld the constitutional validity of *Aadhaar* with certain caveats as regards data protection and placed restriction on sharing of *Aadhaar* data with private entities. K.S. Puttaswamy v. Union of India (Aadhaar-5 J.) 2018 SCC Online

world are treating rights as an impediment to their conception of the majority will.[12] From freedom to travel,[13] to freedom of speech and expression,[14] to civil liberties surrounding the choice of food and trade,[15] across the world the spectrum of individual rights are under

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SC 1642.

12. Kenneth Roth, *The Dangerous Rise of Populism: Global Attacks on Human Rights Values*, HUMAN RIGHTS WATCH, www.hrw.org/world-report/2017/country-chapters/dangerous-rise-of-populism (last visited Dec. 8, 2017).

13. *Trump*, 138 S. Ct. at 2392.

14. Earlier this year, India was mired in a controversy surrounding the release of the film *Padmaavat*—initially titled *Padmavati*. Right wing religious groups, without even watching the movie, claimed that the movie was an affront to a historical figure, a queen on whose life the film was purportedly based. The protesters successfully postponed the release of the movie under threat of violence to the cast and crew of the film. Their ire was specifically directed towards the actress who plays the eponymous queen. *Padmavati: Why a Bollywood Epic is Facing Fierce Protests*, BBC NEWS (Jan. 25, 2018), www.bbc.com/news/world-asia-india-42048512. How weak the discourse of rights has become can be gauged by the fact that some historians have challenged the very existence of the Queen, on whose behalf violent threats are being issued and a movie is being censored. Pradeep Saxena, *Rani Padmavati is an imaginary character: Historian Irfan Habib*, HINDUSTAN TIMES (Nov. 11, 2017, 8:13 PM), www.hindustantimes.com/bollywood/rani-padmavati-is-an-imaginary-character-historian-irfan-habib/story-i6RSXIMu3OkJZbA42W0hnL.html. The biggest evidence of failure of present conception of individual rights lies in the fact that the film was not released for months and continued to linger in a shadow of violence despite the Supreme Court of India refusing to ban it. Krishnadas Rajagopal, *Let Censor Board Certify 'Padmavati': Supreme Court*, THE HINDU (Nov. 20, 2017, 10:33 PM), www.thehindu.com/entertainment/movies/supreme-court-rejects-plea-to-delete-objectionable-scenes-from-padmavati/article20579979.ece. The Supreme Court's stand did precious little to deter populist leaders who in various States of India unilaterally banned the movie with scant regard to rule of law. *Padmavati Row: Bihar, UP, Gujarat and Other States Where Sanjay Leela Bhansali's Film Faces Hurdles*, HINDUSTAN TIMES (Nov. 29, 2017, 12:13 PM), www.hindustantimes.com/bollywood/padmavati-row-bihar-up-gujarat-and-other-states-where-sanjay-leela-bhansali-s-film-faces-hurdles/story-N6qcNFQwX4HmHSdJXs5fKP.html.

15. India has seen a disturbing rise in violence and curb of freedom in the name of 'beef ban.' The argument advanced in favor of the ban is that under Hindu religion cow is considered holy and as such its slaughter should be banned completely and punished stringently. Consequently, freedom of trade, food habits, and individual liberties have all been made subservient to religious beliefs disguised as public interest. If this disturbing interpretation of 'public interest' was not worrisome enough, the systemic curb on individual liberties has emboldened 'cow vigilantes' who have lynched to death scores of hapless individuals suspected of smuggling cattle or possessing cow beef. *See* Parimal A. Dabhi, *Gujarat Amends Law to Bring in Life Sentence for Cow Slaughter*, THE INDIAN EXPRESS (Apr. 1, 2017, 5:02 AM), www.indianexpress.com/article/india/gujarat-assembly-amends-law-to-bring-in-life-sentence-for-cow-slaughter-4594239/ (tracing the socio-political history of the Gujarat Animal Preservation (Amendment) Bill, 2017); Afroz Alam & Yogesh Pratap, *Making India a Cow Republic*, THE STATESMAN (June 21, 2017, 9:21 PM), www.thestatesman.com/features/making-india-a-cow-republic-1498080147.html (examining the historical, political and legal issues surrounding the debate on cow slaughter); The Editorial Board, *Vigilante Justice in India*, N.Y. TIMES (May 28, 207), www.nytimes.com/2017/05/28/opinion/vigilante-justice-in-

a systemic assault on account of an amorphous phenomenon called public interest.

II. PART II

A. Failure of existing theories of rights

It is in this backdrop that this paper asserts that the decreasing space for individual rights is a clear indicator that the existing theories of individual rights have not succeeded.[16] A substantial portion of the blame for the present state of individual rights lies with the narrow scope of analysis of rights. At first glance, this claim may seem counterintuitive, as no other area in jurisprudence has received as much attention as theory of rights. From natural rights[17] to positivism[18] to utilitarianism, the conception of rights is the primary focus of every political or moral theory of rights. Depending upon their focus, these theories can be broadly classified as deontological[19] or teleological.[20]

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india.html. (condemning the rise in vigilante violence over cow slaughter).

16. Philip Alston, *The Populist Challenge to Human Rights*, 9 J. HUM. RTS. PRAC. 1 (Apr. 27, 2017), www.doi.org/10.1093/jhuman/hux007.

17. Wenar, *supra* note 8.

18. "Legal positivism is a theory about the nature of law, commonly thought to be characterized by two major tenets: first, that there is no necessary connection between law and morality; and second, that legal validity is determined ultimately by reference to certain basic social facts, e.g., the command of the sovereign (John Austin), the Grundnorm (Hans Kelsen) or the rule of recognition (Hart).… Bentham viewed talk of natural rights as devoid of meaning. But, if propositions about right and duty could somehow be translated into propositions about laws and sanction, they could be given a sense." Peter Danchin, *Legal Positivism*, COLUM. U., www.ccnmtl.columbia.edu/projects/mmt/udhr/preamble_section_1/discussion_5.html (last visited Nov. 3, 2017).

19. "The word deontology derives from the Greek words for duty (deon) and science (or study) of (logos). In contemporary moral philosophy, deontology is one of those kinds of normative theories regarding which choices are morally required, forbidden, or permitted. In other words, deontology falls within the domain of moral theories that guide and assess our choices of what we ought to do (deontic theories), in contrast to those that guide and assess what kind of person we are and should be (aretaic [virtue] theories). And within the domain of moral theories that assess our choices, deontologists—those who subscribe to deontological theories of morality—stand in opposition to consequentialists." Larry Alexander & Michael Moore, *Deontological Ethics*, STAN. ENCYCLOPEDIA PHIL., (Edward N. Zalta ed., Winter 2018), www.plato.stanford.edu/archives/win2016/entries/ethics-deontological.

20. "In contrast, teleology (from the Greek telos, meaning goal or end) describes an ethical perspective that contends the rightness or wrongness of actions is based solely on the goodness or badness of their consequences. In a strict teleological interpretation, actions are morally neutral when considered apart from their consequences. Ethical egoism and utilitarianism are examples of teleological theories." *Deontological & Teleological Assumptions in Normative Ethics*, REGIS U., www.rhchp.regis.edu/hce/ethicsataglance/DeontologicalTeleological/DeontologicalTeleological_01.html (last visited July

However, irrespective of their ideological affiliations, all existing theories examine rights either from the perspective of interest,[21] side constraints,[22] or in the form of claim[23] and duty,[24] both of which are a subset of the existing Hohfeldian universe.[25] The existing definitions of rights may be useful for conceptual analysis, but not for comparative assessment. They help advance our understanding of what rights are, but do not address the issue of resolution of conflict of rights, and therein lies a fallacy. If one looks at some of the widely regarded modes of resolution of conflict of rights, one can readily identify the same existential flaws of comparison of rights on the basis of end objective and relative strength.[26] The existing theories have failed to identify any one common, shared parameter on the basis of which rights can be assessed. They look at rights in rigid isolation and then they examine which shall prevail if there is a conflict between rights. For example, the existing modes of resolution of conflict of rights would

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17, 2018); *see also* JOHN RAWLS, A THEORY OF JUSTICE 30 (Universal Law Publishing, 4th ed. 2010) (distinguishing utilitarianism as a teleological theory and justice as fairness as deontological).

21. "According to Raz, a person may be said to have a right if and only if some aspect of her well-being (some interest of hers) is sufficiently important in itself to justify holding some other person or persons to be under a duty." Jeremy Waldron, *Rights in Conflict*, 99 ETHICS 503, 504 (1989).

22. According to Nozick, rights are to be thought of as side constraints—limits on the actions that are morally available to any agent. Waldron *supra* note 21, at 503.

23. *See* Nikolai Lazarev, *Hohfeld's Analysis of Rights: An Essential Approach to a Conceptual and Practical Understanding of the Nature of Rights*, 9 MurUEJL (2005), www.austlii.edu.au/au/journals/MurUEJL/2005/9.html. (defending Hohfeld's analysis of rights against its major critics).

24. Joel Feinberg, *Duties, Rights, and Claims,* 3 AM. PHIL. Q. 137 (Apr. 1966), www.jstor.org/stable/20009200?seq=1#page_scan_tab_contents.

25. Max Radin, *A Restatement of Hohfeld*, 51 HARV. L REV. 1141, 1157 (1938).

26. *See* F. M. Kamm, *Conflict of Rights*, PHIL. OF LAW 313, 315 (Joel Feinberg & Jules Coleman eds., 7th ed., 2004). Kamm suggests three modes for resolution of conflict of rights:

> 1. The choice test: If the only way to achieve a certain goal is to transgress R1 or to transgress R2, as the means to the goal, which would one sooner do, given that one had to do one of them? The suggestion is, one would sooner transgress the weaker right when all other things are equal.
>
> 2. The Goal Test: How important a goal must one have for it to be permissible to intentionally transgress R1? The suggestion is that transgressing stronger right requires a more important goal, when all other rights are equal.
>
> 3. The Effort Test: How much effort would one have to make (or loss would one have to suffer) (a) to avoid foreseeably transgressing the right (b) to accord the right, or (c) to compensate or undo the effects of transgression? *Id*.

examine the *Padmavaat* issue[27] as a numerical conflict between artistic freedom and religious sensibilities, and most likely conclude in favor of religious sensibilities. This is because the existing theories examine rights in silos devoid of their moral, social, behavioral, and philosophical context. The underlying assumption is that rights R_1 and R_2 are two independent streams of rights that are in conflict with each other. However, if we are able to come up with a unifying theme for explanation and expansion of rights, it would result in an effective resolution of conflict in favor of individual rights. As elaborated in the ensuing paragraphs, this unifying theme is provided by meaning.

Over the past century, as part of a continuing trend, legal philosophers have relentlessly endeavored to justify, protect, and strengthen individual rights in the face of overarching societal or public interest. In furtherance of this objective, rights have been called trumps that can prevail over political justifications.[28] Their function has been defined as to further the interests of the right holder.[29] In yet another formulation, rights have been categorized as demands that can be insisted upon.[30] It has also been argued that "respect for individual rights is the key standard for assessing state action and hence the only legitimate state is a minimal state that restricts its activities to the protection of the rights of life, liberty, property, and contract."[31]

One would have hoped that with theoretical frameworks as strong as Dworkin's trumps and Nozick's libertarian doctrine, individual rights would remain secure against any onslaught of majoritarian interest. But regardless of their formulation, none of the theories have been able to conclusively resolve the conflict of rights, and perhaps given the nature of rights, conflict is inevitable.[32]

But the inevitability of conflict should not deter us from seeking recourse to a meaningful resolution. This meaningful resolution would arise from addressing the real nature of the conflict, which in my view is not numerical but existential and semantical. However, the present conceptions of rights with their emphasis on jural correlations and jural oppositions are focused on

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27. *Padmavati: Why a Bollywood Epic is Facing Fierce Protests*, BBC NEWS (Jan. 25, 2018), www.bbc.com/news/world-asia-india-42048512.

28. JEREMY WALDRON, THEORIES OF RIGHTS 17 (Oxford Univ. Press, 2009 Reprint).

29. Wenar, *supra* note 8.

30. "A right is something a man can stand on, something that can be demanded or insisted upon without embarrassment or shame." JOEL FEINBERG, SOCIAL PHILOSOPHY 58 (Prentice Hall, 1973).

31. Eric Mack, *Robert Nozick's Political Philosophy*, STAN. ENCYCLOPEDIA PHIL., (Edward N. Zalta ed., Summer 2018), www.plato.stanford.edu/archives/sum2015/entries/nozick-political.

32. Jeremy Waldron, *Rights in Conflict*, 99 Ethics 503, 503 (1989), www.mit.edu/~shaslang/mprg/WaldronRIC.pdf.

the birth of rights and the resultant numerical conflict. The existing liberal rights theories have shied away from addressing the faceless populist challenge mounted by utilitarianism in the name of public interest. The notion that if I have a right someone else must have a corresponding duty helps explain the existence of the right, but does little to strengthen, expand, and most importantly, ensure its survival in the face of a competing public interest.

The existing theories place rights in an artificial vacuum devoid of their social context. I believe that whilst rights may conceptually belong to this Hohfeldian universe, their function and operation has to be examined from a larger linguistic, philosophical, and behavioral perspective. In other words, any meaningful legal theory would need to deal as much with language and human behavior as it does with rights.[33] Professor Stroup best highlights this requirement when he states,

> A consideration of the nature of law suggests that perhaps an appropriate philosophy of law has not been found because it has been sought in the wrong places. Theories of jurisprudence, of the nature of man, of the nature of society, can provide no such philosophy, for these are the very points of contention in judicial debates. But law, whatever else it may be, is language, and perhaps in the philosophy of language can be found a more manageable, less metaphysical subject for discussion. Law is language-not only language, but a very special kind of language, for law is an attempt to structure the realities of human behavior through the use of words.[34]

It is my assertion that this larger triumvirate perspective that we seek for examining rights is provided by "meaning." The relationship between meaning and rights has so far been approached from the perspective of interpretation. However, as elaborated below, I see them as congruent socio-legal subjects in human evolution.

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33. While expounding his general theory of law Ronald Dworkin stated,

> A general theory of law must be normative as well as conceptual…a general theory of law will have many connections with other departments of philosophy. The normative theory will be embedded in a more general political and moral philosophy, which may in turn depend upon philosophical theories about human nature or the objectivity of morality. The conceptual part will draw upon the philosophy of language and therefore upon logic and metaphysics. The issue of what propositions of law mean, and whether they are always true or false, for example, establishes immediate connections with very difficult and controverted questions in philosophical logic. A general theory of law must therefore constantly take up one or another disputed position on problems of philosophy that are not distinctly legal.

RONALD DWORKIN, TAKING RIGHTS SERIOUSLY 2-3 (Bloomsbury, 2013).

34. Danial G. Stroup, *Law and Language: Cardozo's Jurisprudence and Wittgenstein's Philosophy*, 18 Val. U. L. Rev. 331, 331 (1984).

III. PART III

A. Meaning as a parameter for resolution of conflict of rights

The present theories of rights are aimed at providing moral justification for existence of rights. But in the process of regarding rights as moral-social objects, the existing theories underplay the linguistic component of rights. In developing a theory of relationship between meaning and rights, I aim to firstly provide a moral justification of rights in form of their existential[35] outreach and secondly examine their linguistic outlook. I then intend to use both the existential and linguistic components for resolution of conflict of rights.

1. Part A: Existential

Beginning with the existential aspect, a person's eternal quest for meaning of life is guided by rights. In this sense, rights are tools that shape her existential outlook. The presence or absence of rights,[36] the nature of rights, the extent to which rights are protected—these various aspects formulate one's worldview and determine what kind of life would a person deem as meaningful. In this respect, the relationship between rights and meaning is interlinked and dynamic. The nature of right would depend on the meaning one attributes to her life and, conversely, the meaning of one's life would depend on the rights that are guaranteed to her.[37]

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35. "Existence precedes essence," Jean Paul Sartre's famous invocation is a central tenet of existentialism. Jean Paul Sartre, *Existentialism is a Humanism*, MARXISTS.ORG (1946), www.marxists.org/reference/archive/sartre/works/exist/sartre.htm. "For the existentialists, human beings define themselves, give themselves meaning, and establish their essence only via their existence: by what we do and how we choose to live our individual lives." David P. Barash, *Evolutionary Existentialism, Sociobiology, and the Meaning of Life*, 50 BioScience 1012, 1012 (Nov. 2000), www.academic.oup.com/bioscience/article/50/11/1012/219719.

36. The effect of absence of rights has been best demonstrated by Joel Feinberg's thought experiment *'Nowheresville'*. The idea behind Nowheresville is to imagine a society that is as close to our own except for lacking rights. So the Nowheresvillians have duties: there are things they are morally required to do. They can also enforce these duties: people who do the wrong thing can be punished or shamed. They also have a system of personal desert, meaning they can think it's appropriate that people get rewards or punishments. And they have special obligations generated by transactions, like contracts or promises. The biggest casualties in such society are self-respect and dignity as they are based on one's ability to make claims, which in turn is dependent on rights. Michael Green, *Feinberg on Rights*, PHILOSOPHY 34, (Mar. 28, 2013), www.carneades.pomona.edu/2013-Law/0327-nts.shtml; Joel Feinberg & Jan Narveson, *The nature and value of rights*, 4 J. OF VALUE INQUIRY 243 (1970).

37. The Supreme Court of India recently reaffirmed the right of a Hindu girl

Put differently, *any restriction placed on individual rights is a restriction on meaning of life itself*. This relationship between rights and meaning also helps explain the paradox as to why an individual continues to obey the law even when her rights are being violated. It is because she continues to derive the meaning of her life from her rights, in whatever form they exist, and because these rights are protected by law. This relationship also puts to rest any philosophical arguments about why individual rights should prevail over public interest, as the road to a meaningful life is paved by individual rights and not public interest. Robert Nozick briefly explored the moral basis of rights in their ability to help an individual lead a meaningful life, but did not develop the interlinkages completely to address the issue of conflict of rights.[38] These interlinkages help us extrapolate our first tenet for resolution of conflict of rights—*in case of conflict of rights, that right shall prevail which helps an individual lead a meaningful life*. So, for instance in a conflict between a blanket ban on immigration and an individual's right to be with her family, the individual triumphs; in

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to marry a Muslim man and convert to Islam. In the case of Shafin Jahan v. Asokan K.M. & Ors., (2018) SCC Online SC 343 (India) the Supreme Court observed,

> It is obligatory to state here that expression of choice in accord with law is acceptance of individual identity. Curtailment of that expression and the ultimate action emanating therefrom on the conceptual structuralism of obeisance to the societal will destroy the individualistic entity of a person. The social values and morals have their space but they are not above the constitutionally guaranteed freedom. The said freedom is both a constitutional and a human right. *Deprivation of that freedom which is ingrained in choice on the plea of faith is impermissible. Faith of a person is intrinsic to his/her meaningful existence. To have the freedom of faith is essential to his/her autonomy; and it strengthens the core norms of the Constitution.* Choosing a faith is the substratum of individuality and sans it, the right of choice becomes a shadow. It has to be remembered that the realization of a right is more important than the conferment of the right. Such actualization indeed ostracizes any kind of societal notoriety and keeps at bay the patriarchal supremacy. It is so because the individualistic faith and expression of choice are fundamental for the fructification of the right. Thus, we would like to call it indispensable preliminary condition. (emphasis added).

38. "I conjecture that the answer is connected with that elusive and difficult notion: meaning of life. A person shaping his life in accordance with some overall plan is his way of giving meaning to his life; only a being with the capacity to so shape his life can have or strive for meaningful life… This notion we should note, has the right "feel" as something that might help bridge an "is-ought" gap; it appropriately seems to straddle the two." ROBERT NOZICK, ANARCHY, STATE, AND UTOPIA 50-51 (Basic Books, 2013); *see also* NATURAL RIGHTS LIBERALISM FROM LOCKE TO NOZICK 123 (Ellen Frankel Paul et al. eds., 2005) (criticizing Nozick for not showing why Lockean rights are necessary for leading a meaningful life); Samuel Scheffler, *Natural Rights, Equality and the Minimal State*, in 6 RIGHTS AND DUTIES: PROPERTY RIGHTS AND DUTIES OF REDISTRIBUTION 327, 328 (Carl Wellman ed., 2002) (lamenting the surprising haste and lack of details concerning the moral theory in Nozick's argument).

a conflict between privacy concerns and biometric data collection, privacy triumphs; and in a conflict between artistic freedom and religious sensibilities, artistic freedom triumphs.

2. Part B: Linguistic

The second co-relation between rights and meaning is rooted in linguistics. This linguistic analysis is divided into three parts. Firstly, I examine the issue of meaning of rights from the perspective of externalism.[39] Secondly, I explore the doctrine of essentialism[40] to further the meaning of rights. Thirdly, I shall be studying the meaning of rights in light of Hart's "open texture of law."[41] After completion of this triumvirate analysis, I would be

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39. "Semantic externalism is the view that (some) semantic properties of a subject's words and/or thoughts depend for their individuation on features of the subject's 'external' environment. The external environment has traditionally been taken to be any part of the environment beyond the physical boundaries of the subject's skin." Sandy Goldberg, *Semantic Externalism*, OXFORD BIBLIOGRAPHIES (May 10, 2010), www.oxfordbibliographies.com/view/document/obo-9780195396577/obo-9780195396577-0113.xml.

40. Diana Fuss defines essentialism as "a belief in the real, true essence of things, the invariable and fixed properties which define the 'whatness' of a given entity." DIANA FUSS, ESSENTIALLY SPEAKING: FEMINISM: NATURE AND DIFFERENCE xi (1989). "Essentialism is the doctrine that among the attributes of a thing some are essential, others merely accidental. Its essential attributes are those it has necessarily, those it could not have lacked." Richard L. Cartwright, *Some Remarks on Essentialism*, 65 J. OF PHIL. 615, 615 (1968). If words can be said to have essential meaning, which is non-derogable then this property can be transposed to rights (which are also words). As per Barman,

> Noam Chomsky has been called the intellectual ancestor of linguistic essentialism, which aims to identify the intrinsic properties of language per se. Linguistic essentialism is interested in postulating universals of human linguistic structures, unlearned but tacitly known, that permit and assist children to acquire human languages. It has a preference for finding surprising characteristics of languages that cannot be inferred from the data of usage, and are not predictable from human cognition or the requirements of communication. According to Chomsky, the essence of language is its structural rudiment.

Binoy Barman, *The Linguistic Philosophy of Noam Chomsky*, 41-42 PHIL. PROGRESS, 103, 114-15 (2012).

41. "The open texture of law means that there are, indeed, areas of conduct where much must be left to be developed by courts or officials striking a balance, in the light of circumstances, between competing interests which vary in weight from case to case. Nonetheless, the life of the law consists to a very large extent in the guidance both of officials and private individuals by determinate rules which, unlike the applications of variable standards, do not require from them a fresh judgment from case to case. This salient fact of social life remains true, even though uncertainties may break out as to the applicability of any rule (whether written or communicated by precedent) to a concrete case. Here at the margin of rules and in the fields left open by the theory of precedents, the courts perform a rule producing function which administrative bodies perform centrally in the elaboration of variable standards. In a system where *stare decisis* is firmly acknowledged, this function of the courts is very like the

applying the distillation of externalism, essentialism, and core meaning derived from Professor Hart's "open texture of law" to rights.

a. Externalism

Building on Professor Stroup's assertion that law is a special language,[42] I first seek to examine whether there are certain objective characteristics of linguistic meaning that remain unaffected by public perception. I shall then attempt to apply this objective meaning to rights, and in doing so, I hope to provide a new legal-linguistic justification for individual rights. Put differently, if words can have an objective meaning that cannot be altered by the majoritarian view, then individual rights (which are also words) can also have an objective meaning that cannot be affected by shared psychological state (public interest).

In order to understand this co-relation, we need to begin with a foundational meaning question, *"*What gives a word meaning?*"* and use that insight to further our understanding of rights. This foundational meaning question has been sought to be answered both by internalists[43] and externalists.[44] The most famous response to this foundational meaning question was given by an externalist, Hilary Putnam, who in his groundbreaking paper, "The meaning of 'meaning'" defied existing notions of meaning.[45] Prior to Putnam's treatise two notions about meaning were well established:

1. Firstly, to know a meaning is to be in a psychological state, i.e. meaning is inside one's head.[46]
2. Secondly, "that the meaning of a term (in the sense of intension)

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exercise of delegated rule-making powers by an administrative body. In England this fact is often obscured by forms: for the courts often disclaim any such creative function and insist that the proper task of statutory interpretation and the use of precedent is, respectively, to search for the "intention of the legislature" and the law that already exists." H. L. A. HART, THE CONCEPT OF LAW 135 (2012); *see also* H. L. A. Hart, *Positivism and the Separation of Law and Morals*, 71 HARV. L. REV. 593 (1958) (defending positivism against its critics); Brian Bix, *H. L. A. Hart and the "Open Texture" of Language*, 10 LAW AND PHIL. 51 (1991) (offering a detailed analysis of HLA Hart's 'open texture').

42. Stroup, *supra* note 34.

43. Internalists argue that mental or psychological states determine meaning. Paul Grice proposed "an intention based semantics—i.e., a semantical theory according to which the meaning of an utterance is explicated in terms of the psychological state it is intended to produce in an audience." S. Marc Cohen, *Philosophy 453*, U. OF WASH., *Grice: Meaning* (2008), www.faculty.washington.edu/smcohen/453/GriceMeaningDisplay.pdf; *see also* Paul Grice, *Meaning*, 66 PHIL. REV., 377 (1957) (distinguishing between natural sense and non-natural sense of meaning).

44. Goldberg, *supra* note 39.

45. Hilary Putnam, *The meaning of "meaning,"* 7 MINN. STUD. PHIL. SCI. 131 (1975).

46. *Id.* at 135.

> determines its extension (in the sense that sameness of intension entails sameness of extension)."[47]

As per Putnam, these two assumptions cannot be jointly verified. He claimed:

> It is possible for two speakers to be in exactly the same psychological state (in the narrow sense),[48] even though the extension of the term A in the idiolect of the one is different from the extension of the term A in the idiolect of the other. Extension is not determined by the psychological state.[49]

Putnam defied the existing assumptions with the help of a now famous thought experiment titled 'Twin Earth.' Putnam proposes that Twin Earth is a planet (elsewhere in the galaxy) that is exactly like Earth except for one thing: on Twin Earth, the liquid they call 'water' is not H_2O, but a different liquid with a different chemical formula — call it 'XYZ.' XYZ is just another liquid that has many of the same superficial characteristics of water—e.g., you can swim in it, wood floats on it, it nourishes plants and animals, etc.[50]

With these assumptions, Putnam draws his first conclusion: that the extension of "water" in Earthian English is different from the extension of "water" in Twin Earthian English. The second part of his argument is to show that there may be no psychological difference between the speakers of Earthian English and the speakers of Twin Earthian English if our criterion of psychological difference is what is in their heads. Therefore, sameness of psychological state does not determine sameness of extension. Hence, as per Putnam we should give up the claim that meanings are in the head.[51]

The important inference that I wish to draw from Putnam's analysis is that there are certain objective characteristics (extension) which remain unaffected even by shared psychological state. This thought has a tremendous implication on the meaning of rights.

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47. *Id.* at 136. The intension of a term means the concept related with the term. "The extension of a term, in customary logical parlance, is simply the set of things the term is true of. Thus, 'rabbit,' in its most common English sense, is true of all and only rabbits, so the extension of 'rabbit' is precisely the set of rabbits." *Id.* at 132.

48. This psychological state in a "narrow sense" is based on methodological solipsism. *Id.* at 136.

49. *Id.* at 139.

50. S. Marc Cohen, *Putnam: Meaning and Reference,* U. OF WASH. (2008), www.faculty.washington.edu/smcohen/453/PutnamDisplay.pdf (explaining Putnam's theory of meaning).

51. Putnam summarized his finding with the famous words, "Cut the pie any way you like, 'meanings' just ain't in the head!" Putnam *supra* note 45, at 144; *see also* Hilary Putnam, *Meaning and Reference*, 70 J. PHIL. 704 (1973) (devising the 'Twin Earth' thought experiment to illustrate his argument for semantic externalism). *See also* Cohen, *supra* note 50 (explaining Putnam's theory of meaning).

At this stage, we need to pause before applying Putnam's analysis to rights. The application of this linguistic analysis would be more fruitful, if we can also infer objectivity of meaning of rights independently sans their linguistic and legal context. This objectivity is provided by Norman Wilde's study of the meaning of rights. [52] Norman Wilde, while exploring the meaning of rights, states that man created social institutions and over a period of time man's life has been deriving its meaning from these social institutions. In fact, Wilde goes on to claim that rights have been devolved on man to perform social functions. Whilst I do not subscribe to Wilde's assertion of human beings existing only to perform social functions, I see a lot of similarity between his work and Putnam's research. Rights, as per Wilde, derive their meaning from social relations, and the meaning recognized by law is a subset of larger socially recognized meaning of rights, which may not be recognized by law at any given point of time.[53] This implies that there are meanings of rights, which remain unaffected by legal interpretation. This assertion relates directly to Putnam's assertion that meaning is not in the head.

By synthesizing Putnam's research with the theory proposed by Wilde, we find that the meaning of a right recognized by law is not the only plausible meaning, but it is only a temporal meaning. There are social meanings which exist beyond legal recognition which can and should be used to expand the purview of individual rights. Secondly, Putnam's assertion that intension does not determine extension[54] when applied to a contest of meaning between public interest and individual rights resolves the debate conclusively in favor of individual rights. Putnam's assertion that a shared psychological state of meaning cannot be used to overrule individual characteristics of the objects, when applied to the realm of rights, translates into public interest being a shared psychological state that cannot be used to negate individual rights. Put differently, the meaning of a right or meaningful resolution of conflict of rights is not subject matter of a majoritarian opinion (shared psychological state). This also has tremendous implication on the kind of restrictions that can be placed on individual rights in the name of public interest.[55] If the linguistic meaning of a right is

52. Norman Wilde, *Meaning of Rights*, 34 Int'l J. Ethics 283 (1924); *see also* Charles Girard, *On Norman Wilde's "The Meaning of Rights,"* 125 *Ethics* 543 (2015) (summarizing Wilde's views on the meaning of rights).

53. Wilde, *supra* note 52, at 285.

54. 'We have now seen that the extension of a term is not fixed by a concept that the individual speaker has in his head, and this is true both because extension is, in general, determined socially- there is division of linguistic labor as much as of "real" labor-and because extension is, in part, determined indexically. The extension of our terms depends upon the actual nature of the particular things that serve as paradigms, and this actual nature is not, in general, fully known to the speaker.' Putnam *supra* note 51 at 710-11.

55. Unlike many jurisdictions, where "public interest" can be used to trump

not subservient to shared psychological state then its social connotation can also not be subjected to the will of the majority. But can Putnam's analysis, which was based on essential attributes of natural substances, be applied to social phenomenon such as rights? Can rights like water have essential features, an inviolable structure? I answer the question in the affirmative in the ensuing sections.

b. Essentialism

Essentialism is the doctrine that propounds that some of the attributes of a thing may be essential to the thing, and to others accidental.[56] This Aristotelian formulation[57] has been subjected to endless scrutiny in the arenas of natural as well as social sciences.[58] While there is a degree of consensus regarding application of essentialism to natural sciences, its relevance to social sciences particularly law has been perennially debated.[59] Scholars such as Brian Leiter have contested the applicability of essentialism to social sciences.[60] When it comes to legal essentialism, the debate has largely revolved around efforts to determine the nature of law[61] and establishing law as a distinct discipline.[62] Feminists and minority rights groups have also taken an entrenched anti-essentialism stand.[63] In this backdrop, any inquiry into the

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every civil political freedom, the European Convention on Human Rights expressly recognizes "public interest" exceptions only to protection of property and freedom of movement. European Convention of Human Rights and Fundamental Freedoms, Eur. Conv. on H.R., (May 3, 2002), www.echr.coe.int/Documents/Convention_ENG.pdf; *see also* Aileen McHarg, *Reconciling Human Rights and the Public Interest: Conceptual Problems and Doctrinal Uncertainty in the Jurisprudence of the European Court of Human Rights*, 62 MOD. L. REV. 671 (1999) (exploring various theoretical models to reconcile individual rights and public interest). Edwin Rekosh, *Who defines the public interest?: Public Interest Law Strategies in Central and Eastern Europe*, 2 SUR. INT'L. J. HUM. RTS. 166 (2005), www.scielo.br/pdf/sur/v2n2/en_a08v2n2.pdf.

56. Richard L. Cartwright, *Some Remarks on Essentialism*, 65 J. PHIL., 615, 615 (1968).

57. W.V. Quine, *Three Grades of Modal Involvement*, THE WAYS OF PARADOX 173-74 (1966); Gareth B. Matthews, *Aristotelian Essentialism*, 50 PHIL. PHENOMENOLOGICAL RES. 251 (1990).

58. Frederick Schauer, *On the Nature of the Nature of Law*, 98 ARCHIV FÜR RECHTS- UND SOZIALPHILOSOPHIE 457, 462 (2012).

59. Brian H. Bix, *Raz on Necessity*, 22 LAW PHIL. 537, 541 (2003).

60. Schauer, *supra* note 58; Brian Leiter, *The Demarcation Problem in Jurisprudence: A New Case for Skepticism*, 32 OXFORD J. LEGAL STUD. 1 (2011).

61. Schauer, *supra* note 58, at 457.

62. Schauer, *supra* note 58, at 462; Leiter, *supra* note 60.

63. Tracy E. Higgins, *Anti-Essentialism, Relativism, and Human Rights*, 19 HARV. WOMEN'S L. J. 89, 102 (1996).

> An essentialist approach generally begins with the experiences of white, middle-class, educated, heterosexual women. Such an approach tends to

essential nature of rights or the *'essence of rights'* is fraught with risk and, more often than not, would be limited to the realm of speculation.

Notwithstanding the perils described above, I venture forth for one reason and one reason alone: if we are able to establish a non-derogable, universal essence of rights, which is applicable globally regardless of the formulation and cultural context of rights, then we would be able to draw hard boundaries around rights that cannot be traversed in the name of public interest. Any attempts at *reasonably restricting* the essence of rights would negate the rights themselves. The advantage of adopting this minimalistic approach to understanding rights is that if we are able to establish a core nucleus of a right then any attempt to meddle with that nucleus would not be construed as an attempt to curtail the boundaries of the right, but as a negation of the right itself. Presently, the lack of such a nucleus and the vagueness of the restriction in the form of public interest present an existential threat to individual rights.

The term *essence of rights* is not new to legal lexicon. It has been developed as a constitutional standard to check infringement of rights. [64] However, rights have not been examined

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attribute commonly shared forms of oppression to gender and specific forms of oppression to other sources such as race, class, or sexual orientation. Consequently, an essentialist approach risks becoming a least common denominator approach, allowing relatively privileged women's experiences to define the feminist agenda. This tendency, in turn, creates division among women. In short, when feminists aspire to account for women's oppression through claims of cross-cultural commonality, they construct the feminist subject through exclusions, narrowing her down to her essence.

Id.

64. While I am using the phrase "essence of rights" in a philosophical sense, the phrase has conventionally been a term of art in Constitutional Law wherein it has been developed as a legal test to protect fundamental human rights from State intervention. In M. Nagaraj & Ors. v. Union of India & Ors., (2006) 8 SCC 212 (India), the Supreme Court of India held,

> This principle of interpretation is particularly apposite to the interpretation of fundamental rights. It is a fallacy to regard fundamental rights as a gift from the State to its citizens. Individuals possess basic human rights independently of any constitution by reason of the basic fact that they are members of the human race. These fundamental rights are important as they possess intrinsic value. Part-III of the Constitution does not confer fundamental rights. It confirms their existence and gives them protection. Its purpose is to withdraw certain subjects from the area of political controversy to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. Every right has a content. Every foundational value is put in Part-III as fundamental right as it has intrinsic value. The converse does not apply. A right becomes a fundamental right because it has foundational value. Apart from the principles, one has also to see the structure of the Article in which the

jurisprudentially to discover their essence. I would argue that an attempt to discover the essence of rights goes beyond the attempts of defining rights.[65] A definition includes both necessary and sufficient conditions.[66] But an attempt at discovering the essence of rights seeks to establish those properties, in the absence of which rights can no longer be termed as rights.[67] If we establish such essential properties, we could firewall rights against any vague intrusion in the form of public interest. Put differently, any infringement of essence of rights would not be a restriction but an annihilation of rights. This clear formulation of rights would act as a jurisprudential safeguard against policies of populist governments.

In order to attempt to define essence of rights, I will proceed in a manner similar to that adopted by Descartes while coming to his famous conclusion "*Cogito ergo sum*."[68] I shall first try and strip rights of all constitutive elements that they presently possess, and then seek to rebuild them one idea at a time.

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fundamental value is incorporated.

These observations formed the bedrock of the "essence of rights" test formulated by the Supreme Court in I.R. Coelho (Dead) By Lrs v. State Of Tamil Nadu AIR 2007 SC 861 (India). The "essence of rights" test was used by the Supreme Court in Coelho's case to strike down legislative attempts to keep laws that infringe fundamental rights out of the purview of judicial review by placing them in the Ninth Schedule of the Constitution of India.

"Essence of rights" is also recognized under Article 52 of the European Charter of Fundamental Rights. It has been invoked in context of digital privacy in cases of C-362/14, *Schrems*, ECLI:EU:C:2015:650 and C-293/12 and C-594/12, *Digital Rights Ireland*, ECLI:EU:C:2014:238.

65. I draw strength from Professor Schauer's similar assertion regarding "nature." "But if the view that nature is just the set of necessary properties for something being what it is, the soundness of that view must emerge from an inquiry, and cannot be right simply and solely because of how we define the word 'nature.'" Schauer, *supra* note 58, at 458.

66. "A handy tool in the search for precise definitions is the specification of necessary and/or sufficient conditions for the application of a term, the use of a concept, or the occurrence of some phenomenon or event." Andrew Brennan, *Necessary and Sufficient Conditions*, STAN. ENCYCLOPEDIA PHIL., (Edward N. Zalta ed., Summer 2017), www.plato.stanford.edu/archives/sum2017/entries/necessary-sufficient. Again, I place reliance on Professor Schauer's articulation of the nature of law, "What it is for law to have a nature is precisely the matter at issue, and for purposes of that inquiry it will do no good to assume an answer at the outset by starting with the assumption that the nature of anything, including but not limited to law, is necessarily and only the set of its necessary (or essential) and sufficient properties." Schauer, *supra* note 58, at 459.

67. Professor Schauer takes a similar position regarding law, "So long as law can exist, perhaps in theory or in possible worlds even if not in practice or in the worlds we know, without these characteristics (or attributes, or properties), then they are not essential for law and thus not essential (and not part of), in the view of many theorists, to the concept of law." Schauer, *supra* note 58.

68. RENE DESCARTES, MEDITATIONS ON FIRST PHILOSOPHY 18 (Desmond M. Clarke trans., Penguin Books, 2000).

i. Step I: Right is a claim involving a corresponding duty or obligation

I would begin my analysis by using a widely accepted definition of right as a claim enforceable by law.[69] I would then proceed to negate the twin features of rights enshrined in this definition, *"claims"* and *"enforceable by law*," to show that neither of these features is an essential requirement of law. I would then proceed to denude rights of their cultural, political, economic, and social baggage and analyze them conceptually.

The classic Hohfeldian analysis of right being a claim involving a corresponding duty is subject to a well-known exception of liberty rights.[70] Whilst a contractual right requires a corresponding positive obligation, the exercise of the right to freedom of speech and expression does not entail any positive obligation on any other individual or State to facilitate the exercise of such right. Hence, the existence of a corresponding duty or obligation cannot be said to be part of its essence of rights.

ii. Step II: Enforcement or recognition by State is a pre-requisite of right

Jeremy Bentham considered natural rights as "utter nonsense."[71] Positivists have scant regard for rights that are not recognized by law.[72] So are legally recognized and enforceable rights the only set of valid rights? The answer has to be negative for temporal, historical, and evolutionary reasons. A temporal understanding of rights that only considers those rights that are presently legally enforceable seems to presume that the rights came into existence that very moment sans any social, political or moral context. Legal recognition can at best be said to be the last step in the process of sedimentation of rights.[73] It is the culmination of a longer process, which involves moral and sociological considerations. Rights evolve historically as a result of social

69. Susan James, *Rights as Enforceable Claims*, 130 PROC. ARISTOTELIAN SOC'Y 133 (2003).

70. BRIAN OREND, HUMAN RIGHTS-CONCEPTS AND CONTEXT 21 (2002).

71. "Natural rights is simple nonsense: natural and imprescriptible rights, rhetorical nonsense,-nonsense upon stilts." Jeremy Bentham, *Anarchical Fallacies: Being an Examination of the Declarations of Rights Issued During the French Revolution,* 2 THE WORKS OF JEREMY BENTHAM 501 (John Bowring ed., Edinburgh, 1962); *see also* Jerome J. Shestack, *The Philosophic Foundations of Human Rights*, 20 HUM. RTS. Q. 208 (1998) (addressing the historical sources of human rights as well as modern human rights theories); Philip Schofield, *Jeremy Bentham's 'Nonsense upon Stilts'*, 15 UTILITAS 1 (2003) (recapitulating Bentham's critique of natural rights).

72. Shestack, *supra* note 71, at 209.

73. Wilde, *supra* note 52, at 292-93.

inequities, and economic and political developments. Even if one were to make an argument that law can arbitrarily create rights without taking into account any social, economic or political realities, it would be incorrect because formulation of law itself is steeped into social, economic and political realities. Hence, recognition by law or State cannot be said to be an essential property of right.

iii. Step III: What then is the essence of rights?

At this stage, I would proceed to denude the phenomenon of rights of all its legal, social, economic, cultural, and political baggage and seek to examine it purely as a concept. Whilst there may be dispute and argument over every legal, sociological, political, and economic aspect of rights there are few conceptual aspects of rights that no one can dispute. Firstly, rights can only exist *qua* someone else. In a Robinson-Crusoe-stranded-on-the-island-like scenario, there would not be any need for rights.[74] One would then be the absolute sovereign over one's body and surroundings. Rights come into existence when there is someone else who can potentially hamper our interests. And this brings us to the second essential aspects of rights. Rights exist to safeguard interests of the right holders. One may argue over efficacy of social and moral rights as compared to legal rights in safeguarding the interests of the right holder, but one cannot deny that from a conceptual and functional perspective, rights come into existence only to safeguard the interests of the right holder. *Thus, we can define the essence of rights as being the safeguard of the interests of the right holder qua others.*

3. Part C: The core meaning of rights

Having examined rights from the perspective of existentialism, externalism, and essentialism, I wish to provide one final impetus to the meaning of rights by relying on Professor Hart's formulation of 'open texture of law'.[75] As per Professor Hart, for every rule there

74. M.P. Golding, *Towards a Theory of Human Rights*, 52 MONIST 521, 528 (1968).

75. H. L. A. HART, THE CONCEPT OF LAW 135 (3rd ed., Oxford Univ. Press, 2012). The term "open texture" owes its origin to Waismann, who had used it in context of language. Hart first discussed this concept in *Positivism and the Separation of Law and Morals*, which sparked the Hart-Fuller Debate, but did not use the term "open texture" until his 1961 treatise on *The Concept of Law*. H. L. A. Hart, *Positivism and the separation of law and morals*, 71 HARV. L. REV. 593 (1958); *see* Dawid Bunikowski, *The Origins of Open Texture in Language and Legal Philosophies in Oxford and Cambridge*, 47 RECHTSTHEORIE 2 (2016) (exploring the philosophical and legal theoretical background of the concept of open texture); Frederick Schauer, *A Critical Guide to the Vehicles in the Park*, 83 N.Y.U. L. REV. 1109 (2008) (critically examining

must be a set of core meaning—instances to which the rule would be clearly and undisputedly applicable and penumbra meaning—referring to those cases which lay on the fringe.[76] If we apply Professor Hart's formulation of "core meaning" to rights, we discover that each right has a "core meaning" that lies at the heart, the nucleus of the right, its very essence, and then there are expansionary meanings of right that may lie on the fringe, in the penumbra. For instance, criticism of government policies lies at the core of political free speech, whereas perhaps personal criticism of government officials lies in the penumbra.[77] Consequently, while there may or may not be a justification for curbing personal criticism of government officials, there certainly cannot be any restriction on criticism of government policies.

My aim behind invocation of Professor Hart's "open texture" doctrine in context of rights is to demonstrate that the application of the same standard of restriction to all cases falling under a right is jurisprudentially incoherent. While in penumbra cases, the restriction may arguably be reasonable, in core-meaning cases the restriction would amount to negation of the right itself.

Before moving on to the next section of discovering the 'more meaningful' right, in conclusion of this section, I wish to propose an atomic structure of rights in order to facilitate the understanding of

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the Hart-Fuller debate).

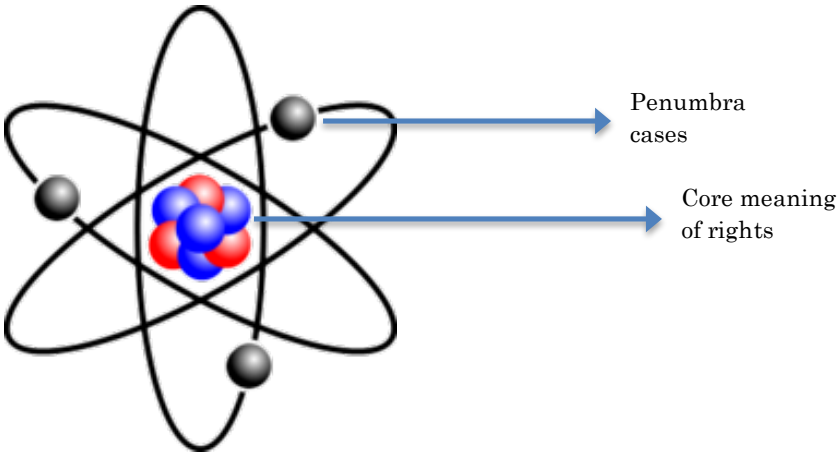
76. The concept as explained by Professor Hart using the famous "vehicles in the park" example in his 1958 paper is as follows:

> A legal rule forbids you to take a vehicle into the public park. Plainly this forbids an automobile, but what about bicycles, roller skates, toy automobiles? What about air- planes? Are these, as we say, to be called "vehicles" for the purpose of the rule or not? If we are to communicate with each other at all, and if, as in the most elementary form of law, we are to ex- press our intentions that a certain type of behavior be regulated by rules, then the general words we use - like "vehicle" in the case I consider - must have some standard instance in which no doubts are felt about its application. There must be a core of settled meaning, but there will be, as well, a penumbra of debatable cases in which words are neither obviously applicable nor obviously ruled out. These cases will each have some features in common with the standard case; they will lack others or be accompanied by features not present in the standard case.

H. L. A Hart, *Positivism and the separation of law and morals*, 71 HARV. L. REV. 593, 607 (1958).

77. India in the recent years has been grappling with the issue of political free speech. Indian authorities have been massively criticized for invocation of seditious charges for curbing political activism. Soutik Biswas, *Why India Needs to Get Rid of its Sedition Law*, BBC News (Aug. 29, 2016), www.bbc.com/news/world-asia-india-37182206. This is despite the ruling of the Supreme Court of India in Kedarnath v. State of Bihar AIR 1962 SC 955 (India), where the Supreme Court expressly held that comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be seditious.

the concepts above.



(Image Credit: Creative Commons)

Please note that this diagram is not an attempt to replicate the atomic structure with its scientific properties or its constituents—protons, neutrons, and electrons. It is merely a pictorial representation of the ideas elaborated above. The inviolable core meaning of rights, which forms the nucleus of this right, lies at the center and the evolving cases lie at the outer extremities, in the penumbra.

Having completed our analysis of development of meaning as a parameter for resolution of conflict of rights in favor of individual rights, let us now move on to discovering the "more meaningful" right.

IV. PART IV

A. The 'more meaningful' right

In my previous paper, I argued that the pluralistic nature of public interest allows construction and deconstruction of meaning more readily unlike concrete individual rights. Also, unlike individual rights, a fluid concept like public interest cannot be reasonably restricted.[78] Whilst I completely denounce a numerical approach to resolution of conflict of rights, I will not shy away from the numerical contest. In order to establish supremacy of individual rights over public interest using meaning, I will adopt a counterintuitive approach. I would first advance three probable explanations (semantical cum numerical) as to why public interest may be considered to be "more meaningful" than individual rights. I would then offer rebuttals to these arguments. My aim behind this

78. Puri, *supra* note 2, at 1089-90.

exercise is to further develop "meaning" as a parameter for resolving conflict of rights.

Arguments in favor of public interest:

1. Structural vagueness: Public interest is vague and hence linguistically more capable of pluralistic meaning. This vagueness is deliberate and necessary for democratic evolution.[79] This structural vagueness awards an opportunity of semantical multiplicity to public interest and consequently numerical supremacy over individual rights.
2. Linguistic: Linguistically, meaning is understood as a shared psychological state,[80] so purely as a function of demography public interest would be a psychological state purportedly shared by a greater number of people than an individual right. Hence, public interest can be said to be more meaningful.
3. Philosophical: Whilst analyzing meaning from a philosophical perspective, I am deliberately not dwelling deeper in the realm of philosophy of language but directing my query towards the significance of meaning in life, as it provides a broader canvas for resolution of conflict of rights. Philosophically, meaning of life is often interchangeably used with purpose of life.[81] Any purposive interpretation by default is teleological and utilitarian. If we apply the same utilitarian yardstick to rights and try to decide which right is more meaningful on the basis of their respective purposes, then in contest of a purposive interpretation of rights public interest appear to be more meaningful than individual rights.

Rebuttals:

1. Structural vagueness: Whilst undoubtedly, public interest is capable of pluralistic interpretation, in order for any fair comparison with individual rights, we must discard the eternal nature of public interest and affix it in a particular temporal space. It is my argument that at any particular interval of time,

79. Dworkin has approached the issue of abstract and concrete rights differently. As per Dworkin, "An abstract right is a general political aim the statement of which does not indicate how that general aim is to be weighed or compromised in particular circumstances against other political aims… Concrete rights on the other hand, are political aims that are more precisely defined so as to express more definitely the weight they have against other political aims on particular occasions." RONALD DWORKIN, TAKING RIGHTS SERIOUSLY 119 (Bloomsbury, 2013).

80. Timothy Pritchard, *Knowing the Meaning of a Word: Shared Psychological States and the Determination of Extensions*, 32 MIND & LANGUAGE 101 (2017), www.onlinelibrary.wiley.com/doi/10.1111/mila.12134/full.

81. VIKTOR E. FRANKL, MAN'S SEARCH FOR MEANING 9, 51 (2008); *see also* Thaddeus Metz, *The Meaning of Life*, STAN. ENCYCLOPEDIA PHIL. (Edward N. Zalta ed., Summer 2013), www.plato.stanford.edu/archives/sum2013/entries/life-meaning/ (critically discussing approaches to meaning in life that are prominent in contemporary Anglo-American philosophical literature).

despite its pluralistic nature, only one singular interpretation of public interest is possible, i.e., despite its propensity for multiplicity, at one particular time only one meaning of public interest can exist to compete with the meaning of an individual right. Let us term this singular temporal meaning of public interest as M_{PI}/s. I am choosing "/s" to denote the per second existence of meaning or to affix meaning in a particular unit of time. Similarly, the singular temporal meaning of individual right will be connoted as M_I/s. If we analyze the two, it emerges that whilst the individual right and its meaning has been existing for a long time, the public interest and its meaning has just come into existence in a particular context to defeat individual rights.

Put differently, the ability of public interest to change its contours depending on context is not a strength but an existential weakness. Yet another way of looking at it is that existence of public interest is derivative and dependent on an individual right, and public interest is actually borne out of the conflict with an individual right. It exists in contradistinction to individual right and may not exist independently.

Also, public interest has to be garnered from context, which brings me back to my initial point that the individual right, having existed for longer, has gathered more mass, i.e., its meaning is stronger. Hence, at any particular span of time the denominator "s" being same, individual rights will always be "more meaningful" than public interest, i.e., $M_I/s > M_{PI}/s$.

2. Linguistic: Meaning as a shared psychological state presumes an existing class. If we look closer at the concept of "public interest" there is no existing class. There is no "public" so to speak.[82] The term "public" is nothing more than a euphemism for a cluster of vested interests, which change from time to time.[83] Hence, the shared psychological state, if any, can only be of an individual right. For instance, different individuals may believe in freedom of speech to a different extent, but they believe in the same individual right. However, there is not and cannot be an identifiable class termed as public which can have a shared psychological state. When it comes to public interest there is never an identifiable class, which stands up to defend its rights. Public interest is a fictitious legal device created to

82. Bentham, *supra* note 9.

83. "The 'public interest' is a concept that is easily referenced but difficult to accurately define. It has a basis in traditional political philosophy, being grounded in the notion of a common good, but can easily seek to justify the will of what James Madison identified as the will of 'interested factions.'" Declan O'Callaghan, *When the Public Interest is Outweighed by the Wider Public Interest: The Supreme Court Judgment of Kiarie and Byndloss* [2017] UKSC 42, Landmark Chambers (Jun. 15, 2017), www.landmarkchambers.co.uk/news.aspx?id=4916#_ftn1. *See also* The Federalist No. 10 (James Madison) (advocating the Union as a safeguard against domestic faction and insurrection); *see generally* AYN RAND, THE VIRTUE OF SELFISHNESS 62 (1964) (setting forth the moral principles of Objectivism).

challenge individual rights and accordingly its meaning cannot be elevated to the status of a shared psychological state.

3. Philosophical: Certainly one of the primary ways of analyzing the meaning of life is as the purpose of life, but the foremost perspective for understanding the meaning of life is existential. And from an existential perspective the relationship between individual and meaning reigns supreme. In fact, it is the individual who chooses and infuses meaning into an otherwise meaningless world.[84] As a corollary, it stands to reason that in a contest between public interest and individual rights, those rights which add meaning to the life of an individual prevail over collective interests.[85]

V. CONCLUSION

Whilst I hope this paper has made a satisfactory attempt at addressing the queries that I had received in response to my previous article;[86] I am certain that these two papers only mark the beginning of the inquiry of the relationship between meaning and rights. I remain convinced that if we have to continue to expand the purview of individual rights and provide them with adequate protection against a faceless utilitarian challenge then we need to look beyond the existing theories of rights and avoid the numerical trap. If we examine rights in their organic social, linguistic, and behavioral setting we will discover the meaning of rights. Whilst it is not possible for any single theory of right to address all philosophical, social, behavioral, moral, and linguistic challenges, in my view any theory that seeks to provide a holistic answer to all these central attributes of rights is a step in the right direction.

84. Sartre, *supra* note 35.
85. Nozick, *supra* note 1.
86. Puri, *supra* note 2.