

On Reasonability and Realizability: Two More Central Problems in the Stage-Wise Philosophical View on Freedoms and Rights

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Abstract: After considering the problem of justification, two more central problems in the stage-wise philosophical view on freedoms and rights are 1) the problem of making reasoned valuations and 2) the problem of realizing a system of freedoms and rights. This paper takes off from a previous work and again draws insights from Rawls, Sen, Habermas, and various rights theorists to methodologically discuss important concerns within these two central problems and to further develop the conceptual sketch of the constructive and integrative approach. The first section on the problem of making reasoned valuations elaborates on the notions of reasonability and rationality, contexts of valuation, and fairness and impartiality. The second section on the problem of realizing a system of freedoms and rights discusses concerns on legitimacy and stability, resolving conflicts, and feasibility. In the course of the reflections and in formulating the main theses of the paper, certain conceptions are recurrently invoked: 1) the emphasis on considering the diverse dimensions of the pluralistic human reality, 2) the espousal of a constructive, deliberative, and discursive mode of reasoning, and 3) the insistence on a coherence between systematic theory and actual social reality, including its conflicts and constraints.

Keywords: freedoms and rights, reasonability, realizability, constructive and integrative approach

INTRODUCTORY REMARKS

This paper is a follow up work to continue and complete the discussions in a previous work, hereinafter referred to as the first paper.¹ In the first paper, an alternative characterization of the first central problem of justification in a stage-wise view of the process of constructing and realizing a system of freedoms and rights was discussed. The first paper reflected on, roughly described and, to some extent, espoused the constructive and integrative approach in establishing a reasonable system of freedoms and rights. This paper shall reflect on what are deemed to be the second and third central problems in this stage-wise view.

Since the publication of the first paper, various academic discourses have ensued on the characterization of important problems pertaining to systems of freedoms and rights within and beyond the problem of justification. For instance, George Klosko, through a critique of Paul Weithman's work, has elaborated on John Rawls' concerns on the stability of liberal democracies, something that, Klosko argues, the past works of Rawls scholars have so far not focused on.² Also, Samantha Besson has further examined the implications of pluralism in general and legal pluralism in particular to the theoretical and practical dimensions of human rights.³ Moreover, Andrea Sangiovanni has challenged the possibility of justifying international legal human rights beyond the need for grounding in moral rights.⁴ Additionally, Thomas E. Randall has attempted to systematize an interest theory of human rights that is

¹ Marlon Jesspher B. De Vera, "The Method as Justification: An Alternative Characterization of the Central Problem of Justifying Freedoms and Rights," *Kritike*, 8:1 (2014), 153-167.

² George Klosko. "Rawls, Weithman, and the Stability of Liberal Democracy," *Res Publica*, 21 (2015), 235-249.

³ Samantha Besson, "European Human Rights Pluralism: Notion and Justification," in *Transnational Law: Rethinking European Law and Legal Thinking*, eds. Miguel Maduro, Kaarlo Tuori, and Suvi Sankari (Cambridge: Cambridge University Press, 2014), 170-205.

⁴ Andrea Sangiovanni. "Are Moral Rights Necessary for the Justification of International Legal Human Rights?," *Ethics & International Affairs*, 30:4 (2016), 471-481.

grounded on care ethics, which is often criticized as a primarily relational moral theory that is inadequate in accounting for and responding to the demands of global justice.⁵ These discourses and similar others motivate further reflection on other central problems in the stage-wise philosophical view on freedoms and rights beyond the problem of justification, especially towards concerns relating to stability, pluralism, and globality.

SECTION 1: THE PROBLEM OF MAKING REASONED VALUATIONS

In the stage-wise view of the process of constructing and reconstructing a theoretical framework of a system of freedoms and rights, the second central problem, after the problem of justifying freedoms and rights, is the problem of making reasoned valuations. This is a central problem in the philosophy of freedoms and rights in general, and especially in relation to the constructive and integrative approach in particular, because the process of constructing and reconstructing a system of freedoms and rights with adequate regard to the pluralistic character of human reality, if the primary objective of such a construction and reconstruction is to establish a robust, acceptable, and reasonable theoretical framework, would entail the need to make reasoned valuations in the processes of selecting, adopting, modifying, combining, structuring, and reconfiguring elements in establishing the overall framework of the system of freedoms and rights.

In addressing the central problem of making reasoned valuations, there is first a need to characterize the conception of what is to be considered as reasoned. The conception of what is to be considered as reasoned can be characterized in a variety of ways, and for the purposes of this discussion, at least three ways of characterization shall be invoked—1) in terms of forms of what is to be considered as reasoned, 2) in terms of criteria for ascertaining whether something is reasoned or not, and 3) in

⁵ Thomas E. Randall. “A Care Ethical Justification for an Interest Theory of Human Rights.” *Critical Review of International Social and Political Philosophy* (1 Jun 2020).

terms conditions under which something that is reasoned could arise. Given the discussions in the first paper, there might be a tentative supposition, perhaps rightly so, that a preference for the third way of characterization has been expressed. However, a conception of what is to be considered as reasoned, that is consistent with the constructive and integrative approach, could be expressed in terms of all of the three ways of characterization. The constructive and integrative approach proposes that there are certain procedures and conditions under which a reasoned or reasonable system of freedoms and rights could arise, and the reasonability that arises could be described as a certain form of what is to be considered reasoned, and the extent to which such procedures are employed or such conditions are secured could be stipulated as a criterion for establishing whether the constructed system of freedoms and rights is reasoned or not. Whether or not the appropriate aspects of the pluralistic human reality are acknowledged and given adequate consideration could be specified as another criterion. Also, Rawls' conception of what is to be considered as reasonable as well as Sen's notion of rationality, both discussed in the first paper, can also be expressed through all the three ways of characterization. Rawls makes a distinction between what is to be rational and what is to be reasonable. Rationality is simply the capability of a person to utilize his or her capacities of reason and deliberation towards serving his or her own interests. The conception of reasonability goes beyond the individualistic notion of rationality and has connotations of fairness and impartiality in a person's utilization of the capacities of reason and deliberation in affairs and matters affecting other individuals. This characterization of what is to be reasonable is consistent with his ideas of the original position and the veil of ignorance. The original position is a scenario which consists of reasonable individuals or their representatives within reasonable conditions and under the veil of ignorance. The veil of ignorance is a hypothetical condition wherein the reasonable individuals or their representatives in the original position are rendered unaware of information pertaining to their self-interests or of those whom they

represent, and also pertaining to the comprehensive doctrines that they or those whom they represent adopt. Thus, under the hypothetical conditions of the original position and the veil of ignorance, reasonable conceptions of justice can be constructed.⁶ Sen does not use a separate terminology but simply re-qualifies his conception of rationality, which is different but somewhat similar to Rawls' notion of reasonability. For Sen, rationality is "the discipline of subjecting one's choices to reasoned scrutiny." Sen likewise espouses a broader, and in a sense, more pluralistic notion of rationality in such a way that he asserts the validity of other reasons for choice apart from reasons associated with self-interest.⁷

All the characterizations and conceptions mentioned and invoked thus far could be integrated towards a richer conception of what is to be considered reasoned, which is consistent with the constructive and integrative view. Ultimately, such a conception of what is to be considered as reasoned needs to have a pluralistic character like Sen's view, in such a way that it accommodates a broad range of justifications for reasoned valuations that is reflective of the pluralistic human reality and also in such a way that it can be expressed in terms of various characterizations, including the three ways of characterization mentioned here, perhaps with a certain extent of partiality towards the third characterization which is in terms of the conditions under which a reasoned valuation could be made. Rawls' conception could be taken as one dimension in the pluralistic character of the conception of what is to be considered as reasoned while the discourse theory of Habermas (particularly the elements that promote robust communicative freedoms and participation in processes of discursive deliberation in the public sphere)⁸ could be integrated into the

⁶ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 24, 48-54,

⁷ Amartya Sen, *Rationality and Freedom* (Cambridge: Belknap Press, 2002), 3-7, 19-22.

⁸ Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. by William Rehg (Cambridge: The MIT Press, 1996), 447-450.

characterization of the conditions under which a reasoned valuation could arise, and its provisions could also be considered as an enabler of the pluralistic character of the conception of what is to be considered as reasoned. In summary, a conception of what is to be considered as reasoned, which is consistent with the constructive and integrative approach, would have a pluralistic character which is enabled, strengthened, and sustained under the appropriate conditions.

Contexts of Valuation

After qualifying the conception of what is to be considered as reasoned, it is also important to characterize the different contexts of valuation⁹ within which reasoned valuations are to be made in the process of construction and reconstruction of a system of freedoms and rights. Contexts of valuation can generally be characterized in terms of scopes, in a broad sense, and scopes can be further characterized in terms of different dimensions. In relation to the construction and reconstruction of a system of freedoms and rights, one dimension of scope that could be invoked as a starting point in characterizing various contexts of valuation is the extent of application in terms of the number of subjects. On one extreme end of this dimension is the context of the individual while on the other extreme end is the context of humanity in general. It can even be asserted that this end of the dimension of the number of subjects can be extended further to include non-human subjects like animals, for instance, although it can be argued that this extension pertains to a separate dimension altogether. Various intermediates between these two extreme ends of the dimension of the number of subjects could be characterized. These various intermediates could be defined not only in terms of the dimension of the number of

⁹ Same as in the first paper, for the discussions in this section, I again draw insights from the discussions in Dr. Armando Ochangco's course which he taught at the University of the Philippines-Diliman, "Human Rights: Problems, Issues, Perspective" (academic year 2013-2014).

subjects but also in terms of other dimensions. For instance, another dimension could pertain to the extent of coverage of the normative system of freedoms and rights and could invoke distinctions among comprehensive doctrines, political conceptions, and legal frameworks. Other dimensions which pertain to various geographies, as well as the different political configurations and economic conditions of human societies could also be invoked. Many other dimensions which correspond to the pluralistic character of human reality could be brought in to characterize the broad range of contexts of valuations. Nonetheless, in what could be a rather reductionist manner and despite the numerous dimensions of scope that could be considered, these different dimensions could probably be, in a sense, calibrated against each other such that they could be reconfigured into a single reference dimension of scope, and the range of contexts of valuation could be viewed as a single spectrum of contexts with varying levels of scope.¹⁰ This spectrum of contexts of valuations could be examined further and certain general inferences could be made on the character of reasoned valuations, pertaining to the construction and reconstruction of a system of freedoms and rights, across different contexts. In more concrete terms, the features of reasoned valuations can be characterized as contexts move from narrower scopes towards broader scopes. In relation to what has been described as the pluralistic character of human reality, it can be said initially that generally, narrower scopes represent lower degrees of plurality while broader scopes represent higher degrees of plurality. Following the line of argument in Habermas' discourse theory, it can be said that it is generally less difficult to communicatively achieve an agreement in contexts with narrower scopes

¹⁰ Here, I draw inspiration in part from Sen's conception of the *indirect approach* (as discussed in his *Development as Freedom*) as a practical approach in measuring capabilities where certain equivalences could be employed to quantify adjustments in income measurements corresponding to valuations pertaining to capabilities. See Amartya Sen, *Development as Freedom* (New York: Alfred A. Knopf, Inc., 1999), 81-85.

than in contexts with broader scopes.¹¹ Thus, if a deliberative and discursive procedure is deemed reasonable, which means it is a procedure within which reasoned valuations could be plausibly made, then it follows that there is a greater likelihood of making reasoned valuations within contexts with narrower scopes. Also, following from Sen's account of informational bases,¹² it can likewise be argued that to be able to make reasoned valuations within contexts with broader scopes, then more informational bases need to be considered and thus, making reasoned valuations would involve greater difficulty. Thus, following the ongoing line or argumentation, what could be intuitively deemed as a plausible approach in making reasoned valuations, particularly in the process of constructing and reconstructing a system of freedoms and rights, is to start with contexts with narrower scopes, where reasoned valuations are more likely to be made, and then expand towards making reasoned valuations within contexts with broader scopes. Such an approach is analogous to how Rawls employs the constructivist approach in establishing a conception of the law of peoples. Rawls also explains how such an approach could achieve integrity—when the agents in the original position proceeds through the series of subjects while taking appropriate measures to ensure that the agreements in the latter stages of construction are still consistent with the agreements in the earlier stages. This could also be applied to the approach

¹¹ Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, 4.

¹² Sen, *Development as Freedom*, 54-58. For Sen, it is important to account for what informational bases are included or excluded in the process of deliberative reasoning. For instance, Sen criticizes both libertarianism and utilitarianism and argues that the inadequacies of either theory are because of the limitations of the informational bases each is founded on. Utilitarianism is overemphasizing the informational base of utility while libertarianism is narrowly prioritizing the informational base of the absolute priority of rights. As a result, both libertarianism and utilitarianism make deliberative evaluations that exclude other important informational bases that correspond to other critical valuational considerations in human affairs (e.g., the normativity of human rights in the case of utilitarianism, consequentialist considerations in the case of libertarianism, etc.). In general, Sen promotes the use of more expansive informational bases in deliberative evaluations.

of making reasoned valuations from contexts with narrower scopes towards contexts with broader scopes. One curious feature of Rawls' account is that in the process of employing the constructivist approach in extending liberal ideas towards the law of peoples, he espouses a more general and, in a sense, more limited, liberal conception in such a way that the set of fundamental principles do not include what he calls the three egalitarian features. This is in line with the thrust to accommodate not only well-ordered liberal societies but also other well-ordered societies, represented by what Rawls calls well-ordered hierarchical societies.¹³ Thus, it might be asked whether this same consequence holds for the central problem of making reasoned valuations, that is whether less and less reasoned valuations pertaining to freedoms and rights could be made as the contexts considered becomes broader in scope. It can be understood that Rawls' conception of more general liberal ideas that are also more limited could be valid given his assumption that the societies considered in the construction of the law of peoples are well-ordered and this conception could therefore be considered, as Rawls points out himself, as an ideal. Rawls likewise recognizes that such a conception is ideal by also characterizing non-ideal theories pertaining to noncompliance and unfavorable conditions although he makes no argument for adjusting the fundamental framework of the law of peoples to accommodate considerations of such non-idealities. Nonetheless, it can be argued that given the pluralistic character of human reality and given that contexts with broader scopes represent greater degrees of plurality, then reasoned valuations pertaining to freedoms and rights made within contexts with broader scopes should be more general but in the sense that they are more comprehensive rather than more limited. Drawing some insights from Sen's Development as Freedom, when the pluralistic character of human reality is considered, certain more comprehensive considerations (such as a broader conception of development in terms of freedoms and capabilities

¹³ John Rawls, "The Law of Peoples," *Critical Inquiry*, 20:1 (1993), 36-68.

as well as a broader conception of the phenomena of poverty and famines, for instance) need to be taken into account in making reasoned valuations. Contexts with broader scopes which represent a greater degree of plurality could also warrant certain special conceptions of freedoms and rights. For instance, certain “special rights” could be put in place as part of making reasoned valuations in due consideration of certain human realities that put certain individuals or groups at a disadvantaged position (e.g., a history of oppression or discrimination that has adversely affected a certain group could warrant the stipulation of certain “special rights” for the particular group).

Beyond Liberal Societies

Another question that could be raised in relation to the central problem of making reasoned valuations is whether any reasoned valuations pertaining to freedoms and rights could be plausibly made in contexts with broad scopes that go beyond the bounds of liberal societies. Parallel to this question is the possible argument that perhaps valuations that put primacy on freedoms and rights are exclusive to liberal societies and in line with providing due consideration to the pluralism of human reality, these liberal values should not be “forced into” non-liberal societies which have traditional values that are different in character. As part of the response to the question and the argument presented, Sen’s rebuttal of what he calls as the “cultural critique” against the universality of human rights shall be invoked.¹⁴ In Sen’s account, the “cultural critique” is often characterized by an assertion that liberal ideas are essentially of Western origin and by contrasting liberal values with what are presented to be traditional Asian values. Thus, Sen’s rebuttal primarily consists of presenting a fairly comprehensive survey of traditional Asian literature which espouses values that put primacy on freedoms and rights. Sen likewise argues for the

¹⁴ Sen, *Development as Freedom*, 227-249.

capability of people across different cultures to share common values and commitments. As it appears that the somewhat universal character of human rights cannot be undermined by such cultural critiques, then reasoned valuations pertaining to freedoms and rights could be made not only within so-called traditionally liberal societies (Sen likewise refutes the merit of such a label) but also in contexts of valuation with broader scopes. Reasoned valuations within contexts with broader scopes would also be plausible when the conception of freedoms and rights has a more general basic characterization, which means that the characterization itself should be reasonably inclusive of the appropriate aspects of the great degree of plurality of contexts with broader scopes rather than defined against the more limited degree of plurality in contexts with narrower scopes. A few examples of what is referred to here as more general basic characterizations of freedoms and rights could be cited. For one, Gewirth's notion of "generic rights" as "the necessary conditions of action, freedom, and well-being" is defined in a reasonably broad and general sense which could accommodate the problem of making reasoned valuations within contexts with broader scopes.¹⁵ In a similar manner, Scanlon defines the primary concern of rights in a broad and general sense. His notion is that this primary concern is the "promotion and maintenance of an acceptable distribution of control over important factors in our lives."¹⁶ Rawls also defines human rights in a more inclusive manner that is evasive of metaphysical grounding, in what he calls as a "politically neutral" way. He defines human rights as a representation of a basic standard upheld by well-ordered political institutions, within a just society, for individual members of good standing. Rawls likewise asserts that such a characterization of human rights cannot be considered as an exclusively liberal or Western notion.¹⁷ Thus, based on the few examples presented here and on Sen's rebuttal of cultural critiques

¹⁵ Alan Gewirth, "Are there any Absolute Rights?," in *Theories of Rights*, ed. Jeremy Waldron (Oxford: Oxford University Press, 1984), 91-109.

¹⁶ T. M. Scanlon, "Rights, Goals, and Fairness," in *Theories of Rights*, ed. Jeremy Waldron (Oxford: Oxford University Press, 1984), 137-152.

¹⁷ Rawls, *Political Liberalism*, 9.

against human rights, it can be asserted that conceptions of freedoms and rights can be characterized in a manner that is accommodating of the pluralistic character of human reality in contexts with broader scopes. Thus, an argument can be put forward in favor of the plausibility of making reasoned valuations within contexts with broader scopes.

Fairness and Impartiality

In the first part of this section on the central problem of making reasoned valuations, an attempt was made to address the basic concern of characterizing the conception of what is to be considered as reasoned and in the course the reflections presented, a rough thesis that a conception of what is to be considered as reasoned was arrived at, which is consistent with the constructive and integrative approach, would have a pluralistic character which is enabled, strengthened, and sustained within the appropriate conditions. Now, before this section is closed, this thesis shall be extended to include concerns of fairness and impartiality, which are central concerns that are conceptually linked to the conception of what is to be considered as reasoned as presented by the rough thesis. In this section, the discussion of the concerns of fairness and impartiality shall be confined within a more abstract and more general sense as attempts to address more concrete and more particular matters pertaining to these concerns shall be made in the next section.

First, there are reasons why the concerns of fairness and impartiality are central concerns given the conception that what is to be considered as reasoned would have a pluralistic character within the appropriate conditions. One important reason is that there is an inextricable conceptual link between concerns of fairness and impartiality and concerns about making reasoned valuations that accommodate the pluralistic character of human reality, and this inextricable conceptual link is present across the entire spectrum of contexts of valuation, from narrower scopes to broader scopes, although addressing the concerns of

fairness and impartiality becomes more difficult as the scope becomes broader. This inextricable conceptual link can be characterized as such—making fair and impartial valuations could be deemed as both constitutive of and instrumental to making reasoned valuations that accommodate the degree of plurality that is reflective of the pluralistic character of human reality within a certain context of valuation in question.¹⁸ There is a constitutive component in the conceptual link because reasoned valuations that accommodate the pluralistic character of human reality should be fair and impartial and thus, concerns of fairness and impartiality could be considered as evaluative of whether a reasoned valuation was made at all. Likewise, there is an instrumental component in the conceptual link because a procedure of making reasoned valuations could be characterized as a procedure which gives due consideration to concerns of fairness and impartiality, and thus, considering concerns of fairness and impartiality could be taken as the means towards making reasoned valuations. Thus, concerns of fairness and impartiality are central concerns in this regard.

This section now proceeds with a brief discussion on the concerns of fairness and impartiality in relation to the central problem of making reasoned valuations. For this purpose, this section shall simply draw from some of the discussions already presented in this paper. As a starting point, Rawls' conception of the original position and the veil of ignorance as well as Habermas' discourse theory could be synthesized in order to establish the foundations for a plausible conception of fairness and impartiality. Following both Rawls and Habermas, it is plausible for fair and impartial valuations to arise from a procedure that has a deliberative and discursive character wherein reasonable individuals or their representatives are involved and they are under the veil of ignorance such that they can only invoke fair and impartial reasons in the deliberations and discussions. It is important to note, however, that such a conception is hypothetical as Rawls

¹⁸ Again, I draw insights from Sen's discussion of the constitutive and instrumental value of freedom in development in his *Development as Freedom*. Sen, *Development as Freedom*, 3-11.

has emphasized that the original position is a representational device and Habermas has also invoked the idea of hypothetical and counterfactual moments of deliberation. Nonetheless, this hypothetical notion could establish an ideal which sets a general normative direction for concrete situations. Possible concretizations could be proposed to approximate this ideal hypothetical notion. Following Habermas, a public sphere where there are reasonably extensive informational bases with minimal defects and where communicative freedoms are valued could foster the deliberative and discursive procedures and conditions towards making reasoned valuations. Following Rawls, the veil of ignorance could be concretized in a manner that goes in a direction that is opposite of the hypothetical notion. While the hypothetical veil of ignorance stipulates that the reasonable individuals or their representatives are ignorant of certain information that could drive them to be unreasonable, the concretization should stipulate that the reasonable individuals or their representatives should have a comprehensive awareness of information corresponding to their personal interests and prejudices and of those that they represent as well as of other information that could drive them to be unreasonable. Given such a comprehensive awareness, the reasonable individuals and their representatives could then actively detach their judgements from such information and take on a reasonably fair and impartial perspective. Likewise, a concretization of Habermas' discourse theory as described could be the overall supporting, reinforcing, and sustaining force for a constructive and integrative approach which fosters reasoned valuations. A public sphere with reasonably extensive and minimally defective informational bases and where communicative freedoms are valued, could serve as a regulating force, which can be seen as employing reasonable selection and filtering processes, which ensures that those who participate in the procedures of construction and reconstruction are reasonable, and that the reasonable individuals or their representatives do not invoke unreasonable reasons in the deliberations and discussions, and that the relevant informational bases remain extensive and minimally defective,

and so on. In such procedures and conditions, the constructive and integrative approach could then be employed in making reasoned valuations in the process of constructing and reconstructing a reasonable system of freedoms and rights.

SECTION 2: REALIZING A SYSTEM OF FREEDOMS AND RIGHTS

The reflections in the previous section as well as in the first paper have been aimed at addressing the central problems and concerns pertaining to how a reasonable theoretical framework of freedoms and rights can be justified, constructed, and reconstructed. The reflections in this section shall be focused on the central problem of realizing a system of freedoms and rights. The motivation for regarding this as a central problem is the presupposition that a reasonable theoretical framework of freedoms and rights is ultimately desired to be realized in practice. Much of the elements already characterized in the preceding section as well as in the first paper already somewhat provide the foundations towards this objective of realizing a system of freedoms and rights. A system of freedoms and rights that has robust bases of justification and which is constructed through a procedure which fosters reasoned valuations has a greater probability of being generally acceptable and thus has a greater likelihood of becoming realized. Again, it must be emphasized that the perfect realization, in the sense that all provisions are absolutely followed by all relevant subjects in all cases, of a system of freedoms and rights is extremely unlikely, if not impossible, and thus the objective of realization as characterized here pertains to a reasonably extensive degree of realization, in the sense that a system of freedoms and rights is generally accepted by its subjects and its provisions are generally complied with in a reasonably stable and sustainable manner, in the sense that general acceptance and compliance covers a reasonably broad range of various relevant dimensions (e.g. across

different subjects and cases, over the period of time when the system is deemed to be valid).

Legitimacy and Stability

In addressing the central problem of realizing a system of freedoms and rights, one of the primary concerns remain to be regarding the claim to legitimacy of the system of freedoms and rights. The basic premise is that despite having established robust bases of justification, and despite having constructed the system through reasonable procedures and conditions, actual human reality still warrants that certain external driving forces be put in place to realize the system of freedoms and rights. These external driving forces are generally taken to refer to the coercive powers of the state, generally channeled through the enforcement of legal systems. Here, the term “external driving force” can be used to denote any driving force which is different from the “internal” theoretical strength and robustness of the claim to legitimacy of the system of freedoms and rights. This theme of the need for external driving forces to realize a system of freedoms and rights is well emphasized in the literature. To cite an extreme example, Bentham famously referred to the conception of natural rights as “nonsense,” and to the notion of “natural and imprescriptible rights as “nonsense on stilts.”¹⁹ For Bentham, rights have no value or claim to legitimacy outside legal systems because rights essentially represent obligations pertaining to certain benefits, and the enforcement of obligations inevitably requires coercive legal rules.²⁰ It can be supposed that Bentham’s notion is consistent with his general teleological, utilitarian position on freedoms and rights. However, even thinkers who recognize the deontological value of rights recognize the need for external driving forces. For Rawls, the need for the exercise of collective political power arises from

¹⁹ As cited by Sen in his *Development as Freedom*, 211.

²⁰ D. Lyons, “Utility and Rights,” in *Theories of Rights*, ed. Jeremy Waldron (Oxford: Oxford University Press, 1984), 110-136.

the actual plurality within a liberal and democratic society. He qualifies that the exercise of coercive political power is valid if the subjects themselves could be expected to deem the exercise of coercion as reasonable out of their own free reasoning. Thus for Rawls, a set of laws can be reasonably enforced through coercive political power if the set of laws could be accepted by its subjects as reasonable through their own independent deliberative powers.²¹ Habermas likewise recognizes that real social agreements that are achieved communicatively could not provide a sole foundation for social cooperation and integration because such agreements are always open to challenge.²² Here, it could be noted that both of the general views of Rawls and Habermas somewhat draw from and recast the notion of the social contract, and following this line, there could be a general conception that the realization of a system of freedoms and rights is somewhat dependent on some form of social agreement. Therefore, the central problem of realizing a system of freedoms and rights could be further characterized in terms of the concern of sustaining the stability of the social agreement within which the system of freedoms and rights is accepted as reasonable. Thus, certain external driving forces are required to ensure the stability of this social agreement. Nonetheless, only a minimal set of driving forces would be required to maintain the stability of the social agreement pertaining to the system of freedoms and rights if its theoretical framework has reasonably robust bases of justifications and if it is constructed and reconstructed through a reasonable set of procedures and conditions which reasonably accommodate the pluralistic character of human reality, and is thus generally accepted as reasonable by its subjects. For the purpose of this discussion with regards to the characterization of the central problem of realizing a system of freedoms and rights in terms of concerns on the system's claim to legitimacy as well as concerns on the stability of the social agreement within which the system

²¹ Rawls, *Political Liberalism*.

²² Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*.

is accepted to be reasonable,²³ a notion of a minimal exercise of coercive political powers, similar to but somewhat different from Nozick's conception of the minimal state,²⁴ could be invoked. In this notion of the minimal exercise of political coercive powers in relation to a system of freedoms and rights, the coercive powers of the state could only be justifiably employed to uphold reasonable elements and to undermine and prevent unreasonable elements. Elements here could be defined in a broad sense to include subjects, behaviors, ideologies, and so on, but in such a way that the exercise of coercive political power to uphold reasonable elements and to undermine unreasonable elements is nonetheless limited by the conception of reasonability that accommodates the pluralistic human reality. Through the reasonable employment of such minimal exercise of coercive political powers, the reasonable claim to legitimacy and the stability of the underlying social agreement pertaining to the system of freedoms and rights would be maintained. It could be pointed out that the conception of the minimal exercise of coercive political powers could be adequate for what could be called as contexts of manageable scope and in contexts where the extensiveness of the proliferation of unreasonable elements is likewise minimal. However, it could be argued that there are certain contexts with broader scopes and where the unreasonable elements that threaten or attack the reasonable claim to legitimacy and the stability of the social agreement pertaining to the system of freedoms and rights are more extensive, where in such cases, the minimal exercise of coercive political exercise may not be adequate. As an illustration, one could look at Rawls' discussion on the non-ideal theory of noncompliance in his *The Law of Peoples*. In this discussion, Rawls recognizes the possibility that certain "outlaw regimes" would refuse to comply with a reasonable law of peoples established for well-ordered societies. It could be evident that such outlaw regimes pose significant threats to the claim of legitimacy as well as to the

²³ Which is evidently somewhat similar and even analogous to Rawls' account in his *Political Liberalism*.

²⁴ Robert Nozick, *Anarchy, State, and Utopia* (Oxford: Blackwell, 1974), 26-28.

social agreement underlying the reasonable law of peoples as well as to well-ordered societies. In his account, Rawls identifies certain obligations of well-ordered societies in such cases of non-compliance—set up a *modus vivendi* with the outlaw regimes, protect the integrity and welfare of their own as well as other well-ordered societies, protect the rights and welfare of innocent people subjected to outlaw regimes, withdraw support from the outlaw regimes, and take measures towards the eventual acceptance of the reasonable law of peoples by all.²⁵ Upon closer examination, these obligations could be categorized under the same category as described in the characterization of the minimal exercise of coercive political powers to uphold reasonable elements and to undermine and prevent unreasonable elements. Thus, the obligations that Rawls identified could be seen as applications of the minimal exercise of coercive political powers with a higher degree of intensity and complexity as demanded by the particular context in question. It should be emphasized therefore that the reasonable exercise of coercive political powers is minimal or limited only in terms of its definitive scope but not in terms of the intensity or complexity of its application. Nonetheless, the discussion so far only argues for a minimal exercise of coercive political power in relation to the central problem of realizing a system of freedoms and rights as characterized in terms of concerns on the claim to legitimacy of the system as well as in terms of the stability of the social agreement underlying the system. In the discussions that follow, this section shall continue to address the central problem of realizing a system of freedoms and rights in terms of some other characterizations and so at this point, it shall be left open whether or not the conception of the minimal exercise of coercive political power is adequate to address these other characterizations of the problem.

²⁵ Rawls, “The Law of Peoples.”

Resolving Conflicts

Another manner by which the central problem of realizing a system of freedoms and rights could be characterized is in terms of concerns on resolving conflicts. Conflicts can be characterized in a broad sense which could include, among others, internal conceptual conflicts within the theoretical framework of freedoms and rights, conflicts that arise among various reasoned valuations across different contexts in the process of constructing and reconstructing the theoretical framework, external conflicts with other theoretical frameworks as well as with other external forces, conflicts among different subjects in various cases of application, and so on. This characterization of the problem arises from the recognition that it is implausible for a reasonable system of freedoms and rights, which accommodates the pluralistic character of human reality, to have an absolutely robust and comprehensive construction to the point where no possible conflicts could arise. Thus, certain conflicts would inevitably arise as a system of freedoms and rights are applied in real human settings. One plausible solution to the concern of conflict resolution could be established through the same bases of justification of the particular system of freedoms and rights in question. In this regard, this conflict resolution approach could be termed as a circular manner of conflict resolution. Thus, for a theoretical framework that is constructed and reconstructed through constructive and integrative approach, resolutions could be proposed for various conflicts by employing the same methodological approach—1) by defining the specifications of the conflict, 2) by identifying the appropriate aspects of the pluralistic human reality that would be considered, 3) by establishing a reasonable starting point based on (1) and (2) and by identifying the reasonable conflict resolution agents, if appropriate, 4) undertaking the process of construction and integration through a procedure that is deliberative and discursive towards formulating a solution for conflict resolution. However, it could be argued that it would not be feasible to apply such a methodological approach for every conflict

that arises. Thus, it would also be plausible to invoke certain conceptions that are derived from the same bases of justification as the constructive and integrative approach. Such conceptions could be considered as “derivative rules-of-thumb” that could be employed for more practical applications of conflict resolution. Some of the conceptions proposed in the preceding section on the central problem of making reasoned valuations could be plausible candidates as derivative rules-of-thumb—particularly the characterization of what is to be considered as reasoned, the thesis that making reasoned valuations within contexts with narrower scopes first before expanding to contexts with broader scopes is more plausible, and the conception of fairness and impartiality that is consistent with the constructive and integrative approach. One or more of these derivative rules-of-thumb could be invoked for certain cases of conflict resolution.

To illustrate this characterization in terms of conflict resolution in more concrete terms, this section shall present the conflicts that arise from the equalitarian notions of a system of freedoms and rights as a case study. Equalitarian conceptions could be deemed as one of the plausible features of a reasonable system of freedoms and rights, but it is likewise not difficult to recognize that various forms of conflicts could arise from a notion of equality. Such conflicts are often characterized in terms of conflicts in the rights among subjects which would inevitably result to some form of inequality when resolved. This seemingly paradoxical consequence of having inequality within an equalitarian framework could likewise be considered as an internal conceptual conflict within the theoretical framework. This section shall cite a few examples of solutions that have been proposed for such problems of conflict resolutions. In Vlastos’ view, certain forms of inequality, as a result of the resolution of conflicting rights, could be justly accommodated by an equalitarian system of rights provided that the conflict resolution is carried out by considering only the relevant rights involved and without regard to other unreasonable differentiating attributes, as doing so would be inconsistent with the equalitarian character of the system of rights. Likewise, since the conception of the

human worth is taken to justify the system of rights, certain forms of inequality could also be accommodated provided that such inequalities do not violate the principles of the notion of human worth, and perhaps, inequalities could even be at times necessary consequences of preserving this principle.²⁶ It could be evident that Vlastos' view has a bias for a deontological valuation of rights. Certain other proposed solutions could be considered as more teleological in character. In his "Principle of Generic Consistency," Gewirth proposes that in instances where the rights of different subjects are in conflict, the right which is more necessary for action takes precedence over rights that are less necessary for action.²⁷ Scanlon, on the other hand, proposes that even though different individuals are to be considered to have equal rights, in cases of conflict, the "most urgent" rights are to be given priority.²⁸ Mackie has a slightly different conception in such a way that he proposes what he calls as the model of centers of force which discriminates in favor of rights that are most closely linked with a subject's central vital interests.²⁹ These proposals, whether deontological or teleological in character, could be taken as consistent with what has been characterized as a general approach towards addressing problems of conflict resolution. It is somewhat evident that Vlastos' view, for example, follows the general direction of resolving conflicting rights, as well as the conceptual conflict of accommodating inequalities within an equalitarian system of rights, by invoking the same bases of justification established to justify the system of rights. It is also evident in the teleological views cited that certain notions of reasonability or fairness are invoked to resolve conflicts and these notions of reasonability and fairness as translated into practical conceptions of conflict resolution could be

²⁶ Gregory Vlastos, "Justice and Equality," in *Theories of Rights*, ed. Jeremy Waldron (Oxford: Oxford University Press, 1984), 55-56.

²⁷ Gewirth, "Are there any Absolute Rights?"

²⁸ Scanlon, "Rights, Goals, and Fairness."

²⁹ J. L. Mackie, "Can there be a Right-based Moral Theory?," in *Theories of Rights*, ed. Jeremy Waldron (Oxford: Oxford University Press, 1984), 168-181.

deemed as analogous to the notion of derivative rules-of-thumb previously characterized.

Feasibility

Lastly, the central problem of realizing a system of freedoms and rights could be characterized in terms of concerns regarding feasibility. Feasibility considerations can be further characterized in terms of various feasibility constraints such as limitations in freedom-related assets (capabilities, capacities, resources, etc.) which could be defined in a general sense to be inclusive of a wide range of contexts, as well as in terms of spatio-temporal limitations. In relation to the immediately preceding discussion on conflict resolution, certain conflicts could arise as a consequence of feasibility constraints, and so it is plausible that the conceptions of conflict resolution previously discussed could still apply for such conflicts. However, the matter of feasibility considerations warrants a more elaborate discussion. It can be suspected that its scope includes certain other areas which do not necessarily overlap with concerns of conflict resolution as presented in the previous discussion. Rawls recognizes the problem of feasibility concerns as evident in his discussions on the non-ideal theory of unfavorable conditions in his *The Law of Peoples*. In his discussion, Rawls notes that there could be certain unfavorable conditions which could limit the capability of a society to adopt a reasonable law of peoples. His account of unfavorable conditions is analogous to what could be conceived as the lack of certain freedom-related assets. Rawls likewise posits that the origin of such unfavorable conditions is the inability of the societies in question to fulfil the requirements of a well-ordered society, a problem that is brought about by the society's political culture and the traditions behind this political culture. Thus, the obligation of well-ordered societies is to help societies afflicted with

unfavorable conditions towards fulfilment of the requirements for a well-ordered society.³⁰

Taking off from Rawls' discussion and with the aim of extending the reflections on the problem of concerns of feasibility to a more general sense, this section shall first invoke an important fundamental distinction between rights in a formal sense and rights in an empowered sense.³¹ A system of freedoms and rights could stipulate certain freedoms and rights in a formal sense but the subjects of such freedoms and rights may not have the freedom-related assets that are necessary to exercise or to achieve the outcomes of these freedoms and rights. This distinction is somewhat analogous to Sen's distinction of the process aspect and the opportunity aspect of freedom. The process aspect pertains to the processes that enable the exercise of freedoms and rights while the opportunity aspect pertains to the actual opportunities that subjects have in relation to freedoms and rights. Sen espouses a two-way view which includes the two aspects of freedoms as opposed to what he deems as the limited and one-sided view of certain liberals who only consider the process aspect and of certain consequentialists who only consider the opportunity aspect.³² Adopting this two-way view is a plausible approach in addressing the feasibility concerns within the central problem of realizing a system of freedoms and rights. Again, following Sen's line of argumentation, the undertaking of addressing feasibility concerns could be carried out by characterizing the various measures that could be taken to expand people's freedom-related assets (capacities, capabilities, resources, etc.) in relation to both the process aspect and the opportunity aspect of freedoms and rights in order to generally enable the exercise and the achievement of the desirable outcomes of a system of freedoms and rights. Rawls' account which was initially cited could also be regarded as somewhat consistent with this

³⁰ Rawls, "The Law of Peoples."

³¹ For this distinction, I again draw insights from the discussions in Dr. Armando Ochangco's course which he taught at the University of the Philippines-Diliman, "Human Rights: Problems, Issues, Perspective" (academic year 2013-2014).

³² Sen, *Development as Freedom*, 13-35.

proposal. Part of the measures that could be taken to expand people's freedom-related assets would consist of establishing the appropriate frameworks as well as providing the appropriate societal and economic supports to ensure that the adequate processes for a reasonable system of freedoms and rights, as well as the adequate opportunities, capabilities, and resources are in place to enable people to exercise and achieve both the desired comprehensive outcomes and the desired culmination outcomes of their freedoms and rights. This thrust of expanding people's freedom-related assets could be identified as a process of development, and again following Sen's line of argumentation, development and freedom could be seen as mutually reinforcing of each other. Development, which could partly be portrayed as the expansion of people's freedom-related assets, consequently expands people's freedoms, and freedoms, as it has been discussed previously, are both constitutive of and instrumental to development. This mutually reinforcing relationship between development and freedom could be seen as a continuous cycle which leads to continuous progress both in terms of human development as well as in terms of realizing a reasonable system of freedoms and rights.

Before closing, this section shall go back to a juncture in the earlier part of this section which was left open. The question can now be reconfigured—whether or not the conception of the minimal exercise of coercive political power could accommodate the concerns of conflict resolution and feasibility brought about by the latter characterizations of the central problem of realizing a system of freedoms. If such concerns are included in the conception of the pluralistic character of human reality which is inextricably linked to the conception of reasonability, then the conception of the minimal exercise of coercive political power could still accommodate concerns of conflict resolution and feasibility. Thus, it would seem that this conception of the minimal exercise of coercive political power is actually a somewhat general notion which could accommodate a broad range of concerns.

CONCLUDING REMARKS

This paper as well as the first paper reflected on what can be considered to be three central problems in the philosophy of freedoms and rights—the problems of justifying freedoms and rights, of making reasoned valuations, and of realizing a system of freedoms and rights. As already stated, at least a significant part of the motivation behind the manner by which these reflections were carried out has something to do with a certain partiality in favor of a constructivist approach towards establishing a theoretical framework of freedoms and rights. The three central problems correspond to what are initially described as the three steps in the stage-wise view of the process of constructing and realizing a system or theoretical framework of freedoms and rights.

In the course of the reflections, certain main theses have been arrived at. The first paper has espoused what have been called the constructive and integrative approach in the construction and reconstruction of a reasonable system of freedoms and rights. In doing so, it invoked the notion of the pluralistic character of human reality, which is a central consideration in the constructive and integrative approach. Section 1 which discusses the central problem of making reasoned valuations proposed characterizations of the conception of what is to be considered as reasoned as well as of the notion of fairness and impartiality. It has also invoked the idea of a spectrum of contexts of valuation and proposed a somewhat hierarchical approach of making reasoned valuations first within contexts with narrower scopes before extending towards contexts with broader scopes. It also presented arguments on the validity of making reasoned valuations pertaining to freedoms and rights within contexts with broader scopes beyond so-called traditionally liberal societies. Lastly, Section 2 which discusses the central problem of realizing freedoms and rights has characterized and addressed the problem in terms of four primary concerns: 1,2) the claim to legitimacy of the system of freedoms and rights and the stability of the underlying social agreement

which warrants the minimal exercise of coercive political power, 3) concerns of conflict resolution for which I have proposed a circular manner of resolving conflicts, and 4) considerations of feasibility wherein the main thesis is that there is a mutually reinforcing relationship between the expansion of people's freedom-related assets and the realization of a reasonable system of freedoms and rights.

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