

Applying Alan Gewirth's Principle of Generic Consistency (PGC) to Global Policies on Human Rights in a Post-Pandemic World

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Abstract: In April 2020, a former member of the Philippine Army's 31st Infantry Battalion who served fighting communist insurgents, suffering from schizophrenia and trauma, was shot by Police Master Sgt. Daniel Florendo Jr at Barangay Pasong Putik in Quezon city when he taunted the authorities and pulled something out of his bag. The strict implementation and enforcement of obedience to pandemic rules, the condition of the former soldier, the vague interpretations of his motives, and the actuations of the policemen before and after the shooting, all point to the notion that this is a human right issue after the facts have been ascertained by the courts. Although the government's intent is to ultimately protect the people against the threats of the virus, human rights must nonetheless be respected at all fronts. To analyze this issue, this paper would attempt to utilize the Principle of Generic Consistency (PGC), conceptualized by Alan Gewirth, in resolving issues by clarifying how morality is rooted in action and its generic features. I would first explain the PGC and its direct and indirect applications; then I would expose how this could be applicable to resolve human right conflicts by exposing the PGC-inspired relation between individual and community; and finally,

I would suggest some enhancements to pandemic-based policies by reverting to some of the ancillary issues discussed by Gewirth.

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THE PRINCIPLE OF GENERIC CONSISTENCY

The Principle of Generic Consistency (PGC) is Gewirth's supreme moral principle.¹ Procedurally, it is the conclusion of the agent's minimal and deductive reasoning whereby the entailments of action and its generic features are educed and accepted by an agent utilizing the necessary dialectical method. Hence, in a holistic sense, it can be said that the philosophy of Alan Gewirth follows the rationalist-foundationalist tradition and, as regards to the argumentation on the material and formal aspects of such education, could be said to belong primarily to moral philosophy. From such a perspective, the PGC functions as a rationalist foundation for human rights. As a principle of action, it can be utilized to source out appropriate policies by governments and their agencies. Hence, even in novel scenarios such as during emergencies, actions which emanate from this principle would not only be effective but would also ultimately protect human rights.

Specifically, the argument leading to the supreme moral principle begins with an analysis of the nature of morality and the role of action in its fulfillment. It traces the generic features of action - or those found in all

¹ Gewirth notes that in fields like chess, soccer, business, the requirements are simply derived from their designated ends. In morality, however, what is being questioned is the rightness or wrongness of the moral end itself. From this consideration, he reverts back to the nature of action itself, including its generic features. By logically educing the entailments of action, we proceed to a principle which agents who engage in action must accept. Those who reject this principle, on the other hand, fall under contradiction because they engage in action without accepting its entailments. In such perspective, this principle – termed by Gewirth as the PGC – is considered as supreme because it is the final entailment of all action.

action - and identifies them as voluntariness and purposiveness. Re-translated into the linguistic form “I do X for purpose E,” Gewirth educes three entailments which an agent ought to accept else he or she would fall into contradiction or a violation of one’s own minimal and deductive consistency. These entailments eventually lead into the acceptance of a supreme moral principle or the PGC.

Morality, for Gewirth, revolves around three questions, to wit: “Why should one be moral?” (authoritative), “whose interests other than his own should the agent favorably consider in action?” (distributive), and “which interests are good ones or constitute the most important goods?” (substantive).² These questions are comprehensive enough in my opinion because traditionally, it presents the justification for what Scholasticism calls “synderesis” or the first moral principle which mandates a person to do good and avoid evil; and aside from this, it recognizes the subjective and objective aspects of morality. Moreover, Gewirth adds that the answers to these questions must be determinate, conclusive, and not beg the question.

Establishing morality from such a perspective, Gewirth proceeds to assert that its necessary content is action, and that the generic features of action comprise voluntariness and purposiveness,³ or as related to an agent, constitutes the latter’s freedom and well-being, respectively.

To educe the entailments of action and its generic features, Gewirth tried to find a statement that would serve as a linguistic representation of action and its generic features, arguing that the proposition “I do X for purpose E” fulfills the requirements of such substitution. With this

² Alan Gewirth, *Reason and Morality* (Chicago: University of Chicago Press, 1978), 3.

³ Gewirth has extensively explained why all possible generic features can be reduced to voluntariness and purposiveness: “Voluntariness involves a procedural aspect of actions in that it concerns the way actions are controlled as ongoing events. Purposiveness, on the other hand, in addition to having the distinct procedural aspect mentioned above, also involves the substantive aspect of actions, the specific contents of these events. Voluntariness refers to the means, purposiveness to the end; voluntariness comprises the agent’s causation of his action, whereas purposiveness comprises the object or goal of the action in the sense of the good he wants to achieve or have through this causation” See Gewirth, *Reason and Morality*, 41.

established, he then submits this to what he calls the “dialectically necessary method” - the eduction of entailments from a proposition that applies to all human beings since they are engaged in voluntary and purposive action. Gewirth further clarifies that action and its generic features, including its entailments form what he calls a “normative structure” from which descriptive assertions imply deontic mandates, both giving way to justified rights and duties.⁴

The first entailment of the statement “I do X for purpose E” as a signification of action and its generic features of voluntariness and purposiveness is the recognition of the necessary goodness of the agent’s freedom and well-being, as reflective of these generic features in relation to himself. The necessity of such affirmation emanates from the rationality of engaging into action in the first place. Gewirth, however, clarifies that the value that is placed in such necessity is not yet moral; hence, even so-called evil actions are given value at this point of the argument. This is not surprising, because in Gewirth’s paradigm, any procedural justification of a moral principle cannot itself be moral because the answer to the authoritative question would end up begging the question.

While there may be degrees of voluntariness (and freedom in relation to the agent) that determine the level of adherence to principles, including to that of the mandate of the PGC, it is nonetheless the degrees of well-being that are utilized mostly in resolving conflicts of rights. Gewirth explains that the proximate requirements of agency form the

⁴ Edward Regis Jr. raised his doubts as regards Gewirth’s presuppositions in his argument: “The success of Gewirth’s argument for right depends, therefore, upon the truth of the conative theory of knowledge which it presupposes and requires. This epistemology is problematic because, in general, the truth of an assertion is not a function of the wishes or needs, even the agency needs, of its utterer. For this reason, unless we are prepared to make wholesale changes in our notions of truth, evidence, and criteria of warranted belief, it does not seem that Gewirth’s case for rights, or the dialectically necessary method on which it rests, could in principle be successful.” I opine that ethics is necessarily conative because, dealing with human acts, the internal experience of choosing to act is inherent in it. Hence, unless we find other internal causes of the human act besides experience, the argument holds true. See Edward Regis Jr., “Gewirth on Rights,” *The Journal of Philosophy*, 78:12 (1981): 794.

foundation of the agent's basic well-being,⁵ being able to retain whatever good he or she already possesses, is his or her non-subtractive well-being, and the qualitative and quantitative increase or development of these goods would form his or her additive well-being. In conflicts of rights, prioritizations would be given to the agent with a higher level of right claim based primarily on these degrees of freedom and well-being.

The second entailment would be a shift from the evaluative statement recognizing the necessary goodness of freedom and well-being to a deontic affirmation of a right claim to such freedom and well-being, creating both a right which Gewirth termed as "generic rights" and a correlative duty on the part of other agents to at least not interfere with the agent's pursuit of freedom and well-being. This is a controversial aspect in Gewirthian thinking due to the opinion of some theorists that such a shift from an evaluative statement to a deontic one is simply not plausible.⁶ An entire book was even written to address such dissent. However, in his response, Gewirth clarifies that he has consistently applied such an entailment in the generic and dispositional level, not in the contingent and occurrent situations where judgments of importance do not necessarily lead to deontic claims. If Gewirth is right in such entailment, then it

⁵ Well-being, in this sense, is described as generic, above the variabilities of particular preferences: "Because of this generality, the generic-dispositional view of goods has an invariability that is lacking at the level of particulars. Where the particular purposes for which different persons act may vary widely, the capabilities of action required for fulfilling their purposes and for maintaining and increasing their abilities are the same for all persons." See Gewirth, *Reason and Morality*, 59.

⁶ One of those who disagreed with the plausibility of this entailment was Loren Lomasky: "It would seem that Gewirth is tacitly introducing a further premise linking desires with claims to rights. An agent *may* indeed take his own desires as sufficient to establish a right – at least a *prima facie* right – to the object of his desire. But that is a far cry from asserting that *must* do so, that otherwise he is being irrational. And among the many possible objects of desire, why are freedom and well-being singled out as generating rights?" I believe here Lomasky failed to see that this entailment emanates from action itself and the consideration that the generic features emanating from it are perceived to be necessary. Thus, the claim to freedom and well-being in the generic sense cannot simply be compared to our variable desires. See Loren Lomasky, "Gewirth's Generation of Rights," *The Philosophical Quarterly*, 31:124 (1981), 249.

logically follows that, in the generic and dispositional level, a proportionate level of mandate would emerge. This command, in Kantian terms, would have such strong illocutionary force that it would create a parallel perlocutionary effect on other agents, leading to sanctions or severe censure for violations thereof.

The application of the Principle of Universalizability (PU)⁷ which states that “if one person S has a certain right because he has quality Q (where the “because,” as before, is that of sufficient condition, now understood as justificatory), then all persons who have Q must have such a right.” Such principle is the basis of legal equity, whereby the Supreme Court has often noted in its decisions that “those who are similarly situated must be treated similarly.” Applying PU in the right claims of agents provides the philosophical foundation of the PGC which provides that “Act in accord with the generic rights of your recipients as well as of yourself. I shall call this the Principle of Generic Consistency (PGC).”⁸ Such consistency provides the formal consideration to its material object (generic rights).⁹

⁷ There is a lot of confusion as to this third entailment because it can be contended that why would an “immoral” right claim – such as killing others – be rightfully subjected to “universalization.” One of these criticisms came from Arval Morris: “But Gewirth’s third step requires an agent to believe that he has a right to his freedom and well-being without considering whether his purposes are morally justified.” It should be noted that step 2 is prudential or can still be subject to the whims of the agent. The universalization takes place without regard to morality because what is being established are generic rights. It is the arbitration of the PGC where the agent considers the gravity of the right claims that would instill morality in the final analysis. See Arval Morris, “A Differential Theory of Human Rights,” *Nomos*, 23 (1981), 164.

⁸ For a discussion of the two principles (Universalizability and Generic Consistency) see Gewirth, *Reason and Morality*, 106 and 135 (respectively).

⁹ The foundation of the specific right to health is further problematic, and for this reason a lot of philosophers have grounded this on human dignity – something which is vague and is subject to dogmatic interpretations. Audrey Chapman explains that the “lack of clarity about the foundations of and justification for the right to health has been problematic in a number of ways. The failure to provide a stronger conceptual foundation and more comprehensive theoretical exposition for the right to health linked to that foundation has complicated efforts to reach a consensus about the normative content, scope, and requirements of the right.” However, it seems that if the right to health is

DIRECT APPLICATIONS OF THE PGC

The moral courses of action that must emanate from the PGC must, according to Gewirth, be conclusive and determinate in the sense that when one course of action has been established, no alternative course, much more a contradictory one, must emanate from the same principle. The direct applications are those that govern individual-to-individual transactions where an agent, following the PGC, acts in accord with the generic rights not only of himself but also, through the application of the Principle of Universalizability, of his or her recipients. By recognizing what Gewirth calls as the *Equality of Generic Rights*, the agent pro-actively assists others in the exercise of their freedom and well-being, or at least refrains from interfering with such acquisition. Thus, as an example, we may consider that a drowning person is making a right claim to a basic good (right to life), validly establishing a strict duty on the part of the agent to save the person in distress especially in cases where this act raises no comparable cost from the latter. In cases of conflict of rights, with Hitler, for instance, raising his additive right to improve his evolutionary stature by killing Jews would be countermanded by the PGC due to the stronger right claim of the latter to their basic well-being or their right to life. In self-defense situations, on the other hand, Gewirth reminds that in cases where the equilibrium borne about by the mutual duties of non-harm, then another duty arises that seek to bring the situation back to balance. Hence, when Agent A disrupts this and attempts to hurt agent B, then B can similarly and justifiably hurt A not to directly cause harm but to restore said equilibrium. In the aforementioned then, the PGC would strictly mandate the duty to rescue a person in distress, command Hitler to cease and desist from hurting/killing any Jew due to latter's higher right claim,

interpreted as an extension of the right to well-being in Gewirthian terms, then it could be traced back to action and ultimately to ethics. See Audrey Chapman, "The Foundations of a Human Right to Health: Human Rights and Bioethics in Dialogue," *Health and Human Rights*, 17:1 (2015), 6.

and morally justify defense of persons and rights which have already been enshrined in legal provisions.

The benefits of the PGC in these cases go beyond mere justification; it may also resolve conflict of rights that might go beyond the normal reach of legal provisions to adjudicate.¹⁰ The reason for this is that harm has an expanded meaning in terms of the PGC compared to what can be placed in the provisions of law. Gewirth gives the example of a person who is about to be defrauded by another of something important to him or her and the obligation the PGC demands for the agent to inform the potential victim of such a lie - something not demanded for the same lie that does not involve anything of value. Thus, the qualitative difference of the "damage" to one's well-being establishes the extent of the obligation to prevent the lie. Matters such as these cannot simply be enacted into law unless such damage can be estimated. In the Philippines, a close approximation to such an attempt can be found in the crime of unjust vexation but such is difficult to prove unless the issue is apparent and incontrovertible. Nonetheless, despite such difficulties in preventing such damages in the legal sphere, the PGC continues to prohibit such and once the enactment of laws catches up with the moral mandate of the supreme principle, the protection of rights would have been elevated to its constitutional ideal.

The same can be argued for additive well-being because in a similar sense, its determination is both subjective and qualitative. A contemporary example of this is emotional disregard - as it cannot be enforced by law, it can nonetheless cause anxiety and loss of self-respect. Another limitation of law is that it only deals with occurrent scenarios while the PGC would attempt to ensure dispositional freedom and well-being whereby the agents' exercise and possession of these generic rights accompany them all throughout their lives.

¹⁰ It is worth clarifying at this point that the adjudicative ability of the PGC rests on the understanding that it is made effective as the basis by which actions are educed without conflicting with the entailments of action itself – calling for compliance and respect with the generic right claims of all parties.

Gewirth further notes that the Equality Principle theoretically leads to both equal freedom and to the common good (as applied to well-being). Thus, we can observe that even at this level, the direct applications of the PGC already touch on societal concerns¹¹ and would only move up to its indirect applications once rules have already been put in place. This is an improvement from previous contractualist political theories which place common good as an objective of conventional agreement rather than as being basically founded on the agents' generic rights.

INDIRECT APPLICATIONS OF THE PGC

Of course, if the PGC would only deal directly with what it can morally resolve involving individuals, then such a principle would be severely limited because it would not be able to adjudicate issues that are social and/or political in nature. For this reason, Gewirth extended the scope of the PGC by utilizing it indirectly as it justifies social rules that would govern everyone in its jurisdiction. In other words, once these rules are ultimately consistent with the PGC, then obedience to these provisions would still be emanating from the supreme moral principle, albeit indirectly. These indirect applications – related as principle-to-institution whereby social rules that are followed are in accord with the PGC - are crucial to this paper because the application of the PGC to pandemic policies are socially and politically implemented. This is in line with Gewirth's explanation that the inclusion of multiple agents in a moral scenario necessitates the resolution of possible multilateral conflicts of rights through the intervention of social rules - which ideally must be in accord with the PGC; and being in line with this supreme moral principle, the arguments in this indirect application would follow the various combinations by and through which freedom and well-being can be enhanced, leading to procedural and instrumental

¹¹ Gewirth extends his PGC to societal concerns by means of what he calls indirect applications whereby social rules, inasmuch as these are in accord with the PGC, become the basis of social action and policy.

justifications of social rules, respectively. Gewirth, however, clarifies that there is critical difference between the direct and the indirect applications of the PGC in that the requirement that agents act in accord with the generic rights of others are replaced by the constraints inherent in the social rules justified by the PGC, and thus there may be certain restrictions in the latter which are not necessarily binding in the former. Thus, he explains that a baseball player must play not based on consent but on predefined rules. Similarly, a pandemic-response policy requires special restrictions for the safety of everyone that may not necessarily be found in normal person-to-person relations governed by the PGC.¹² However, as long as these social rules have undergone a procedural adherence to the PGC, then substantively it continues to protect human rights despite its novelty and uniqueness.

The optional-procedural justification requires that each party provide his or her consent as regards membership and rules and thus in this case the freedom is individually assented to and conformed with. There is not much issue as regards associations under this scheme because of the lack of any prior constraint on the part of any agent and, most probably, organizations that follow this rely on some form of voluntariness to keep membership as voluntary as possible. However, when it comes to large-scale membership such as states and nations, not only is it difficult to determine individual consent, but there is also a dangerous tendency for malefactors to simply choose to abandon any cause that requires collective participation - as we have seen in the League of Nations' failure to prevent the onset of World War I when those who have decided to initiate the war simply chose to leave. This may not also be an effective and efficient

¹² Some countries utilized a militaristic approach which I hope would not have led to human rights abuses. Matthias Rogg expounds on this: "In view of the existential nature of the threat and the great uncertainties arising from the coronavirus crisis as well as the tensions that come with them, it is only a matter of time before this crisis also becomes the focus of security policy. Germany's armed forces are already making a significant effort to deal with the COVID-19 outbreak." See Matthias Rogg, "COVID-19," *Prism*, 8:4 (2020), 55.

instrument to effectuate strictly collective endeavors such as control of a virus-spread during a pandemic.¹³

The necessary-optional justification fills in the gaps of the former by including the element of strict compliance to what has been initially agreed upon. This is the kind of justification we see in most nations that rely on a generic constitution agreed upon through a plebiscite of qualified voters. Once a constitution has been approved, it enforces obedience to all persons under its jurisdiction regardless of the presence or absence of individual consent. While it may seem that there is a problem of consent especially for those who never wished their constitution to be enacted, the process through which the document became enforceable is ultimately justified by the PGC in terms of practicality since in complex social relations, the constant need for consent for every individual decision would be detrimental to the instrumental aspect of the PGC especially when basic rights are needed to be provided efficiently and effectively.¹⁴ To understand this more extensively, there is a need to expound on the indirect instrumental justifications of the PGC.

The first of these is the static instrumental justification of the PGC. Such justification is limited because it assumes equality of rights specifically directed to basic goods. Gewirth avers that this is especially applicable to criminal law and enforcement which comes in when an agent disrupts the balance of non-harm by actions that lead to his or her

¹³ These dangers are not initiated only by the disobedient, but also by criminals, or worse, terrorists. As explained by Gary Ackerman and Hayley Peterson, these activities “range from terrorists leveraging an increased susceptibility to radicalization and inciting a rise in anti-government attitudes, to engaging in pro-social activities and even reconsidering the utility of bioterrorism.” See Gary Ackerman and Hayley Peterson, “Terrorism and COVID-19,” *Perspectives on Terrorism*, 14:3 (June 2020), 59.

¹⁴ This is the reason why Michael Freeman has argued that “[t]oleration is not always a virtue. It would be difficult now to construct a recognizably moral argument that would require or permit the toleration of genocide or racism. The Gewirthian and less controversial theories of human rights provide a solution to the problem of the limits of toleration: tolerate up to the point that you do not tolerate the violation of human rights.” Michael Freeman, “The Problem of Secularism in Human Rights Theory,” *Human Rights Quarterly*, 26:2 (2004), 400.

enhancement of goods against the loss of other agents. Criminal law, in these cases, attempts to reinstate balance by enforcing agents to must follow the mandate of the PGC on mutual respect of generic rights and non-harm.¹⁵

Generally, criminal law enforcement in the Philippines is geared towards being an instrument of peace and order. While this is admirable and in line with the duties of enforcement agencies of the government, Gewirth warns that the means-end relation where the means are external to the end - such as punishments that do not necessarily lead to peace and order - may detach the static instrumental justification away from the PGC. In other words, punishment as a means must be viewed rather as a way to reinstate the balance disrupted by the criminal-agent, creating a direct natural link between the means and the end.¹⁶ This is specifically useful in dealing with justifications of punishments imposed on violators of policies on lock downs and health protocols during the pandemic. Actions that establish external ends may lead to acts inimical to generic rights.

As mentioned, the limitations of the static instrumental justification emanate from the very specific focus on equality as regards generic rights and the mandate to maintain the equilibrium inherent in the relations between and among agents. However, inequalities are found in

¹⁵ Eric Von Magnus gave some examples of such non-harm: "Gewirth holds that persons have a right not to have cancer inflicted on them by the actions of others. This right is a special case of the right not to be killed or seriously injured. We will call these rights of non-harm. Another fundamental consideration, informed control, is important in supplementing and determining the requirements of such rights of non-harm. As a criterion of moral responsibility, informed control requires that persons not perform actions which they have good reason to believe will result in the death or injury of others, whether or not such harmful effects are desired or intended by the agent." See Eric Von Magnus, "Rights and Risks," *Journal of Business Ethics*, 2:1 (1983), 23.

¹⁶ Confusion as regards the real objective of punishment has led some philosophers to the conclusion that it cannot be justified. Douglas Husak explains: "The dominant philosophical attitude towards human rights seems somewhat parallel to that about the institution of punishment. Most philosophers (including myself) are able to demonstrate (to our own satisfaction, at least) that no argument yet produced suffices to justify the practice of punishment." See Douglas Husak, "The Motivation for Human Rights," *Social Theory and Practice*, 11:2 (1985), 249.

the real world, not only in terms of the natural differences in physical potencies but also those which are caused by systemic circumstances leading to differences in social and political capabilities due to wealth or power disparities. For this reason, the dynamic instrumental justification seeks to establish first at least an approximation of proportionate intervention to meet the minimum requirements of equality in terms of generic freedom and well-being. Gewirth rightly notes that those who are trapped in the quagmire of poverty or other similar situations are sometimes forced in degrading dependence on others for their subsistence, limiting the exercise of their generic rights.

In justifying social rules dynamically, Gewirth warns of the possible extremes that may end up violating generic rights – whereby violations are made on either freedom or well-being. As applied to the global pandemic scenario, I surmise that the first extreme is initiating implementations that forces equality by means of dole-outs where little consideration is made on efforts made by individuals to make themselves better and more productive citizens; the other extreme is total disregard of disadvantages that a lot of people have that prevents them from exercising their rights and duties compared to others. The first one violates the generic right to freedom, while the other disenfranchises against the right to well-being.¹⁷ Gewirth proposes that a partial distribution of goods at least to meet basic requirements of food and shelter, while at the same time, proposing equalizing opportunities such free access to additive goods such as education or training. In pandemic scenarios - something which Gewirth may not have foreseen - more creative means must be developed due to the severe limitations of government resources amidst almost insurmountable threats borne by an invisible enemy.¹⁸

¹⁷ In the case of the Philippines, however, where the dole-outs were just sufficient for a just a few weeks, there seems to be the absence of any forced levelling, thus justified.

¹⁸ It seems that the global pandemic caught everybody flatfooted and unprepared, including first-world governments. Ralf Roloff avers: “The absence of global leadership by the United States, China, and Russia during the COVID-19 crisis can be portrayed as a kind of ‘G-Zero Moment.’ G-Zero is a power vacuum in international politics because no country,

HOW HUMAN RIGHTS ARE GENERALLY TREATED BY THE PGC

Gewirth explains that the standard structure of rights can be expressed in this way:

A has a right to X against B by virtue of Y (where A is the subject, B is the respondent, X is the object of the right, and Y is the justification of such).¹⁹

He further explains that in moral terms, the consideration of rights is of utmost importance because it provides the necessary conditions of agency inherent in every human act. The problem lies in that this understanding of human rights does not necessarily include the notion of equality especially when Y or the justification of rights does not depend on a principle that denotes equality.

As an example, Gewirth notes that justification of rights may emanate from legal provisions, yet these may still require substantive arguments to ground them in reason.²⁰ If a provision, for example, provides that a certain person in any scenario has a right, the question still arises as to why he had such a right in the first place, even though it is already executory, mandating authorities to afford him such. In cases of conflicts of rights, for instance, there arises the necessity by which rational

and no group of countries, has the leverage – neither political nor economic – to promote and drive an international agenda or to provide global public goods.” See Ralf Roloff, “COVID-19 and No One’s World,” *Connections*, 19:2 (Spring 2020), 27.

¹⁹ This form applies to all those capable of having rights, from real to juridical persons.

²⁰ However, it is not only reason that is the basis of such grounding. Steven Ross suggests a more descriptive approach: “But we cannot prove or deduce the existence of family or loved ones from any premise that states we have these desires. We can only *explain*, given that these are objects of desire do exist, *why* they mean so much to us. Gewirth then explains why rights *matter*. He errs in taking the *source* of their importance as the deductive touchstone that generates their existence.” See Steven Ross, “A Comment on the Argument between Gewirth and his Critics,” *Metaphilosophy*, Vol. 21:4 (1990), 413.

justifications are unearthed and compared to determine which should be prioritized. He further observed that by the time he has presented the PGC, philosophers have already answered this substantive question, albeit differently, leading to various implications. He noted Kant who espoused reason, Kierkegaard utilizing religion, Nietzsche explaining that such is sourced from power, Mill calculating such through the Principle of Utility, and Marx redirecting it as an expression of class struggles. The difference between and among these methods and that of the PGC, Gewirth explains, is that all these imply purposive action and subsequently the acquisition of well-being - the two generic features of action which the PGC explains as the source of the primary duty to either assist a prospective purposive agent to act in according with his or her generic rights or at least to refrain from interfering in the exercise of these. He is right in this sense because it seems that these philosophers mentioned have grounded their justifications on some preconceived assumptions that need further justifications, or in the case of Kant, grounded on reason yet based on its relation to universal law, and not as regards the implications inherent in action. In other words, these other philosophies cannot be directly linked to action as the necessary content of morality.

Gewirth clarifies that justifications must go beyond the fulfillment of mere wishes or arbitrary intentions since generic rights emanate from the necessary features of agency applicable to all prospective purposive agents, or as he aptly described it - rights would always involve normative necessity. When he mentions necessity as being normative, he means that what is due to a prospective purposive agent is justified primarily by the PGC in cases where such arbitrariness is transcended by the universality of the right claim because the ground upon which the claim is made consists in the fundamental demand of agency, rooted in action itself and its generic features of freedom and well-being. He, however, clarifies that such criterion is initially prudential and not moral because it

depends at the onset on one's necessary demands from his or her agency;²¹ however, it becomes moral after such has met the demands and constraints of the PGC.

Seen in this way, therefore, the fundamental basis of human rights²² lies in the generic features of action, leading to the notion that the right to freedom and well-being as the first amongst these rights, implying further that all other subsequent rights flow from these. There are other rights that emanate from law and agreements. However, the PGC differs from these in the sense that rights emanate from generic right claims that are universalized. The latter justifies rights in a more non-arbitrary way and thus paves the way from these rights being both absolute and categorical.

The justification for slavery in the Ancient and Medieval Periods, for instance, centered on the factual assumption that some persons are neither civilized nor intelligent enough; and because of their condition, they need to be colonized and managed in order for them to develop as a

²¹ Prudential for Gewirth is a claim by an agent for himself but is eventually extended as an obligation for others. There had been contentions as regards the transition from a prudential right to an actual obligation. I argue that this can be done in the generic but not in the individual level. James Scheuermann, however, provided a very interesting distinction: "Universalization may 'work' on this reading only because the agent universalizes not from *his* being a prospective purposive agent, but from the fact that what is true of any arbitrarily chosen prospective purposive agent (e.g. himself) is also true of any other. The agent can claim rights for all others, then, because it is agency in general, not *his* agency in particular, which he views as good from within the standpoint of his 'prudential' agency. If this is correct, then the fundamental problem in Gewirth's transition from the prudential to the moral is not the concept of prudential rights, but rather the concept of prudential agency which is its foundation." See James Scheuermann, "Gewirth's Concept of Prudential Rights," *The Philosophical Quarterly*, 37: 148 (1987), 304.

²² In international law, however, human rights are founded on inherent human dignity as opined by Glenn Hughes: "Inherent human dignity is therefore the foundational fact and value upon which rests the Declaration's affirmation of rights, and this view of dignity as founding rights has been echoed in numerous charters, conventions, and constitutions produced around the world since 1948." While I agree with this, interpreting human dignity without resorting to the PGC would make interpretations of this both variable and arbitrary because some theories have viewed dignity as inherently linked to race as we have observed in Nazism. See Glenn Hughes, "The Concept of Dignity in the Universal Declaration of Human Rights," *The Journal of Religious Ethics*, 39:1 (2011), 4.

society. Based on contemporary standards set by the Universal Declaration on Human Rights, this becomes a serious affront to freedom and well-being, and the repression of such is founded on a conceptual redoubt that they need to develop in a certain way. The PGC, on the other hand, seeing that the generic rights are founded on a more basic entity, namely the deductive powers of reason to educe the requirements of simple agency,²³ would not accede to the idea that an additive good would justify the subjugation of generic rights considered as basic. The PGC would sense the inherent contradictions in its justification, making slavery's prohibition in the Universal Declaration on Human Rights proper and more consistent with the implications of agency. In gist, self-determination was sacrificed on the pretext of a more "civilized" existence. It was, simply put, more hegemonic than consensual concern.

COMMUNITY OF RIGHTS

Gewirth never had to react to human rights issues emanating from any global pandemic event; yet, having experienced two world wars, we could readily surmise that he already was aware as regards the conflict between individual and community rights. Thus, his position on this relation and interplay is significantly useful in the analysis of the focal point of this paper.

A normal non-critical analysis of the relation between the individual and community would lead to what Gewirth calls as the "adversarial position," the main position of which assumes that the selfishness of persons would lead them to be naturally antagonistic against

²³ While deduction may be an epistemological endeavor, its object in Gewirthian philosophy is the external reality of action and its generic features, bringing in a realist touch to his otherwise rationalist approach. Thus, when Alasdair MacIntyre argued that human rights are mere fictions in the same way the belief in unicorns and witches are true, Gewirth answered that the violations of Nazi leaders and the freedoms given in the United States are empirical correlates of human rights. See Alan Gewirth, "Rights and Virtues," *The Review of Metaphysics*, 38:4 (1985), 740.

common interests espoused by communities. Corollary to this is the notion that communities would naturally place limitations to the fulfillment of individual desires. From such argument, he explained that many have considered the term “community of rights” is simply an oxymoron.

Resolutions to these problems are beset with issues. The notion that rights emanate from the goodwill of those in charge of communal concerns may run into conflicts once these concerns contradict individual needs, such as what happens during the hardships faced during pandemics, where economic needs are stifled by the overall necessity for lockdowns and restricted movements and interactions. In this sense, the rights of the community are invoked to some extent, sometimes leading to extreme measures such as militarization or criminalization of certain violations.

Gewirth has countered these preconceptions by arguing that when rights are understood in the light of the PGC - where actual and prospective agents act in accord with one's own generic rights, including those of their recipients - it would bring into clarity that the exercise of individual rights would necessarily include the notions of mutuality and equality - the very essence of “community of rights,” exercised both positively and negatively.

Positive rights, which generally is the notion of providing positive action for the attainment of freedom and well-being on the part of the recipients, are contrasted with negative rights which require other agents to refrain from interfering with the attainment of such freedom and well-being.²⁴ When this distinction is applied in the community of rights, these positive and negative rights are gauged in light of the duty of the government to recognize their role in the fulfillment of their generic rights

²⁴ Despite the difference between the two, Gewirth clarified that their origin is the same: “We must ask, then, whether there is any rational argument for the existence of positive moral rights, that is, positive rights that are grounded in a rationally justified moral principle. What must be stressed in reply is that the positive human right have the same originative foundation as the negative ones: the concern of all human beings, as prospective purposive agents, that the proximate necessary conditions of their action and generally successful action be protected.” See Alan Gewirth, *The Community of Rights* (Chicago: The University of Chicago Press, 1996), 39.

to freedom and well-being, or at least in their non-interference to the self-fulfillment of their agencies, respectively.

Circumstances, however, differ and may, in the end, modify the delicate lines governing the interaction between positive and negative rights. Gewirth notes that in cases where there is a mandate or duty to save or when a certain person is already deprived of freedom and well-being, the act of refraining from interfering would itself entail some form of moral omission. Emergency situations blur these lines because events happen quickly and devastatingly, depriving persons of freedom and well-being - this time considered as non-subtractive goods - that to simply move aside and let these externalities take their course would itself constitute a violation of human rights, signifying simply that both sympathy and empathy plays a mandatory role in such milieu.

These resulting positive-negative-duty variations, for Gewirth, gave way to three forms: first, there are purely negative rights that do not have the complications above, or in other words, devoid of prohibitive background, such as the simple right not to be hurt or killed; second, there is the mixed kind, where the former, for better implementation, requires positive action, such as the active participation of the police in order to avoid scenarios where persons are hurt or killed; and the third, are purely positive rights that do not have prohibitive backgrounds such as the right to education. For positive rights as utilized by Gewirth's community of rights, both the second and the third are utilized. I surmise that this distinction is crucial in the implementation of rights by governments conceptually baffled by conflicts of rights as they implement emergency measures, assuming good will among its intents. Hence, since the understanding of positive rights has been enhanced by Gewirth through the PGC, compared to how it was understood by political philosophers of the past, the integration of what entails greater labor than mere passive non-

interference can serve as a more stable basis for policy evaluation in emergency - specifically pandemic - situations.²⁵

Yet despite Gewirth's emphasis on the utilization of rights as positive, the transition from individual applications to communal implementations still needs to be clarified. To achieve this, he introduced four concepts which function as the formal component of such right, to wit: justice and equality, and mutuality and reciprocity. Basically, it is justice, equality, and mutuality which, for him, constitute the essential elements in the establishment of the community of rights.²⁶ Since this paper deals with the resolution of individual and communal conflicts of rights in emergency scenarios, the proper milieu that the community of rights can bring will set as the parameters by which policies could then be implemented.

As can be seen in most ethical systems, where both substantive and procedural justice are endorsed, the PGC also functions as a principle of the former inasmuch as the right claims of each prospective purposive agent creates a duty on the part of other agents, and from this comes what is "due" to each; it also functions as a principle of the latter when the Principle of Universalizability is applied whereby universal respect of what is due is

²⁵ Other philosophers, however, want to go beyond mere action as the basis of human rights. Michael Freedman avers that "human rights also pertain to people directly by virtue of other facets of their nature – for human beings comprise packages of physical, emotional, mental as well as moral properties. Each of these categories contains attributes of fundamental value to persons, without which they cannot function adequately. A theory of human rights must therefore consist of protective capsules for every one of these sets of attributes." See Michael Freedman, "Human Rights and Welfare: A Communitarian View," *Ethics*, 100:3 (1990), 490.

²⁶ The limitations of reciprocity do not make it as an essential component of the community of rights. Gewirth explains the difference: "A parallel difference bears on the persons who owe benefits. In reciprocity the giving of benefits is an obligation only of those who have previously received benefits. But the mutuality of human rights involves that all persons are in principle the duty-bearers or respondents; the duties correlative with the rights are owed by all persons, not only by those who have been prior beneficiaries of others' actions. By this mutuality, all persons are directly members of the community of rights, and the state through its taxing and other powers must embody it." See Gewirth, *The Community of Rights*, 77.

given to the generic whole with equity (where those who are similarly situated are treated similarly).

Further, Gewirth correctly noted that the notion of rights does not necessarily include the idea of equality, since the historical practice of rights were mainly unequal in the sense that certain groups of peoples - like the nobles - have exercised rights which were not accessible to the commoners. However, he asserts that once the PGC becomes the principle by which rights are determined, equality becomes inevitable since the Principle of Universalizability is applied to all prospective purposive agents in their right claims to freedom and well-being. They become equal as regards the duty to assist in fulfilling positive rights to these generic features of action or they are negatively mandated at least in refraining from interfering with the pursuits unless there is a threat to one's own freedom and well-being. In other words, the PGC connects these generic rights to both universal and equal applications at least to basic rights, in the same way as John Rawls has proposed, albeit for the latter, only as a proposal, while for Gewirth, as a logical mandate.

This Gewirthian principle becomes more apparent in emergency and pandemic scenarios where the limitations of rights lead to various levels of sufferings that are proportionate to social, political, and economic inequalities. In social media, for example, those who lamented the effect of lockdowns in their daily lives were criticized because, for some, it only means being confined to the comfort of their homes; while, for the poor, it means having to endure the heat and the impossibility of social distancing in their cramped spaces. The latter is exacerbated by some insensitive comments stating that some Filipinos are hard-headed - without a holistic consideration of their unjust situation. Hence, the increase in begging for food in the streets during the pandemic borne about by the prohibition of physical interaction at work, and correspondingly of public travel, has made this inequality more apparent, leading to violation of rights, especially when there is a lack of empathy on the part of government officials who have no idea as regards their difficult situation.

In the communal arena, however, equality is passive, and it is both reciprocity and mutuality that would, in a way, prod an active form of interaction between and among the relevant parties. However, Gewirth notes that reciprocity - an offshoot of gratitude - is both time-based, limited, and contingent. In other words, it arises only when the benefit of one is received, the duty to reciprocate is only to the person from whom one has received, and that such provisions are not necessarily borne by all agents. On the contrary, mutuality that is borne out of the PGC is not merely reactive to what one has received; rather, it presupposes interactive respect for rights that belong to all as it imposes a duty to positively act towards leading others to the full capacities of their freedom and well-being. As such, it applies to all even to those who are severely limited as to their capacity to give and is thus treated with moral necessity.²⁷ Reciprocity, being based on a person's capacity to give, would severely limit those who have none. However, Mutuality, since it disregards such proportionate give-and-take, establishes the foundation of the community of rights, and could serve as a philosophically valid basis for sound policies during emergency and pandemic situations.

PGC AND ANCILLARY ISSUES IN HUMAN RIGHTS

The first critical issue to consider is the "Is-Ought Problem."²⁸ One may argue that it is perplexing why a discussion on human rights specifically applied to pandemic scenarios utilizing the PGC would delve on an ancillary ethical issue which is primarily philosophical. The is-ought problem, tackling the derivation of what is prescriptive or normative from factual statements, becomes relevant to such a discussion when facts as

²⁷ For an expanded discussion on the capability theory of Alan Gewirth, kindly read the Martha Nussbaum-Alan Gewirth theory comparison. Rutger Claassen and Marcus Duwell, "The Foundations of Capability Theory: Comparing Nussbaum and Gewirth," *Ethical Theory and Moral Practice*, 16: 3 (2013), 493.

²⁸ This refers to an issue in ethics whereby the question as to how the *ought* (right action) is deduced from the "is" (factual scenario) leading to a proper moral response.

regards any emergency is treated as a basis for policies - the latter functioning as ought statements. The problem now becomes clearer because the issues of the “is-ought problem” are parallel to the eduction of action plans from the fast-paced contingent scenarios created by the pandemic.

Gewirth masterfully clarified certain misconceptions as regards the presentation of the is-ought problem; thus, certain solutions, reacting to these, end up being unable to tackle the real issue governing this problem. Even before Gewirth, the problem of educing prescriptive or normative statements from factual ones have raised philosophical issues as regards their connection. While the senses can establish what facts are, the eduction of “oughts” has no clear validation rules. With the latter having no truth-value, resolutions or reductions have been presented. David Hume, for instance, explaining that statements are either that of facts or of relations, has argued that statements as regards right and wrong, not being factual, must be relational, and as such, either as resemblance or contrariety, having qualitative and numerical degrees. In other words, being relational, the *ought* is determined by a person’s subjectivity and are thus qualified by his or her conceptual prejudices and emotional preferences. If Hume is right, hypothetically, policies would thus arbitrarily follow from personal experiences of the pandemic, and directives would thus be made in accord with leanings of leaders as regards their styles of governance. Realistically it may happen, and this could explain why some leaders would prefer a health-based approach while others would push through with a more militaristic solution depending on arbitrary perceptions as regards to which is more effective and efficient.

Yet Gewirth has established criteria as he presented what is for him the real issue in the is-ought problem. By understanding the interplay between the factual and the moral, he could then provide a proper solution therein. Of course, the criteria set would lead him to expose that the PGC would establish the corresponding solution to the case at hand. If he is correct, then we could safely surmise that the solution to the derivation of

the right policy solutions to the pandemic could be provided by the PGC. The criteria are as follows: first, the ought statement must be moral from the perspective of increasing the well-being of its recipients; second, these should be prescriptive or is able to set proper actions in the light of the facts presented; third, these should egalitarian between and among agents and recipients; fourth, they should be determinate in the sense that the same facts cannot give way to contrary prescriptions; and fifth, these should be categorical (as distinguished from the hypothetically contingent) in the sense that they are not subject to whims or variable factors.²⁹

Both the third and fifth criteria are most useful for determining policy based on the fact of pandemic situations. Policies, emanating emergency scenarios where only limited resources are available and time restrictions are crucial, require a clear perception of how they affect inequalities that are exacerbated during these times. The subsequent loss of jobs, for instance, greatly affect those who have least savings (or none at all) and these sufferings would have ripple effects on their capacity to support themselves in terms of food and rent and may even create problems in additive goods such as education and simple comforts. Variabilities can also effectuate disorder such as when people react differently to pandemic rules (categorized by Gewirth as acceptance-variability) or sometimes emphasis is given to various modes of well-being where some governments focus more on the economy, others on sustainability, and the rest on people (content-variability). On the other hand, if the *ought* is based on the PGC, Gewirth argues that it would satisfy the aforementioned five criteria.

Satisfying these criteria are, in parallel, crucial to policy making on the part of the government because any limitation of right to freedom and well-being in order to keep viruses at bay cannot be simply based only on efficiency and effectivity. Such would create invariabilities not only on

²⁹ For Gewirth's comprehensive discussion on these criteria, kindly refer to Alan Gewirth, "The 'Is-Ought' Problem Resolved," in *Human Rights* (Chicago: The University of Chicago Press, 1982), 116-123.

these policies but also in their implementation,³⁰ susceptible to right abuse as can be gleaned in the proceeding discussions.

The second related ancillary issue discussed by Gewirth is starvation. Not only does it deal with the virtue of distributive justice, but it is also directly related to the basic right of life. In emergency scenarios - where during pandemics, such is exacerbated to universal proportions - starvation also extends to large numbers of the populace, especially to peoples that suffer financial instabilities and uncertainties.

In simple, direct, and hypothetical scenarios, it is easy to see that the PGC clearly mandates the moral obligation of a person to feed another who is suffering from hunger insofar as this act does not in any way endanger his or her own agency to maintain his or her own claims to basic well-being. It is corollary to his or her duty to save, pro-actively fulfilling another's right claim to freedom and well-being as mandated by the Principle of Universalizability.

But real-life situations are far from simple and direct. The interplay between the causes and effects of hunger gets complicated in certain ways such as when decisions directly or indirectly lead to hunger. Gewirth notes that practically, the fact that some person A is hungry does not automatically provide a strict obligation for others to feed him unless he has sufficient moral justification for such an effective right. One reason that removes this justification could be seen in instances where the agent himself directly deprives himself of food, or indirectly, through his or her negligence whereby through overindulgence or sloth, he eventually becomes hungry. In these cases, and many others like these, Gewirth

³⁰ Determinate and consistent action are not only valued in Gewirthian philosophy, but these are also crucial to the implementation of legal provisions. Richard Brooks explains that "ethical theory must be persuasively 'objective.' Since many Americans, and law students in particular, may be skeptical that ethical systems are anything other than expressions of the ethicist's personal preference, the theory must establish some basis for values other than personal preferences." See Richard Brooks, "The Future of Ethical Humanism. The Re-Introduction of Ethics into the Legal World: Alan Gewirth's Reason and Morality," *Journal of Legal Education*, 31:3/5 (1982), 288.

clarifies that there is no interference as to the hungry person's right to freedom and well-being simply because of the intervention of choice. In circumstances, however, of causes of hunger and, at worst, starvation outside the choice of the hungry agent,³¹ the mandate of the PGC to save him - either positively or negatively - from acquiring a basic good remains a moral duty.

Yet it may happen further that this simplified one-on-one right-to-be-saved and duty-to-rescue between two individuals may occur in the generic level, i.e., between states - with the latter, however, being involved in greater complications. These stem from the differences between individuals and states, among which are that while individuals are organic entities, states contain varying societal groups - such as the rich and the poor - including political structures that may lead to unequal distribution of goods which may already be present in the country itself. In these circumstances, and others like it, establishing simplistic relations may not necessarily be realistic. Gewirth is aware of these differences,³² and he even acknowledges the possibility that fulfilling the duty to stave off the threat of actual or potential starvation could lead to jurisdictional and political violations. Nonetheless, he argues at the same time that starvation is an issue involving basic well-being, and in the order of priority, the duty that stems from a valid claim for the right to such a basic well-being cannot easily be set aside in the light of the PGC.

³¹ This may happen even in advanced economies. Amartya Sen explains that "no matter how well an economic system operates, some people can be typically on the verge of vulnerability and can actually succumb to great deprivation as a result of material changes that adversely affect their lives. *Protective Security* is needed to provide a social safety net for preventing the affected population from being reduced to abject misery, and in some cases even starvation and death." See Amartya Sen, *Development as Freedom*, (Oxford: Oxford University Press, 1999), 40.

³² Gewirth was clearly aware of the technical issues surrounding the organization of international programs against hunger: "The relief of starvation is a political as well as a technical problem, and the moral guidance of both sorts of problem requires that the freedom of the recipients be protected equally with their well-being, and this for the sake of well-being itself." See Alan Gewirth, "Starvation and Human Rights," in *Human Rights*, 216.

Aside from the issue of starvation *per se* being an effect of pandemic lockdowns, there is also an indirect parallelism between the personal duty to save another individual from hunger and the state duty to prevent hunger amongst its populace, especially for fortuitous scenarios such as emergency lockdowns during pandemics.

While at first glance it would seem that civil disobedience is out of topic as regards the eduction of policies in pandemic scenarios, I still deemed this third ancillary issue as essential inasmuch as during emergencies, Congress would naturally be impelled to pass laws within a short span of time to address the threat, as in the case of the Philippines enacting Republic Act 11469 or the “Bayanihan to Heal as One Act.” Of course, Congress will nonetheless seek to avoid violating any provision of the Constitution even for these hurriedly created laws yet amidst the panic and resistance of certain sectors to the curtailment of freedom - especially for cases where violators are penalized - it would not be surprising for some people grabbing the knife by the hand, disobeying these laws for assorted reasons.

Gewirth did not tackle this scenario directly when he discussed the relations between civil disobedience, law, and morality. Instead, he was reacting to former American Justice Abe Fortas’s position as regards the conflicts between and among these concepts. With the justice calling himself “a man of the law,” he expressed his opinion that everyone ought to follow the law enacted by his government. He then paradoxically follows it up that had he lived in Hitler’s time or had been a Negro during the implementation of the Southern Segregation Laws, he would have willingly disobeyed these unjust laws. To address these issues, the justice cited conscience and the traditional teachings on distributive justice as the bases to distinguish just from unjust laws.

Yet with the application of conscience which can choose which laws to obey or not, Gewirth was quick to note the inconsistency that accompanies this resolution. He argued that if any such disobedience is justified by one’s conscience, then it would follow that any punishment that

follows such is consequently immoral, creating the paradoxical scenario whereby the state legally implements something which is morally wrong. This is because of the notion that the state follows the constitution and thus should be able to override the variant judgments of individual persons who follow their own moral principles. He avers that in cases where a moral principle justifies an institution and another contradictorily mandating its violation, a more generic principle is needed. Of course, Gewirth here is leading to the need for the PGC to arbitrate both these justifications, resolving it in accord with respect to one's own generic rights and that of others.³³

In a similar sense, applying the PGC in its indirect justification of social rules mentioned earlier would ultimately resolve conflicting issues in the creation of laws during emergency situations, with actions and policies being justified not only by the Philippine Constitution³⁴ but also by a moral principle that derives its implications from action and its generic features.

Another ancillary issue is Gewirth's position that civil liberties ought to be treated as effective powers. Here, he noted two philosophers - Isaiah Berlin and E.F. Carritt - who provided two ways by which freedom

³³ Gewirth explains the possibility of reconciliation: "More generally, it is possible to reconcile acceptance of the rule of law with the principled violation of a particular law by an appeal to moral criteria which would justify both. Such a reconciliation, however, would require that the rule of law be regarded as conditional rather than as absolute." This is ideally proper, yet governments would rarely adhere to the subservience of law to morality. See Alan Gewirth, "Civil Disobedience, Law, and Morality," in *Human Rights*, 308.

³⁴ A critical distinction can be made here. E.M. Adams avers: "The supreme moral principle, what Gewirth calls the Principle of Generic Consistency (PGC), in its assertoric form (APGC), is: 'Every agent ought to act in accord with the generic rights of his recipients [those affected by his acts] as well as of himself' (152). This, he contends, is derivable from the dialectical form of the principle (DPGC): 'Every agent logically must accept that he ought to act in accord with the generic rights of his recipients as well as of himself' (152). He claims that the APGC follows logically from the DPGC and the premise, 'agents ought to do what they logically must accept that they ought to do' (153)." Even the Philippine Constitution has this dialectical form that necessitates consent of the country's citizenry, establishing that it ought to be obeyed by all, justified in Gewirthian terms as necessary-procedural. Only then can the assertoric form mandating obedience to it can be applied. See E.M. Adams, "Gewirth on Reason and Morality," *The Review of Metaphysics*, 33:3 (1980), 580.

could be construed. The first is what is termed as “negative freedom” or the non-interference of persons or governments to what others would want to do unless they violate certain parameters such as laws or commandments; and the second, “positive freedom” is the ability of persons to potentially fulfill these desires. These distinctions, and others that may follow, are crucial to how freedoms enjoyed by peoples are also considered under pandemic scenarios because the latter provides governments a lot of justifications for the curtailment of rights, and almost every policy that arises from the battle against the virus would raise issues as to how each should balance both power and freedom.

Negligence can come into the picture when the lines of both positive and negative freedoms are applied. An example of this is the question - would government leaders be liable if they would simply restrict freedom during a pandemic but not pro-actively address the poverty of its constituents? The position of Gewirth applies here, even if he was dealing with the constitutional freedoms guaranteed in the United States. He discussed extensively the relations between negative and positive freedoms and showed that allowing a scenario whereby persons are left to their inabilities would constitute having their negative freedom affecting their positive freedoms, even if the latter are enshrined in both in law and policy. He cites the tremendous resources needed to utilize media for the extension of the freedom of speech - he lived way before social media became available for everyone. While his example may have been overridden by the use of the internet, his argument remains relevant.³⁵ In Philippine politics, for instance, while it may have been enacted that there is no discrimination as to who can run for president, the COMELEC’s practice of disqualifying candidates for the lack of resources of a nationwide campaign is similar to Gewirth’s example. In other words, despite negative freedoms given, the

³⁵ Gewirth expounds on this: “The poverty which afflicts sizeable groups in our society and which drastically reduces the effective achievemental power of their civil liberties in the political process derives from a set of humanly-caused institutions which constitute dispositional obstacles to the ability to act on the part of the poor.” See Alan Gewirth, “Civil Liberties as Effective Powers,” in *Human Rights*, 327.

differences in conditions and capacities result in reduction of effective powers and actions.

PGC-BASED PANDEMIC RESPONSES

When the World Health Organization (WHO) gave the directive to governments for aggressive measures to contain the coronavirus discovered way back in December 2019, various governments had to contend with a global threat that needed policies that would naturally restrict movements that would affect all aspects of civil life - travel, economy, conduct of business, health care, and the like. In Gewirthian parlance, these responses have drastic effects on the agents' generic rights of freedom and well-being. Since the spread immediately took effect after the world has vaguely learned of the virus, the academe, including organizations protecting human rights, failed to respond quickly. The shock and awe of the threat, including the fear that this may be able to end the species itself, has created a conceptual hemostasis on the parameters that would define which policies violate human rights and which do not. In a speech given by the United Nations (UN) Human Rights Chief in April 2020, he reiterated that "we must ensure that any emergency measure, including states of emergency, are legal, proportionate, necessary, and non-discriminatory."

In the same month, the UN released some preliminary guidelines as regards the safeguarding of human rights during the pandemic, to wit: first, that while protecting human life is essential, the economic and social impact must be minimized; second, the governments must engage in inclusive responses where no one is left behind; third, the creation of policies must be transparent and participatory; fourth, the objective of policies must be to protect people from the virus; fifth, the global threat must be dealt with through international cooperation;³⁶ and sixth, the

³⁶ The strict rigors of reason are not the only basis by which international cooperation could be effectuated. Arthur Dyek, for instance, argued that human rights are actualized by

recovery plans must make people better than they were before. These guidelines are very much in accord with the PGC. However, in conflicts of rights, it is the latter that can morally adjudicate these issues in practical matters.

National emergency situations are often the bane of the standard applications of human rights practiced under normal circumstances. Even the 1987 Constitution allows the suspension, for instance, of the writ of habeas corpus in cases of invasion, rebellion, or when public safety requires it - the latter being an arbitrary power of the executive up until a concurrence by Congress is mandated. The reason for this is the conflict of rights inherent in the response to these disruptions, and since the act is protective in nature, it is in these situations when communal rights are pitted against individual rights in the most apparent manner. Utilizing the parlance of Scholastic philosophy, the implementor of these measures is forced to determine priorities, confronted by the philosophical debate on whether state-individual relations are governed by a unity of order or by absolute unities - whereby the state functions for the individual or vice-versa, respectively. This distinction is crucial because a mindset that prioritizes individual rights and pro-actively protects these unless their violation is necessary would lead to policies that would maximize tolerance instead of creating restrictions to merely create ideal conditions. The latter blurs the effectivity and efficiency of right restrictions and borders dangerously close to state abuse,³⁷ all at a time when all governments are

moral responsibilities, cultivated by moral bonds, grounded on interdependence, and justified by an ethics of care. See Arthur Dyek, "Grounding Human Rights: Autonomy vs Interdependence," *The Annual of the Society of Christian Ethics*, 6 (1986): 87.

³⁷ Challenges to restrictions were not felt only in the Philippines. Sebastian von Munchow enumerated how complaints against curfew violations are effectuated: "With regard to coronavirus-related restrictions, challenges to curfew constraints can be found in two basic procedures. First, a case could be initiated solely by the act of issuing a fine based on the COVID-19-associated violations (i.e., a caterer who disregarded the ban to host guests). The fine is the means by which the administrative act affects the claimant. He or she may then appeal to the issuing authority at the local level. If the issuing agency sees no legal or factual circumstances to change its stance, then the case would proceed to the first

similarly engaged and would thus be unable to provide political pressure of such violations. It may even be possible that due to the lack of known historical responses to past pandemics, even governments that have sworn to protect rights might have crossed similar lines.

One example of such susceptibility was shown when a curfew violator in the Philippine province of Cavite died after being subjected 300 squats as punishment. Although the implementors were quickly suspended and sanctioned, the policy continued elsewhere albeit lessened due to fears of a repeat. The invariability which Gewirth was trying to avoid with the implementation of policies in accord with the PGC was very apparent in this situation, including the digression from the UN guidelines concerning legal and proportionate punishment. While it seems that there was no intent to harm the violators, implementors are often told to resort to homologous measures, disregarding differences, and capabilities. In a more systemic sense, while the pandemic would allow the necessary-procedural justification of social and political rules, violations of laws must lean towards a proper implementation with the least proportionate loss of freedom and well-being. Harms to basic goods such as life and health ought to be avoided when the same can be done to mere additive or non-subtractive goods and effectuate the same result - such as the fines, community service, or for recidivists, loss of certain privileges afforded to good citizens. Analysis of facts coupled with creativity are important here. Misdemeanor would have varying effects on the spread of the virus - less when a curfew violator, for instance, would walk at night with a mask on, more when a dissenter willingly takes off his or her mask in a crowded area. A greater penalty should be given for violations of political leaders because of the scandal their actions may effectuate. Following the guidelines of the UN and the PGC, studies should be made on these effects, producing penalties with the least harm, and encoded in clear ordinances.

court level." See Sabastian von Munchow, "The Legal and Legitimate Combat Against COVID-19," *Connections*, 19:2 (2020), 52.

In a country like the Philippines, with its people being heterogeneous as regards economic and financial capabilities, the teachings of Gewirthian philosophy on dynamic-instrumental justification - where social and political rules assume inequality and pro-actively moves to restore equilibrium - is appropriate to avoid severe violation of human rights, especially in drastic measures such as service stoppage and lockdowns. Disregarding this distinction would lead policymakers to implement provisions and worse, punishments, without considering the abilities of groups of persons to comply.

The decision, for instance, to limit public transportation would naturally lead workers who commute to struggle in the streets amidst the competition, consequently violating distancing protocols. The stay-at-home mandate suffers the same fate, with the poor who live in shanties with multiple families being unable to withstand the inconveniences of their homes, eventually becoming violators, and being branded by the media as hard-headed. Their rich counterparts, however, comply with the mandate in the comforts of their homes. Following Gewirth's clarification as regards mutuality and community, pro-active equalization measures ought to be put in place before implementation of any policy is put in effect. Studies ought to be made on how every policy would affect every sector of society and distinctions made as to its enforcement. Only after adaptive adjustments are made and ascertainments that violations emanate solely from the will of malefactors could proportionate penalties be imposed.

Hunger is a natural consequence of the policies on stoppages and lockdowns. Certain laws such as those governing mendicancy ought to be suspended and constant provisions of food must always be present in the barangay levels. The PGC's mandate on hunger is parallel with the duty to save and thus actions in this regard are always mandatory especially during pandemic scenarios. Not only is it a basic right to well-being but the intervention ensures the avoidance of further violations of human rights brought about by theft, robberies, or worse, riots. If, for instance, a lockdown is lifted, the poor or those unable to save would not be able to

recover immediately, and thus help must be sustained if the PGC is to be followed.³⁸

With the successes and losses in the battle against the coronavirus, with vaccinations bringing cases down and subsequent mutations raising these up again, creativity had been at work by substituting general lockdowns with granular restrictions. Although these may signal the return to pre-pandemic freedoms, policies that are in accord with human rights must be clarified and stabilized as these may serve as future guides in case the threat returns in other forms.

There are innumerable instances and issues surrounding the moral adjudication of pandemic responses that may or may not have crossed the line from human rights protection to abuse. These lines are ambiguous yet social rules that are justified by the PGC and legal provisions governing these that are in accord with international laws on human rights may serve as guiding posts as to what governments may or may not do despite battling the threat that engulfs mankind today. Since the PGC involves direct and indirect applications, variations in restrictions for persons in different situations and levels of dangers could be rationally applied both in the national and local jurisdictions. This would ensure that such restrictions would not be applied unnecessarily, leading to a proportionate respect not only for lives, but also for rights.

³⁸ Reacting to the objection that the interpersonal duty to rescue cannot be extended to states giving food to another state with hungry citizens, Per Buhn admitted that "Gewirth's argument cannot so easily be extended to justify international duties to aid famine victims. Here the problem is that at least an important part of the control of the famine victims' effective right to well-being is not in the hands of the potential donor countries, but is instead exercised by the undemocratic local governments that often are responsible for the outbreak of the famine in the first place." Even Gewirth has extended the variability of such help especially when the donor state has reasons that their help would lead to dependency. However, if conditions are perceived to be beneficial, the hindrances to the duty to save remains enforceable. See Per Buhn, "Gewirthian Positive Duties Reconsidered," in *Johanssonian Investigations*, ed. Christer Svennerlind, Jan Almang, and Rogvaldur Ingthorsson (Berlin: De Gruyter, 2013), 94.

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