The Human Rights Discourse between Liberty and Welfare

A Dialogue with Jacques Maritain and Amartya Sen
Ethik in den Sozialwissenschaften –
Ethics in the Social Sciences

Edited by
Prof. Dr. Elke Mack
Prof. Dr. Christof Mandry
Prof. Dr. Michael Schramm

Volume 3
The Human Rights Discourse between Liberty and Welfare
A Dialogue with Jacques Maritain and Amartya Sen
“It is justice, not charity, that is wanting in the world.”
Mary Wollstonecraft, *A Vindication of the Rights of Woman* (1792).
Acknowledgements

Over the years, I have researched on the works of two prominent philosophers of human rights. Jacques Maritain, whose life and philosophy are entangled with the human rights history of the twentieth century, provided me with a meaningful foundation on human rights. Then, Amartya Sen brought about a Humean effect of waking me up from my ‘dogmatic slumber’, drawing my attention to the urgent task of human development as well. Thus, my research project evolved in the interface of human rights and human development discourses, which resulted in a human rights-based approach to development. Originally, this book is my doctoral dissertation, which I submitted at the University of Osnabrück in 2016 in collaboration with the University of Münster.

I would like to acknowledge many people who helped to make this book possible. First and foremost, my most profound gratitude goes to Prof. Dr. Marianne Heimbach-Steins, my doctoral supervisor at the University of Münster, for her unwavering support, erudite guidance and great trust. Later, Prof. Dr. Andreas Lienkamp, my doctoral supervisor from the University of Osnabrück, greatly helped me through his expertise and encouragement. The arguments in this book were tested in the doctoral colloquium at the Institut für Christliche Sozialwissenschaften of the University of Münster, and I thank everyone who challenged and motivated me.

I would like to thank Nomos publications, especially Dr. Sandra Frey and Sonja Schmitt for their cordial cooperation. I am very grateful to Prof. Dr. Elke Mack, Prof. Dr. Christof Mandry and Prof. Dr. Michael Schramm for including this book in the series “Ethics in Social Sciences”. My deep gratitude goes to Sr. Sherrey Murphy, O.S.F., not only for her meticulous reviewing of the draft but also for her unfailing concern and devoted support. I owe special thanks to Dr. Paul Deselaers, who faithfully accompanied my life with his insights and advice. I am indebted to the diocese of Münster for the scholarship for my doctoral studies as well as the partial financial support in the printing of this book.

In Münster, I stayed at the Franciscan Sisters’ Motherhouse and I would like to acknowledge their hospitality and friendliness. Dr. Rudolf Kösters, Dr. Tanja & Dr. Thomas Liedtke, Gerhard Mallmann, Bärbel & Reinhard Müllenhoff, Sr. Margarete Ulager O.S.F., Prof. Dr. Heinz Wieland, Julia
Acknowledgements

Zehe and many more friends in Germany constantly supported my research project in various ways. I wish to acknowledge my deep gratitude to Pierina Wasescha for her motherly affection and concern. My final thanks go to my family members, the Vincentians and friends in India for their continued support and encouragement. I dedicate this book to my loving mother for her unfailing love and care.

Münster
September 2017
Table of Content

Abbreviations 13

GENERAL INTRODUCTION 15
1. The Context: Increasing Inequality in a Prospering World 15
2. The Problem: The Question of Liberty Rights and Welfare Rights 16
3. The Objective: Mutual Enforcement of Human Rights and Human Development 18
4. The Relevance of the Comparative Study 21
5. Some General Information about the Structure and Style of the Book 30

A. MARITAIN’S HUMAN RIGHTS DISCOURSE 33
I. The Shaping of a Political Philosopher 33
   1. Socialist Influences: The Young Maritain 33
   2. Conversion to Metaphysics: Henri Bergson 34
   3. Conversion to the Catholic Faith: Léon Bloy 37
   4. The Socialist and Nationalist: Charles Péguy 38
   5. To the Right: Maurras and Action Française 40
   6. To the Left: Emmanuel Mounier and Personalism 43
   7. The Political Philosopher and Diplomat: The Later Maritain 46
      Conclusion 48

II. The Founding Principles of Maritain’s Political Philosophy 49
   1. The Human Being 50
   2. The Social Being 56
   3. The Knowing Being 72
   In lieu of a Conclusion: Towards a Personalist Political Theory 77
**Table of Content**

III. The Idea of Human Rights 78  
   1. Maritain’s Conversion to Human Rights 79  
   2. Natural Law: The Rational Foundation of Human Rights 89  
   3. Maritain’s Characterization of Human Rights 96  
   Conclusion 117  

IV. An Appraisal of Maritain’s Human Rights Discourse 118  
   1. A Practical, Secular and Plural Approach to Human Rights 119  
   2. The Concept of Progression 132  
   3. The Elevation of the Human 139  
   4. An Enormously Influential Approach to Human Rights 147  
   Conclusion 163  

V. Some Limitations of Maritain’s Treatment of Human Rights 164  
   1. Spiritualism 164  
   2. Liberalism 169  
   Conclusion 180  

B. AN INTERIM APPRAISAL: From Maritain to Sen 182  
   1. The Legacy of Scholastic Economics and Sen’s Rediscovery  
      of the Tradition of Political Economy 182  
   2. From Integral Humanism to Integral Development 188  

C. SEN’S HUMAN RIGHTS DISCOURSE 196  
   I. The Entanglement of Biography and Philosophy 196  
      1. Two Anamnestic Moments 197  
      2. The Idea of Justice and the Question of Welfare and Liberty 207  
         Conclusion 216  
   II. Sen’s Twin-Motif of Liberty and Welfare 217  
      1. The ‘Possibility’ of Liberty and Welfare 217  
      2. Liberty: Sen’s Critique of Economics 222  
         Conclusion 255
### Table of Content

#### III. The Idea of Human Rights
- 1. The Nature and Content of Human Rights 256
- 2. Universality and Viability of Human Rights 276
- 3. Obligations 293
- 4. Human Rights as Social Goals 303
- 5. The Indivisibility and Interdependence of Human Rights 324
- Conclusion 347

#### IV. An Appraisal of Sen’s Human Rights Discourse
- 1. A Paradigm Shift in the Conceptualization of Development and Human Rights 350
- 2. The Integration of Human Development and Human Rights 352
- 3. The Right to Development as a Vector of Rights and Processes: Sengupta 355
- 4. The Integration of Human Rights and Human Development: Sen 374
- Conclusion 380

#### V. Some Limitations of Sen’s Human Rights Discourse
- 1. The Overestimation of *animal rationale* 381
- 2. The Insufficient Treatment of Structural Causes of Injustices 386
- 3. The Insufficient Treatment of Group Rights 391
- 4. The Insufficient Treatment of Ecological Issues 396
- 5. The Absolutization of Political Freedom 401
- 6. The Risks of Total Non-Essentialism 404
- Conclusion 407

#### D. A COMPARISON OF MARITAIN’S PERSONALISM AND SEN’S HUMANISM
- I. Some Common Characteristics 408
  - 1. Old Answers to New Questions 408
  - 2. A Broad Anthropology 415
  - 3. A Synthetic Approach 424
  - 4. The Methodology: Realization-focused Comparative Approach 430
- II. Some Commonalities in the Human Rights Discourses 442
  - 1. Human Rights as Ethical Claims 442
  - 2. The Universality of Human Rights 446
  - 3. The Indivisibility of Human Rights 449
Table of Content

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>451</th>
</tr>
</thead>
<tbody>
<tr>
<td>GENERAL CONCLUSION: The Contours of an Effective Social Ethics</td>
<td>452</td>
</tr>
<tr>
<td>1. Liberty</td>
<td>453</td>
</tr>
<tr>
<td>2. Welfare</td>
<td>458</td>
</tr>
<tr>
<td>Conclusion</td>
<td>461</td>
</tr>
<tr>
<td>Bibliography</td>
<td>463</td>
</tr>
</tbody>
</table>
### Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>BJP</td>
<td>Bharatiya Janata Party (Indian People’s Party)</td>
</tr>
<tr>
<td>DH</td>
<td>Dignitatis humanae</td>
</tr>
<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
</tr>
<tr>
<td>GS</td>
<td>Gaudium et spes</td>
</tr>
<tr>
<td>HDI</td>
<td>Human Development Index</td>
</tr>
<tr>
<td>HRBAD</td>
<td>Human Rights-Based Approach to Development</td>
</tr>
<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
</tr>
<tr>
<td>MDGs</td>
<td>Millennium Development Goals</td>
</tr>
<tr>
<td>Oxfam</td>
<td>Oxford Committee for Famine Relief</td>
</tr>
<tr>
<td>RtD</td>
<td>Right to Development</td>
</tr>
<tr>
<td>SDGs</td>
<td>Sustainable Development Goals</td>
</tr>
<tr>
<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
</tr>
<tr>
<td>UNESCO</td>
<td>United Nations Educational, Scientific and Cultural Organization</td>
</tr>
<tr>
<td>UNU-WIDER</td>
<td>United Nations University World Institute for Development Economics Research</td>
</tr>
<tr>
<td>Vatican II</td>
<td>Second Vatican Council</td>
</tr>
</tbody>
</table>
GENERAL INTRODUCTION

1. The Context: Increasing Inequality in a Prospering World

This book studies the idea of human rights according to two significant streams in political philosophy, namely the personalism of Jacques Maritain (1882–1973) and the capability approach of Amartya Sen (*1933). The context of this study is the alarming pervasiveness of extreme poverty in our increasingly prosperous world, especially the scandal of hunger. A recent Oxfam report, “An Economy for the 1%” (2016), reveals the disturbing dimension of the inequalities in a world where 1% of the population owns more wealth than the other 99%.¹ Thomas Piketty argues that free market capitalist economies have a natural tendency to incubate highly unequal distributions of income and wealth. It challenges the conventional economic wisdom that inequalities would shrink over time.² In a similar vein, Thomas Pogge outlines the gravity of the crisis. “Half of humankind are [sic] still mired in severe poverty, sharing less than 2% of a now vastly more abundant global product. And one third of all human lives still end in a premature death from poverty-related causes. This massive persistence of severe poverty is the great scandal of this globalized civilization and threatens its promised gains in peace, stability, and prosperity.”³ Thus there is a demanding challenge to overcome the prevailing apathy that overlooks poverty as a non-issue. Referring to the glaring inequalities in Indian society, Drèze and Sen emphasized “the need for impatience” that truly leads to actions.⁴

Fighting against poverty is a global task that must go beyond the Westphalian model of national boundaries, which are legitimated by contractarian theories. There is now an emerging interest in ‘global’ justice. Charles Beitz attributes this phenomenon to two facts: “We face an assortment of urgent practical problems that are not likely to be solved, if they can be solved at all, without concerted international actions”, and “there is [...] the emergence of a nascent global capacity to act”. This book appeals to human solidarity to embolden our ‘global capacity to act’ for shaping a better world.

2. The Problem: The Question of Liberty Rights and Welfare Rights

Liberty and welfare are essential to human dignity and well-being; however, in the prevalent political debates they have often been presumed to be incompatible. Already at the preparation of the 1948 Universal Declaration of Human Rights (UDHR) there were polarizing ideological binaries; one, favoured by the United States, prioritizes civil and political rights (fostering democracy, free markets, etc.), and the other, supported by the Soviet Union, prefers economic and social rights (fostering just distribution, social security, etc.). The UDHR, however, embraced a holistic approach to human rights – it did not conceptualize human rights in the prevailing liberal language that primarily considered human rights in minimalist constraint-based language. Unfortunately, due to Cold War antagonisms, the original integral vision of the UDHR was later put asunder, giving way to two separate treatises, thus splitting liberty and welfare concerns. Mary Ann Glendon, an expert in the history of the UDHR, makes a fitting observation about the fate of this declaration.

To the disappointment of the framers, however, the adoption of the Declaration was followed by nearly two decades during which the international human rights project floundered and stalled amidst Cold War politics. When the Declaration woke up, so to speak, it was like Rip Van Winkle, who went to sleep for twenty years and awakened to find himself in a world from which his friends had disappeared, and where no one recognized him. By the late 1960s, the architects of the Declaration were mostly departed or inactive, and in their place, was forming an extensive human rights industry. The giants of the industry are organizations heavily influenced by the ideas about rights,

---

2. The Problem: The Question of Liberty Rights and Welfare Rights

both good and bad, that were developed in the American judicial rights revolution. The Declaration itself began to be widely, almost universally, read in the way that Americans read the Bill of Rights, that is, as a string of essentially separate guarantees. Alas, that misreading of the Declaration not only distorts its sense, but facilitates its misuse.6

Thus, the integral project of the UDHR was reduced to an East-West problem. American liberals were not very enthusiastic about the UDHR, and European conservatives, especially Christian Democratic politicians, found it mostly as a weapon to counter socialism, particularly the godless and anti-liberal communism.7 This was built on the strategic geopolitical tension between the conservative, religious, and capitalist West, and the leftist, secularist, communist East. The dominant Western human rights discourses wrongly dismissed social and economic rights as leftist agenda, whereas many ‘Eastern’ countries became sceptical about the ‘Western’ agenda of human rights, which is fixated on liberty.

This was not only a political, but also a philosophical fissure that was related to the vindication of rights. The ‘clash of philosophies’ at the University of Harvard reveals this prevalent tension. Harvard Professor Rawls’ magnum opus A Theory of Justice (1971) was an attempt to reconcile both liberty and welfare concerns in political philosophy; his first principle affirmed liberty and the second principle welfare concerns. But debates took divisive routes as Robert Nozick’s Anarchy, State, and Utopia (1974) gives complete priority to liberty, whereas Michael Walzer’s Spheres of Justice (1983) attempts to be sensitive to the welfare issues as well, challenging Rawls’ temptation to lump together all goods into primary goods. Another Harvard communitarian philosopher, Michael Sandel, challenged the liberal agenda with his Liberalism and the Limits of Justice (1982).

This book focuses on another Harvard philosopher, Amartya Sen, who attempts to reconcile these two camps, the champions of liberty and welfare. His efforts culminated in his magisterial work The Idea of Justice

(2009), in which he considers capability as the *equilisandum* of justice. His engagement with both human development and human rights integrates liberty and welfare concerns in his ‘goal rights system’. This is actually an amalgamation of two seemingly irreconcilable streams in philosophy, namely deontology and consequentialism, in the capacious space of *actual* life of human persons, thus focusing substantive freedoms. It has significantly contributed to overcoming the exaggerated gulf between the so-called ‘first’ and ‘second’ generations of human rights.

3. The Objective: Mutual Enforcement of Human Rights and Human Development

We are now witnessing a paradoxical phenomenon of the globalization of nationalism and populism, which jeopardizes the democratic basis of civil society by spreading deep cynicism about politics. The authoritarian juggernaut is moving even through the ‘liberal democratic’ West. The most poignant aspect is that it happens at the cost of many valuable liberty rights. In fact, in many countries liberty is either hollow or ailing. Though the starting point of this work is the relative neglect of welfare rights in the human rights discourse, it is equally concerned with the intrinsic value of liberty rights, as it is persuasively defended by Sen.\(^8\) His deep interest in the twin-motif of liberty and welfare culminated in his most important statement on development, *Development as Freedom* (1999), that equates development with freedom. This theoretical framework contributed substantially to the promising integration of human rights and human development that culminated in the Vienna Declaration of the Right to Development (RtD) in the year 1993. He successfully established that both ‘food’ and ‘freedom’ are not incompatible; rather they enforce each other mutu-

---

ally.\textsuperscript{9} This general pattern of ‘liberty + welfare’ or ‘liberty = welfare’ in a ‘goal rights system’ envisions human rights as social goals to be achieved. This is no more a wishful thinking; it is now widely acknowledged through the Millennium Development Goals (MDGs) and the new target of Sustainable Development Goals (SDGs), which consider human development in terms of global social goals to be achieved collectively.

Sen’s theoretical framework is diametrically opposed to the ‘all or nothing’ world view that tends toward binary divides;\textsuperscript{10} here, freedom and welfare do not exclude each other. Liberty is not a monopoly of liberalism nor libertarianism and welfare not a monopoly of economists. This book argues that the poor are not passive patients who are benevolently administered by strong authoritarian leaders, who often bulldoze the liberty of the people in the name of development; rather they are agents who are in charge of their own fate. Liberty is not a luxury for the poor but an important ally in the struggles for welfare. Liberty and welfare are not only compatible, but they are also mutually complementary in a broad human rights discourse. The integration of rights and development envisions broadening the notions of liberty and obligation, thus incorporating both negative and positive elements.

The prevalent human rights discourses fail to establish the viability of ‘new’ rights like the right to food, to basic medical care or to education; these rights are often dismissed merely as ‘rights-rhetoric’ or moral platitudes out of heart-warming sentiments. Some approaches acknowledge our ‘moral obligation’ to help others, but they fail to satisfactorily substantiate that the poor have a correlate ‘right’ to food, water or medicine. It limits such important human rights in the narrow domain of sporadic generosities of ‘imperfect’ obligations. In her human rights discourse, Mary Wollstonecraft envisioned a paradigm shift from charity to justice: “It is justice, not charity, that is wanting in the world.”\textsuperscript{11} The challenge is to ac-


cept poverty as a ‘justice’ problem (i.e., a human rights problem). Pogge outlines:

Today we are more likely to say that the very poor have a human right to basic necessities, or even that their basic human rights are violated. This change of language appeals to many of us as we can now picture the poor not as shrunken wretches begging for our help, but as persons with dignity who are claiming what is theirs by right. But it is still only a new form of words, a rhetorical triumph: one in a long series of paper victories. The real task is to end severe poverty on this planet. And in this task, we are failing badly, as illustrated by some 300 million premature deaths from poverty-related causes since the end of the Cold War.\(^\text{12}\)

It was the human toll of World War II that led to a soul-searching and re-orientation of the united world. Today, the scandal of poverty is not less tragic as it causes 18 million deaths per year, as Pogge notes.\(^\text{13}\) We desperately require another global soul-searching in the face of extreme global poverty, in order to move out of complacency and comfort. The relative neglect of welfare rights is also manifested in the selective perception. Human rights violations related to liberty rights, for example, freedom of speech, are fiercely condemned, whereas severe violations of human rights related to welfare rights, such as extreme poverty and deprivations, often go unnoticed.

Mary Robinson, the former UN High Commissioner for Human Rights, effectively called upon the conscience of humanity, identifying extreme poverty as a violation of various human rights. “Extreme poverty to me is the greatest denial of the exercise of human rights. You don’t vote, you don’t participate in any political activity, your views aren’t listened to, you have no food, you have no shelter, your children are dying of preventable diseases – you don’t even have the right to clean water. It’s a denial of the dignity and worth of each individual which is what the Universal Declaration proclaims.”\(^\text{14}\) Meanwhile, extreme poverty is generally considered as a human rights problem in international discourse, which is reflected in the strategies of various UN bodies and international organizations. Sen has greatly contributed to the integration of human rights and human development by highlighting their mutuality. Development policies followed

by many countries are abysmally inadequate. This book tries to make value additions to the process of development that requires a larger discourse on human rights as well. Human rights, for Sen, are not merely minimal standards; rather they are conceived as social goals to enhance human life, thus being well-reflected in the overarching aim of eradicating extreme poverty through programmes like MDGs and SDGs.

4. The Relevance of the Comparative Study

Maritain may seem to be almost obsolete; in contrast, Sen appears very contemporary. Hence, in the very outset it is required to state the rationale behind this comparative study. Though many commonalities will be outlined in the course of the book, I would like to underline three motives that make this comparative study relevant.

4.1. The Interplay of the Maritain-Rawls-Sen Triad

John Rawls’ *A Theory of Justice* is widely recognized as the most groundbreaking work in political philosophy in the twentieth century, laying the foundation to his famous theory of “justice as fairness”. Interestingly, Maritain is often identified as the forerunner of Rawls. Charles Taylor, for instance, conceives his notion of “unforced consensus” on human rights similar to Rawls’ “overlapping consensus”, and he immediately gives credit to Maritain for such a consensus-based approach by referring to Maritain’s decisive contribution in the formative process of the UDHR: “We would agree on the norms while disagreeing on why they were the right norms […]. The idea was already expressed in 1949 by Jacques Maritain.”

---


Martha Nussbaum, referring to Maritain’s *Man and the State*, singles him out as “the first example of political liberalism in the Western tradition”, practically calling him the forerunner of Rawls.\(^{17}\) Besides, she identifies him as “one of the first architectures of Universal Declaration”, who spelled out the idea of “dignity” that entails a value, and not a mere price tag.\(^{18}\) She places her own liberal political philosophy in the liberal tradition of Maritain, who, according to her, first introduced the idea of an overlapping consensus in the Rawlsian sense. “My current political-liberal views lie closest to those of Maritain, who was both one of the most distinguished international human rights thinkers after the war and, also, or so I would argue, the first political liberal, in that he introduced into neo-Aristotelianism the idea of an overlapping consensus among believers in different comprehensive conceptions of human life.”\(^{19}\)

Despite such esteemed admiringes, Maritain is unfortunately reduced to the caricature of a conservative Thomist. This is partly related to some of his own stances, for instance, his early antimodern conservative writings and associations and the disappointments caused by one of his final works, *The Peasant of the Garonne*, which seemed to be his return to the conservative camp. In contrast to that, this book is a reappraisal of an underestimated Maritain, a Maritain who made lasting contributions to political liberalism. At the same time, I am cognizant of the legitimate reservations concerning the appropriateness of designating his personalism ‘liberal’ philosophy, especially in view of the reality that he developed his philosophy in opposition to the dominant liberal individualist philosophies. Actually, Maritain speaks from two vantage points, one substantial and theoretical, and the other procedural and pragmatic. It is obvious in the UNESCO book: in the “Introduction”, a pragmatist Maritain proposes a practical modus operandi in view of a global collective praxis, and in the


chapter titled “On the Philosophy of Human Rights”, a personalist Maritain ‘confesses’ his unfailing confidence in Thomist philosophy. They need not be necessarily considered as antipodes; it simply manifests the inevitable tension between confessional and common languages.

Nussbaum notes that this dividedness of the same person is not defeatist. “Maritain argues that his conception, though supported in his own mind by metaphysical Catholic ideas of the soul, does not require that metaphysical support and could be endorsed by anyone, theist or atheist, who is prepared to give a certain non-negotiable place to the idea of human dignity.”20 As a true Thomist, his personalism is essentially theistic. While Rawls is concerned with generating a ‘consensus’, Maritain is open for ‘plural grounding’, which indeed is closer to Sen’s approach. The openness to the plurality of justifications and convictions brings the theist Maritain into a fruitful dialogue with the atheist Sen.

Maritain’s lasting legacy is identified not so much in the speculative philosophy but in “democratic pluralism and human rights”.21 Interestingly, both Maritain and Sen locate human rights in the space of ‘freedom’. Maritain notes: “[The world] will have to establish itself upon the affirmation, the recognition and the victory of all the freedoms, spiritual freedom, political freedom, social and working freedom.”22 He insists that “a genuine democracy implies a fundamental agreement between minds and wills on the bases of life in common; it is aware of itself and its principles, and it must be capable of defending and promoting its own conception of social and political life; it must bear within itself a common human creed, the creed of freedom.”23 Despite their different accentuation and nuances of the concept of freedom, the consensus of Maritain and Sen on the fundamental value of freedom is a fertile starting point for any human rights discourse.

GENERAL INTRODUCTION

There are already a few works that compare the Maritain’s personalist philosophy with Rawls’ political liberalism. However, so far, there is no work that brings Rawls’ forerunner in dialogue with Rawls’ ‘benign critic’, Sen. This book is aimed to fill this research gap. As the collaboration of the quasi-essentialist Aristotelian Nussbaum and the non-essentialist economist Sen was obviously fruitful, a comparison of the personalist Maritain and the humanist Sen can also bring about an interesting interface of principles and praxis. Though I argue that Sen’s capability liberalism is more comprehensive than Maritain’s personalist liberalism, this study gives credit to Maritain’s significant pioneering contributions to the evolution of a liberal democratic society. Reading Maritain’s works more than half a century later, it is really amazing to note the pioneering role he played in shaping modern political liberalism and in the aggiornamento of the Church.

4.2. The Genesis of Human Rights

Though the topic of human rights is now obvious and ubiquitous, it has a long history of genesis and development. Unlike Samuel Moyn’s thesis that considers the 1970s to be the pivotal fulcrum of human rights history, which is related to the global politics of that period, I understand the human rights discourse as a progressive and cumulative historical process within a longer genealogy, similar to what Maritain calls the law of pro-

gressive prise de conscience,\textsuperscript{26} which underlines the historical evolution of human moral consciousness. Major changes in the perception of human rights are brought about by two watershed events in the twentieth century, namely World War II and the Cold War. Both Maritain and Sen stand in the seamless continuum of these historical moments, each constituting a real kairos.

Maritain belongs to the epoch of post-World War II soul-searching of humanity that resulted in the Universal Declaration of Human Rights. He personally contributed to the formative process of this most important political and ethical project of the twentieth century. Among his other responsibilities, he served as the head of the French delegation and president of the General Assembly of UNESCO in 1947. He was the editor of the UNESCO book, which was supposed to study philosophical foundations of the idea of human rights. In the process of post-war reorientation, then dominant philosophical streams of various existentialist, neo-Kantian and natural law theories had all the chance of being a reasonable candidate in substantiating human rights. Nevertheless, the philosophy of personalism surprisingly gained great acceptance in UDHR, despite its explicit spiritual and often religious overtones. The personalist conception of the human person that appeals to the sacredness of the human beings has thus become the essence of post-Holocaust wisdom. Moyn recently called attention to the rather ignored philosophy of personalism by acknowledging its role in UDHR’s “epoch-making reinvention of conservatism”.\textsuperscript{27} “The increasing Christianization of human rights after World War II”\textsuperscript{28} cannot be exclusively attributed to Maritain, because the personalist movement has been manifold. Yet his substantive contributions are beyond doubt.

Sen, for his part, stands in the post-Cold War period of human rights history, which regained the forgotten original integral vision of the UDHR, thus culminating in the Vienna Declaration of human rights (1993) that finally reached a consensus about the Right to Development. Decolonization and the end of the Cold War have substantially changed the way human rights are conceptualized. Going beyond cold-war polarization of the

\begin{itemize}
\item \textsuperscript{28} Moyn (200): \textit{The Last Utopia}, 74.
\end{itemize}
so-called first and second-generation rights – liberty and welfare rights – Sen’s human rights discourse demonstrated that all rights are interdependent and mutually reinforcing. His ideas are greatly assimilated by various bodies of the United Nations, especially the United Nations Development Programme.

What unites *post-World War II* and *post-Cold War* phases of human rights history – Maritain and Sen – is the deep concern for the human person. Maritain’s personalism and Sen’s humanism agree upon the fundamental idea of human dignity. Sen outlines:

The Universal Declaration of Human Rights correctly noted that “disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind.” It went on to make the resolute affirmation that the world would henceforth stand up in defense of “the inherent dignity” and “the equal and inalienable rights of all members of the human family,” identifying these rights as “the foundation of freedom, justice and peace in the world.” The document was an expression of strong feeling and powerful conviction, but it also made a significant contribution to the world of ideas.29

Though the notion of ‘natural’ rights has a long genesis, it was concretely articulated in the modern period by Hugo Grotius (1583–1645) in the context of international jurisprudence.30 The shift of focus from ‘natural’ rights to ‘human’ rights kept aside the difficult questions about the content of human nature, as well as the source of rights, thereby focusing more on the right-holders and their inviolability. A consensus on the idea of human dignity may not be possible in view of the enormous pluralism existing in the world. At best, it can be understood as our equal moral status on the basis of our shared humanity. In spite of legitimate disagreements about the idea of human dignity and the justification of human rights, the UDHR gained universal recognition and relevance. Glendon notes: “The United Nation’s Universal Declaration of Human Rights of 1948 is the single most important reference point for cross-cultural discussion of human freedom and dignity in the world today.”31

30 Grotius emphasized the idea of natural rights in his famous *De Jure Belli Ac Pacis* (The Rights of War and Peace) in the year 1625.
4.3. The Justification of Human Rights

On the one hand, the American Declaration of Independence and the French Declaration of Rights of Man consider human rights as self-evident; on the other hand, there are the utilitarian impossibility of human rights as expressed in Jeremy Bentham’s contemptuous rejection of them as “nonsense” or the communitarian revulsion to human rights as manifest in Karl Marx’s infamous rejection of human rights as “the rights of egoistic man”. In view of such philosophical and political polarizations, the justification of human rights was a formidable task for the drafting committee of the UDHR. The Declaration was, in that sense, a negotiated text, and it took years to get a broader recognition to all categories of human rights.

Beyond the cosiness of self-evidence and total rejection, we are confronted with the challenge of reasonably justifying the viability of human rights. Sen’s capability approach is neither a finished theory nor a magical formula; rather it is a reasonable “framework of thought, a mode of thinking”\textsuperscript{32} for the assessment of social states. This study makes use of his framework of a “realization-focused comparative approach” as an interpretative key to compare both Maritain and Sen. This outline entails two components: a comparative approach to agree on some common principles of action and a realization-focused agenda for the sake of praxis.

4.3.1. A comparative approach to a practical agreement on principles of action: liberty

Both Maritain and Sen establish their human rights discourses on the normativity of human person – Maritain on the dignity of the person and Sen on the actual life of human beings. They manifest substantial similarities in their methodology of a comparative approach in agreeing on some common principles of action. The identification and vindication of principles are an epistemological process related to the nature and acquisition of moral knowledge. Sen essentially champions a discursive method of arriving at shared principles. Though Maritain is deeply a Thomist, he turns out

to be a pragmatic philosopher in his political philosophy. The agreeing upon human rights, according to him, is “a collective effort of comparing, recasting, and perfecting” on the basis of analogical similitude. It is not very different from “the procedure of open and informed scrutiny through public deliberation”, as envisaged by Sen. The interface of Maritain’s search for a practical agreement without being lost in the pursuit of doctrinal consensus, and Sen’s comparative justice in a nyaya structure can be a fertile soil for a meaningful conceptualization of human rights. Such a pragmatic approach is required to overcome many maladies that plague our world today.

4.3.2. A realization-focused approach: welfare

Another motif underlying this book is a genuine interest in the praxis, i.e., a human rights discourse that is focused on the realization. Maritain’s personalism was very successful in defining and defending the idea of human dignity. However, he is limited in two ways. Firstly, his characterization of human dignity only marginally encompasses welfare concerns. Secondly, he does not provide a theory that is directly interested in the realization, i.e., praxis. In regard to the UDHR, Sen notes the chasm between the principles and the praxis. “And so the Universal Declaration of Human Rights, with its powerful reasoning, continues to serve as strong ammunition for social movements and agitations that defend the lives and freedoms of the ill-treated, the excluded, the violated, and the wretched. The force of that visionary affirmation is still empowering. Its work is not yet done.”33 Implementing the ideals of the UDHR in our world of appalling injustices and massive poverty remains an unfinished task.

4.4. Towards the Major Argument of the Book

Both Maritain and Sen experienced the atrocities of World War II – Maritain in exile in the United States and Sen as a little boy in the form of the Bengal Famine that struck the Bengal province of pre-partition India following the Japanese occupation of Burma in 1943, killing three million


28
people. In a rather affluent Europe, Maritain diagnosed a spiritual deca-
dence caused by ‘statolatory’, and Sen worried about the factors that de-
nied the starving people an entitlement to food. This sheds light on why
Maritain harps on the ‘primate of the spiritual’, while Sen always insists
on ‘empowering the poor’. Maritain’s description of human dignity in
scholastic metaphysical structures often fails to encompass its existential
demands which require that the dignity of human person has to be realized
in concrete social, economic and political spheres of life. He is chiefly
concerned about a moral and spiritual transformation of humanity. This
book argues that Maritain, as well as the modern scholasticism in general,
neglected the rich heritage of political economy, which evolved in the tra-
dition of scholastic moral philosophy engaging with questions of justice
and well-being. Maritain’s liberalism, combined with a sort of spiritualism
and moralism, only insufficiently engaged with the actual life of the peo-
ple.

Sen’s forays into the heritage of political economy, especially his
rereading of the so-called father of capitalism, Adam Smith, situating him
back into the prehistory of modern economics, resulted in a reinvention of
a welfare economics, making it effectively committed to human flourish-
ing and social justice. His redefinition of the notion of well-being in the
space of capability brought attention to the non-economic elements of de-
velopment as well. Sen thus stands as a ‘missing link’ between scholastic
economics and modern welfare economics. His effective conjunction of
deontology and consequentialism successfully combined the demands of
welfare and freedom. His ‘goal rights system’ provides an effective theo-
retical structure for reimagining the foundations of current human rights
discourse, since it entails the normative strength of human rights discourse
(value) and the operational advantage of human development framework
(realization). Welfare is not merely about economic prosperity, nor are hu-
man rights only about liberty rights. Liberty is inalienable to the notion of
well-being, and welfare is likewise essential to human dignity. Sen’s ‘real-
ization-focused’ approach is primarily concerned with “the significance of
human lives”, focusing on what actually happens to human life. As social
arrangements and individual well-being are measured in the space of capa-
bility, all categories of freedom gain significance – positive and negative
freedom, but also instrumental and intrinsic freedom. The acknowledge-
ment that the notion of human dignity is not merely an abstract or ethereal
metaphysical concept but an existential reality, which is entangled in the
contingencies of history, demands that Maritain’s ‘integral humanism’
must be augmented by Sen’s ‘integral development’. The human rights discourse requires not only negative protections but also positive flourishing – civil liberties as well as social and economic entitlements. Besides, human rights are to be taken beyond ideological binaries – it is neither an East-West nor left-right problem. Beyond sloganeering and politicking, it is a matter of the quality of life that requires both liberty and welfare.

Hence the major argument of this book: A human rights discourse builds on the overarching notion of human dignity. The materialization of human dignity in the actual life situations requires a comprehensive human rights discourse that is concerned with the substantive freedoms of human persons, which are comprised of both liberty and welfare rights. This demands that the significant advancements of Maritain’s ‘integral humanism’ must be complemented with the broader concerns of Sen’s ‘human development’.

Though human dignity is acknowledged as the bedrock of the human rights discourse, it is important not to resort to any thick definition of this concept in order to make room for plural justifications. In its effort to reimagine the foundations of human rights discourse, this book dwells on the interface between human rights and human development and argues that a human rights-based approach to development (HRBAD) can better do justice to the intricate challenge of reconciling the demands of both liberty and welfare, which is required for a meaningful enhancement of human dignity.

5. Some General Information about the Structure and Style of the Book

5.1. Scope, Delimitation and Methodology

Sen’s idea of justice is “a theory of justice in a very broad sense”, which primarily provides a method of social evaluation. Similarly, this book is not chiefly concerned about constructing a well-knit theoretical edifice, rather about evaluating social situations and human conditions in view of enhancing them. However, drawing inspirations from various moral considerations, there is an attempt to outline the contours of social ethics. Sen is quintessentially secular and plural, and Maritain also developed his the-

---

oretical framework primarily as a “philosopher” to be in dialogue with people of all creeds and cultures. Taking into consideration the large corpus of both Maritain and Sen, this book limits itself to the works that are immediately relevant to political philosophy. All works of Maritain will be studied only in their English translations—some of them are originally published in English. This book follows a comparative-analytical methodology that makes comparison across two significant streams of philosophical traditions, Maritain’s personalism and Sen’s capability approach.

5.2. The Structure of the Book

The book is comprised of two major parts; the first part (A) deals with Maritain’s human rights discourse and the second part (C) with Sen’s idea of human rights. Each part includes some biographical information and significant formative influences followed by an overview of their general theoretical foundations. Then, their human rights discourses are discussed in detail, followed by a positive evaluation that gathers their strengths and a negative evaluation that draws attention to their shortcomings. An interim appraisal (B) hinges the two major sections, A and C, and manifests that Maritain’s personalism needs to be complemented by Sen’s capability approach. The third major part (D) compares their human rights approaches, primarily focusing on their commonalities but without missing vital differences. “The General Conclusion” looks forward to identifying prospects for a meaningful human rights discourse within the framework of social ethics.

5.3. The Language

It is genuinely attempted to use a gender-sensitive inclusive language. Maritain is the child of his time; he does not follow an inclusive language, which will be explicit in the citations from his writings. Sen is very gender-sensitive. He notes that the exclusive use of ‘he’ or ‘she’ is equally sexist, while using ‘he or she’ everywhere and every time is verbose, cumbersome and ugly. His strategy is to use both ‘he’ and ‘she’ interchange-

GENERAL INTRODUCTION

ably. This book tries to use neutral expressions as far as possible; otherwise, the strategy of Sen is followed. Besides, this book does not follow a strict separation between British and American English. In his book, *The Idea of Justice*, Sen uses American spelling such as, “realize”, “recognize” along with British spelling “behaviour” and “favour”. The same elasticity is followed in this book.

5.4. Sen’s Name, Editions and Bibliography

There exist some variations in Sen’s name. Though some of his earlier works carry the name Amartya Kumar Sen/Amartya K. Sen, this book consistently uses only Amartya Sen in view of maintaining uniformity. The references to Maritain’s works carry the date of first publication and the edition that I refer to. The books of Sen are mostly cited from the first edition, with very few exceptions. In the bibliography, primary sources of both Maritain and Sen are first catalogued, followed by the secondary literature, which is listed together.

A. MARITAIN’S HUMAN RIGHTS DISCOURSE

I. The Shaping of a Political Philosopher

Maritain lived in a turbulent period between First and Second World War, and between the First and Second Vatican Councils. His intellectual itinerary reflects the complex socio-political developments in this muddled phase of the twentieth century, with all its fluctuations and intricacies in politics and Church. This period characterizes a general dynamic happening in the world at large, particularly in France – a fierce tension between the right and the left in politics and between Catholic ultra conservatives and Catholic liberals in the Church. The French social situation exemplarily manifests these social dynamics, where communists, liberals, socialists, fascists, conservatives and traditionalists fought each other ideologically.\(^{37}\) Here we have some formative influences in the intellectual development of Maritain, which directly or indirectly shaped his political philosophy.

1. Socialist Influences: The Young Maritain

Maritain was raised in a solidly liberal Protestant household. As a teenager, he was influenced by the contemporary political scandal of the Dreyfus Affairs. He declared: “I will be a socialist and live for the revolution.”\(^{38}\) This reveals an anticlerical, pro-republican attitude. He goes on: “Everything I will think and know, I will consecrate to the proletariat and to humanity. I will use everything to prepare the revolution, to aid the happi-


ness of humanity.”

Contrary to the growing anti-Semitic sentiments in many corners of France, he chose a Russian Jewish émigré, Raïssa Oumansov, as his wife. Interestingly they met up during a ‘social action’ during his philosophy studies at Sorbonne in the year 1900. Just a few weeks before his baptism, he wrote in his Notebook how the mission of the Church was overpowered by the bourgeois materialist selfishness of so many of its members: “The great obstacle to Christianity is the Christians. This is the thorn which pierces me. The Christians have abandoned the poor—and the poor among the nations: the Jews—and Poverty of the soul: authentic Reason. They horrify me.” Thus, Maritain’s later advocacy of human freedom and human rights, especially his stance for the Jewish cause, are already palpable in his early youth.

At the same time, this rebellious student at Sorbonne was intensely disenchanted with the agnosticism and scepticism of prevalent academic positivist philosophy and scientism because they, according to him, failed to address deeper existential issues of life. Both Jacques and Raïssa were perplexed about the question of the existence of God, but the contemporary phenomenalism and materialism, which were marked by spiritual bareness, provided them with no solace. Out of this despair, they vowed to commit suicide within a year if they could not find an answer to the meaninglessness and absurdity of life. This odd mixture of a ‘socialist revolutionary’ and a ‘seeker of the ultimate truth’ reveals the crisis that Maritain was going through.

2. Conversion to Metaphysics: Henri Bergson

Maritain’s encounter with Henri Bergson (1859–1941) provided them with an answer to the uncertainty and absurdity they were facing in life. Bergson’s philosophy revolted against prevailing mechanistic world view, making room for values of motion, change and evolution, thus paving the

---

way for what is later called as ‘process philosophy’. Two original insights of Bergson are consolidated in two important concepts: durée and intuition. In contrast to prevailing Kantianism, Bergson proposed intuition as a form of knowing which arises out of the deepest part of the self and affords a penetrating grasp of being in time (durée), i.e., intuition as a kind of intellectual insight. For him intuition was a potential vehicle through which he attempted to extend knowledge to the deepest recesses of the self and the universe. What changes, and change itself, cannot be ultimately grasped by the instruments of positive science; a true science, for Bergson, must penetrate the inter-unity of beings in change, time and existence; a true philosophy must grasp the durée of existence. This implies that rational truth is partial and must go beyond mechanistic and positivistic science. Thus, establishing “the superiority of a true philosophy of intuition over a science of reason”, he reformulated “the cultural polarizations between rationalism and Romanticism”.

At a time when scientism claimed that only positive science could claim truths, Bergson contended that philosophic intuition is capable of yielding the absolute truth and certainty. He thus postulated the immense possibility of metaphysics. The lectures of Bergson gave Jacques and Raïssa a “sense of the absolute”, introducing them to the possibility of a metaphysical solution to the liberal enigmas, which plagued them, by assuring the possibility of truly knowing the reality – the absolute – through

---


44 “In the mind of the listeners engaged with agnosticism or materialism”, says Maritain, “the worth and dignity of metaphysics was (sic) revived. To the minds brought up in the most depressing pseudo-scientific relativism, it was said: ‘it is in the absolute that we live and move and have our being’”. “Bergson sought to overcome”, he continues, “the false cult of scientific experience, the mechanistic and deterministic experimentalism which a philosophy of vulgar simplification claimed to be necessary for modern science”. Maritain, Jacques (1944): Redeeming the Time, London: Geoffrey Bles, The Centenary Press, 47.

} Bergson belonged to the romantic tradition that prioritized intuition over the functions of reason and intelligence. And in that sense, he was less a social philosopher.\footnote{Cf. Shklar, Judith (1958): “Bergson and the Politics of Intuition”, \textit{The Review of Politics}, 20(4), 635–636.

} Though Maritain had reservations about the direction of Bergson’s metaphysics, he considers his \textit{genuine intellectual intuition} to be of central importance.\footnote{Cf. Maritain (1944): \textit{Redeeming the Time}, 49.

} This intuitionism bears a ‘latent spiritualism’, which is also manifest in the fact that the spiritual element in the human beings gains precedence in Bergson’s ethics. John DiJoseph argues that the spiritual intuition was “roughly analogous in concept to Maritain’s person”. Besides, his idea of ‘duration’ was analogous to the notion of the spirit.\footnote{Cf. DiJoseph, John (1996): \textit{Jacques Maritain and the Moral Foundation of Democracy}, Lanham, New York, etc.: Rowman & Littlefield Publishers, 10–11.

} In 1910 Jacques and Raïssa started reading Thomas Aquinas’ \textit{Summa Theologica}, and Maritain began criticizing Bergsonian Philosophy in the light of the philosophy of St. Thomas. All of a sudden, he became a believer and a Thomist – a shift from a Bergsonian philosophical religion to the personal God in Jesus Christ. His first book \textit{La Philosophie Bergsonienne} (1913) is a critique and correction of Bergson’s philosophy in the light of Christianity and Thomism. The crux of his critique was Bergson’s anti-intellectualism. Maritain argued that intelligence should not be separated from intuition to do justice to the fundamental insight of Aquinas, who considered reason to be one of the greatest gifts of God.\footnote{Cf. Maritain, Jacques (1913/1955): \textit{Bergsonian Philosophy and Thomism}, Andison, Mabelle L. and Andison, Gordon J. (trans.), New York: Philosophical Library, 102–116, 132–145. Whether the publication of Maritain’s \textit{Bergsonian Philosophy and Thomism} in 1913 immediately caused the condemnation of Bergsonianism is still disputed. It can be generally presumed that Bergson fell under the suspicion of the Vatican during ‘the Modernist crisis’ as the Church fought against the theory of evolution.

}
Nevertheless, Bergson’s idea of being qua being – the philosophy of existence⁵⁰ and Bergson’s treatment of intuition as super-intelligibility – formed the heart of Maritain’s philosophy.⁵¹ In epistemology, contrary to the rigidity of neo-scholasticism, Maritain’s Thomism possesses Bergsonian qualities of fluidity and dynamism, especially in his aesthetics of creative intuition.⁵² In political philosophy, Maritain assimilated three core ideas of Bergson: democracy as the preferred form of political order, democracy animated by Christianity, and the idea that the spiritual transcends the material in politics.⁵³

3. Conversion to the Catholic Faith: Léon Bloy

It is through the influence of the novelist, critic and polemicist Léon Bloy (1846–1917) that Maritain left the philosophical religion of Bergsonian philosophy and embraced the personal God in Jesus Christ. In 1906 both Jacques and Raïssa received baptism, where Bloy acted as godfather. Bloy led a life of absolute poverty, living completely out of charity. He was a radical Catholic, a resilient critic of bourgeois values and a prophet of authentic Christianity who thundered against France’s rejection of God.⁵⁴ He fought against the complacent bourgeois, who fails to lead an authentic life.⁵⁵ He was anti-modernist to the core, with an apocalyptic attitude to modernity and progress. The impersonal Bergsonian élan vital as the object of intuition was, according to Maritain, inadequate to “satisfy the longings of the human intellect or heart for the fullness of knowledge and love”. And in his life, he realized that “the crucified Logos” is the absolute

⁵⁰ Following Aquinas, Maritain holds that metaphysics deals with being as being (ens inquantum ens), i.e., it “investigates the first principles of things and their highest causes.” Maritain, Jacques (1939/1945): A Preface to Metaphysics: Seven Lectures on Being, London: Sheen & Ward, 27.
that can really satisfy both the intellect and heart.\textsuperscript{56} Thus, beyond the abstract absolute of Bergsonianism, Jacques and Raïssa encountered the human presence of God in the Christian mystery. Both Jacques and Raïssa shared Bloy’s radical Catholicism, which may seem to be a profound denial of the worldly.\textsuperscript{57} Their fidelity and affection lasted until Bloy’s death in 1917 because it was Bloy who had “begotten him [Maritain] in the faith” by introducing him to a wholly unexpected way of perceiving the truth.\textsuperscript{58} Bloy’s lasting impact on Maritain was the influences of a radical Christianity and anti-modernism, traces of which can be found throughout his life.

4. The Socialist and Nationalist: Charles Péguy

Since 1901, the socialist sensitivities of Maritain are also influenced by Charles Péguy (1873–1914), who occupies an important place in the pre-First World War intellectual life as a noted French philosopher, writer and editor who combined Christianity, socialism and patriotism in his writings as a poet and philosopher. In the early phase of his intellectual life, Péguy considered socialism to be the sole means by which poverty and destitution in the modern world could be overcome. He founded, edited and published the journal \textit{Cahiers de la Quinzaine} (Fortnightly Notebooks), which


\textsuperscript{57} In 1912 Jacques and Raïssa, with her sister Vera, became Benedictine oblates, establishing a domestic community of prayer and study. In order to become better seekers of the Absolute and servants of the truth, Jacques and Raïssa decided to live like brother and sister, taking a vow of chastity, which they respected throughout their long life. It seems that the revolutionary in him is putrefied, making way for a spiritual quest and renouncement of the worldly. Cf. Schultz (1982): \textit{Jacques Maritain’s Social Critique and His Personalism}, 25–26. His deep sensitivity to the decadence of the world resulted in occasional “excursions into strange semi-spiritual lands”. Molnar, Thomas (1998): “Jacques Maritain: Protean Figure of the Century”, \textit{Modern Age}, 40(3), 284.

enjoyed great influence on French intellectual life for almost 15 years.\textsuperscript{59} For a considerable time, Maritain worked for this store as an academic aide. Péguy had been a champion of Dreyfus and battled to establish his innocence. This helped him to unify many socialists.\textsuperscript{60} He remained a devoted disciple of Bergson, who was particularly interested in his idea of intuition.

Though Péguy later embraced Catholicism, he continued battling on behalf of Dreyfus. As a tireless socialist defender of the Republic, he inspired several generations of the French Left. Maritain’s departure from Bergsonian philosophy caused great dismay to Péguy. Maritain gradually realized that Péguy was not practising his religion, which caused a rift between them.\textsuperscript{61} A series of misunderstandings and quarrels eroded and destroyed their friendship, and by 1910 their collaboration broke down. Marjorie Villiers has well described the contrast between them: “Péguy had found himself a Catholic and his world had grown infinitely complicated; Maritain had become a Catholic and his world had suddenly grown simple.”\textsuperscript{62}

Putting an end to his socialist phase, Péguy later leaned to the right. “Péguy’s intellectual development led at the same time from a humanistic socialism to a mystical Christianity and from a passionate internationalism to a fervent nationalism.”\textsuperscript{63} The legacy of Péguy is contentious. It is argued that he belongs to the extremist French nationalist and racist traditions, which later provided a foundation for Fascism and anti-Semitism. But this line of argument is also challenged. Swinging between two poles of politics and mysticism, he exercised a polyvalent attraction: on the one hand, as a socialist, republican, Dreyfusard, severe critic of anti-Semitism, Catholic mystic; on the other hand, as a representative of dogmatic, totali-


\textsuperscript{63} Amato (1975): \textit{Mounier and Maritain}, 35.
tarian ideological thinking and a model for nationalist extremism, racism and anti-Semitism. Maritain shared Péguy’s attack against the Sorbonne, clericalism, politics and the spiritless knowledge of the academics. He also concurred with Péguy that the present order was politically and morally bankrupt, thus resulting in an absolute decadence of society and culture. There is an urgent need for a revolution that would change the very essence of the human heart, life and society, aimed at a total regeneration of national life and civilization. Maritain’s 1922 book Antimoderne reflects many of these concerns.

5. To the Right: Maurras and Action Française

Throughout the nineteenth century, the messianic ultramontanism and Auguste Comte’s vision of the positivist society which was ruled by an intellectual elite prepared a fertile soil for the ideology of the Right in France. The counter-revolutionary, traditionalist ideology of the Action Française thrrove in this context, which was infamous for its anti-Semitism, anti-democracy and anti-modernism. Charles Maurras (1868–1952) was its principal philosopher. French society was deeply divided between two camps, as the progressives were clamouring for a total abolition of monarchy and the conservatives for a restoration of it. Maurras endorsed an integralist conception of the nation as an organic whole that is ordered by strong leadership. Democracy was conceived to be in disagreement with

64 Cf. Carroll, David (1995/1998): French Literary Fascism: Nationalism, Anti-Semitism, and the Ideology of Culture, Princeton, NJ: Princeton University Press, 44. Carroll notes that Péguy’s name appears as a positive reference in the works of so many literary fascists, especially those of Catholic backgrounds with ties to the Action Française movement. The literary-cultural foundations of his utopian ‘socialist’ political vision were constantly evoked by fascists to support their ideology. It would be far-fetched to name Péguy as a protofascist; nevertheless, the dark side of his legacy cannot be ignored. Carroll argues that the political writings of Péguy are similar to the writings of Nietzsche; on the surface level, no one may find a fascist, but in the undercurrents, the traces of Fascism can be noted. Cf. Carroll (1998/1995): French Literary Fascism.


nature, as it was supposedly libertarian, individualist, revolutionary, Kantian, Jean-Jacquist and Lutheran.67

It is hard to imagine that Catholic Church made an alliance with an ultra-rightist, chauvinist, monarchist and anti-Semitic organization like Action Française that was shaped by an agnostic. This organization did not hesitate to advocate verbal and physical violence, the murder of prominent citizens and physical abuse against Jews. There emerged a yearning to restore the past glory and power of the Church as in former Ancien Régime which it lost through the French Revolution; there existed a counterrevolutionary nostalgia within ecclesiastical circles against the surge of modernity.68 The open ultramontane policy of the Church in France adopted the reactionary Syllabus mentality of Pius IX,69 often conveniently making pacts with hostile governments and movements at the cost of the immense disappointment of a tiny group of pro-democrats in the Church.70

Maritain, too, was carried away by this right movement. As Phayer puts it, he “had been washed by the waters of French Catholic anti-Semitism”.71 Father Humbert Clérissac, who introduced Maritain to the Philosophy of Saint Thomas Aquinas in 1909, exhorted him to embrace right-wing political theses. Soon he became the group’s ‘house philosopher’, largely through his works in an affiliated publication called the Re-

70 The tension between the secular modernist and ecclesial anti-modernist streams is well epitomized in the construction of the Sacré-Cœur Basilica in Paris, which was supposed to be an embodiment of conservative moral order that gained the support of the ultra-conservative Catholics as well as those espousing the cause of monarchist restoration. The triumphalist monument of Sacré-Cœur was thus a political symbol against the civil movement for freedom and democracy. Cf. Harvey, David (1979): “Monument and Myth”, Annals of the Association of American Geographers, 69(3), 362–381. This was an attempt to enforce “the restoration of monarchy and the defence of Rome within a cultural framework of official piety”. Cf. Jonas, Raymond A. (1993): “Monument as Ex-Voto, Monument as Historiosophy: The Basilica of Sacré-Cœur”, French Historical Studies, 18(2), 485.
vue universelle. Until the papal condemnation of the Action Française in 1926, young Maritain defended the authoritarian neo-royalism of Charles Maurras with his great erudition and precise reasoning. His aversion toward bourgeois liberal modernity can clearly be detected in his book Anti-moderne, which sounded ‘an intellectual battle cry’ even if the contents were more nuanced. “His apocalyptic vision of all things modern cohabited within his philosophy of time.” His 1925 book Three Reformers: Luther, Descartes, Rousseau was a critique of the ‘decadence’ of the Western thought through a turn to the subjective individual as the measure of all meaning and value, a turn done under the influence of Descartes, Luther and Rousseau.

Action Française defended Catholicism resolutely for over twenty years. Its anathematization in 1926 was not so much because of its fascist ideology but rather out of the fear of losing the Church’s power to the political. That is, in order to bring French Catholics under the hierarchy’s leadership, the Pope was forced to act decisively against the integral nationalists “in the defence of the church’s divine rights”, thus reiterating his supreme authority and emphasizing religious duty to make no space for Christian democracy or any other form of government.

In response to the Vatican’s condemnation of Action Française, Maritain published The Things That Are not Caesar’s or The Primacy of the Spiritual (1927). This was a thoroughgoing critique against the fundamental principle of ‘politics first’ (politique d’abord) of Action Française which considered Church just as a political party. Politics without mystic was not a politics. The Primacy of the Spiritual would now serve as the guiding principle of Maritain’s political philosophy. The fundamental fault in Maurras, according to him, was that his dangerous agnosticism gave “no consideration to the supernatural end of man”. His political movement simply used the church as a social institution, obscuring its “essential end,
function and dignity, which is to dispense to men supernatural truth and the means to eternal life”.80 As the husband of a Jewish convert to Catholicism, Maritain’s association with Maurras and his Action Française had always been problematic. After parting with Action Française, he gradually developed into an outspoken crusader against anti-Semitism, arguing against the blank vilification of Jews drawing a distinction between “carnal Jews” and “true Israelites”.81 Maritain’s short alliance with Action Française and the later papal condemnation of this movement were a watershed in his intellectual career; he subsequently started grappling with wider social issues and got out of the ivory tower of speculative philosophy, gradually becoming a champion of democracy and human rights.

6. To the Left: Emmanuel Mounier and Personalism

After parting with Action Française, Maritain shifted to a liberal Christian humanism, which laid the foundation for his political philosophy. His collaboration with Emmanuel Mounier (1905–1950) from 1928 resulted in what Joseph Amato called a common “French Catholic understanding of the modern world”,82 which was open to democratic pluralism on the basis of the principles of a Christian personalism. This development has to be seen in the general context of the emergence of a left Catholicism during the final years of the Second World War, which endorsed an urgent spiritual and social transformation. Among many branches of the Catholic Left, Mounier and his journal Esprit were outstanding. It succeeded in gathering the non-conformist Catholics under one umbrella.83 Maritain played an important role in the publication of the magazine Esprit in 1932, providing financial backing, office space and other support. The journal championed a Christian intelligence that could be both integrally Catholic and sincere-

ly revolutionary, which was often labelled as “chrétien rouge” (red Christian).

Mounier’s personalism proposed a revolutionary restructuring of the present, allying him to the cause of the workers against capitalism. He strove to find “a French and European alternative to Russia and the United States”. He also tried to stop “the growing ideological division between Eastern and Western Europe” and described his personalism as a “socialist humanism which was revived across Europe and France after Second World War”. Mounier’s personalism was thus opposed to the secular and liberal mistakes of an atomized individualism and the totalitarianism of collectivism. In an attempt to save the human person from isolation and tyranny – from the furies of individualism and collectivism – Mounier proposed the fundamental principle that a human person is a ‘personal and communal being’. The human person is also conceived as both spiritual and communal, in the line of Hermann Lotze, Max Scheler, Martin Buber, Karl Jaspers, Paul Ludwig Landsberg and Nikolai Berdyaev. Despite its revolutionary tenor, the personalism of Mounier strives to fathom the depth of the person. The idea of a human person as imago Dei was a spiritual and revolutionary answer to “a soulless world that refused youth’s hopes, that denied the poor’s needs, and even resisted acknowledging life’s mystery”. The philosophy of personalism is ‘integral’, meaning that it attempted to overcome the dichotomies, conflicts and dilemmas that plagued philosophy, politics, science, spirituality and culture.

85 Cf. Amato (1975): Mounier and Maritain, 7. At the same time, Amato notes that Mounier’s personalism did not give itself to a ‘doctrinaire leftist’ or a vague leftist spirituality, as he kept himself deliberately away from a naïve leftist.
87 He states: “A person is a spiritual being, constituted as such by its manner of existence and independence of being; it maintains this existence by its adhesion to a hierarchy of values that it has freely adopted, assimilated, and lived by its own responsible activity and by a constant interior development; thus, it unifies all its activity in freedom and by means of creative acts develops the individuality of its vocation.” Mounier, Emmanuel (1938): A Personalist Manifesto, London: Longmans, Green and Co., 68.
The early 1930s witnessed a troubled polarization of European politics against the backdrop of the Great Depression, which resulted in the 1933 Nazi seizure of power. France experienced riots from right-wing leagues and from a smaller number of communists. Maritain’s collaboration with Mounier and other concerned intellectuals led to the drafting of the antifascist manifesto *For the Common Good* in 1934. Such social actions culminated in the publication of his major work, *Integral Humanism* in 1936. It was a critique of bourgeois civilization that envisioned a personalist civilization. In the mid-1930s, personalism enjoyed a global acclaim; the newly emerged Christian Democratic Parties adopted personalist philosophy almost *in toto*. Maritain’s break with Maurras rendered the enmity of the French right, and he and other personalists were attacked as ‘Red Christians’.

The personalism propagated by Mounier and Maritain differed in emphasis. Maritain recreated “the personalism of the classical ancient and mediaeval tradition with the ‘being-person’ in mind with its metaphysical foundation, with a base in the natural law of human nature”, whereas Mounier envisioned a personalism “emphasizing the ‘acting-person’ with its heightened consciousness within its own reflection and relating it to other within the perspective of a praxis giving an axiology promoting the person as an operational and meaningful creative self”. In the thirties, both approaches to personalism – ‘being-person’ and ‘acting-person’ – were complementary, contributing to the revival of an integral humanism in promoting human dignity based on the notion of person.

Maritain gradually developed reservations about the left-wing Catholicism of his younger friends, especially about ‘the Third Group in *Esprit*’ because of their preoccupation with mere revolution, sans a spiritual revolution. He insisted that “political action be grounded in the proper principles”. The linking of a political cause with religion always risked the “primacy and freedom of the spiritual”. Hence, Maritain was often wary of

---

Marxist analysis being used at all. He, therefore, attempted to find a ‘centre above politics’, carefully separating and distinguishing the work of the Church proper from political action. Finally, there was a decisive split between the ‘intellectualism of the Thomists and the activism of the personalists of the *Esprit* group’; it was a crucial fissure in French Catholic thought. Gradually there was less and less dialogue between the two camps.

The most enduring contribution of Mounier’s personalism is that he presented his generation an antidote to the Catholic Right heritage of *Action Française*. Maritain’s shift from illiberal and parochial “integral nationalism” to a liberal and universal *Integral Humanism* is indebted to the genius of Mounier. Moyn rightly notes that Maritain “would never have become a political thinker without Mounier’s example”.

7. The Political Philosopher and Diplomat: The Later Maritain

In view of these oscillations between the right and the left, it is not easy to situate Maritain on the wide spectrum of political and philosophical schools and associations. Later, he described this quandary: “To be neither right nor left means simply that one intends to keep his sanity.” He continues: “I keep myself as far as I can from both camps, but it is quite natural (if hardly pleasing) that I feel myself less distant from the first when it is a question of things that are Caesar’s, and less distant from the second (alas!) when it is a question of the things that are God’s.” In a way, his whole philosophical career was an attempt to reconcile both the left and the right – to remain sane.

Maritain learned the integral relationships between Kantianism, idealism, relativism and positivism from Bergson. Péguy and Bloy instilled in

---

Maritain a kind of nationalism that envisioned France as the Israel of the New Testament. This later resulted in his association with the nationalist monarchic movement *Action Française*. He joined Pope Pius X to fight against modern ideas of individual freedom and democracy. Mounier led him to the wider world of social questions. Thus, an anti-modernist Maritain, who was deeply sceptical about the very idea of human freedom, became a champion of human rights. In contrast to the spirit of the *République sans Dieu*, he later developed a Thomistic personalism and became the principal exponent and interpreter of Thomism in the twentieth century. His first experimentation with Thomism was speculative; his later Thomism had temporal and political dimensions. “Thomism provided him with a measure of theological orthodoxy as well as a counter-world view.”

The tragic events of World War II and his encounter with American democracy occasioned him to reconsider and refine many of his ideas. An ambitious nationalism in the line of Bloy and Péguy like “France is the Israel of the New Testament” was irrelevant in the post-war world order. Maritain became increasingly generous of what once was the ‘capitalistic United States’. Now America represented, even more, an approximation of his historical ideal for a new Christendom. It considerably broadened his world view and made him more receptive to the great pluralism in the world.

Maritain’s appointment as ambassador to the Vatican (1944) and his subsequent assignment with UNESCO (1947) contributed significantly to the further development of his political philosophy, especially the idea of human rights. On the one hand, Maritain is conceived as a soft contemplative soul; on the other hand, he was also engagé in the context of sinister events happening in Europe. His activism, especially his vigil against the danger of anti-Semitism, must have motivated him to accept General Charles de Gaulle’s offer of the ambassadorship to the Vatican. Maritain’s letter to his friend, the Undersecretary Giovanni Montini, one of

Pius XII’s closest advisers, spoke openly about the Holocaust. He wanted that the Holy See spoke out against that unprecedented breach of natural law. However, his attempt to break through the papal mindset was not successful. It is assumed that his resignation from the ambassadorship in 1948 was out of his disillusioning realization that his arguments for “a papaled spiritual reawakening in Europe would come to naught”. It must also be noted that though the official Church took a position of neutrality in the wake of the Spanish Civil War, Maritain persuasively made a case against the idea of ‘Holy War’ and ‘White Crusade’ against the communists. He was thus ahead of time in many respects. But after Vatican II, he appeared as a sharp critic of reforms in the Church – to the dismay of many.

Maritain’s works, especially his writings in political philosophy, manifest an underlying tension between two Maritains – Maritain ‘the Thomist’, who tried to remain faithful to his philosophical convictions, and Maritain ‘the pragmatic political philosopher’, who struggled to reconcile his philosophical convictions with the challenges of the world. Actually, it is this tension, which runs through his person and philosophy, that makes an engagement with Maritain exciting and enriching.

Conclusion

Maritain’s personalism developed not in a historical vacuum. In the great convulsions occurred in the middle of the twentieth century, he swung be-

106 Cf. Phayer (2000): The Catholic Church and the Holocaust, 1930–1965, 182. Maritain was irritated by “the sympathy and indulgence of Pius XII in regard to the German people, his incessant refusal to envisage the notion of collective responsibility, and finally the role of German influences that exert themselves in the Vatican, and the ‘imponderables’ coming from the immediate milieu in which the Holy Father lives (his private secretariat and domestic personnel are largely Germanic).” Crane (2009): “Jacques Maritain, the Mystery of Israel, and the Holocaust”, 51.


tween left and right, progressiveness and conservatism, and spiritualism and activism. The puzzling detours and deviations in his world view would reveal that the dialectics of his philosophy is neither linear nor spiral; it is rather circular. Hence it seems difficult to conclude that he had made a complete rupture with any philosophical strand; there are both, continuities and discontinuities. Interestingly, his personal struggle also reflects the larger context of the Catholic Church’s difficult confrontation with modernism, especially with human rights and democracy, and its slow approximation to them. It is clear that Maritain himself was constantly struggling to reconcile his personalism with liberal demands of the modern society. He was constantly reinventing himself and his ideas, without compromising the core of his philosophy – the mystery of the human person. Consequently, the concept of human dignity became the bedrock of his political philosophy. The underlying tension between the Thomist and the pragmatist makes his philosophy really discursive and fruitful.

II. The Founding Principles of Maritain’s Political Philosophy

Though Maritain is now best known for his political philosophy, by vocation he was a metaphysician who was principally concerned with the intuition of being (ens), in which the primacy of the act of existing (esse) is recognized. He reinvented medieval Thomism as a corrective to the ‘modern’ philosophies, employing the conceptual tools of a personalist philosophy that are anchored on the fundamental question what it means to be human. Since his political philosophy is intertwined with metaphysics, it is required to explore some fundamental notions of his metaphysics and epistemology. This section surveys the founding principles of his political philosophy in a matrix of ‘human-social-knowing being’. The key to Maritain’s human rights discourse is the notion of an inviolable human dignity and its social embeddedness, the principles of which are accessible to us through natural law. The pattern of ‘person-society-natural law’ triad thus underpins his human rights theory.

1. The Human Being

The primary intuition that permeates the whole corpus of Maritain is the notion of human person. “Personality is the subsistence of the spiritual soul communicated to the human composite.” This statement from *The Person and the Common Good* is actually the quintessence of his metaphysics and anthropology. It is this notion of “subsistence” that justifies the claim of inalienable human rights, the rights that are due to humans by virtue of what they are by nature. Hence, it is necessary to map the human nature in his general metaphysical structure. Maritain’s anthropology is construed in an Aristotelian hylomorphic construct, in which “the metaphysical distinction between the individual and person” is fundamental. His personalism hinges on this distinction, which belongs to the great intellectual heritage of humanity. In the contemporary world, according to him, there is a particular need to grasp “the doctrine of distinction between individuality and personality” which is “revealed in the principles of St. Thomas”. Maritain contends that the “contemporary world is hardly accustomed” to possess this “metaphysical insight”, and this vacuity led to severe human rights violations and horrors.

1.1. Individuality

Maritain argues, in concordance with the Thomistic tradition, that individuality is that aspect of humans which is primarily rooted in matter. “The word matter designates here, not a concept used in physics, but in philosophy: that of the *materia prima*, pure potentiality, able neither to be nor to be thought by itself, and from which all corporeal beings are made. Prime matter or ‘matter absolute’ is a kind of non-being, a simple power of re-

ceptivity and of substantial mutability, an avidity for being.”  

In the construct of matter-form, form or soul is the “metaphysical energy” or the principle of animation and determination, and matter the principle of particularization and differentiation. It is by virtue of matter – the material – that a thing exists as a unique individual within a species. “Individuality has its primary ontological root in matter”, and in this sense, it is “the narrowness in being” and the “grasping for oneself” “in a body animated by a spirit”.  

Matter thus is the limiting element of human beings that finally perishes. “Matter as such tends to decompose itself. In so far as we are individuals, each of us is a fragment of a species, a part of this universe, a single dot in the immense network of forces and influences, cosmic, ethnic, historic, whose laws we obey. We are subject to the determinism of the physical world.”  

Maritain is nonetheless cautious to add that “the material individuality is not something bad in itself. No, it is something good, since it is the very condition of our existence. But it is precisely in relation to the personality that individuality is good. What is bad is to let this aspect of our being predominate in our actions […] if left to itself, material individuality is bound to fall back”. The individuality is thus granted only an instrumental role as a means to serve the higher ends of human life. If individuality becomes more than a means for the development of personality and is embraced for its own sake, it would lead to deterioration. Maritain posits:

If the development of the human being follows the direction of material individuality, he will be carried in the direction of the ‘hateful ego’, whose law is to snatch, to absorb for oneself. In this case, personality as such will tend to adulterate, to dissolve. If, on the contrary, the development follows the direction of spiritual personality, then it will be in the direction of the generous self of saints and heroes that man will be carried. Man will really be a person, in so far as the life of spirit and of freedom will dominate in him that of passion and of the senses.  

As evidenced here, this survey now leads to the notion of person, which animates the matter.

---

1.2. Personality

Having established individuality as the material aspect of the humans, Maritain now conversely presents ‘the person’ as the spiritual element that refers to human subjectivity and dignity. There are both intrinsic and extrinsic reasons for the dignity of the human person; the extrinsic reason consists in the human orientation to God and the intrinsic in the quasi-Kantian notion of the human person as an end-in-oneself.

The extrinsic

Unlike individuality that makes us subject to the determinism of the physical world, by virtue of personality “one is not subject to the stars and atoms; for he subsists entirely with the very subsistence of his spiritual soul.”\textsuperscript{120} The person denotes the human orientation to God; hence, it is integrally linked with the soul. “In the flesh and bones of man there lives a soul which is a spirit and which has a greater value than the whole physical universe”. Maritain continues: “However dependent it may be on the slightest accidents of matter, the human person exists by virtue of the existence of its soul, which dominates time and death. It is the spirit which is the root of personality.”\textsuperscript{121} The term ‘person’ is uniquely applicable to humans among all the creatures on earth because of this higher ordination of humans: “The human person is ordained directly to God as to its absolute ultimate end.” The immortal soul which informs matter is beyond limitations of space, time and death. The human person bears not only ‘the common resemblance born by other creatures’; it resembles God in a unique way as ‘the image of God’.\textsuperscript{122} This deep mystery is the foundation of every human person’s dignity. Maritain summarizes the idea of the sacred in human beings:

The notion of personality thus involves that of totality and independence; no matter how poor and crushed a person may be, as such he is a whole, and as a person, subsists in an independent manner. To say that a man is a person is to say that in the depth of his being he is more a whole than a part and more independent than servile. It is to this mystery of our nature that religious

\textsuperscript{120} Maritain (1940/2011): \textit{Scholasticism and Politics}, 62.
\textsuperscript{121} Maritain (1942/2011): \textit{The Rights of Man and the Natural Law}, 66.
\textsuperscript{122} Cf. Maritain (1940/2011): \textit{Scholasticism and Politics}, 64.
thought points when it says that the human person is the image of God; the worth of the person, his liberty, his rights arise from the order of naturally sacred things which bear upon them the imprint of the Father of Being and which have in him the goal of their movement. A person possesses absolute dignity because he is in direct relationship with the Absolute, in which alone he can find his complete fulfilment.\textsuperscript{123}

The spiritual depth of humans is thus sacred, independent and total, which is the cradle of human rights.

The intrinsic

This spiritual construct of humans is fortified with intelligence and will; these faculties of knowledge and love make humans unique compared to the non-human world. Maritain takes a Thomistic position: “the free act of the human person, considered in its pure and secret intimacy as a free act, is not of this world. By its liberty, the human person transcends the stars and all the world of nature.”\textsuperscript{124} He gives an ingenious Kantian flavour to Thomism through his appeal to ‘intelligence and will’, which now becomes the foundation of his theory of human rights. “The human person possesses rights because of the very fact that he is a person, a whole, master of himself and of his acts, and who consequently is not merely a means to an end, but an end, an end who must be treated as such.”\textsuperscript{125} As ends in themselves, humans should never be used as means. In contrast to individuality, personality encompasses totality, unity, independence, freedom and wholeness. Because Maritain envisions a cautious and nuanced notion of human autonomy, his conception of complete and unrestrained freedom and wholeness of the human person has yet to be understood analogically in a theocentric perspective, where freedom and wholeness in the fullest sense can only be applied to God.

\textsuperscript{125} Maritain (1942/2011): \textit{The Rights of Man and the Natural Law}, 106.
1.3. A Precarious Unity

This distinction, nonetheless, does not indicate two mutually exclusive realities in the fashion of a Cartesian dualism:

According to this doctrine, the human soul, together with the matter which it informs, constitutes one substance, which is both carnal and spiritual. The soul is not, as Descartes believed, a thing—thought—existing on its own as a complete being, and the body another thing—extension—existing on its own as a complete being. Soul and matter are the two substantial co-principles of the same being, of one and the same reality, called man.\textsuperscript{126}

He adds: “Obviously as the very condition of our existence, it is something good. But it is precisely as related to personality that individuality is good.”\textsuperscript{127} A total neglect of the individual in favour of personality does not do justice to this distinction. One needs to exist first as an individual, in order to exist as a person. Maritain squarely criticizes any unidimensional exaggeration. “\textit{Death to the individual! Long live the person!} Unfortunately, when one kills the individual, one also kills the person.”\textsuperscript{128} This is not a real distinction between person and individual in humans, rather a major virtual distinction based on the principle of personality and the principle of individuation.\textsuperscript{129} He is, therefore, at pains to accentuate the integral unity of the human personality.

However evident it may seem, in order to avoid misunderstanding and nonsense, we must emphasize that they are not two separate things. There is not in me one called reality, my individual, and another reality, called my person. One and the same reality is, in a certain sense, an individual, and, in another sense a person. Our whole being is an individual by reason of that in us which derives from matter, and a person by reason of that in us which derives from spirit.\textsuperscript{130}

On the one hand, both individuality and personality have “their own ontological physiognomy”. On the other hand, they are not “two separate things”. “It is the same entire being which, in one sense, is an individual, by reason of what I receive from matter, and I am wholly a person, by rea-

\textsuperscript{126} Maritain (1947/2009): \textit{The Person and the Common Good}, 36.
\textsuperscript{127} Maritain (1947/2009): \textit{The Person and the Common Good}, 43.
\textsuperscript{128} Maritain (1940/2011): \textit{Scholasticism and Politics}, 66.
\textsuperscript{130} Maritain (1947/2009): \textit{The Person and the Common Good}, 43.
son of what I receive from spirit.”\textsuperscript{131} Maritain elaborates this argument with an analogy of a painting. A painting is entirely a physico-chemical complex consisting of the colouring materials (matter) and painter’s art (form). Similarly, the whole of a painting is a physico-chemical mixture by reason of the colouring stuff of which it is made, and the whole of it is a work of beauty by reason of the painter’s art. Separating them in the work of beauty is not possible.\textsuperscript{132}

Thus, in Maritain’s anthropology, human beings are caught between two poles: “a material pole, which, in reality, does not concern the true person but rather the shadow of personality or what, in the strict sense, is called \textit{individuality}, and a spiritual pole, which does concern true \textit{personality}.”\textsuperscript{133} This dialectical character of individuality as the principle of division, materiality and instrumentality, and personality as the principle of spirituality, unity, totality, wholeness, intrinsic worth, independence and freedom, is the basic tension that runs through the whole of Maritain’s political philosophy, especially in his account of human rights.

Maritain hence calls this inextricably intertwined metaphysical reality of human beings a “precarious unity”\textsuperscript{134} as inherent in the dictum of humans as ‘rational animal’: “The human being is a person, that is to say, a universe or whole of a spiritual nature, endowed with the freedom of choice and intended to enjoy freedom of autonomy. He is no more a pure person than he is pure intellect. On the contrary, just as he is at the lowest level of intellectual beings, so is he also at the lowest level of personality […] it is in man because he is animal and also spirit that the characteristic law of individuation enters most deeply into composition with that of personality and tends to thwart it.”\textsuperscript{135} He is deeply concerned about irrational forces of “animality, of egoism and of latent barbarism” in “large portions of humanity” that hamper the social existence and make them unworthy of civilized life.\textsuperscript{136}

\textsuperscript{133} Maritain (1947/2009): \textit{The Person and the Common Good}, 33.
In view of this human predicament, he argues that it is imperative to uphold a theocentric humanism. Such a humanism, in opposition to anthropocentric humanism, “recognizes that God is the centre of man; it implies the Christian conception of man, sinner and redeemed, and the Christian conception of grace and freedom [...] the second kind of humanism believes that man himself is the centre of man, and therefore of all things. It implies a naturalistic conception of man and of freedom. If this conception is false, one understands that anthropocentric humanism merits the name of inhuman humanism and that its dialectic must be regarded as the tragedy of humanism.”

This dialectic between the sinner and the redeemed, freedom and grace is the quintessence of Maritain’s political philosophy. The moral advancement takes place only progressively through education and conscientization.

2. The Social Being

According to Maritain, “personality means interiority to oneself”, which indicates that a person is free and independent from others. Unlike an isolated windowless entity in the manner of the Leibnizian monad, Maritain’s anthropology envisions human beings as open to communion and communication. Hence, “the person as such aspires naturally to the social life” and “requires membership in a society in virtue both of its dignity and its needs” – its dignity as a person and its needs and deficiencies as an individual.

Communion in virtue of dignity

In Maritain’s anthropological understanding, “the person, as such, is a whole.” This perfection of being whole is “open and generous”, thus having an “inner urge to the communications of knowledge and love” that naturally seeks a relationship with others. “In its radical generosity, the human person tends to overflow into social communications in response to the law of superabundance inscribed in the depths of being, life, intelligence and love.” Our societal existence is, therefore, a matter of superabundance of love and knowledge, resulting in a “dialogue in which souls really communicate”. Maritain states that “man is a political animal because he is a rational animal”, and “human reason requires development” through the cooperation of others; “society is thus indispensable to the accomplishment of human dignity.” He deals with the communion of love among humans as well.

Love is the deepest reality, the most substantial, hidden, existing reality in the beloved – a metaphysical centre […] Love aims at this centre, without separating it from the qualities – in fact, merging into one with them. This centre is in some way inexhaustibly a source of existence, of goodness and of action, capable of giving and of giving itself – and capable of receiving not only this or that gift from another, but another self as gift and give.

According to Maritain, ‘giving oneself’ is a spiritual existence. In that sense, this existence is different from the existence of other beings: “one must exist in an eminent way, by possessing itself, by holding oneself in hand and by disposing of oneself; that is, one must exist through a spiritual existence, capable of enveloping itself by intelligence and freedom, and of super-existing in knowledge and free love.”

Communion in virtue of needs and deficiencies

Human beings are in need of society also because of their needs and deficiencies, which are derived from the material individuality. “But man is very far from being a pure person. The human person is an unfortunate material individual, an animal who is born in an infinitely more depraved state than all the other animals […] He is destitute and miserable – an indigent person, full of needs.”\textsuperscript{149} He adds: “In this respect, unless it is integrated in a body of social communications, it cannot attain the fullness of its life and accomplishment. Society appears, therefore, to provide the human person with just those conditions of existence and development which it needs. It is not by itself alone that it reaches its plenitude but by receiving essential goods from society.”\textsuperscript{150}

The needs, according to Maritain, are not merely material needs “of bread, clothes and shelter, for which man requires the help of his fellows”, “but also, and above all, of the help which he ought to be given to do the work of reason and virtue, which responds to the specific feature of his being”.\textsuperscript{151} The assistance and opportunities provided by social relations and institutions are, therefore, inevitable for a meaningful flourishing of human dignity.

To sum up: on the one hand, it is the person itself, which enters into society; and on the other hand, it is finally by reason of its material individuality that the person is in society as a part whose good is inferior to the good of the whole. If this is the case, we understand that society cannot live without the perpetual gift and the perpetual surplus which derive from persons; each \textit{irreplaceable} and incommunicable; and that, at the same time, what in social use is retained from the persons is transmuted into something communicable and \textit{replaceable}, into something ever individualized and yet depersonalized.\textsuperscript{152}

Maritain here reiterates his basic premise that political order is primarily a spiritual community grounded on a spiritual bond between citizens based on friendship and Christian charity.

\textsuperscript{149} Maritain (1940/2011): \textit{Scholasticism and Politics}, 71.
\textsuperscript{152} Maritain (1940/2011): \textit{Scholasticism and Politics}, 76.
2.1. The Common Good

Maritain founds the idea of the common good on his doctrine of the metaphysical distinction between individuality and personality. Does society exist for each one of us, or does each one of us exist for society? This is a perennial question, and a “unilateral answer would only plunge us into error”.\(^{153}\) It is to be explained with the help of the essential bipolarity of human nature, which Maritain refers to as “the typical paradox of social life”. “This paradox is linked to the fact that each of us is altogether an individual and altogether a person.”\(^{154}\) This tension or paradox is natural and inevitable, and the solution is not static but dynamic.\(^{155}\) The paradox can be better delineated by analysing the two-way relations of human beings: our relation to society as an individual and as a person.

2.1.1. Relationship to Society as an Individual

Our relationship to society as an individual is *a relationship of a part to the whole*.

Because of these profound indigences—deriving from the matter of which man is made and from material individuality—and because of the limitations of his perfection itself, which also, in another way, derive from material individuality, it so happens that, when such a person enters into the society of his fellows, he becomes a *part* of a whole, a whole which is larger and better than its parts, in so far as they are parts.\(^{156}\)

In this part-whole relationship, the whole surpasses the interests of the parts by rightfully using them to serve its own ends. The individual as a part is subordinated to the whole, the society. In a conflict situation, the interest of the whole takes precedence. Hence humans can be legitimately

---

156 Maritain (1940/2011): *Scholasticism and Politics*, 71. He elaborates elsewhere: “Indeed if human society were a society of pure persons, the good of the society and the good of each person would be bug one and the same. Yet man is very far from being a pure person; the human person is a poor, material individual, and animal born more poverty-stricken than all other animals.” Maritain (1942/2011): *The Rights of Man and the Natural Law*, 72.
subjected to various kinds of restrictions and limitations in the interests of society. Their individual good, even the sum total of their individual goods, always remains inferior to the common good of the society; therefore the society can use them as means to serve its common good. This approach is a corrective to an anarchical individualism where society is simply used to serve one’s own interests.

2.1.2. Relationship to Society as a Person

Here it is a reverse relationship – a relationship of the whole to a whole. “If the question of the destiny which belongs to man as a person, the relation is inverse, and it is the human city which is subordinate to his destiny.” A human person is, therefore, no longer part of the whole; it is a whole that is related to another whole. “To say […] that society is a whole composed of persons is to say that society is a whole composed of wholes.” A person, accordingly, is a spiritual totality “ordained to the absolute and summoned to a destiny beyond time”. This ordination makes humans superior to all temporal societies and their institutions, including the state. This transcendental destiny to supra-temporal ends elevates the human person above the shortcomings of earthly institutions. Humans do not exist for these institutions; rather these institutions exist for them and derive their meaning only through assisting them in the realization of this final goal as spiritual beings. And hence the grand statement of Maritain:

From this point of view, or if you will, in respect to things which are not Caesar’s both society itself and its common good are indirectly subordinated to the perfect accomplishment of the person and its supra-temporal aspirations as to an end of another order – an end which transcends them. A single human soul is worth more than the whole universe of material goods. There is noth-

157 Maritain states: “Human person is part of the political community and is inferior to the latter, according to the things which compensate in him the needs of material individuality: that is to say, according to the things which, in him and of him, depend as to their very essence on the political community, and can be called upon to serve as means for the temporal good of this community.” Maritain (1940/2011): Scholasticism and Politics, 75.
II. The Founding Principles of Maritain’s Political Philosophy

...ing higher than the immortal soul, save God. With respect to the eternal destiny of the soul, society exists for each person and is subordinated to it.\textsuperscript{161}

He thus underscores that human rights are anterior to any society and its legislation. All societies are obliged to respect and guarantee these pre-political claims of human beings.\textsuperscript{162}

2.1.3. The Dialectical Tension

Being simultaneously a whole and a part entails a kind of “paradox”, and Maritain considers “this tension and conflict” as “something natural and inevitable”. “Their solution is not static; it is dynamic, \textit{in motu}.” The resultant “double motion” is thus “a deeper one than the dialectic motion of the Marxists”.\textsuperscript{163} This fundamental bipolarity of human nature thus gives rise to two forms of progressions of history in two directions: a horizontal and a vertical movement. The first, a horizontal movement, is a progression of history in and operated through the “energies of spirit and freedom”, thus tending to bring “the law of personality to prevail.” This will be fully realized only at the end of human history. The second is a vertical movement. It concerns the life of persons themselves in society and is realized in various institutions like the family or civil society.\textsuperscript{164}

Maritain notices that “a totalitarian or exclusively communal conception of society”\textsuperscript{165} emerged as a reaction to the errors of individualism of the nineteenth century. In a “simultaneous reaction against both totalitarian and individualistic errors”, the concept of the human person is now introduced. It is “opposed to both the idea of the totalitarian state and that of the sovereignty of the individual”.\textsuperscript{166} A personalist concept of society is thus an antidote to atomistic and mechanistic pattern of prevalent systems: “The relation of the individual to the society must be conceived according to a type irreducibly human and specifically ethico-social, that is, both personalist and communal, and this will then mean an \textit{organization of}...
That means that “the true conception of political life is neither exclusively personalist nor exclusively communal [...] Hence, there is nothing more illusory than to pose the problem of the person and the common good in terms of opposition.” However, the common good of a multitude or a whole is related to the good of a person as “there is a correlation between this notion of the person as a social unit and the notion of the common good as the end of the social whole. They imply one another”.

2.1.4. Three Characteristics of the Common Good

Maritain holds that the idea of the common good has three characteristics, namely redistribution, intrinsic morality and authority.

a. Redistribution

The first essential characteristic of common good, according to Maritain, is redistribution. The common good, by its very essence, directs itself to the persons as persons and directs the persons as individuals to itself. It directs itself to persons in a twofold way: first, in so far as the persons are engaged in the social order, the common good by its essence must flow back over or redistribute itself to them; second, in so far as the persons transcend the social order and are directly ordained to the transcendent Whole, the common good by its essence must favour their progress toward the absolute goods which transcend political society.

168 Maritain (1947/2009): The Person and the Common Good, 65. He states: “Man and group are, therefore, intermingled one with the other, and they mutually surpass each other in different frames of reference. Man finds himself by subordinating himself to the group, and the group attains its goals by serving man and by realizing that man has secrets which escape the group and a vocation which the group does not encompass.” Maritain (1942/2011): The Rights of Man and the Natural Law, 76.
The first argumentation refers to the requirement of justice, “the law of redistribution of the common good to the parts of society because these parts are persons”. The second is about “the law of transcendence by which the transcendence of the person over society is manifested”. The society exists neither for “the individual good nor the collection of the individual goods of each of the persons”; this would be reductionist and individualistic, thus eventually giving “the strong full freedom to oppress the weak”. Both “justice and amity” work as the glue of social relations: “Man finds himself by subordinating himself to the group, and the group attains its goal only by serving man and by realizing that man has secrets which escape the group and a vocation which the group does not encompass.” The essential task or final aim of body politic or political society is not to ensure material convenience of the scattered individuals, nor to bring about either industrial mastery over nature or political mastery over others; “it is rather to better the conditions of human life itself, or to procure the common good of the multitude, in such a manner that each concrete person […] may truly reach that measure of independence which is proper to civilized life and which is ensured alike by the economic guarantees of work and property, political rights, civil virtues, and the cultivation of the mind.” This vision of ‘each concrete person procuring the common good’ is the essence of the concept of ‘flowing back’.

b. Intrinsic Morality

The second characteristic of the common good is its intrinsic morality. Maritain reiterates: “common good is something ethically good”. He outlines:

---

174 Maritain (1947/2009): *The Person and the Common Good*, 66. He notes: “The common good of the city is neither the mere collection of private goods […]. It is the good human life of the multitude, of a multitude of persons; it is their communion in good living. It is therefore common to both the whole and the parts into which it flows back and which, in turn, must benefit from it.” Maritain (1947/2009): *The Person and the Common Good*, 50–51.
A. MARITAIN’S HUMAN RIGHTS DISCOURSE

The common good is not only a system of advantage and utilities but also a rectitude of life, an end, good in itself or, as the Ancients expressed it, a bonum honestum. For, on the one hand, to assure the existence of the multitude is something morally good in itself; on the other hand, the existence, thus assured, must be the just and morally good existence of the community. Only on condition that it is according to justice and moral goodness is the common good what it is, namely, the good of a people and a city, rather than of a mob of gangsters and murderers. For this reason, perfidy, the scorn of treaties and the sworn oath, political assassination and unjust war, even though they be useful to a government and procure some fleeting advantages of the peoples who make use of them, tend by their nature as political acts – acts involving in some degree the common action – to the destruction of the common good.\textsuperscript{177}

Maritain’s frontal assault on Machiavellianism reveals his attempts to restore the moral foundation of politics. Machiavellianism is the culmination of separation of morality and politics, denying its spiritual foundation. In Maritain’s system, the common good is an integral concept that includes material, moral and spiritual goods.\textsuperscript{178} His affirmation of the intrinsic justness and moral goodness of common good is a clear departure from utilitarian principle. To claim that morality forms one of the essential elements of the social constitution is also a departure from contractarian understanding, which claims that morality derives from mutual agreement of the members of a society.

c. Authority

The third characteristic relates to authority in society. “Common good”, according to Maritain, “is the foundation of authority”.\textsuperscript{179} By virtue of its intrinsic morality, the common good is the most authoritative element in the structure of any society. Authority, if enjoyed by any society, becomes legitimate only when it is exercised for the promotion and development of the common good.\textsuperscript{180} Maritain makes a distinction between authority (auctoritas) and power (potestas), which are framed after two antithetical philosophies about human nature. In the framework of an anthropocentric

\textsuperscript{179} Maritain (1942/2011): The Rights of Man and the Natural Law, 70.
humanism, which purports that humans are arbitrary generators of reality, we have a solely subjective route, giving no space for any objective standard beyond human subjectivity. Maritain notes that “authority is suppressed and power perseveres [...] since each individual is born free, it is necessary that he obeys only himself”.\(^{181}\) This can lead to the myth of ‘the General Will’ where the majority rules, in the line of social contract theory.\(^{182}\) The consequence is legal positivism.

Authority, on the contrary, necessarily involves the principles of righteousness and justice; hence, it is essentially different from the concept of power. “Power is the force by means of which you can oblige others to obey you. Authority is the right to direct and command, to be listened to or obeyed by others. Authority requires power. Power without authority is tyranny.”\(^{183}\) Maritain totally discarded the idea of sovereignty, which denotes Absolutism and power without accountability. “The concepts of sovereignty and Absolutism have been forged together on the same anvil. They must be scrapped together.”\(^{184}\)

Building on Pope Pius XI’s principle of subsidiarity, Maritain envisages a ‘pluralist’ political society, which is an agenda to decentralize the power.\(^{185}\) A true political society, according to him, is pluralist because “a plurality of autonomous communities which have their own rights, liberties and authority” is required for the development of the person. Some communities in the political society are inferior to the political state, like family, “which arise either from the fundamental exigencies of nature”. There are communities superior to the State, like Church.\(^{186}\) Respecting the “organic heterogeneity in the very structure of civil society”\(^{187}\) is a programme against totalitarianism. The state is thus an instrument at the service of humans and not an end in itself. In contrast to the absolutist or despotic notion of the State, Maritain holds that “the state is neither a


whole nor a subject of right, or a person.”188 “Man is by no means for the State, the State is for man.”189 On the contrary, the state is simply a part of the body politic and is especially concerned with the maintenance of law, the promotion of the common welfare and public order, and the administration of public affairs.190

In sum, Maritain cogently formulated the positive correlation between the good of the person and society. His application of the philosophical tool of the Aristotelian notion of superadditive property,191 wherein the whole is more than the addition of its parts, is a brilliant attempt to give credit to the complex interrelations and conflicts between the self and society, and it is far beyond a model of individualist-communitarian dichotomy. Thus, Maritain’s idea of a personalist society has an alternative account of the common good which, he thinks, is compatible with liberal democracy and, at the same time, explicitly distinct from liberal notions of the common good. It is also an alternative to totalitarian views where the common good of the state is understood to be superior to that of the individual person.

2.2. A Global Governance for the Global Common Good

Maritain envisions an extension of the idea of common good from limited state polity to a global context in view of inescapable global interdependence. It is a vision of a world political order in order to overcome the evils of the global society. He calls this ambitious project a problem – “the problem of world government”.192 This is a problem because, in view of

191 Maritain notes: “The common good includes all of these and something much more besides – something more profound, more concrete and more human. For it includes also, and above all, the whole sum itself of these; a sum which is quite different from a simple collection of juxtaposed units. (Even in the mathematical order, as Aristotle points out, 6 is not the same as 3 + 3).” Maritain (1947/2009): _The Person and the Common Good_, 52–53.
prevailing theories of the sovereignty and autonomy, there is only a scant chance that nations will compromise their own sovereignty.\footnote{Maritain observes: “If a state were sovereign, in the genuine sense of that word, it could never surrender its sovereignty, nor even have it restricted. Whereas the body politic, which is not sovereign, but has a right to full autonomy, can freely surrender this right if it recognizes that it is no longer a perfect society, and decides to enter a larger, truly perfect political society.”\textit{Man and the State}, 195.}

Maritain’s ideas of a ‘relative’ autonomy and the principle of subsidiarity lay a foundation to this global project. According to him, a possible world government calls for getting rid of the merely governmental theory of world organization, and of the sole and exclusive consideration of the \textit{state and government}. Rather it calls for a \textit{fully political} theory of world organization, which envisages a universal or integral consideration of the \textit{body politic or political society}. ‘Fully political’ acknowledges the global common good and connotes that human nature is also ordered to things that are not political. This global structure, therefore, originates from the “will of the people”.\footnote{Cf. Maritain (1951/1998): \textit{Man and the State}, 202.}

Maritain appeals for a “common will to live together”, which in his view is a magnitude for moral revolution. This living together goes well beyond geographical borders and limited loyalties. Living together means a human determination to share “in certain common sufferings and in a certain common task”.\footnote{Maritain (1951/1998): \textit{Man and the State}, 207.} It is about living together in a world-wide society to achieve “a world-wide common task”. The task, according to Maritain, is the “conquest of freedom”. ‘Living together’ implies ‘suffering together’, which is an invitation to bear some “sufferings due to solidarity”. This would naturally imply social and economic cooperation on national and international levels. This world-wide society implies, “people in occidental nations would be ready to accept […] a serious lowering of their standards of life in order to provide people on the other side of the iron curtain with an equivalent raising of their living standards of life”. These new obligations and sacrifices would require “a kind of moral heroism”, as he puts it.\footnote{Cf. Maritain (1951/1998): \textit{Man and the State}, 207–208.}

The principle that the authority is to be kept at the lowest level possible – the principle of subsidiarity – should be the operating principle of such a political order. Therefore, Maritain proposes a ‘pluralist unity’ where a di-

\footnote{Maritain (1951/1998): \textit{Man and the State}, 195.}
versity of differing bodies of politic will be preserved and fostered as part of the common good. He reiterates: “Let me emphasize once again that the basic political reality is not the State, but the body politic with its multifarious institutions, the multiple communities which it involves, and the moral community which grows out of it.”¹⁹⁷ The very soul or animating form of every political society is a sense of civic friendship; consequently, the foundation of a world political society is a world-wide civic friendship and world-wide common good.¹⁹⁸

Besides, Maritain cautiously ascertains that this international structure functions bottom-up: “the essential part would be played by the will of the people, in every nation, to live together in the world.” A body politic on a world scale founded on the ‘will of the people’ distances itself from any other purely governmental notions of world society that would lack a proper grounding of its own.¹⁹⁹ His vision of “a supra-national advisory council” is an attempt to form a core group to work like the conscience of the world, with the task of “awakening the common conscience”.²⁰⁰ Maritain tries to modernize “the old temptation of the philosophers who would have reason, through the instrumentality of certain wise men to be accepted as an authority in human affairs”.²⁰¹ According to him, this council “would be deprived of any power, but endowed with unquestionable moral authority, which has “a function of ethical and political wisdom.” The members of the council lose their national citizenship and would be given world citizenship; they “would give a voice to the conscience of the peoples”.²⁰²

2.3. Democracy

The catastrophic experiences with totalitarianism at the height of World War II prompted Maritain to guard against the double danger of too much subjectivity as in the case of liberalism (Rousseau) and too much objectiv-

ity as in communism (Marx). He makes a prophetic claim: “We are witnessing the historical liquidation of the world of Jean-Jacques Rousseau and bourgeois democracy. Now a genuine, a real democracy must be built up.” This resulted in his conceptualization of a ‘personalist democracy’, which, according to DiJoseph, is Maritain’s signature contribution to political theory. Seeking compatibility between the Thomistic tradition and liberal democracy is an ambitious project in view of the opposition of the Church to the idea of individual freedom. He builds up his argumentation for democracy by appealing to his metaphysical distinction of the person and the individual. On the one hand, democracy prepares a venue for the material individual’s need for dialogue and communication; on the other hand, the human person’s priority over the state functions as a ‘limiting factor’ in the democratic process.

Maritain emphasizes the moral and spiritual foundation of political order in opposition to Machiavellianism that separated ethics and politics. He pleads that Western democracies need to “discover in its primitive purity their vital principle which is justice and love, and whose source is of divine origin”. He similarly disavows the anarchic democracy of Rousseau, which, according to him, is a “bourgeois liberal democracy” that exacerbates the natural tendency of democracy for materialism. Because of this exaltation of the material, it was designated by him as “mismatched democracy”.

In Maritain’s view, a personalist democracy is at once opposed to “the false liberal conception of modern times” as the Rousseauan conception of democratism and “the sacral ideals of the Middle Ages”. He argues for an

---

206 DiJoseph observes that Maritain’s conception of democracy is based on an ontology that he formulated deviating considerably from the classical Thomistic political thought and supplementing it partly with his own interpretation of Tocqueville and Bergson. Cf. DiJoseph (1996): *Jacques Maritain and the Moral Foundation of Democracy*, 36.
“affective and moral” conception of a personalist democracy, which refers to the dignity of the person, “a dignity people themselves have become conscious” “through concrete and positive freedoms”. This dignity may be “incarnated in social institutions and social bodies”. Such an ethical conception of democracy does correspond to “a popular civic consciousness”, which implies, on the social and political plane, respect for human personality in every individual who composes a part of the whole. In contrast to Communist revolution, this is a Christian manner of bringing the classes to a denouement through an ‘ethical and affective democracy’.210

For Maritain, democracy is not simply a political enterprise. The notion of democracy has, according to him, a wider meaning than in classical treatises. “It designates first and foremost a general philosophy of human and political life and a state of mind.”211 To consider democracy as a personalist way of life is indeed in the line with the technique of satyagraha developed in India by Mahatma Gandhi, a nonviolent approach to conflict resolution, which was not different from Jesus Christ’s teaching.212 Maritain explores the ethical-spiritual foundation of democracy, making it more than just a system of government, a rule by the majority; rather it is a human way of life.213 Since democracy is not primarily founded on a particular form of government, his idea of democracy does not exclude any sort of regimes or other forms of government; in effect, even a monarchical regime can be democratic if it is consistent with a democratic way of life. James V. Schall rightly observes that Maritain uses the word ‘democracy’ as the equivalent of any good regime.214

In this general perspective, his appeal for a moral rationalization of politics can better be understood as an agenda that is directed to the expansion of human freedom and virtue,215 in opposition to the technical ratio-

212 Cf. Maritain (1936/2012): “Integral Humanism”, 112–115. Satyagraha literally means ‘holding firmly to truth’ or ‘insistence on truth’, which would function as a spiritual energy for the political life. It thus reiterates the ethical-spiritual foundation of political order.
213 For Maritain, truth is beyond the absolute majority of the people. He reiterates: “I do not share the romantic optimism which ascribes to the people a judgment which is always just and instincts which are always upright.” Maritain (1943/2011): Christianity and Democracy, 48.
nalization envisioned by Machiavelli that is directed to non-moral successful politics. Democratic moral rationalization aims at recognizing and materializing justice, law, mutual friendship, peace, love, and moral and spiritual resources of human beings.

In Maritain’s view, this process of moral rationalization is a process of evangelization, in order to ‘tame’ the animality of humans; thus, his vision of democracy is vitally and truly Christian. He considers the ‘modern’ idea of democracy to be of Christian heritage. “It is under the influence of the evangelical ferment at work in the world that they took shape in the secular conscience.” He conceptualizes this idea of Christian legacy in a wider perception of a process of “hidden stimulation of Christianity” in all the cultures. He frequently refers to such internal inspiration in expressions like “the hidden work of evangelical inspiration” and “élan which are at work in in depths”. It is evident that such political society is neither a mere clerical nor a decoratively Christian state. It is a secular vision of political life which springs from evangelical inspiration. For Maritain, Christian democracy was an alternative between totalitarianism and communism. “If I see in Nazism the final stage of an implacable reaction against the democratic principle and against the Christian principle all in one, I see in Communism the final stage in the inner destruction of the democratic principle due to the rejection of the Christian principle.”

The relevance of his symbiosis of Christianity and democracy can be evaluated on the basis of the success or failure of the Christian Democratic parties in Western Europe and Latin America that emerged after World War II. After more than 30 years of Christianity and Democracy, he recounts his democratic dreams in his Peasant of the Garonne and laments

---

219 Maritain (1943/2011): Christianity and Democracy, 35.
222 Maritain (1943/2011): Christianity and Democracy, 32.
that the Christian Democrats failed the Christian spirit and principles.\textsuperscript{227} The frequent alignment of Christian Democrats with the Left was diametrically opposed to Maritain’s conception of a true democracy. However, his claim of a Christian inspiration of democracy is not uncontroversial.

3. The Knowing Being

Maritain’s critical realism holds that “the critique of knowledge is part of metaphysics”.\textsuperscript{228} Since he considers metaphysics to be prior to epistemology, his theory of knowledge is very much embroiled in metaphysical discourses. Here we focus only briefly on the ‘process of knowing’, as the ‘content’ of knowing will be discussed in the coming section.\textsuperscript{229} Maritain developed his theory of knowledge around two opposing tendencies regarding the human faculty of knowledge. On the one hand, there was excessive Enlightenment optimism of human reason’s capacity to know, as in ‘idealism and subjectivism’ – Cartesian overconfidence in human reason is identified by him as “angelism”\textsuperscript{230}. On the other hand, there was a pessimistic view of human intellect as in scientism and empiricism, which holds that primary knowledge is of an extra-mental world, which inevitably requires considering sense data and measuring of sensible phenomena. Between these opposing poles there were others: existentialists,
who reject ‘reason’ (primacy of existence at the denial of essence), Freud, who highlighted the dark, irrational forces of the unconscious, and the Bergsonians, who claimed that true and direct knowledge of reality is gained not through the mind but through the will – through intuition.231

Between irrationalism, enlightenment rationalism and scientism, Maritain attempts an alternative in Thomistic philosophy, calling it “existential intellectualism”.232 Knowing is realized not merely by sensory perception, as the empiricist system claims, nor by mind perception, as the rationalists claim, but by the individual human person who interacts with the world. Knowing is thus a dynamic process where the existing human person knows objective reality by means of the senses and the intellect. Maritain defends his existential intellectualism with the conceptual tool of ‘connatural knowledge’. The idea of connatural knowledge is an attempt to overcome the conflict between intuition (Henri Bergson) and experience (William James).233 One does not gain connatural knowledge through philosophizing or discursive reason; instead, this knowledge is achieved “in our very being”.234 It is knowledge by analogy. It is “immediate” and “without any conceptual and rational medium”.235 Though connatural knowledge is not purely rational, it is an “objective means of knowing”.236 It is produced in the intellect “not by virtue of conceptual connections or by way of demonstration”.237

Reason works thus in a preconscious, preconceptual and prerational way.238 As in the case of poetic knowledge, it originates in the “preconscious life of the intellect”, and in that sense it is “nonconceptual and non-rational”.239 Moral experience is the most common example of knowledge through connaturality: “It is through connaturality that moral consciousness attains a kind of knowing – inexpressible in words and notions – of the deepest dispositions – longings, fears, hopes or despairs, primeval

loves and options – involved in the night of subjectivity.” 240 According to Maritain, “when a person makes a free decision, he takes into account, not only all that he possesses of moral science and factual information, and which is manifested to him in concepts and notions, but also all the secret elements of evaluation which depends on what he is, and which are known to him through inclination.” 241 Human beings possess in their inner being the primary rules of natural law; these rules express themselves through spontaneous human inclinations, 242 and the rules of natural law are in accordance with our nature or are ‘co-natured’ in our being. 243

Since it is a knowledge known in an undemonstrable way, it is often not possible rationally to justify our most basic moral beliefs. 244 This, according to Maritain, does not manifest the irrationality or intrinsic invalidity of these beliefs but actually shows the beliefs’ essential naturality and greater validity. 245 That this knowledge about first principles is nondiscursive and undemonstrable does not mean that it is inconsistent with rationality; for “the inclinations we have […] are essentially human, and therefore, reason-permeated inclinations; they are inclinations refracted through the crystal of reason in its unconscious or pre-conscious life.” 246 It is similar to what Aquinas calls synderesis, which “gives us the first principles of morality and, specifically, the first principle ‘Good is to be done and sought after, and evil is to be avoided’ (bonum est faciendum et prose-quendum, et malum vitandum); all other precepts of the natural law are based on this (et super hoc fundantur omnia alia praeccepta legis naturae)”. 247 Practical reason derives from this first principle. 248

The formal medium by which we advance in our knowledge of the regulations of Natural Law is not the conceptual work of reason, but rather those inclinations to which the practical intellect conforms in judging what is good and what is bad. Through the channel of natural inclinations, the divine rea-

son imprints its light upon human reason. This is why the notion of knowledge through inclination is basic to the understanding of Natural Law, for it brushes aside any intervention of human reason as a creative factor in Natural Law.\textsuperscript{249}

Operating in the realm of practical reason, connaturality relies more on experience than on reason. Maritain states that “the judgments in which Natural Law is made manifest to practical reason, [they] proceed from that connaturality or congeniality through which what is consonant with the essential inclinations of human nature is grasped by the intellect as good; what is dissonant as bad.”\textsuperscript{250} His affirmation of the primacy of the act of existing makes his version of Thomistic philosophy an “existential intellectualism”, which bridges both intuition and existence (being and mind). “What distinguishes authentic Thomism [...] is precisely the primacy which [it] accords to existence and the intuition of existential being.”\textsuperscript{251} He thus integrated both existentialism (primacy of act of existing) and intellectualism (intuition) into this concept.\textsuperscript{252}

Maritain’s emphasis on “the act of existing” gives him rightly the epithet existentialist.\textsuperscript{253} The idea of being as existent – the actualization of essence by existence – is a robust affirmation of the notion of the subject. The existent is grasped as an existent because it is seen by intuition as exercising an act: only a subject, a centre and source of activity, can exercise an act. “Precisely because of existentialism of [Thomistic] philosophy, the notion of subject plays a capital part in it; we may even say that subjects occupy all the room there is in Thomistic universe, in the sense that, for Thomism, only subjects exist, with the accidents which inhere in them, the action which emanates from them, and the relations which they bear to one another. Only individual subjects exercise the act of existing.”\textsuperscript{254} The notion of the subject thus functions as a point of reconciliation between the uniqueness of the real and the intelligibility of the real. Each subject exercises its act of existing according to the specifications of one’s essence. Since each one is a unique embodiment of essence, one exercises

\textsuperscript{250} Maritain (1952): \textit{The Range of Reason}, 27.
\textsuperscript{253} Actually, his \textit{Existence and the Existent} is subtitled “an essay on Christian existentialism”.
\textsuperscript{254} Maritain (1948/1957): \textit{Existence and the Existent}, 70.
one’s act of existing in a unique way, issuing forth unique actualizations of its essence on the existential plane. Essence and existence in them are not enough to account for the subject.  

What we call subject St. Thomas called suppositum. Essence is that which a thing is; suppositum is that which has an essence, that which exercises existence and action [...] that which subsists. Here we meet the metaphysical notion which has given students so many headaches and baffles everyone who has not grasped the true—the existential—foundation of Thomist metaphysics, the notion of subsistence.  

A human subject as existent is a unique centre of conscious, autonomous being; the human person enjoys the uniqueness possessed only by a self. In material nature, human beings stand alone as a truly unique subject. The metaphysical notion of subsistence (human subject as free self-perfecting activity) is the rational foundation of human dignity and autonomy, and the moral order is defined in this domain of ontological depth of subjectivity. It is Thomism’s famous ‘anthropological shift’.

In summary, Maritain affirms that moral knowledge is naturally known by human beings through their proper human nature. His briefest description of this process of knowing is “listening to the inner melody” in the depth of the human person. This harmonizes the truth of the connatural inclinations of our human nature with the truth of the empirical world. Philosophy is thus based more on the wisdom that explores the ultimate principles of reality than on mere intellectual knowledge. By prioritizing metaphysics over ethics and politics, it is shown that ‘theoretical knowledge’ derived from human nature should guide human choices and actions. It refers to the static nature of Thomistic philosophy; how it became dynamic and flexible in Maritain’s rendition will be discussed in the following section.

Maritain translated the metaphysical notion of the primacy of esse into the primacy of the human person in his political philosophy. His profound

grasp of the human person, who is endowed with intellect and will, capable of understanding and loving, knowing and deliberating, has far-reaching implications for political philosophy.\footnote{261} The crux of this analysis is the notion of ‘subject’, simultaneously incorporating the universality of human nature and the uniqueness of the human person – universal because each human subject shares a common humaneness, and unique because the human essence is embodied in a person through a singular act of existing as the subject. The tension between \textit{shared essence} and \textit{unique embodiment} sheds light on many problems in political philosophy like the challenge of reconciling general welfare with personal autonomy.

In lieu of a Conclusion: Towards a Personalist Political Theory

An analysis of the basic building blocks of Maritain’s personalism demonstrated that his conception of the human person is both metaphysical and ethical, which emphasizes the basic human orientation to God and values. The normative idea of the human person thus becomes the benchmark of ethics and politics. The personalist philosophy builds on this fundamental vision. The philosophical movement of ‘personalism’ emerged in the twentieth century as a bulwark against the challenges of modernism. However, there existed an enormous variety of this philosophy as Maritain observes: “There are, at least a dozen personalist doctrines, which, at times, have nothing more in common than the term ‘person’”.\footnote{262}

Maritain’s personalism “tends essentially to render the human being more truly human”\footnote{263} against reductionist tendencies of prevailing positivist approaches such as economism, biologism or scientism and total intellectual pessimism.\footnote{264} Moyn pertinently observes how he politicized this idea of the human person: “The crux of the idea of ‘the person’ is its oppo-

\footnotesize
\begin{itemize}
\item 262 Maritain (1947/2009): The Person and the Common Good, 12.
\item 263 Maritain (1936/2012): “Integral Humanism”, 153.
\item 264 Maritain distinguished between \textit{empiriological} and \textit{ontological} approaches to knowledge; the logical positivist approach of science and technology takes an empiriological route, whereas philosophy and metaphysics follow an ontological approach. He critiques the general dominance of positivism and materialism that enslaves the human person. Cf. Maritain, Jacques (1949): “Science and Ontology”, Bulletin of the Atomic Scientists, 5(6/7), 199–200.
\end{itemize}
sition to ‘the individual’. He not only politicized the distinction as he invoked it; he did so in a way that fit his politics at the time.”\(^{265}\) The philosophy of personalism in the rendition of Maritain and Mounier is deeply political, where politics is conceived as a means of flourishing our humaneness and ordering the society. This calls for a revival of informed and active citizenry.\(^{266}\)

The heart of this political philosophy is the interplay of a tripartite relationship between wholeness, independence and belonging. Wholeness and independence refer to the inviolability of the person and hence to human rights, whereas belonging refers to our co-existence as a social entity and hence to the obligations.\(^{267}\) Such a conception of political society based upon ‘the reality of human nature and the human person’ represents a political philosophy which may be called a humanist political philosophy or a political humanism.\(^{268}\) Thus, Maritain’s robust account of free and rational human person, as conceived in the liberal tradition, is balanced by his conception of humans as a social being, as conceived in the communitarian tradition, which is limited by the common good. This persuasive personalist-communitarian foundation prepared a solid ground for Maritain’s human rights discourse. How the politicization of the notion of human person reshaped the political philosophy of the twentieth century, especially the human rights discourse, will be discussed in the following section.

III. The Idea of Human Rights

This section surveys Maritain’s human rights discourse placing him in the historical setting of Catholic Church’s aversion to human rights and the craving of the secular world for human rights, especially freedom rights. His shift to human rights was a slow and difficult process; his audacious


Integral Humanism (1936) does not deal with human rights; even until the late 1930s, Maritain’s “Christian humanism” incorporates no human rights. Nevertheless, in the end the ‘anti-modern’ critic of individualistic rights gradually transforms into the champion of human rights, not only in the Catholic Church but also in the secular world. Anyway, his turn to political philosophy and resultant accommodation of human rights into his personalism was decisive for the human rights discourse in the twentieth century.

1. Maritain’s Conversion to Human Rights

In the beginning of the twentieth century, two things occurred simultaneously: the Church’s rejection of human rights and modernity’s rejection of Thomism.

1.1. Anti-modernism of the Church

From the utter rebuke of Syllabus of Errors to the unconditional acceptance of human rights in Pacem in terris, it was a slow and difficult process. Curran fittingly summarized it as “from hostility/reluctance to acceptability”.269 Moyn evaluates the anti-modernism of the Church in regard to human rights: “The Church has treated the notion of rights with vituperation for the entire modern period.”270 As the world was definitely moving towards modernity and struggling for human rights and autonomy, the modern papacy continued its estrangement from modernity. Pope Pius IX (1846–1878), known to be the architect of the modern Catholic papacy, was also infamous for establishing ‘papal autocracy’. He was an ‘anti-modern romantic’ who wished to consolidate church power even more around the papacy and triumph over the forces of the Enlightenment, science, nationalism, socialism and liberalism.271 The notion of ‘personal

rights’ was described as insanity. The promulgation of the ‘Syllabus of Errors’ in the encyclical *Quanta Cura* (1864) attacked “progress, liberalism, and modern science.” It also opposed democracy and the free press, claiming control of all science, culture and education by the Catholic Church. It rejected liberty of faith for other creeds. Additionally, it proclaimed the complete independence of the Roman Church from any state controls. The whole document constitutes a massive defiance of modernity and freedom.272 This defensive posture of the Church is also to be judged from “the excesses of French Revolution and the attempt of European liberals to remove the Church from public life and public square”.273

Despite Pope Leo XIII’s concern for ‘new things’ (the conditions of the workers) in *Rerum Novarum*, his immediate successor Pius X (1903–1914) authorized the severe anti-Modernist campaign which condemned or silenced many of the leading Catholic scholars and theologians. Thus, it was a major setback to the Catholic social movements in Europe, especially those close to the moderate socialist movements.274 This fierce anti-Enlightenment movement, especially in opposition to the French Revolution, resulted in the concentration of power in Rome, which ushered in ultramontanism and the subsequent centralization of the power in the Church that culminated in the statement on the infallibility of the pope in the First Vatican Council. Whether the revival of Thomism initiated by Pope Leo XIII was an attempt to counteract modernism or to respond to it creatively is difficult to answer. It is nevertheless explicit that the scholastic heritage of the late nineteenth and early twentieth century largely neglected human rights endeavours initiated by the Enlightenment and French Revolution. Even in the early 1960s most educated Catholics, and even

272 Pope Pius IX wrote that it is ‘insanity’ (*deliramentum*) to hold that liberty of conscience and worship is each one’s personal right. Cf. *Quanta cura*, #3.
more non-Catholics, assumed that natural law was consistent with the language of duties, but not with the language of rights.  

1.2. Anti-Thomism of the Modernity

The secular world was deeply sceptical about the scholastic tradition of the Church. It perceived the modern rights language as diametrically opposed to the Catholic Church and scholastic tradition. Thomas Hobbes in *Leviathan*, particularly in Part IV “On the Kingdom of Darkness”, makes a sweeping criticism against the Catholic Church and scholasticism: “The enemy has been here in the night of our natural ignorance, and sown the tares of spiritual errors; and that […] mixing with the Scripture divers relics of the religion and much of the vain and erroneous philosophy of the Greeks especially of Aristotle.”

In his classical work *Natural Right and History*, the political philosopher Leo Strauss argued that the term ‘rights’ used by Hobbes in *Leviathan* and in *De Cive* resulted from an intellectual tradition in opposition to scholasticism, which could be traced back to Franciscan intellectual opposition to scholasticism, especially in the person of William of Ockham. There was thus a substantial shift from ‘law’ to ‘rights’. Strauss wrote:

If, then, natural law must be deduced from the desire for self-preservation, if, in other words, the desire for self-preservation is the sole root of all justice and morality, the fundamental moral fact is not a duty but a right; all duties are derivative from the fundamental and inalienable right of self-preservation. There are, then, no absolute or unconditional duties; duties are binding only to

---

275 With reference to the publication of the encyclical *Pacem in Terris*, it is argued that “this encyclical’s recourse to rights language itself constituted an intellectual challenge”; for many “it seemed a capitulation to the Enlightenment; to others it amounted to an overdue encounter with the secular (Western) world.” Cf. Christiansen, Drew (2005): “Commentary on Pacem in Terris”, in Himes, Kenneth R. (ed.), *Modern Catholic Social Teaching: Commentaries and Interpretations*, in Kenneth R. Himes (ed.), *Modern Catholic Social Teaching: Commentaries and Interpretations*, Washington, D.C.: Georgetown University Press, 224.


the extent to which their performance does not endanger our self-preservation.\textsuperscript{278}

This happened partly because of the rejection of natural teleology, which is the cornerstone of natural law tradition. Hence, Strauss attributes the origin of human rights more to Thomas Hobbes, who was totally opposed to the natural law tradition. He argues that the Aristotelian teleological view of nature was overtaken by the mechanical conception of natural science in favour of a non-teleological conception of the universe:

According to one, the non-teleological conception of the universe must be followed up by a non-teleological conception of human life. But this “naturalistic” solution is exposed to great difficulties: it seems to be impossible to give an adequate account of human ends by conceiving of them merely as posited by desires and impulses. Therefore, the alternative solution has prevailed. This meant that people were forced to accept a fundamental, typically modern dualism of non-teleological natural science and a teleological science of man. This is the position which the modern followers of Thomas Aquinas, among others, are forced to take, a position which presupposes a break with the comprehensive view of Aristotle as well as that of Thomas Aquinas.\textsuperscript{279}

Though Strauss admired the magnificence of Thomism in many respects, for instance recognizing the achievements of Aristotle in Christian theology, he concluded that the death of Thomism opened a door to the birth of rights language.

It is now generally accepted that a radical shift in the natural law tradition took place with Grotius. This partially happened through the rejection of the idea of natural teleology. Zuckert, for instance, contends that the role played by Grotius in giving a radical new understanding of the natural law tradition resulted in the break with scholastic tradition. Ius in Grotius’s doctrine of natural law became “solely facultas or subjective right”. “Both the identification of jus with facultas and the drastic shrinkage of the natural law in Grotius” led to Hobbes’ natural rights teaching.\textsuperscript{280} Grotius found the Thomistic version of natural law in the post-Reformation period deficient, especially in establishing the relationship be-

\textsuperscript{278} Strauss (1953): \textit{Natural Right and History}, 181.
\textsuperscript{279} Strauss (1953): \textit{Natural Right and History}, 8.
tween “the natural inclination” to know God and our desire for social life. It resulted in a ‘secularization’ of the concept of natural law.

Villey observes that individual rights are a modern innovation which has no counterpart in ancient or medieval jurisprudence. He insists that “all efforts to find in the Aristotelian dikaión or the Roman ius anything like what we mean by a right are misbegotten.” “The just or the dikaión or iustum is a thing, a relation or proportion, out there, to be objectively determined by the judge.” The fundamental “shift from the just as a ‘thing’ to something someone or everyone has, in virtue of which one can make claims on some or all others”, is to be traced back to the so-called Second Scholasticism. This scholasticism is fundamentally immersed in nominalism, which points to a break with the natural law approach of scholasticism.

Thus, when most historians and critics argue that it was the end of Thomism that made way for liberalism and human rights, Maritain claims that any break with the Thomistic tradition was unnecessary. Aurel Kolnai, a Hungarian political philosopher who drew on the philosophical realism of Thomas Aquinas, states in his review of Maritain’s Man and the State: “Here is a sentimental and romantic attempt […] dressing up poor Thomas Aquinas in the rags of a laicist apostle of democracy.” This grim humour reveals the extent of the challenge Maritain took up. Rowland, in her survey of the engagement of the Church with modernity, argues on the basis of the ideas of Alasdair MacIntyre, Charles Taylor and David Schindler that the Thomist tradition and the liberal tradition have no scope for any kind of synthesis. Rowland sharply criticizes the ‘rhetoric of

281 Zuckert notes that the Thomist version of the natural law was not fitting to the post-Reformation context, especially because of the hierarchy of inclinations where the orientation to God is understood to be “simply the highest demands nature places on human beings”. Zuckert (1994): Natural Rights and the New Republicanism, 144–145.
rights’ used by modern natural law theorists such as Finnis, Maritain etc.  

1.3. Maritain, the Philosopher of Human Rights

Maritain’s ardent defences of human rights made him one of the most significant philosophers of the twentieth century. How “this once reactionary critic of human rights transformed into their champion” is an interesting chapter in the history of Catholic social thought. There are but two “curious things” about the evolution of Maritain’s human rights theory, as Crosson calls it.

1.3.1. The Historical Oddity

In the twenties and early thirties, Maritain never discusses natural rights and uses the term only once, in a passing way, without any justification or explanation. It was in the appendix to Freedom and the Modern World, in connection with ‘the right to private property’. Though it is a matter of individual ownership, he justifies it in ‘communitarian’ terms; here it is not “rights possessed by the individual prior to or apart from the community”, and the phrase ‘natural rights’ appears nowhere in the book.

The Things That Are not Caesar’s (1927) is Maritain’s first work on political philosophy. Here, the term ‘right’ occurs many times, “almost always to mean the power of the Church”. There are two notable exceptions, both occurring nonetheless in footnotes: “the fundamental rights which natural law confers on human personality and domestic society”, and “a natural right of human personality or the family.” It is deeply Thomistic when Maritain states that the liberty of humans is to be regulated. Even in his classical work Integral Humanism (1936), which laid the foundation...

III. The Idea of Human Rights

for his personalist philosophy, he elucidated the concept of the person without endorsing rights; “there was simply no sign in Maritain’s thought that such ‘Christian humanism’ meant human rights.”

The first occurrence of Maritain appealing directly to the notion of natural rights is in *Scholasticism and Politics* (1942). Here he uses the terms “fundamental rights” and “primordial rights”. This work is a composition of talks given by him in America during 1938. “It was most clearly in early 1942 that Maritain was transformed into the philosopher of human rights that he had never been before”, Moyn observes. He rightly identifies an ‘ambivalence’ that surfaces in Maritain’s *Fortune* magazine article of 1942. On the one hand, Maritain chides modern people for “claim[ing] human rights and dignity without God, for his ideology grounded human rights and human dignity in a godlike, infinite autonomy of human will”; on the other hand, he refers to the apparently alternative “concept of, and devotion to, the rights of the human person” as “the most significant political improvement of modern times.”

Maritain’s fully developed theory of natural rights is well stated in *The Rights of Man and Natural Law* (1943). Here he first deals with the meta-
physical foundation of human rights – the notion of human person – and then presents a comprehensive statement of his theory of human rights. His later works *The Person and the Common Good* (1947) and *Man and the State* (1951) supplemented what he stated in his earlier works. His *Man and the State* is now considered to be the most comprehensive statement on political philosophy.

What must have caused Maritain’s conversion to human rights, which was otherwise alien to Catholicism? It is often opined that his frequent visits to the United States and his encounters with the Anglo-American tradition of law and political thought must have played an important role. Crosson however is of the opinion that “that tradition has played more of a heuristic role than a substantive one […] he found in the language of natural rights a universe of discourse, a set of commonplaces, in which he could speak effectively to a secular American audience and which led him in new directions.”

Another decisive factor in Maritain’s transformation was World War II. Amato makes an interesting observation: “The war caused […] Maritain to rethink [his] view of Europe and the world, and the results of this rethinking […] led Maritain in the direction of American liberalism”. Moyn finds in Maritain’s “geographical and intellectual voyage to the American scene one that would be fateful for the future of Catholicism as a whole”. His association with Emmanuel Mounier and the journal *Esprit*, his gradual disassociation with authoritarian figures like Father Garrigou-Lagrange and others in the Vatican, his disagreement with Cardinal Pacelli over fascism in Spain and his stance on the civil war in Spain etc. provided him with a bold and broad world view.

---

296 Hellman observes: “It is striking to learn how, in 1940–42, the ‘orthodox’ Thomists were favorable to an authoritarian Europe. Maritain, who was the leading Thomist intellectual, was shocked by the comportment of American Catholic leaders as well as by great French scholars like the Petainist Pere Garrigou because it suggested where Thomism led, politically.” Hellman, John (1991): “The Anti-democratic Impulse in Catholicism: Jacques Maritain, Ives Simon, and Charles de Gaulle during World War II”, *Journal of Church and State*, 33(3),
Moyn, however, situates Maritain’s turn to human rights – also of the whole Continent – in the wider context of the Catholic Church’s conversion to personalism, which happened dramatically in the mid-1930s through the decision of Pius XI to commit the Church to anti-totalitarianism. But this move toward human rights talks “occurred neither at a slow and steady pace nor all at once in a single transformative moment.” According to Moyn, Pius XI’s use of human rights language “in more serious and organizing way” toward the end of his papacy was “the crucial leap” in the history of Christian social thought. This is well evident in the language of his anti-Nazi encyclical *Mit brennender Sorge*, which emphasized the inviolable rights of human beings; the anti-Communist encyclical *Divini redemptoris* emphasized the right of property in the context of a more general scheme of the rights of the person against the totalitarian collective. His immediate successor Pius XII took it forward. He quoted *Mit brennender Sorge* to argue for “the inviolability of the human person that, in his sovereign wisdom and infinite goodness, the Creator has honoured with an incomparable dignity”.

In his 1944 Christmas message, Pope Pius XII endorsed democracy on condition of differentiating between its Christian communitarian and reprobate secularist version. Moyn identifies a reciprocal influence: “Maritain – who castigated the individualist language of rights through the late 1930s – changed them through his turn to them as much as they changed him. And his personalist and communitarian recasting of the language as a new option for Christianity helps explain why commitments to human dignity and human rights occurred neither at a slow and steady pace nor all at once in a single transformative moment.”

---

470. The misuse of Thomism to defend dangerous totalitarian attitudes prompted Maritain to reinterpret it and to use the same tool to fight against those evils.


298 “Man, as a person possesses rights that he holds from God and which must remain, with regard to the collectivity, beyond the reach of anything that would tend to deny them, to abolish them, or to neglect them.” Pius XI, Pope (1937): *Mit brennender Sorge*, #105.


rights could become as prominent as they did in the post-war European order.”301 This period was thus a watershed in the history of the Church.

1.3.2. The Philosophical Curiosity

It is already mentioned that modern human rights language contrasts to the classical Aristotelian-Thomistic tradition. Crosson pertinently states that “Maritain not only adopts but adapts the notion of natural rights”, and he achieved it “by linking the notion of rights both to a pre-political status of man, like Locke, and to the teleology of human nature, like Aquinas”.302 Maritain makes a solemn statement: “Man is constituted as a person, made for God and for eternal life, before being constituted part of a human community [...] hence there are primordial rights, which [political society] must respect.”303 Such a primordial right is actually alien to Thomism.

Maritain used the Thomist notion of *ius* (giving other their due) to defend subjective right as in the liberal tradition of Hobbes, Locke, Rousseau, etc. Aquinas originally used it as an *objective* idea of right, not as something possessed by an individual, rather as a ‘just thing’ to be done, traces of which can be seen in the etymological link between *ius* (right) and *iustitia* (justice). Thus, “giving a man that which is due” refers to our duties and obligations to bring about a “right order”, which means that “everyone receives his due, and everyone is disposed to give others their due”.304 Though originally foreign to Thomism, Maritain incorporated the notion of subjective rights into the Thomistic concept of *ius* or justice. He considered it to be according to the spirit of Thomism because “objective right implies or contains subjective rights”, which is the other side of ‘what is due to someone’; “the matter or object of natural justice is natural right”.305 It seems that for Maritain the idea of subjective rights is self-evident: “If man is morally bound to the things which are necessary to the fulfilment of his destiny, obviously, then, he has the right to fulfil his

destiny.” According to him, the concept of human rights traces back to the long history of the idea of natural law, and he is vehemently opposed to “the one-sided distortion and rationalistic petrification” of the idea of human rights in the seventeenth century through Grotius. However, it must be admitted that it is only with the philosophical tools of modern philosophy that Maritain accommodated human rights in Thomism. In his hands, natural law and natural rights do not exclude each other; on the contrary, one implies the other.

2. Natural Law: The Rational Foundation of Human Rights

Maritain’s most promising contribution to political philosophy is his affirmation and articulation of human rights in the language of traditional Thomism. The international consensus reached in 1948 in the form of the Universal Declaration of Human Rights bracketed the question of why. However, Maritain notes that it is important to have rational justifications for human rights. He states: “From the point of view of intelligence, what is essential is to have a true justification of moral values and moral norms. With regard to human rights, what matters most to a philosopher is the question of their rational foundations.”

In spite of prevalent philosophical reservations about natural law philosophies, Maritain considers that natural law is the rational foundation of human rights. He argues that natural law belongs to our shared human heritage, especially to both Greek and Christian tradition. The first systematic presentation of the concept of natural law can be found in the

words of Cicero, who claimed that true law is natural and right reason.\footnote{Cicero considers natural law as the universal, immutable and eternal principle to discern the right action, which no human authority can alter. 
\textit{De Re Publica}, III, 33, from Schall, James V. (1993): “The Intellectual Context of Natural Law”, \textit{The American Journal of Jurisprudence}, 38(1), 86.} Stoics have later carried over this tradition of natural law. The natural law theory of Thomas Aquinas was theocentric. The Enlightenment project set philosophy free from religious fetters, resulting in an anthropological shift in epistemology which Maritain calls “one-sided distortion and rationalistic petrification”.\footnote{Maritain (1949): “On the Philosophy of Human Rights”, 73.} The claim of rationalism that knowledge about natural law is deduced a priori by conceptual knowledge finally detached natural law from the transcendental. This shift to the self and autonomy “compromised and squandered these rights, because it led men to conceive their rights in themselves divine, hence infinite, escaping every objective measure, denying every limitation imposed upon the claims of the ego, and ultimately expressing the absolute independence of the human subject”.\footnote{Maritain (1951/1998): \textit{Man and the State}, 84. Also cf. Maritain (1942/2011): \textit{The Rights of Man and the Natural Law}, 108. According to Maritain, this anthropocentrism stems from the philosophy of Rousseau, which is known as a democracy of the individual, “where authority is suppressed and power perseveres […] since each individual is born free, it is necessary that he obeys only himself.” Maritain (1940/2011): \textit{Scholasticism and Politics}, 95. Besides, Hobbes, through his contractarian approach, challenged the notion of objectivity in justice; thus, justice becomes just what is agreed upon. Cf. Taylor, Quentin (2010): “Thomas Hobbes, Political Economist: His Changing Historical Fortunes”, \textit{The Independent Review}, 14(3), 421.}  Maritain, however, attempts to give an objective measure to human rights. He dares a metaphysical, natural law-based defence of human rights.

To my mind, any attempt at rational justification of the idea of human rights, as of the idea of right in general, requires that we rediscover in its true metaphysical connotations, in its realistic dynamism and in its humble dependence on nature and experience, that concept of the natural law which was defaced by the rationalism of the eighteenth century. We then understand how an ideal order, with its roots in the nature of man and of human society, can impose moral requirements universally valid in the world of experience, of history and of facts, and can lay down, alike for the conscience and for the written law, the permanent principle and the primal and universal norms of right and duty.\footnote{Maritain (1949): “On the Philosophy of Human Rights”, 73.}
The challenge, hence, is to understand ‘the realistic dynamism’ of natural law. Maritain argues in the Thomistic tradition that a human being as a person has a distinct nature, origin and end. The ‘natural’ in natural law can be understood in two ways: it is natural in the sense that it is related to the nature of a being; in the case of humans it is related to human functioning and human ends. It is natural also in the sense that it is known naturally (connaturally). Natural law has thus two elements: an ontological and a gnoseological element. This distinction between natural law in itself and natural law as known by us is very significant in Maritain’s natural law theory. He emphasizes: “The law and the knowledge of the law are two different things.”

2.1. The Ontological Element of Natural Law

Natural law refers to the ontological structure and the underlying nature of each being. Hence “every being has its own natural law, as well as it has its own essence.” Maritain calls it “the normality of its functioning”, which is founded on the very essence of a being. In the Thomistic tradition, the ‘normal’ functioning of humans is “to act reasonably”, which is inherent in human nature. This ontological structure of a being is universal; it will, however, be normally expressed in a particular individual. This basic structure of a being informs us of the end inscribed in the very nature of a thing.

Maritain uses the analogy of different types of piano: regardless of their variety, “they have as their end the production of certain attuned sounds”. He applies this to human beings: “But since man is endowed with intelligence and determines his own ends, it is up to him to put himself in tune with the ends necessarily demanded by his nature. This means that there is, by the very virtue of human nature, an order or a disposition which human reason can discover and according to which the human will must act in order to attune itself to the essential and necessary ends of the human being. The unwritten law, or natural law, is nothing more than that.”

This ontological structure in all things determines their functions or how they should function – how a thing should act. This ‘should’ however is only metaphysical, not moral. But as the locus of intelligence and freedom, “the same should starts to have a moral meaning, that is, to imply moral obligation” in human beings. “For man, the natural law is a moral law because man obeys or disobeys it freely, not necessarily, and because human behaviour pertains to a particular, privileged order which is irreducible to the general order of the cosmos and tends to a final end superior to the immanent common good of the cosmos.”\textsuperscript{320} The obedience demanded from natural law is not out of necessity but out of human being’s ontological and teleological structure – we are naturally commanded to achieve the ‘normality of functioning’.\textsuperscript{321} Obedience to natural law perfects the dignity of the human person. This faculty of ‘acting reasonably’ makes humans the highest of the beings, a microcosm in themselves and the rule of themselves, which gives them moral autonomy. Hence there is also a possibility to act against one’s own nature.\textsuperscript{322}

Such a conception of natural law is truly teleological. This underscores that human beings have certain ends or roles in the world, and, by virtue of human intelligence, they are capable of ascertaining those ends.\textsuperscript{323} Such an outline of a human nature “being constituted in a given, determinate fashion” refers to “ends which correspond to his natural constitution and which are the same for all”.\textsuperscript{324} It is “the ideal formula of development”, and “the ideal order” is “a divide between the suitable and the unsuitable, between what is proper and what is improper to the ends of human nature or essence”.\textsuperscript{325} This refers to a progressive awareness of the demands of the essence of human nature.

[N]atural law is something both ontological and ideal. It is something ideal, because it is grounded on the human essence, on its unchangeable structure and the intelligible necessities it involves. On the other hand, natural law is something ontological, because the human essence is an ontological reality, which moreover does not exist separately, but in every human being, so that

\textsuperscript{324} Maritain (1942/2011): \textit{The Rights of Man and the Natural Law}, 103–104.
by the same token natural law dwells as an ideal order in the very being of
every existing man.326

In our day-to-day life, the demands inherent in human essence are not al-
ways immediately available. Our moral awareness is hence in a process
constantly “ask[ing] questions of that essence”.327 This is an individual
and collective learning process that foresees the contingencies and limita-
tions of life. Here arises the second element of natural law.

2.2. The Gnoseological Element of Natural Law

The second element of the natural law is called ‘gnoseological’, by which
Maritain means our grasp or knowledge of the ontological element. As
discussed in the preceding section, connatural knowledge is not grasped
by concepts and theories but by connaturality and congeniality. Our grasp
of natural law is the best example of connatural knowledge.328 “Natural
law is the ensemble of things to do and not to do” which follows from the
preamble or principle “do good and avoid evil” in necessary fashion,
which is known by inclination.329 Thus, natural law becomes a measure of
our activities and an operative principle within us.330 It is not ‘abstract for-
mulas which life should copy like a book’, neither ‘theorems nor idols’,
but moral virtue grounded in right reason and will.331

The knowledge of natural law is a slow and difficult process. Natural
law is an unwritten law;332 hence, there are many restrictions on the extent
to which the content of natural law can be grasped. “Men know [the natu-
ral law] with greater or less difficulty, and in different degrees, running the
risk of error here as elsewhere […]. That every sort of error and deviation
is possible in the determination of these things merely proves that our
sight is weak, our nature coarse, and that innumerable accidents can cor-
rupt our judgment.”333 “The only practical knowledge all men have”, Mar-
Maritain observes, “naturally and infallibly in common […] is that we must do good and avoid evil”\textsuperscript{334} and that our acquisition of it would vary considerably. Since the law and the knowledge of the law are two different things, the one who does not know the law is not responsible before the law. “And knowing that there is a law does not necessarily mean knowing what law is.”\textsuperscript{335} It is only with “the evolutionary refinement” of human intelligence that the knowledge of the content of natural law will be increased.\textsuperscript{336}

Since natural law is unwritten, it can be known only progressively. Our knowledge of it has increased little by little as our moral conscience has developed.\textsuperscript{337} The gnoseological element implies that natural law “is progressively recognized from the most common principles to the more and more specific ones”.\textsuperscript{338} There are fundamental dynamic schemes of natural law in human nature, like the spontaneous knowledge that to take a human’s life is not like taking another animal’s life, or that the family group has to comply with some fixed pattern, etc. He calls these dynamic schemes “tendential frameworks” which can be found among all peoples of the earth.\textsuperscript{339}

For the cave man as well as the modern, the appropriation of natural law happens in a double manner: both through inclination and discursive reason. Over the course of history, reason “has become aware in a less and less crepuscular, rough, and confused manner, of the primordial regulations of the natural law.” On the other hand, human’s inclinations have made them more “aware […] of its further, higher regulations”.\textsuperscript{340} Here Maritain does not make any direct reference to the need of a supernatural assistance. The dynamic development of our moral conscience or the knowledge of natural law endures as long as human history endures. “That progress of moral conscience is indeed the most unquestionable instance of progress in humanity.”\textsuperscript{341}

\textsuperscript{335} Maritain (1942/2011): \textit{The Rights of Man and the Natural Law}, 104.
The ideal determinate part of the ontological element is thus skilfully engrafted to the contingencies of personal and collective history through the gnoseological element. The possibility of historical growth in our basic knowledge of natural law through our connatural knowledge is, therefore, “one of the distinctive and controversial notes of Maritain’s account of natural law”. On the one hand, humans are capable of grasping the content of natural law through the faculty of reason; on the other hand, it is not through reason that one discerns the content of natural law but through the knowledge of ‘inclination’. This paradoxical tension that arises from the ontological and gnoseological elements of natural law is a controversial subject in human rights discourse. Maritain deliberately leaves our moral knowledge incomplete, thus giving sufficient space for ambiguities and errors, which is not congruent with classical Thomism.

Maritain conjoins the modern ‘invention’ of human rights with this gnoseological element of the classical doctrine of natural law. He recognizes that Aquinas himself did not develop a theory of human rights. Duties were primary to Aquinas’ system of social relations. “Individuals are principally expected to do their duty, not clamour for their ‘rights’. In the natural law framework, duties are active and the implied ‘rights’ (or entitlements) are passive because their legitimacy depends upon the prior fulfilment of one’s duties and the requirements of justice. The virtue of justice requires a giving of rewards due to persons according to their role in community.”

Though Maritain had been vehemently opposed to the Enlightenment project, he nevertheless concedes that it was to its credit that there emerged a growing awareness of human rights. “In ancient and medieval times, attention was paid, in the natural law, to the obligations of man more than his rights.” It was “a great achievement of eighteenth century” that there arose “a progress in moral and social experience” which resulted

---


in paying attention to human rights. He considers this progression in the moral conscience of humanity as a development in the collective knowledge through inclination. Nevertheless, it oscillated to the other extreme when “attention was shifted from the obligations of man to his rights only. A genuine and comprehensive view would pay attention both to the obligation and the rights involved in the requirement of natural law.” Maritain tried to regain the correlative value of rights and duties. “If man is morally bound to the things which are necessary to the fulfilment of his destiny, obviously, then, he has the right to fulfil his destiny; and if he has the right to fulfil his destiny he has the right to the things necessary for this purpose.” He thus proves that rights imply obligations and vice versa.

3. Maritain’s Characterization of Human Rights

In Maritain’s theoretical framework, human rights and natural law are inseparable because “the same natural law which lays down our most fundamental duties […] is the very law which assigns to us our fundamental rights.” Human right is thus a ‘moral power’ claimed by an individual or by a community in light of the natural law. We possess rights vis-à-vis others because we are enmeshed in (1) the universal order, (2) the laws and regulations of the cosmos, (3) the laws and regulations of the immense family of created natures, and (4) the order of creative wisdom.

A comprehensive definition of human rights from Maritain, however, appears in one of his unpublished manuscripts. It reads:

What does the notion of right mean? A right is a requirement that emanates from a self with regard to something which is understood as his due, and of which the other moral agents are obliged in conscience not to deprive him. The normality of functioning of the creature endowed with intellect and free will implies the fact that this creature has duties and obligations; it also implies the fact that this creature possesses rights, by virtue of his varying nature – because he is a self with whom the other selves are confronted, and whom

III. The Idea of Human Rights

they are not free to deprive of what is due him. And the normality of functioning of the rational creature is an expression of the order of divine wisdom.\(^{349}\)

For Maritain, human dignity derives from the ‘personality’ of human beings – the spiritual centre of humans. He shows further how human rights are anchored in divine order. “Every right possessed by man is possessed by virtue of God’s right to see the order of His wisdom in beings respected […] and loved by every intelligence.”\(^{350}\) This claim seems to be ambiguous; nevertheless, it can be presumed that by respecting the rights of human beings we respect the order set by God in the human nature. In that sense, it “flows back” to God, to use an expression used by Maritain in relation to common good.\(^{351}\) This elevated status of human beings refers to the pre-political status of human rights.

3.1. The Pre-Political Status of Human Rights

There are basically two approaches to the validity and viability of human rights – pre-political and legal positivist. A pre-political moral approach conceives human rights to be prior to human authorities and social institutions, whereas legal positivism perceives the validity of human rights only within human authority and institutions. Maritain is diametrically opposite to an equivocation of law and right; the recognition of the pre-political status of human rights is an essential component of his political philosophy.

Maritain states unequivocally that a positivist philosophy “that recognizes Fact alone is powerless to establish the existence of rights, which are naturally possessed by the human being, prior and superior to written legislation and to agreements between governments.”\(^{352}\) It will end up considering human rights merely as a “superstition”. Such a positivist ap-

---

349 Maritain (2001): *Natural Law: Reflections on Theory and Practice*, 60, F.N. 27. This definition comes from an unpublished manuscript of Maritain entitled “The Philosophical Foundations of Natural Law”. Although the text is almost identical to *Man and State*, here Maritain provides a definition of rights that does not appear in his other works.


351 Taking into consideration the deep Christian faith of Maritain, it can be assumed that he had in mind the biblical notion of loving God through loving our neighbours. “Truly, I say to you, as you did it to one of the least of these my brethren, you did it to me.” Matt 25:40, *Revised Standard Version*.

A. MARITAIN’S HUMAN RIGHTS DISCOURSE

approach to human rights has its roots, Maritain says, in the ‘fatal mistake’ of philosophers who believe in an apparently infallible Reason/Nature; in reality, such rights are only arbitrary and artificial. This approach can be found either in the ancient temptation of Euclid to believe that moral calculation could be done with mathematical or geometric precision, or later in the philosophy of Rousseau and Kant, which treats the individual as a god. Maritain quotes Kant: “A person is subject to no other laws than those which he (either alone or jointly with others) gives to himself.” Maritain says that it is equal to saying that one must “obey only himself”.353 Thus, a philosophy that does not go beyond fact alone cannot recognize the ‘value’.

Pure positivism is not in a position to establish ‘ought’ in the cosmic order or in human nature. In the nineteenth century occurred the so-called “victory of juridical positivism over the doctrine of natural law”. Maritain adds that it was in no way the demise of natural law itself, as evidenced in the so-called “renaissance of natural law” by the end of that century. It remains true that a positivist philosophy based either only on observed facts or on the idealistic or materialistic philosophy of Absolute Immanence is powerless to establish the existence of rights, which are antecedent and superior to written law and agreement between human beings.355

In order that human rights make sense, Maritain argues, it is necessary to recognize a normative structure in the created order. Such an order is not merely “factual datum in things”; it is required that the “essence” of things are recognized, thus finally referring to the divine ordering of the notion of human rights. “[T]he fact that things participate in an ideal order which transcends their existence and requires to govern it, would not be possible if the foundation of essences themselves and eternal truths, did not exist in a separate Spirit, in an Absolute which is superior to the world, in what perennial philosophy calls the Eternal Law.”356 In order to insist that human beings possess “certain fundamental and inalienable rights antecedent in nature, and superior, to society”,357 it is to be recognized that rights are “prior and superior to written legislation”.358

III. The Idea of Human Rights

Hence the solemn statement of Maritain: Human rights are the claims which “the civil society does not have to grant but to recognize and sanction as universally valid, and which no social necessity can authorize us even momentarily to abolish or disregard.” Such a concept can be valid and rationally tenable only if it is accepted that each human person has “a nature or essence which is the locus of intelligible necessities and necessary truths.” This definitely is an approach that goes very well beyond positivism. “There is no right unless a certain order – which can be violated in fact – is inviolably required by what things are in their intelligible type or their essence.” Maritain argues that certain rights are inalienable “since they are grounded on the very nature of man, which of course no man can lose”.

As discussed in connection with the common good, by virtue of ‘the wholeness’ of a human person, the entire human person is also above political society. “There are in it things – and the most important and the most sacred – which transcend political society and which rise the ‘entire man’ to a position above political society […] There are in me gifts, rights and values which exist neither by the state, nor for the state and which are outside the sphere of the state.” This is a way out of legal positivism.

3.2. Three Types of Law

Maritain constructs his concept of human rights and correlative obligations on the basis of “imperceptible transactions between natural law, the law of nations and positive law”. It is in accordance with the “dynamism” of how natural law “flowers forth” in human laws that “the rights of the

362 Frank H. Knight, an economist and radical empiricist who adheres to the ‘socio-logical’ philosophy of value, finds in Maritain’s The Rights of Man and Natural Law only “empty verbiage or sheer absurdity” (262). In his social contract approach, Knight holds that the process of establishing social consent “is essentially that of discussion of values”, and that “values are established or validated and recognized through discussion and activity, which is at once social, intellectual, and creative” (235). Cf. Knight, Frank H. (1947): Freedom and Reform: Essays in Economics and Social Philosophy, New York: Harper & Brothers.
human person take political and social form in the community”.\textsuperscript{363} In his theoretical framework, human rights fall into three different classes: first, primordial rights derive \textit{directly} and \textit{necessarily} from natural law; secondly, rights of the law of nations derive \textit{necessarily} from the natural law given certain conditions; and thirdly, rights of positive law are \textit{contingently} derived from the natural law.\textsuperscript{364} Hence it is necessary to take a brief glance at various types of laws proposed by him.

3.2.1. Natural Law

The term ‘natural law’ spontaneously invokes a notion of written law; hence, Maritain observes that it is necessary to grasp its “analogical character”. It is only analogical because it is not a given law but a law to be derived.\textsuperscript{365} He underlines a dynamism of relationships between human positive law and eternal law because all laws ultimately emanate from the eternal wisdom of God. Reason is fundamental to human nature, and this is related to the author of nature, God. In the sixteenth century, this theocentric understanding of human nature was outpaced primarily by Grotius, and subsequently an anthropocentric project of natural law was adopted by his successors.\textsuperscript{366}

\begin{footnotesize}
366 The famous \textit{Hume’s Guillotine}, which is also known as ‘Is-Ought’ problem, gradually got rid of normative imperatives of nature. Nature is here understood only as a fact, or as an ‘is’ without any ‘ought’. Maritain argued vehemently against such ‘modern’ tendencies: “Suppose, absurdly, that God does not exist and that nothing is changed in things [i.e., let us suppose everything remains as it is]: then, by hypothesis, nature would continue to exist, and consequently the normality of functioning of human nature; the requirements of the ideal order based upon the essence of man would likewise continue to exist. But a second question presents itself: is this order rational; is it wise, does it oblige me in conscience? Indeed, the only foundation for its rationality is the Eternal Law, the divine reason, and it is precisely this which Grotius did not perceive […] why should I be obliged in conscience by a purely factual order? In reality, if God does not exist, the Natural Law lacks obligatory power. If the Natural Law does not involve the divine reason, it is not law, and if it is not law, it does not oblige.” Maritain (2001): \textit{Natural Law: Reflections on Theory and Practice}, 46–47.
\end{footnotesize}
For Maritain, eternal law is not solely a revealed truth but also a “philosophical truth”, because it is concluded from the truth that God exists. In that sense, “the Eternal Law is the eternal wisdom of God and divine essence itself.” Natural law is the participation of all creatures in the “Subsistent Reason, the Intelligence or First Truth” “insofar as they emanate from it the inclinations through which they tend naturally toward their proper operations and ends.” Hence a recourse to the concept of eternal law is, for Maritain, unavoidable. Human goodness derives from the eternal law, and hence participation in the divine wisdom makes human nature more dignified.

Maritain argues that “divine reason alone is the author of natural law, and natural law emanates from it”. He continues saying that “the divine reason is the only reason to be considered […]. Indeed, in the case of Natural Law, human reason has no share in the initiative and authority establishing the Law, either in making it exist or in making it known”. In this theocentric framework, both natural law’s content and the means of knowing it are determined by the wisdom of God, as articulated in the concept of connatural knowledge.

3.2.2. The Law of Nations

The law of nations or ius gentium is an intermediary between natural law and positive law. Maritain calls it the “common law of civilization”. Ius (right) means that something is no longer only “virtual”; thus, right obtains a “formal and actual” meaning. They are no more ideal but natural rights. The difference between natural law and ius gentium lies in the way they are known, that is in the gnoseological element of natural law. Natural law is known through inclination, ius gentium is known through the conceptual exercise of reason; the grasping of the ius gentium is done collectively by common civilized humanity, thus being less an individual

It is true that the *ius gentium* belongs generally to the social domain and especially to the international domain, but Maritain warns that “it is absurd to reduce the laws of nations merely to the laws of international morality”. “Every norm of conduct which is universally valid, but which is known to common consciousness because necessarily deduced by human reason, is part of *ius gentium*.”

The intermediary character of the *ius gentium* makes it difficult to define it. It encompasses both: natural law, insofar as it is not only known as rationally inferred; positive laws, insofar as it is known through the conceptual exercise of reason. Maritain cites the example of the prohibition of murder, the knowledge of which can be attained both through inclination and through the exercise of conceptual reason; therefore it is both a precept of the natural law and a precept of the *ius gentium*.

Because of this intermediary status between virtual law and positive law, the *ius gentium* “belongs at once to the moral order and to the juridical order”; it thus binds us both morally and legally. The *ius gentium* “presupposes a *debitum morale*, a moral obligation appealing to conscience, before the legal obligation, *debitum legale*”. It is not necessarily a written law; it may not be necessarily promulgated in a society. Nevertheless, it is “first of all formulated in the common conscience by human reason in its legislative role, making the law known through its own conceptual means.” The unwritten and un-promulgated character does not spare it from juridical validity. The *ius gentium* “may be formulated juridically; in fact, it seeks to be, but is not necessarily so formulated”.

This is particularly true of the UDHR, which was a formulation in “the code of a supranational world society whose tribunals would be required to enforce” these rights. They were valid before the formulation; they are valid even when they are not legally enforced. This category of law is

---

very remarkable in human rights discourse because many human rights lie in the realm of moral claims. The recognition of a moral order beyond the positive laws of states was most forcefully proved in the Nuremberg Trials. Though Nazi leaders were allegedly acting legitimately according to the positive law of their state, it was counted as a delictum ius gentium – a crime against humanity. In this trial, Maritain himself notes a recourse to the principle of natural law.  

3.2.3. Positive Law

According to Maritain, “Positive law or body of laws in force in a given community, deals with the rights and duties, which follow from first principle, but in a contingent manner, by virtue of the determinate ways of conduct set down by reason and the will of man when they institute the laws or give birth to the customs of a particular community.” Positive law, as in the case of ius gentium, is a “prolongation or an extension of natural law”; hence, its moral force derives, according to Maritain, from natural law. The legal and moral obligation of positive law derives from its conformity to natural law. “[A]n unjust law is not a law. This follows as a consequence from [...] the fact that the positive law obliges by virtue of the Natural Law which is a participation in the Eternal Law. It is inconceivable that an unjust law should oblige by virtue of the Natural Law, by virtue of regulations which go back to the Eternal Law and which are in us as participation in that Law.” This sets limits to the legal-positivist and contractarian understanding of the morals and its concept of the state as ‘law-giver’.

Maritain anchors his human rights theory on the interlocking dynamism among the above-mentioned laws that govern the cosmos and the humans.

383 Maritain observes: “[W]hen it comes to the application of basic requirements of justice in cases where positive law’s provisions are lacking to a certain extent, a recourse to the principles of Natural Law is unavoidable, thus creating a precedent and new judicial rules. That is what happened, in a remarkable manner, with the epoch-making Nazi war crimes trial in Nuremberg.” Maritain (1951/1998): Man and the State, 95, F.N. 12.
The right to existence, to personal freedom and to the pursuit of the perfection of moral life belongs to natural law. The right to private property lies between natural law and *ius gentium*. Human rights, like freedom from want and freedom from fear etc., belong to the law of peoples and are fulfilled by positive law.\(^{387}\) This explicit epistemic gradation necessarily assigns a hierarchy of human rights, which will be analysed in the following.

3.3. The Hierarchy of Human Rights

Maritain develops an extensive list of human rights in three broad hierarchical categories: the rights of the human person, the rights of the civic person and the rights of the working person.

3.3.1. The Rights of the Human Person

The rights of the human person should be understood in the light of Maritain’s fundamental postulate that a human being as a person has a transcendent nature and destiny, by virtue of which she transcends all social institutions, including the state.\(^{388}\) His line of argumentation is obviously theological. Before enumerating the rights of the human person, he presents two *fundamental* human rights that take a prime place in his human rights discourse. These are indeed his strong statements against the “totalitarian pretensions”\(^{389}\) of the time, setting limits to the power of the state: the right to the pursuit of the perfection of the moral and rational life, and the right to conscience.

In affirming the right to spiritual-rational pursuit, he argues in the Aristotelian scheme that “moral virtues are ordered to a contemplation of truth which surpasses political intercourse.” A state does not have the right to impose any philosophical or mathematical doctrine since it depends “sole-
ly and exclusively to truth”. 390 Then he recourses to the right of conscience, “the secret of heart and the free act as such, the universe of moral laws” which enables one “to hearken unto God”. 391 A state does not have the right to violate “the sanctuary of the conscience” “by monstrous means of psychological poisoning, organized lies and terror”. 392 Maritain continues: “Every human person has the right to make his own decisions with regard to his personal destiny, whether it be a question of choosing one’s work, of marrying the man or woman of one’s choice, or pursuing a religious vocation.” 393

Having stated the fundamental rights, Maritain enumerates a list of the rights of the human person as follows:

1. The right to existence and life.
2. The right to personal freedom, or to conduct one’s own life as master of oneself and of one’s acts, responsible for them before God and the law of the community.
3. The right to the pursuit of the perfection of a moral and rational human life.
4. The right to the pursuit of eternal good. This includes the right of the Church and other religious families to the free exercise of their spiritual activity, the right of pursuing a religious vocation, the freedom of religious orders and groups.
5. The right to keep one’s body whole (bodily integrity).
6. The right to private ownership of material goods, which is a safeguard of the liberties of the individual.
7. The right to marry according to one’s choice and to raise a family which will be assured of the liberties due to it.
8. The right of association.
9. The respect for human dignity in each individual, whether or not he represents an economic value for society. 394

393 Maritain (1942/2011): The Rights of Man and the Natural Law, 115. He concedes that the state has an “educative function”, but he is very cautious to warn that it should take place in accordance with each human being’s “vocation as a human person”. Maritain (1942/2011): The Rights of Man and the Natural Law, 116.
Maritain reiterates his personalist conviction: “All these rights are rooted in the vocation of the person”, that is, the vocation as “a spiritual and free agent” to “the order of absolute values and to a destiny superior to time”.\textsuperscript{395}

This list of human rights may disclose some parallels with \textit{The French Declaration of the Rights of Man} and the rights encapsulated in \textit{The American Declaration of Independence}. Maritain diagnoses an essential difference between them: the former bears an entirely rationalist point of view of the Enlightenment and Encyclopaedists tradition, whereas the latter, “marked by the influence of Locke and ‘natural religion’, adhered more closely to the originally Christian character of human rights”.\textsuperscript{396} He repeats his antipathy to the rationalist project and his lamentation about the corruption of Christian principles. Maritain hesitates to give any credit to the tradition of the French Revolution and takes a provocative stance, claiming that “consciousness of the rights of the person [in revolutionary France] really has its origin in the conception of man and of natural law established by centuries of Christian philosophy”.\textsuperscript{397} In view of the historical contingencies, such a claim may not stand the criticism.

3.3.2. The Rights of the Civic Person

Political rights or “the rights of the civic person”, states Maritain, “spring directly from positive law and from the fundamental constitution of the political community”.\textsuperscript{398} The rights of the civic person are anchored upon this postulate of the political nature of human beings. He first catalogues “the right of equal suffrage for all” and considers it as “a wholly fundamental political and human value […] one of those rights which a community of free men can never give up”.\textsuperscript{399} He also emphasizes the right of association “according to the affinity of their ideas and aspirations”, especially to form “political parties and political schools”.\textsuperscript{400} Though he is aware of the potential abuses of these associations and political parties,
III. The Idea of Human Rights

even to the extent of degenerating and paralyzing democracies, he reiterates that such potential abuses do not take away the fundamental value of this political right. A one-party system, in his view, does not remedy but worsen this political problem.\textsuperscript{401}

The right of the people to create a constitution and to determine for themselves the form of government is a more fundamental right than the right to vote or the right to political association.\textsuperscript{402} “Such a right”, Maritain insists, “is subject only to the requirements of justice and natural law”. He affirms that “a constitution juridically promulgated by virtue of the will of the people deciding freely to live under the political forms thus set up” is a commendable progress in the “grasp of political consciousness and in political organization”.\textsuperscript{403}

Maritain summarizes his discussion on the rights of the civic person stating “three equalities” which comprise them.

a) Political equality which assures to each citizen his status, security and liberties within the state.

b) Equality of all before law, thus implying independent judiciary power, which includes access to law and due process.

c) Equal admission of all citizens to public employment, according to their capacity, and free and ready access of all to various professions without racial or social discrimination.\textsuperscript{404}

It is revealing that Maritain stresses that even non-citizens retain the rights of the civic person to participate in the political life.\textsuperscript{405} He revisits the right of association and freedom of expression, which he considers to be of prime importance in exercising political rights. For him, these rights belong to natural rights. Any limitation of this right is allowed only if the common good requires it.\textsuperscript{406}

\begin{itemize}
\item \textsuperscript{401} Cf. Maritain (1942/2011): \textit{The Rights of Man and the Natural Law}, 120.
\item \textsuperscript{402} Cf. Maritain (1942/2011): \textit{The Rights of Man and the Natural Law}, 121.
\item \textsuperscript{403} Maritain (1942/2011): \textit{The Rights of Man and the Natural Law}, 121.
\item \textsuperscript{405} Cf. Maritain (1942/2011): \textit{The Rights of Man and the Natural Law}, 121.
\item \textsuperscript{406} Cf. Maritain (1942/2011): \textit{The Rights of Man and the Natural Law}, 122–123. He is very careful to strike a middle way between liberty and restriction. “What here distinguishes a society of free men from a despotic society is that this restriction of the destructive liberties takes place, in a society of free men, only with institutional guarantees of justice and law.” Maritain (1942/2011): \textit{The Rights of Man and the Natural Law}, 123.
\end{itemize}
3.3.3. The Rights of the Working Person

Already in Integral Humanism, Maritain dealt with the ‘progress in organization and progression in consciousness’ with regard to the rights of the working person. According to him, these rights are the result of a social and historical progression which culminated in the nineteenth century. “The principal phenomenon [...] which emerged in the nineteenth century is the consciousness of self (prise de conscience), achieved by the working person and the working community.”407 Though this self-consciousness happened in the economic life and temporal order, it was caused primarily by a spiritual and moral awareness of “the grasp of consciousness of an offended and humiliated human dignity and of the mission of the working world in modern history. It signifies the ascension towards liberty and personality, taken in the inner reality and their social expression, of a community of persons […] the community of manual work, the community of human persons charged with this labour.”408

The recognition of the adulthood of the proletariat, Maritain notes, had its negative effects too. Here he refers to the idea of class struggle and class dictatorship in Marxism. Though he is sensitive to the role of workers and peasants, he takes a pacifist direction, stressing the need of organizing and educating themselves, becoming aware of their responsibilities in the community, becoming an integral part of society, etc.409 He catalogues some important rights of the working person as follows.

1. The right to a just wage that yields a person and his family a sufficient human standard of living, because “a man’s work is not a piece of merchandise subject to the mere law of supply and demand.”
2. The right freely to choose one’s work, so that everyone finds work which will afford a living for oneself and one’s family.
3. The right to joint ownership, joint management of an enterprise, and to the worker’s title. A wage system can be substituted by an associative system.
4. The freedom to organize, to form trade-unions and other vocational groups which refer to the political right of association.
5. The ‘right to strike’, which Maritain calls the “natural weapon”, is a consequence of the freedom of association. Neither the state nor eco-


According to Maritain, the great historical self-awareness that a working person “stands before his employer in a relationship of justice and as an adult person, not as a child or as a servant”, emerged from the awareness of the dignity of work, founded on a “moral datum”. He thus situates these rights in the personalist framework.\footnote{Cf. Maritain (1942/2011): \textit{The Rights of Man and the Natural Law}, 127.} His pacific approach surfaces again when he reiterates the need for a peaceful settlement of economic issues, warning against trade unions and cooperative organizations “running the risk of becoming tyranny”. He appeals for a harmonious relationship between capital and labour that is founded on justice and human rights.\footnote{Maritain (1942/2011): \textit{The Rights of Man and the Natural Law}, 127–128.}

Maritain is particularly critical of the socialist temptation of “granting primacy to economic technique”, thus entrusting everything to the power of the State, which obviously leads “in the direction of a totalitarianism with a technocratic base”.\footnote{Maritain (1942/2011): \textit{The Rights of Man and the Natural Law}, 128–129.} He argues that the idea of a planned economy should be replaced by an “adjusted economy” that is “based upon the progressive adjustment due to the activity and the reciprocal tension of the autonomous agencies groping producers and consumers from the bottom up”. Additionally, collectivization should be replaced by associative ownership. Maritain is totally against the tendency toward paternalism, which “tends to treat the worker as a minor and opposes in the most radical manner that consciousness of the social dignity and the rights of the working person.” The temptation of “corporatism” is also equally condemnable, as it “leads the way to Fascism, to a political totalitarianism”.\footnote{Maritain says: “The political life and organization of the State affect the common life of human persons and their direction towards a common task, which assumes the strength, peace and harmony of the social body, and which must aim at the conquest of freedom and the establishment of a brotherly city as its supreme ide-}

III. The Idea of Human Rights

Maritain is at pains to defend the dignity of the person against the power of the state. For Maritain, the “establishment of a brotherly city” is an order superior to the establishment of economic order.\footnote{Maritain (1942/2011): \textit{The Rights of Man and the Natural Law}, 128–129.} He goes beyond the reductionist temptation of defining human well-being exclusively in terms of economic

For Maritain, the “establishment of a brotherly city” is an order superior to the establishment of economic order.\footnote{Maritain (1942/2011): \textit{The Rights of Man and the Natural Law}, 128–129.} He goes beyond the reductionist temptation of defining human well-being exclusively in terms of economic
factors. Human well-being is a broader concept that encapsulates moral, intellectual and spiritual well-being, without denying the material element. Economic structures, like trade-unions, economic institutions and vocational bodies, are just means which “play only a consultative role”. They are not to “direct political life or to constitute the structure of nation”.416

In the conclusion of this discussion, Maritain thematises slavery and forced labour as a grave violation of personal liberty in contrast to the right to freely choose one’s work – “the right to direct his own life as his own master”.417 He feels the burden of antiquity and medieval theology that failed to condemn this grave violation of human right.418 All forms of slavery, which alienate one’s activity while giving the benefit to another, “becoming to that extent the organ of another person”, have been, are being and will be eliminated only gradually, as the techniques of production and of social life become perfected and as spiritual energies become liberated within communal life. This is in accordance with his progressive notion of human emancipation, where diverse forms of servitudes are abolished only “by degrees” proportionate to the growth in the awareness of human dignity. A legitimate question would be whether we need to patiently wait for a gradual moral evolution to happen when faced with severe human rights violation like slavery. The problems related to Maritain’s pacifism and moralism will be treated in the course of the book.

3.4. The Limitations of Human Rights

It is already stated that in the historical context of the dangers of statolatry, Maritain primarily defended human rights ‘against’ the state. He very painstakingly established the pre-political nature of human rights, founded on the nature of human beings and hence inviolable. But in view of human frailties, many of the human rights must be subject to limitations. Though they are founded on the nature of humans, it “does not mean that they reject by nature any limitation.” He is very particular to affirm that human rights are limited by the common good since they have an “intrinsic rela-

tion to the common good”.\textsuperscript{419} The body politic, which embodies the common good, can restrict human rights, like the right of association or of free speech, in case “the common good would be jeopardized”.\textsuperscript{420} They are, according to Maritain, only \textit{substantially inalienable}. There is, however, another category of human rights which is \textit{absolutely inalienable}, viz. the right to existence, the right to the pursuit of happiness, etc. They cannot be restricted by human agencies because such a restriction would be \textit{de facto} against the common good.\textsuperscript{421} His hierarchy of human rights determines their restrictions and limitations. The rights arising from the \textit{ius gentium} and positive law make sense only by virtue of membership in a particular group or society, and they can neither be universal nor absolutely inviolable, whereas the rights of the human person, possessed by any human person qua person irrespective of biological, sociological, geographical, political and economic differences, are universal in scope and absolutely inalienable.\textsuperscript{422}

3.4.1. Possession and Exercise of Human Rights

Maritain’s insistence upon the absolute character of primordial rights faces a serious challenge in the case of capital punishment. On the one hand, the right to exist is absolutely inalienable; on the other hand, capital punishment is, at least in principle, permitted for the sake of common good. In order to solve this impasse, Maritain distinguishes between “possessing” and “exercising” rights. One may possess a right, but the exercise of that right is qualified by the community. “Even absolutely inalienable natural human rights are subject to limitation, if not to their possession, at least

\begin{itemize}
\item \textsuperscript{419} Maritain argues: “[Natural rights] are inalienable since they are grounded on the very nature of man, which of course no man can lose. This does not mean that they reject by nature any limitation or that they are the infinite rights of God. Just as every law, notably the natural law on which they are grounded, aims at the common good, so human rights have an intrinsic relation to the common good.” Maritain (1951/1998): \textit{Man and the State}, 101.
\end{itemize}
with respect to their expression or exercise.”

In order to make this point clear, he explains the case of a criminal guilty of a capital offense.

If a criminal [who has possession of the absolutely inalienable right to life] can be justly condemned to die, it is because by his crime he has deprived himself, let us not say of the right to live, but of the possibility of justly asserting this right. He has morally cut himself off from the human community, precisely as regards the use of this fundamental and ‘inalienable’ right which the punishment inflicted upon him prevents him from exercising.

This alludes to Aquinas’s argumentation that a wrongdoer takes himself outside of the human society. In Thomistic understanding, what is due to one person is due to her as a member of the political community. When one ceases to be a member of the community, one has nothing due from it and hence no rights to claim against it.

Furthermore, restrictions on the exercise of inalienable natural human rights are caused not only by individual actions but also by social structures. Maritain cites the example of the fundamental right to education. Though the claim to education remained legitimate for the slave society in ancient Rome or Middle Ages, this claim was “something to be fulfilled in time”. He continues: “[T]he exercise of it is subject to a given society’s concrete possibilities; and it can be contrary to justice to claim the use of this right for each and all hic et nun if that can only be realized by ruining the social body.” This case of an impasse, where humans possess some inalienable rights but are deprived of practising them, is “because of the inhuman element that remains in the social structure of each period”, or because of “social structures whose vice or primitiveness prevents the claim.”

This argumentation is vaguely similar to the way we understand new rights like the right to food, which will be later treated in detail.

A positive conception of this distinction is particularly important. Sometimes it is quite reasonable ‘to forgo the exercise of certain rights, which we nevertheless continue to possess’. Maritain rightly mentions that this principle would apply to the modalities of private property in a society which is in the process of economic transformation. He explicitly refers to redistribution of properties, which would naturally result in a restriction of the exercise of the fundamental right to private property. This same princi-

ple should be applied to the limitations on the so-called ‘sovereignty’ of states in the formation of an international community and world government, as dealt with in the preceding section.\textsuperscript{427} When the rights are limited by an external agency, this distinction between ‘possession’ and ‘exercise’ becomes problematic, and the arguments supporting it seem to be ambiguous.\textsuperscript{428}

3.4.2. Obligations

Traditional Thomism considered natural law only as the source of obligations; thus, Maritain’s accommodation of subjective rights into it was a watershed in political philosophy. He, however, was very critical about the absolutization of rights as happened in the case of the voluntaristic conception of human rights that considers them to be rooted in the will and not in human nature,\textsuperscript{429} which eventually will sideline the correlative obligations. It was Rousseau’s philosophy that laid the foundation to such a one-sided view which divinized the rights of human beings. “A genuine and comprehensive view”, Maritain states, “would pay attention both to the obligations and the rights involved in the requirements of natural law”.\textsuperscript{430} The concept of duties thus functions as a limiting factor in human rights discourse.

By virtue of the two facets of humaneness, the spiritual person and the material individual, as formulated by Maritain, humans have also a two-

\textsuperscript{428} Crosson contends: “[It is] unclear how a right possessed by nature can have its possession restricted by the body politic. What could it mean to say that rights proper to the very nature of a thing can be given and taken away by legislation? Clearly the essential properties of a thing cannot be so disposed of without changing its nature. Are rights different in this respect from essential properties, if they are possessed by the individual ‘before being constituted part of a human community?’ There seems to be a dilemma here.” Crosson (1983): “Maritain and Natural Rights”, 905–906.
\textsuperscript{429} In this framework, natural right is what the will wills. The human will is not limited by human nature. “Thus if whatever is willed is right because it is willed, and only because it is willed, then there arises a certain parallel between law and right.” In natural law tradition, there are often conflicts between what is willed and what is right, and what is right takes priority over what is willed. Cf. Schall (1998): \textit{Jacques Maritain: The Philosopher in Society}, 85–86.
\textsuperscript{430} Maritain (1951/1998): \textit{Man and the State}, 94.
fold destiny. By virtue of our eternal destiny, we have rights and claims against the society; because of our imperfect destiny as an individual, society can make legitimate claims on us. To miss this correlation would result in divorcing human rights from “the moderating doctrine” of obligations and duties. A conception of unbridled human rights finally jeopardizes the common good.\textsuperscript{431}

On the basis of the analysis in section A.II.1, I present two theses that justify the complementarity and indivisibility of rights and duties. The first thesis: human beings as \textit{persons} are not mere ‘parts’ of society; they are whole within society. The second thesis: society is not a mere collection of individuals; it is an ontological whole. If a human person, as a whole, has claims over the society, the society as a whole has also, in the same way, claims over the individuals. Society has a \textit{telos} unreducible to the goods of its constituents.

The liberal tradition only insufficiently acknowledges that the person is essentially social. This sets a serious limitation on its anthropology, which in turn limits the scope of the notion of obligation. It is already explained how Maritain establishes that humans are essentially social because of both sufficiency and deficiency. The priority of the common good over the individual in the personalist perspective constitutes the basis for defining ‘duty’ and for making it at least equal in importance to ‘rights’.\textsuperscript{432} Maritain’s liberal-communitarian structure makes room for a better correlation of rights and duties. Our rights \textit{against} society are thus often limited by our obligations \textit{to} the society, which arise from our essential embeddedness in the society. While remaining deeply liberal, Maritain lets ‘common good’ limit some of the fundamental rights of human beings.\textsuperscript{433}

\begin{thebibliography}{99}
\bibitem{Watkins} It is clear that “Maritain firmly and uncompromisingly upholds the common good, and that he would adhere to the communitarian thesis of the priority of the good over the right since he believes that the common good has primacy.” Watkins, Michelle and McInerney, Ralph (1995): “Jacques Maritain and the Rapprochement of Liberalism and Communitarianism”, in Grasso, Kenneth L.; Bradley, Gerard V. and Hunt, Robert P. (eds.), \textit{Catholicism, Liberalism and Communitarianism}, Maryland: Rowman and Littlefield, 167.
\end{thebibliography}
3.4.3. Trade-offs and Dynamic Unity

Between the ‘ontological immutability of natural law’ and ‘the progress and relativity as regards the awareness of it’, there are many grey zones. With its tendency to absolutize human rights, the liberal individualistic tradition misses the community for the individual, while the communitarians miss the individual in the tendency to exclusively prioritize obligations. Here arises the tension between the “old” rights and “new” rights, as Maritain calls them, which is often intensified by ideological and geopolitical polarizations.

Maritain believes that we are now in a historical conjuncture where “the rights of a social person engaged in the process of production and consumption, especially [...] his rights as a working person”, are accepted by human reason along with the rights of the human beings as human and a civic person.\(^{434}\) Hence “the most urgent problems” of the current time, according to him, is to balance both the primordial, pre-political rights on one side and the rights of a human being as a working person, the rights of economic groups and the rights of social groups on the other side. It is essential to recognize the dignity of the work and worker.\(^{435}\)

Such an integral perspective urges us to reconsider the presumed “antagonism between the old and the new” rights. Maritain is convinced that this conflict is by no means insuperable but arbitrarily magnified, especially by the opposed ideologies and political systems. “Too much of stress cannot be placed on the fact that the recognition of a particular category of rights is not the privilege of one school of thought at the expense of the other; it is no more necessary to be a follower of Rousseau to recognize the rights of the individual than it is to be a Marxist to recognize the economic and social rights.”\(^{436}\) He notes that the UDHR document simultaneously made room for both the ‘old’ and the ‘new’ human rights. The message is clear: no right is, in reality, to be claimed singly, but integrally, because human rights enrich and limit mutually, in view of attaining common good. “That the various rights ascribed to the human being limit each other, particularly that the economic and social rights, the rights of man as a person involved in the life of the community, cannot be given room in

human history without restricting, to some extent, the freedoms and rights of man as an individual person, is only normal.\footnote{Maritain (1951/1998): \textit{Man and the State}, 106.}

What is enduring and challenging in his human rights theory is this attempt to seek a synthesis of various ‘generations’ of rights, so that the ensemble of human rights harmoniously works for the flourishing of the human person. Finding a middle way between liberal and communitarian traditions thus resulted in a \textit{personalist approach} to human rights.

What creates irreducible differences and antagonisms among men is the determination of the degree of such restriction [on various individual, economic, or social human rights], and more generally the determination of the scale of values that governs the exercise and concrete organization of these various rights. Here we are confronted with the clash between incompatible political philosophies. Because here we are no longer dealing with the simple recognition of the diverse categories of human rights, but with the principle of dynamic unification in accordance with which they are carried into effect; we are dealing with the tonality, the specific key, by virtue of which different music is placed on this same keyboard, either in harmony or in discord with human dignity.\footnote{Maritain (1949): “Introduction”, 16.}

Many disputes about priorities of human rights originate from ‘the clash between incompatible political philosophies’ resulting in an unfortunate compartmentalization of various rights finally endangering the well-being of the human person. As per Maritain’s analogy, discussions and disputes about ‘a specific key’ in the keyboard should not distort the music, which is the purpose of playing various keys – a music in harmony with human dignity.

By following this line of thought, the extent and limits of the practical agreement on human rights so often mentioned in the pages of this Introduction would become clear. It would be understood that to go beyond a mere list or enumeration of rights and to produce a true Charter determining a common way of action, the agreement must also cover the scale of values, the key in which in their practical exercise in social life, the acknowledged rights of man must be harmonized.\footnote{Maritain (1949): “Introduction”, 16.}

Everything depends, he argues, on “the ultimate value whereon those rights depend and in terms of which they are integrated by mutual limitations”.\footnote{Maritain (1949): “Introduction”, 16.} This ultimate value, as demonstrated in the UDHR, is human
dignity. This calls for an open and flexible approach to human rights. It is common place that there arise conflicts among various rights: “If each of human rights were by its nature absolutely unconditional and exclusive of any limitation, like a divine attribute, obviously any conflict between them would be irreconcilable.”

Maritain acknowledges that the advocates of a “liberal-individualistic”, a “communistic” and a “personalistic” type of society “will lay down on paper similar, perhaps identical lists” of human rights. They would, however, set accent on various rights, according to “the supreme values”. How these rights will be ordered and mutually limited depends on “the hierarchy of values” to which a society subscribes. Liberal and communitarian traditions have their own priorities. Various schools of thoughts will accuse each other of ignoring “certain essential rights of the human being”. Maritain delineates the shape of a personalist type of society, of which he actually dreams. “[T]he advocates of a personalistic type of society see the mark of human dignity first and foremost in the power to make these same goods of nature serve the common conquest of intrinsically human, moral, and spiritual goods and of man’s freedom of autonomy.” This calls for a dialogical and flexible approach to the implementation of human rights, in which legitimate prioritizing and weighing are respected if they are basically in tune with human dignity.

Conclusion

Maritain’s accommodation of human rights into his personalist philosophy provided classical Thomism with a contemporaneity. His pioneering forays into human rights discourse can be seen in his 1942 book *The Rights of Man and Natural Law* which exhibits many striking similarities with the UDHR. His description of human rights as pre-political moral claims substantially broadened the scope of rights which were then championed by positivists and contractarians. On the one hand, he lays a strong foundation for rights making natural law its rational basis; on the other hand, his characterization made room for dynamism and pluralism. Since the human person transcends all social institutions, the rights of the person – the

A. MARITAIN’S HUMAN RIGHTS DISCOURSE

liberal rights – are indispensable. However, the human individual is subordinate to the society; hence, the common good takes precedence over individual interests, thus making sufficient room for welfare rights. Maritain’s endorsement of a “dynamic unification” of rights beyond ideological wars reconciles the liberal and welfare rights. Even after almost 70 years of the UDHR, many liberal philosophers find no justification for social and economic rights; unfortunately, these rights are often treated merely as valuable aspirations. Maritain’s openness to possible ‘new rights’, in resonance with his notion of “law of prise de conscience”, is of great significance, particularly in view of the recent advancement of human rights discourse that recognized the welfare rights like the right to food and water, the right to basic education, the right to development, etc.

IV. An Appraisal of Maritain’s Human Rights Discourse

Scholasticism was infamous for its immutable and irreversible principles. In the hands of Maritain, Thomism undergoes a transformation by adapting to the challenges of the time. Sigmund rightly observes that Maritain was deeply a Thomist, but a Thomist who dared to use “traditional Thomistic categories to argue to a conclusion that would have horrified Saint Thomas”.443 Maritain is in this sense a heterodox Thomist who incorporated Thomism into modern challenges like freedom of conscience, democracy, human rights, etc. “Maritain expands the list of rights, though in a manner he believes follows from Aquinas’s way of ‘changing’ natural law either by making something more clear [sic] or deciding among legitimate alternatives.”444 In this section, I analyse Maritain’s explanation and expansion of Thomism, which decisively broadened the idea of human rights.


IV. An Appraisal of Maritain’s Human Rights Discourse

1. A Practical, Secular and Plural Approach to Human Rights

1.1. Practical

It is rightly argued that Maritain’s work in various groups of the United Nations in the formulation of the UDHR with people of widely differing philosophical and religious outlooks had a great impact on his natural law theory that resulted in “some major modifications” in his understanding of human rights, especially his recognition of the feasibility of a practical consensus about human rights.\footnote{Cf. Sigmund (1987): “Maritain on Politics”, 163.} He was the head of the delegation from France to the UNESCO’s second General Conference. In view of the irreconcilable ideological and cultural differences, the UNESCO committee philosophers found it impossible to come to a consensus.

The paradox is, that such rational justifications are at once indispensable, and yet powerless to bring about agreement between minds. They are indispensable because each one of us believes instinctively in the truth, and will only assent to what he himself has recognized as true and based on reason. They are powerless to bring about a harmony of minds because they are fundamentally different, even antagonistic and why should this surprise us? The questions they raise are difficult and the philosophic traditions to which they are related have long been divergent.\footnote{Maritain (1949): “Introduction”, 9.}

In the face of such an insuperable challenge, Maritain has famously said: “Yes, we agree about the rights \textit{but on condition that no one asks us why. That ‘why’ is where the argument begins.}”\footnote{Maritain (1949): “Introduction”, 9.} The ensuing insight was: “Men mutually opposed in their theoretical conceptions can come to a merely practical agreement regarding a list of human rights”, as Maritain’s comprehensive chapter about human rights in \textit{Man and the State} begins.\footnote{Maritain (1951/1998): \textit{Man and the State}, 76.}

Interestingly, Maritain, who considered himself to be a speculative philosopher, becomes a pragmatic philosopher for the sake of human rights. It is already mentioned that there is a certain tension between Maritain the Thomist and Maritain the pragmatist. It is argued that the separation of the philosophical from the political is required to make it possible to agree upon a document that enjoys universal acknowledgement.\footnote{Cf. McKeon, Richard P. (1949): “The Philosofbic Bases and Material Circumstances of the Rights of Man”, in UNESCO (ed.), \textit{Human Rights: Comments and Considerations}, 163.}

---

\footnote{448} Maritain (1951/1998): \textit{Man and the State}, 76.
the one hand, there is a philosophical question about the rational foundation of human rights, and Maritain had the temerity to hold strong to his rational justification: “The philosophical foundation of the Rights of man is Natural Law”. On the other hand, in the wake of unsurmountable pluralism in the world, Maritain, as a pragmatic philosopher, accepted the fact that there was going to be no ideological agreement as to the source of the rights contained in the Declaration. “[I]t would be quite useless to seek for a common rational justification of those practical conclusions and rights. That way lies the danger either of seeking to impose an arbitrary dogmatism, or of finding the way barred at once by irreconcilable divisions.”

In the absence of unity of faith or unity of philosophy, there will definitely be mutual conflicts. But in the domain of practical assertion, Maritain claims that the approach is pragmatic rather than theoretical, considering a highly complex geology of the mind, and the methodology is a “collective effort of comparing, recasting and perfecting the drafts” in order to achieve a practical convergence. It is indeed surprising when a Thomist concedes that if a theoretical consensus is attained at all, “it would remain one doctrine among many, accepted by a number and rejected by the rest, and could not claim to establish in actual fact universal ascendancy over men’s minds”. As it was already analysed in section A.II.3, moral knowledge works primarily in the realm of practical knowledge. In Maritain’s epistemology,

---


“practical reason [...] is the measure of human acts”. In that sense, abstract rational reflections provide justifications for human rights only in a secondary way. Though theoretical discourses and doctrines may vary, people can reach on similar conclusion on the basis of practical knowledge. Maritain observes: “[T]hese various systems, while disputing about the ‘why’, prescribe in their practical conclusions rules of behavior which appear on the whole as almost the same for any given period and culture.”

Thus, a practical approach to human rights discourse is open, although deliberately incomplete and ever revisable. Maritain argues: “Whatever school of thought we belong to, the comparison of our own ideas with those of so many distinguished minds will perfect and broaden our views on the nature and basis of human rights, on what enumeration of them should be attempted at our present stage in historical evolution, and on the scope – indeed on the gaps also – of the new declaration being prepared in the councils of the United Nations.” And hence he sought the possibility of arriving at a practical agreement despite theoretical differences:

Thus it is that men possessing quite different, even opposite metaphysical or religious outlooks, can converge, not by virtue of any identity of doctrine, but by virtue of an analogical similitude in practical principles, toward the same practical conclusions, and can share in the same practical secular faith, provided that they similarly revere, perhaps for quite diverse reasons, truth and intelligence, human dignity, freedom, brotherly love, and the absolute value of moral good.

Analogical similitude among ethical convictions of various peoples functions as the unifying element and serves as common moral ground in the absence of a common moral theory. The possibility of a practical agreement in human rights discourse is founded on a dialogical process that foresees “a collective effort of comparing, recasting, and perfecting the drafts”. A unity is possible on basic practical ideology and basic principles of action which “constitute *grosso modo* a sort of common denominator, a sort of unwritten common law, at the point where in practice the

most widely separated theoretical ideologies and mental traditions converge.\textsuperscript{461}

The possibility of some degree of shared morality despite cultural and philosophical diversities is inevitable for claiming ‘universality’ of human rights. Such a sense of ‘common minimum’ is particularly required in the face of extreme cultural particularist theories. Even when one is convinced of one’s preferences, there is a possibility of coming together on the basis of a “reasoned agreement”.\textsuperscript{462} Such an enterprise requires a basic agreement about the ethical foundation of human rights – that is human dignity, which is the ultimate determinant of the natural law.\textsuperscript{463} Since they are founded on human nature and not on human reason or understanding, it gains an inalienable character. Human dignity is the benchmark that determines the ‘scale of values’ or ‘the key according to which various rights are harmonized’.\textsuperscript{464} Maritain’s rational foundation is thus human dignity, which is based on a knowable, universal human nature.

Unlike Aquinas, who enumerates several self-evident precepts, Maritain maintains that only one precept of natural law is self-evident: “one has to do good and avoid evil”.\textsuperscript{465} This functions as the guiding principle for other human choices. In view of his acknowledgement of epistemological limitations, the application of this guiding principle in the contingencies and uncertainties of particular cases offers adequate space for plurality and even imperfections, without denigrating the fundamental demands of human dignity.\textsuperscript{466} It would make room for the unity of Thomism and the plurality of theological and philosophical positions in order to address the challenge of applying his metaphysically grounded ethics in a global

\textsuperscript{461} Maritain (1949): “Introduction”, 10.
\textsuperscript{462} Cf. Clark (2012): “Reasoned Agreement versus Practical Reasonableness”.
\textsuperscript{464} Maritain (1949): “Introduction”, 16.
\textsuperscript{466} According to Maritain, this epistemological process can be “either in harmony or in discord with human dignity.” Maritain (1951/1998): Man and the State, 106.
context. This synthesis of the universal and the particular attempted by Maritain fits into the vision of recognition of “the ontological universalism present in the tradition”, accompanied by “a kind of epistemological humility” which lays the foundation for a dialogically universalist ethic rather than a natural law ethic. In view of epistemological limitations, it is necessary to leave theoretical disputes in the background in order to resolve practical problems for the sake of common good, especially in promoting human rights. Martha Nussbaum summarizes it succinctly: “Although Maritain clearly himself prefers a theistic grounding for the ideas of human rights, he refrains from endorsing this grounding, because he is aware that it will not be shared by all his fellow citizens; respect for pluralism, together with the awareness of a substantial political common ground, calls for restraint.”

1.2. Secular and Plural

A shift from the *sacrum imperium* of the Middle Ages, which bears the Constantinian heritage of the union of state and Church, to a secular and pluralist world view of the modern time was decisive in the development of a universal consensus on human rights. As outlined in the preceding section, Maritain’s conversion from monarchic *Action Française* to a secular democracy eventually made him a devoted advocate of human rights. His seminal work, *Integral Humanism*, was an attempt to find a synthesis of ‘the things of God and the things of Caesar’ in order to overcome both rationalism and fideism. Deep within, Maritain had a secular spirit that he might have inherited from his socialist past and the prevalent republican tradition in France, which motivated him to think beyond a confessional state. His argument for the separation of temporal and spiritual orders started with *Things that are not Caesar’s*, further developed in *Integral

467 Cf. Thompson, Phillip (2001): “Review: Jacques Maritain: The Philosopher in Society by James V. Schall”, *The Journal of Religion*, 81(29), 316. The fact that Maritain was open for dialogue and dissent is evident from his founding of the “Cercle d’études thomistes” (Circle of Thomistic Studies) at his home in Meudon near Paris, which welcomed not only Catholic intellectuals but also inter-confessional and inter-religious philosophers.


Humanism and culminated in *Man and the State*. In contrast to the traditional Thomist view of unification of religious and political entities, he rejected the notion of a state religion or granting privileges to one religion over another.\textsuperscript{470} His distinction between the secular and the sacral realms and the way he construed it have “proven to be the most controversial element of his political philosophy”.\textsuperscript{471}

Maritain pioneered a revolutionary conception of a new Christian temporal order founded on the notion of “the autonomy of the temporal”.\textsuperscript{472} It is but “a Christian secular conception and not a Christian sacral conception of the temporal”. It is no more a *sacrum imperium*. It is the idea of “the *holy freedom*” in opposition to the freedom of liberalism which is only “the caricature and mockery of this freedom”.\textsuperscript{473} Maritain distinguished between “en tant que chrétien” (distinctly Christian actions) and “en chrétien” (Christian inspired actions). The notion of “en chrétien” opened up possibilities for co-operating with people of radically different religious or philosophical faiths to work for the betterment of the world.\textsuperscript{474} He says that “the energies of the Gospel must pass into temporal life”;\textsuperscript{475} thus he laid a foundation for Christian Democratic parties, which were, despite their Christian inspiration, essentially secular.

This secular society is thus a ‘pluralist structure of body politic’, which is an organic structure in contrast to the medieval mechanical and quantitative notion of political unity. This society respects the “organic heterogeneity in the very structure of civil society”.\textsuperscript{476} Quoting Pope Pius XI’s notion of ‘the principle of subsidiarity’, Maritain states that this organic unity allows a diversity of social groupings and structures in opposition to the spirit of totalitarianism.\textsuperscript{477} Recognizing the plurality of social structures is a prerequisite for a human being to attain the full freedom of au-

\textsuperscript{473} Maritain (1936/2012): “Integral Humanism”, 255.
\textsuperscript{475} Maritain (1943/2011): *Christianity and Democracy*, 25.
\textsuperscript{476} Maritain (1936/2012): “Integral Humanism”, 256.
tonomy.\textsuperscript{478} For Maritain, pluralism in political structures or societal pluralism within the body politic belong to the essence of a truly political society. This plurality issues from the person’s needs, but also from abundance and generosity as explained in the preceding section on “common good” (A.II.2).

Diametrically opposite to the medieval structure where “a common profession of faith [was] the source and the principle of the unity of the social body”,\textsuperscript{479} this society guarantees heterogeneity of contemporary religions. “Civil legislation should adapt to the variety of moral creeds of the diverse spiritual lineages which essentially bear on the common good of the social body – not by endorsing them or approving them, but rather by giving allowance to them.”\textsuperscript{480} The scholastic agenda of a ‘harmonious’ society has given way to pluralist model, consequently changing the self-understanding of the Church and society.\textsuperscript{481}

According to Maritain, the unifying element of this pluralist city is “a simple unity of friendship” moving beyond both the religious language of medieval ages and bourgeois liberalism’s anarchical atomization of society.\textsuperscript{482} The guiding force is a “spiritual energy, enough force and political prudence to practically exhibit […] that such a conception is in conformity with sound reason and with the common good”.\textsuperscript{483} Religion is repositioned as an energizing principle, whereas people gather around ‘friendship’ to work together for the common good. According to him, “time has a meaning and a direction, human history is made up of periods each of which is possessed of a particular intelligible structure, and therefore of basic particular requirements.”\textsuperscript{484} The “particular intelligible structure” of modern history is the common good, and diverse religious and societal communities work together for that end. It was a new direction given to

\begin{thebibliography}{99}
\bibitem{478} Cf. Maritain (1936/2012): “Integral Humanism”, 255 ff.: plurality in religion, economic systems, and juridical structures, as described in the preceding section.
\bibitem{479} Maritain (1936/2012): “Integral Humanism”, 262.
\bibitem{481} Cf. Hollenbach (1979): \textit{Claims in Conflict}, 120.
\bibitem{483} Maritain (1936/2012): “Integral Humanism”, 262.
\end{thebibliography}
Christianity. “It is not in the heights of theology, it is in the depths of the secular conscience and secular existence that Christianity works in this fashion.”

Certainly, this change of focus has enormously contributed to the aggiornamento of the Church.

Already in 1927, Maritain could think of a unifying element in humanity despite all the differences. “[I]n spite of the accidental differences – exaggerated out of all bounds, it seems, by many philologists and theorists – man and reason are everywhere the same.” He observes that the distinction of secular and sacral is a “process which was in itself but a development of the Gospel distinction between the things that are Caesar’s and the things that are God’s – the civil society has become grounded on a common good and a common task which are of an earthly, ‘temporal’ or ‘secular’ order and in which citizens belonging to diverse spiritual lineages share equally.” Further he proposes in Man and the State a new creed for a secular society to which all should adhere:

For a society of free men implies basic tenets which are at the core of its very existence. A genuine democracy implies a fundamental agreement between minds and wills on the bases of life in common; it is aware of itself and of its principles, and it must be capable of defending and promoting its own conception of social and political life: it must bear within itself a common human creed, the creed of freedom.

The need of such a civic or secular faith derives from the failure of both bourgeois liberalism and totalitarian governments. According to Maritain, bourgeois liberalism is not in a position to defend freedom, “just as it had no real common good, it had no real common thought – no brains of its own”, and countries with fascist, racist or communist propaganda are a “society without any idea of itself and without faith in itself, without any common faith which could enable it to resist disintegration”. Maritain’s


practical creed is intended to serve “national communion and civil union”.\textsuperscript{491}

This secular faith is “a merely practical one, not a theoretical or dogmatic one.” This is what he famously called “analogical similitude in practical principles” that helps us to reach the same practical conclusions.\textsuperscript{492}

Such an analogical similitude is the guiding principle that brings people of varying principles together “in a constructive action involving the right ordering of the life of temporal society and earthly civilization and the moral values inherent therein”.\textsuperscript{493} The coming together of peoples on the basis of a secular minimum or common minimum for the sake of fraternal amity and common good is not based on equivocation but “upon ‘analogical’ likeness as between the practical principles, motions, and progressions implied in their common acceptance of the law of love and corresponding to the primary inclinations of human nature.” Additionally, “this community of analogy itself supposes \textit{a primum analogatum} purely and simply true; and that implicitly and ultimately everything which is authentic love, working in the world for the reconciliation of men and the common good of their life here below.”\textsuperscript{494}

Such a secular creed will not harm a religious creed nor does it cause religious divisions among people. It is an attempt to teach people of different creeds to live “in perfect justice, love, and understanding” for the sake of common good.\textsuperscript{495} Maritain is deeply aware of the risks involved in his “philosophical attempt to solve a difficult problem”, which may sound

\textsuperscript{491} Maritain (1951/1998): \textit{Man and the State}, 111.
\textsuperscript{493} Maritain (1941): “The Achievement of Co-operation among Men of Different Creeds”, 365. In the context of globalization, he draws on the ideas of Mahatma Gandhi: “‘I am convinced’, wrote Gandhi in a note on the Satyagraha in 1920, ‘that the nations can never really be one, and that their activities can never lead to the common welfare of mankind as a whole, unless they recognize explicitly and accept the family law of love in national and international things, in other words in the political order. The nations can only be civilized in so far as they obey that law’. That, I also believe, is the truth.” Maritain (1941): “The Achievement of Co-operation among Men of Different Creeds”, 366–367.
\textsuperscript{495} Maritain spells out: “On the day when all the faithful could be able to live with men of other creeds in perfect justice, love, and understanding, and at the same time to keep the true faith perfectly whole and pure, on that day men will not need actually to practice these virtues toward people of other creeds, because in-
heretical to some people; hence he begs pardon for speaking out his ‘faith’. “I hope that I have said nothing which might offend the conscience of any of my readers.”

It is no wonder that Integral Humanism was called “petit livre rouge” (little red book) and was for a long time considered a candidate for the Index. It is surprising that even in the preparatory documents of Vatican II there were suggestions to impose a sanction on him (along with materialism and communism) because of his “doctrine of laicism”.

There is an enormous optimism in Maritain’s works on political philosophy in contrast to a certain apocalyptic pessimism in his earlier writings. He now envisages a political society which is personalist, communal, plural and Christian. It is personalist since a society is composed of persons whose dignity is anterior to society. Since the person tends naturally toward society and communion, in particular toward the political community, it is communal. This political society is pluralist because for the flourishing of human personality “a plurality of autonomous communities which have their own rights, liberties and authority, are required”. Finally, this political society is theist or Christian “not in the sense that it would require every member of society to believe in God and to be Chris-

fidelity and religious division will, on such a day, have disappeared from the face of the earth.” Maritain (1941): “The Achievement of Co-operation among Men of Different Creeds”, 372. He makes an interesting point on this new ‘secular religion and its creed’: “The heretic is the breaker of the ‘common democratic beliefs and practices’”. Maritain (1951/1998): Man and the State, 114.


His post-World War I writings give the impression that the world approaches a catastrophe; his anti-modern attitude fails to find any true order in political and social spheres. Cf. Gurian, Waldemar (1943): “On Maritain’s Political Philosophy”, Thomist: A Speculative Quarterly Review, 5, 14.
tian” but in the sense that it recognizes natural law and the gospel-inspired values and virtues.\textsuperscript{500} He seems to be very confident of the “secular” potencies of Christianity when he claims that “the secular conscience” is shaped out of “the evangelical ferment at work in the world”.\textsuperscript{501} The awareness about “The Rights of Man” with the values of liberty, equality, fraternity, etc. is also attributed to the credit of evangelical ferment: “The evangelical impulse which thus erupted bore the imprint of a secularized Christianity.”\textsuperscript{502}

This secularization of gospel message has, however, another significant relevance in political life. The father of liberation theology, Gustavo Gutiérrez, gives credit to Maritain for his path-breaking attempt to separate the temporal and spiritual level – for the ‘separation between faith and social life’ in his vision of New Christendom, asserting the autonomy of the temporal, especially against the Church. This Thomistic approach, where “grace does not suppress or replace nature, but rather perfects it, opened the door to possibilities of a more autonomous and disinterested political action”. Gutiérrez observes that Maritain admirably integrated certain modern elements like justice, respect for the rights of others and human fellowship in this space.\textsuperscript{503} At the same time it is important to evade the temptation to present him as a liberal-pluralist in the contemporary sense. “In itself religious pluralism is for Maritain something unfortunate. But it need not be politically divisive.”\textsuperscript{504} What is innovative and pioneering in his philosophy is the conclusion that these religious differences need not be a hindrance for political unity.

1.3. Criticisms

Maritain ventured an incredible epistemological shift that naturally evoked many criticisms especially because of its alleged minimalism that eludes necessary theoretic content required for Thomistic philosophy. Long, for

\textsuperscript{500} Maritain (1943/2011): \textit{Christianity and Democracy}, 77–79.
\textsuperscript{501} Maritain (1943/2011): \textit{Christianity and Democracy}, 35.
instance, argues that Maritain proposed “a minimal purely practical consensus” that stands in great tension with many other tenets of his own Thomistic philosophy. He claims that it is “somewhat foolish to suppose that atheists and agnostics are necessarily capable of judgments of ‘right’ sufficiently well-founded to avoid clear error extending to grievous injustice and even to persecution”. He persuasively argues that a prior speculative insight is required not only with regard to the end of human life but also in the case of a practical agreement on human rights – a speculative foundation, the germ of the speculum arising out of the ontological density of human nature.

Hittinger holds that a neo-Platonic and Thomistic principle approach to natural law is necessarily theological; hence, the contemporary displacement of theology by epistemology weakens natural law which finally results in individualism and materialism. In opposition to a Cartesian, anthropocentric version of natural law, he attempts to retrieve theological foundation of natural law. This scepticism actually arises out of the scepticism about the reach of human reason.

Another vehement criticism in this regard comes from Aurel Kolnai against Maritain’s project of ‘neutralizing faith’. In his brutal critical review of Maritain’s Man and the State, he writes: “In the upshot, what we are faced with here is not Christ recognizing the autonomy, in his own rightful domain, of Caesar; rather it is Anti-Christ begged to accord an asylum to Christ.” Another negative response to his secular project comes from Cardinal Siri. Referring to the distinct realms of the secular and the sacral, he says that “these two absolutes […] constitute a sort of intimate secret of all Maritain’s thought”. Neither of these criticisms does justice to Maritain’s nuanced treatment of the secular, which he subordinates to the spiritual, at the same time respecting the autonomy of each realm.

Maritain’s alleged leniency towards secularism was not positively received in the Protestant circles either. For instance, the Protestant theologian Reinhold Niebuhr, in his review of Maritain’s *The Rights of Man and the Natural Law*, opines: “Maritain has presented a plausible and persuasive alternative to both secularism and clericalism”, “but it naturally has the defect of avoiding the errors of the former more completely than of the latter”.

Criticizing Maritain’s famous political concept of “the democratic charter”, which holds that the unity in the truth is not necessarily a prerequisite for the unity in the good, Kozinski argues that an epistemologically neutral democratic faith could never really exist anywhere but in thought, because it is impossible to divorce practical reason from theoretical reason on the level of existence and action. He worries that the ‘exigencies of pluralism’, a ‘religiously neutral state and theoretically neutral truth’, would undermine the priority, in both public and private life, of supernatural or spiritual reality and even invert the proper subordination of the mundane to the spiritual. This is in line with Long’s criticism of Maritain’s “secularist minimalism” for its privatization of revelation and religion, which would very soon fall into anti-theistic naturalism or pure scientism, finally denying the theonomic principles inherent in nature and natural orders.

These criticisms indeed demonstrate the extent of the epistemological shift that Maritain brought about. This is evident from the fact that Maritain was overtaxed by modernization and secularization, an assumption to which he himself contributed enormously: In *The Peasant of the Garonne* he sharply criticizes the modernism vindicated by the aggiornamento of Vatican II. “They passionately undertake to secularize their Christianity

completely – from now on everything is for the earth.”

He believes that the programme of secularization was misinterpreted or misused, thus resulting in a “kneeling before the world”. He saw an attitude spreading from some clergy to Catholics generally, an uncritical acceptance of secular standards and values as the norm for the Church. He warns against “a complete temporalization of Christianity” and a “Christian thought re-invigorated by blood transfusion of a passionate faith in the world”.

However, it is important to keep in mind that the lamentation of “The old layman about himself and the present time” is primarily about liturgical reform and demythologization process in the exegesis. All this is no adequate reason to conclude that there was a reversal in his ‘political’ ideas.

2. The Concept of Progression

The traditional natural law was accused of “being reactionary instead of progressive, biologistic instead of personalistic, essentialistic instead of existentialistic, static instead of dynamic”. Thomism seeks an invariable, determinate and universal standard of moral conduct founded on a rationally abstracted, immutable human nature. Modern philosophies are in tension with the changeless concepts of scholastic epistemology, which defined truth as conformity of the judgement to reality. Post-Kantian German philosophy, for instance, claimed that concepts and conceptual frameworks are mutable and revisable. In the same vein, Bergsonian philosophy had shown that a concept’s function was not to conform the mind to a static reality; it was merely to enable a moving in order that a temporal mind

---

copes with its practical needs.\textsuperscript{521} This resulted in a shift from Aristotelian metaphysics of being to metaphysics of becoming. “The Modernists had abandoned the metaphysics of being, in which God is the changeless Pure Act, and substances owe their perduring natures to stable Aristotelian forms. They had replaced it with the evolutionary temporality of Hegel and Bergson.”\textsuperscript{522}

Postmodern philosophies demythologize the grand claims of classical philosophies about invariable, determinate and universal nature of beings. For example, Judith Butler’s interpretation of performativity claims that gender and human nature are a stylized repetition of acts and hence real only to the extent that they are performed. She considers even biological sex to be a social construct.\textsuperscript{523} Although Maritain claimed himself to be in the traditional pedigree of Cajetan and John of St. Thomas, he was indeed instrumental in getting rid of the rigidity of traditional Thomism, more than the self-proclaimed progressive representatives like Garrigou-Lagrange.\textsuperscript{524}

2.1. Human Dignity in Evolution

Despite Thomism’s ontological assumption of the human nature, Alma Acevedo observes that for Maritain human dignity is “an ongoing task. Human dignity, freedom, and autonomy are not complete in themselves; human beings must psychologically and morally accomplish what is metaphysically theirs”.\textsuperscript{525} This is verified when Maritain contends that human beings themselves must win in the moral order – “win [their] liberty and [their] personality”.\textsuperscript{526} Being is thus in a process of becoming. For him, the progressive evolution of history takes place in accordance with the

\begin{thebibliography}{99}
\bibitem{526} Maritain (1947/2009): \textit{The Person and the Common Good}, 44.
\end{thebibliography}
deeper “knowledge of anthropology”. As explained in the preceding section, his notion of existing nature (esse) brilliantly incorporates both the absolute and the relative. This is similar to the Bergsonian notion of ‘being-in-time’ – la durée.

2.2. History in Evolution

That human history is also progressively advancing is a basic premise of Maritain. His shift of loyalty from Bergson to Thomas was to “defend reason against Bergson’s concept of intuition and the unity of nature against this élan vital”; nevertheless, he occupied himself with the questions of change, causality and potency in Thomas’ doctrine and brought about the dynamic potencies of Thomism. The concluding statement of Integral Humanism sheds light into Maritain’s philosophy of history. “Human history grows thus, for it is not here a process of repetition, but of expansion and progress: it grows as an expanding sphere, drawing near at one and the same time to its double consummation – in the absolute from below where man is god without God, and in the absolute from above where he is God in God.”

Maritain’s progressive understanding of history is later substantially thematised in his On the Philosophy of History (1959). He identifies a two-fold contrasting progress, both in the direction of good and in the direction of evil, which he calls “functional laws”. He notes that “the deeper our knowledge of anthropology becomes”, the more the “progress upward”. He adds that vigilance is required to avert the “downward movement”. He illustrates these two-fold contrasting movements referring to the paradoxical progression of history: on the one hand, greater awareness of human rights and dignity, solidarity and democracy, liberties and social justice; on the other hand, the subjection of human beings through the state, materialism, communism, fascism and racism. At the face of it, genuine Christianity “abhors the pessimism of inertia”. Each period of

history is featured with these antagonistic movements: “No period of human history can be either absolutely condemned or absolutely approved. It is irrational to condemn the Middle Ages, from the rationalist point of view, as to condemn modern times, from the so-called Christian point of view”. We are supposed to live with this ambivalence of history. This evolution is not an aimless process, because history evolves in the direction of full realization of personhood – divinization. Maritain’s notion of evolution can be understood as a political counterpart of Teilhard de Chardin’s celebrated cultural and cosmic evolutionism.

2.3. Human Knowledge in Evolution

In the same note, Maritain proposed a dynamic conception of natural law which seems deeply influenced by Chardin’s understanding of interiorization of consciousness. Knowledge is evolving. As “the ensemble of things to do and not to do”, it is only an operative principle present in us, being indeed an “obscure, unsystematic” knowledge of the first principle that “good is to be done and sought after and evil is to be avoided”. Though unwritten, this knowledge is not acquired a priori; a lot of work is left to humans in the process of ‘reading’ this unwritten law or basic template. It would be naïve to claim that formal concepts ‘are inscribed in the very nature of reality’ without paying attention to the constructive exercise of translating these concepts into “an epistemologically credible set of moral propositions”. Natural law itself is in a slow and painful process of evolution. Maritain underlines:

[N]atural law calls for completion, according to the needs of time and circumstance, by the contingent dispositions of human law; how the human group’s awareness of the obligations and rights implicit in the natural law itself

evolves slowly and painfully in step with the evolution of the group, and de-
spite all errors and confusions yet definitely advances throughout history
along a path of enrichment and revelation which has no end. Here we see the
immense influence of economic and social conditioning.539

Knowledge of the natural law is increased “little by little as man’s moral
conscience has developed”.540 There existed only a primitive understand-
ing of natural law earlier, as Maritain made clear in the example of the
prohibition of slavery. Even today “the knowledge which our moral con-
science has of this law is doubtless still imperfect”.541 For him, our knowl-
edge of the natural law will always be incomplete and will never be fully
developed. He says that our knowledge of natural law (and human rights)
“will continue to develop and to become more refined as long as humanity
exists”.542

The rationale of natural law – do good and avoid evil – is to be translat-
ed into time and space through ius gentium and ius positivo. Contrary to
biological or naturalistic tendencies, Maritain thus underlines that the sub-
stance of natural law must be concretized and contextualized by each cul-
ture and every human person. He observes that the end of practical wis-
dom “is not to know that which exists but to cause to exist which is not
yet. A moral choice is individualised (both by the singularity of the person
from who it emanates and by that of the context of contingent circum-
stances in which it takes place).”543 This is in resonance with his “law of
progressive prise de conscience” – the slow growth in awareness, which is
linked to “the history of civilization”.544

Our moral knowledge has thus a historical character because we come
to know it better over time. It has also a social character because human
beings, as moral agents, live in the world and enter into relations with oth-
ers. But this historical and social character does not prevent it from being
of universal application, as will be evidenced by Maritain’s claim that

“Maritain and Universality of Human Rights”, in Sweet, William (ed.), Philo-
sophical Theory and the Universal Declaration of Human Rights, Ottawa: Uni-
metaphysics is prior to epistemology.\textsuperscript{545} That there is still scope for common moral beliefs is proved by the codification of the UDHR, overcoming all the apparent insurmountable differences.

2.4. Human Rights in Evolution

A progressive and relational conception of human nature, history and human knowledge implies that, as new situations arise, new conclusions must be drawn from the general principles of natural law. Despite the so-called ‘errors’ of the Enlightenment, Maritain notes that “due to a progress in moral and social experience” a “great achievement” has shifted the focus from a one-sided emphasis on duties to human rights.\textsuperscript{546} He situates the development of the awareness about social rights exactly in this process of moral evolution, “transcending liberal or bourgeois individualism and touching the social values of human life”.\textsuperscript{547} Humanity is gradually discovering ‘new’ human rights, reconciling them with ‘old’ human rights and vice versa. This process of evolution can even result in a revised version of Human Rights Declaration. “No Declaration of Human Rights will ever be exhaustive and final. It will ever go hand-in-hand with the state of moral consciousness and civilization at a given moment in history.”\textsuperscript{548} Maritain was, in principle, not against “a new and wider declaration of human rights” beyond the ideological antagonism between individualism and communism.\textsuperscript{549}

Many rights are seen to be conditioned by the evolution of society. In order to clarify the notion of spontaneous growth of moral knowledge and

\begin{itemize}
\item \textsuperscript{546} Cf. Maritain (1951/1998): \textit{Man and the State}, 94.
\item \textsuperscript{547} Maritain (1949): “On the Philosophy of Human Rights”, 74.
\item \textsuperscript{548} Maritain (1949): “On the Philosophy of Human Rights”, 74.
\item \textsuperscript{549} He underlines: “There is nothing to prevent the achievement, in this way, of a new and wider declaration of human rights marking a notable stage in the unification of the world […] It is not reasonably possible to hope for more than this convergence in practice in the enumeration of articles jointly agreed. The reconciling of theories and a philosophic synthesis in the true sense are only conceivable after an immense amount of investigation and elucidation of fundamentals, requiring a high degree of insight, a new systematization and authoritative correction of a number of errors and confusions of thought.” Maritain (1949): “Introduction”, 12.
\end{itemize}
human rights, Maritain applies a metaphor. He compares it with “a kind of plant-like formation and growth of moral knowledge and moral feeling, in itself independent of philosophic systems and the rational justifications they propound […] where the principal part has been played by the lessons of history and by a kind of practical apprehension.”

Here there is a resource for tolerating diversities in the global order. As the awareness of human nature is gradual and contingent on societies, it is not fair to demand uniformity from all cultures and peoples. Definitely, there arises also the legitimate question to what extent disparate appreciation of human freedom and liberties in the name of culture is bearable.

The progress of moral knowledge and feelings is seen as a practical apprehension informed by historical and social experiences, historical, social and cultural contingencies and conditionings. But it is definitely growing, and a global wisdom of humanity was ‘crystallized’ in the articulation of the UDHR, as Maritain put it. This perspective has great potential in the context of globalization and trans-national consensus on morality: “[T]he cross-cultural dialogues attempting to identify shared reasons underlying the acceptance of the human rights consensus are precisely efforts to sift through and interrelate the cross-traditional factors or reasons that may account for the shared practical wisdom of the UDHR”. Since natural law is an unwritten law, known with difficulty, running the risk of error, it should continue to be read in the personal history and the history of the world.

To summarize: Maritain’s optimism that the advancement of history marks pari passu the advancement of human knowledge and the development of human moral consciousness is contestable. Contrary to the prevailing conception of a natural evolution of human rights, Hoffmann considers human rights “as a historically contingent object of politics that gained salience internationally since the 1940s – and globally since the

1970s as a means of staking political claims and counterclaims”.\textsuperscript{556} Furthermore, it is really challenging for a faithful Thomism to incorporate the demands of relativism. Murno, for instance, observes the difficulties associated with the grand ideas of progression and pluralism: “This is certainly beautiful and poetic in its expression [...] how do we resolve a dispute if someone’s inner melody differs from someone else’s inner melody? [...] this approach creates a kind of relativity in moral knowledge that in practice could allow human criminals to get off the moral, as well as legal hook.”\textsuperscript{557} Anyway, relativism is not the greatest evil to be defeated; besides, our globalized plural world urgently requires the great virtues of tolerance and mutual respect. Thus, it demands parting with nostalgia for a perfect society (societas perfecta) and embracing a dialogical society.

3. The Elevation of the Human

The Enlightenment movement marked a break with the pure communitarian vision of society; it brought about a paradigm shift, relocating the individual as the primary locus of value in society. This was reiterated by growing awareness about human rights after World War II. Elliott notes that the centrality of the individuals was recognized by almost all disciplines by emphasizing rational procedures and domains of self-hood.\textsuperscript{558} He maintains that “the increasing concern for, and elaboration of, human rights points to a world-cultural environment where the individual is increasingly regarded as sacred and inviolable”.\textsuperscript{559} This is in opposition to the communitarian disenchantment with the elevation of the individual, as

\begin{itemize}
\end{itemize}
well-expressed in Marx’s notorious rejection of human rights – “the so-called rights of man” as “the rights of the egoistic man”. \(^{560}\)

It is true that Maritain constantly attacked “the eighteenth century conception of the rights of man” and later very well included “not only his earlier criticism of Kantian notions of the autonomy of the will and also the argument that it was too rationalistic and deductive in character”. \(^{561}\)

His idea of a progressive appropriation of natural law – the gnoseological element – ultimately comprised the ‘rational and deductive’ character of Kantian philosophy in human rights theory. This gradual shift of focus can be noticed when, in his work *The Rights of Man and the Natural Law* (1944), he argues that the *ius gentium* as natural law principle is appropriated “in a given state of civil society or relationship among peoples”, \(^{562}\) whereas later, in *Man and the State* (1951), it is known “not only by inclination but through the *conceptual exercise of reason* or through rational knowledge”. \(^{563}\)

A careful analysis of Maritain’s human rights discourse reveals that the only human right that would sustain all the limitations and trade-offs would be ‘the right to freedom’ or the freedom of conscience, \(^{564}\) which is ultimately buttressed on the autonomy of the human will. However, in Thomism, the notion of freedom of autonomy was not taken for granted. According to Aquinas, freedom of autonomy was part of the ontological structure of the human person, or it was a ‘datum’ which indicates that it was not a case of freedom of choice. For Maritain, freedom of autonomy is not just a ‘terminal’ freedom but a freedom to be pursued conjointly by the individual person and by society. Despite the constraints of matter and individuation, humans are called to realize personality and autonomy. Thus, there is a dynamism of freedom “wherein an initial freedom exists for, and is oriented to, a terminal freedom – [which] must be completed, both in the individual human person and in the society of human persons, by the conscious and deliberate pursuit of that terminal freedom”. \(^{565}\)


Kant’s compelling ethical idea of the individual as a transcendental subject capable of autonomous will is the foundation of modern rights theories. Rights, then, flow from the autonomy of the individual to choose one’s ends without hampering freedom of others.\textsuperscript{566} As mentioned earlier, for Maritain Thomism is not a museum piece to be protected. He believed that there are principles in St. Thomas that “have not yet been sufficiently exploited” especially with regard to human freedom.\textsuperscript{567} Accordingly, he explored wider possibilities of Thomism by assimilating Kantian elements in Thomism.

3.1. Maritain’s Reclaiming of the Person

Maritain’s conception of human beings as a composite of the material and the spiritual, possessing intellect and soul, is deeply Thomistic. But there are explicit Kantian elements in his formulation of freedom. In his detailed analysis of human freedom in \textit{Scholasticism and Politics}, Maritain elucidates how personality involves a movement toward higher nature that culminates in rational and beatific life as the \textit{telos} of humans, calling this the \textit{dynamism of freedom}. However, he cautiously adds that it is a \textit{freedom of exultation} in the Pauline tradition and not the \textit{freedom of autonomy} in the Kantian sense.\textsuperscript{568} He declares: “A single human soul is worth more than the whole universe of material goods. There is nothing higher than the immortal soul, save God.”\textsuperscript{569} In view of the infinite dignity attributed to the human person, Kraynak contends that “Maritain has given Thomas a Kantian twist”.\textsuperscript{570}

In Maritain’s classical distinction between the individual and the person, humans as individuals are subject to some limitations while as persons they are called to be one’s own master. Even in his polemical work \textit{The Peasant of the Garonne}, Maritain considers the “conquest of human autonomy” as the natural end of human beings in the world, taking place

\textsuperscript{567} Maritain (1936/2012): “Integral Humanism”, 199.
\textsuperscript{569} Maritain (1947/2009): \textit{The Person and the Common Good}, 61.
in the process of realizing full personhood. Yet it is also a common task of humanity, setting “the human person and the different human groups (races, classes and nations) free from servitude or subjection to other men”.\textsuperscript{571} This is a vision of human persons and human societies progressing into full personhood or freedom and autonomy. There are elements of Kantianization in this emphasis on human autonomy. In view of Maritain’s reclaiming the person, thus establishing the dignity of the individual person as the central objective of Christian moral teaching, Kraynak calls Maritain’s personalist humanism “Kantian Christianity” “because it incorporates Kant’s theory of human dignity into Christian theology”.\textsuperscript{572}

An important motif of Maritain’s philosophical engagements was the revival of Thomism as an antidote to the inadequacies of modern philosophies, and in this venture, he clearly positioned himself as an opponent of Kantianism. Yet while he remained rather faithful to Thomist realism in metaphysics, he incorporated modern concepts of freedom in political philosophy.\textsuperscript{573} Maritain’s conception of the human person is considered to be “an ingenious synthesis of Thomas and Kant”; most significantly, he assimilated the Kantian idea of autonomous individuals whose rights are more fundamental than their duties.\textsuperscript{574} Although he went on attacking “the eighteenth century conception of the rights of man”, his human rights discourse gradually embraced Kantian notions of the autonomy of the will without any more being sceptical about its ‘rationalistic’ and ‘deductive’ character.\textsuperscript{575}

3.2. The Notion of Subjective Rights

It is already mentioned in the preceding sections that Maritain incorporated the idea of subjective rights in Thomistic philosophy, which otherwise knew only an objective idea of just order (\textit{ius}). Maritain underlines: “The dignity of the human person? The expression means nothing if it

does not signify that by virtue of natural law, the human person has the right to be respected, is the subject of rights, possesses rights.” Such an affirmation of the subjective rights actually is in resonance with the basic principle of personalist philosophy; *ius* becomes what is owed to a human person because of her dignity. It is not so much a change in content but a change in emphasis and vocabulary. Subjective rights are thus shown to be logically consistent with Thomistic tradition. Both traditional Thomism, which conceptualized *ius* only in terms of duty, and modern liberal philosophies, which understand human rights merely as negative rights, are deficient. By formulating rights as the claims of the inviolable human persons for the freedom to flourish their life, Maritain substantially broadened the scope of human rights discourse.

### 3.3. The ‘Deification’ of the Human Being

Though Maritain basically underlines the basic correlation between rights and duties, contrary to traditional Thomism he actually makes a reverse priority – the primacy of rights. Based on the fact that freedom belongs to the nature of human beings (as in the case of God), he claims that “the notion of right is even more profound than that of moral obligation”, thus implying the priority of rights over duties. There is something revolutionary in this characterization of the human person.

Unlike Thomas, Maritain seeks to blur the distinction in rank and to enhance the status of man by giving him personhood akin to God. This shift is more than a technical violation of Thomism, for it leads Maritain to understand the human person in terms of God’s free, creative agency. In other words, the root of human personhood is autonomy of the will; and the model for the autonomous will of man is God’s freedom in creating the world. Human agency is thereby likened to divine agency.

For Aquinas, the concept of *imago dei* referred to human’s *natural* propensity to God; therefore, his notion of autonomy was not particularly

---

creative. Maritain, however, divinizes the human being – according to Kraynak “a kind of impiety”.\textsuperscript{580} This is evident when he studies the mystery of free will: “It is the will […] which rises from the depths of personality, by an act of the person […] in which the practical \textit{fiat} bears in the creature, the greatest possible resemblance to the creative \textit{fiat} […] this is man’s absolute secret […] you cannot foresee this act. Even God cannot do so.”\textsuperscript{581} The comparison of human will with the divine will is here only analogical, but Maritain’s human divinization becomes still loftier: The “conquest of freedom in the social, political, as well as the spiritual order is [our] aim – I mean freedom of expansion, exultation, and autonomy […] [it] says to men: you are gods by the gift and calling of God […] [it] dignifies the creature really – in God and as made by God and for God; not illusively – as a god itself.”\textsuperscript{582}

According to Kraynak, these are not isolated cases of a rhetorical overstatement. In analysing human liberty, especially the ‘fallible freedom’, Maritain writes that we have “truly and really the first initiative in the line of evil”, and we intervene negatively “in the very modelling of designs of Providence”. He argues that God waits for each of us, on our refusal or acceptance of the gifts which derive from “the sovereign influx”.\textsuperscript{583} It can be concluded that by virtue of human dignity, founded on the autonomous will, human beings are elevated to the level of the divine Creator and thus become worthy of being called a god.\textsuperscript{584} This is not far removed from the Kantian or liberal notion of freedom. At the same time, analysing the Thomistic doctrine of action and contemplation, Maritain underlines the primacy of contemplative life, referring to Aristotle, who considers human beings as gods in opposition to beasts.\textsuperscript{585} The rational nature elevates humans to the level of gods.

Kraynak rightly observes an incorporation of the Kantian ideas in Christian theology, referring to the change of focus in the Christian concept of ‘charity’. Earlier it was understood to be a kind of compassion,
whereas now Christian charity is generally understood as a kind of respect, which is a “respect for the autonomy of human beings who determine their own moral personalities. By understanding morality as respect for autonomy, theologians have transformed Christian charity from compassion for man as a fallen being who stands in need of divine redemption to an active movement for the recognition of rights.”

The above analysis reveals that many of these conclusions skirted the boundaries of traditional theological understanding, and it is no wonder that Maritain’s *Integral Humanism* only barely escaped being kept in the Index!

### 3.4. Democracy – Collective Autonomy

Maritain considers “the freedom of expression and criticism” “as a bulwark of [humans’] political liberties”, especially of democracy. Democracy builds on individual autonomy, which places ultimate political authority in the people. Maritain’s endorsement of democracy was a radical break with classical Thomistic political theory, which considered monarchy as the best form of government. Thomistic philosophy presupposes “an absolute ruler at the apex of the temporal body politic.” This absolute ruler was not accountable to the people but to the divine law and natural law. Maritain’s theory of democracy, with its unique Christian rendition, is more in the tradition of Alexis de Tocqueville and Henri Bergson than of Thomistic political thought. Thus, his works enormously contributed to repudiate the antidemocratic streams in the Catholic social thought; this in effect helped the Church to get rid of its medieval remnants.

---

3.5. Criticisms

Traditional Thomism, emphasizing duty and authority, was deeply entrenched in society. A faithful Thomist would find it difficult to justify ‘human rights’ in terms of Thomistic vocabularies, as is evident in Alasdair MacIntyre’s eloquent criticism of the notion of natural rights. In his communitarian natural rights theory, the individual, who is the supposed bearer of rights, simply does not exist, giving no scope for the ‘individual’ prior to any interpersonal relations. Since such individuals do not exist prior to any particular culture or tradition, and if natural rights require such individuals, natural rights are chimeric indeed. Such a communitarian perspective makes room only for duties, not for rights.

From a natural law perspective, duties could imply rights, but rights do not always imply duties. This is the difficulty in speaking about rights apart from or prior to duties. Thus, the idolizing of individual freedom at the cost of traditional concepts of virtue, duty and common good becomes problematic. The critique of the privatization of human rights, divorced from duties, is legitimate because duties are fundamental to human society. Social philosophers find a problem with the notion of primordial, pre-political rights, which are based on a person’s humanity that is assumed to be prior to any substantive social roles or attributes. Maritain’s notion of the pre-political person allegedly contradicts his description of the community as the locus of human identity and development.

In Macintyre’s ‘communitarian’ perspective, a search for universal agreement about basic moral norms is an illusory project. He argues that human dignity is a dynamic and socially embedded notion, deeply rooted in the teleology of human beings; hence, the idea of an autonomous human being founded on human dignity has no stand. Communitarians understand human rights only in relational terms. This was a reaction against

---

the alleged individualization of human rights concepts.\textsuperscript{593} We have seen that, despite the elevation of the human person, Maritain emphasized the relevance of common good and the resultant obligation in his human rights theory, thus actually limiting the possible danger of individualization.

There are also theological reservations about the ‘divinization’ of humans, suspecting that such a ‘self-sufficiency’ of human beings would lead to a modern Pelagianism. Maritain indeed takes a middle way between Luther (overemphasizing grace at the expense of nature) and Pelagius (overemphasizing nature at the expense of grace). The divinization and rationalization of human persons in the hands of Maritain altered the way we perceive the natural law – it must have made it something ‘less than natural law’.\textsuperscript{594} But the resultant human image was not, indeed, in the line of Nietzsche’s ‘man-God’. As already described, Maritain was at pains to assert the notion of the common good, which is the cornerstone of his political philosophy that underpins the notion of fraternity and solidarity. With the philosophical tool of Aristotelian notion of superadditive property, according to which the whole is more than the addition of its parts, he brilliantly overcomes the individualist-communitarian dichotomy. In a nutshell, the achievement of Maritain lies in a\textit{ coupling of the Thomist spirit of the primacy of common good and the Kantian idea of the primacy of human person as an end in itself}. This dynamic, inclusive approach greatly enriched his human rights theory.

4. An Enormously Influential Approach to Human Rights

Maritain achieved great advancements in political philosophy. These are particularly reflected in the human rights discourse and in the extensive reception of his personalism in the secular intelligentsia and Church. He has significantly influenced the way we now conceptualize human rights.

\textsuperscript{593} In his\textit{ After Virtue}, MacIntyre advocated a deeply communitarian model in the Aristotelian tradition, where individuals just adopt and perform the roles given by the community. Cf. MacIntyre, Alasdair (1981/2007):\textit{ After Virtue}, Notre-Dame: University of Notre Dame Press.

4.1. The Reception in the Secular World

Already in the early 1940s, Maritain was identified as “one of the watchdogs of humanity”. His political philosophy made significant advancements after this interim appraisal. Beyond all the modernist optimism promised by positivism in the twentieth century, the birth of modern human rights history is to be situated in an “epoch-making reinvention of conservatism”, as Moyn puts it – a fact that is obvious in the “spiritual and often explicitly religious approach to the human person” in the UDHR. The personalist influences can also be seen in the prospering of the Christian Democratic hegemony in the post-war period and in the embrace of a strongly communitarian view in the constitutions of many of the newly born democracies in the post-war period, especially in the post-war German constitutional laws, Grundgesetz (Basic Law). In the following brief analysis, I study the imprint of Maritain’s personalism in two areas of human rights advancement.

4.1.1. Universal Declaration of Human Rights

In the post-war time, the united world craved for peace and unity. There emerged an urgent need to draft a Document to draw on lessons from the trauma and wreckage of World War II. In the pantheon of varying philosophical positions, drafting a document that would satisfy all stakeholders was a formidable task. In the wake of the tragedies of the Second World War, there was distaste among legislators and lawmakers for positivism which had allowed the Nazis free reign for twelve years. A natural law approach enjoyed dominance at this time, as evidenced in the Nuremberg trials, because of its pre-political concept of human rights founded on human nature.

An anti-individualistic, anti-collectivist notion of personalism was the sure candidate to serve as basis for the UDHR. There were many versions of personalism, as Maritain himself acknowledged.\footnote{Cf. Maritain (1947/2009): The Person and the Common Good, 12–13.} His Thomistic version of personalism, however, was espoused in the UDHR. Natural law had considerable advantages compared to other approaches: its universality, the pre-political status of rights and the foundation of rights on human dignity or sacredness without necessarily appealing to religious sanction, to mention only a few of them. The UDHR manifests how the notion of human ‘person’, with deep metaphysical connotations, developed into a world-wide concept with universal comprehensibility.\footnote{Cf. Kobusch, Theo (1997): Die Entdeckung der Person: Metaphysik der Freiheit und Modernes Menschenbild, Darmstadt: Wissenschaftliche Buchgesellschaft, 11.}

Maritain’s professorship in the USA, the enormous influence he enjoyed in both Americas, his sojourn in the Vatican as Ambassador, his cooperation with committees and commissions etc. provided him with the status of a global thinker with great reach and influence. During his term as Vatican Ambassador, beginning in 1945, he had the opportunity to meet many world leaders at dinners and to converse with them about the reconstitution of European society in the post-war period, along with his friend and patron, the future pope, Giovanni Battista Montini.\footnote{Cf. McCauliff (2011): “Jacques Maritain’s Embrace of Religious Pluralism”, 600.}

Maritain was head of the delegation from France to the UNESCO’s second General Conference held in Mexico City in November 1947 and an active member of a UNESCO committee to study the philosophical foundations and practical feasibility of a document declaring human rights. His contribution to the preparatory phase is laudable, particularly his “introduction” to the Symposium edited by UNESCO (\textit{Human Rights: Comments and Interpretations}), which undoubtedly presented a blueprint for such a possible document.\footnote{There exists an earlier version of it, dated June 18, 1947, which is still retrievable in the online archive of UNESCO, named UNESDOC. Maritin, Jacques (1947): “Communication with regard to the Draft World Declaration on the Rights of Man”, UNESCO Document, Catalog Number: 124341, Document code: Phil./5/1947. Web, 22/01/2015, <http://unesdoc.unesco.org/images/0012/001243/124341eb.pdf>. I, however, base my analysis on the version published in UNESCO book.} Later, it would become a ‘kingmaker’ during the discussions of the drafting committee. Maritain’s report that agreement

was possible “not on the basis of common speculative ideas, but on common practical ideas, not on affirmation of one and the same conception of the world, of man and of knowledge, but upon the affirmation of a single body of beliefs for guidance in action,” was pivotal in the further discussions and formulations of the committee.  

Maritain himself was not part of the commission for drafting the document. Eleanor Roosevelt, of the United States, chaired the commission. The direct influence that led to the personalist language of the document comes from the Lebanese delegate Charles Malik, an Orthodox Christian and a Harvard-trained philosopher who imbibed the contemporary Catholic social teachings as well. His intellectual affinity to personalism is revealed also from the fact that he later served as a Jacques Maritain Distinguished Professor of Moral and Political Philosophy at The Catholic University of America (Washington, D.C.) from 1981 to 1983.

In the highly-debated drafting process, ‘dignity’ was the keyword. Reaching a consensus on the foundation or justification of this dignity was a herculean task. First, it was stated that ‘dignity and rights’ are ‘endowed by nature’. The Belgian delegate presented a motion to eliminate ‘nature’ from the Declaration. Charles Malik attempted to give human rights a religious foundation in Thomist natural law theory; however, it was rebuffed by other members of the drafting committee, especially by P. C. Chang of China, who defined himself as a philosophic pluralist. The Brazilian members, however, wanted to add that “all human beings are created in the image and likeness of God”, which represented only the tradition of the Christian West. The Canadian delegates also lobbied for the inclusion of a divine reference in the draft. Eleanor Roosevelt was personally for the term ‘divine Creator’ as the source of human dignity and rights, but she, in view of ‘other people around the table’ who would like to put it in their particular way, was ready to leave her stance.

605 Malik explained in 1951: “In Christianity, the individual human person possesses an absolute value […]. The ultimate ground of all our freedom is the Christian doctrine of the absolute inviolability of the human person.” As quoted in Moyn (2011): “Personalism, Community and the Origins of Human Rights”, 99.
Meanwhile, there was lobbying from Vatican through the American and Canadian episcopates to articulate Catholic teaching on human rights in Thomist terms, especially teachings on natural, inalienable rights and obligations of the human person, the family, the state and the international community. The pluralist position of P. C. Chang of China was supported by Mrs Lakshmi Menon of India and Salomon Grumbach of France. The most decisive moment occurred when Grumbach reminded the group of Maritain’s conclusion that nations should and could reach practical agreement on basic principles of human rights even without achieving speculative consensus.\footnote{608} It was Maritain who taught them the art of singing the dignity of human person without quarrelling about the relative priority of each key, as he put it in the introduction.\footnote{609}

Finally, it was René Cassin, famous international jurist and Jewish exponent of France’s republican anti-clerical tradition,\footnote{610} who insisted that only a secular approach to human rights could respect freedom of belief. The final draft does not take side with any religious sanctions or explicit philosophic foundations. In this connection, this observation about Maritain’s contribution is certainly true: “Maritain’s influence on the creation of the text seems to have been indirect at best, as Rene Cassin, who had drafted the text, was presumably acquainted with his writings.”\footnote{611} In spite of the draftsmanship of ‘secularist’ René Cassin, the world embraced a language of Thomistic natural law tradition through the UDHR. Carlos Romulo, who was an active member of the UN General Assembly debates over the Universal Declaration, reminisces reviewing the success of natural law tradition in the Declaration that there is a “paradox of Christianity

\footnotesize{Cf. Glendon (2001): \textit{A World Made New}, 144–147.}
\footnotesize{Cf. Maritain (1949): “Introduction”, 15–16.}
\footnotesize{Interestingly Cassin got encouragement from future Pope John XXIII, then Papal Nuncio Roncalli, who was in these days a popular mediator between the conservative and socially active clergymen. “I received discreet personal encouragements from the Papal Nuncio Roncalli.” This appreciation is later materialized in \textit{Pacem in Terris}, where Pope John XXIII praised the document as an “act of the highest importance”. Cf. Glendon (2001): \textit{A World Made New}, 132.}
emerging as the only practical program for lasting peace and equitable order in our troubled world”. 612

There are already many efforts to find the similarities of Maritain’s enumeration and justification of human rights and the UDHR. 613 Such an attempt to find out the personalist and natural law traces in the Declaration is beyond the scope of our study. Considering the influence of Maritain in the mid-twentieth century as an important human rights philosopher and activist, it is quite natural that there are many convergences. But his most enduring contribution to the UDHR would be the methodology that he provided, without which such a Declaration would have been polarized by a war of ideologies. At a time when terms like ‘secular’, ‘plural’, ‘pragmatic’, etc. were almost as disconcerting as ‘atheism’ or ‘communism’, it was Maritain who prepared the way for the birth of such a formidable document. He played the role of a harbinger.

4.1.2. Influences in the Politics

The growing awareness of human rights is positively related to the democratization of politics in the world. Though Maritain’s career took place mostly in the United States, he was widely read and adopted in Europe and Latin America. His classical work Integral Humanism had already underlined the need for Christian action in the secular order, which induced the emergence of Christian workers’ movements in many parts of the world, thereby inaugurating a powerful lay movement in a laicized society. It was also a blueprint for a Christian Democratic society that guards against dictatorial and totalitarian regimes. Christian Democratic movements, which emerged after the War as an antidote to Fascism and Nazism, drew inspiration from his writings. During World War II, copies of Christianity and Democracy were dropped by the RAF (Royal Air Force) over Poland, 614 which can also be understood as a symbolic gesture that prophetically calls for the need of moralization of politics and the democratization of the world.

In Maritain’s vision of a new democracy under Christian inspiration, the war-exhausted West had found a new social consciousness. Mounier’s version of Christian politics was more wide-spread in Belgium and France, which finally slipped into revolutionary communism, whereas Maritain’s message found its most significant hearing in Italy and other parts of Europe and Latin America. Already in 1934, he had important influence on the US journal *The Catholic Worker*, and he visited its editors in November. From December 1936, it published European Catholic authors – Mounier, Maritain, etc. – who were critical of the Nationalists in Spain. Another notable influence was on the Christian Democratic Party in Chile. The publication of Maritain’s *Letter on Independence* in Chile led to the great receptivity of Maritain in the new-found party. Two of its leaders, Jaime Castillo, (then Chairman of the Chilean Human Rights Commission) and the late Eduardo Frei, the future president of Chile (1964–1970), propagated his democratic ideas through books and pamphlets. Maritain’s Catholic social and political thought, especially his democratic theory, gradually became influential in other Latin American research institutes and universities as well. It shows that a continent that was in the shadow of colonization and dictatorship was indeed craving for democracy.

Such a democratic spirit waved in Europe after World War II with the emergence of large Christian Democratic parties in France (the MRP), Germany (CDU-CSU) and Italy (DCI), which later played a very important role in shaping the future of Europe. There are considerable grounds to believe that Maritain’s Thomistic version of personalist communitarianism rendered philosophical justification to the Christian concept of democracy. Christian Democratic parties have played a historical role in the rebuilding of Germany from the wreckage of the World War II, and they still exert enormous influence on the political scene of the country. An official study on the genealogy of the CDU in Germany gives credit to “the French philosopher Jacques Maritain and the Italian politician Don Luigi Sturzo” for conceptualizing a social parliamentary democracy inculcating

Christian values as an antidote to ‘the corruptibility of the mass’. 618 Though Maritain’s influence in German-speaking countries is supposed to be marginal, 619 Andries opines that the German Basic Law (Grundgesetz), which, since its promulgation, serves as a major model for the new consti-


619 An overview of the literature that reached my hand also confirms this estimation. An article that was published in connection with Maritain’s fifth death anniversary is a brief and comprehensive study of his contributions, focusing on speculative and political philosophy alike; but it concludes with an indication that his ideas are antiquated. Cf. Riefstahl, Hermann (1978): „Jacques Maritain: Zum 5. Jahrestag seines Todes“, Zeitschrift für philosophische Forschung, 32(1), 103–108. Hermann Steinkamp studied Maritain’s personalism from a sociological point of view. Cf. Steinkamp, Hermann (1967): Der Personalismus in der Sozialphilosophie Jacques Maritains, Gelsenkirchen-Buer: Rheinische Friedrich-Wilhelms-Universität. The political philosophy of Maritain as a problem of Christian politics was dealt with by a Cuban in a doctoral dissertation under the guidance of Prof. Hans Maier, which touches important aspects of Maritain’s political philosophy. Cf. Castro Sarria (1971): Die politische Lehre von Jacques Maritain. Benedikt Ritzler more recently published a study about the historical development of the idea of the person in the writings of Maritain, a concept which was underlined by the UDHR. Cf. Ritzler, Benedikt (2000): Freiheit in der Umar- mung des ewig Liebenden: Die historische Entwicklung des Personverständnisses bei Jacques Maritain, Frankfurt am Main and New York: Lang. This study is more metaphysical and epistemological in nature. Jan-Werner Müller recently brought Maritain back to academic discussions through his article in the Zeitschrift für Ideengeschichte in 2008, situating him in the Christian democratic movement which appeared as an alternative to the extremes of the time. He attributes a decisive role to Maritain in the process of democratization of Europe. Müller (2008): „Die eigentlich katholische Entschärfung?“. These studies agree upon the conclusion that Maritain was only insufficiently received in the German-speaking world.

It is Heinz Hürten, who really searches the reasons for such a poor reception of Maritain in Germany. He finds the problems related to publication politics – various publishers and prolonged publication. Maritain’s insufficient relation to this land and the curious differences within Catholicism in France and Germany are also presented as reasons for non-reception. Maritain’s prevalent criticism against German transcendental philosophy was perceived as general attitude against ‘German Geist’. Hürten finds that Integral Humanism dreams of some dysfunctional utopia. The political situation in Germany by the end of the 1930s was not apposite to consider seriously the political visions of Maritain’s writing. Hürten, Heinz (1985): „Der Einfluß Jacques Maritains auf das politische Denken in Deutschland“, Jahrbuch für christliche Sozialwissenschaften, 26, 25–39. Had he sufficiently analysed later political writings of Maritain, especially Man and the
tutions in all parts of the world, is deeply influenced by Maritain’s political philosophy; he proves that the resemblances are of causation, and not of coincidence. 620

In the post-war Germany, a Catholic conception of natural law and political thought seemed to have enjoyed a strategic advantage vis-à-vis Protestant ideas, 621 particularly because of its potential to think beyond legal positivism and state-omnipotence which legitimated the NS crimes. It was through the Catholic Konrad Adenauer that natural law theory found an honourable position in the political thinking of Germany. 622 Immediately after the war, he was mayor of Cologne, prior to his position as President of the Parliamentary Council. He was greatly influenced by Ernst von Hippel, a Thomistic natural law scholar from the University of Cologne who served as Director of Seminars for state political philosophy and legal-political philosophy. Professor von Hippel and others like him were adamant in their insistence on a personalist foundation for the basic values and rights in the constitution. 623

Soon after the War, natural law theory surfaced in the legal system of Germany. Already in 1945, a decision of the lower court (Amtsgericht) in Wiesbaden held: “The laws which declared that the property of Jews had become forfeited to the state” were “incompatible with natural law” and, therefore, were “void at the very time of their enactment”. 624 The juristic novelty of the ‘crimes against humanity’ of the Nuremberg trials, as well as expressions like ‘crimes against the spirit’, refers to the undeniable influence of personalist natural law movement. It is generally accepted that the democratic and legal system of Germany is clearly influenced by An-

State, which are widely appreciated, he must have presented a different picture of Maritain’s political philosophy.


glo-Saxon political thinking – and only slightly by the French. Here it is important to keep in mind that Maritain’s political philosophy flourished in the United States. Nevertheless, regarding his influence on German Catholic thought of the mid-twentieth century, which was characterized by the principles of personality, solidarity and subsidiarity, Hürten rightly observes that his influence would not have been very ‘clear and conscious’. It is to be admitted that, since Germany had its own personalist tradition through Max Scheler, Romano Guardini and Martin Buber, it is indeed difficult to identify the exact contributions of Maritain.

4.2. The Reception in the Church

The pre-Vatican II Church was “impoverished by a lack of imagination, narrowly focused on scholastic hair-splitting, rigidly enclosed by dogma and irrelevant to the contemporary world”. This gives us the general direction of the pre-Vatican II Catholicism, which was defensive and ultramontanist, protecting itself with the intellectual tools of an antiquated Thomist philosophy. At a time when Maritain started his political engagement, the majority of Catholics were satisfied with the social vision of the Council of Trent, which Vatican I did not alter much. Thus, paradoxically, Catholics were comfortably entrenched in their medieval legacy in the midst of a fast-progressing and independently-thinking modern world. In such a historical background, Integral Humanism immensely contributed to a radical shift from a papalist monarchical conservatism to a democratic liberalism that later altered the self-awareness of the Church.

It is well known that the official Church had a slow and painful passageway toward human rights and democracy, and suddenly there arose a situation where “Christianity implies democracy”. It was only in Pope Pius XII’s 1944 Christmas Message that a modern papacy expressed the first indication of the relationship between freedom, democracy and the

Christian message.\textsuperscript{629} That was a strictly qualified acceptance on the condition that it had to be Christian inspired. There was also a strict warning against possible abuses, especially the abuses of ‘masses’ and state absolutism. Though suspicious, a radical reorientation was taking place in the Catholic Church in the time between post-World War II and Vatican II, finally substituting moral manuals with the post-war wisdom of the conscience of the human person. A survey of Catholic Church’s appropriation of democratic values and human rights cannot be made without recourse to Maritain’s contributions.

Maritain invariably called himself a philosopher, and he would have preferred to devote himself to speculative philosophy. But he encountered “new questions posed to the anxiety of men by the movement of civilizations”, and out of Christian responsibility he sought solutions to the burning problems of his time.\textsuperscript{630} There are good reasons to believe that he succeeded in his ‘Christian action’, to use his favourite expression.

Maritain’s reception in the Catholic thinking is closely related to his friendship with Giovanni Battista Montini (Pope Paul VI). Montini’s translation of Three Reformers in Italian in 1928 and his introduction to an Italian translation of Integral Humanism are some indicators of their friendship. Deeply interested in philosophy throughout his life, Montini favoured “a school of mediation between the ancient and the modern, tradition and revolution, order and adventure”,\textsuperscript{631} and in Maritain he found such a synthesis. Cardinal Montini diligently studied and quoted him to substantiate his Catholic social thought. Maritain’s tenure as Ambassador to the Vatican gave them enough opportunities to engage in discussions about the shape of the European reconstruction in the post-war period. Later, Maritain’s philosophy was invoked during the discussions of the Vatican II, and it was no accident that at the conclusion of the Council he was asked to accept the message for “thinkers and academics”. Later Pope John Paul II singled out Maritain as an exemplary philosopher whose life

\textsuperscript{629} Cf. Pius XII, “True and False Democracy”, in Major Addresses, as explained in Moyn (2011): “Personalism, Community and the Origins of Human Rights”, 97.


and work had exhibited the synthesis of *fides et ratio*. Finally, in 1967 Pope Paul VI cited *Integral Humanism* in his first social encyclical, *Populorum Progressio*. “Development [...] cannot be restricted to economic growth alone. To be authentic, it must be well rounded; it must foster the development of each man and of the whole man”, which is actually the quintessence of Maritain’s personalism.

In order to identify Maritain’s contributions to the advancing Catholic perception of human rights, the following section studies the drafting of the two most important documents of Vatican II, *Dignitatis humanae* and *Gaudium et spes*, which in fact caused a historic caesura in the world view Catholic Church. They are about acknowledging the freedom of the person and the relevance of the secular, which were recurrent themes in the writings of Maritain.

4.2.1. Dignitatis Humanae: The Affirmation of the Person

*Dignitatis humanae* (DH) is considered to be the most progressive document of Vatican II, reiterating the freedom of the human person. It emphasizes how the autonomy of the human person is essential to human dignity and avows the fundamental right of all individuals, religious communities

---


634 It is widely acknowledged that Maritain significantly influenced the “Declaration on the Relation of the Church to non-Christian Religions”, *Nostra Aetate*, especially its statements about the relations with Jews. Having a wife of Jewish ancestry, he engaged earnestly with ‘Jewish Question’ as a religious mystery through his plentiful writings on this topic. He always wanted a stronger statement from the Church against anti-Semitism, which Church failed to make. As already mentioned, it is believed that this led to his premature resignation from the post as French ambassador to the Vatican as a protest against papal silence in the aftermath of the Holocaust. Doering opines that even the statement of Vatican II was not up to the expectations of Maritain. Cf. Doering, Bernard E. (1982): *Jacques Maritain and the French Catholic Intellectuals*, Notre Dame: University of Notre Dame Press, 126–167. Also cf. Crane (2009): “Jacques Maritain, the Mystery of Israel, and the Holocaust”, 26; Cagin (2016): “Jacques Maritain und das zweite Vatikanische Konzil”, 64–65.
and families to freedom of religious participation and expression. It also insists that it is the duty of the state to ensure this right. It was a milestone in the Catholic teaching on human rights and church-state relationships.

Without forgetting the fact that this document is certainly credited to direct input and the draftsmanship of John Courtney Murray, an American, it would be fair to consider the intellectual influence Maritain exerted during his long stay in America. His early writings influenced Murray on political questions. Already in 1942 in *The Rights of Man and the Natural Law*, Maritain had written: “Every human person has the right to make his own decisions with regard to his personal destiny”. He adds: “With respect to the state, to the temporal community, and to the temporal power he [man] is free to choose his religious path at his own risk, his freedom of conscience is a natural, inviolable right.” “[The] right to freedom, the right freely to believe the truth recognized by one’s conscience that is with the most basic and inalienable of all the human rights.” Article two of DH states “that the right to religious freedom belongs to the inalienable dignity of the human person”.

In the preparatory discussions for drafting the document, it was not easy to reach a consensus, especially on the relation between state and Church, and on the theological foundation of human freedom. At the height of it, Pope Paul VI wanted to consult his mentor and friend Maritain, who had written extensively about the proper autonomy of Church and state. On December 27, 1964, Pope Paul sent his private secretary, Monsignor Pasquale Macchi, and the French intellectual Jean Guitton to Toulouse to consult with Maritain about the last session of the Council. One of Pope Paul’s four questions to Maritain was about religious liberty. Maritain’s reply in March 1965 emphasized the political aspect of religious freedom. As he claimed for decades, the sacral state was a thing of the past. In the modern world, both Church and state are autonomous. “The state was not entitled to interfere in matters of conscience unless it were for the terrestrial common good […]. The state’s right to intervene was limited because,
in Maritain’s view, ‘human beings, directed as they are to God, transcend by their nature the terrestrial and temporal orders of things’”.

After receiving a letter from Maritain, the Pope arranged a brief audience with Murray. A hurdle to overcome was the division between American and French bishops about the foundation of the right. The French were obviously for theological arguments – dignity of the person, referring to natural law, which could be perceived as static – whereas the Americans favoured a biblical argument – conscience of the person, a dynamic concept referring to the freedom of the individual.

The final draft accepted human dignity as the foundation of freedom. “Number 2 includes the most important content of the declaration. First, the right is grounded, not in truth […] or conscience, but in the dignity of the human person, of every human person. In place ‘truth has rights’ or ‘error has no rights’ DH proclaims that human dignity possesses rights.”

Regarding the role of the state in maintaining freedom of religion, DH stated that “the exercise of this right cannot be interfered with as long as the just requirements of public order are observed.” The French or Maritainian view that the state should intervene to protect the common good was, however, not adopted by the Council.

4.2.2. Gaudium et Spes: The Affirmation of the Secular

In Integral Humanism Maritain made a radical break with old Christendom and envisioned a new Christian order which is secular, having ‘autonomy of the temporal order’. This was much before Karl Rahner argued in his paper “Theological Position of Christians in the Modern World” (1954) that Christendom is bygone. Maritain also endorsed an authentic secularization of the salvation history – a countercultural offensive was not the need of the time. It is widely believed that Integral Humanism had a decisive influence on Gaudium et spes (GS), providing it with a philosophical framework for the affirmation of the temporal.

Presiding over the Council, Cardinal Montini, with regard to GS, invoked the works of Maritain, particularly regarding the relation between Church and state and the temporal mission of Christians referring to the notion of common good, the role of the state, the rights of the human person and other institutions, especially that of family. The ideas of the centrality of the lay person as the prime Christian actor in society, the dignity of the human person regardless of her personal merit (or lack of it), the pluralism of religions, the limitations on the power of state to act in society and against individuals, the notion of democracy, etc. had long been explained and elaborated by Maritain. Thus it may not be an exaggeration to hold that, though Maritain was not an official peritus, his ideas were omnipresent in the discussions and the final decision. Smith puts it:

More than any other Catholic, it was Maritain who prepared the way for the Roman Catholic renewal. Following the lead of Pope Leo XIII, Maritain’s social writings appeared to any, before the Council, to be revolutionary. He developed a philosophy of Christian openness to the world that was significant in creating the intellectual conditions that led to Vatican II. Indeed, if there be any point on which his critics agree, it is that the influence of his writing on Vatican II was overwhelming.

Keeping in mind the contributions of Maritain in preparing ways for the reforms of Vatican II, Nicolas raises a pertinent question: “Who will ever distinguish what [Maritain] owes to the Church from what the Church owes to him?”

Maritain’s harsh criticisms on the reforms of the Council and on Teilhard de Chardin in his The Peasant of the Garonne are indeed disappointing. Though he gives credit to the role played by GS to overcome a certain ‘Manichaean’ attitude within the Tridentine Church, he sharply criti-

648 Maritain was described as a “Brutus” who stabbed the renewal from the back. He was also accused of “treason”, “disloyalty”, “injustice” and “dishonesty”, or his book was regarded as a “talk of a lost leader, of a cause betrayed, of a pseudo revolutionary who liked the theoretical plotting but took fright when the revolution actually began”. Cf. Smith (1976): Jacques Maritain, Antimodern or Ultramodern?, 27.
cizes the tendency in the Church towards the ‘temporalization of Christianity’ and a habit of ‘kneeling before the world’.\textsuperscript{649} He fiercely criticizes both rightist and leftist extremism as well. As Hittinger rightly mentions, Maritain wanted to avoid the extremes of the preconciliar Manicheanism and the postconciliar Pelagianism.\textsuperscript{650} In spite of the developments and contrasts between different phases of Maritain’s political thought, a careful reading of his works demonstrates “deeper continuities” underneath apparent contradictions: “a consistent qualified support for democracy and religious freedom on the one hand, and an affirmation of the primacy of the spiritual over and against secular liberalism on the other”.\textsuperscript{651}

We have seen how Maritain’s most sustained forays into ‘modernity’ enormously influenced the self-image of the Church. “There are hardly any major social and political trends of the twentieth century with which he was not involved in some way.”\textsuperscript{652} His influence was, to use his own expression, “an evangelical ferment working in the secular conscience”.\textsuperscript{653} A peripheral reading would miss the ferment that works ‘from within’. He performed a leavening function – a progressive influence working from within. Many of his philosophical and political stances were ‘prophetic’ and forward-looking, and this attribute still renders his personalism a certain contemporaneity, though Thomism long ago ceased to be the \textit{philosophia perennis} in the Catholic Church.

In summary: Firstly, Maritain’s signature contribution to the human rights discourse in the secular world is his ‘spiritual’ notion of human dignity that surprisingly gained great breakthrough in the UDHR. There are still contemporary endeavours to seek the genealogy of human rights in the \textit{sacredness of the person}, and there is the need of such a feeling of sac-credness to effectively protect them in the contingencies of the world.\textsuperscript{654} Secondly, Maritain prepared the Church to be dialogical with the modern

\textsuperscript{651} Cf. Hughes, John (2010): “Jacques Maritain: Pre-Conciliar Conservative or Thomist Liberal Democrat?”, \textit{Theology}, 113(871), 12–22.
\textsuperscript{653} Cf. Maritain (1943/2011): \textit{Christianity and Democracy}, 35.
and the secular. There is nevertheless something puzzling about Maritain: on the one hand, he pushed the philosophical endeavour forward; on the other hand, there was an element in him that pulled it back to good old days of Christendom. This push-pull enigma resulted from the underlying tension between Maritain the Thomist and Maritain the pragmatist.

Conclusion

Though the Church maintained a defensive attitude towards the ‘modern’ idea of human rights until the mid-twentieth century, it is also argued that the modern idea of ‘liberalism’ is indebted to ancient Christian thinking. The ‘invention of the individual’ in the West – the belief in individual liberty and in the fundamental moral equality of individuals – is said to be pioneered by Christian thinkers of the Middle Ages. This, in effect, holds that the foundation of liberal democracy is laid not by Renaissance but by the Christian understanding of human dignity, personal liberty and the idea of the human person.\textsuperscript{655} Maritain retrieved this rich tradition with the tools of Thomistic philosophy. Even now there are philosophers like MacIntyre who argue that Thomism and liberal tradition are dialectical, giving no scope for any synthesis. They are therefore highly sceptical about Thomistic ‘rhetoric of rights’. He considers Thomism as a tool to overcome modernity, rather than being conformed to it.\textsuperscript{656} Maritain stood against “the instinct of accumulative inertia of a backward Scholasticism” – a “univocist inertia which clings to what is dead and done with the temporal ideal of medieval Christendom”.\textsuperscript{657} Thus he makes Thomism forward looking, bringing it in dialogue with the modern world. And that exactly is his legacy.

\textsuperscript{655} Cf. Siedentop, Larry (2014): \textit{Inventing the Individual: The Origins of Western Liberalism}, Cambridge, Mass.: Belknap Press of Harvard University Press. This position is, however, fiercely challenged by Samuel Moyn, who argues that the idea of human ‘dignity’ did not cause the birth of the modern idea of human rights. “Christian human rights were injected into tradition by pretending they had always been there, and on the basis of minor antecedents now treated as fonts of enduring commitments.” This is, as Moyn puts it, a “fictitious retrospective editing” of the history. Moyn (2015): \textit{Christian Human Rights}, 5, 6.


V. Some Limitations of Maritain’s Treatment of Human Rights

A critique of Maritain’s human rights discourse can be exercised from various vantage points. For instance, as the personalist philosophy is deeply entrenched in the human person, it is explicitly human-centred, and so it misses the rights of the non-human world. Though it is a serious shortcoming, it will not be treated in this section, because he produced his major works before the ecological turn of the last century. Since the scope of this book is to integrate both liberty and welfare concerns in human rights discourse, I particularly focus on those shortfalls which caused Maritain to deal only insufficiently with the ‘welfare concerns’. The crux of my critique is that a curious mixture of a spirituality of hermit style and a liberalism of American style prevented him from seriously engaging with the demands of welfare rights.

1. Spiritualism

In contrast to the prevalent anthropocentric endeavours in politics that deny the metaphysical roots of the dignity of the human person, Maritain proposed an ‘integral humanism’ which is Christian theocentric to the core in the natural law tradition. Despite oscillations and changes in his life and ideas, what really remained unchanged was his conviction about the primacy of the spiritual over and against the secular. The subordination of earthly common good to the spiritual makes it a less elevated principal agent, whereby temporal ends become only an intermediary or infravalent end. According to Maritain, this subordination is in contrast to “modern Gallican and liberal conceptions”. In the same vein, he diagnoses that the problem of ‘modern’ Europe is a spiritual crisis. “Europe has forgotten even the subordination of political to spiritual ends”, which has brought about “that general condition oppressive of the spirit and conscience, that

practical contempt for the human person and his dignity”. 661 There is indeed an element of surprise when a political philosopher first lists ‘the right to spiritual life’ (for the contemplation of truth) under the privileged rights of the human person. 662

Maritain’s vocation as a metaphysician made him primarily a man of contemplation; analysing Thomistic ideas of action and contemplation, he underscores “the preeminence of the contemplative over the political life”. 663 In opposition to social action, it is an act of the spirit and hence spiritual and deeply personal. This faculty of human beings elevates them to the level of ‘gods’. Maritain says: “The contemplative life is better than the political life.” 664 Such a spiritual-moral project primarily focused on “the transcendence” of both economics and politics in order to reinvent their spiritual and moral foundations. 665

The tension between the personalism represented by Maritain and the personalism of Mounier demonstrates two opposing approaches to the problems of the world. The metaphysical Thomistic personalism of Maritain emphasized ‘being-person’; the existential communitarian personalism of Mounier, the ‘acting-person’. 666 Maritain’s spiritualism and dogmatism often clashed with Mounier’s pragmatism. He went on pressing Mounier that the journal Esprit must be guided by truly Catholic principles; he demanded a “separation from elements which are very insufficiently spiritualised” and the stripping of their “Leftist mystique”. 667 Maritain constantly intervened to censor the materials in order to maintain Esprit truly spiritual. Mounier describes his dilemma:

665 It does not mean that Maritain was against economics and politics as such; he was rather against ‘economism’ and ‘politicism’. He writes that ‘economism’, whether Marxist or capitalist, is materialistic and hence finally would corrupt politics because it is devoid of spiritual and moral foundations. Politicism also corrupts politics as it is oriented to the “conquest of power” either by a political party or by a class in the name of a “substantial transformation”, finally transforming it into “a purely technical idea of political and social activity”, which thus totally eschews the normative. Cf. Maritain (1936/2012): “Integral Humanism”, 286–287.
My heart says he is entirely right [...] but he thinks like a hermit. A monastic project would perhaps be more fertile than Esprit. But if we are engaged in a temporal project [...] we have to draw our publics from all quarters and a flaunting of Catholicism would discredit us in the eyes of many, as long as we had not yet given proof that one could be integrally Catholic and sincerely revolutionary at the same time.668

Indeed, Maritain had a heart of a hermit. Doering’s vignette of Maritain as a “beggar for heaven on the byways of the world” brilliantly captures it.669 The ‘temporal city’ envisioned by Maritain was communal, personalist and peregrinal, where *peregrinal* refers the pilgrim nature (*en route*) of human beings that oriented the earthly city. His deep awareness of the *en route* nature of temporal life is immanent in his attitude and philosophy.670 Mounier had troubles with such monastic types, and he observes that there was “so much timidity on the side of the meditative types, so little competence. Salvation is not in intellectual pietisms which replace the effort to think with edifying citations, the courage to advance with a sanctification of established kindnesses. One group must be played off against the other.”671 Maritain’s later criticism against temporalization of Christianity, where “the only thing that matters is the temporal vocation of the human race, with its march, embattled but victorious, to justice, peace and happiness”,672 reveals that his spiritualism remained unchanged.

Maritain is for a pacifist approach in the line of Gandhi’s Satyagraha, which is a spiritual revolution realized through ‘active patience’ and non-violence. This spiritual enterprise requires “souls oriented toward sanctity, of the intelligence as well as of the heart”.673 In the context of growing frictions with the advocates of the Third Force in *Esprit*, Maritain told Mounier that there is not only a difference but a “diametrical opposition and incompatibility in the way which you and they envisage the spiritual revolution”.674 Beyond the “carnal war of proletariats in a Jerusalem of the

672 Maritain (1968/2011): *The Peasant of the Garonne*, 56. It is ironical that his *Integral Humanism* principally contributed to the very situation he is now condemning and which finally turned out to be for the good of the Church.
Revolution”, Christians are advised to be armed for “a spiritual warfare, and by a social and temporal struggle which must be waged by all those whom a common human idea brings together, and in the very movement of which the conflict in question is already surmounted.” Even when he discusses some burning problems of the time, like the rights of the working person or “the race question in America”, he is against any kind of a “revolutionary ferment”. He seems to be unduly optimistic, subsequently leaving the challenge of revolutionary social change to the mercy of ‘gradual’ progression of spiritual élan. Also in his discussion about ‘Catholic action and political action’, he does not in any way favour any “hyperbolic solution” like martyrdom but prefers the gradual transformation of the social order through Christian actions.

For Mounier, it was a herculean task to reconcile the ‘activists’ and ‘spirituals’ in *Esprit*. He actually wanted to translate the spiritual dimension of his life into worldly activity, but Maritain vehemently criticized the “goose-stepping philosophy” of his *Ordre Nouveau* friends or the “Kerenskyist foolishness” of the Third Force. Mounier persisted in seeing God’s grace where Maritain saw only immature analyses, muddled thinking or hot-headedness. Mounier’s spiritual awareness, however, transformed him differently. Hellman observes: “Ever since his Bergsonian student days in Grenoble, Mounier was fascinated by individuals with a mystique, or with an altruistic élan, and discerned traces of God in them. This made him an early ecumenist, and far more sympathetic to political extremists than was Maritain.” Precisely because of this dialogical nature, Mounier and *Esprit* became more famous and influential in the secular world. Thirty years later, fifteen years after the tragic early death of Mounier, there is a brief note in *The Peasant of the Garonne* in which Maritain admits that ‘communitarian personalism’ had seemed to win out over the personalist

part. But he still contends that this version of ‘personalism’ and the pro-
gressive Catholicism of Esprit harmed the Church.  

This conflict between spiritual and actual revolution emerges from the 
fundamental tension between being-person and acting-person. Mounier’s 
‘activism’ ended in leftism. A complementarity of ‘being and acting’ in 
promoting human dignity would have yielded a better result.  
Now there are attempts to found an integral personalism that comprises an overlap-
ping of the ‘being-person’ of the classical mind, of the ‘thinking-person’ 
of the modern mind and of the ‘acting-person’ of the contemporary mind, 
which are but three elements of one and the same self.  
An endeavour to complement both Maritain and Mounier was later pursued by Yves R. 
Simon, a lifelong friend of Maritain, by keeping a strong Thomistic meta-
physical basis while promoting a dynamic openness for the on-going cre-
ativity of the person. John Paul II’s *The Acting Person* was also an attempt 
to develop “an integrated personalism which requires fidelity and norma-
tive adherence to the ‘metaphysics of being’ of Thomas Aquinas in the 
spirit of Maritain with the need of openness to the exigency of contempo-
rary existential phenomenological personalism in the spirit of Max Scheler 
and Mounier”.  

Needless to say that Maritain’s staunch spiritualism and moralism de-
cisively influenced the way he characterized human dignity and human 
rights. It also determined the ‘priorities’ and ‘hierarchies’ in his human 
rights discourse, where welfare rights were only insufficiently accommo-
dated in the materialization of human dignity.

---

682 Maritain observes: “[T]he expression ‘personalist and communitarian’ has be-
come something of a catchphrase for French Catholic thought and rhetoric. I am 
not without some responsibility for this myself […]. It is from me, I believe, that 
Mounier got it […] but when I see the way it is now being used, I am not very 
proud of it. For it is clear that after paying lip-service to the ‘personalist’, it is 
really the ‘communitarian’ which those who use it cherish.” Maritain 
2. Liberalism

Maritain consistently considered himself to be ‘neither left nor right’; as mentioned in the general introduction, he is rightly identified as a liberal philosopher in the Rawlsian tradition. It was this liberalism that facilitated the accommodation of subjective rights into his personalism. Maritain, during his association with Mounier and the journal *Esprit*, maintained a critical attitude towards both communism and capitalism, as evidenced in *Integral Humanism*. However, he skewed later to a valorisation of the American model of capitalism and liberalism. Though he developed his human rights discourse in opposition to the ‘liberal’ ‘individualistic’ tradition, he landed, willingly or unwillingly, in this camp, which caused him to bypass many urgent welfare issues that are related to unjust social structures.

2.1. Early Criticism of Capitalism

On the one hand, Maritain took a clear stance against the Spanish Civil War, departing from the idea of a ‘Holy War’ or ‘White Crusade’ against communism. At a time when many Catholics judged that Franco and fascism were the lesser evils in comparison to communism and Soviet domination, he boldly stated that he is a man of the left when it comes to “the things of Caesar”.686 Both Mounier and Maritain were attacked as ‘Red Christians’. On the other hand, when the condemnation of capitalism has become commonplace, Maritain makes a very balanced criticism of capitalism: “considered in itself, the ideal mechanism of the capitalist economy is not essentially evil and unjust” as projected by Marxism, “yet when we consider the spirit which makes concrete use of that mechanism and which determines its concrete forms and its particular realizations, it must be said that a radical disorder is hidden there”.687 Instead of making a blanket criticism of capitalism, he acknowledges the relevance of the market mechanism, which no economist would deny. At the same time, he calls for a radical reorientation of the guiding spirit of capitalism. Though

the capitalist system supports the dynamism and initiatives of the individual, it contains a

spirit of hatred of poverty and of the scorn of the poor man; the poor man exists only as an instrument of a production that yields profits, not as person. The rich man exists only as a consumer [...] the tragedy of such a world is that, in order to maintain and develop the monster of a usurious economy, it will inevitably be necessary to tend to make of all men consumers, or rich men.688

Maritain has here a very substantial criticism of “the monster of a usurious economy” which makes the human person either an instrument of production or an instrument of consumption, mercilessly reifying the human subject. He observes that Christians contributed to the decadence of the world through their failure to prevent the invasion of deflected and deformed economic structure of capitalism, especially “in the barbarous and victorious days of early capitalism”. Maritain decries the social damage it has caused, and he pertinently observes that it is in this space of the collective indifference of the humanity that “Socialism found vacant and occupied”.689

In this connection, he is very critical of the “passive resistance and secret hostility of Catholic social formations”, which failed to provoke any efficacious effort of redressment or active and deliberate opposition.690 Here is a Maritain who is impatient at the face of glaring injustice. His analysis of the indifference and failure of Christians identifies some exceptions in the history of the Church in the nineteenth century, for instance, in the persons of Frederick Ozanam and Tonilo, the founder of the St. Vincent de Paul Society, who took care of the victims of the vicious capitalist structure at a time when the triumph of capitalism was at its high.691 Maritain insisted on the social mission of the Church, especially the mission of the Church for the poor. “The reality, as deeper historical experience shows, is that by the nature of her mission the Church always has her heart with the poor and always finds in them her true resources.”692

Maritain further insists on many considerations for the liquidation of capitalism. “They [considerations] presuppose a radical change not only in the material but also in the moral structure and in the spiritual principles of the economy: for capitalism itself is fully understandable only through the spirit which informs it.”\(^{693}\) The transformation of a society, therefore, consists not just in the transformation of economic technique but also in a change of the ‘spirit’ that underlies this system. The first challenge to overcome is the temptation to measure the economic process on the basis of ‘fecundity of money’ that is external to the human person; instead it is the human person who should be the measure to which the things of the world would be referred.\(^{694}\)

He, therefore, envisions a personalist approach to economics with the aim “to subordinate technology, the machine, and industry to man.” He advocates a humanization of the whole economic structure: “A science of the nonhuman, the science of the production of things, if it becomes the rule of life, can only impose inhuman rules.”\(^{695}\) According to him, it is time to choose between an essentially industrial civilization and an essentially human civilization; a society should not be guided by the rationality of industry, for “it is only an instrument and therefore subjected to laws that are not its own”. He thus favours an ‘organization and rationalization’ of the economy by “a political and economic wisdom, which above everything else is a science of freedom, proceeding according to the dynamism of means to ends and in continuity with the nature of the human being.” The quest to go beyond industry’s own laws is evident, primarily to “regulate the movement of production according to the real needs and capacities of consumption.” This is an appeal to give primacy “to ethical dominants over the technical dominants”. Thus, it calls for a redefining of economic reason based on a Christian philosophy of the human being, work and ownership of material goods.\(^{696}\)

Instead of a “bourgeoisising of the proletariat” that socialism envisages, Maritain stands for the prise de conscience of the worker’s dignity and solidarity. Against the historical mistake of “the misery and the social non-existence” of the proletariat, which happened in the time of so called “golden age of liberal individualism and capitalism”, now it is a kairos to

---

awake “a certain prise de conscience, it is the growth in the awareness of an offended and humiliated human dignity, and the growth in the awareness of a historical mission”.

This calls for “growth in awareness of the dignity of work and of worker’s dignity, of the dignity of the human persons in the workman as such”. There is a historical need to fight against an economic system that exploits the working person by simply merchandising the human forces. “This idea of the proletariat”, “without falling into Marxist messianism […] is the bearer of fresh moral reserves which assign to it a mission in regard to the new world; a mission which will be […] truly a mission of liberation if the consciousness it has of it is not […] falsified by an erroneous philosophy.” It is prophetic to claim that the sufferings of the proletariat calls for a mission of liberation. Marxism and Christianity are united in identifying the need of the time; the difference lies in the philosophy they follow.

Notwithstanding his virulent attack on communist ideology, Maritain played an important role in changing the attitude of the Catholic Church toward communism, especially through the Cardinal Montini-Maritain collaboration. Montini, for instance, substantiated his stance for social action and economic justice referring to the ideas of Maritain. He also advocated the ideas of Maritain by calling on Catholics to love everyone, even those who persecuted them. In its final statement, the Second World Congress of the Lay Apostolate “urged Catholics to work for ‘social and economic justice’ in collaboration with all people of good will. It paid homage to the ‘victims and martyrs of the Church of Silence’ in communist countries; but made no call for renewed mobilization against communism, suggesting that in the international organizations at least, the Maritain-Montini thinking prevailed.”

Maritain thus did not favour “an all-out political mobilization against communism, or to elevate it to the position of public enemy number one”. Before seeking errors in Marx’s philosophy, he is to be listened to. Maritain was, in principle, not against cooperation with communists for common good, spelling out the distinction between ‘action of Catholics’ and

This economic acumen of Maritain is definitely enriched by his collaboration with Mounier. On economics, many similarities can be found in their analysis. “The economist cannot however definitively resolve his problems except under the guidance of politics, which relates them to ethics […] politics is needed to add the rule of ethics to the rigours of technique. It is at the level of politics that an economy becomes personalized and its personnel institutionalised.” Striking similarities between them are obvious in this statement.

Maritain supported Mounier and George Izard’s launch of Esprit (1932), a journal for young intellectuals with the aim “to set up a platform where people can freely share and discuss their way of searching and experiencing self-transcendence and, secondly, to translate the shared spiritual commitment into a contextual, social engagement”. Maritain moved eventually away from Mounier and Mounier’s personalist movement as described in the preceding section. The extent of incongruities between Maritain’s liberalism and Mounier’s socialism was reflected in their later life too: Maritain became appreciative of the American model of democracy; Mounier became increasingly hostile to American democracy and more sympathetic to Marxism or at least to ‘real socialism’. Moyn rightly observes that personalism, in both Maritain’s and Mounier’s renditions, had left-wing implications, which contributed to a quick sputtering of “left Catholicism”. Personalism is not fashioned after the model of “the economic liberalism of the eighteenth or nineteenth centuries”. There was

---

a general consensus among Christians on the left and the right that “some management of the economy was necessary”. Nevertheless, the left versions of personalism extinguished soon, giving way to “a reinvention of conservatism in power”. The political hegemony of Christian Democracy played an important role in this “re-recasting of bourgeois Europe”. This general shift of Europe from left to right is reflected in the personal biography of Maritain too.

2.2. A Proponent of Liberalism: The American Spirit

I resort to two experiences of Maritain to emphasize the strangeness of this conversion. Firstly, because of his uncompromising anti-fascism in the wake of the Spanish Civil War, he found himself painfully and unexpectedly isolated from Catholics in the United States who considered that his position ‘smacked of heresy’. Secondly, Maritain once confided to Mounier that “living in Canada one realizes that the British empire and Anglo-American Protestantism are truly the heart (if such a word can be used!) of capitalism: and that is a bitter and disgusting experience”. Interestingly his view of the American attitude had shifted notably by the 1950s after living there for a long time. This resulted in an insufficient critical distance from capitalism and liberalism.

Maritain fled war-torn Europe in 1940 and went to the United States. He stayed there until 1960, except for the three years he served as French ambassador to the Vatican after the war. In spite of a more general antipathy toward America in Europe and voluminous anti-American literature in circulation toward the end of his sojourn, he published _Reflections on America_ (1958), a book that was very sympathetic to the United States. Beyond European tyranny and disorder, he found a haven of freedom and stability in America. He was very much saddened by Europe’s cultural and spiritual decline and believed that America, in contrast to Europe’s secularist drift, will be the promised land where his dream of a new Christendom, which he had already visualized in _Integral Humanism_ (1936), would be realized in the new historical situations.

He explains how he literally fell in love with America: “When he who, meeting for the first time either France or America, falls in love at first sight, it is because he is confronted with a moral personality, a moral vocation, something of invaluable dignity, which is spiritual in nature, and which, I think, in the last analysis is quickened, in one way or another, by some spark of the Christian spirit and legacy.”708 “The first contact with America is thus liable to produce a sort of intoxication, a delight in a newborn freedom.”709 He insisted on the “obvious fact” of America’s uniqueness. “There is one thing that America knows well and that she teaches as a great and precious lesson to those who come into contact with her amazing adventure: that is the value and dignity of the man of common humanity, the value and dignity of the people.”710

Accordingly, he felt that the United States had a special role to play in the post-war world. To bring about a new order in the post-war world, the American experiment was pivotal. “If we want civilization to survive”, he wrote during the darkest period of World War II, the “American spirit” must help lead the way in creating “a world of free men penetrated in its secular substance by a real and vital Christianity, a world in which the inspiration of the gospel will direct the common life of man toward an heroic humanism”.711 He praises the democracy in America where, “despite the influence wielded by the great economic interests, democracy has penetrated more profoundly into existence, and where it has never lost sight of its Christian origin […] in Europe it conjures up an ideal scoffed at by reality and whose soul has been half devoured by these same errors.”712 It is no accident that he is often identified as “the first great theorists of democratic capitalism” as in the United States.713

Moreover, he posited a “root incompatibility” between the American people and Marxism.714 Despite his principle of primacy of the spiritual, Maritain refutes the frequent charge that Americans were peculiarly given to materialistic pursuits. He called attention to the private charities, foundations, schools, etc. The enormous creative energy of the American pri-

vate sector in generating wealth and giving it away constituted for him an epochal boon to human flourishing. He was full of praise for the philanthropic spirit of average Americans.\textsuperscript{715} He entertains great optimism that America would never become *embourgeoisée* – “a nation interested only in its own material welfare and power”.\textsuperscript{716}

This lavish praise of America and his agenda to debunk Marxism and communism caused him to overlook many evils of the turbo capitalism that believes in the self-regulating power of ‘invisible hand’. A social analysis which claims that the generosity of some rich people would realize the common good and the demands of distributive justice will end up chronically bypassing uncomfortable questions about the structural evils that perpetuate poverty and deprivations of the less privileged. Had he read the classics of American political economy like *The Federalist Papers*, his fellow Frenchman Alexis de Tocqueville’s *Democracy in America* or the writings of Abraham Lincoln, he would have adopted a critical and nuanced vision of the ‘American spirit’.

Maritain’s swinging towards American liberalism has also something to do with the Cold War polarization in the West. The Cold War was generally understood as “the defence of religion and ‘the West’.\textsuperscript{717} It will be later described how the world at large has embraced an integral approach to human rights only after Cold War. The Christian Democratic hegemony was chiefly instrumental in such a shift from left to right or “a re-invention of conservatism”. Moyn notes that “many of the chief founders of the European project, both in politics generally and in the tradition of European human rights specifically, were avowed personalists (for instance, Robert Schuman, Paul-Henri Spaak, and Pierre-Henri Teitgen).”\textsuperscript{718} Maritain’s oscillation to the right, or to capitalism, had, however, a great consequence – his conversion to human rights.

\textsuperscript{717} Cf. Moyn (2011): “Personalism, Community and the Origins of Human Rights”, 100–101. The Church was in a battle with her arch-enemy communism, whereas the attitude of the Church towards right totalitarianism was ambivalent.
2.3. Liberal Politics and Liberal Human Rights

Maritain endorsed a hierarchy of human rights by which political rights take precedence over others. In spite of his genuine effort to overcome the antagonism between the ‘old’ and the ‘new’ human rights – the first and second generations of human rights – he proposes a clear gradation of human rights, i.e., the rights of the human person, the rights of the civic person and the rights of the working person. Furthermore, the rights of the human person are primarily about personal liberty to conduct one’s own life. Maritain thus asserts human rights mainly as an immunity against interference, especially political coercion, which is typical of liberal tradition. Two reasons can be identified for it. Firstly, he developed his human rights discourse as a refugee in the USA against the backdrop of the political convulsions of the Second World War, especially the evils of totalitarianism. He thus fails to appreciate positive interventions of the state. Secondly, as already outlined, his conversion to American liberalism caused him to focus more on the rights of the person. America has always been hesitant to appreciate a ‘welfare state’ which presumably hampers the rights of the individual.

Human rights, in terms of positive entitlements to lead a meaningful life and to participate fully in the life of society, are usually considered as the Marxist-socialist approach, where human rights are primarily conceived as ‘positive’ rights. Rights, according to Marxist theory, cannot function as claims against society, since rights are perceived as merely opportunities to participate in the benefits of the society. Though the possibility of abuse of the state power is real, Maritain’s one-sided focus on the corrosive effects of the state in order to immunize society against the overweening interests of the state power missed the need of positive interventions of the state through institutional support and welfare programme. His polemic against the state unfortunately led to a simplistic state-person binary which was deeply averse to the state ‘machinery’.

721 Maritain’s aversion to ‘statization’ is evident when he plainly proclaims that he does not like “the State machinery”: “I do not like it. Yet many things we do not like are necessary, not only in fact but by right. On the one hand, the primary reason for which men, united in a political society, need the State, is the order of
Moreover, his liberalism is explicit in his characterization of the ‘rights of working man’ against the general context of ‘political totalitarianism’, especially against the ‘state corporatism’ of communism. As Maritain locates the rights of the working person in the space of positive law, where rights and duties follow from the first principle only “in a contingent manner”, they are of lesser quality. Their incomplete recognition due to delay in inclination either across time or space is rather easily tolerated. The feeling of urgency in realizing the welfare rights is thus relatively scant as they are placed on the lower rung of the hierarchy. He has many suggestions for the workers’ titles, but his reluctance to any revolutionary changes provides only cosmetic moral solutions to the pathetic situations of the workers and the poor.

Maritain responded to the immediate political task of maintaining peace on earth. Even his demand for “a redistribution of the wealth” was a means of ensuring peace among nations. Any genuine interest in the elimination of inequalities and human development is not palpable. Though there are some passing references to “the primacy of human welfare” and “the primacy of the general welfare and the political common good” in the framework of an economic humanism, the notion ‘welfare’ was narrowly conceptualized. Due to his deep reluctance to Marx, he seems to be hijacked by the camp of Rousseau that “recognize[s] the rights of the individual”, though he claimed his equal distance from both of them. The reality is that we actually need both: Rousseau and Marx.

2.4. A Moral Politics and an Amoral Economics

Given the backdrop of drastic abuse of the political power, Maritain fought a relentless battle against the Machiavellian remnants in politics, attempting to give a moral foundation to politics. He endorsed a ‘moral ra-
tionalization’ of political life through a process of democratization in accordance with “the essentially human ends of political life, and of its deepest springs: justice, law and mutual friendship”. 726

Maritain makes an Aristotelian dualism of ‘nature-reason’ between economics and politics. He accepts that both economic life and political life depend on nature and reason. The principle that primarily guides economic process is nature, which is “dominated by material forces and deterministic evolution”. The political, on the other hand, is guided by reason, which is “concerned with the ends of human existence and the realm of freedom”. 727 This purely materialistic approach to economic process gives the impression that ‘market and merchants’ were invariably associated with some debasement of values. For a long time, this had great bearing on Christian spirituality and theology.

Machines are to be tamed by “human conscience and moral intelligence” for the service of humankind; human’s instinctive greed is to be controlled by a collective reason. 728 Expressions like ‘nature’, ‘matter’, ‘determinism’, ‘instinct’, ‘greed’, etc. demonstrate that Maritain, unfortunately, describes the economic process in toto as an amoral and hostile force. For him, ethics is not internal to economic behaviour but external, mediated through the political. Yet even pure capitalism has its own ethics which guides the market transactions. Such a blanket amoralization of economics is a grave aporia in his political philosophy, thus revealing his failure of a serious engagement with political economy. This attitude recasts the Aristotelian tradition that considers trade for profit wholly devoid of virtue, being carried over by the Christian attitude of juxtaposing trade and greed, which was a consequence of the general antagonistic attitude of scholasticism to commerce. Though scholastics did not analyse the mercantile part of economics, they developed a normative approach toward economic process, bringing it under the discipline of justice. 729 A purely mercantile approach to economics was not even in the mind of the so-called father of capitalism, Adam Smith. The glaring inequalities occurring in the market system calls for an ethical approach to economics that

strives for a just ordering of market system in view of the welfare of all people.

Conclusion

We have identified two important factors that limited Maritain’s political philosophy in general and his human rights discourse in particular – his spiritualism and liberalism. This uncommon combination of the mystic and liberal is enigmatic.730 Firstly, the general tenor of the ‘spiritual’ and the ‘moral’ renders the earthly common good only an intermediary and infravalent value.731 His grand project, Integral Humanism, attempted to reclaim some important immaterial elements (both theos and ethos) in a world which, according to him, was highly materialized. In his encyclical Populorum Progressio, which addressed the urgent need of the development of people, Pope Paul VI cites his ‘master’ Maritain to highlight “a full-bodied humanism” which is “open to the values of the spirit and to God”.732 This immaterial concept of development is but one aspect, and the encyclical indeed complements it with the ‘material’, thus exploring other sources. The critical need to take the ‘material’ seriously calls for a substantial shift from integral humanism to ‘integral development’, where the earthly common good achieves a prevalent value than a mere infravalent one.

Secondly, though Maritain distanced himself from the dominant liberalism, his basic philosophical attitude favoured it. Despite his self-identification as a man of the left in the matters of the world,733 he leaned considerably toward the right. His preoccupation with the rationalization of politics caused him to overlook many urgent problems related to social justice. This lacuna is symptomatic of the collective failure of liberal political tradition. Actually, the reinvention of the human person as subject and right-holder is a rich legacy of liberal tradition, but its tendency to prioritize lib-

732 Cf. Pope Paul VI, Populorum Progressio, #42.
property rights – mostly as negative rights – seriously handicaps its human rights discourse.

Maritain’s notion of *prise de conscience* – the idea of progressive advancement of the moral consciousness – recognizes a historical moment in the nineteenth century, whereby the humanity experienced a radical conscientization on the dignity of the work and workers.\(^{734}\) Another significant *prise de conscience* occurred in the human rights history in the post-Cold War period, which took an integral and broader view of human rights that culminated in an integration of human rights and human development. This contributed enormously to the integration and mutual enforcement of both liberty and welfare.

B. AN INTERIM APPRAISAL: From Maritain to Sen

Maritain’s enduring contributions to human rights discourse in the twentieth century have been analysed. His reinvention of the normative idea of human person provided it with a solid foundation. His insufficient treatment of welfare rights reflects the geopolitical tensions in the Cold War period; in this context, his personalism associated with liberal conservatism to fight against godless communism. Maritain primarily dealt with homo politicus, consequently treating homo oeconomicus only insufficiently. He thus missed some urgent social issues related to inequalities and deprivations. It reveals his disengagement with the scholastic economic thought that is deeply concerned with justice and welfare. The following interim appraisal first identifies the richness of medieval economic thoughts and its implications for contemporary welfare economics. Then it will be argued that an acute interest in welfare concerns calls for a broader understanding of human rights that can integrate human development as well.

1. The Legacy of Scholastic Economics and Sen’s Rediscovery of the Tradition of Political Economy

Prehistory of modern economics is intrinsically related to scholastic economic thought; thus, it can be considered as a precursor of Classical economic thought.\textsuperscript{735} De Roover argues rightly that the medieval heritage is not a bygone past. “To consider scholastic economics as medieval doctrine is simply an error, and economists have bypassed a current of thought which runs parallel with mercantilism and reached out into the eighteenth century, connecting the economists and even Adam Smith with Thomas

Aquinas and the medieval Schoolmen.”

Significantly, it was the monastic tradition that nurtured and sustained economic institutions and economic culture. Max Weber famously diagnosed the link between protestant individualistic ethics and the spirit of capitalism. This link is often attributed to the Anglo-Protestant hegemony, which later produced soulless capitalism and atomistic individualism in contrast to the monastic tradition of ‘civil market economy’.

This calls for the need to explore the great tradition of political economy. Neither in antiquity nor in the medieval period was political economy only an appendix to ethics and law. The medieval scholastics considered economics as part of their larger concern for the common good and social justice. Exchange relations were judged by the rules of justice, especially in cases of distribution and exchange of scarce goods.

According to de Roover, the prehistory of economics demonstrates a continuity from “the ancient Greeks, the eleventh-century Benedictine monks, or the thirteenth century scholastics” to “the insights of the Scottish triumvirate, Gershom Carmichael (1672–1729), Francis Hutcheson (1694–1746), and Adam

737 Moreover, in the medieval period, economic institutions, which originated from “civil market economy”, grew under the patronage of monastic tradition. Zamagni considers this to be the ancient form of modern market economy. “Monastic culture was the source of the first economic lexicon, which gained currency throughout Europe in the late Middle Ages. Europe’s first complex economic institutions were the monasteries, where the need for proper forms of management and accounting emerged.” Principles like *ora et labora* were not just meant for individual holiness but refer to a work ethic, which emerged in contrast to ancient Greco-Roman culture, where labour was not a component of good life (*eudaimonia*). Zamagni, Stefano (2010): “Catholic Social Thought, Civil Economy, and the Spirit of Capitalism” in Finn, Daniel K. (ed.), *The True Wealth of Nations: Catholic Social Thought and Economic Life*, Oxford and New York: Oxford University Press, 64–66. The above-mentioned monastic economic culture of *ora et labora* was replaced by Calvin’s *laborare est orare* (work is prayer), which clearly refers to a shift from Catholicism’s other-worldly asceticism to the this-worldly asceticism of Calvinist spirituality. This is the source of capitalist *Geist*. Combined with the Protestant belief that salvation is an individual and not a community matter, it led to further individualization, which negatively affected one of the essential principles of Christianity – common good. Zamagni (2010): “Catholic Social Thought, Civil Economy, and the Spirit of Capitalism”, 75–77.

Smith (1723–1790), who each successively held the chair of moral philosophy at the University of Glasgow, and it gave rise to the birth of modern economics. It is proved that Adam Smith read Grotius at the age of fifteen as a student at Glasgow. His teacher Hutcheson and his predecessor Carmichael dealt with the subject in scholastic fashion as a branch of natural jurisprudence. Adam Smith nonetheless modified this outline by substituting the fourth part of the course on justice with expediency, which really is a break with scholastic tradition. Sen also accentuates this medieval lineage of modern economics in the European universities, and he reminds that “economics used to be taught at Cambridge until fairly recently simply as part of ‘The Moral Science Tripos’.”

There are reasons to believe that Adam Smith was influenced more by scholasticism, which drew a lot from Aristotle’s *Nicomachean Ethics* and *Politics*, than by mercantilism and physiocracy. Modern economics thus owes the scholastic economics a great debt, a fact that is often not acknowledged. De Roover makes an optimist conclusion to his analysis: “Nevertheless, it [scholastic economics] contained much that was worth preserving and which was preserved in actual fact. Valuable ideas may lie buried for a time but they eventually spring up.” It will be argued in this book that Maritain, despite being a Thomist, missed recapturing this legacy of scholastic economics, while an agnostic economist, Sen, did it.

The fact that economics as a discipline had its origin in Christian theology

---

739 Cf. de Roover (1955): “Scholastic Economics”, 188. The outline of the course in Moral Philosophy, taught by Francis Hutcheson and later by Adam Smith, clearly shows that the curriculum at Glasgow College in the eighteenth century paid no attention to mercantilist thought but taught economic principles based on ethics and law, inherited from the medieval tradition. In *The Wealth of Nations*, Adam Smith devoted several chapters to mercantilism, but it was only to denounce it as a pernicious and “sophistical” system. Cf. de Roover (1955): “Scholastic Economics”, 188–189.


741 Walsh is of the opinion that the new-found interest in economics for a normative evaluation of the market and economics process can *mutatis mutandis* greatly benefit from the economic casuistry of the medieval schoolmen. Cf. Walsh (2004): “The Morality of the Market and the Medieval Schoolmen”, 241–259.


743 In my research, I have come across only once someone mentioning this deficit of Maritain’s political philosophy. “It is surprising how little sustained attention Maritain gave to the most significant new discipline of post-medieval times, political economy, with the accent on economy. Maritain came to the problems of

---

184
and jurisprudence, explicitly substantiated by scholasticism, indicates the gravity of his failure to deal with economics.\footnote{744}

The scholastic economics correctly diagnosed the economic problem as one of scarcity. In their opinion, economics was a branch of ethics which determined the rules of justice that ought to preside over the distribution and the exchange of scarce goods. It is obvious that there would be no need for distribution or exchange if goods could be obtained without effort in unlimited quantities.\footnote{745} Exploring the relation between scholasticism and welfare economics, Stephen Theodore Worland argues that the keystone of scholastic economic thought, \textit{justum pretium} (just price), functions as a missing link between both disciplines. The notion of \textit{justum pretium} links justice in exchange and the common good; in effect, it links both commutative justice and distributive justice.\footnote{746} Political economy was primarily concerned with justice – both distributive justice and com-


746 Distributive justice aims at a sort of ‘geometric mean’ where the common good is proportionally distributed among members of the community. Commutative justice, on the contrary, seeks an ‘arithmetic mean’, which is a ‘mean of justice’ between individuals. This simultaneous attention to both commutative and distributive justice combines both self-interest – need (scholasticism rightly diagnosed
mutative justice. “Economic matters pertained to justice, not to charity, as can be readily ascertained by merely running through the table of contents of Aquinas’ *Summa theologica.*”

It is noted that Aquinas’ virtue theory on justice can be a solid foundation for a contemporary global business ethics that can appeal to a broader non-confessional audience.

A striking contrast between mercantilism and scholastic economics helps us better understand the development of economic thought. Unlike mercantilism, scholastic economics formed a consistent body of doctrine about the laws of distributive and commutative justice. In contrast, mercantilism was just a conglomerate of uncoordinated prescriptions primarily to serve private interests. Scholastics were formed at universities to be good theorists, whereas mercantilists were self-trained merchants who were empiricists. The Doctors were moralists, preoccupied with social justice and general welfare, but they were not willing to rejuvenate their medieval concepts and methods. The conservatism of the late scholastics thus led to the flourishing of mercantilists, who were ruthless to try everything. The scholastic writers regarded trade as an occupation that endangers the salvation of the soul in view of all the possible temptations. In contrast, mercantilism was amoral. Here, trade was not an evil, and usury was no longer considered a voracious monster.

Scholastic economics was universal, whereas such uniformity did not exist for mercantilists — “everyone is his own economist”. It is to be admitted that there were many regional variations of mercantilism, and the appellation ‘mercantilism’ in its true sense is applicable only for British economics during that period when mercantilists were defenders of free trade. British mercantilism was totally opposed to state control; rather it that the need or scarcity is the cause of exchange) — and common good — social justice. Thus, it is diametrically in opposition to neo-classical capitalism that seeks an association of both laissez-faire and individualism. Welfare economics nonetheless inherited the tradition of scholastic economics. Worland, Stephen Theodore (1967): *Scholasticism and Welfare Economics*, Notre Dame and London: University of Notre Dame Press, 210–233.

supported the exclusive privileges of chartered companies and corporations, as it happened during colonization.\textsuperscript{753} A great transformation to a natural rights approach was happening in the person of Hugo Grotius, who is now better known for his economics. He can hardly be classified as mercantilist; he was rather an Aristotelian who used scholastic methods to defeat scholasticism, particularly through his secularization of natural law theory.\textsuperscript{754}

The decline of scholastic economics is related to its formalism that resulted in a kind of “hypermoralism”.\textsuperscript{755} The waning of scholasticism in the wake of the Renaissance provided it with an increasingly hostile spirit; it stubbornly refused the advancement of sciences, which left it with its antiquated sciences. Scholastic economics decayed due to its unwillingness to revamp its systems.\textsuperscript{756} Had the late casuists revised their economic system and modernized their methods, history would have been different.

Scholastic economics has an unquestionable place in the historical progression of modern economics. Scholars like Sen effectively challenge the general perception that Adam Smith, the so-called father of capitalism, was a promoter of an unbridled market left to the mercy of ‘the invisible hand’; rather he successfully incorporated mercantilism and ethics in his ‘political economy’, which builds on the legacy of scholastic economics. Tawney considers Karl Marx as the culmination and last representative of this legacy. He considered him a genius, a great man, “a humanist saturated with ethics as a Hebrew Prophet” and “a moralist who preferred to clothe his philosophy in the garb of history”.\textsuperscript{757}

\begin{footnotes}
\textsuperscript{753} Thomas Mun was a wealthy merchant of East India Company who engaged in controversial activities. Here we find the dark history of collaboration between colonization and economics. Worland (1967): \textit{Scholasticism and Welfare Economics}, 30.

\textsuperscript{754} Cf. de Roover (1955): “Scholastic Economics”, 184.

\textsuperscript{755} “They attached an excessive importance to formalism so that the study of economics nearly reduced itself to an investigation into the form and nature of contracts. Because of their preoccupation with ethics, the Doctors were also more interested in what ought to be than in what actually was. In the matter of usury, they made the fatal mistake of allowing this subordinate question to overshadow all other problems.” De Roover (1955): “Scholastic Economics”, 186.


\end{footnotes}
In spite of the rhetoric of the demise of scholastic economics and political economy, the twentieth century birth of ‘welfare economics’ reclaims this great tradition. Worland rightly observes that modern welfare economics, which provides an ethical reorientation to economics, provides the ‘missing link’ to scholastic economics which was also primarily preoccupied with justice and the common good. Subsequently, welfare economics can be considered a corollary of scholastic natural law, whereby it occupies the space of *ius gentium*. Worland identifies in welfare economics ‘the ultimate development’ of classical economic thoughts.\(^{758}\) Of these two disciplines, according to him, one is ‘subalternated’ to the other, “so that the theorems of welfare economics turn out to be the joint product of both scientific economic analysis and scholastic moral values”.\(^{759}\) This combination of normative judgements of value and scientific propositions of fact gave birth to welfare economics, which, contrary to a laissez-faire economics, is distinct for its concern for a normative appraisal. There is a heterodox economics succession from Karl Marx, Adam Smith, Karl Polanyi, J. M. Keynes and recently to Amartya Sen, which attempts an integration of market and morals, of ‘ethical’ and ‘engineering’ aspects of economics within the framework of welfare economics, as Sen himself calls it.\(^{760}\)

2. From Integral Humanism to Integral Development

Marx has famously spoken about the history of philosophy: “The philosophers have only interpreted the world, in various ways; the point, however, is to change it.”\(^{761}\) This is a sharp critique of mainstream transcendent philosophies that are not focused on praxis. We have already noticed that Maritain envisaged, above all, a ‘reformation’ agenda that primarily occurs through rationalization or humanization of the political and that is sceptical of any ‘revolution’. It also clarifies how he failed to address the

burning problems of poverty and deprivation. The most sustained criticism of Maritain, however, comes from Liberation Theology, which is contrary to his ‘mild reformism’. According to Gustavo Gutiérrez, it is “a timid and basically ambiguous attempt”\(^\text{762}\) that does not foresee any new radical social reforms, thus inadequately addressing the urgent need of revolutionary political and economic changes in the face of abject poverty, oppression and exploitation in the world. Scholastic preoccupation with the metaphysical structures of human dignity failed to deal with the ‘historical demands of human dignity’ in the concrete historical moment – demands that inevitably involve fighting against oppressive structures.\(^\text{763}\) Human dignity is not an abstract or ethereal reality but a concrete reality to be realized in the personal, social, economic and political life.\(^\text{764}\) A ‘terrestrialization’ of human dignity demands that Maritain’s ‘integral humanism’ is complemented with wider concerns of human development.

Liberation theology – a powerful mixture of theology and activism – was disillusioned with the rhetoric of both cosmetic ‘reformism’ of the Church and ‘developmentalism’ of the secular world. There was an urgent need for a broader concept of development, whereby humanity takes charge of its own destiny, which they called liberation. More than a mere personal reformation, in their view the need of the time was a reformation of evil and unjust structures that had to be realized through a revolutionary process. This call goes beyond Maritain.\(^\text{765}\)

A new social consciousness was emerging in the Catholic Church through the watershed event of Vatican II, especially in the document *Gaudium et spes* (GS), and the consequent developments, such as “the Pact of the Catacombs” or the emergence of liberation theology, which marked the beginning of the wave of change. The joys and sorrows of

\(\text{765}\) Gutiérrez nonetheless appreciates Maritain’s historical role in separating ‘faith and social life’, providing the temporal order with its autonomy, especially against the interferences of Church. Maritain pertinently argued that the task of constructing the human city demands striving for a society based upon justice, respect for human rights and human fellowship. Yet Gutiérrez criticizes that Maritain’s efforts seemed to achieve conditions favourable to the activity of the Church in the world, which demonstrated the remnants of “certain ecclesial narcissism” in his approach. Cf. Gutiérrez (1973): *A Theology of Liberation*, 54–55.
people are returned to the centre focus of concerns. The Latin American Bishops’ Conference (CELAM) at Medellín (1968), and later the Puebla conference (1979), made the elimination of poverty a key issue by focussing on the rights of the poor.

A paradigm shift was happening in the conception of human rights as well. Human rights in their entirety were first incorporated officially in the Catholic social teaching by Pope John XXIII in *Pacem in terris*. Written in the shadow of an imminent Third World War, the focus was primarily on ‘peace on earth’. Pope Paul VI, through his encyclical *Populorum Progressio* (1967), began a reform in the social thought of the Catholic Church, providing a new emphasis, namely “development is new name for peace”. This was a radical shift in the self-image of the Church, where principles of justice and charity came back to the centre of human rights understanding: “All other rights, whatever they may be, including the rights of property and free trade, are to be subordinated to this principle.” The document raises disturbing questions about the glaring injustices between the rich and the poor: “It involves building a human community where liberty is not an idle word, where the needy Lazarus can sit down with the rich man at the same banquet table.”

It is true that Pope Paul VI quoted his ‘master’ Maritain in this document, referring to the integral nature of development. However, interestingly the major ‘ghostwriter’ of this document was Louis-Joseph Lebret (1897–1966), a French Dominican social scientist and philosopher who was one of the key inspirations of Denis Goulet – the pioneer in the field of development ethics. In 1941, Lebret founded the Economy and Humanism movement (*Économie et Humanisme*) in order to “create an alternative economics through dialogue with philosophy, theology and social sciences, but also built from below, with ethnographic work as its ba-

---


767 *Populorum Progressio*, #26, #42.

768 In his most influential work, *The Cruel Choice: A New Concept in the Theory of Development* (1971), Goulet makes a vehement attack against the development model, practised by the major donor and multinational agencies, which he describes “maldevelopment”.

190
sis”. In this combination of humanism and economics we do find the missing link of scholasticism and economics that Maritain missed. It is now generally accepted that it was Lebret who first explicitly used the term ‘human development’ in relation to ‘economics’ and ethics. This was later developed by the Pakistani economist Mahbub ul Haq, anchored on the theoretical framework of economist-philosopher Sen and institutionalized in the Human Development Report of the Office of UNDP.

Gutiérrez interestingly appeals to the notion of development as “a global social process” with a humanist perspective, as proposed by Lebret, and draws a great deal of inspiration from him.

Justice in the World, the document produced by the 1971 Synod of Bishops, deals with the issue of justice and liberation of the poor. It is the beginning of another progressive phase of the development concept. I identify three features of this document in regard to human development. Firstly, this document devised the notion of “the right to development” (13–19), which requires “dynamic interpenetration of all those fundamental human rights” for the enhancement of both the whole person and the whole of humanity. It emphasized the need to use socio-economic rights as the instrument for lifting people out of poverty and protecting the marginalized. The pioneering nature of this concept is evident from the fact that the landmark UN Declaration on the Right to Development appeared only in 1986, which put a decisive end to the putative antagonism and separation of various ‘generations’ of rights.

Secondly, it makes clear statements about the concept of structural injustice, especially in the “international order”, as “the social structural ob-

772 The document states: “This aspiring to justice asserts itself in advancing beyond the threshold at which begins a consciousness of enhancement of personal worth (cf. Populorum Progressio, #15) with regard both to the whole person and the whole of humanity. This is expressed in an awareness of the right to development. The right to development must be seen as a dynamic interpenetration of all those fundamental human rights upon which the aspirations of individuals and nations are based.” Justice in the World, #15.
stacles to development”. It is especially remarkable in the context of the prevailing rhetoric that the poor are solely responsible for their wretched lot, or the perception that the weak and the powerless have always been at the mercy of the rich and the strong, which finally prevented it from being considered as a matter of justice. The poor are mostly not just poor; they are made poor, and hence many prevalent ‘rationalizations’ of global poverty must be strongly challenged.

Thirdly, this document emphasizes that work for justice is a “constitutive” dimension of preaching, dispelling the misunderstanding that it is merely incidental to the work of the Church. Gutiérrez acknowledges that Maritain’s “theses of New Christendom marks another stage” in the history of the development of theology. Namely, an escape from “Political Augustinism”, where the Kingdom of God had no room for a profane, historical plan, to a Thomistic view, according to which “grace does not suppress or replace nature, but rather perfects it, opened the door to possibilities of a more autonomous and disinterested political action”. The acknowledgement of the world as “Verantwortungshorizont” (the horizon of responsibility) of the Church calls our attention to the double mission of

773 Cf. Justice in the World, #16. Populorum Progressio, #52 had thematised this problem: “Financial or technical assistance was being used as a cover for some new form of colonialism that would threaten their civil liberty, exert economic pressure on them, or create a new power group with controlling influence.” John Paul II later confronted this topic in Sollicitudo rei Socialis, calling it ‘structure of sin’ or ‘modern imperialism’ (#37), which he again elaborated in Centesimus Annus.

774 The writings of American libertarian political scientist Charles Murray argue that the poor people are lazy ones. That means they are not made poor; rather they are poor because of their inherent personal defects. Murray claims that intelligence is a reliable predictor of well-being. His theory proposes a sort of scientific racism when he claims that the enduring differences in “race and intelligence” are the reasons for varying levels of social status in American society. Cf. Herrnstein, Richard J. and Murray, Charles A. (1996): The Bell Curve: Intelligence and Class Structure in American Life, New York: Simon & Schuster.

775 “Action on behalf of justice and participation in the transformation of the world fully appear to us as a constitutive dimension of the preaching of the Gospel, or, in other words, of the Church’s mission for the redemption of the human race and its liberation from every oppressive situation.” Justice in the World, #6.


the Church: evangelization and the inspiration of the temporal sphere, as M. D. Chenu formulates it. Political liberation against oppressive regimes or structures is thus not a mere derivative mission; rather it is constitutive of gospel proclamation. “It does not make it the sole or exclusive element of that proclamation; but if the transformation toward justice is missing, then a distortion of the gospel occurs.” In summary, it can be stated that this document marks a paradigm shift from a first-world perspective to a third-world perspective, unequivocally declaring that the Church is firmly on the side of the poor and the oppressed, fighting against injustice.

Hollenbach’s analysis of Catholic human rights tradition notices a profound methodological shift in Vatican II, a shift from a paradigm of scholastic preoccupation with theory (faith) to a paradigm of praxis (love) in the post-conciliar Church, thus calling for a better human solidarity based on the centrality of love. Beginning with Rerum Novarum, the notion of rights and the principles of justice are correlative in the Catholic tradition, leading to a theory of human rights within the framework of ‘a complementary theory of justice’. Human rights, considered conjunctively in the framework of justice, require a reconsideration of the demands of ‘distributive justice’ without abolishing the claims of ‘commutative justice’. This calls for a reinstating of the demands of social justice into rights theory, incorporating personal, social and institutional aspects of justice. Reinstating ‘justice’ as the criterion of personal and social di-

782 Cf. Hollenbach (1979): Claims in Conflict, 144. “The language of rights […] focuses on the dignity, liberty and needs of all persons in society regarded disjunctively or one at a time. The language of justice, on the other hand, focuses on the dignity, liberty and needs of all persons regarded conjunctively or as bound by obligations and duties to one another.” Hollenbach (1979): Claims in Conflict, 144.
dimensions of human dignity calls for an inclusive approach to human rights, which is beyond all ideological compartmentalisations. Such an inclusive approach also requires a break with traditional scepticism in Christianity about market and merchants, as if they were invariably associated with some moral debasement and self-interest. A concern for ‘integral development’ demands that economics and market-mechanism are taken seriously, as done by *Centesimus Annus.* The conjunction of justice and economics is in welfare economics.

Despite the concerted effort in the Catholic Church to extinguish the thrust of liberation theology, principally through Cardinal Ratzinger’s documents from the Congregation for the Doctrine of the Faith in 1984 and 1986, which are highly critical of liberation theology, there are reasons to believe that this Christian commitment of keeping the poor as *locus theologicus* was not extinguished. In the person and mission of Pope Francis, this ancient and ever-new mission of the Church is reclaimed in his vision of ‘a poor Church for the poor’. Now is the *kairos* – a favourable time to prioritize “the joys and the hopes, the griefs and the anxieties of the poor” against the background of deprivation and poverty which persist despite an aggregate ‘economic’ growth in the world.

Here we notice a great aggiornamento in the Catholic perception of development and human freedom. Liberation theology’s aspiration for praxis and for the improvement of the actual life of people required a broader human rights discourse, as now Pope Francis’s option for the poor did. The second part of this book complements this need. The human rights discourse of Sen, which is ultimately aimed at an integral human development, measures the capabilities or real freedoms one enjoys. His economic thinking is founded on a brilliant combination of ethics and economics, of morals and market; his version of welfare economics can be understood as ‘the missing link’ between scholastic and modern economics. Sen situates the question of human rights in the wider concept of capability and justice, focusing on all sets of human rights. Welfare economics shares with scholastic economics the fundamental notion that economic activity is a

784 Prior to the publication of this document, Pope John Paul II invited internationally distinguished economists to Vatican to seek their guidance to draft an ‘integral development’ project – a gesture that sheds light on the need for co-operation between theology and economics for the sake of betterment of the world. Amartya Sen was also among the invitees.
teleological process oriented toward an end. Sen’s economics is also teleological in the Aristotelian sense of *eudaimonia* where enhancing human capability lies at the centre of economic affairs. The capability approach with its emphasis on well-being, agency and freedom has many elements that overlap with the aspirations of Liberation Theology, bringing the poor and oppressed to the forefront. Inequalities, hunger and underdevelopment became central concerns in his developmental ethics. Expressing development in non-economic terms – in terms of capability – represents a fruitful theoretical horizon for an inclusive approach to human rights, which bears enormous ramifications for a human rights discourse. The manner and extent to which the capability approach thus augments this new emphasis will be outlined in the subsequent section.

---

786 In Sen’s theoretical framework, wealth is only a means of enhancing human capabilities – substantive freedoms. He quotes Aristotle: “wealth is evidently not the good we are seeking; for it is merely useful and for the sake of something else.” Sen (1999): *Development as Freedom*, 14.
C. SEN’S HUMAN RIGHTS DISCOURSE

I. The Entanglement of Biography and Philosophy

The eminent economist and philosopher Amartya Sen was born in 1933 into an academic family at the university campus of Santiniketan (the home of peace) in Calcutta. This was originally a school started by another Indian Nobel laureate, Rabindranath Tagore. Sen spent his early childhood in Dhaka, and after the Partition in 1947 his family settled in India. Sen’s early education was in Dhaka and later at Santiniketan. Amartya studied at Presidency College in Calcutta and at Trinity College, Cambridge. Later he taught at many world prestigious universities. At present he is Thomas W. Lamont University Professor and Professor of Economics and Philosophy at Harvard University. He served as the Master of Trinity College, Cambridge, and as President of the Econometric Society, the Indian Economic Association, the American Economic Association and the International Economic Association. He had been Honorary President of Oxfam and is now its Honorary Advisor. Among numerous awards rendered to him are the Bharat Ratna – the highest honour awarded by the President of India – (1999), the National Humanities Medal, USA (2011), the Nobel Prize in Economics (1998), the Meister Eckhart Prize, Germany (2007), and more than 100 honorary doctorates.

Sen’s long academic career produced a huge corpus of works crossing a wide spectrum of issues and various disciplines such as social choice theory, economics, moral and political philosophy, public health, gender studies, welfare economics, measurement of poverty, development economics, theories of identity, and peace and war. Though he made deep and lasting contributions in these academic disciplines, Sen believes that he belongs

largely to “the world of social science”. The Nobel citation refers specifically to “Social Choice, Welfare Distributions, and Poverty”. He is consistently among the most influential persons in the world, significantly influencing many governments and international organizations, including the United Nations. His famous ‘capability approach’ caused a paradigm shift in the way we understand and measure well-being. He is admired not only as an intellectual but also as a tireless champion of poverty eradication, mass education, health care, empowerment of women and promotion of democracy and public reasoning.

This section is composed of two parts: first, two biographical moments which shaped his philosophy of life are identified; second, the characteristics of his philosophy, which is deeply concerned with the actual life of people, is described.

1. Two Anamnestic Moments

Sen is both cosmopolitan and a global citizen; there is, however, something deeply Indian in his person and philosophy. Time and again Sen conceded that some haunting childhood experiences of injustices

---

790 Despite having spent most of his professional life in the United Kingdom and the United States, he proudly maintained his Indian citizenship. He has never been away from India for more than six months at a time. All his four children carry typical Indian names, Antara, Nandana, Indrani and Kabir, where the last two are his children from his second wife, Eva Colorni, an Italian economist from a distinguished anti-fascist family.
shaped and marked his career and philosophy. He begins his magisterial book on justice in a nonchalant vein quoting Charles Dickens’ social critique, *Great Expectations*, taking us to the world of little children. “In the little world in which children have their existence […] there is nothing so finely perceived and finely felt, as injustice.” And his philosophical investigations have an unusual starting point: “What moves us, reasonably enough, is not the realization that the world falls short of being completely just – which few of us expect – but that there are clearly remediable injustices around us which we want to eliminate.” Two tragic incidents in the history of India that Sen experienced as a child are the key to understand his prolific works, namely the Great Famine of Bengal in 1943 and the Partition of India in 1947. The first incident raises questions about poverty and deprivations (welfare) and the second about freedom and identity (liberty).

1.1. The Great Famine of Bengal: The Question of Welfare

One of the devastating consequences of World War II in India was the Bengal Famine of 1943, in which approximately 3 million people died due to starvation and diseases. Sen concedes that the enormity of this catastrophe, which was imprinted in his childhood memories, was instrumental in his choice of economics to seek ways to prevent such man-made calamities.

---


794 Sen is mainly shaped by “memories”, and he cherishes an admirable anamnestic virtue. He is famous for his meticulous crediting of acknowledgement in his works.
795 Cf. Klamer, Arjo (1989): “A Conversation with Amartya Sen”, *The Journal of Economic Perspectives*, 3(1), 136. Sen observes: “The economic problems engulf us. When I was nine years old we had the Bengal Famine. It was a very strong experience: the victims suddenly emerged in millions – it seemed from absolutely nowhere, dying in incredible numbers […] One did not, of course, and then know the absolute numbers, but the enormity of the catastrophe was clear even to a
Firstly, the Bengal Famine taught Sen the connection between famine and entitlements. It is a commonplace belief that famines are caused by food shortage. Sen, in his path-breaking *Poverty and Famines*, nevertheless challenges the conventional wisdom that famines are caused by the shortage of food. There was a bountiful harvest in 1942. The very first lapidary sentence of *Poverty and Famines* reverses existing perceptions: “Starvation is the characteristic of some people not having enough food to eat. It is not the characteristic of there being not enough food to eat.” While the British Raj invested money for war production, it caused a great inflation, which resulted in an escalation of food prices. The wages of the workers, however, were not raised proportionally, and the ‘poor labourers’ suffered a downward shift in ‘entitlements’ – a reduction in their ability to command power over food. That means that people starved because they did not have purchasing power and not because there was a lack of food. The ‘entitlement approach’ was the rudimentary form of his later capability approach.

Secondly, the Bengal Famine demonstrated the class structures of society that perpetrate poverty and deprivation. Even at Presidency College, the shocking memories of famine which he watched from Santiniketan were still quite fresh in his mind. Sen was struck by the thoroughly class-dependent character of this famine. He remembers: “It was not a famine that afflicted even the lower middle classes – only people much further down the economic ladder, such as landless rural labourers.” The tragedy is that, when 95 per cent of the people lived normally, millions from small and vulnerable classes died. His further research (for I would remember the harrowing scenes vividly when more than three decades later I tried to do an economic analysis of the causal antecedents and processes of famines.” Ibid.

798 Sen observes: “Ninety to 95 percent of Bengalis’ lives went on absolutely normally, while three million died. They all came from a small community, a small class. The people who died were primarily rural wage earners, but also wage workers in river transport or other trades and services, like barbers and craftsmen. Once the famine hit, there was no market for them. This small group of people were [sic] economically most vulnerable. They got drowned by the flood of the famine.” Barsamian, David (2011): “Interview with Amartya Sen”, *The Progressive*, September 29, 2011. Web, 20/05/2015, <http://www.progressive.org/amartya_sen_interview.html>.
C. SEN’S HUMAN RIGHTS DISCOURSE

stance, the Great Irish Famine) manifests that a human-made inequitable distribution system causes the inequalities.799 His recent book, *Uncertain Glory*, an attempt to bring the underdogs of Indian society to the centre of public discussion, worries about the chasm between the rich and the poor which is caused by the lop-sidedness of development priorities in India.800 There exists an appalling unequal class structure in the Indian society, “making the country look more and more like islands of California in a sea of sub-Saharan Africa”.801

Thirdly, this famine teaches the important link between famine prevention and democracy. Sen’s research on famines underscores the fact that no famine has ever taken place in the history of the world in a functioning democracy.802 The opposite is evident in history: “Famines occur under a colonial administration, like the British Raj in India or for that matter in Ireland, or under military dictators in one country after another, like Somalia and Ethiopia, or in one-party states like the Soviet Union and China.”803 The idea of freedom had suffered a setback in Cold War polarizations, as it was identified as a Western slogan. Sen develops a framework where both the positive and negative freedoms are not monopolized by any ideologies. Negative freedoms are not simply ‘bourgeois’ freedoms which can be dismissed in the name of economic and social rights. Sen’s idea of capabilities broadened the scope of freedom.

Fourthly, the Bengal Famine occasioned Sen to become aware of the multi-dimensional nature of the idea of development. The devastating experience of famine motivated him to work for the betterment of the society. This commitment is manifest in the topic of his doctoral book and the resultant work *Choice of Techniques* (1960). He argued for an integration of ethics and economics – ethics and efficiency – that better facilitates hu-

800 Drèze and Sen note: “The lack of health care, tolerably good schools and other basic facilities important for human well-being and elementary freedoms, keeps a majority of Indians shackled to their deprived lives in a way quite rarely seen in other self-respecting countries that are trying to move ahead in the world.” Drèze and Sen (2013): *An Uncertain Glory*, 282.
803 Barsamian (2011): “Interview with Amartya Sen”.

200
man welfare. Sen fights against a narrow conception of the notion of development that is exclusively shaped in terms of economic development and leaves out significant political, philosophical and social factors, which are central to understand many economic problems. He revived the tradition of welfare economics by founding it on social choice theory. He also integrated the analytical techniques of mathematical economics into practical welfare economics, focusing on the problem of choosing right techniques for the development of an ‘underdeveloped’ economy, even providing a new way of measuring poverty, taking into account the existing class and gender inequalities. Sen is concerned with a normative economics that is concerned with “the hopeless beggar, the precarious landless labourer, the dominated housewife, the hardened unemployed, or the over-exhausted coolies” and the many, many others who have to suffer the injustices of our world.

Finally, his childhood encounter with famine and poverty also influenced his profession and politics. Commitment for the poor calls for some

804 Joan Robinson, his doctoral guide at Cambridge, constantly persuaded him to change the direction of the work, as she thought that welfare economics was nonsense, for she held a naively positivist view of ethics. She wanted him to get away from all the “ethical rubbish” and do some serious economics in the direction of capital theory, growth theory, distribution theory, etc. At the face of this positivist neo-classical neglect, Sen strongly felt a need “to return to the traditional concern of economics with human welfare and social evaluation. This basic conviction was also supplemented by my interest in classical economics and the roots of value theory.” He wanted to make adequate room for “concepts such as justice, equality, freedom, even efficiency”. Sen (1998): “Amartya Sen – Biographical”.

806 Sen went through a significant shift from rather abstruse pure social choice theory to more “practical problems”. Sen (1998): “Amartya Sen – Biographical”.
807 Sen’s empirical analysis was focused on the measurement of poverty and inequality, thus exposing the deficiencies of prevalent head-count measure of poverty, especially its failure to capture the relative inequality among those below the poverty line. Sen provided a better economic measure that captures individual human person’s capability deprivation. Cf. Agarwal, Bina; Humphries, Jane and Robeyns, Ingrid (2003): “Continuing the Conversation: Amartya Sen Talks with Bina Agarwal, Jane Humphries, and Ingrid Robeyns”, Feminist Economics, 9(2/3), 319–332.

sort of social involvement too. Sen concedes that he had taken interest in the left-wing politics in Calcutta, which was a stronghold of the Communist party of India, as “involvement with economics had a component of social passion, in addition to intellectual fascination.” However, he is quick to add that it was only at an academic level, and he was never in any political party. He was not simply fixed with Marx but rather fascinated also by Aristotle, Smith, Mill, even Bernard Shaw. Given Sen’s endorsement of freedom and democracy, communism was a difficult choice for him.\textsuperscript{809} He was later also influenced by Nehruvian socialism and his non-alignment policy during Cold-War politics.\textsuperscript{810}

To summarize: Beginning with his devastating childhood experience of the Bengal Famine, his research on famine, hunger and deprivation finally led him to the positive and broader understanding of human well-being in terms of capability. Beyond ideological demarcation, the driving force of his economic research is obvious: “The fact that economics is also concerned with the poor, the downtrodden, the underdogs of society is something that is very close to my heart.”\textsuperscript{811}

1.2. The Partition of India: The Question of Freedom

Another haunting experience that the teenager Amartya experienced is the Partition of India. The last years of British Raj were characterized by the communal riots of 1944–1947, which culminated in the partition of India. This caused a painful tear in the multicultural fabric of India. In 1944, 11-year-old Amartya had a traumatic experience in his family home in Dhaka in the undivided India. A profusely bleeding person stumbled through the


\textsuperscript{810} The famous speech of Nehru on the eve of independence, “Tryst with Destiny”, is often quoted by Sen. He recollects his childhood memory of it: “In celebration of independence and in welcoming a democratic India, Jawaharlal Nehru’s voice roared loud and clear over the radio, telling us about India’s ‘tryst with destiny’. The ‘task ahead’ included ‘the ending of poverty and ignorance and disease and inequality of opportunity’. We heard with rapt attention and we felt powerfully inspired.” Sen (2005): The Argumentative Indian, 193.

gate to the garden, crying for help and water. He was the victim of communal riots – Hindus and Muslims killing each other – which finally resulted in the partitioning of India and Pakistan. The knifed man, called Kader Mia, was a Muslim daily labourer who had to go into a hostile area, though his wife requested him not to go out into the riot-hit area. He had to work in order to earn money to feed his starving family; later he succumbed to death in the hospital. Sen spells out:

The penalty of his economic unfreedom turned out to be death, which occurred later on in the hospital. The experience was devastating for me. It made me reflect, later on, on the terrible burden of narrowly defined identities, including those firmly based on communities and groups […] But more immediately, it also pointed to the remarkable fact that economic unfreedom, in the form of extreme poverty, can make a person a helpless prey in the violation of other kinds of freedom. Kader Mia need not have come to a hostile area in search of a little income in those terrible times had his family been able to survive without it. Economic unfreedom can breed social unfreedom, just as social or political unfreedom can also foster economic unfreedom.812

How was Kader Mia reduced to only one identity – his Muslim identity – though his fellow Hindus also went out in the unprotected open to earn something for their starving family? “For a bewildered child”, Sen reminisces, “the violence of identity was extraordinarily hard to grasp. It is not particularly easy even for a still bewildered elderly adult”.813 This sheds light on Sen’s two important areas of research: identity and freedom, which will be unfolded in the course of the book.

Firstly, the partition of India taught Sen the danger of ‘solitarist’ approach to human identity, which reduces the human person to a singular identity814 that ends up in narrow sectarianism.815 Sen’s vision of identity

815 The Partition was enigmatic in the eyes of a teenager in several ways. “Some of my own disturbing memories as I was entering my teenage years in India in the mid-1940s relate to the massive identity shift that followed divisive politics. People’s identities as Indians, as Asians, or as members of the human race, seemed to give way – quite suddenly – to sectarian identification with Hindu, Muslim, or Sikh communities. The broadly Indian of January was rapidly and unquestioningly transformed into the narrowly Hindu or finely Muslim of March.” Sen (1998): “Amartya Sen – Biographical”; also cf. Sen (2006): Identity and Violence, 2.
was comprehensively stated in his Romanes Lecture in 1998,\textsuperscript{816} which was later expanded and published as \textit{Identity and Violence: The Illusion of Destiny}. Here Sen sharply criticizes the communitarian presumption that identity is merely ‘discovered’, stating that it is the prerogative of each human person to choose from one’s multitude of identities and to set priorities. “The imposition of an allegedly unique identity is often a crucial component of the ‘martial art’ of fomenting sectarian confrontation.”\textsuperscript{817} Sen argues that the acknowledgement of our plural identities is a guard against ‘the clash of civilizations’ theories,\textsuperscript{818} where humanity is unalterably and crudely divided and categorized according to a unique identity, which in effect will be the ‘destiny’ of a human person,\textsuperscript{819} rather than what one can deliberately choose or prioritize from a range of identities. Sen’s programme against the ‘solitarist’ approach to human identity holds that such a reductionist concept of human identity is descriptively wrong.\textsuperscript{820} That imperious view goes not only against the old-fashioned belief that “we human beings are all much the same, but also against the more plausible understanding that we are diversely different”.\textsuperscript{821} Hence, the notion of identity is conceptualized in a social choice framework, where it is the privilege of the person to prioritize one of his identities. Ultimately, it is a

\begin{thebibliography}{99}
  \bibitem{819} This refers to the \textit{Lee Hypothesis}, which will be described in the course of the book. Cf. Zakaria, Fareed (1994): “Culture is Destiny: A Conversation with Lee Kuan Yew”, \textit{Foreign Affairs}, 73(2), 109–126.
  \bibitem{820} While “a Hutu labourer from Kigali may be pressured to see himself only as a Hutu and incited to kill Tutsis […] he is not only a Hutu, but also a Kigalian, a Rwandan, an African, a labourer and a human being.” Sen (2006): \textit{Identity and Violence}, 4. “In our normal lives we see ourselves as members of a variety of groups.” “The same person can be, without any contradiction, an American citizen, of Caribbean origin, with African ancestry, a Christian, a liberal, a woman, a vegetarian, a long-distance runner, a historian, a schoolteacher, a novelist, a feminist, and a heterosexual, a believer in gay and lesbian rights, a theatre lover, an environmental activist, a tennis fan, and a jazz musician.” Sen (2006): \textit{Identity and Violence}, xii–xiii.
\end{thebibliography}
question of human freedom that makes room for plural identities rather than being reduced to a polarizing one.

Secondly, Sen’s fundamental notion of the possibility of plural identities thus becomes the foundation of his cosmopolitan approach, based on the commonalities of humanity opening up cross-cultural interactions and agreements. The relationships between human beings in different countries or cultures cannot be understood in unidimensional terms, say, in terms of religion-based civilizational definitions, as done by Huntington. In the globalized world, people interact with each other in a myriad of ways – through business, literature, science, the global campaign for human rights, etc. Exclusiveness of a culture is thus debunked; there exists, rather, a mutual interaction on multiple levels, as Sen underscores. He demonstrates that things usually ascribed to one culture in fact often arose in another.  

Sen hence represents a cross-cultural and global perspective that underlines multi-culturalism. He insists on the integration of culture in a wider picture, in which culture, seen in a dynamic and interactive way, makes room for various cultural intersections rather than making some sweeping East-West contrast.

Thirdly, sensitivity to internal heterogeneities saves us from narrow, blanket generalizations, inviting us to be enriched by the diversity within each culture. More than 80 per cent of Indians may be Hindu; accordingly, Huntington classifies India as ‘a Hindu civilization’. But it is silent about the “sizeable Christian and Jewish communities for nearly two thousand years, it had been mainly Buddhist for nearly a thousand years in its history, it has Sikhs and Parsees and Jains, and it has more Muslims (145 million people) than nearly every country in Huntington’s list of countries in ‘the Muslim world’”, thus the Muslim population of India being larger than entire British and French populations put together. In the same

822 Vindaloo, now seen as a quintessentially Indian dish, originally derived from chilies brought from Portugal, while the trigonometric sine function, assumed to be a European discovery, came from India. Tandoori cooking might have been perfected in India, but it originally came to India from West Asia. Chilli is usually understood to be typical Indian, but India had no chilli until the Portuguese brought it to India from America! Sen (2006): *Identity and Violence*, 156–157.


way, it is necessary to pay attention to the internal heterogeneity within a particular religion and its philosophy.\textsuperscript{825} It is, therefore, important to acknowledge the composite nature of each society, paying attention to dialectic and dialogic traditions \textit{within} each culture.

It is to be mentioned that his negative teenage experience of the Partition of India is complemented by his positive experiences from Tagore’s school, Santiniketan. It was there that Sen assimilated ‘the idea of India’ with its legacy of multiculturalism, pluralism and globalism.\textsuperscript{826} “By pointing to the extensive heterogeneity in India’s cultural background and richly diverse history, Tagore argued that the ‘idea of India’ itself militated against a culturally separatist view, against the intense consciousness of the separateness of one’s own people from others.”\textsuperscript{827} Sen developed an approach that is simultaneously national and global, personal and universal. Like Tagore, he also maintains reservations about the philosophy of Gandhi, which is predominantly religious and national in nature; in his writings, Sen often portrays both of them mostly in contrary terms.\textsuperscript{828}

Tagore represented a secular perspective that is founded on reason and science – a secular, modern and global point of view.

In summary: The lessons from this tragic incident became the nucleus of his philosophy, especially the urgent need not to think in binaries, in black and white. Instead of finding comfort in warring identities, he en-

\textsuperscript{825} Sen elucidates internal heterogeneity within Hinduism to challenge a monolithic notion of Hinduism. He himself is an atheist, and he resists the blanket generalization that India is a ‘religious’ land. A mere religious interpretation of India will comfortably neglect the fact that Sanskrit had a larger atheistic literature than what exists in any other classical language. Sen (2005): \textit{The Argumentative Indian}, xii.

\textsuperscript{826} Sen remembers: “The curriculum of the school did not neglect India’s cultural, analytical and scientific heritage, but was very involved also with the rest of the world. Indeed, it was astonishingly open to influences from all over the world, including the West, but also other non-Western cultures, such as East and South-East Asia (including China, Japan, Indonesia, and Korea), West Asia, and Africa.” Sen (1998): “Amartya Sen – Biographical”. Sen’s profound gratefulness and admiration for Tagore are manifest in his person and works. Cf. Sen, Amartya (1997): “Tagore and His India”, \textit{The New York Review of Books}, 44(11). Web, 21/10/2015, <https://www.nobelprize.org/nobel_prizes/literature/laureates/1913/tagore-article.html>.

\textsuperscript{827} Sen (1998): “Amartya Sen – Biographical”.

courages us to think in relational terms in order to see many commonalities and intersections. This synthetic approach is not only the key to his notion of identity but also the heart of his philosophy.\textsuperscript{829} For instance, he does not see consequentialism and deontology in binary terms but in a synthetic way. “The ultimate test is the freedom of the citizens to exercise their free agency and choose in an informed and participatory way. If that foundational value has priority, then other concerns have to be integrated with its pre-eminence.”\textsuperscript{830}

2. The Idea of Justice and the Question of Welfare and Liberty

Sen’s interest in philosophy went hand in hand with his ‘profession’ of economics. Economics was supposed to be a positivist science, which deliberately kept aloof from ‘abstract’ philosophy. This is reflected in his intimate friend and great Pakistani economist Mahbub ul Haq’s “almost instinctive aversion to talking about philosophy.” It was Haq who challenged him to account his philosophy:

He never theorized about justice, perhaps because he did not want to be distracted from his practical efforts to reduce the grip of privation and poverty in the world […]. In fact, Mahbub had an almost instinctive aversion to talking about philosophy. Perhaps he thought that philosophy could not but be rather abstract in content, or diverting in consequence. In response to my spurring him to be more explicit on his foundational ideas and basic philosophy, he retaliated more than once to say “Why don’t you do it: tell me what my philosophy is?”\textsuperscript{831}

Sen’s career gave an answer to his friend’s question. He proved that philosophy too can be a tool to fight against injustice, integrating both guiding philosophy and practical commitment. Such a philosophy will be one

\textsuperscript{829} The haunting episode of Kader Mia recurs later in his most comprehensive statement about development, \textit{Development as Freedom}.
that “focuses on lives and freedom”. His approach is a ‘realization-focused comparative approach’. Sen proves that a real interest in human welfare demands a realization-focused approach while respect for human liberty necessitates a comparative approach.

2.1. The Fact of Injustices and the Task of Bettering the World: A Direct Interest in Welfare

The ‘economist’ Sen developed a philosophy that is essentially empirical, without neglecting the entanglement of the empirical with the normative. His concern for the empirical and the immediate caused him to depart from the transcendental preoccupation of dominant political philosophy. Accordingly, his starting point is not justice but injustice. Empirically, the identification of repressible injustices is less disputed. What is persistently needed is the “removal of manifest injustice” on which a reasoned agreement is possible. He notes that the perception about manifest injustice is strong: “[T]here is nothing so finely perceived and finely felt, as injustice.” “What moves us, reasonably enough, is not the realization that the world falls short of being completely just—which few of us expect—but that there are clearly remediable injustices around us which we want to eliminate.”

He adds: “The identification of redressable injustice is not only what animates us to think about justice and injustice, it is also central […] to the theory of justice. In the investigation presented here, diagnosis of injustice will figure often enough as the starting point for critical discussion.” It was his confrontation with the existential problems of lack of liberty and lack of food as a child that later prompted his wide range of research on inequalities and deprivations in terms of freedom. His confrontation with the ‘negative’ led gradually to the positive construct of capability.

Sen, therefore, affirms that “the greatest relevance of the idea of justice lies in the identification of patent injustice, on which reasoned agreement is possible, rather than in the derivation of some extant formula for how

the world should be precisely run.”836 In spite of the tangibility of injustice, a process of reasoning is unavoidable. “To understand the world is never a matter of simply recording our immediate perceptions. Understanding inescapably involves reasoning. We have to ‘read’ what we feel and seem to see, and ask what those perceptions indicate and how we may take them into account without being overwhelmed by them.” He continues: “A sense of injustice could serve as a signal that moves us, but a signal does demand critical examination, and there has to be some scrutiny of the soundness of a conclusion based mainly on signals.”837

It is important to ascertain the kind of reasoning that helps us to identify injustices. “The impossibility of remaining silent on a subject is an observation that can be made about many cases of patent injustice […]. Injustices are ‘patent’, but that does not dispense political philosophy with the demands of ‘clear articulation and reasoned scrutiny.’”838 That patent injustice is easily identified does not fulfil the whole demands of justice. On the one hand, the starting point of Sen’s idea of justice is his deep awareness about the patent injustices, which requires “being appropriately sensitive and having the right nose for injustice.” On the other hand, it is also a matter of ‘reasoning’, as mere instinctive revulsion or protest will not reveal if an injustice could have been prevented. Some cases of injustice may also be much more “complex and subtle than the assessment of an observable calamity”,839 which may require deep analysis. Hence our commitment to enhance the world requires a serious engagement with the justification of justice.

Sen’s idea of justice rediscovered philosophy as a down-to-earth affair that is directly interested in the actual life of the people. It is not about dreaming of the transcendental theories, about chasing the chimera of an ideally just society; it is about gaining clarity and understanding the “way society functions and operates”.840 He makes it clear that our concern for the idea of justice is closely linked with “the enhancement of human lives

and improving the actual world in which we live, rather than transcendental search for some ideal institutions”. Hence the idea of justice is deeply concerned with the enhancement of human life – human welfare.

The structure of the realization-focused comparative approach lies in the tradition of Adam Smith, Marquis de Condorcet, Jeremy Bentham, Mary Wollstonecraft, Karl Marx and John Stuart Mill, who were mainly interested in “comparisons of societies that already existed or could feasibly emerge”. The ultimate goal of ‘theorizing’ is not primarily theoretical knowledge but actual realization; the guiding concern is ‘how would justice be advanced?’, not ‘what would be perfectly just institutions?’

A commitment to the actual life of the people cannot be indifferent to realization.

The need for an accomplishment-based understanding of justice is linked with the argument that justice cannot be indifferent to the lives that people can actually live. The importance of human lives, experiences and realizations cannot be supplanted by information about institutions that exist and the rules that operate. Institutions and rules are, of course, very important in influencing what happens, and they are part and parcel of the actual world as well, but the realized actuality goes well beyond the organizational picture, and includes the lives that people manage—or do not manage—to live.

A social arrangement where individuals enjoy more capabilities is more just than another. For example, a society where people are capable of being educated or are free from malnourishment is more just than the one in which they are not. A focus on social realizations will take both empowerment and resultant responsibilities seriously. In such a framework there are, inescapably, a large variety of issues that are central to the analysis of justice in the world.

Sen invokes an ancient Sanskrit distinction between two forms of justice – nyaya and niti. Niti refers to organisational propriety and behavioural correctness, whereas nyaya stands for a comprehensive concept of realised justice based on evaluating people’s actual lives and the situations that they experience. The contrast is between ‘arrangement-focused’ and ‘realization-focused’ approaches. Mainstream transcendental

theorists including Rawls focused on *niti* while Sen draws our attention to *nyaya*.

In opposition to exclusive concentration on institutions and rules, sensitivity to “the lives that people can actually live” necessitates “an accomplishment-based understanding of justice”. Such an approach demands an informational broadening with regard to the importance of “human lives, experiences and realizations”, and “the realized actuality goes well beyond the organizational picture, and includes the lives that people manage—or do not manage—to live”. In the course of the book how Sen brought these concerns together in a “goal rights system” that seeks an integral realization of freedoms.

2.2. A Comparative Approach to Justice: Attention on Liberty

The current political philosophy is dominated by contractarian theories. Such theories were first exposed by Hobbes and further developed by Locke, Rousseau and Kant. Contractarianism is primarily concerned with identifying just institutional arrangements for a society – an approach that Sen calls ‘transcendental institutionalism’. They are typically preoccupied with transcendental issues – the identification of the demands of an ideally ‘just’ society and the nature of ‘just institutions’. Sen opines that such transcendentalism will not help much in the process of improving the world. In contrast to “the strong and more philosophically celebrated tradition of transcendental institutionalism”, Sen’s alternative vision of enhancing justice through the reduction of injustice entails a practical conception of justice, focusing directly on the *actual* societies that would ultimately emerge. The “realization-focused comparative approach” as Sen calls it, makes a dual departure from mainstream philosophically celebrated approaches, namely by taking a *comparative* route and by focusing on *actual realizations* in the societies.

A philosophy that is concerned with making the world less unjust demands, according to Sen, a *comparative* approach of assessing justice

---

rather than speculating about the nature and the demands of ‘the perfectly just society.’ A philosophically celebrated transcendental approach faces two problems: ‘a feasibility problem’ and ‘a redundancy problem’.

The feasibility problem: The idea of justice is, for Sen, inherently plural: “genuinely plural, and sometimes conflicting, general concerns that bear on our understanding of justice”\(^{852}\) Given the immense plurality, even under strict conditions of impartiality and open-minded scrutiny, it is not possible to reach an agreement about the nature of the ‘just society’. In the metaphor of three children, Sen reiterates that justice is not a ‘monistic’ concept but a multi-dimensional and dynamic notion which can be justified in varied ways.\(^{853}\) Different schools of thought, such as libertarians, economic egalitarians and utilitarians, have valid arguments of justification for the demands of justice and have a “straightforward just resolution” at hand.\(^{854}\) Though they all make use of “impartial and non-arbitrary reason”, arriving at a unanimous consensus about “perfectly just social arrangement” is not to be expected.\(^{855}\) People may have various reasons for their sense of injustice (in Sen’s system it is more about agreement about injustice than about justice); it is not mandatory that they agree on one particular argument as being the dominant reason for the diagnosis of injustice.\(^{856}\) What is required is not a descriptive homogeneity – “in terms of an a priori need for descriptive homogeneity of what is to be valued” – but an intellectual honesty to confront legitimate pluralism of competing principles.\(^{857}\)

The redundancy problem: Sen demonstrates that in our effort to enhance the world a transcendental theory, if available at all, is redundant.

---

\(^{853}\) Sen tells the story of ‘three children and a flute’ to make his point clear. Anne says the flute should be given to her because she is the only one among them who can play it. Bob says the flute should be handed to him as he is so poor that he has no toys at all. Carla claims it because it is the fruit of her own labour. In case of a monetary reasoning, Bob, the poorest, will have the immediate support of the economic egalitarian, Carla will be supported by the libertarians, and utilitarians will defend the case of Anne because she will get the maximum pleasure, as she is the one who can actually play the instrument. The dilemma in deciding between these three legitimate claims refers to the challenge of the idea of justice. Cf. Sen (2009): *The Idea of Justice*, 12–14.


“If a theory of justice is to guide reasoned choice of policies, strategies or institutions, then the identification of fully just social arrangements is neither necessary nor sufficient.”\textsuperscript{858} A comparative approach to justice does not need to already have the transcendental answer to the question ‘what is a just society?’ for a meaningful social evaluation.\textsuperscript{859}

In the discipline of comparative judgements in any field, relative assessment of two alternatives tends in general to be a matter between them, without there being the necessity to beseech the help of a third – ‘irrelevant’ – alternative. Indeed, it is not at all obvious why in making the judgement that some social arrangement X is better than an alternative arrangement Y, we have to invoke the identification that some quite different alternative, say Z, is the very ‘best’ (or absolutely ‘right’) social arrangement.\textsuperscript{860}

In judging the relative merits of various feasible alternatives, knowledge about an identifiably perfect alternative – the superlative – is not required, for a comparative framework ranks different suboptimal social arrangements as more or less just. Even if the identification of such a perfect alternative were putatively possible, it wouldn’t be decisive. “But the possibility of having an identifiably inviolate, or best, alternative does not indicate that it is necessary (or indeed useful) to refer to it in judging the relative merits of two non-supreme alternatives.”\textsuperscript{861} The knowledge, with great certainty, that Mount Everest is the tallest mountain in the world, Sen explains, is neither needed nor particularly helpful in order to compare the peak heights of Mount Kilimanjaro and Mount McKinley. “There would be something deeply odd in a general belief that a comparison of any two alternatives cannot be sensibly made without a prior identification of a supreme alternative. There is no analytical connection there at all.”\textsuperscript{862}

Sen unambiguously defends the self-sufficiency of comparative approach underlining that the comparative approach is not “a by-product of [the] transcendental approach”.\textsuperscript{863} Some critics of Sen believe that the

\textsuperscript{863} Sen (2009): The Idea of Justice, 98.
transcendental can be of help in the comparative process. Yet the specification of an entirely just society is not sufficient at all for a comparative approach. ‘Identifying distance from the ideal’ could have been a possibility – in the sense of the absoluteness of the transcendental ‘right’ – against the relativities of the ‘better’ and the ‘best’ – however, there are “varying dimensionalities of transgressions, and diverse ways of weighing separate infractions”. Sen, thus, is not convinced: “A no-nonsense transcendental theory can serve, in this sense, as something like the grand revolutionary’s ‘one-shot handbook’. But that marvellously radical handbook would not be much invoked in the actual debates on justice in which we are ever engaged.” The transcendental approach suffers from serious “relational silence”; “gradings and comparative assessments are however relational conclusions”.

As the diagnosis of injustice is the primary task, “a univocal diagnosis of the deficiency of a society with, say, large-scale hunger, or widespread illiteracy, or rampant medical neglect can go with very different identifications of perfectly just social arrangements in other respects.” Not only the gradeless ‘right’ social arrangement but also the graded ‘best’ social arrangement (the comparison of two best alternatives) does not “tell us much about the full grading, such as how to compare two non-best alternatives, nor does it specify a unique ranking with respect to which the best stands at the pinnacle; indeed, the same best may go with a great many different rankings at the same pinnacle.” Thus a transcendental approach is not sufficient to support a comparative process.

We can compare situations without assessing each situation in terms of an ideal or perfect state. “In contrast, what can be called a ‘comparative’ approach would concentrate instead on ranking alternative societal arrangements (whether some arrangement is ‘less just’ or ‘more just’ than

869 Sen (2009): The Idea of Justice, 100–101. Emphasis added. As Sen argues, the fact that a person regards Mona Lisa as the best picture in the world does not reveal how she would rank a Picasso against a Van Gogh.
Given the conflicting values in the world, only a comparative approach can be true to the actual life of the people. Sen contends that there is no one single principle for ranking all alternatives and no ideal justice to which everyone will agree. He distinguishes between an ‘optimal set’ and a ‘maximal set’. An optimal set is choosing the ‘best’ alternative among the feasible options, whereas a maximal set is “choosing an alternative that is not judged to be worse than any other”. Each option is evaluated as ‘better than’ or ‘same as’ another. The description of an ideally just society requires the comparison of every alternative, thus leading to an optimum, whereas a comparative approach, aimed at the elimination of patent injustices, requires only a maximal set. Thus, optimization is quite redundant for maximisation.

Partial ordering presupposes incompleteness, and that does not cause ‘an embarrassment for advocacy’ of that approach. “Quite the contrary […] to insist on the mechanical comfort of having just one homogeneous ‘good thing’ would be to deny our humanity as reasoning creatures”. “Such durable ambiguity” due to the incompleteness of judgements about social justice needs not be considered to be an embarrassment. Moral and normative questions may not have completely determinate answers since partial ranking leads to incompleteness and open-endedness. But the presence of some indeterminacy does not entail radical indeterminacy. Even if the bundles are not fully measurable in this way, they may be at least partially measurable – and this may still generate significant implications.

Sen envisions a framework of ‘plural grounding’ where an injustice is condemned on various grounds in order to rectify it urgently. A consensus on a particular ground as the dominant reason is not required. For Sen,

the idea of justice is inherently malleable; we require only practical agreement upon pro tanto reasons for the removal of injustice.

Conclusion

In this section, two childhood events were delineated that have great ‘retrospective’ effects on the writings and ideas of Sen. The problems related to welfare and liberty agitated him from early life, and they directed his later research. His research interests can be sorted under two topics: welfare and freedom (poverty and liberty), thus confirming the pattern that was mentioned in the beginning of this chapter. Sen himself observes that the Nobel Committee rightly identifies the fields of his greatest involvement, which actually lie in the two broad categories of welfare and liberty.877 This outline of ‘liberty + welfare’ was the basic structure of his first (at present the last as well) major work, Collective Choice and Social Welfare (1970/2017). His later comprehensive statement about human well-being, Development as Freedom (1999), uses the model of “welfare = freedom” (freedom as substantive opportunities). His magisterial critique of the dominant approaches to justice in contemporary political philosophy, The Idea of Justice, brought this dialogue forward, taking Rawls’ earlier attempt to integrate both liberty and welfare substantially further. The amalgamation of this twin interest is also reflected in his idea of justice, where theoretical interest is not divorced from a practical commitment to the enhancement of the world. The significant integration of economics and philosophy in the person and works of Sen thus contributed enormously to the enrichment of human rights discourse. For Sen, the idea of justice is no larger-than-life ideal but a reflection of the actual life.

877 Sen observes: “These encompassed welfare economics, economic inequality and poverty, on the one hand (including the most extreme manifestation of poverty in the form of famines), and the scope and possibility of rational, tolerant and democratic social choice, on the other (including voting procedures and the protection of liberty and minority rights.” Sen (1998): “Amartya Sen – Biographical"
II. Sen’s Twin-Motif of Liberty and Welfare

1. The ‘Possibility’ of Liberty and Welfare

From the very beginning, Sen founded his intellectual edifice on the twin motif of liberty and welfare – in accordance with the general pattern of ‘welfare + liberty’ that was identified in the previous section. Welfare economics, as a discipline, was lying on its death bed, and Sen faced a double challenge: on the one hand, it was required to make room for freedom and rights in economics that was otherwise unconcerned of them; on the other hand, there was an urgent need to redefine the notion of welfare, so that it really characterizes the actual life of the people within an ethical framework. This section briefly narrates Sen’s early efforts to integrate both liberty and welfare in a social choice framework.

1.1. The Impossibility of a Paretian Liberal and the Possibility of Liberty

The whole intellectual project of Sen started with a profound critique of existing welfare economics, which at that time displayed a dismal picture because of its utilitarian foundations. The sacrosanct dogma of welfare economics was the principle of Pareto optimality. This principle states that “a social state is described as Pareto optimal if and only if no-one’s utility can be raised without reducing the utility of someone else”.\textsuperscript{878} Sen’s seminal paper “The Impossibility of a Paretian Liberal” debunked the assumption that the foundations of Paretian welfare economics are fundamentally ‘liberal’, proving that there is no social decision function that can simultaneously satisfy both Pareto optimality and liberalism.\textsuperscript{879} He diagnosed:

In a very basic sense liberal values conflict with the Pareto principle […]. If someone does have certain liberal values, then he may have to eschew his adherence to Pareto optimality. While the Pareto criterion has been thought to be an expression of individual liberty, it appears that in choices involving more than two alternatives it can have consequences that are, in fact, deeply illiberal.\textsuperscript{880}

\begin{itemize}
\item \textsuperscript{880} Sen (1970): “The Impossibility of a Paretian Liberal”, 157.
\end{itemize}
This manifests the inability of traditional welfare economics to make room for individual autonomy and human freedom. This paradox contradicts the neoclassical liberal claim that markets are both efficient and sensitive to individual freedoms. Arrow, who is famous for his own impossibility theorem,\(^8\) considers Sen’s impossibility theorem path-breaking in highlighting “some private domain of choice” for an individual. Sen’s proof caused a paradigm shift in the traditional formulations of welfare economics, making room for ‘rights’ in economics. Arrow fittingly observes:

> The result is not only surprising analytically but also addresses profound ethical questions on the relation between even the vestigial remnant of utilitarianism contained in the Pareto principle and the existence of individual “rights”, a scope (however small) over which the individual has complete control. Sen’s work has sparked both a technical literature [...] and contributed to philosophical emphasis on rights from very diverse critical viewpoints.\(^7\)

Sen’s impossibility theorem fundamentally raises the question of how rights are to be formulated. The answer is a social choice formulation of rights which is concerned with outcomes.\(^5\) His *Collective Choice and Social Welfare* (1970) studies in detail the latent conflict between rights and Paretianism, resulting in a rediscovery of social choice theory. His strong defence of “some private domain of choice” – the freedom to choose – subsequently resulted in a prolific literature, focusing on a notion of ‘freedom’ which is substantiated with the tools of social choice theory.\(^4\)

---

84 Sen’s engagement with human freedom culminated in his most celebrated work *Development as Freedom* (1999), which views the expansion of freedom both as the primary end and as the principal means of development, radically departing from the classical economic understanding of economic ‘growth’. Cf. Sen (1999): *Development as Freedom*, xii.
1.2. Impossibility Theorems and the Possibility of Welfare Economics

Welfare economics foresees some group decisions, such as choice and preferences that require aggregation of the information. Arrow’s path-breaking ‘impossibility theorem’ – the “General Possibility Theorem” – produced a result that was a real watershed in the history of welfare economics, giving birth to “social choice theory in its modern form”,885 as Sen rightly notes. The theorem of Arrow proves that aggregation in the social choice is impossible if the aggregation process is to satisfy a set of ‘reasonable’ conditions.886 If a social welfare has to satisfy the conditions of unrestricted domain, independence and Pareto principle, it has to be necessarily dictatorial. This challenged “social rationality” because “social appraisals, welfare economic calculations, and evaluative statistics would have to be, it seemed, inevitably arbitrary or unremediably despotic”.887 The result that only dictatorship would avoid inconsistencies is deeply embarrassing not only to politics but also to economics. This finding, as Sen rightly notes, “deepened the pre-existing gloom by establishing an astonishing and apparently pessimistic result of ubiquitous reach”.888 In effect, Arrow’s impossibility theorem proved that it is impossible to have a social welfare function with universal domain. As social rationality is challenged and there is no scope for reasonable welfare calculations, welfare economics “seemed to be inescapably doomed”.889

The dominant predictive economics, which considered itself to be positivist and scientific, enormously sidelined the normative welfare economics; welfare was not a thing that was ethically valued in economics.890 The utilitarian basis of the so-called ‘new welfare economics’ was marked with eschewal of interpersonal comparison, and the remaining criterion of fairness and social improvement was ‘Pareto comparison’ which was ill-deserved to be an egalitarian measure.891 Thus, a revival of welfare eco-

nomics had to necessarily establish the possibility of interpersonal comparison and a *just* egalitarian measure to substitute the Pareto principle.

In order to “arrive at cogent aggregative judgments about the society [...] given the diversity of preferences, concerns, and predicaments of the different individuals within the society” and to “find any rational basis for making such aggregative judgements”, Sen seeks possibilities out of impossibilities. He notes: “The real issue is not, therefore, the ubiquity of impossibility (it will always lie close to the axiomatic derivation of any specific social choice rule), but the reach and reasonableness of the axioms to be used. We have to get on with the basic task of obtaining workable rules that satisfy reasonable requirements.”

The impossibilities and paradoxes occasioned for Sen a “constructive program of developing a systematic social choice theory that could actually work”, and it has to be realized through his general programme of “informational broadening” – a programme against informational parsimony and narrowness in economics and philosophy. He diagnoses that “the epistemic foundations of utilitarian welfare economics were incurably defective”; therefore, he wielded a staunch criticism at the utilitarian foundation of welfare economics, epitomized in the inherent injustices of the Pareto principle and the eschewal of interpersonal comparison.

Sen challenged the axiomatic reasonableness of prevailing social choice theories and made room for the *partial* to reach an aggregate social decision, giving up the search for perfection in the social choice process, especially in interpersonal comparison. He summarized it as follows:

In order to choose between the different possibilities through the use of discriminating axioms, we have to introduce *further* axioms, until only one possible procedure remains. This is something of an exercise in brinkmanship. We have to go on cutting down alternative possibilities, moving-implicitly *towards* an impossibility, but then stop just before all possibilities are eliminated, to wit, when one and only one option remains. The real issue is not, there-

---

fore, the ubiquity of impossibility […] but the reach and reasonableness of the axioms to be used.896

Sen’s reconsideration of reach and reasonableness of axioms resulted in an ‘informational broadening’, which worked as an effective way to overcome the social choice impasse, thereby leading to a constructive approach that focuses on the real opportunities of people. Each evaluative system relies on particular ‘information’ to make evaluative judgements about social or individual states, and the information that is excluded or considered to have no direct influence on evaluative judgements can nevertheless be very important in judging social states. Hence the “real bite of a theory of justice can, to a great extent, be understood from its informational base: what information is – or is not – taken to be directly relevant”.897

Conclusion

Sen’s endeavour to expand the informational basis of welfare economics resulted in his capability approach. This approach is the fruit of his modification and expansion of the theories of his two colleagues at Harvard, Arrow and Rawls. That is, a) the critique of the social choice theory of Arrow – the question of liberty; b) the critique of Rawlsian contractarian approach to justice – the question of welfare. Sen elucidates:

If my work in social choice theory was initially motivated by a desire to overcome Arrow’s pessimistic picture by going beyond his limited informational base, my work on social justice based on individual freedoms and capabilities was similarly motivated by an aspiration to learn from, but go beyond, John Rawls’ elegant theory of justice, through a broader use of available information. My intellectual life has been much influenced by the contributions as well as the wonderful helpfulness of both Arrow and Rawls.898

The twin influence of Arrow and Rawls – social evaluation and social justice – resulted in a shift of focus from the pure theory of social choice to more ‘practical’ problems, thereby proving the extensive reach and relevance of social choice theory both in economics and philosophy.899 Sen


II. Sen’s Twin-Motif of Liberty and Welfare
accordingly constructed his idea of justice on a social choice framework where social evaluation is a ‘social choice exercise’ that requires public discussion and a democratic understanding and acceptance,\textsuperscript{900} while philosophical investigation is a ‘social choice exercise’ where informational inputs are ranked.\textsuperscript{901}

Sen’s capability approach opened up a broader moral landscape for welfare economics that accommodates the demands of rights, freedoms, justice and fairness. His normative and empirical informational broadening paved a strong foundation to the forgotten discipline of welfare economics that is humanistic at the core. Predictive economics suffered from grave descriptive impoverishment; thus, Sen attempts a revival of welfare economics that is sensitive to the “the joys and sufferings of human beings and their deprivations and fulfilments”.\textsuperscript{902} Sen was awarded the Nobel Prize for his contributions in welfare economics, particularly for his contributions in three areas: social choice, distribution and poverty. Sen himself identifies social choice theory as the nucleus of his works, and his Nobel lecture was pertinently concentrated on social choice theory.\textsuperscript{903} In his Nobel lecture, he opines that the “subject of ‘social choice’ includes within its capacious frame various problems with the common feature of relating social judgements and group decisions to the views and interests of the individuals who make up the society or group”.\textsuperscript{904} In the following, we study how Sen made use of the social choice framework to deal with the important concerns of liberty and welfare.

2. Liberty: Sen’s Critique of Economics

This section studies Sen’s efforts to underline the significance of liberty in economics. Sen radically departed from the dominant economic rationality. The behavioural assumptions in economic analysis, particularly the notion of “rational economic man” — \textit{homo oeconomicus} — is the result of a

II. Sen’s Twin-Motif of Liberty and Welfare

A crude simplification of the idea of human beings, which eventually sheds light on the foundational problems associated with utilitarian ‘informational base’ of neoclassical economics. Sen describes: “What is objectionable in the economic theorizing that identifies widely different concepts of self-interest, motivations, etc., is not the fact of simplification itself, but the particular simplification chosen, which has the effect of taking a very narrow view of human beings (and their feeling, ideas and actions), and thereby significantly impoverishing the scope and reach of economic theory.”905 A cogent human rights discourse requires a broader anthropology that understands human beings as moral agents, not only as narrowly conceptualized economic agents. It is already outlined how Sen unfolded ‘deep illiberalities’ in the dogmas of economic theories. The affirmation of liberty of human agency demands a “multi-dimensional and dynamic character of human beings in which people constitute their identity and pursue human flourishing”,906 in contrast to an a priori human nature.

2.1. Critique of Economic Rationality

The fundamental human motivation in economics is assumed to be self-interest maximization: “the first principle of economics is that every agent is actuated only by self-interest”.907 The individual advantage is thus understood in terms of utility satisfaction.908 Rationality thus lies in maximizing one’s own utility function, which is expressed in terms of individual preferences hierarchically ranked under resource constraints,909 and a choice is represented by mathematical maximization of the utility function.

909 This entails a serious flaw since there is no reasonable possibility of ranking all the preferences in a hierarchic and transitive way, because perfect knowledge of all possible alternatives to make a rational choice is not available to us. Cf. Gio-
Already in his classic paper, “Behaviour and the Concept of Preference”, Sen raised an alarm about the profound conceptual ambiguity of rational choice that guided dominant economic theories. In standard economic theory, there are two methods of defining rational behaviour: rationality as internal consistency of choice and rationality as maximization of self-interest. The former excludes alternative behaviour patterns, which may derive from other concerns, whereas the latter claims that the content of rational behaviour is exclusively self-interestedness. This reduces human beings to a “self-seeking animal”, thus failing to describe their actual behaviour.

2.1.1. Rationality as Consistency: The Internal Correspondence

Revealed preference theory, which presumes an “identification of actual behaviour with rational behaviour”, has a very simple assumption:

If you are observed to choose $x$ rejecting $y$, you are declared to have “revealed” a preference for $x$ over $y$. Your personal utility is then defined simply as a numerical representation of this “preference,” assigning a higher utility to a “preferred” alternative. With this set of definitions, you can hardly escape maximizing your own utility, except through inconsistency.

Sen questions the a priori imposition of various restrictive conditions of alleged ‘internal consistency’ in the agent’s choice function, such as the ‘Weak Axiom of Revealed Preference (WARP)’ or ‘Condition α’,
which limit the range of human reason. He rightly argues that mere consistency cannot be a logical condition of rationality. “It is hard to believe that internal consistency of choice can itself be an adequate condition of rationality, [...] it is certainly bizarre to think that internal consistency – no matter how defined – could itself be sufficient for guaranteeing a person’s rationality.”

A personal deviation for one’s own reasons cannot be merely considered as a case of inconsistency. “Preferring $x$ to $y$ is inconsistent with preferring $y$ to $x$, but if it is asserted that choice has nothing to do with preference, then choosing $x$ rather than $y$ in one case and $y$ rather than $x$ in another need not necessarily be at all inconsistent.” In the real-life situations, it can be understood as a case of perfect ‘consistency’ – “the correspondence between what one tries to achieve and how one goes about it.” Sen thus argues for a complex and realistic structure to human rationality.

Sen notes: “If a person does exactly the opposite of what would help achieving what he or she would want to achieve, and does this with flawless internal consistency (always choosing exactly the opposite of what will enhance the occurrence of things he or she wants and values), the person can scarcely be seen as rational, even if that dogged consistency inspires some kind of an astonished admiration on the part of the observer.” Sen (1987): On Ethics and Economics, 13. Thus, consistency itself can hardly be adequate for rational behaviour, a point he tried to argue in Sen, Amartya (1993): “Internal Consistency of Choice”, Econometrica, 61(3), 495–521.


Sen (1987): On Ethics and Economics, 13. External influences like preferences, objectives and motivations of the agent can at times cause reasonable inconsistencies in human choices. Sen elaborates that there is still a ‘foundational’ problem in the requirement of internal consistency in itself, without reference to any external factors. “Statements $A$ and not-$A$ are contradictory in a way that choosing $x$ from $\{x, y\}$ and $y$ from $\{x, y, z\}$ cannot be. If the latter pair of choices were to entail respectively the statement (1) $x$ is a better alternative than $y$, and (2) $y$ is
Despite some of its merits in consumer theory, the ‘revealed preference approach’ assumes a binary relation in a person’s choice function, whereas Sen convincingly proves that our choice function is not embedded in a single binary relation over the universal set of alternatives and that this will not end in logical contradiction. A purely instrumental concept of rationality may be quite inadequate to capture the reach of human rationality especially in cases of a reasonable inconsistency. A notion of ‘correspondence rationality’ – the correspondence of choice with aims, etc. – must be in general a necessary condition of rationality. Seeking mathematical, axiomatic and mechanical precision from the dynamic notion of rationality is ambitious. The notion of rationality necessarily involves ambiguities and incompleteness in rationality judgements, which should not be but considered fatal. In short, Sen tries to emphasize the freedom of a human agent to choose that which makes room for “more sophisticated inconsistencies”, as Sen puts it.

A person thus described may be “rational” in the limited sense of revealing no inconsistencies in his choice behavior, but if he has no use for these distinctions between quite different concepts, he must be a bit of a fool. The purely economic man is indeed close to being a social moron. Economic theory has been much preoccupied with this rational fool decked in the glory of his one all-purpose preference ordering. To make room for the different concepts related to his behavior we need a more elaborate structure.

What is to be sought is not a ‘purely internal consistency’ but “the interpretation of those choices and on some features external to choice as such (e.g. the nature of our preferences, aims, values, motivations)” It thus becomes a case of ‘external consistency’ rather than of internal consistency. “The cogency of the so-called ‘inconsistencies’ can thus rightly be understood in the context of some ‘external correspondence’, that is, some

---

demand *originating outside the choice function itself* (e.g., optimization according to an individual objective function or the requirement not to choose Pareto inferior alternatives in social choice).”

Sen argues against an “*a priori* imposition of requirements of ‘internal consistency’ of choice” and holds that “the gap resulting from the eschewal of ‘internal consistency’ conditions can be filled by making use of appropriate external correspondence”.

In short, the cogency of the binary relation underlying choice actions is challenged, since a person may not be consistently maximizing one’s own ‘utility function’. This prompts a discussion about the content of maximization.

2.1.2. Self-interest and Rational Behaviour: The External Correspondence

A second behaviourist presupposition of economics is the demand of *external* correspondence between the choices that a person makes and the self-interest of the person. This assumption is buttressed by ‘rational choice theory’, where rationality is identified with intelligently pursuing self-interest.

Sen writes: “The maximization of self-interest is not irrational […] but to argue that anything other than maximizing self-interest must be irrational seems altogether extraordinary.”

We have seen that Sen rejected ‘revealed preference theory’, which assumes a choice action in a binary structure, say, between x and y. Instead, he develops a structure that emphasizes the enormous *complexity* of our preferences.

In order to counter the assumption that an individual’s preferences are based exclusively on considerations of the individual’s own welfare, Sen makes an incisive structural analysis of the process of choice, which he calls “the privateness of individual orderings” – among (1) self-centered welfare; (2) self-welfare goal, and (3) self-goal choice – and draws on the differences between various aspects of ‘privateness’.

929 Rational Choice Theory (RCT) holds an exceedingly narrow approach to rational choice, which assumes that “people choose rationally if and only if they intelligently pursue their self-interest and nothing else […] It is somehow taken for granted in this approach that people would fail to be rational if they did not intelligently pursue only their own self-interest, without taking note of anything else.” Sen (2009): *The Idea of Justice*, 179.
Self-centered welfare is the assumption that a person’s welfare depends only on his or her own consumption bundles, without involving any sympathy or antipathy toward others.

Self-welfare goal holds that the only goal of a person is to maximize his or her own welfare; the person’s goals do not attach any weight, positive or negative, to other people’s welfare.

Self-goal choice assumes that each act of choice of a person is guided immediately and exclusively by the motive of furthering his or her own goal and that it is in no way restrained by the recognition of other people’s pursuit of their goals. These quite distinct components “have typically been lumped together and in general insufficiently distinguished, it can be argued that they play quite different parts in the behavioral models” However, in actual life, all three of these assumptions will be violated. Sen shows the limitations of a model in which economic agents do not know the differences between their welfares, their goals and the bases of their choices. He contends that our actual life does not correspond with the maximizing logic of rational choice theory: “Choice may reflect a compromise among a variety of considerations of which personal welfare may be just one.”

In his classic paper “Rational Fools” (1977), Sen departs from the “unsympathetic isolation abstractly assumed in economics”. He explores a distinction between ‘sympathy’ and ‘commitment’ to establish the possibilities of other-regarding behaviour. In the case of sympathy (also antipathy), one’s welfare is affected by the position of others; hence, the assumption of self-centred welfare is ipso facto violated. Commitment, on


937 Sen explains that sympathy “corresponds to the case in which the concern for others directly affects one’s own welfare. If the knowledge of torture of others makes you sick, it is a case of sympathy; if it does not make you feel personally worse off, but you think it is wrong and you are ready to do something to stop it, it is a case of commitment.” Sen (1977): “Rational Fools”, 326.
the other hand, breaks the tight link between individual welfare and the choice of action. A case for a non-egoistic action that is based on commitment arises not because one personally feels worse off as in the case of sympathy, but because one thinks that something is wrong, and is ready to do something to stop it.

According to Sen, “commitment then involves choosing an action that yields a lower expected welfare than an alternative available action”. It therefore involves ‘counterpreferential choice’, thus “destroying the crucial assumption that a chosen alternative must be better than (or at least as good as) the others for the person choosing it”. This is well captured in his distinction between welfare goals and agency goals. Commitment, in Sen’s version, “drives a wedge between personal choice and personal welfare”. He notes that much of traditional economic theory relies on “the identity of the two”. He goes on: “The basic link between choice behavior and welfare achievements in the traditional models is severed as soon as commitment is admitted as an ingredient of choice.” Thus, self-interest, sympathy and commitment are various motivations of our rational choices that may be conflicting and yet rational on their own merit.

2.2. Human Beings between Egoism and Altruism

It is outlined that the possibility of committed behaviour gives human reason its due. Sen contends: “We do need to take note of the possibility of committed behavior, so that conduct may not be congruent with the relentless pursuit of one’s own goals, and in particular one’s own welfare […]. If committed behavior is ruled out, then the reasoning that can go into the determination of choices would be correspondingly impaired. That would hardly be the way to give reason its due in the idea of rationality in general

---

and rational choice in particular.”

He goes on: “The conception of the individual as a very ‘private’ person – unconcerned about the rest of the world – has been seen, in my judgment rightly, as both empirically unrealistic and theoretically misleading.”

The seeming irrationality – the systematic departure – in actual choices made by people does not always originate from what the ancient Greeks called *akrasia*, the ‘weakness of will’. The presumption that people invariably act in a ‘rational’ way denies the basic fact that “people are not altogether alienated from the demands of rationality”. There are multiple factors that influence our choices, the ‘menu’ over which the ranking and choice are made. Human beings, as rational and relational beings, are capable of making a “searching scrutiny” of their preferences, including critical examination of both the objects to pursue and the constraints of sensible behaviour that one may have reason to follow,” instead of being led by some “simple formula” such as self-interest maximization, as assumed in rational choice theory. Sen, therefore, reiterates: “The possibility of plurality of sustainable reasons is not only important in giving rationality its due, it also distances the idea of rational choice from its putative role as a simple predictor of actual choice, as it has been widely used in mainstream economics.”

It is presumed to be an empirically proven fact that the pursuit of self-interest maximization brings about an efficient outcome – a presumption which, according to Sen, is without substance. The success of free market economies, like Japan, is not indebted to self-interest theory, as generally held. Japan’s success model is believed to be dependent on ‘the Japanese

---

949 Sen states: “The responsibility associated with choice can sway our ranking of the narrowly-defined outcomes (such as commodity vectors possessed), and choice functions and preference relations may be parametrically influenced by specific features of the act of choice (including the identity of the chooser, the menu over which choice is being made, and the relation of the particular act to behavioral social norms that constrain particular social actions). All these call for substantial analytical attention in formulating the theory of choice behaviour.”
ethos’, which systematically departs from self-interested behaviour, underlining the significance of duties and commitment.\footnote{Sen (1987): On Ethics and Economics, 18–19.} The doctrine of the exclusive pursuit of self-interest maximization is attributed to Adam Smith. Unfortunately, it is based on a partial understanding of Smith – a ‘baker-brewer-butcher’ reading of Smith\footnote{Cf. Sen (1987): On Ethics and Economics, 23.} – that has but little to do with his nuanced understanding of human behaviour.

Along with self-interest, Smith developed the notion of ‘prudence’ as the union of two qualities, ‘reason and understanding’ on the one hand and the Stoic notion of ‘self-command’ on the other. The Stoic virtues of sympathy and self-discipline played an important role in Smith’s conception of good behaviour. A human person is “a citizen of the world, a member of the vast commonwealth of nature”, and “to the interest of this great community, he ought at all times to be willing that his own little interest should be sacrificed”.\footnote{Sen (1987): On Ethics and Economics, 22–23.} He actually asserted that, as free and rational agents, the human beings are capable of going beyond the exclusive pursuit of their respective well-being. Smith distinguished actions motivated by ‘prudence’ from those influenced by ‘sympathy’, ‘humanity’, ‘justice’, ‘generosity’ and ‘public spirit’, to each of which he gave a distinct and differentiated role.\footnote{Cf. Sen (1987): On Ethics and Economics, 24.}

Smith admitted the relevance of self-interest in certain areas of our actions, such as economic transactions, division of labour, etc. He was, however, against the reduction of all human motivations into one virtue, as Epicurus did.\footnote{Cf. Sen (2005): “Why Exactly Is Commitment Important for Rationality?”, 10.} Many of our activities inside and outside economics have a plurality of motivations. Smith pointed out that “‘self-love’, as he called the underlying impulse behind a narrowly self-interested behaviour, might
be just one of many motivations that human beings have”. Refuting “the straitjacket of self-interested motivation”, Sen thus defends that Smith’s concept of human nature is much more complex. “It is precisely the narrowing of the broad Smithian view of human beings, in modern economies, that can be seen as one of the major deficiencies of contemporary economic theory.” There is a plurality of reasons to depart from the self-interest maximization, arising from various interests and values of the human agent.

Sen contends that “it may not be quite as absurd to argue that people always actually do maximize their self-interest, as it is to argue that rationality must invariably demand maximization of self-interest. Universal selfishness as actuality may well be false, but universal selfishness as a requirement of rationality is patently absurd.” He goes on: “Nevertheless, our heads have not all been colonized by that remarkably alienating belief. There is considerable resistance to the idea that it must be patently irrational – and stupid – to try to do anything for others except to the extent that doing good to others would enhance one’s own well-being.”

The rejection of consistent egoism does not, however, imply the acceptance of some universalized morality as the basis of actual behaviour, nor does it make human beings excessively noble. “To deny that people always behave in an exclusively self-interested way is not the same as asserting that they always act selflessly.” The emphasis of the agency aspect does not make the well-being aspect redundant. Self-interest takes a major part in a great many decisions, especially in economic transactions. Sen argues for the relevance of a plurality of motivations. “The mixture of selfish and selfless behaviour is one of the important characteristics of group loyalty, and this mixture can be seen in a wide variety of group associations varying from kinship relations and communities to trade unions and economic pressure groups.” Thus, it is important to acknowledge the complexity of human motivations and human sympathies and solidarities underlying choices, beyond a neat dichotomy between ra-
tional and irrational, egoistic and non-egoistic universalized moral systems.\textsuperscript{964}

Furthermore, in the cases of “self-imposed constraints of ‘decent behaviour’”, “the goal maximization in those self-imposed constraints can conform to the broad demands of rationality”.\textsuperscript{965} Such instances do not necessarily indicate that one takes other people’s goals as one’s own.\textsuperscript{966} Here is the desideratum of behaviourism that considers rationality as an ‘intermediary’ to identify actual behaviour. Commenting on the work of Sen, Paul Streeten fittingly said: “It is therefore perfectly rational not to be perfectly rational”.\textsuperscript{967} Sen thus has a nuanced ethical position that transcends the dichotomy between self-interest and altruism. The accommodation of commitment in human choice action is required to explain our contextuality and situatedness, which clarifies “behavioral variations between different societies and over time”. It also helps us to understand actual behaviour better, taking note of the varying role of commitment in different social circumstances – the patterns of behaviour that hardly fit into the narrow format of rational choice theory.\textsuperscript{968}

Making use of the tools of game theory, Sen studies the possibility of violating ‘self-goal’ maximization, which enlightens our understanding of the prevalence of cooperative behaviour.\textsuperscript{969}

\begin{flushright}
\textsuperscript{965} Sen (2009): The Idea of Justice, 182. Such decent behaviours vary, as Sen argues, “from following safety rules of orderly exit without jostling one’s way to the exit door as the fire alarm sounds, to more mundane practices like not racing to take the most comfortable chair in a social gathering, leaving others far behind”. Ibid.
\textsuperscript{966} Sen narrates an example to elucidate this wedge: “You happen to be occupying a window seat in a plane journey, with the window shade up on a sunny day. That is when you hear the occupant of the aisle seat next to you requesting you to pull down the shade (‘if you would, please’) so that he can see his computer screen better, to be able to devote himself fully to playing some computer game. You know that game and it is in your view a ‘plainly silly’ game (‘a great waste of time’). You are, in general, frustrated that there is so much ignorance around, with so many people playing inane games rather than reading the news – boning up on what is actually happening in Iraq, or Afghanistan, or for that matter in your home town. You decide, nevertheless, to behave well and comply with the game-enthusiast’s request, and you oblige him by pulling the shutter down.” Sen (2009): The Idea of Justice, 192.
\end{flushright}
matter and thinking in terms of what ‘we’ should do or what should be our strategy, may reflect a sense of identity involving recognition of other people’s goals and the mutual interdependencies involved.”

We are individuals operating with our affiliation with multiple groups, like family, class, workplace, religion, political party, etc. By reason of our interdependence, arising out of our multiple affiliations, we adopt certain rules of behaviour in order to promote the goals of the members of the community – our group identity often engenders some group loyalty, which may involve sacrificing our personal interests. This necessitates various departures from standard behavioural assumptions of economic theory.

They may involve bonhomie and sympathy for others. There may also be commitments to various causes. Further, there may be commitment to particular behaviour patterns, the violation of which may be seen to be intrinsically bad. But there may be also other behaviour patterns, loyalty to which may not arise from any intrinsic valuation related to that behaviour itself, but from the instrumental importance of that behaviour — either individually or for the group.

What Cudd calls “the normative situatedness of human behaviour” reveals a vast area of communion and commitments.

2.3. Meta-ranking as an Apparatus to Overcome the Rationality-Morality Dichotomy

The assumption that economic rationality presupposes a conflict between “individual rationality and social optimality” results in an alleged dichotomy between rational behaviour and morality. As rational choice theory is inimical to ethics with “too little structure”, Sen accommodates morality in the framework of the social choice theory similar to his idea of justice that follows a comparative approach.

Sen relentlessly contends that the dogma of being ‘consistently rational’ will not be basically affected if some simple variations of the preference patterns are made. There is thus a space for rational-moral choice, against the presumption that moral choice is irrational. Already at the 1972 Bristol conference on ‘practical reason’, Sen argued for the need to consider rankings of preference rankings to express our moral judgments. For him, rationality as a concept can belong to the ‘relationship between choices and preferences’. “Thus, rational action and moral action may both be defined on the set of preferences of all and in this context the question of the correspondence of rationality and morality has some substance to it.” Sen, therefore, speaks out against the separation between rationality and morality. Dictates of morality can very well coincide with those of rationality.

Let $X$ be the set of all possible outcomes and $\pi$ be the set of all possible orderings of the elements of $X$. A moral view can be defined as a quasi-ordering $Q$ of the elements of $\pi$. (A quasi-ordering is a ranking relation that is reflective and transitive but not necessarily complete, as indeed a moral view need not be). A moral quasi-ordering $Q$ stands for “a moral desire to have one preference pattern over outcomes rather another”. The person concerned would have morally preferred a particular preference ordering than another one. Thus Sen defines a moral ordering not directly on the space of outcomes (actions) but on the orderings of outcomes (or actions). He calls such an ordering of the preference orderings “meta-ranking”. Traditional theories with “too little structure”, i.e., with only “one preference ordering”, lack resources to conceptualize moral reasoning. In contrast to the reductionist understanding of rational behaviour, where a person just maximizes her own well-being, incorporated within a binary form, meta-
ranking is a case of the ordering of orderings. A meta-ranking is a ranking according to the preferences one has for particular preference orderings.

A particular morality can be viewed, not just in terms of the “most moral” ranking of the set of alternative actions, but as a moral ranking of the rankings of actions (going well beyond the identification merely of the “most moral” ranking of actions). Let $X$ be the set of alternative and mutually exclusive combinations of actions under consideration, and let $Y$ be the set of rankings of the elements of $X$. A ranking of the set $Y$ [...] will be called a meta-ranking of action set $X$.984

Meta-ranking permits a varying extent of moral articulation, as it does not demand a complete ordering, rather only a partial ordering.

The rankings of action can, of course, be ordered also on grounds other than a particular system of morality: meta-ranking is a general technique usable under alternative interpretations of the meta-ranking relation. It can be used to describe a particular ideology or a set of political priorities or a system of class interests. In quite a different context, it can provide the format for expressing what preferences one would have preferred to have.985

Meta-ranking can accommodate a multiplicity of preference orderings over a distinct set of alternatives. More than a finished theorem, it is a broad structure of evaluation that encompasses pluralities and individual variations. Without denying the domain of certain self-interest choices, meta-ranking makes room for various non-self-interested principles, such as commitments, obligation, goals and objectives. Sen states that “the apparatus of ranking of rankings assists the reasoning which involves considering the merits of having different types of preferences (or of acting as if one had them).”986 Regarding the contrast between moral ordering and actual ordering, a deviation from self-interest maximization is not necessarily a case of akrasia – ‘weakness’ of will.987 Such a deliberate deviation from one’s own well-being rather manifests the (moral) ‘power’ of the will.

In opposition to the utilitarian approach that is concerned only with individual aggregate utilities in terms of some homogenous magnitude, a numerical index, a vector-view of utility that entails several distinct components, accommodates “a wider class of interesting moralities” than the

utilitarian or welfarist approaches permit.\textsuperscript{988} Yet it is urgently required to transcend the limited utilitarian economic perspective of value because utility achievement is only one element of the concept of well-being.\textsuperscript{989} As human beings are persons with several alternative value sets, it is possible to shift attention from the utility index to the capability index. Well-being thus becomes a multi-dimensional concept, which is no more measured by a single entity of utility function but by a combination of measures – a vector. This results in a reconceptualization of the notion of well-being.\textsuperscript{990}

Sen’s tool of meta-ranking overcomes the ‘too little structure’ of existing economic models, making room for the agency of human persons. Meta-ranking foresees possible departures from exclusive egoistic behaviour, and it has enormous significance in broadening the scope of welfare economics by incorporating human sympathies and solidarities in making the world better. Furthermore, meta-ranking is not purely an individual construct, because it is influenced not only by individual values but also by social ethos and environment. This broadening is particularly important in view of the demands of social justice, civic participation, public goods and environmental protection.\textsuperscript{991} In short, Sen underlines the moral capacity of human persons to think, evaluate, judge and behave, challenging the mechanistic predetermined structure of the traditional economic rationality.

Conclusion

This section revealed Sen’s defence against the diminution of the normative idea of a human person and the gross oversimplification of human reason in mainstream economics, making room for goals, values, strategies and motivations in the purview of relevant information. He thus does justice to the complex nature of human rationality, which is capable of rea-
soning, weighing and judging in its positionality and relationality. Sen’s distinction between the well-being aspect and the agency aspect of human beings, which he calls “an essential and irreducible ‘duality’ in the conception of a person in ethical calculation”, emphasizes the autonomy of human persons. This leads to “an objectivist second-order view of ethics” that can “co-exist with a substantive ethics that includes among the valuable objects people’s ability to get what they do, in fact, value”. His idea of meta-ranking is capacious enough to accommodate wider ethical concerns related to social justice, like public goods, human rights, etc.

The idea that human beings are more than the mere locus of their own well-being, that they are also actors and agents who act autonomously for their objectives, challenges the deterministic mechanistic anthropology of current welfare economics. It is, on the one hand, a programme against atomistic individualism; on the other hand, a guard against the ‘communitarian’ temptation to enslave in some pre-determined communitarian identity. Parochial identities, of a group or of a community, may be invoked to bully us into submission; we have to resist the smallness that is thrust upon us. “We have to take responsibility for the lives we lead, and even for the world, in which we live. The alternative is not social wisdom but intellectual surrender.” Thus, Sen’s penetrating critique of deep-held dogmas of neo-classical economics reclaims the central idea that human beings are an end in itself, rational agents who shape their own eudaimonia, which includes other-regarding normative considerations as well. This

---

998 Sen begins an important statement about development quoting Kant’s *Grundlegung zur Metaphysik der Sitten*: “So act as to treat humanity, whether in thine own person or in that of any other, in every case as an end withal, never as means only”. On the one hand, human beings are “agents, beneficiaries and adjudicators
calls for a reconsideration of the very notion of well-being, which will be discussed in the following section.


An important task of welfare economics is to identify the appropriate currency of human well-being. This part of the book deals with Sen’s engaging criticism of the prevalent approaches to the assessment of social and personal advantage, such as utilitarianism, libertarianism and Rawls’ theory of justice, and his formulation of an alternative in his capability approach. The dominant systems, Sen demonstrates, are only partially egalitarian and hence fail to capture the actual life that people lead.\footnote{Sen (1992): \textit{Inequality Reexamined}.} As the normative branch of economics, welfare economics has to make normative judgements about the social states of a society. As already mentioned, the central motif of social choice theory is to seek the possibility of making cogent aggregative judgments about the society, for instance, about social welfare, public interest or aggregate poverty.\footnote{Cf. Sen (1999): \textit{The Possibility of Social Choice}, 349.} Sen’s analysis of various evaluative approaches comes to the conclusion that “there are distinct merits in each of these well-established strategies, but that each also suffers from significant limitations”.\footnote{Sen (1999): \textit{Development as Freedom}, 85.}

Interestingly, he does not discard any of these approaches completely; instead he shows why they need to be complemented with a broader concept of human well-being. His capability approach is, according to him, capacious enough for that.

3.1. Critique of Utilitarianism

The traditional welfare economics is founded on the Benthamian version of utilitarianism, which uses “utilitarian calculus to obtain judgments about the social interest by aggregating the personal interests of the differ-

ent individuals in the form of their respective utilities”. Sen identifies three components of utilitarian method of ethical evaluation.

### 3.1.1. Welfarism

According to Sen, “welfarism restricts the judgments of state of affairs to the utilities in the respective states”. Sen rejects welfarist theories, because, whatever their further specifications, they rely exclusively on utility and thus pre-empt non-utility information, like human rights, from our moral judgements. The utility is not sufficient to capture the wider notion of human well-being: “One of the extraordinary features of standard welfare economics has been the neglect of information about health, morbidity and longevity. Though these variables have often been taken seriously in the development literature, […] they have typically been ignored in welfare-economic treatises”. The utilitarian reduction of prized values to “one homogeneous magnitude” of pleasure, excluding other significant values of “freedom, rights, creativity or actual living conditions”, is a denial of our humanity. Classical utilitarianism identified a relevant evaluative space of personal advantage in the space of happiness, while modern utilitarianism identified the space of desire fulfilment. They are inherently flawed because “the mental metric of pleasure is just too malleable to be a firm guide to deprivation and disadvantage”. It is revealing that, despite the apparent limitations associated with ‘mental metrics’, the utilitarian approach was single-handedly dominant in ethical theory. The gravest limitation associated with the evaluation of social states, ex-
clusively in the space of subjective mental metrics, is the problem of ‘adaptive conditioning’, as Sen puts it:

The most blatant forms of inequalities and exploitations survive in the world through making allies out of the deprived and the exploited. The underdog learns to bear the burden so well that he or she overlooks the burden itself. Discontent is replaced by acceptance, hopeless rebellion by conformist quiet, and—most relevantly in the present context—suffering and anger by cheerful endurance. As people learn to adjust to the existing horrors by the sheer necessity of uneventful survival, the horrors look less terrible in the metric of utilities.\(^{1009}\)

Sen notes that “it would be ethically deeply mistaken to attach a correspondingly small value to the loss of their well-being because of this survival strategy”.\(^ {1010}\) The metric of ‘desire’ is also miserably limited as permanently deprived people become reconciled to their circumstance and appreciative of small mercies: “The hopelessly deprived people may lack the courage to desire any radical change and typically tend to adjust their desires and expectations to what little they see as feasible. They train themselves to take pleasure in small mercies.”\(^{1011}\)

3.1.2. Sum-ranking

In the classical utilitarianism, the utilities of different people were simply summed together to get the aggregate merit – the sum total of utility created. “Maximising the sum of individual utilities is supremely unconcerned with the personal distribution of that sum. This should make it a particularly unsuitable approach to use for measuring or judging inequality”.\(^{1012}\) Such an aggregate approach fails to capture the distributional problems associated with the asymmetrical distribution of power and resources, for instance, within a household. This has significant implications for the inequality studies, which are committed to the well-being of the individual


human person.\textsuperscript{1013} As the interpersonal comparison is eschewed,\textsuperscript{1014} the remaining dogma of welfare economics was Pareto optimality. Sen observes: “A state can be Pareto optimal with some people in extreme misery and others rolling in luxury, so long as the miserable cannot be made better off without cutting into the luxury of the rich.”\textsuperscript{1015} The Paretian criterion as the fundamental theorem of welfare economics, which was considered to manifest ‘efficient’ competitive equilibrium, was deeply unjust, despite its deep insights into the working of the price mechanism.\textsuperscript{1016} This sum-totality, combined with the principle of Pareto optimality, ill-deserves to be an egalitarian measure; thus, Sen departs from such an additive welfare function.

\subsection*{3.1.3. Consequentialism}

According to consequentialism, the rightness of actions depends on the value of the states of affairs they produce. Consequentialism thus requires that every choice, whether of actions, institutions, motivations, rules, etc., is ultimately determined by the goodness of the consequent states of affairs.\textsuperscript{1017} The deontic values of actions are here ruled out (the rights, freedoms and fairness of process, etc.). “The utilitarian approach attaches no intrinsic importance to claims of rights and freedoms (they are valued only indirectly and only to the extent they influence utilities). It is sensible enough to take note of happiness, but we do not necessarily want to be happy slaves or delirious vassals.”\textsuperscript{1018}

\begin{footnotesize}
\textsuperscript{1014} The eschewal of interpersonal comparison is the result of the assumption that such a comparison itself is ‘normative’ or ‘ethical’. Cf. Sen (1987): \textit{On Ethics and Economics}, 30.
\end{footnotesize}
Having analysed the components of utilitarianism, Sen makes an emphatic diagnosis: “The epistemic foundations of utilitarian welfare economics were seen as incurably defective.”\textsuperscript{1019} The cumulative effect of these elements makes an egalitarian measure of social judgement difficult. Such an informational base is enormously narrow, as it fails to capture many areas of quality of life, which are related to non-utility information.\textsuperscript{1020} As already mentioned, the ‘agency’ aspect of the human person has the possibility of choosing beyond one’s own well-being, as in the case of commitments. It is simplistic to reduce well-being to a single measure of ‘utility’.

Meanwhile, the fact that utilitarianism must go beyond mental metrics was recognized. The utility was defined in the modern economic analysis as a numerical representation of a person’s observable choices. The basic formula is this:

\[ \text{If a person would choose an alternative } x \text{ over another, } y, \text{ then and only then that person has more utility from } x \text{ than from } y. \text{ The } \text{“scaling” of utility has to follow this rule, among others, and in this framework it is not substantively different to affirm that a person has more utility from } x \text{ than from } y \text{ than to say that she would choose } x \text{ given the choice between the two.} \textsuperscript{1021} \]

In the contemporary social choice theory, the utility is seen “simply as the numerical representation of a person’s choice”, which follows a real income method. Shifting the focus from mental states to incomes was significant, but the grave distributional problems are not addressed.\textsuperscript{1022} Sen argues for a radical shift from the traditional welfarist evaluation because, as he puts it, “these standard measures are all basically parasitic on the traditional concentration on the income space and ultimately ignoring the fundamental fact of human diversity and the foundational importance of human freedom”.\textsuperscript{1023} The phenomenon of poverty in rich countries mani-

\begin{thebibliography}
\item Though Sen departs from these utilitarian assumptions, he nevertheless gives credit to some important contributions of utilitarianism. He underlines the importance attached to the results and the attention paid to the well-being of the people involved. These concerns gain particular significance in his ‘consequence-sensitive’ methodology. Sen (1999): Development as Freedom, 60.
\end{thebibliography}
fests how inequality and social exclusion are not captured in the income metrics and are camouflaged in the opulence of the rich societies. Hence there is an urgent need to go beyond utilitarian welfare metrics.

3.2. Critique of Libertarianism and Rawls’ Primacy of Liberty

3.2.1. Nozick and the Complete Priority of Liberty

The libertarian tradition is marked by its complete priority of rights, an approach championed chiefly by Robert Nozick. Guaranteeing individual liberties requires, according to Nozick, ‘institutions’ supporting these rights. This institutional approach leaves the matter of freedoms and rights completely in the hands of institutions without being concerned with the assessment of outcomes. Ends and means are disarrayed here; the instrumental role of institutions for the realization of rights is not acknowledged, rather institutions themselves are idolized. This idolization of rights and institutions does not allow outweighing or trading-off of any right, however nasty the results may be. Sen observes that “even gigantic famines can result without anyone’s libertarian rights (including property rights) being violated.” In Inequality Reexamined he makes a pertinent criticism of libertarianism, mentioning that Nozick’s framework results in a scheme of “justifying inequality through equality”.

Having noticed the serious problem here, however without compromising the “complete priority of libertarian rights”, Nozick makes space for some exceptions in what he calls “catastrophic moral horror”, by abandoning the absolute dependence on right institutions altogether. The failure of libertarianism to apply this in the so-called less drastic cases derives from its disregard for the realization. Consequence-independence and complete priority of political freedoms led to considerable indifference to the

1024 Sen observes that the African Americans in the United States have lower chance of reaching advanced ages than the people who are born in immensely poorer economies of Chine or the Indian state of Kerala. Sen (1999): Development as Freedom, 21.
substantive freedoms that people actually enjoy.\textsuperscript{1029} Such a procedural and formal rule, insensitive to consequences, can hardly be sensitive to the actual life of the people.\textsuperscript{1030}

Complete priority of personal liberties is also indifferent to the contingencies that arise through our historical, geographical, cultural and social environments; a fact that underlines the need to be sensitive to the added disadvantages of the ‘worst-off’ in the world, as famously addressed by Rawls in his idea of justice as fairness. Rawls emphasizes that justice, as fairness, makes sure that all humans are endowed with a minimum set of primary goods (including education and income), subject only to a prior rule that would guarantee equal personal liberties.\textsuperscript{1031}

Ignoring consequences and being indifferent to prior-existing grave inequalities in general can hardly be a meaningful starting point of a fair evaluative system. A focus on the actual life of people demands “being constantly sensitive to what actually happens in the world no matter how excellent the institutions are taken to be”.\textsuperscript{1032} How mere preoccupation with rules and institutions is insufficient for the conceptualization of human rights will be discussed further in the following sections.

3.2.2. Rawls and the Predominance of Liberty

John Rawls’ innovative work \textit{A Theory of Justice} (1971) is a critique of utilitarianism on two grounds: its aggregative character, which pays no attention to the distribution of welfare, and its obsession with ‘welfare’. He replaced aggregation with equality and welfare by primary goods.\textsuperscript{1033} Primary goods are “general-purpose resources that are useful for anyone to have no matter what her exact objectives are”.\textsuperscript{1034} The focus on the choice of the individual person brought the notion of ‘liberty’ to the forefront.

\begin{itemize}
  \item \textsuperscript{1032} Sen (2009): \textit{The Idea of Justice}, 85. Emphasis added.
\end{itemize}
Rawls’ two principles of justice\textsuperscript{1035} shifted the focus of evaluation from utility-space to the priority of liberty, at the same time being greatly sensitive to distributive justice. Compared to the neutral libertarian tradition, which considers liberties/rights only as ‘side constraints’, it is a substantial advancement. Sen, however, considers this approach inadequate to be a fitting model of social and personal advantage. I highlight two of the various grounds for this consideration.

a. Overwhelming Precedence of Personal Liberties

The freedom-centred approach of Sen and the Rawlsian emphasis on liberty may seem to be similar; the difference, however, lies in the content of the notion of liberty, where political liberties take overwhelming precedence in the Rawlsian justice. The importance of social and economic needs for human life challenges liberty taking an exclusive priority. Sen argues: “Equal personal liberty is given priority over the demands of the second principle which relates to the equality of certain general opportunities and to equity in the distribution of general purpose resources. That is to say, liberties that all can enjoy cannot be violated on grounds of, say, the furtherance of wealth or income, or for a better distribution of economic resources among the people.”\textsuperscript{1036}

Despite the enormous advancement Rawls initiated through his fairness-axiom in the way the liberals conceptualize justice,\textsuperscript{1037} his distinct priority for political liberties entails serious deficiencies in social evaluation. Sen’s system acknowledges the crucial role of personal liberties; he, however, hesitates to prioritize any set of freedoms. On the one hand, all

\textsuperscript{1035} Rawls’ principles of justice are: a) Each person has an equal right to a fully adequate scheme of equal basic liberties which is compatible with a similar scheme of liberties for all. b) Social and economic inequalities are to satisfy two conditions. First, they must be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they must be to the greatest benefit of the least-advantaged members of society. Cf. Rawls, John (1996): Political Liberalism, New York: Columbia University Press, 6–7. Also cf. Sen (2009): The Idea of Justice, 59.


\textsuperscript{1037} Cf. Sen (2009): The Idea of Justice, 62–65. It is self-evident that Sen gives a lot of credit to Rawls’ theory of justice; most notably he dedicated his magnum opus The Idea of Justice to the memory of Rawls.
kinds of freedoms are intrinsic to human well-being; on the other hand, certain situations demand reasonable trade-offs for the sake of personal or general well-being. Sen argues: “Why should the status of intense economic needs, which can be matters of life and death, be lower than that of personal liberties? This issue was forcefully raised in a general form by Herbert Hart a long time ago [...].”

He rightly observes that there is no sufficient ground to regard hunger, starvation and medical neglect to be invariably less important than the violation of any kind of personal liberty. The precedence of political liberty, combined with a contrast between personal advantage and social advantage, thus makes it ill-suited to be a comprehensive model of social evaluation that reflects the actual life of the people.

The critical issue, I would submit, is not complete precedence, but whether a person’s liberty should get just the same kind of importance (no more) that other types of personal advantages – incomes, utilities and so on – have. In particular, the question is whether the significance of liberty for the society is adequately reflected by the weight that the person herself would tend to give to it in judging her own overall advantage.

Rawls’ treatment of this explicit tension between personal well-being and the common good is inadequate.

b. Conversion Problems

In comparison to the traditional focus on utility or income, Rawls’ theory of justice is deeply sensitive to the distributional issues; nevertheless, its focus on primary good or equality of opportunity is seriously limited. His “difference principle” presupposes a strict equation between primary goods and well-being, which often contradicts actual life. For instance, a pregnant woman requires more nutrition, and hence more ‘compensation’ to overcome her disadvantages, in order to lead a life of well-being, com-

pared to a man, even when both are provided with primary goods.\textsuperscript{1041} Rawls judges the opportunities that people have through the means they possess without taking into account the wide interpersonal variations they have in being able to convert primary goods into good living. There is a “variable and deeply contingent” relationship between resources and opportunities; therefore, the problem of conversion of income or primary goods into real opportunities is to be taken very seriously.

The \textit{substantive} importance of the question ‘equality of what?’ relates thus to the empirical fact of pervasive human diversity. Investigations of equality – theoretical as well as practical – that proceed with the assumption of antecedent uniformity (including the presumption that ‘all men are created equal’) thus miss out on a major aspect of the problem. Human diversity is no secondary complication (to be ignored, or to be introduced ‘later on’); it is a fundamental aspect of our interest in equality.\textsuperscript{1042}

Sen identifies four important sources of variation, namely personal heterogeneities, diversities in the physical environment, variations in social climate and the differences in relational perspectives. He rightly observes that there also can be “some ‘coupling’ of disadvantages between different sources of deprivation”, which would lead to added disadvantages of a particular group or of a particular person.\textsuperscript{1043} Rawls’ considerate inclusion of people with ‘special needs’ – people with a disability or a handicap – was an attempt to respond to heterogeneities; his “pervasive sympathy for the disadvantaged”, however, does not figure in the principles of justice, thus virtually sideling them as externalities in the theory of justice.\textsuperscript{1044} The index of primary goods does not adequately accommodate the variations in the needs of the persons, because of a variety of reasons.

Rawls’ identification of personal advantage in terms of a person’s command over ‘primary goods’ called attention to “the extents of freedom rather than on means”.\textsuperscript{1045} Though it was indeed a great advancement in the theory of justice, its focus on primary goods made it, in effect, ‘resour-

\begin{flushleft}
\textsuperscript{1042} Sen (1992): \textit{Inequality Reexamined}, xi.
\textsuperscript{1045} Sen (1992): \textit{Inequality Reexamined}, xi.
\end{flushleft}
cist’. The serious problem of interpersonal variations is not supposed to be assumed away.

3.3. Sen’s Alternative Metric of Capability

Sen’s critique of dominant methods of welfare evaluation led him to formulate his currency of evaluation in the space of capability, where substantive freedoms are assessed. His focus on the actual life, in the sense of actual opportunities, led to the alternative metric of the capability approach. The capability approach thus substantially advanced the economic and philosophical discussions about ‘egalitarianism’. Sen calls attention to the limitations of the prevalent paradigms: “The demand for equality in terms of one variable entails that the theory concerned may have to be non-egalitarian with respect to another variable, since two perspectives can, quite possibly, conflict […] wanting equality in what is taken to be the central social exercise goes with accepting inequality in the remoter ‘peripheries’”. Therefore, the space of assessment is “neither commodities, nor characteristics (in the sense of Gorman and Lancaster), nor utility, but something that may be called a person’s capability”. Sen actually substituted the evaluative space of the famous Arrow-Debreu economic theory from utility to individual substantive freedoms. It is thus a philosophical alternative in judging the human advantage by “taking an interest in the lives that people actually lead”.

Sen first introduced the concept of capability in his Tanner Lecture on Equality of What? (1979). Here he considered his approach “as a natural extension of Rawls’ concern with primary goods, shifting attention from goods to what goods do to human beings”. He then went on to elabo-

rate it in subsequent publications during the 1980 s and 1990 s. This approach has Aristotelian roots, which considers that functionings are constitutive of a person’s ‘being’. Traces of this can be found in the works of Smith and Marx, where human well-being is assessed through the significance of functionings and capability. This currency of assessment avoids confusion between means and ends. Goods, income, economic growth etc. are only means of human development, as is manifest in the famous Aristotelian dictum: “Wealth is evidently not the good we are seeking; for it is merely useful and for the sake of something else”. The capability approach focuses directly on the substantive freedoms of people, and it places – in the Kantian sense – the human person at the centre. “An alternative to focusing on means of good living is to concentrate on the actual living that people manage to achieve (or going beyond that, on the freedom to achieve actual livings that one can have reason to value).” The capability approach employs three distinct but interdependent notions, namely functionings, capabilities and agency.

“Functionings represent parts of the state of a person – in particular, the various things that he or she manages to do or be in leading a life”. Sen describes:

The concept of ‘functioning’, which has distinctly Aristotelian roots, reflects the various things a person may value doing or being. The valued functionings may vary from elementary ones, such as being adequately nourished and being free from avoidable disease, to very complex activities or personal states, such as being able to take part in the life of the community and having self-respect.


Capabilities are “the substantive freedoms he or she enjoys to lead the kind of life he or she has reason to value”.

Capabilities “represent the various combinations of functionings (beings and doings) that the person can achieve. It is thus a set of vectors of functionings, reflecting the person’s freedom to lead one type of life or another […] to choose from possible livings”. Being defined in the space of “the alternative combinations of functionings that are all feasible for her to achieve”, capability represents “a kind of freedom: the substantive freedom to achieve alternative functioning combinations”. Both functionings and capabilities are distinct but dependent.

A functioning is an achievement, whereas a capability is the ability to achieve. Functionings are, in a sense, more directly related to living conditions, since they are different aspects of living conditions. Capabilities, in contrast, are notions of freedom, in the positive sense: what real opportunities you have regarding the life you may lead.

Functioning is directly related to well-being, whereas capability is primarily related to the ‘agency’ of the human person.

Agency refers to the autonomy of the human person. Sen uses the word ‘agent’ not to denote someone who acts on someone else’s behalf; rather an agent is “someone who acts and brings about change, and whose achievements can be judged in terms of her own values and objectives, whether or not we assess them in terms of some external criteria as well.”

An individual is conceived “as a member of the public and as a participant

---

1063 Sen uses the example of a bicycle to explain the interconnections of commodity, characteristics, utility and capability. “It is, of course, a commodity. It has several characteristics, and let us concentrate on one particular characteristic, viz., transportation. Having a bike gives a person the ability to move about in a certain way that he may not be able to do without the bike. So, the transportation characteristic of the bike gives the person the capability of moving in a certain way.” Sen (1999/2010): Resources, Values and Development, 334; also cf. Sen, Amartya (1982): “Rights and Agency”, Philosophy & Public Affairs, 11(1), 3–39; Sen, Amartya (1983): “Evaluator Relativity and Consequential Evaluation”, Philosophy & Public Affairs, 12(2), 113–132.
in economic, social and political actions”. The crux of the capability approach is the freedom to lead the kind of life one values and has reason to value. It manifests ultimate respect for the autonomy of the human person, where everyone is entitled to define one’s own idea of eudaimonia. Thus, the central role of ‘agency’ emerges: “There is a difference between ‘nannying’ an individual’s choices and creating more opportunity of choice and for substantive decisions for individuals who can then act responsibly on that basis”. People are perceived “as agents rather than as motionless patients”. While patients are mere beneficiaries of the process of development, people are here recognized as responsible adults who are in charge of their own well-being. Individuals are not simply passive welfare-seekers but active agents who “shape their own destiny and help each other”. It is about “the liberty of acting as citizens who matter and whose voices count, rather than living as well-fed, well-clothed, and well-entertained vassals”. Sen thus envisioned a paradigm shift in the idea of development.

Pluralism is an overarching principle in the capability approach, which Sen calls the vector view. In contrast to Nussbaum’s “tremendously over-specified” list of functionings about what constitutes a human good living, Sen endorses a “deliberate incompleteness”, making room for various lists and weighting. He provides only a general metrics of evaluation, without specifying a ‘list’ of it. In contrast to Nussbaum, he buttress-

1069 The vector view is an attempt to broaden the notion of utility – which is normally perceived by utilitarians as some homogeneous magnitude. Sen considers utility as a vector with several distinct components – “many co-existing aspects of utility”, i.e., utilities of different types which allow a “significantly richer descriptive account of a person’s well-being”. Sen, however, substitutes utility with capabilities, thus focusing on what a person can do rather than what he does do. Moreover, it is also an inherently plural notion. Cf. Sen (1981): “Plural Utility”.
es his approach on a deliberative process to specify and weigh the functionings,\textsuperscript{1071} whereas Nussbaum takes a rather philosophical route.\textsuperscript{1072}

Sen, however, underlines some “basic capabilities”,\textsuperscript{1073} such as education, health, nutrition and shelter, which are “intended to separate out the ability to satisfy certain crucially important functionings”; in their absence, people are counted as being “scandalously deprived”.\textsuperscript{1074} Despite the incompleteness, he believes, the capability approach does have considerable ‘cutting power’ over existing models of well-being analysis. He states: “The capability perspective allows us to take into account the parametric variability in the relation between the means, on the one hand, and the actual opportunities, on the other.”\textsuperscript{1075} Interestingly, he developed an \textit{inclusive} approach that enriches itself from the resources of those perspectives which he criticized:

Not only is this approach able to take direct note of the importance of freedom, it can also pay substantial attention to the underlying motivations that contribute to the relevance of the other approaches. In particular, the freedom-based perspective can take note of, inter alia, utilitarianism’s interest in human well-being, libertarianism’s involvement with processes of choice and the freedom to act and Rawlsian theory’s focus on individual liberty and on the resources needed for substantive freedoms.\textsuperscript{1076}

\textsuperscript{1071} It is possible to disagree both on the exact \textit{grounds} underlying the determination of relative weights and on the \textit{actual} relative weights chosen, even when there is a reasoned agreement on the general nature of the value-objects (in this case, personal functionings and capabilities). If a reasoned agreement is seen as an important foundational quality central to political and social ethics, then the case for the cause is not so hard to understand. Cf. Sen (1993): “Capability and Well-being”, 48. Also cf. Sen (2009): \textit{The Idea of Justice}, Chapter 4, “Voice and Social Choice”, 87–113.


\textsuperscript{1073} In his Tanner Lecture, Sen mentioned the term ‘basic capability’ as a first rough attempt to answer the ‘equality of what’ question, but subsequently he changed his terminology to ‘capability’. Cf. Sen (1980): “Equality of What?”, 195–220.


This inclusive nature can be considered as the most significant characteristic of Sen’s capability approach and fits well into his general framework of informational broadening.

The capability approach’s focus on the actual life of the people provided a broader understanding of poverty and inequality. Poverty, in this framework, is not conceptualized as ‘income deprivation’ but as ‘capability deprivation’. A distinction between ‘low income’ and ‘capability failure’ does matter. A poverty analysis that concentrates only on incomes can be quite remote from the main motivation behind our concern with poverty. It may also fail to provide empirical guidance regarding the genesis and prevalence of deprivation.”

Sen underlines: “Poverty must be seen as the deprivation of basic capabilities rather than merely as lowness of incomes, which is the standard criterion of identification of poverty.” He contends that the “process of development […] is not essentially different from the history of overcoming […] unfreedoms”. Development, in this framework, is seen as a process of expanding human freedom.

Another challenge is the problem of interpersonal comparison. Under the mantle of ‘scientific neutrality’, the positivist economics shied away from the ‘idea’ and measurement of poverty. An idea of poverty requires a value judgement, but values, according to the positivists, are not factually or objectively verifiable. That poverty is relative does not rule out the possibility of its factual analysis on the basis of partial ordering. Even within a utility framework there is a possibility for such a partial ordering. Sen writes: “We may, for example, have no great difficulty in accepting that Emperor Nero’s utility gain from the burning of Rome was smaller than the sum-total of the utility loss of all the other Romans who suffered from the fire.” It is outlined that a partial ordering does not require ‘optimization’ – everyone’s utility need not be measured. Sen pertinently ar-

gues that an interpersonal comparison is possible in a social choice framework which goes beyond an ‘all-or-none’ dichotomy,\(^\text{1082}\) on the basis of ‘maximization’ that studies maximum available data. In the case of patent and grave injustices, it is possible to reach conclusions in “terribly exacting terms”.\(^\text{1083}\) Sen adds that “it would be overambitious to be severely exclusive in sticking only to one informational approach, rejecting all others. In the recent literature in applied welfare economics, various ways of making sensible interpersonal comparisons of well-being have emerged.”\(^\text{1084}\) In that sense, it is quite possible to indulge in a multi-dimensional and non-idealistic interpersonal comparison and measurement of poverty and deprivation.

**Conclusion**

The prevailing approaches to justice belong to three general categories: the ‘sufficientarian’ approach that makes sure that ‘people get enough’, the ‘prioritarian’ approach that is concerned with giving people as much as possible, but with extra concern for benefits to those who have less, and the ‘egalitarian’ approach that attempts to give people equal benefits.\(^\text{1085}\) Identifying the right space of equality, insofar it is relevant to justice, is the challenge of any theory of justice. In contrast to the prevalent currencies of justice based on resources, liberty and primary goods, Sen proved that the equilisandum for justice is capability, where the focus is on the *actual* lives and freedoms that people really enjoy.\(^\text{1086}\) Making capability the appropriate focal variable, he freed economics and moral philosophy from their vestiges of utilitarian philosophy. The focusing on the vector of capabilities brings the notion of freedom into focus, whereby human agency becomes an overarching principle – not just an idea of a generic individual but persons in their contextuality.\(^\text{1087}\) This approach acknowledges

---

various interdependencies of the notion of well-being, eventually calling for a “vast informational expansion” which includes also noneconomic and nonmaterial aspects of life in the moral assessment of social arrangements.  

Sen’s welfare economics thus significantly expanded the reach of the discipline, legitimizing the study of inequalities, such as famine, relative disadvantages of women, the poor, etc., which were conventionally regarded to be outside the concerns of welfare economics.  

Thus, capability, as maximand in social evaluation, has brought about seismic shifts in the way we understand human rights – ultimately integrating the idea of human rights and human development in the space of substantive freedoms.

III. The Idea of Human Rights

1. The Nature and Content of Human Rights

Though Sen is not fond of finished theories, interestingly he concedes that the human rights discourse requires ‘some’ theory and some defence of the proposed theory for wider reach and acceptability – the seemingly self-evident nature of human rights requires reasonable justification.  

His capability approach conceptualizes human rights as ethical claims on some relevant freedoms and corresponding obligations which are assessed through the scrutiny of public reasoning, involving open impartiality. This part of the book deals with an exposition of this formulation, namely the nature, content, viability and obligations that are encompassed in it.


1.1. The Nature: Human Rights as Ethical Claims

The capability approach itself is a normative framework;\textsuperscript{1091} accordingly, human rights are conceptualized as \textit{justified moral claims} – ethical claims – about the relevant freedoms. Sen states: “Human rights may stand for claims, powers and immunities (and other forms of warranty associated with the concept of rights) supported by ethical judgments, which attach intrinsic importance to these warranties.”\textsuperscript{1092} Ethics was for long \textit{terra incognita} in economics; the status of ‘ethical’ claims is often disputed in positive sciences, as is manifested in the widespread notion of ‘fact-value dichotomy’, whereas Sen as a moral philosopher in Smithian tradition underlines ‘fact-value entanglements’.

He founds the concept of human rights on this entanglement:

The ‘existence’ of human rights is obviously not like the existence of, say, Big Ben in the middle of London. Nor is it like the existence of a legislated


\textsuperscript{1093} Neo-classical economics considered itself to be positive economics, which completely shunned normative analysis in economics, in effect ostracizing normative branch of economics – welfare economics. Hilary Putnam considers Sen to be a pioneer to have overcome this dichotomy. Cf. Putnam, Hilary (2002): \textit{The Collapse of the Fact/Value Dichotomy, and Other Essays, Including The Rosen-thal Lectures}, Cambridge, Mass.: Harvard University Press, 9. In his efforts to revive the ethical tradition of political economy, one of Sen’s earliest works deals with the problem of descriptive and evaluative judgements. Cf. Sen, Amartya (1967): “The Nature and Classes of Prescriptive Judgements”, \textit{The Philosophical Quarterly}, 17(66), 46–62. Later, Sen makes a frontal assault on the uncritical positivism incorporated in the neoclassical economics that separates ‘fact-based science’ from ‘value-based ethics’. “If that position were accepted, then the statement that person A is happier that B would be nonsensical – ethical nonsense just as much as it would be descriptive nonsense. I guess it is a reflection of the way ethics tends to be viewed by economists that statements suspected of being ‘meaningless’ or ‘nonsensical’ are promptly taken to be ‘ethical’. The peculiarly narrow view of meaning championed by logical positivists – enough to cause disorder in philosophy itself – caused total chaos in welfare economics when it was supplemented by some additional home-grown confusions liberally supplied by economists themselves. Positivist philosophers may have been of beam in taking all ethical propositions to be meaningless, but even they had not suggested that all meaningless propositions were ethical.” Sen (1987): \textit{On Ethics and Economics}, 31.
law in the statute book. Proclamations of human rights, even though stated in
the form of recognizing the existence of things that are called human rights,
are really strong ethical pronouncements as to what should be done. They de-
mand acknowledgement of imperatives and indicate that something needs to
be done for the realization of these recognized freedoms that are identified
through these rights.  

Sen emphasizes “the same shared and general territory of ethical beliefs
and pronouncements”.  

The ethical underpinnings in the conceptualization of a pre-political moral approach to human rights are in resonance
with his general nyaya framework of justice that is in contrast to institutional and legal niti approach. Human rights and justice are thus understood primarily as moral matters and not as institutional concerns. This sheds light on the traditional distinction between lex and ius (Gesetz and Recht in German system), the former referring to statutory law and the latter to law in a broader inclusive sense which encompasses principles of justice as well as rules laid down by the legislature. A law/Gesetz is legitimated by the authority of the legislature, whereas Recht is legitimated by its inherent reasonableness. In short, the distinction is between law-as-enacted-law and law-as-principle.  

Sen thus accentuates a pre-political notion of human rights as “shared by all, irrespective of citizenship the benefits of which everyone should have”. In such a moral and non-institutional approach, “human rights are best seen as articulations of a commitment in social ethics. Their ethical status is prior to their legal relevance, if any.”

1.1.1. Beyond the Legislative Route

Even though human rights as moral claims are acknowledged as normatively significant, they are not always codified by laws. There had been strong and widespread scepticism about the legitimacy of human rights in political philosophy. Bentham, for instance, unrelentingly dismissed natural rights as ‘nonsense’ and the concept of ‘natural and imprescriptible rights’ as “nonsense on stilts”. He obviously succumbs to a reductive stance: “Right, the substantive right, is the child of law; from real laws come real rights; but from imaginary laws, from ‘laws of nature’ [can come only] imaginary rights.”\(^{1100}\)

Such a post-political approach to human rights vigorously challenges the legitimacy of a pre-legal status of human rights. The argumentation is based on the “worry that human rights confound consequences of legal systems, which give people certain well-defined rights, with pre-legal principles that cannot really give one a justiciable right.”\(^{1101}\) This, according to Sen, challenges the “naturalness” of human rights. “Human beings in nature are, in this view, no more born with human rights than they are born fully clothed; rights would have to be acquired through legislation, just as clothes are acquired through tailoring. There are no pre-tailoring clothes; nor any pre-legislation rights.” He calls this line of attack the legitimacy critique.\(^{1102}\)

Sen contends this objection: “Pronouncements of human rights are quintessentially ethical articulations, and they are not, in particular, putative legal claims.”\(^{1103}\) Strongly rejecting the association that Bentham made between real law and real rights, he persuasively argues that law is not the source of human rights and human rights should not, therefore, be defined narrowly in legal terms.\(^{1104}\) The fact that an ethical claim has substance, even without legal or institutional force, identifies the need to go...

\(^{1100}\) As quoted in Sen (2004): “Elements of a Theory of Human Rights”, 325. The historical connection that Bentham’s *Anarchical Fallacies* was written during 1791–1792 specifically against the French “rights of man” is certainly revealing.


beyond the utilitarian approach which fails to attach any intrinsic value to human rights and human freedoms. This champions “an ethics that makes room for the fundamental significance of human rights (as the advocates of ‘rights of man’ did), linked with a diagnosis of the basic importance of human freedoms and the obligations generated by that diagnosis.”

The contemporaries of Bentham, Thomas Paine and Mary Wollstonecraft, powerfully explored the reach and range of ethical interpretations of rights. They “asserted that all human beings are endowed with rights prior to the formation of social institutions that constrain both the design of institutions and the conduct of other individuals”.

An exclusive pre-occupation with ‘legislative route’, which presumes that the effectiveness of human rights depends only on legislation, takes another form in the case of H. L. A. Hart, who claims that human rights are “legal rights in waiting”. The affirmation that human rights are ‘claims in social ethics’ should not be seen only as putative legal rights, waiting to be legislated – as a kind of ‘laws in waiting’.

Sen contends:

These rights can thus be seen as being prior (rather than posterior) to legal recognition. Indeed, social acknowledgement of these rights can be taken to be an invitation to the State to catch up with social ethics. But the invitation is not merely to produce fresh legislation—important as it is—since the realization of rights can also be helped by other developments, such as creation of new institutions, better working of existing ones and, last but not the least, by

---

1106 Rights of Man (Paine) and A Vindication of the Rights of Woman (Wollstonecraft), both published in 1792.
a general societal commitment to work for appropriate functioning of social, political and economic arrangements to facilitate widely recognized rights.\textsuperscript{1110}

Human rights as a ‘child of law’ (Bentham) or as a ‘parent of law’ (Hart) necessarily presuppose that they are to be translated into legislation; Sen persuasively argues that an ethical approach entails a broader vision.\textsuperscript{1111} It is true that many human rights are legislated and implemented; however, acknowledging motivational connections and reducing the relevance exclusively to that motivation are worlds apart.\textsuperscript{1112} Furthermore, there are various ways and means of advancing the ethical claims on human rights, which need not be confined to legal route. Without denying the important instrumental role of legislation and institutions in enforcing the moral claims of human rights, Sen thus takes a moral route.

1.1.2. Limitations of the Legal Route

Having underscored the moral foundation of human rights, Sen notes some inherent limitations of an exclusive legal route to human rights.

a. Not all rights can be legislated

Though many rights are substantially important for human life, they are nevertheless difficult to legalize, such as the right to be respected and consulted. Sen provides the example of the right of a wife, in a sexist society, to be consulted in family decisions. Such a right has far-reaching ethical and political relevance, but it is not sensible to make this human right into a ‘coercive legal rule’. So is the ethical importance of the right of a stam-
merer not to be slighted or ridiculed in public meetings, which can hardly be brought under punitive legislation.\textsuperscript{1113}

b. Law cannot be a guide to moral obligations

In the human rights discourse, many concerns like ‘moral obligations’ lie in the broader domain of morality, which cannot be always brought under the criminal law. “The case for fulfilling these rights even in the absence of legislation is seen to be relevant and legitimate, and that is quintessentially an application of the idea of human rights.”\textsuperscript{1114} Our obligation to help others or the obligation of the state in the process of development is often \textit{morally} grounded. Very few countries have claims like ‘right to food or medicine’ guaranteed by law, and it may also not be possible to provide adequate legal coverages against all deprivations, thus calling for the relevance of a broader ethical route.\textsuperscript{1115} Sen states: “The insistence that the discourse of rights cannot go beyond the limits of legal demands does less than justice to the sense of solidarity and fairness in social living, commitments that are not parasitic on the exact laws that may have been enacted in a society.”\textsuperscript{1116}

c. Universality of human rights

According to Sen, the insistence on rights in “postinstitutional terms as instruments rather than as a prior ethical entitlement militates, in a rather fundamental way, against the basic idea of universal human rights”.\textsuperscript{1117} Given the non-existence of an all-encompassing global institution to legitimate human rights, there is then no scope for universal human rights. He, therefore, affirms the need to reclaim the \textit{intrinsic importance} of human rights.\textsuperscript{1118}

\begin{thebibliography}{9}
\end{thebibliography}
d. Existence of law does not guarantee the realization of human rights

The mere existence of law does not guarantee the realization of human freedoms.\textsuperscript{1119} The implementation of human rights requires the collaboration of many non-legal agents as well. These grave limitations of the legal route validate the need for a wider moral landscape beyond a narrow judicial arena.

Sen affirms: “Human rights can be seen as primarily ethical demands. They are not principally ‘legal’, ‘proto-legal’ or ‘ideal-legal’ commands. Even though human rights can, and often do, inspire legislation, this is a further fact, rather than a constitutive characteristic of human rights.”\textsuperscript{1120} Hence the human rights discourse “extends to ethical claims that transcend legal recognition”,\textsuperscript{1121} a fact that is substantiated by the long history of human rights declarations – in the invocation of ‘inalienable rights’ in the American Declaration of Independence, ‘the rights of man’ in the French Declaration and the non-legal ‘declaration’ of the UDHR.\textsuperscript{1122} Sen notes: “There is something deeply attractive in the idea that every person anywhere in the world, irrespective of citizenship and territorial legislation has some basic rights, which others should respect. The moral appeal of the human rights has been used for a variety of purposes, from resisting

\textsuperscript{1119} Drèze and Sen put it in their work on hunger: “When millions of people die in famine, it is hard to avoid the thought that something terribly criminal is going on. The law, which defines and protects our rights as citizens, must somehow be compromised by these dreadful events. Unfortunately, the gap between law and ethics can be a big one. The economic system that yields a famine may be foul and the political system that tolerates it perfectly revolting, but nevertheless there may be no violation of our lawfully recognized rights in the failure of large sections of the population to acquire enough food to survive. The point is not so much that there is no law against dying of hunger. That is, of course, true and obvious. It is more that the legally guaranteed rights of ownership, exchange and transaction delineate economic systems that can go hand in hand with some people failing to acquire enough food for survival.” Drèze and Sen (1989): \textit{Hunger and Public Action}, 20.


\textsuperscript{1122} Cf. Sen (2009): \textit{The Idea of Justice}, 357. The American Declaration of Independence in 1776 took it to be “self-evident” that everyone is “endowed by their Creator with certain inalienable rights”, and thirteen years later, in 1789, the French Declaration of “the rights of man” asserted that “men are born and remain free and equal in rights”. They were all pre-legal claims of rights. Cf. Sen (2007): “Children and Human Rights”, 6.
torture and arbitrary incarceration to demanding the end of hunger and of medical neglect.”

1.1.3. Interactive and Interrelated Means of Enhancing Human Rights

The human rights discourse is thus not primarily concerned with institutional ratification but with ‘ethical recognition’. According to Sen, “what is being articulated or ratified is an ethical assertion – not a proposition about what is already legally guaranteed.” Such an ethical assertion may “serve as a kind of a template for new law” initiating some fresh legislations. Sen tries to extend the human rights discourse “from the pure domain of legality to the broader arena of social ethics”, and what is actually required is ‘social acknowledgement of these rights’ especially by the state. This social acknowledgement consists not merely in producing fresh legislation but in the realization of these rights through other instrumentalities “such as creation of new institutions, better working of existing ones and, last but not the least, by a general societal commitment to work for appropriate functioning of social, political and economic arrangements to facilitate widely recognized rights.”

Legislation can indeed promote the ethical claims reflected in human rights. Many concerned citizens, as well as many NGOs, have been intensely involved in promoting fresh legislation. “The legal relevance is posterior rather than prior to ethical reasoning and legal use is not the only field of application of the ethical and political idea of human rights.” Sen primarily argues for a “recognition route”, which is buttressed on acknowledgement, not on legalization or institutional enforcement of a class of claims that are seen as fundamental human rights. It actually appeals more to conscientization and enlightenment. “The protection of that human right would have to be sought elsewhere, for example through the influence of education and public discussion on civility and social conduct.”

The effectiveness of the human rights perspective does not rest on seeing it invariably in terms of putative proposals for legislation”.1129 Protection and promotion of human rights can be brought about in various ways; Sen’s capability approach to human rights is a highly interactive approach founded on public discussion. It acknowledges “the effectiveness of interactive ways and means, including social recognition, informational monitoring and public agitation.”1130 He has persuasively argued that capability as a substantive freedom is to be understood as a web of interconnectedness and complementarity, and so are human rights.

It is perhaps important to emphasize that not only are there several ways of safeguarding and promoting human rights other than legislation, these different routes have considerable complementarity […]. The ethics of human rights can be made more effective through a variety of interrelated instruments and a versatility of ways and means. This is one of the reasons why it is important to give the general ethical status of human rights its due, rather than locking up the concept of human rights prematurely within the narrow box of legislation – real or ideal.1131

Only the recognition of the ethical status of human rights would uphold the possibility of a variety of interrelated instruments enhancing human rights.1132 This opens up different avenues of promoting human rights as moral claims: besides legislation, “social monitoring and other activist support provided by such organizations as Human Rights Watch, Amnesty International, Oxfam, Médicins sans Frontières, Save the Children, the


Red Cross, or Action Aid (to consider many different types of NGOs) can help to advance the effective reach of acknowledged human rights”.\textsuperscript{1133}

There is thus a range of mechanisms other than legalization that contribute to the promotion and protection of human rights. Change is conceptualized in terms of “broader processes of social transformation that affect expectations, behaviour and choice”.\textsuperscript{1134} Effective is not the route of coercion but of behavioural change arising from freedom and social awareness, which is famously proved in the historical confrontation between Condorcet’s (pro-freedom) and Malthus’s (anti-freedom) arguments.\textsuperscript{1135} It is not primarily about structural changes but about social freedom.\textsuperscript{1136} Thus, Sen takes the human rights discourse beyond the narrow confines of legal positivism, which is limited to institutional arrangements, to a broader moral landscape.

1.2. The Content: Human Rights as Freedoms

As capability is the proper \textit{maximand} of human well-being in Sen’s theoretical framework, so capability is the space of human rights as well – capability understood as substantive freedoms. Sen states: “The importance of human rights relates to the significance of the freedoms that form the

\begin{itemize}
  \item Referring to a historical debate, Sen explains how Condorcet and Malthus followed contrasting ways in confronting the imminent population problem. Condorcet held “nuanced views on the population problem, in contrast to Malthus’s single-minded worry about the failure of human rationality in stemming the tide” and his “alarmist theory of population catastrophe”. An alternative perspective is to affirm the role of education and enlightenment, where a more educated society, with social enlightenment, public discussion and more widespread women’s education, would reduce the population growth rate dramatically and could even halt or reverse it. History has proved that “Condorcet’s appreciation of enlightenment and interactive understanding has received much more vindication than Malthus’s dire cynicism”. Sen (2009): \textit{The Idea of Justice}, 112.
\end{itemize}
subject matter of these rights.” \textsuperscript{1137} The capability approach and human rights thus share a common motivation and commitment by focusing on the valuable things that people can do and be. Its concentration on the actual freedoms goes beyond the traditional conception of legal rights or formal declarations or some nominal catalogues of human rights, giving priority to the realization of substantive freedoms. \textsuperscript{1138} Sen accentuates: “It is possible to argue that human rights are best seen as rights to certain specific freedoms, and that the correlate obligation to consider the associated duties must also be centred around what others can do to safeguard and expand these freedoms.” \textsuperscript{1139}

Sen notes that the idea of human rights can be understood in terms analogous to utilitarian ethics, “even though the substantive contents of the articulation of human rights are altogether different from utilitarian claims”. In the case of human rights discourse, it is not about the maximization of utilities but about the maximization of “the recognition of the importance of certain freedoms and the acceptance of some social obligations to safeguard them”. He emphasizes “the same shared and general territory of ethical beliefs and pronouncements”. \textsuperscript{1140} The fecund moral landscape generated by the synergies and interactions between the capability approach and the human rights discourse can efficiently deal with various justice-related problems.

Sen’s pluralist concept of freedom is multidimensional and cannot be reduced to the space of capability. This calls for a nuanced treatment of his broad idea of freedoms.

1.2.1. Human Rights: From Minimal Liberty to Real Opportunities

Two phases can be identified in the evolution of the notion of human rights in the Sen system of evaluation. He started with defending minimal liberty – the individual right of choice, which was widely obliterated in the welfarist structure of traditional welfare economics. His seminal “The Impossibility of Paretian Liberal” was an attempt to retain ‘minimal liberty’, and it became his classical social choice formulation of individual rights.

Moreover, Sen concedes that the formulation of liberty in the dominant social choice theory is guided by “minimalist motivations”, which demands a “fuller characterization of liberty”.\footnote{Sen (2002/2011): \textit{Rationality and Freedom}, 432.} He later developed the idea of human rights as individual freedom in terms of the \textit{opportunity} set of outcomes.\footnote{Cf. Sen, Amartya (1988): “Freedom of Choice: Concept and Content”, \textit{European Economic Review}, 32(3/2), 269–294. [Originally Sen, Amartya (1987): \textit{Freedom of Choice: Concept and Content}, WIDER Working Papers 25, Alfred Marshall Lecture at the annual meeting of the European Economic Association Copenhagen, World Institute for Development Economics Research of The United Nations University.]} Nevertheless, it is not fundamentally different from his idea of the minimal liberty to have one’s own preference ranking, thus focusing on \textit{real} opportunity to lead a life that one chooses to live. Though Sen is no friend of ‘finished lists’, he considers five types of important freedoms, namely political freedoms, economic facilities, social opportunities, transparency guarantees and protective security, which are inherently interconnected.\footnote{Cf. Sen (1999): \textit{Development as Freedom}, 38–40.} This idea of freedom goes well beyond ‘minimal liberty’; it is a multifarious notion of freedom that encompasses all relevant spheres of human life, understood in the context of their multiple empirical interconnections among various kinds of freedoms. Human rights, as freedoms, demand the need to recognize “complex interdependences” of
various social factors. Various social factors. Hence, for Sen, freedoms are not only the end of development but also the principal means as well – constitutive and instrumental of development.

Overcoming capability deprivations thus becomes an important concern in this framework. Reconceptualization of welfare in the space of freedom – development as freedom – emphasized that human rights need also to deal with the removal of poverty and deprivations. This ‘welfare’ concern was traditionally excluded from the theories of freedoms and human rights. Sen states: “When we assess inequalities across the world in being able to avoid preventable morbidity, or escapable hunger, or premature mortality, we are not merely examining differences in well-being […] [T]he available data regarding the realization of disease, hunger, and early mortality, tell us a great deal about the presence or absence of certain central basic freedoms.” Thus his idea of freedom is inherent to human well-being.

1.2.2. Process and Opportunity Freedom

Though both capabilities and rights exist in the space of freedom, Sen is particularly careful to draw attention to their differences as well. “The concepts of human rights and human capabilities have something of a common motivation, but they differ in many distinct ways.” He consistently argues that ‘opportunity’ and ‘process’ are two aspects of freedom that require distinction, with the importance of each deserving specific acknowledgement. Substantive opportunities and freedom of processes are two separate and independent aspects of freedom. He uses the example of a young woman who was determined to go out in the evening: “The violation of the opportunity aspect would be more substantial and manifest if she were not only forced to do something chosen by another, but in fact, forced to do something she herself would not otherwise choose

to do.” Even if one’s preference corroborates with the coercion from others, there is a serious violation of process freedom in this case.

Capability focuses on “the set of valuable things that a person is able to do and be” – the real opportunity, which is a characterization of the opportunity aspect of freedom. This, according to Sen, “comes into its own in dealing with the remainder of the second principle of Rawls; namely, ‘the difference principle’ — a principle that is particularly concerned with the distribution of advantages that different people enjoy”.

He endorsed an alternative space for the second part of the second principle of justice, shifting the focus from ‘access to primary goods’ to the conversion of primary goods into valuable ends – the space of capability. This shift of focus draws attention to “the parametric variability in relation between the means, on the one hand, and the actual opportunities, on the other”. Sen nevertheless reiterates the relevance of the other Rawlsian principles of justice in measuring the full range of freedom. He adds: “Rawls’ ‘first principle’ of justice involves the priority of liberty, and the first part of the ‘second principle’ involves process fairness, through demanding that ‘positions and offices be open to all’. The force and cogency of these Rawlsian concerns can neither be ignored nor be adequately addressed through relying only on the informational base of capabilities.”

Thus, Rawls is inevitable in addressing “the relevance of the rest of the territory of justice”, which is not captured by capability approach.

Sen adds that “the process through which a state of affairs is reached is significant in the characterization of that social state”. He portrays an example: Given symmetric care, women live longer than men. An exclusive focus on capability, that is the capability to live long, may construct an argument for giving men more medical attention than women to counteract the natural masculine handicap. He concludes: “But giving women less medical attention than men for the same health problems would clearly violate an important requirement of process equity, and it seems reasonable to argue, in cases of this kind, that demands of equity in process free-

---

The relevance of the capability perspective in judging people’s substantive opportunities does not, in any way, dismiss the relevance of the process aspect of freedom in a theory of human rights. Sen is acutely aware of the limitations of the ‘capability framework’ as well. “They fall short of telling us enough about the fairness or equity of the processes involved, or about the freedom of citizens to invoke and utilize procedures that are equitable.” The capability approach can well represent the opportunity aspect of freedom, but it is ill-equipped to characterize the process aspect of it. Capabilities are critically important in understanding the notion of human rights, “but it cannot claim to occupy the entire space from which human rights are drawn”.

“A theory of justice”, contends Sen, “has to be alive both to the fairness of the processes involved and to the equity and efficiency of the substantive opportunities that people can enjoy”. An evaluation of a state of affair hence is to be supplemented with additional information in resonance with Sen’s general idea of ‘information pluralism’ or informational broadening. “A similar plurality of informational base has to be invoked in dealing with the multiplicity of considerations that underlie a theory of human rights. Capabilities and the opportunity aspect of freedom, important as they are, have to be supplemented by considerations of fair processes and the lack of violation of people’s right to invoke and utilise them.”

He thus underlines the relevance of the process aspect of freedom:

It is important to recognise that both processes and opportunities can figure powerfully in the content of human rights. A denial of ‘due process’ in being, say, sentenced without a proper trial can be an infringement of human rights (no matter what the outcome of the fair trial might be), and so can be the denial of opportunity of medical treatment, or the opportunity of living without

the danger of being assaulted (going beyond the exact process through which these opportunities are made real).\textsuperscript{1165}

Not all human rights take the form of claims based on the value of capabilities; some rights are procedural, thus relating to different concentrations within the multi-dimensional idea of freedom.\textsuperscript{1166} The focus must be, therefore, on the plurality of concerns, which includes processes as well as opportunities; this inescapably takes a normative social choice route.\textsuperscript{1167}

\section*{1.2.3. A Multidimensional Notion of Freedom}

Though Sen propounds a “capability-based theory of justice”, he concedes that “this could be true only in the very limited sense of naming something according to one principal part of it (comparable with, say, using England for Britain). It is only one part of the informational base of a theory of justice that the capability perspective can expect to fill.”\textsuperscript{1168} The capability approach, therefore, needs to be supplemented with other considerations of broad notions of freedom. Though human rights and capabilities share many areas of common motivation, it is nevertheless important not to “subsume either entirely within the other”.\textsuperscript{1169}

Sen’s human rights discourse encompasses a broad understanding of the notion of freedom – process and opportunity, as well as negative and positive. This is a radical departure from the outcome-independent approach of libertarians and freedom-independent approach of welfarists. In short, Sen stands against any kind of ‘minimalism’ and tries to defend an expansive

\begin{itemize}
  \item[\textsuperscript{1166}] Cf. Sen (2012): “Forward”, xv.
  \item[\textsuperscript{1168}] Sen (2005): “Human Rights and Capabilities”, 164. In this context, he recognizes the limitation of the famous Human Development Index (HDI) which concentrates on some of the aggregate human development indicators, such as longevity, literacy and other socio-economic concerns. The domain of human development goes indeed much beyond what HDI captures, including political and civil freedoms, which are extremely important for any genuine capability enhancement of the poor but at the same time difficult to be quantified. Cf. Sen (2000): “Human Rights and Human Development”, 20.
  \item[\textsuperscript{1169}] Sen (2005): “Human Rights and Capabilities”, 163.
\end{itemize}
construal of human rights. The capacious range of his idea of freedom is summarized in his *Development as Freedom* as follows:

> Sometimes the lack of substantive freedoms relates directly to economic poverty, which robs people of the freedom to satisfy hunger, to achieve sufficient nutrition, or to obtain remedies for treatable illnesses, or the opportunity to be adequately clothed or sheltered, or to enjoy clean water or sanitary facilities. In other cases, the unfreedom links closely to the lack of public facilities and social care, such as the absence of epidemiological programs, or of organized arrangements for health care or educational facilities, or of effective institutions for the maintenance of local peace and order. In still other cases, the violation of freedom results precisely from a denial of political and civil liberties by authoritarian regimes and from imposed restrictions on the freedom to participate in the social, political and economic life of the community.¹¹⁷⁰

This manifests that Sen’s ‘freedom-centred’ approach to human rights is capacious enough to entail various contemporary challenges of the human rights discourse.

1.2.4. The Threshold Conditions: Not all Freedoms Are Human Rights

Given the elasticity of the notion of freedom in the day to day use, there is often valid scepticism about a “proliferation of human rights”.¹¹⁷¹ Similarly, Sen’s notion of freedom is criticized for being too inclusive, thus tending to “overextend the concept of freedom”.¹¹⁷² First of all, it is to be noted that he focuses not so much on functionings but on the opportunity to achieve combinations of functionings, and the person is free to choose this opportunity or not. “A capability reflects the alternative combinations of functionings over which the person has freedom of effective choice.”¹¹⁷³

---

Sen’s notion of freedom is certainly broad, but, as he notes, to be qualified as the basis of human rights, the freedom to be defended or advanced must satisfy some “threshold conditions of (i) special importance and (ii) social influenceability”\textsuperscript{1174} He elucidates further: “A pronouncement of human rights includes an assertion of the importance of the corresponding freedoms – the freedoms that are identified and privileged in the formulation of the rights in question – and is indeed motivated by that importance.”\textsuperscript{1175} He adds:

In so far as some agreement is needed for the social framework of human rights, the agreement that would be sought is not only whether some particular freedom of a particular person has any ethical importance at all, but also whether the relevance of that freedom meets the threshold condition of having sufficient social importance to be included as a part of the human rights of that person, and correspondingly to generate obligations for others to see how they can help the person to realize those freedoms, a subject that will be more fully discussed presently.\textsuperscript{1176}

Unlike other significant freedoms, the correlate obligations that are generated by a right make human rights unique. Not all the freedoms to which individuals attach some degree of importance and which in some way enhance the quality of life are freedoms that can be claimed as human rights. Sen explicates: “For a freedom to be included as part of a human right it clearly must be important enough to provide reasons for others to pay serious attention to it.”\textsuperscript{1177} What makes a particular freedom ‘important enough’ to be included within the spectrum of human rights is determined through public reasoning – a process of assessment and scrutiny that may provide us but only a partial and procedural answer,\textsuperscript{1178} which in the Sen system is not an embarrassment at all. “How the threshold of relevance should be determined, and on whether a particular freedom crosses that threshold or not” remain debatable, but an interactive process of a transparent valuational scrutiny can establish the viability of some important freedoms to be considered as human rights.\textsuperscript{1179}

Conclusion

Sen’s characterization of human rights in the space of freedom is capacious enough to encompass other dominant currencies of human rights, such as human dignity, human agency, etc. He propounds a multifarious notion of freedom as the basis of the idea of human rights. In the hiatus between moral and legal approaches, he reiterates the moral gravitas of human rights that better serves the global appeal of the idea of human rights. The ethical underpinnings of human rights provide us a broad moral landscape that entails multifarious ideas of human rights.

The dominant approaches to human rights are limited because of their minimalism. For instance, the minimalist approach of Ignatieff attempts the “protection of human agency”, by which he means “more or less what Isaiah Berlin meant by ‘negative liberty’”;\(^{1180}\) or Pogge’s institutional approach to human rights – an institutional account of rights focusing on negative rights, which advocates a minimally just institutional order.\(^{1181}\)

Sen developed a framework that pays attention to “the significance of freedoms incorporated in the formulation of human rights” that “provides a foundational reason not only for affirming our own rights and liberties but also for taking an interest in the freedoms and rights of others”.\(^{1182}\) For him, human rights (like freedoms) are both means and ends that guarantee a basic decent life for all. He does this in the framework of a non-welfarist consequentialist ‘goal rights system’, in which the fulfilment of rights is included among the goals and is a criterion for the evaluation of the states of affairs.

---

2. Universality and Viability of Human Rights

Social contract theory enjoys an esteemed position in current mainstream political philosophy, which finds its antecedents in the writings of Thomas Hobbes, who envisages human life as ‘nasty, brutish and short’ and doomed to ‘the disturbing adversity of being ‘solitary’.1183 Hobbes’ *Leviathan* thus depicts human nature as fundamentally selfish and uncooperative. Sen, however, has a ‘convivial’ understanding of human beings; they are not like wolves attacking each other, who must be tamed with power *from without*. His human beings are reasonable and cooperative persons, who are capable of acting responsibly. The Sen system of ethics works within a social choice theoretical framework that is founded on a dialogical democratic method, which he calls an “open and informed scrutiny”.1184 This methodology draws on the political nature of human beings, thus affirming the basic human ability to understand and arguing, in the line of Rawls’ assumption, that people do have the ‘moral power’ to undertake ethical and political reasoning. This social nature opens a door for ‘public reasoning’, which is the litmus test of any ethical claim in Sen’s system.1185 He clarifies: “Because of these basic human abilities – to understand, to sympathize, to argue – people need not be inescapably doomed to isolated lives without communication and collaboration.”1186

In Sen’s capability approach, the justification of any ethical claim is founded on this cooperative nature of human beings as political beings. He emphasizes: “In the most general form, the notion of human rights builds on our shared humanity. These rights are not derived from citizenship in any country, or membership in any nation. They are taken as entitlements of every human being.”1187 This reveals the pre-political and universal nature of human rights, which are a normative project of global discourse founded on human reason. A corollary of admitting incompleteness in the evaluations about the idea of justice is the admissibility of distant voices.

1185 Cf. Sen (2012): “A reply to Robeyns, Peter and Davis”.
in the assessment of justice, which in turn enriches the process of public reasoning. It is also a device to overcome parochialism and biases.

2.1. Universality Based on Our Shared Humanity

However, there are hypotheses that claim “uncrossable barriers between the values of different cultures”, which feed on inevitable “clashes of civilizations”\textsuperscript{1188} Two major factions can be identified among the people who believe in the putative clash of civilizations: the champions of Western uniqueness and the defenders of non-Western particularism.

There are claims of magnificent uniqueness, and often of the superiority, of Western culture, as if it has always been modern and liberal. Such presumptions are underlined by the hypothesis of Huntington, claiming that the “West was West long before it was modern” and that “a sense of individualism and a tradition of individual rights and liberties” are “unique among civilized societies”.\textsuperscript{1189} In a similar vein, Gertrude Himmelfarb argues that ideas of “justice, right, reason and love of humanity are predominantly, perhaps even uniquely, Western values”.\textsuperscript{1190}

The other faction is represented by champions of regional ethics, for instance, the claim of particularism of ‘Asian values’, who really jeopardize the ‘universal’ human rights. Sen explicates: “The disputation of the reach of human rights has often come from such cultural critiques; perhaps the most prominent of these is based on the idea of the alleged skepticism of Asian values toward human rights. Human rights, to justify that name, demand universality, but there are no such universal values, the critics claim. I shall call this the cultural critique.”\textsuperscript{1191} It is thus assumed that Asian values do not regard freedom to be important; ‘authoritarianism’ was proclaimed as the special characteristic of Asian values as presumed by the ‘Lee hypothesis’, which takes its name from the former ruler of Singapore. This line of argument underlines the need to resist the foreign ‘Western’ values and be faithful to the own system of philosophical and political pri-

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{1188} Cf. Sen (2005): “Human Rights and Capabilities”, 161–162.
\item \textsuperscript{1189} Cf. Huntington (2002): \textit{The Clash of Civilizations}, 69, 71.
\item \textsuperscript{1191} Sen (1999): \textit{Development as Freedom}, 228.
\end{itemize}
\end{footnotesize}
Western propaganda that democracy, freedoms and human rights are exclusively Western corroborates the anti-Western posture of the particularists, who project some unique identity and philosophy of life. The claim that the idea of human rights is uniquely Western reiterates the non-Western scepticism of the ‘Western hegemony’ of any human rights programme. For instance, Dallmayr argues that “[t]he advocates of human rights are typically citizens and the emissaries of the West […] buttressed on global hegemony”. He, therefore, finds it important to distinguish between “message and messenger”. Sen rightly observes: “The championing of Asian values is often associated with the need to resist Western hegemony. The linkage of the two issues, which has increasingly occurred in recent years, uses the political force of anticolonialism to buttress the assault on civil and political rights in post-colonial Asia.” Anticolonialism rhetoric has thus endangered the project of universal human rights.

Sen’s strategy is to prove that values like human rights are trans-cultural ‘universal’ values, dismantling the two strands of arguments – the myths of Western uniqueness and Asian particularism as well. He overcomes the alleged inevitable gulf between the cultures, exposing that the ideas of freedoms and the opposite co-existed in all the cultures.

Firstly, Sen elucidates that the historical antecedents of the ideas of fundamental freedoms and human rights are not the exclusive possession of any culture or religion. The noble ideals of respect for human dignity and pluralism, ideas of human freedom, the relevance of tolerance, the concern for the less-privileged etc. were present ‘universally’ in all cultures and societies, without being regionally constrained. He identifies: “Contrary to cultural stereotypes, the histories of different countries in the world have shown considerable variations over time as well as between different groups within the same country.”\(^{1195}\) In order to counter the mistake of monolithic interpretation of cultures and the reductive reading of history, he explores the non-Western sources and traditions that respected human freedoms and rights, many of which appear mostly prior to the West’s much celebrated ‘Age of Enlightenment’.

Indian emperor Ashoka, for instance, championed religious and other kinds of tolerance in the third century B.C., which is “certainly among the earliest political defences of tolerance anywhere”, thus supporting tolerance, pluralism and minority rights.\(^{1196}\) This legacy of tolerance and secularism was subsequently inherited by the later Muslim Moghul emperor Akbar, who ruled between 1556 and 1605 and was one of the “powerful expositors and practitioners of tolerance of diversity in India”.\(^{1197}\) Akbar issued various enactments at this juncture of history, some of which focused on religious tolerance.\(^{1198}\) In the light of the hard sell of ‘Western liberalism’, Sen observes that, “while Akbar was making these pronouncements, the Inquisitions were in full bloom in Europe”.\(^{1199}\) He also explores the writings of Kautilya, a contemporary of Aristotle, especially *Arthashastra*, which is a detailed account of economics and politics that underlines the idea of freedom.\(^{1200}\)

---

1198 For instance: “No man should be interfered with on account of religion, and anyone [is] to be allowed to go over to a religion he pleased. If a Hindu, when a child or otherwise, had been made a Muslim against his will, he is to be allowed, if he pleased, to go back to the religion of his fathers.” Sen (1999): *Development as Freedom*, 238.
In the context of the general scepticism that the Islamic civilization is fundamentally intolerant and hostile to individual freedom, Sen investigates the Islamic traditions as well. He argues that “the Turkish emperors were often more tolerant than their European contemporaries”, considering how they protected Jewish scholars who fled from intolerant Europe. Arabic traditions also manifest such value equivalents. Elements of respect for freedom are also found in African cultures. Sen quotes from the autobiography of Nelson Mandela, *Long Walk to Freedom*, to depict how impressed and influenced Mandela was, as a young boy, by seeing the democratic nature of the proceedings of the local meetings that were held in the regent’s house in Mqhekezweni. Mandela thus assimilated the essence of democracy “from his general ideas about political and social equality, which had global roots, and from his observations of the practice of participatory public discussion that he found in his local town.”

Sen concludes: “The valuing of freedom is not confined to one culture only, and the Western traditions are not the only ones that prepare us for a freedom-based approach to social understanding.” It amounts to ‘insult’ when the credit of some liberal thoughts in other cultures is patented by some Westerners. He goes on: “Describing Iranian dissidents as ‘ambassadors of European thought’ is to add insult to injury because there is also a history in Iran of democracy going back to the third century BC. And to be told that no, no, no, you are actually implants of John Stuart Mill, misdescribes the nature of Iranian dissidence.”

Sen underlines the folly of Western chauvinism: “The world is invited to join the club of ‘Western democracy’ and to admire and endorse tradi-

---

1202 Sen outlines: “Everyone who wanted to speak did so. It was democracy in its purest form. There may have been a hierarchy of importance among the speakers, but everyone was heard, chief and subject, warrior and medicine man, shopkeeper and farmer, landowner and labourer […]. The foundation of self-government was that all men were free to voice their opinions and equal in their value as citizens.” Sen (2009): *The Idea of Justice*, 332.

280
There is an urgent need to acknowledge the presence of internal diversities within cultures beyond reductionist interpretation.

The recognition of diversity within different cultures is extremely important in the contemporary world. Our understanding of the presence of diversity tends to be somewhat undermined by constant bombardment with oversimplified generalizations about “Western civilization”, “Asian values”, “African cultures” and so on. Many of these readings of history and civilization are not only intellectually shallow, they also add to the divisiveness of the world in which we live.1207

This validates the need to accept the internal heterogeneity of each culture, which Sen calls “regional diversity”.1208 He refers to the polysemy of culture: “Asia is where about 60 percent of the total world population live. What can we take to be the values of so vast a region, with such diversity? There are no quintessential values that apply to this immensely large and heterogeneous population, none that separate them out as a group from people in the rest of the world.”1209 He debunked the idea of a monolithic Asian culture that is presumed to be ‘authoritarian’, thus being opposed to basic human freedoms and rights. He challenges such cultural stereotyping: “The presence of conscious theorizing about tolerance and freedom” was present in substantial and important parts of the Asian traditions, in early Chinese, Indian, Arabic and other cultures. The notions of rights and freedoms are not present in the modern sense, but there “are the constituent components of this compound idea”.1210 Sen thus rescues the universal notion of freedoms and human rights from the hands of both Asian authoritarians and Western chauvinists.

Secondly, Sen challenges the flawed logic of “extrapolating backward” the Western values, which actually has only a relatively recent origin through European Enlightenment. The notion of universal human rights is of very recent origin. He observes: “There is a substantial tendency to extrapolate backward from the present. Values that European Enlightenment and other relatively recent developments have made common and

C. SEN’S HUMAN RIGHTS DISCOURSE

widespread cannot really be seen as part of the long-run Western heritage experienced in the West over millennia.”

Without denying the important role of the Enlightenment as a decisive shift in the history of the evolution of human values, it is equally important to acknowledge that many practices against human rights existed in the West, for instance, slavery, sexism, racism and fascism, etc. Even the Universal Declaration of Human Rights itself was an immediate response to the severe and systematic violation of human rights against the backdrop of the Holocaust – and not the culmination of an Enlightenment project of freedom and justice. Ignatieff puts it in a nutshell: “Calling the global diffusion of Western human rights a sign of moral progress may seem Eurocentric, yet the human rights instruments created after 1945 were not a triumphant expression of European imperial self-confidence but a war-weary generation’s reflection on European nihilism and its consequences.”

Moreover, Sen notes the double standard of the West, which is proud of its legacy of freedom and human rights but was not very interested in the freedoms of the people in Asia or elsewhere. The denial of freedoms to other countries through colonialism is not a bye-gone phenomenon in the context of different manifestations of conquests, especially in the Middle East. “We have to take note also of the dialectical encounters of the Middle East with its own imperial past and the subjugation that followed from the dominance of an imperial West – a dominance that still has many remaining influences.”

Sen’s strategy is not to find fault with any culture but to make it clear that both champions and detractors of the idea of freedom are to be found universally. “Freedom has had its supporters as well as detractors in classical Western writings (contrast, for example, Aristotle with Augustine), and it has received similarly mixed support in non-Western writings as well”. It may be possible to make statistical comparisons of the relative frequency of the occurrence of freedom in various parts of the world, but there is little hope of capturing the ideological distinction between being

‘for’ or ‘against’ freedom in some large geographical dichotomy.\textsuperscript{1216} Sen thus guards against geographical or temporal categorizations.

It is true that many contemporary ‘categorizers’ see belief in individual liberty as a significant classificatory device separating the ‘West’ from the ‘East’. Indeed, the advocacy of that line of classification has come from both the jealous guardians of the uniqueness of ‘Western culture’ and from resonant Eastern champions of what are called ‘Asian values’, allegedly giving priority to discipline over liberty. There is, however, very little empirical basis for dividing the history of ideas in this way.\textsuperscript{1217}

Sen, therefore, convincingly argues that the provenance of modern ideas of respect for human rights and freedoms “can be sought in terms of constitutive elements, rather than as a whole”.\textsuperscript{1218} There were supporters and suppressors in all cultures. This corroborates his general principle of rejecting “all-or-nothing terms”.\textsuperscript{1219} He reiterates:

The presence of these components must not be confused with the absence of the opposite, that is, with the presence of ideas and doctrines that clearly do not emphasize freedom and tolerance. The championing of order and discipline can be found in Western classics as well. Indeed, it is by no means clear to me that Confucius is more authoritarian than, say, Plato or Augustine. The real issue is not whether these non-freedom perspectives are present in Asian traditions, but whether the freedom-oriented perspectives are absent from them.\textsuperscript{1220}

Even Akbar and Kautilya were not modern democrats or proponents of the modern idea of human rights in the modern sense, manifesting limitations in their conceptualization freedom, as it is true of Aristotle and Plato. “Tolerance and equality at one level are combined with intolerance and inequality at another level, but the extent of general tolerance on matters of belief and practice is quite remarkable.”\textsuperscript{1221}

In contrast to the prevalent wooden classification of cultures, mostly based on the particularism of culture and religion, Sen proves that in spite

\begin{thebibliography}{9}
\bibitem{1217} Sen (2009): The Idea of Justice, 228.
\end{thebibliography}
of widespread pluralities there are many factors that make us united because of “our shared humanity”.\textsuperscript{1222} His persuasive argument that respect for basic freedoms is a ‘trans-cultural value’ renders human rights discourse a cross-cultural foundation.\textsuperscript{1223} He provides numerous examples of exchanges and mutual enhancement between cultures in various fields of life,\textsuperscript{1224} and this possibility of mutual exchange is the foundation of universal human rights: “The barriers of nationality and citizenship do not preclude people from taking legitimate interest in the rights of others and even from assuming some duties related to them. The moral and political examination that is central to determining how one should act applies across national boundaries, and not merely within them.”\textsuperscript{1225} This is a cosmopolitan vision of a world that is not “broken up into fragments by narrow domestic walls”.\textsuperscript{1226} Thus, it stands in sharp opposition to social contract theory, which is fundamentally domestic and parochial in its approach.

Sen’s global perspective is clearly distinguished from an international perspective; he argues that a global point of view is indispensable for the vindication of universal human rights. “An international approach is inescapably parasitic on the relation between nations, since it works through the intermediary of distinct countries and nations. In contrast, a truly global approach need not see human beings only as (or even primarily as) citizens of particular countries, nor accept that the interactions between citizens of different countries must be inevitably intermediated through the relations between distinct nations.”\textsuperscript{1227} Since the causes and reach of many problems are of global nature, it is imperative that the fight against them demands universal solidarity and commitments.

Prioritizing identity over reason militates against the possibility of any cross-cultural dialogue, as Sen argued in his \textit{Identity and Violence}. The mistaken belief that identity is a destiny causes people to fall into sectarianism. As cultures are non-homogenous, our multiple identities that cut

\begin{itemize}
  \item \textsuperscript{1227} Sen (2000): “Work and Rights”, 127.
\end{itemize}

284
across cultures make it possible to agree upon many fundamental things in our life. It challenges the myth of impenetrable civilizational islands and defends the idea of universal human rights against relativist and culture-based critique. Sen’s agenda is thus against any kind of cultural relativism that produces a relativist ethics.

2.2. Viability Based on Survivability in Reasoned Discussion

In opposition to an exaggerated universalism-particularism hiatus, Sen explores resources for transcultural justifications of the universal idea of human rights buttressed on the ethical notion of freedoms and capabilities, without eschewing legitimate diversity among various cultures. This is based on “a belief in the ability of different people from different cultures to share many common values and to agree on some common commitments”.\textsuperscript{1228} Sen posits that there is a shared faculty in our shared humanity to agree upon some general universal principles. “And there are some strong intellectual arguments for universalism. Just as Chomsky claims that our ability to use certain forms of syntax and language are present in all human beings, similarly there are a number of capacities to think on your own, if you try, that exist among different people.”\textsuperscript{1229} For Sen, the viability of human rights is justified in a social choice framework.\textsuperscript{1230} In this framework, ‘public reasoning’ is the test of the viability of human rights, where dismissal or defence of human rights is done through the procedure of open and informed scrutiny:

Like the assessment of other ethical claims, there must be some test of open and informed scrutiny, and it is to such a scrutiny that we have to look in order to proceed to a disavowal or an affirmation. The status that these ethical claims have must be ultimately dependent on their survivability in unobstructed discussion. In this sense, the viability of human rights is linked with what

\textsuperscript{1228} Sen (1999): Development as Freedom, 244.
\textsuperscript{1229} Bardhan (2006): “The Arguing Indian”.
\textsuperscript{1230} The social choice theoretical framework is the motor of Sen’s philosophy, which has its antecedents in the writings of French mathematicians, especially Marquis de Condorcet, which was later revived and reformulated by Kenneth Arrow. It is Sen who made use of this mathematical framework in an analytical way to elucidate demands of justice in political and moral reasoning. Sen, Amartya (2012): “Values and Justice”, Journal of Economic Methodology, 19(2), 102.
John Rawls has called ‘public reasoning’ and its role in ‘ethical objectivity’.

Pronouncements of human rights require that “the underlying ethical claims will survive open and informed scrutiny”. This methodology is called the general exercise of ‘open impartiality’, which foresees unobstructed discussion and scrutiny, along with adequately wide informational availability. “Uncurbed critical scrutiny is essential for dismissal as well as for justification.” As already substantiated in the previous section, pluralism belongs to the very nature of a social choice framework.

Reasonable people, under any device of ensuring fairness, may continue to disagree – and plausibly disagree – on the nature and the exact demands of the perfectly just society. And yet this will not preclude an agreement that major improvements can be made in reducing injustice through eliminating remediable outrages, such as needless hunger and starvation, removable illiteracy, correctable insecurity, or the prevalence of torture.

Sen reiterates: “Viability in impartial reasoning is seen, in this approach, as central to the vindication of human rights, even if such reasoning leaves considerable areas of ambiguity and dissonance.” The ethical affirmation of human rights need not deliver “a complete blueprint for evaluative assessment”. The selection of human rights in this perspective is an ongoing process of public reasoning and scrutiny, rather than finalizing some finished list of human rights. Sen’s general approach to justice is a ‘procedural’ route, and the same is true particularly in the case of human rights, where he hesitates to take a dogmatic approach.

Sen’s capability approach is basically against “insisting on one pre-determined canonical list of capabilities, chosen by theorists without any

1238 This does not mean that Sen is silent about the substance. Section C.III.1.2 actually dealt with the substance of human rights, and this section is about procedural aspect of it. In the Sen system, both procedures and substance are equally valuable. Cf. Sen, Amartya (2015): “The Idea of Justice: A Response”, Philosophy and Social Criticism, 41(1), 84.
general social discussion or public reasoning”. His protest is not exactly against the usefulness of lists but “against the fixing of a cemented list of capabilities which is absolutely complete (nothing could be added to it) and totally fixed (it could not respond to public reasoning and to the formation of social values)”. “But pure theory cannot ‘freeze’ a list of capabilities for all societies for all time to come, irrespective of what the citizens come to understand and value.”. There is also the problem of determining the relative weights and importance of the different capabilities included in the relevant list, beyond the temptation to use the elements of the list ordered in a lexicographic way; selection and prioritization remain a social choice function. He thus leaves room for further discussions, disputations and arguments through public discussion.

Nevertheless, Sen’s framework is not consensus-seeking in the sense that it works out ‘reconciliation’; rather it acknowledges “the domain of continued dispute” in human rights discourse. This continuum of human rights discourse makes it different from the consensus-based approach of Maritain or the overlapping consensus of Rawls or international consensus on human rights of Charles Taylor. In the Sen system of political philosophy, human rights are not justified on any foundational reason but with plural justifications, making it possible to encompass pluralist foundations. The viability of human rights is thus buttressed on an ongoing interactive process of public discussion that is committed to upholding universal standards of justice and universally valid human rights.

Two prevalent ‘consensus seeking’ approaches to ethics – the overlapping consensus of Rawls and the discourse ethics of Habermas – are simi-

1240 Sen (2004): “Capabilities, Lists and Public Reason: Continuing the Conversation”, 78. Sen argues: “To insist on a ‘fixed forever’ list of capabilities would deny the possibility of progress in social understanding, and also go against the productive role of public discussion, social agitation, and open debates. I have nothing against the listing of capabilities (and take part in that activity often enough), but I have to stand up against any proposal of a grand mausoleum to one fixed and final list of capabilities.” Ibid., 80.
lar. Sen identifies “an essential similarity in their respective approaches to objectivity”, in their “ability to survive challenges from informed scrutiny coming from diverse quarters”, thus emphasizing the role of ‘reasoned scrutiny’ in an objective ethical evaluation.\(^{1245}\) He seeks a complementarity among various theories and approaches instead of reducing them all to a grand theory, and such an approach to justice does not require investigating the ontological objectivity of ethics.\(^{1246}\) Sen’s system of ethical evaluation also emphasizes the inescapable need of an open and informed intellectual scrutiny and public reasoning within the social choice framework. Despite its formal and mathematical associations, the social choice theory has resources for the “championing of public reason” and public discussion.\(^ {1247}\) He thus founds his idea of justice on the notion of deliberating human beings: “The role of unrestricted public reasoning is quite central to democratic politics in general and to the pursuit of social justice in particular.”\(^ {1248}\)

The test of public discussion is important for Sen’s human rights discourse. The approach of open public reasoning can settle disputes about some of the clearly sustainable rights and may leave some others unsettled. “The admissibility of a domain of continued dispute is no embarrassment to a theory of human rights.”\(^{1249}\) Sen underscores “the possibility of such debates – without losing the basic recognition of the importance of human rights”, as in his idea of justice.\(^ {1250}\) An immediate agreement is possible with regard to certain human rights while some others may still be disputed. The purpose of the public discussion is not arriving at a “complete unanimity in what everyone in the world actually wants”; “what sustainability of a judgement demands is a general appreciation of the reach of reasoning in favour of those rights, if and when others try to scrutinize the claims on an impartial basis”.\(^ {1251}\) He affirms: “A theory of human rights can, therefore, allow considerable internal variations, without losing the commonality of the agreed principle of attaching substantial importance to human rights (and to corresponding freedoms and obliga-

---

tions) and of being committed to considering seriously how that importance should be appropriately reflected.”

Sen, therefore, argues that “the ethics of human rights is not nullified or thwarted by internal variations that it allows and incorporates”. He thus sees pluralism not as an embarrassment but as an enrichment.

As explained in the earlier section, given the pluralism of philosophies and cultures, it is not possible to reach a consensus on the ‘transcendental’ ideal. Further, the matter of weighting and setting priorities is an urgent matter of public discussion and debate, which is contingent on the context and interrelatedness of various factors. Determining the relative importance of various capabilities (human rights) certainly requires a political evaluation. Sen adds that in order to undertake meaningful social discussion “we have to free ourselves from the straitjacket of ‘given’ weights that obliterates the possibility of such discussions and processes”.

Sen’s sensitivity to context and responsible pluralism is expressed in his endorsement of ‘positional objectivity’ in opposition to a ‘transpositional objectivity’ “A capacious ethics” must take into account the relevance in positional features; in this respect human rights discourse is also supposed to make an agent-relative and position-relative assessment of the notion of obligation. The real challenge ahead is to seek the possibility of a ‘positionally-unbiased’ approach. This calls for a balancing of posi-

1254 Cf. Sen (2005): “Human Rights and Capabilities”, 151–166. Sen states: “My own reluctance to join the search for such a canonical list arises partly from my difficulty in seeing how the exact lists and weights would be chosen without appropriate specification of the context of their use (which could vary), but also from a disinclination to accept any substantive diminution of the domain of public reasoning. The framework of capabilities helps, in my judgement, to clarify and illuminate the subject matter of public reasoning.” Sen (2005): “Human Rights and Capabilities”, 157.
1259 More in section C.III.4.2.2.
tional closeness and positional-independence to engender some kind of universality; Sen calls it a “transpositional understanding” of human rights.

When Mary Wollstonecraft pilloried Edmund Burke for his support of the American Revolution without taking any interest in the status of the slaves, as if the freedom that he supported for white American people need not apply to its black slaves […] Wollstonecraft was arguing for a universalist perspective that would overcome positional prejudice and sectional favouritism. The point there is not positional comprehension, but some kind of a transpositional understanding.¹²⁶⁰

In this framework, there is thus a scope to affirm both the local and the universal, which yields a simultaneous affirmation of the universal and the particular. Kant and Rawls presuppose an ideal world where a set of moral principles are reached as categorical imperatives or discussed in ‘original position’. The assumption is that individuals, as rational beings, would select principles of justice behind a veil of ignorance if stripped off their cultural and political heritage. The idealistic conceptions of ‘original position’ and ‘veil of ignorance’ or ‘view from nowhere’, which consider human beings completely detached from all empirical constraints, do not, however, have a provision to consider a society or individual in their contextuality.

The possible cultural and regional prejudices and ill-practices, which are legitimated in the name of culture, cannot be neglected. The way to transcend such limitations is taking information from other corners of the world – a ‘foreign’ point of view. No culture is sacrosanct spared from criticism and improvement. Invoking Adam Smith’s methodological device of the impartial spectator that seeks “perspectives from far as well as near”, Sen opens up pathways “beyond the positionality of local observations within societies with entrenched discrimination”.¹²⁶¹ He elucidates this corrective dimension: “A procedural requirement to consider nonlocal

¹²⁶¹ Sen (2009): The Idea of Justice, 162. The device of ‘impartial spectator’ has, according to Sen, two relative merits compared to the Rawlsian theory of justice as fairness. The first is the comparative framework. Instead of contractarian preoccupation with identifying the demands of transcendence (done in the original position), the Smithian ‘impartial spectator’ attempts to contrast alternatives to throw light on specific issues of advancement or retardation of justice in a comparative approach. The second is a global perspective. In the Smithian system, “the impartial observers may be imagined as coming from far as well as near”,

https://doi.org/10.5771/9783845284491

Generiert durch IP '54.70.40.11', am 21.12.2018, 03:15:34.
Das Erstellen und Weitergeben von Kopien dieses PDFs ist nicht zulässig.
perspectives can help to avoid undue dominance of local interest as well as possible parochialism of local reasoning shaped by the influence of established conventions and limited informational frameworks (without these being intellectually challenged).”  

Considering distant voices has thus “an important place for their enlightenment relevance”.  

It functions on the principle of mutual enrichment, especially the possibility of learning good lessons from other corners of the world. “The need for open scrutiny, with unrestrained access to information (including that about practices elsewhere in the world and the experiences there), is particularly great because of these connections.”  

Sen emphasizes the need of getting out of the comfort zone of one’s own world: “Central to the Smithian approach is our willingness to see critically what we observe around us. The sense of comfort that is often associated with being content with the world as it is, can seriously hamper the pursuit of justice.”  

International monitoring of human rights violations and the procedure of “naming and shaming” make sense in this perspective, and Sen considers this as a wider manifestation of public reasoning.  

Sen’s advocacy of a “scrutiny from a distance” is diametrically opposed to Rawls’ social contract approach that limits public discussions about the demands of justice within the boundaries of each ‘particular nation’ or ‘regional collectivity’.  

Drawing a distinction between ‘closed’ and ‘open’ impartiality, Sen endorses an open impartiality, which takes the full range of positional perspectives from all corners but does not neces-

sarily subscribe to them. A closed impartiality entails the danger of the undue exclusion of relevant positions; hence, it is gravely unfitting to address the problems arising from collective prejudices and biases, which are often culturally legitimated.

In order to be universally inclusive for “everyone be seen as morally and politically relevant”, “a broader and capacious framework that can take everyone into account” is required in opposition to a domestic framework of contractarian theorists. “The universality of inclusion” is hence an integral part of the demands of a global justice. It is not a “view from nowhere”, as advocated by Thomas Nagel, wherein the notion of justice is derived through a process of abstraction from individual differences, after the model of the Rawlsian method; it is actually a matter of taking seriously ‘views from everywhere’.

Conclusion

Both ‘cultural relativism’ and ‘Western chauvinism’ are two sides of the same coin; they underpin the theories of the incommensurability of warring cultures and putative civilizational ruptures. Sen persuasively challenged both streams of the argument and established the universality of human rights based on our shared humanity. Beyond the parochialism of social contract theories, he proves that our multiple identities, such as nationality, culture, religion, various group identities, etc., bring out many intersecting commonalities that can be the basis of shared values like human rights. The viability of human rights rests ultimately on the test of a claim’s ‘survivability’ in a reasoned dialogue, a process that must cut across geographical and cultural boundaries. Such a discursive process must foresee also differing ideas and competing loyalties. Sen has overwhelming optimism in the power of public reasoning that simultaneously defends both the particular and the universal. He thus envisions an inter-

active process of viability and interactive methods of promotion in the framework of an interactive philosophy of capability approach.

3. Obligations

Human rights are inherently linked to the notion of obligation. Though Sen conceptualizes human rights in the space of freedoms, there is a crucial difference between freedoms as capabilities and freedoms as human rights. Unlike all kinds of freedoms that are relevant for human development, human rights incorporate some correlate obligations. All relevant freedoms are “laudable goals” that can be encouraged by anyone; nevertheless, what endows some specific freedoms the status of a human right is the claim on other people or institutions that generate specific duties, constraint or action. Sen states: “An agreement on human rights does involve a firm commitment […] to give reasonable consideration to the duties that follow from that ethical endorsement.” The characterization of the nature and content of obligations remains nevertheless a matter of contention in the human rights discourse. This part of the book studies Sen’s understanding and justification of the idea of obligation.

3.1. Scepticism about the Obligations Arising from Welfare Rights

Sen establishes the correlation between rights and duty: “If person A has a right to some x, then there has to be some agency, say B, that has a duty to provide A with x. If no such duty is recognized, then the alleged rights, in this view, cannot but be hollow.” There is a general consensus about the viability of negative obligations. In the cases of ‘new’ rights, like the right to food or to medicine, it is not easy to find an agency that can be called as the specific duty-bearer; yet such difficulty challenges the existence of those rights. Sen states: “Human rights, in this understanding, are heart-warming sentiments, but they are also, strictly speaking, incoherent.

Thus viewed, these claims are best seen not so much as rights, but as lumps in the throat. I shall call this the coherence critique.”

For those who insist on a close linkage between rights and obligations – an exact specification of “responsible agents and their duties to bring about the fulfilment of these rights” – many of the right claims would seem to be just ‘rhetoric of human rights’ or ‘loose talk’ which does not have much intellectual strength. What is actually disputed in human rights discourse is not the existence of obligation per se but the nature and extent of those obligations. A legal approach stumbles at the lack of ‘specificity’ in moral claims, due to its rigid correlation of rights and obligation. Sen rightly diagnoses that “the perceived problem arises from an implicit attempt to see the use of rights in political or moral discourse through a close analogy with rights in a legal system, with its demand for specification of correlated duties”.

Champions of deontology and libertarianism are concerned only with constraints on behaviour that make room only for negative obligations, consequently excluding a vast area of positive obligations. Another influential framework is the institutional approach of Pogge, which also situates the problem in the space of negative duty. He argues that “affluent states are violating this negative duty when we, in collaboration with the ruling cliques of many poor countries, coercively exclude the global poor from a proportional resource share and any equivalent substitute”.

Here, the focus is again on our negative duty not to violate the human rights of other peoples, which in effect excludes positive obligations. “The question of our moral duty to the global poor, then, may ultimately be more about the ways in which we are obligated to refrain from acting.”

Another candidate is the virtue ethics represented by Onora O’Neill. Her approach to human rights commendably makes space for imperfect obligations, but without any counterparty human rights, as she thinks that they lack ‘specificity’. In her Kantian structure, perfect obligations gener-
ate corresponding counterparty rights, whereas imperfect obligations lack the specificity to do so, and hence they generate only duties of beneficence, thus locating them in the sphere of virtue rather than justice. Perfect obligations are a matter of justice, imperfect obligations of virtue, as the very title of her book underlines. Imperfect obligations have only, according to O’Neill, “subordinate status in an ethical system in which the concept of rights is fundamental”. Therefore she argues that the primary emphasis must be on obligations rather than on rights, because not all obligations are correlated by counterpart rights. There cannot be genuine human rights unless they produce ‘perfect obligations’; hence, in her framework, the existence and viability of ‘putative’ welfare rights are nullified.

Sen fundamentally has an ethical approach to human rights; thus, the moral domain of imperfect obligations and the correlative ‘rights’ are to be urgently substantiated.

3.2. Sen’s Formulation of Perfect and Imperfect Obligations

Sen’s human rights discourse hinges on the idea that human rights are relevant freedoms, which generate correlative obligations on others to contribute to the effective realization of those claims. He builds upon the Kantian distinction between perfect and imperfect obligations, where the former entails prespecified exact duties of particular agents and the latter more general duties of those who can help. As the cases of perfect obligations are not generally disputed, I focus on Sen’s characterization of the idea of ‘imperfect obligations’.

Sen emphasizes the centrality of the binary correlation between rights and obligations in the human rights discourse. “The question that remains is whether it is adequate for this binary relation to allow imperfect obligations to correspond to human rights without demanding an exact specification of who will have to do what, as in the case of legal rights and specified perfect obligations.”

Along with the legal domain of perfect obligations, it is essential to make room for the moral domain of imperfect

---


obligations. Though not legally supported as in the case of perfect obligations, neglecting imperfect obligations can involve very serious moral and political consequences.1285 With the legal route one is tempted to seek an exact correlation between rights and duty holders. Yet it is urgent to get out of this rigid legal structure to make room for many important social and political matters. Many rights are not addressed to a particular duty bearer, which is the case of Kant’s imperfect obligations; rather they make a claim on anyone who can help.1286

Such an affirmation of normative significance is essential for social justice in fighting against social evils. Fighting for equal rights of women, for instance, cannot merely be realized through legalizations; it requires social, legal and institutional reforms: “The duties correlated with this right cannot easily be allocated to particular duty bearers because the task of reforming these unjust practices falls on the group as a whole. Yet individuals surely have imperfect duties correlative to this right, and speaking of this right clearly expresses something of great normative importance.”1287

His normative approach acknowledges a general duty of all to help in fulfilling them: “While it is not the specific duty of any given individual to make sure that the person has her rights fulfilled, the claims can be generally addressed to all those who are in a position to help.”1288 Imperfect obligations thus make claims on our capability:

Human rights generate reasons for action for agents who are in a position to help in the promoting or safeguarding of the underlying freedoms. The induced obligations primarily involve the duty to give reasonable consideration to the reasons for action and their practical implications, taking into account the relevant parameters of the individual case. The reasons for action can support both “perfect” obligations as well as “imperfect” ones, which are less precisely characterized. Even though they differ in content, imperfect obligations are correlative with human rights in much the same way as perfect obligations are. In particular, the acceptance of imperfect obligations goes beyond volunteered charity or elective virtues.1289

Thus, in Sen’s system, an imperfect obligation is not simply a claim that generates sporadic acts of optional charity. He elucidates the notorious ‘Kitty Genovese case’ to make his point clear. A woman called Catherine

(Kitty) was assaulted and killed in the city of New York in full view of a crowd, which watched the crime taking place but failed to make any attempt to intervene or even to alarm the police. It will not be disputed that the assailant had a ‘perfect’ obligation not to violate Kitty’s right not to be assaulted or killed. Sen argues that at least some of the spectators had an ‘imperfect’ obligation “to provide reasonable help to a person facing assault and murder” either by intervening to protect her from the assault or at least by alerting the police about the crime.\textsuperscript{1290}

Sen explores the moral domain of ‘reasonable consideration and reasonable action’ (to stop a violation, even if one is not responsible for it). He realistically considers possible constraints in exercising our imperfect obligations, such as other conquering duties or one’s own limitations. It is not demanding martyrdom from others, nor about saving the whole world, but about seriously considering one’s possibility in contributing to the realization of others’ freedoms. He states that “if one is in a plausible position to do something effective in preventing the violation of such right, then one does have an obligation to consider doing just that.”\textsuperscript{1291} Possible contingencies do not make the relevance of ‘reasonable consideration’ – an assessment of priorities and possibilities – vacuous. Sen writes: “The basic general obligation is that one must be willing to consider seriously what one should reasonably do, taking note of the relevant parameters of the cases involved.”\textsuperscript{1292} He explains some parameters that would guide us to consider if one is in a position to help the realization of another person’s freedom: the importance of claimed freedom, one’s influenceability, one’s own circumstances and likely effectiveness.\textsuperscript{1293} Primarily it involves a “duty to give serious consideration to the reasons for action and their practical implications”;\textsuperscript{1294} it is not an imperative to act that ranks first. Sen explains: “The necessity to ask that question (rather than proceeding on the assumption that we owe nothing to others, unless we have actually harmed them) can be the beginning of a more comprehensive line of ethi-

\begin{footnotes}
\footnotetext{1294}{Sen (2007): “Children and Human Rights”, 7.}
\end{footnotes}
cal reasoning. The territory of human rights firmly belongs there.”

This ‘duty to consider’ will generate in very many cases ‘a duty to act’. He also emphasizes the possibility of acting together with others, thus pointing to the huge possibilities of concerted social movements.

In contrast to the traditional view that there is no right to which the imperfect duty is correlative, Sen makes a bold leap in the right category by introducing “the right to be helped” and the responsibility of others to consider this right seriously. The conventional view held that we do not owe anything to others on the basis of imperfect duties, and hence no injustice occurs by the failure of an imperfect duty. Sen convincingly argues that the neglect of imperfect obligations can involve grave injustice. He thus corrects the misconception that it is “none of one’s business”. “Loosely specified obligations must not be confused with no obligations at all.” He notes that Kant himself attached great importance to the category of ‘imperfect obligations’.

Sen states that a general impunity from general or imperfect obligation is hard to justify. He outlines: “The ambiguity of duties of this type whether in ethics or in law would be difficult to avoid if third-party obligations of others in general are given some room, and this cannot be avoided for an adequate theory of human rights.” He thus argues that human rights associated with imperfect obligations on one side and positive obligations of reasonable assistance and aid on the other side are coherent and viable. In Sen’s view, an “inflexible” characterisation can militate against the principles of “solidarity and fairness in social living” embodied in the Universal Declaration of Human Rights, which suggests that “people have some claims on others and on the design of social arrangements regardless of what laws happen to be enforced”. This builds up

---

on our human solidarity and cooperation in making the world a better place.

The demands of imperfect obligations are not exclusively confined to the ethical domain. Sen quotes the French provision for ‘criminal liability of omissions’ in the failure to provide reasonable help to others suffering from particular types of transgressions. The ambiguity of duties of this type – whether in ethics or in law – would be difficult to avoid if the third-party obligations of others, in general, are given some room.\textsuperscript{1302} Strikingly such offences are called ‘offences based on public duty’ and ‘commission by omission’.\textsuperscript{1303} Such cases, where omissions amount to commissions, reveal the urgent need to take our imperfect obligations and others’ ‘right to be helped’ seriously.

The broad moral landscape of the obligation to seriously consider the scope of reasonable actions, as elaborated by Sen, is vast and rich, but his treatment of the concept of ‘reasonableness’ requires more elaboration as it is not easy to differentiate between reasonable and unreasonable.\textsuperscript{1304} As social ethics works mostly outside the legal domain, open-endedness and ambiguity are no embarrassment in his system of social evaluation. There is sufficient space for indeterminacy and ambiguity, for not all correlative duties can be precisely specified ex ante.

The presumed precision of legal rights is often contrasted with inescapable ambiguities in the ethical claims of human rights. This contrast, however, is not in itself a great embarrassment for ethical claims, including those of imperfect obligations, since a framework of normative reasoning can sensibly

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{1302} Cf. Sen (2004): “Elements of a Theory of Human Rights”, 342; Sen (2009): The Idea of Justice, 375–376. French penal code § 63, 2 considers the deliberate failure to render help to a person in danger a criminal liability (‘non-assistance à personne en danger’). Cf. Ashworth, Andrew and Steiner, Eva (1990): “Criminal Omissions and Public Duties: The French Experience”, Legal Studies, 10(2), 153. It is enriching to note that the German penal code § 323c deals with the failure to provide assistance (‘Unterlassene Hilfeleistung’) as an offence. This provision of law demands that a citizen is obliged to provide help in case of accident or general danger. Too, awareness of this responsibility and knowledge of first aid is a prerequisite for getting the driving license. Polly Vizard argues that, though Sen has an emphatic focus on moral human rights, the possibility of legalizing the so-called imperfect obligations needs not be exceptional and minimal. Cf. Vizard, Polly (2010): “The Idea of Justice: Sen’s Treatment of Human Rights”, Journal of Human Development and Capabilities, 11(4), 615–621.
\item \textsuperscript{1303} Cf. Ashworth and Steiner (1990): “Criminal Omissions and Public Duties”, 153.
\end{enumerate}
\end{footnotesize}
allow variations that cannot be easily accommodated in fully specified legal requirements. As Aristotle remarked in the *Nicomachean Ethics*, we have “to look for precision in each class of things just so far as the nature of the subject admits.”\(^\text{1305}\)

That the obligation is imperfect, ambiguous and general does not make the content of the claim less relevant.

### 3.3. Obligation of Effective Power

Sen’s idea of imperfect obligation is essentially related to his normative notions of human agency and human solidarity that are founded on the idea of capability. Here, capability is understood as *power*, and power implies responsibility.

Freedom to choose gives us the opportunity to decide what we should do, but with that opportunity comes the responsibility for what we do – to the extent that they are chosen actions. Since a capability is the power to do something, the accountability that emanates from that ability – that power – is a part of the capability perspective, and this can make room for demands of duty – what can be broadly called deontological demands.\(^\text{1306}\)

It is already outlined that human agency can take up other-centred actions. “Capability is a kind of power, and it would be a mistake to see capability only as a concept of human advantage, not also as a central concept in human obligation.”\(^\text{1307}\) More than the minimalist deontological notion of obligation as constraint-based, Sen’s system follows a realization-based approach that is inclusive of our positive obligations. He calls this “the responsibility of effective power”, which everyone has to take seriously.\(^\text{1308}\) He articulates: “if someone has the power to make a change that he or she can see will reduce injustice in the world, then there is a strong social argument for doing just that […]. This obligation of effective power contrasts with the mutual obligation for cooperation, at the basic plane of motivational justification.”\(^\text{1309}\) Mainstream political philosophy is dominantly contractarian in nature, “in a directly Hobbesian or anonymously Rawlsian


form”, as Sen observes. The obligation of effective power is nevertheless not in resonance with social contract theory but stands in the tradition of political economy, which makes space also for ‘unilateral obligations’.

This can be seen as something of a general limitation on the reach of impartial thinking modelled within the specific approach of a ‘social contract’, since a contract of this kind, as Thomas Hobbes had noted, is basically a device for mutually gainful cooperation. Impartiality need not always take the form of being linked with mutually gainful cooperation, and can also accommodate unilateral obligations that we may acknowledge because of our power to achieve social results that we have reason to value (without necessarily benefiting from those results).

Sen draws on the wisdom of Buddha from Sutta-Nipata, which argues that human beings have a responsibility to animals precisely because of the asymmetry between human beings and other animals, not because of any symmetry that takes us to a contractarian solution for efficient cooperation. He argued that since we are enormously more powerful than the other species, we have some responsibility towards other species that links exactly with this asymmetry of power. Buddha illustrates this with an analogy of the responsibility of the mother towards her child. A mother’s willingness to help her child is not at all guided by “the rewards of cooperation, but precisely from her recognition that she can, asymmetrically, do things for the child that will make a huge difference to the child’s life and which the child itself cannot do. The mother does not have to seek any mutual benefit – real or imagined – nor seek any ‘as if’ contract to understand her obligation to the child.” The power to “make a huge difference to the child’s life” sets a moral obligation on us to make use of our effective power in our living contexts.

The seeking of mutual benefits, as in the case of social contract approach, “does have enormous social relevance, but it is not the only kind of argument that is relevant to discussing what would be reasonable behaviour”. Sen situates this idea of obligation in the great tradition of Tom Paine and Mary Wollstonecraft, who argued a case for a strong element of social reasoning, linked with the responsibility of effective pow-

er.\textsuperscript{1316} “Mutual benefit, based on symmetry and reciprocity, is not the only foundation for thinking about reasonable behaviour towards others. Having effective power and the obligations that can follow unidirectionally from it can also be an important basis for impartial reasoning, going well beyond the motivation of mutual benefits.”\textsuperscript{1317}

As in the case of imperfect obligations, Sen proposes two conditions in considering our obligation: feasibility and justice-enhancing conditions: “If some action that can be freely undertaken is open to a person (thereby making it feasible), and if the person assesses that the undertaking of that action will create a more just situation in the world (thereby making it justice-enhancing), then that is argument enough for the person to consider seriously what he or she should do in view of these recognitions.”\textsuperscript{1318} Again, it is not an imperative to act but “an argument for acknowledging the obligation to consider the case for action”.\textsuperscript{1319} This indeed appeals to the moral agency of human beings, who are not only self-interest maximizers but also agents who are capable of making ‘meta-rankings’, making room also for other-regarding concerns. Human beings are perceived as intelligent agents, who can reflect on “what we owe to each other”,\textsuperscript{1320} “allowing room for the pursuit of goals (whether or not self-interested) by other people who share the world with us”.\textsuperscript{1321} An obligation is often considered as a restraint on human freedom, but for Sen it is an expression of human freedom. The imperative to act comes not from the outside but \textit{from within} – a fruition of individual freedom in the sense of exercising one’s priorities and goals.

Conclusion

Sen’s theoretical framework substantially extended the range of imperfect obligations beyond the domain of mere benevolence and charity. His mission was “perfecting imperfect duties”,\textsuperscript{1322} to lend an expression of

\textsuperscript{1320} Scanlon, \textit{What We Owe to Each Other}.
Buchanan. The ‘negative’ rights, especially the foremost principle of abstaining from harming (*primum non nocere*), are really a significant element in human rights. It is, however, insufficient to respond to the broad demands of the realization of human rights to serve the actual human life. In Sen’s framework, three categories of obligations are equally important: to respect, to protect and to fulfil. The framework of goals incorporates non-interference, protection and fulfilment of rights. The constraint of not violating is no longer adequate in itself.\(^\text{1323}\) He notes: “Indeed, it is a commitment to *common fellowship and solidarity*, quite well expressed in Article 1 of the Universal Declaration that inspires the idea that all persons have duties both to refrain from harming others and to help them.”\(^\text{1324}\) There is an urgent need to affirm human solidarity in the face of growing human rights violations and widespread poverty and deprivation. Invoking the parable of the Good Samaritan, Sen advocates that we need to expand our notion of neighbourhood from ‘the proximate’ to the ‘global’, thus cutting across the familiar frontiers while taking into account “our pervasive neighbourhood in the world today”, where even “our shared frustrations and shared thoughts on global helplessness can unite rather than divide”.\(^\text{1325}\)

### 4. Human Rights as Social Goals

This book identified ‘liberty + welfare’ as the general pattern that runs through Sen’s whole philosophy. This ‘political’ achievement is actually the result of a bold ‘philosophical’ experiment that he attempted through the integration of two influential but seemingly irreconcilable philosophical traditions, namely deontology and consequentialism, in his concept of ‘goal rights systems’.\(^\text{1326}\) Consequentialism understands human rights only instrumentally. The intrinsic value being denied, human rights are consid-


ered only as *instruments* of good results, which are measured aggregately in terms of ‘utilities’. Attaching intrinsic value only to utility virtually neglects non-utility features like basic human freedoms and recognized human rights. In such a framework, neither the violations of rights are considered bad, nor is the fulfilment of rights considered good.\textsuperscript{1327} “The most far-reaching substantive problem neglected in standard economics”, Sen diagnoses, would be “the foundational importance of freedom”.\textsuperscript{1328} Such a crude utilitarian approach is adopted in mainstream welfare economics, where some basic human rights are sacrificed in a “fierce” process, with much “blood, sweat and tears”.\textsuperscript{1329} Moreover, the exclusive focus on the aggregate result excludes the human person as an individual agent. The instrumental aggregate structure is thus deeply limited.\textsuperscript{1330}

The second approach, deontology, on the other hand, judges the goodness of an action or a choice by the conformity with moral norms, without taking any recourse to the goodness of the consequences. In this framework, human rights are conceived only as side constraints that describe what one is entitled to do or not to do. Rights are intrinsically valued, and hence *any* violation of rights is not allowed, even if such a right violation would have better results. An exemplary champion of this approach, Nozick, represents, for instance, a concept of trade-off free human rights. According to him, human rights are not supposed to serve social goals; “rights do not determine the social ordering but instead set the constraints within which a social choice is to be made, by excluding certain alternatives, fixing others, and so on”.\textsuperscript{1331} In the consequence-blind libertarian literature and in related contributions employing ‘game form’ formula-


\textsuperscript{1329} For example, Karl Marx referred to some fundamental human rights as ‘the rights of egotistic man’, ‘separation of man from man’ and ‘recognition of slavery’. Cf. Marx (1844): “On the Jewish Question”, 127.

“rights have been characterized in procedural terms, without referring to states of affairs”. Though this approach respects each human person’s entitlement, its exclusive negative concept of freedom, understood in the limited sense of constraints and total resistance to trade-offs, makes it incapable to serve social realizations. Thus, it omits the important interconnections of various rights, which are an interplay of both negative and positive freedoms. Negative freedom is too meagre a concept to capture social development. An exclusive preoccupation with negative freedom often co-exists with grave social evils, as it often happens in the case of famine, as Sen constantly underlines.

The traditional social choice theory was primarily concerned with the ‘outcomes’ – with social welfare judgements. The real challenge is to integrate the ‘rightness of procedures’ and ‘the goodness of outcomes’. Sen establishes that both exclusively procedural libertarian rights and procedure-independent utilitarianism approaches are insufficient. He attempts combining process and consequences. “The contrast between the procedural and consequential approaches is, thus, somewhat overdrawn, and it may be possible to combine them, to a considerable extent, in an adequately rich characterization of states of affairs. The dichotomy is far from pure, and it is mainly a question of relative concentration.”

It is thus in resonance with his general pattern of ‘liberty + welfare’ that integrates procedural considerations in a consequential analysis, which is enormously important in the human rights discourse.

---


1334 An exclusively constraint-based concept of freedom is hardly equipped to entail the range and reach of the notion of ‘substantive freedom’. A starving person need not necessarily suffer from the violation of negative freedom. The capability approach rightly underscores the need to create opportunities to choose a life without poverty and hunger, which demands both negative and positive freedoms. Cf. Sen (1988): “Freedom of Choice: Concept and Content”, 269–294.


Sen brilliantly crafts an integration of supposedly irreconcilable philosophical traditions – consequentialism and deontology – in order to construct a theoretical framework that is simultaneously sensitive to outcomes and the agency of the individual human person. He retrieves resources from an ancient Indian approach to jurisprudence, which contrasts a consequent-independent approach niti and consequence-sensitive nyaya. Sen advocates a nyaya approach, which affirms the “the relevance of the actual world” and “the significance of human lives”. He underlines that “what happens to the world must matter and be significant in our moral and political thinking”. This approach is not so much about institutions, rules and organization; it is a broader perspective “which is inescapably linked with the world that actually emerges, not just the institutions or rules we happen to have.”

Sen diagnoses that “both welfarist consequentialism (such as utilitarianism) and constraint-based deontology are fundamentally inadequate because of their failure to deal with certain important types of interdependences present in moral problems.” His interest in the actual life of the people led him to focus on the ‘substantive freedom’ – people’s capability to lead a meaningful life – which incorporates both positive and negative, and instrumental and intrinsic freedoms. There is a strong case for the freedom to be considered in assessing social arrangements.

Utilitarianism, in general, does not consider rights and duties among valuable objectives. “Rights or duties may be instrumentally valued by utilitarians for what they can do to promote utilities, but their fulfillment or violation does not, by itself, make the states better or worse in utilitarian accounting.” The libertarian interest in rights and duties is nonetheless only to restrict what others may possibly do. The deontological pur-

suit of ‘justice for justice’s sake’ as Sen calls it. Such a framework may tolerate many heinous injustices whereas a realization-focused approach deals with ‘justice for human’s sake’. Not the evil or goodness of the state of affairs but only the ‘wrongness of action’ is the primary concern. Utilitarianism is thus ultimately concerned only with utilities, whereas libertarianism is not concerned about state of affairs at all. Hence, Sen’s criticism is simultaneously against welfarist instrumentalism and constraint-based deontology as they bear a common characteristic of “insensitivity to the fulfilment and violation of rights”.

Sen elucidates:

[B]oth the welfarist instrumental approach […] and the deontological constraint-based approach are inadequate in important ways. Furthermore their respective inadequacies are related to a common ground shared by the two, despite sharp differences in other respects. The particular common ground is the denial that realization and failure of rights should enter into the evaluation of states of affairs themselves and could be used for consequential analysis of actions. Nozick’s view that “rights do not determine a social ordering” is shared fully by welfarists in general and utilitarians in particular. Their ways part there, however, with the welfarist instrumentalist viewing rights in terms of their consequences for right-independent goals and the constraint-based deontologist reflecting rights without consequential justification as constraints on actions. State-evaluation independent of rights leaves a gap that cannot be adequately closed by either of these approaches.

Focusing on the actual life of the people demands the incorporation of the ‘realization’ of rights in an evaluation of states of affairs. Sen’s ‘goal rights system’ attempts, in a consequential framework, to bring fulfilment and non-realization of rights into the evaluation of states of affairs. Interestingly, two allegedly antagonistic notions, ‘goals’ and ‘rights’ (conse-

1346 Cf. Sen (1982): “Rights and Agency”, 15. In some of his writings, he had followed the writing style of “goal-rights system”, but I follow the style of “goal rights system”.
quentialism and deontology), are brought together. Rights are conceptualized as goals to be promoted, and analogic to the utilitarian framework the goal rights system aims at the maximization of rights fulfilment, as a social goal, which works within a broad consequential structure. According to Sen, “a moral system in which fulfilment and nonrealization of rights are included among the goals, incorporated in the evaluation of states of affairs, and then applied to the choice of actions through consequential links will be called a goal rights system.”

A goal rights system certainly requires an ‘informational broadening’ where the totality of various concerns is included in a “broad consequential evaluation”. Contrary to a rights-independent consequential evaluation and rights-inclusive non-consequential procedures, a rights-inclusive consequentialism “would take note of freedoms, rights, and obligations and their violation would argue that bad things have happened precisely because someone’s freedom has been breached, and some rights and duties have been violated”. Seeing consequences in very broad terms helps to incorporate “the value of actions performed or the disvalue of violated rights” in human rights discourse to effectively overcome the presumed dichotomy between rights and goals. The underlying feature of such a rights-inclusive, consequence-sensitive goal rights system is to “tie up different types of rights in ways that are not covered by the standard deontological correspondences.” In a goal-included view of rights, a non-realization of those rights that are included in the goals makes the state of affairs worse in a direct way (not resting on its instrumental contribution to the non-fulfilment of some other goals specified in a right-independent way).

A broad consequential evaluation thus entails ‘comprehensive outcomes’; it evaluates the overall goodness of states of affairs by taking note of all important features. In opposition to a mere focus on the ‘ultimate result’, this calls for an evaluative framework that also incorporates the process of choice and the outcomes in the state of affairs. It makes room for agency-related information, like “agencies involved, processes used, etc. along with the simple outcomes seen in a way that is detached from processes, agencies and relations – what I have been calling ‘culmination outcomes’”.

Such a broad consequential evaluation necessitates some relaxation of both deontology and consequentialism to abandon some of their rigidity, without dropping the adequacy of side constraints and consequential sensitivity. Now human rights are no more an exclusive pursuit of deontology but a concerted effort of both deontology and consequentialism. Together they give human rights a new quality, making it more than a mere formal declaration on paper, which previously often failed to influence the actual life of the people. This is an actual and immediate result of Sen’s ‘realization-focused comparative approach’ to social justice.

4.2. Relaxations and Affirmations

Sen’s general principle of informational broadening is opposed to various ‘informational constraints’ that rule out the use of particular types of information in assessing social choices. He states: “The failure to introduce fulfilment and non-realization of rights in the evaluation of states of affairs produces a lacuna that can scarcely be made good either by inflexible deontological constraints used without consequential evaluation or by trying to catch the importance of rights in terms of the metric of utilities.”


---

the impurities that sacramental theorisation abhors” and splitting the conventionally “simple and monolithic entities” into “rich and complex structures”. Especially with regard to consequentialism and deontology, this resulted into some relaxations and affirmations, providing us with a rich moral landscape for social evaluation.

4.2.1. Relaxation 1: Welfarist Instrumentalism

Consequentialism needs to be dispensed from some ‘imposed’ conditions so that it conforms to a comprehensive consequential reasoning. Sen diagnoses: “If consequential reasoning is used without the additional limitations imposed by the quite different requirements of welfarism, position independence, and the overlooking of possible intrinsic value of instrumentally important variables, then the consequential approach can provide a sensitive as well as a robust structure for prescriptive thinking on such matters as rights and freedom.”

Firstly, the most important hurdle to overcome is the limitation associated with welfarist instrumentalism. The welfarist approach is ultimately based on utility information contributing to a mental metric of pleasure, happiness or desire, whereas non-utility information is valued just as “causal influence on – or as a surrogate for – utility information”. In a welfarist framework, positive freedom is regarded as important only because that freedom may be conducive to more happiness. Such a system can, however, entail inherent injustice in its moral evaluation. The exclusive focus on the goodness of the consequences, ignoring everything else, including moral rights in general and human rights in particular, is well manifest in the Benthamite instrumental-positive view of freedom and his resultant rejection of human rights. Hart strikes the right note

1361 Sen says: “The losses of the victim and other sufferers are contrasted with the gains of the violators and other gainers entirely in terms of relative utility features. There might have been good utilitarian reasons for forcing men to fight wild animals in the Colosseum with the utility gain of the thousands of spectators outweighing the utility loss of the few forced men.” Sen (1982): “Rights and Agency”, 7.
when he underlines that a satisfactory foundation for a theory of rights will not be found “as long as the search is conducted in the shadow of utilitarianism”.  

It will be argued in the following section that there are some advantages for assuming a welfarist approach in the human rights discourse. “Whether they also include utility-based goals or not is a different issue altogether. That issue is, of course, of obvious importance, but its importance does not lie in any need to have right-independent goals to serve as the basis of a theory of rights. Rights stand whether or not utility does.”  

Sen thus advocates a ‘consequential reasoning’ without obliging to consequentialism per se – without amalgamating it with extraneous demands such as welfarism. The crux of the distinction is to evaluate actions and state of affairs ‘consequence-sensitive’ without demanding them to be entirely based on consequences only.

Secondly, Sen identifies three more ‘supplementary assumptions’ that are not intrinsic to a general approach of consequential evaluation and, therefore, must be abandoned.

   (1) the insistence on a complete ordering of all states of affairs (thereby confounding maximization with optimization);
   (2) the removal of actions, motives, processes, and other features of states of affairs from artificially denuded concepts of states of affairs (thereby ignoring the breadth of comprehensive outcomes in favour of the narrowness of culmination outcomes); and
   (3) disregarding the positionality of the agents vis-à-vis the actions and the resulting states of affairs (thereby replacing situated valuations by selectively blind assessment).

Once these supplementary assumptions are dismissed, there is no case to “damn consequential evaluation for the company it is thus forced to keep”. We have thus identified two fundamental pitfalls, firstly the problem of welfarist instrumentalism and secondly the denial of agent-related concerns, which will be supplemented by affirmations of deontology.

4.2.2. Affirmation 1: Intrinsic Value and Agent-weighted Approach of Deontology

The deficiencies of welfarist consequentialism are to be complemented by some of the significant affirmations of deontological tradition, which will be treated under two elements.

a. The intrinsic value of rights

The libertarian assertion that rights are not merely derivative but fundamental is central to the human rights discourse.\textsuperscript{1368} Sen brings it to the point: “The ‘intrinsic’ view of the importance of freedom asserts that freedom is valuable in itself, and not only because of what it permits us to achieve or do. The good life may be seen to be a life of freedom, and in that context freedom is not just a way of achieving a good life, it is constitutive of the good life itself.”\textsuperscript{1369} As deontology is concerned with constraints understood as negative freedom, its focus is consequently on the negative obligation. The moral significance of negative freedom, as mostly conceptualized in terms of rights and duties, is very relevant in the social ethical evaluation. Accommodating positive freedom in social evaluation does not eliminate the importance of negative freedom, as the deliberate violation of one person’s freedom by another is something that is especially obnoxious.\textsuperscript{1370} Sen claims that “even the poorest are not unconcerned with issues of basic political freedom”, a fact which is proved by the defeat of Indira Gandhi in the aftermath of her declaration of an emergency in India.\textsuperscript{1371} The intrinsic value of human rights and freedoms will be discussed further in the coming sections.

b. Agent-weighted approach

Welfarist consequentialism is known for ‘agent-neutrality’ and an exclusive focus on aggregating good results at the cost of the omission of agent-

relative values. A deontological perspective, however, entails agent-relative concerns, such as goals, relations, group loyalty, etc., thus providing sufficient space for rights and obligations.

Firstly, there is an inescapable need to give credit to process significance – preferences may be sensitive to the choice process, including the identity of the chooser. This calls for evaluating a person’s preferences over comprehensive outcomes instead of focusing only on culmination outcomes. Sen calls exclusive preoccupation with outcome “end-statism”, and “end-statism in the company of welfarism is very restrictive”. In his nyaya approach to justice, the evaluation of social realizations encompasses the importance of process and responsibilities. A process-inclusive broad account that pays attention to ‘comprehensive outcomes’ includes “actions undertaken, agencies involved, processes used, etc.” along with outcomes. Thus, more than merely focusing on what happens at the end, there is a need to consider simultaneously both “realizations and agencies”.

Secondly, positional-relativity of the deontological approach must be affirmed in a meaningful human rights discourse. Sen finely distinguishes between an agent as ‘doer’ and as ‘viewer’. An agent does things and also views actions and outcomes. Agent neutrality can be characterized in terms of the switching of the ‘doer’ role or of the ‘viewer’ role or of both together. He, therefore, underscores that there is a need to consider both viewer relativity and doer relativity. Accommodating agent-relative values depends on the way outcome morality is characterized. A consequential reasoning, combined with ‘position-relativity’ of evaluation of states of affairs, allows the possibility of taking different views, which is re-

required to accommodate an agent-relative morality. Only such an agent-relative morality can meaningfully include the notion of responsibility. Sen spells out:

It is quite arbitrary to exclude the possibility of having a special interest in—and taking responsibility for—one’s own actions, in evaluating states of affairs of which those actions and their effects are among the constitutive elements. And if this possibility is kept open—not arbitrarily closed—then consequential reasoning can certainly accommodate the deontological concerns mentioned earlier. There is no basic conflict between consequential ethics and agent-relativity in judging states and actions.

Consequentialism fails to take human autonomy seriously; for instance, if the violation of a minor right is recognized to be good for the final result, in the consequential framework one has the obligation just to do it. Sen argues that it should not be a case of obligation but of permission, leaving the action to the decision of the agent. Pure consequentialism would demand that all get involved in helping since the result is a valued good. Agent independence of permissions and obligations is thus admitted in the name of ‘impartiality’. Sen percussively argues that this requirement is to be relaxed. Some consequences are good from the point of view of A, but not from that of B. He thus envisages a consequentialism that is agent-dependent. The Sen system can be called positional consequentialism, where evaluator-relative outcome moralities are accommodated within consequence-based reasoning. “Thus, goal rights, including capability rights, and other goals can be combined with deontological values (in the nonconstraint form), along with other agent relative considerations, in an integrated system.”

4.2.3. Relaxation 2: Constraint-based Deontology

Deontology’s negative concept of freedom suffers from informational parsimony, as it draws “only from a single source” – the source of individual rights solely in terms of ‘abstention from’ at the expense of ‘positive ser-

---

The human rights discourse will be seriously impoverished if it is exclusively focused on immunity from interference by others and requires nothing positive to be done in defence of negative freedom when threatened with a violation. Actually, the focus on negative freedom is done under the guise of equality; Sen unequivocally argues that side constraints cannot be the goal to be maximized, where constraint of action is the only source of concern.\footnote{Cf. Hart (1979): “Between Utility and Rights”, 835.}

Sen’s research, especially his works on poverty and famines, has repeatedly denuded that the consequence-independent view of the libertarians is basically misleading. Famine and starvation occur even when nobody’s libertarian rights are violated — some people’s property rights can restrict the basic freedoms of some others. Such an overly simple and one-dimensional libertarian solution cannot confront complex social moral problems. Though the Rawlsian theory of justice takes a leap forward, incorporating positive freedom in a framework of justice as fairness through his advocacy of the importance of ‘primary goods’,\footnote{Primary goods include “rights, liberties and opportunities, income and wealth, and the social bases of self-respect”. Sen (1987): Food and Freedom, 29.} the “lexicographic priorities in the objectives – the priority of liberty” makes it a hierarchical understanding of rights that has little scope for trade-offs.\footnote{Cf. Sen (1981): “A Positive Concept of Negative Freedom”, 49.} How Sen’s reformation of freedom, in the space of capability, substantially broadened the human rights discourse will be demonstrated by analysing two elements of the notion of human right: (1) it aims at the freedom of the right-holder to do certain things or to achieve some conditions, and (2) it demands some correlate obligations on the part of others (which can take the form of non-interference or of positive assistance) to help in the realization of this freedom by the right-holder.\footnote{Cf. Sen (2000): “Consequential Evaluation and Practical Reason”, 492.}

**Broadening the notion of freedom**: Sen’s capability approach, with its focus on the actual life of the people, attempts to overcome the overstated divide between negative and positive freedoms. “There is something totally inadequate in focusing on negative freedom only, and there is clearly a case for paying attention to the overall freedoms, i.e., a person being able to do this or be that (such as being well nourished, avoiding escapable

---

In a framework where the focus is on overall freedoms, even negative freedom is conceptualized in a positive concept. The exclusive focus on negative freedom is unsatisfactory both in utilitarian morality and in deontological morality; this indeed calls for a more affirmative formulation, which Sen made possible in his goal rights system, by incorporating positive freedom as well. Capabilities manifest positive freedom: “they can be seen as rights – positive rights to do this or be that. The realization of these rights can be the basis of valuation of states of affairs, taking note of aggregative considerations as well as distributive ones.” When the violation of basic capabilities is brought to the focus, human rights discourse will move beyond a fixation on side constraints (negative freedoms) by concentrating more on the realization of those capabilities, which nevertheless includes guaranteeing negative freedoms as well. The departure from an exclusive reliance on constraint-based negative freedom for the sake of overall freedoms incorporates both interventions and instrumental roles of freedom.

Broadening the notion of obligation: Obligations treated in terms of side constraints have only a very limited scope. Sen has repeatedly argued that protecting negative freedom intact “can coexist with terrible hardships and miseries in the lives of those who happen to lack what Frank Knight called ‘power’”, as in the case of famines, which often take place even when nobody’s negative freedom, as outlined and defended by Robert Nozick, is violated. His ground-breaking study on the causes of famines revealed that famines can emerge even at times of peak food availability if some people fail to have their entitlements to food, despite their guaranteed negative freedoms.

Sen suggests ways to broaden the limited range of constraint-based negative freedom, taking note of some important ‘positive connections’:\(i\) admitting the possibility of these rights being overridden for other benefits – related to other rights or nonright goals – if they are sufficiently

---

strong; and (ii) entailing duties of ‘third parties’ who can help or hinder, requiring the evaluation of duties through consequential analysis of interdependences (possibly in an evaluator-relative form).\textsuperscript{1397} In the following, I analyse these two points together.

Our duty to protect the negative freedom of others demands more than non-interference. Protecting someone’s negative freedom may sometimes demand that we must do something positive to stop the violators.\textsuperscript{1398} It may even involve the violation of some minor rights of a third party to protect a vitally important right of someone.\textsuperscript{1399} ‘Violating a minor right of a third party’ is hard to digest in a deontological perspective. Sen argues: “It is not absurd to think that you have a reasonable case for violating the minor right of the car owner to prevent a bigger violation of more important rights of the person who is threatened with rape or murder.”\textsuperscript{1400} If rights are conceived only in terms of constraints, nobody is under obligation to help, to do something positive. But many real-life situations demand the accommodation of relevant trade-offs in the evaluation of the state of affairs. He goes on: “There are different rights, which can sometimes conflict with each other, and the possibility of ‘trade-off’ between them has to be considered. While their respective importance may vary with circumstances, all rights are not necessarily equally important […]. The relative importance of different rights […] comes inseparably into the assessment of the ‘rightness’ of rights, along with other features of social choice.”\textsuperscript{1401}

The internal tension arising out of trade-offs can be avoided “if the value of the fulfilment of negative freedoms and disvalue of their violations are incorporated in a consequence-sensitive system of ethical evaluation, so that the importance of preserving negative freedoms is well reflected in the evaluation of actions and the decision regarding what is to be done.”\textsuperscript{1402} Such a positive approach to the protection and flourishing of negative freedom is “particularly relevant to many economic problems, es-

\textsuperscript{1399} Nozick dismissed violating someone’s less important rights as “utilitarianism of rights”, referring to the instrumental approach applied. Sen (1981): “A Positive Concept of Negative Freedom”, 43.
especially since the choice of institutional structures can be quite important in defending negative freedoms, rather than treating the requirements of negative freedoms purely as constraints on personal behavior.”

Sen underlines the importance of ‘interventions’ as well. An overall expansion of freedom – including the freedom to live long and live respectably – requires positive interventions of the state through welfare policies. This is particularly important for developing countries. Sen points to the promising results of such interventions through public policies in Sri Lanka, China, the Indian state of Kerala, etc. India’s ability to deal with threats of famine has been connected with government intervention as well; especially early public action before a famine threatens could be developed. Sen’s prolific works illustrate how interventionist public policy, in support of individual entitlements to food and health care, may have an important role in enhancing positive freedoms. The supporting role of public policy in enhancing positive freedoms deserves explicit recognition in development policy.

Sen is not basically against a redistribution of wealth if extreme deprivations demand it. The fact that some rights are not violated does not mean that they are realized. A trade-off inclusive goal right system is concerned with outcome morality, which is directly interested in the goodness of outcomes. The existence of trade-offs, however, demands a painstaking process of assessing and balancing various competing rights and prioritizing them within a coherent consequentialist framework. “Those who take rights as side constraints tend to argue against any such balancing, and seem to be dead set against endorsing the infraction of any right—no matter how minor—for the sake of preventing a more important violation of another—more crucial—right.”

In certain cases libertarian priority can be unjust. Sen raises a pertinent question: “Why should it be the case that rules of ownership, etc. should have such absolute priority over life-and-death

1405 Sen outlines: “As it happens, famines are easy to prevent, partly because they affect only a small proportion of the population (rarely more than 5 percent and hardly ever more than 10 percent), and redistribution of existing food can be arranged through immediate means such as emergency employment creation, thereby giving the indigent an immediate income for purchasing food.” Sen (2009): The Idea of Justice, 47.
questions?”⁴⁴⁰⁷ Nozick, however, makes an exception, giving room for violation of libertarian rights in the case of ‘catastrophic moral horrors’. If the relevance of good consequences can be admitted in such a particular case, there are good reasons to extend this to other cases for the sake of good outcomes. There are indeed cases where a violation of procedural rights brings bad consequences; but there are also cases where a violation of procedural rights avoids bad consequences. “Once trade-offs based on consequential evaluation are accepted, there is no obvious stopping place for a theory that was set up on a purely procedural approach.”⁴⁴⁰⁸

The instrumental advantage of a violation of a minor negative right in fulfilment of a great outcome has to foresee the trade-offs between interests of different persons. “It is indeed the ability to outweigh the harm done by violating someone’s interests or rights by greater fulfilment of someone else’s more important interests or rights that gives the goal rights a distinct position among the right-based moralities.”⁴⁴⁰⁹ Being “moved by the relative gravity of different violations of rights, or by other consequences”, is “part and parcel of taking responsibility for the consequences of one’s actions. Indeed, in that approach, refusing to consider the relative importance of the different violations of rights can well count as a significant abdication of responsibility.”⁴⁴¹⁰ The examination of the relative importance of various consequences forces us to take responsibility for our choices “since our actions influence other people’s freedoms and lives as well as our own”.⁴⁴¹¹ The inclusion of reasonable trade-offs does not mean that negative freedom is less important. Some negative freedoms are very fundamental, such as non-violation of the right to life, which resists any kind of trade-offs. It is here that the process of assessing and balancing becomes very significant.⁴⁴¹² Sen’s alternative approach of a goal rights system thus focuses on rights-realization as the goal; hence it can better accommodate welfare rights like the right to food, water, medical attention, etc., which include both negative and positive freedoms.

---

4.2.4. Affirmation 2: Instrumental and Interdependent Sensitivity of Consequentialism

The strength of Sen’s approach is not to overlook the good elements of the approaches which he pertinently criticizes. On the one hand, in his *On Ethics and Economics*, he sharply criticizes the dominance of an engineering approach over the equally important ethical approach, which consequently led to the impoverishment of the discipline of economics. On the other hand, he assimilates from the consequentialist engineering approach the relevance of acknowledging instrumentality and the interconnectedness of various factors.\textsuperscript{1413} Accordingly, the instrumental role of rights and their various interconnections are crucially significant in a goal rights system that is deeply concerned with realizations.

Firstly, the utilitarian instrumental understanding of rights, as instruments for good results, has a value of its own. The freedom of speech, for instance, is valuable in itself; it is also *instrumentally* important to meet the claims of the economically deprived to claim their right from governments. Freedom thus has a significant instrumental importance as a *means* to other ends.\textsuperscript{1414} Sen notes that some rights are not at all part of right-fulfilment goals, say ticket checker’s right to see your ticket during a train journey. He articulates: “The enormously important part that instrumental rights have to play in bringing about valuable outcomes is not eliminated (nor, on the other hand, necessarily strengthened) having fulfillment of some rights directly as fundamental goals.”\textsuperscript{1415} As already mentioned, the violation of negative freedom of a third party to protect the positive freedom of someone may be *instrumentally* justified by good conse-

\begin{footnotes}
\item[1413] Sen identifies two different origins of economics, one concerned with ‘ethics’ and the other with ‘engineering’. The engineering approach emerged in the nineteenth century from the technique-oriented logistic analyses of statecraft developed by some actual engineers. This approach is concerned primarily with logistic issues, not with ultimate ends of human life; it is more about the *means* to serve the end of life. Sen acknowledges two significant features of the ‘engineering approach’: a) the relevance of inter-relatedness and b) the importance of consequential analysis. The importance of consequential analysis is already studied in various sections; hence our focus is here on the relevance of information about interdependences. Cf. Sen (1987): *On Ethics and Economics*, 5.
\end{footnotes}
Sen rightly observes that the distinction between ‘absolute’ and ‘prima facie’ rights (or between fundamental and instrumental) should not be overstated. “Being intrinsically valuable is no guarantee of strength, and being only instrumentally important is no proof of weakness.”

Secondly, the recognition of interdependence in consequentialism can enrich the human rights discourse. The deontological approach to human rights, according to Sen, is not “particularly suitable for focusing on complex problems of pervasive interdependence involved in social morality”. An engineering approach, within its consequential framework, is deeply sensitive to the significance of interdependence, which actually is the heart of ‘general equilibrium theory’. Here is a methodological point that is very instructive about the “important interrelations that call for technical analysis of a very high order”. Such awareness about the nature of complex social interdependence has great relevance in understanding and analysing many practical issues, such as the real problems of hunger and famine. Despite its narrow characterization of human motivation and eschewal of the ethical, the engineering approach has significant practical relevance and effectiveness in certain realms.

This sensitivity to “general interdependence” in a framework of “consequential reasoning” is the legacy that can be assimilated into moral philosophy, especially in the human rights discourse. Because of its preoccupation with non-coercion and related issues of negative freedom, the constraint-based deontological approach hardly has space for positive freedom. A meaningful understanding of negative freedom must take note of “multilateral interdependence”. The constraint-based deontological framework is particularly inadequate to take note of such cases of interde-
pendencies – the positive connections. Sen’s development programme envisions the mutual interdependence of various kinds of freedoms, economic, social and political activities that take place through a variety of institutions and many interactive agencies.\textsuperscript{1421} A particular freedom works as an engine for further freedoms. In the coming section, the inter-relatedness of political freedom and development will be discussed in detail. Another significant inter-connectedness is women’s freedom and general development. Sen demonstrates how various social opportunities, social institutions etc. enhance economic development. A recurring example in his writings is the Kerala development experiences, where literacy, healthcare and land distribution contributed to better human development. This proves his affirmation of a wide range of interconnections between various freedoms and institutions.

Sen suggests ways to broaden the limited range of constraint-based negative freedom, taking note of the “positive connections” which may be important in societies with imperfect compliance with rules. Taking the “positive rights under threat” seriously, especially in poor countries,\textsuperscript{1422} affirms the\textit{ instrumental} relevance of rights in the framework of a goal rights system. The violation of a right like the freedom of speech makes the outcome worse,\textit{ both} because of the violation of that right itself and because of the negative effect it has on other objectives, like meeting the claims of the economically deprived to receive help.\textsuperscript{1423} It sheds light on the protective power of negative freedom in maintaining and promoting positive freedoms that are urgently important in fighting against many social evils – for example, to fight against starvation and premature mortality. Sen contends: “Journalistic liberty and permissibility of open political opposition may contribute greatly to enhancing positive freedom to avoid escapable morbidity and mortality, related to food shortage and threatening famines.”\textsuperscript{1424}

\begin{flushright}
\end{flushright}
The capability approach considers substantive freedoms as the most appropriate space of social evaluation and evaluation of people’s advantage. If freedom is conceptualized as constitutive of a good life, none of these elements are insignificant. Accordingly, Sen’s commitment to actual life makes him focus his human rights discourse on the realization of human rights, and this realization is a process that depends on a web of various interdependent factors, which reinforce each other, such as commodities, capabilities, negative and positive obligations, social institutions, etc. Violations also have a mutually reinforcing impact.

Conclusion

The desiderata of current human rights models were rightly diagnosed by Hart, who states that neither “the old faith in utilitarianism” nor “the new faith in rights” succeeds in identifying a proper moral space to conceptualize human rights in the philosophy of political morality. Sen masterfully mapped a new framework of a goal rights system that makes capability as the proper moral space to conceptualize human rights. Here, “fulfilment and non-realization of rights are included among the goals, incorporated in the evaluation of states of affairs”. It moves beyond the welfarist disregard for human rights; the libertarian skeletal ‘negative’ rights, conceiving rights only as inviolable side constraints or absolute imperatives; the minimalism of Pogge, who conceptualizes rights in terms of goods which are needed for a ‘minimally decent living standard’; and the minimalism of Michael Ignatieff, who limits human rights to those rights necessary to protect human ‘agency’. Sen’s goal rights system focuses primarily on the ‘realization’ of rights in a realization-focused consequential approach. It overcomes conceptual confusions and ideological polarizations that have long prevented the realization of many human rights. Merging the insights from both deontology and consequentialism, it provides a compelling theoretical structure to bridge human rights and human development by virtue of the shared space of freedom. Based on the found-

1427 That is, those rights strictly necessary to protect a person’s ability to make choices with dignity. Ignatieff et al. (2000): Human Rights as Politics and Idolatry.
dational relevance of enhancing human life, it thus provides an effective tool that conflates both liberty rights and welfare rights, taking a direct interest in the actual life of people.

5. The Indivisibility and Interdependence of Human Rights

In principle, the indivisibility and interrelatedness of human rights are underlined by all major catalogues of human rights. In practice, however, the substance and significance of social and economic rights have always been a matter of contention. For instance, the UDHR treated both political and economic rights integrally, but the subsequent drafting of two separate protocols (1966 covenants on human rights) divided rights into two categories: liberty and welfare rights. Thus, the theoretical affirmation of the integral nature of both classes of rights by the UDHR did not exist in practice. This discrepancy was caused by the Cold War rivalries, which were at once a North-South or North-East division. In effect, civil and political rights became the trademark of the Western liberal-democratic countries, whereas economic and social rights were the trademark of Eastern countries, especially of Communist countries, thus pitting them one against and each other.1428

Sen’s theoretical framework contests such a deep divide between two sets of human rights. The basic pattern that runs through my analysis of Sen, ‘liberty + welfare’, challenges the exaggerated tension between rights and welfare. As outlined, he famously underscored in his “The impossibility of a Paretian liberal” that the conflict between welfare and rights arose due to the welfarist value of the Pareto principle.1429 His foundational thesis that a non-welfarist route to welfare can balance these two essential el-


elements of human well-being culminated in his conclusive statement about well-being in *Development as Freedom*. The title itself is a programme that envisions a marriage between the supposedly conflicting categories of development and freedom. Sen’s general pattern of ‘liberty + welfare’ thus convincingly overcomes the exaggerated gulf between various sets of human rights in the framework of a ‘goal rights system’. He persuasively argues that development is not merely an economic process but also a political one. His project is to overcome “the presumed existence of a deep conflict between political freedoms and the fulfillment of economic needs”.

5.1. The Plausibility of Economic and Social Rights

Obviously, there was an uneven pattern in the programme and promotion of human rights in the post-war period. Post-war capitalist order gave fundamental priority to negative civil and political rights, assuring ownership of private property whilst keeping a distance from positive economic and social rights that would place constraints upon the freedom of market actors. It was not merely a political division but a philosophical one as well. Sen bemoans the exclusion of welfare rights from the human rights discourse: “The exclusion of all economic and social rights from the inner sanctum of human rights, keeping the space reserved only for liberty and other first-generation rights, attempts to draw a line in the sand that is hard to sustain.” Actually, welfare rights are necessary for a meaningful flourishing of any other human rights.

The assertion and promotion of human rights have expanded enormously since World War II. But it was actually by the end of the Cold War polarization that the human rights discourse was ‘broadened’ to include welfare rights in the mainstream. However, it is presumed that such an enlargement of the notion of human rights would lead to a ‘human rights in-

---

flation’ – a devaluation caused by the proliferation of rights. Human rights expert Alston, for instance, welcomes the widening of the range of the human rights horizon but warns that an overextension can be counter-productive: “Such a proliferation of new rights would be much more likely to contribute to a serious devaluation of human rights currency than to enrich significantly the overall coverage provided by existing rights.” We have seen that Sen’s human rights discourse does not consider all freedoms to be a human right; he sets two threshold conditions for the inclusion of any freedom as a human right: “significance and influenceability”. He notes that the inclusion of welfare rights was a significant advancement in the human rights discourse and fits well into the capability framework.

The inclusion of second-generation rights makes it possible to integrate ethical issues underlying general ideas of global development with the demands of deliberative democracy, both of which connect with human rights and quite often with an understanding of the importance of advancing human capabilities [...]. It is only with the inclusion of second-generation rights that this kind of a radical proposal for extended integration becomes possible, without taking us beyond the human rights framework. A focus on the actual life of the people and their real freedoms makes room for a broader understanding of human rights, including economic

1434 Alston, Philip (1984): “Conjuring up New Human Rights: A Proposal for Quality Control”, The American Journal of International Law, 78(3), 614. Alston notes that “both the validity and the necessity of a dynamic approach to human rights, as well as the expansion, where appropriate, of the list of recognized human rights, cannot reasonably be disputed. However, the reason for serious concern with respect to current trends arises not so much from the proliferation of new rights but rather from the haphazard, almost anarchic manner in which this expansion is being achieved. Indeed, some such rights seem to have been literally conjured up, in the dictionary sense of being ‘brought into existence as if by magic’.” Alston (1984): “Conjuring up New Human Rights: A Proposal for Quality Control”, 607.
and social rights, such as the right to food, or the right to basic education or medical attention, etc. Therefore, it is important to confront the strong challenges posed against the inclusion of welfare rights. Sen rightly notes that many of the critiques are not against the inclusion per se; there are theoretical desiderata with regard to the interpretation of the content and reach of these rights, which indeed calls for a nuanced disputation. He identifies two courses of criticisms, namely the “institutionalization critique” and the “feasibility critique”, which are mainly aimed at welfare rights that supposedly fail in regard to duties and realizations.\footnote{Sen (2009): The Idea of Justice, 382; cf. Sen (2004): “Elements of a Theory of Human Rights”; Sen (2009): The Idea of Justice, 382.} In the following, I analyse these two critiques against welfare rights.

5.1.1. Institutionalization Critique

This critique arises from the criticism that it is not always possible to correlate rights-claims with the obligation-bearers, especially in the case of imperfect obligations. This critique has its roots in the legal approach to human rights, because it calls for an exact correspondence between authentic rights and precisely formulated correlate duties. Unless institutionalized, there is no substance to such claims, so the argument goes.\footnote{Cf. Sen (2004): “Elements of a Theory of Human Rights”; Sen (2009): The Idea of Justice, 382.} Thus, a right can be a proper right only when it is ‘institutionalized’.

Even John Rawls, who is deeply sensitive to the inequalities in the world, failed to acknowledge the actual substance of welfare rights. In The Law of Peoples he argues that human rights “set a necessary, though not sufficient, standard for the decency of domestic political and social institutions”; therefore only Articles 3–18 of the Universal Declaration of Human Rights, which relate to civil and political rights, contain “human rights proper”.\footnote{Rawls (1999/2000): The Law of Peoples, 80.} Social and cultural rights, according to Rawls, “presuppose specific kinds of institutions”.\footnote{Cf. Rawls (1999/2000): The Law of Peoples, 80.} According to this logic, they cannot be qualified as human rights. O’Neill also argues that a claim of uni-
versal economic, social and cultural right can be called a right only if it is ‘institutionalized’; “if they are not institutionalized there is no right”.\textsuperscript{1441}

As discussed in connection with the relevance of imperfect obligations, the relaxation of ‘rigidity’ in seeking correlate obligation-bearers makes these rights relevant. Imperfect obligations (arising from rights which are not properly institutionalized) are relevant not only in relation to welfare rights but also in cases of liberty rights (as illustrated in the case of Kitty Genovese case). Sen spells out:

Depending on institutional possibilities, economic and social rights may similarly call for both perfect and imperfect obligations. There is a large area of fruitful public discussion and possibly effective pressure, concerning what the society and the state, even an impoverished one, can do to prevent violations of certain basic economic or social rights (associated with, say, the prevalence of famines, or chronic undernourishment, or absence of medical care).\textsuperscript{1442}

Institutions play an enormous supportive role in the realization of ‘welfare’ rights, but “the ethical significance of these rights” seeks realization not only through “institutional expansion” but also through reforms of “social attitudes”, which opens up the scope of “agitation for new legislation, or through helping to generate greater awareness of the seriousness of the problem”. The goal is to retain the reach and relevance of the ethical status of human rights claims.\textsuperscript{1443} “To deny the ethical status of these claims would be to ignore the reasoning that motivates these constructive activities.”\textsuperscript{1444} Sen affirms the relevance of various institutions without taking a quintessentially ‘institutionalist’ approach: “It is important to remember that while institutions typically are good starting points, they need not be convincing end points”.\textsuperscript{1445} What ultimately matters is the ethical relevance of a claim, not the political, important though it is.

The legal positivist demand of strict correlation and the libertarian criterion of “mutual co-possibility” for the admissibility of human rights can make room only for “universal negative rights” and “universal negative

obligations” of omission and restraint. \(^{1446}\) This makes the range and reach of human rights very narrow. Sen, hence, attempts a relaxation of a strict requirement of logical co-possibility/correspondence, thereby accommodating universal positive rights and positive obligations. \(^{1447}\)

5.1.2. Feasibility Critique

The feasibility critique maintains that, “even with the best of efforts, it may not be feasible to realize many of the alleged economic and social rights for all”; it is presumed that in order to be coherent “human rights must be wholly accomplishable for all”. \(^{1448}\) Such a rigorous feasibility condition takes economic and social rights outside the domain of human rights. Sen observes that even in utilitarianism, which pursues maximization of utilities, “the viability of that approach is not compromised by the fact that there always remains scope for further improvement in utility achievements”. \(^{1449}\) In a similar way the human rights discourse demands that recognized human rights be maximally realized. “The viability of this approach does not crumble merely because further social changes may be needed at any point of time to make more and more of these acknowledged rights fully realizable and actually realized.” \(^{1450}\)

Sen strikingly observes that if “complete realization for all” is made the condition of the cogency of human rights, then not only the welfare rights but also the right to liberty would have been nonsensical. He thus shows that the existence of human rights cannot be denied just because it is not possible to satisfy them all maximally. By this standard, he says, we could show that there is no human right to liberty because we cannot stop all attacks on liberty. \(^{1451}\) Even if an immediate and total fulfilment may not be possible, “credit can still be taken for the extent to which these alleged


\(^{1451}\) Cf. Sen (2009): *The Idea of Justice*, 384–385. “If the current feasibility of guaranteeing complete and comprehensive fulfillment were made into a necessary condition for the cogency of every right, then not only economic and social
rights are fulfilled”.1452 He states: “The first and ‘second’ generation rights are not as distinct in terms of fulfillability as some critics of developmental rights have tended to make them.”1453 This is in resonance with the general realization-focused perspective of Sen that foresees a piecemeal realization justice.

It is already outlined that Sen’s comparative justice strives toward enhancing actual realization; in this sense, what is sought is not an immediate complete feasibility but the enhancement of the realization of human rights. Rights sometimes are not fulfilled; Sen argues that “a right that a person has, which has not been fulfilled and a right that the person does not have” belong to two different categories. He states unambiguously: “The current unrealizability of any accepted human right, which can be promoted through institutional or political change, does not, by itself, convert that claim into a non-right.”1454 Even liberties and autonomies cannot be guaranteed and promoted if they are “left alone”.1455 This sheds light on the works to be done: “Often, rights are unfulfilled precisely because of the failure of duty bearers to perform their duties.”1456 This places some demands on others who are in a position to help in realizing these rights;1457 often it calls for working towards “changing the prevailing circumstances to make the unrealized rights realizable, and ultimately, realized”.1458 In view of his emphasis on “multilateral interdependence”, it would be a grave mistake to cast out the so-called ‘second generation rights’ from human rights catalogues because of present inadequate expansion. Enormous “causal connections” of various freedoms call for more institutional expansion, political will and cooperation of various institutions towards their realization. Sen summarizes:

An unrealized right is a distinct category from a non-right—it is an acknowledged right that is not yet fulfilled, and is perhaps not completely fulfillable without some social changes. Indeed, precisely because we see claims of this kind as rights, we have particular reason to try to do what we can to make

them realizable and then be actually realized, when necessary through new institutions. The usefulness of the acceptance of some rights as legitimate may lie, at least partly, in inspiring and helping to promote institutional change. The answer to the question “why human rights?” lies, to a great extent, in the social role of human rights in translating an ethical value into practical action aimed at promoting that ethics.  

He again resorts to the ethical relevance of human rights and emphasizes that “the question of the fulfilment of rights must be distinguished from the issue of their existence”.  

The impossibility of complete fulfilment in the present situation does not nullify or damage or embarrass a claimed human right; rather it calls for more engagement. This challenges the accusation that human rights, like the right to food, have only rhetorical value. They are indeed moral claims on individual and collective agents who are in a position to help in realizing it, and on the design of adequate social arrangements.  

The state is identified as the ‘major agent’ who has “an enormously large role” in helping achieve the fulfilment of human rights. Sen thus makes room for the objective of piecemeal changes rather than immediate and complete changes. As long as “enhancement of actual realization” is the focus, complete feasibility is not the sine qua non of human rights. Human rights as a social goal that has to be realized through piecemeal changes is well expressed in Sen’s innovative concept of ‘metarights’.

5.1.3. Metarights

Sen’s seminal notion of metarights exemplifies his conceptualization of human rights as social goals to be achieved. It is already explained how his goal rights system conceives the realization of rights as a continuum.

---

He elucidates that new rights like “the right not to be hungry” may sound like an ‘abstract’ right when the trade-offs with other objectives are not specified and other features of concrete application kept somewhat vague.\textsuperscript{1464} It could be the case that a state may not be in a position to provide public services because of limited resources and other costs. Even in that situation people have a right to policies and programmes that promote the achievement of these services as an immediate or cumulative outcome. Sen names such rights ‘metarights’, and this can be considered to be his most original contribution to human rights discourse.

A metaright to something, $x$, can be defined as the right to have policies, $p(x)$, that genuinely pursue the objective of making the right to $x$ realisable. So it is not a right to $x$, but to $p(x)$, which is a metaright to $x$\textsuperscript{1465}.

The notion of metarights underscores the right to public policies, social institutions and many non-rights considerations, all aimed at fulfilment of that right. The right to $x$ entails $p(x)$, $s(x)$, $g(x)$, etc., where $p$ stands for public policies, $s$ for social institutions, $g$ for public goods. These multiple actors, factors and processes, individuals and collectives work together for the realization of these rights.\textsuperscript{1466} In that sense, a metaright can be considered as a vector of rights and freedoms. It will generally be a case of ‘progressive realization’, especially in the case of resource constraints – both rights and obligations arising out of metarights may be realized only progressively.

The notion of metarights enormously broadens the idea of human rights surrounding $x$. Sen underscores that “whether such a metaright is unrealized would depend not on whether $x$ fails to obtain, but on whether $p(x)$ fails to obtain”.\textsuperscript{1467} Even if the second right remains unrealized at some point, the first right can at that time be satisfied. The absence and inadequacy of policies and programmes for a better future of the land are a human rights violation. It is thus evident that metaright is primarily targeted at governments.

---


\textsuperscript{1467} Sen (1982): “The Right not to Be Hungry”, 357.
Even if it were to be the case that a particular government does not, right now, have the resources (or the possibility of raising the resources) needed to bring about the fulfilment of specified rights for all, it is essential to encourage the government to work towards making their fulfilment feasible. Credit can still be given for the extent to which these alleged rights are fulfilled. This can help to focus attention on these human rights—and to promote their fulfilment. It can also enrich the understanding of processes that lead to successes and failures in human development.\(^{1468}\)

Sen underscores the relevance of such rights illustrating the example of hunger abolition:

Rights related to not being hungry can, thus, take very many different forms in terms of concreteness, institutional reflection etc., but it seems necessary also to consider in this context the class of metarights not to be hungry. This is particularly relevant to countries in which immediate abolition of hunger is impossible but policies that would rapidly achieve such a goal do exist. The failure to fulfil metarights of this kind can provide legitimate reasons for revolt.\(^{1469}\)

This approach takes the human rights discourse beyond welfarism because it holds that “the assertion of a right to the basic means of living would demand something more than an acknowledgement of a claim that hold \textit{if and only if} certain assumed utility conditions are fulfilled”. Fighting against poverty and misery requires including various non-welfarist considerations in a consequence-sensitive structure.\(^{1470}\)

The distinction between rights and metarights is similar to the distinction between legal and moral claims. Metarights are not weak rights, even when they lack legal status: it reaffirms the power of moral right.

While the content of law may not be independent of moral principles and boundaries are unclear, this does not disestablish the thesis that moral rights differ from legal rights. This right not to be hungry and the corresponding metarights can strongly arise in such moral contexts, even when their legal status is weak or absent. The moral right not to be hungry has, thus, to be distinguished from the corresponding legal rights in all its forms.\(^{1471}\)

In the goal rights system, it is “a relation not primarily between two parties but between one person and some ‘capability’ to which he has a


right”.\textsuperscript{1472} It is thus the right to have an opportunity, and this can entail a cluster of duty bearers. In this framework, ‘new’ rights, such as the right to food, right to water, etc., can be well substantiated because broad social goals can be considered as human rights that generate human responsibility, even global response. Sen thus proved that social and economic rights (welfare rights), even if some rights are not realized immediately and completely, are not empty platitudes without substance but claims with a substance that call for the attention of the whole of humanity.

5.2. The Relevance of Political and Civil Rights

Now we turn to the other side of the spectrum – the problems related to the exclusion of political and civil rights. In Sen’s general idea of the interrelatedness of all classes of rights, political freedoms are positively related to economic growth, thus calling for a holistic approach to human rights. His academic career revolted against developmentalism, which conceives human development only in economic terms, and he successfully demonstrated important ‘non-economic’ dimensions of poverty and development. He says: “No concept of poverty can be satisfactory if it does not take note of the disadvantages that arise from being excluded from shared opportunities enjoyed by others.”\textsuperscript{1473}

5.2.1. Political Freedom a Luxury for the Poor and Foreign to Culture?

The presumption that political freedom belongs to the rich and the prosperous is a fairly widespread belief. It is often claimed that human rights “cannot thrive on empty stomachs” as long as people battle with their burning “bread-and-butter issues”.\textsuperscript{1474} Such reasoning would lead to a reverse prioritization of economic and social concerns at the neglect of the

political. Political rights are sometimes labelled as ‘a Western programme’ which, as some claim, does not appeal to hungry and sick people.\textsuperscript{1475} Howard-Hassmann disparagingly calls this approach “full-belly thesis”; the argument is “that a man’s belly must be full before he can indulge in the ‘luxury’ of worrying about his political freedoms”.\textsuperscript{1476} Besides, the view that civil and political rights are a luxury that Africa could not afford is widespread. The arguments may seem to be persuasive, as the right to vote may sound meaningless when one must go hungry, and the right to join a trade union is meaningless as long as one is jobless. Here arises a real-life situation where one is tempted to prefer food to freedom.

This general belief is reinforced by another argument that political authoritarianism provides efficiency and acceleration to economic growth. A well-known representative of this line of thought is the ‘Lee hypothesis’, which claims that democracy hampers economic growth and development. The phenomenon of the ‘East Asian wonder’, which demonstrates the enormous economic boom of the East Asian ‘tigers’ South Korea, Singapore and post-reform China as compared to less authoritarian states including India, Jamaica and Costa Rica, is quoted as validating example.\textsuperscript{1477}

This argument is cleverly coupled with claims of a ‘regional and cultural particularism’, which justifies the exclusion of political and civil rights. For instance, the champions of ‘Asian values’ presume that Asian cultures accord less value to individual rights and more to discipline and order.\textsuperscript{1478} The ‘Lee hypothesis’ attributes the recent success of some East Asian countries to disciplinary Confucianism or the cultural geist of this re-

\textsuperscript{1475} Ake, for instance, is sceptical of the Western programme of human rights which prioritizes political rights, such as the right to assembly, the right to free speech, fair process of trial, etc. “The appeal of these rights is sociologically specific. They appeal to people with a full stomach […]. There is no freedom for hungry people, or those eternally oppressed by disease.” Ake, Claude (1994): “The African Context of Human Rights”, \textit{Africa Today}, 34 (1/2), 5–6.


\textsuperscript{1478} Cf. Zakaria, (1994): “Culture is Destiny”.
gion.  

1479 Sen notes: “These values are taken to imply disregard, in general, of human rights (focusing more on duties and discipline than on rights and entitlements), as deep skepticism, in particular of political liberty and civil rights (focusing more on economic conditions than on political freedom).”  

1480 This particularism-argument feeds on the clash of civilization-logic, which often takes an apologetic stance to the human rights as a conspiracy of Western culture. This attests to the rhetoric that democracy is quintessentially a Western import. Sen notes that such oversimplification appears not only “in the writings of some governmental spokesmen in Asia, but also in the theories of some of the finest Western scholars themselves.” “But even though every Asian pull may be matched by a Western push, the two together do not really manage to dent democracy’s claim to be a universal value.”  

The ‘Huntington clash-thesis’, applied to the religious lines, presumed that Muslim societies do not prefer a democratic form of regime. New empirical studies, however, reveal that the majority of Muslims not only in Europe but also in Near East and Maghreb countries prefer democracy as the favoured form of governance.  

5.2.2. The Inevitability of the Political  

It is already delineated how Sen dismantled the claims of ‘clash of civilizations’ hypotheses in section C.III.2. We now focus mainly on the arguments related to poverty. At a first glance, the ‘Lee hypothesis’, which states that authoritarianism serves economic development better than democracy does, seems to be more empirical and rational; Sen, however, debunks this deeply held belief. He demonstrates that it is simply “based on sporadic empiricism, drawing on very selective and limited informa-

1479 It is to be noted that Sen in his writings amply explored non-disciplinar ‘liberal’ resources of Confucianism. The underlying problem is the oversimplification of a rich and multidimensional philosophy.  
tion, rather than on any general statistical testing over the wide-ranging data that are available. A general relation of this kind cannot be established on the basis of very selective evidence.”

This random empiricism fails to establish causal processes involved in a complex phenomenon where a variety of reasons have played their part. Sen argues that “the temptation to see the positive role of authoritarianism seems to be based on taking the post hoc to be also propter hoc; it is not systematically founded on any establishment of cause and effect relations.”

According to Sen, there are varieties of “economic policies and circumstances” that contributed to the success of the East Asian countries, and it is not easy to assign emphasis to one particular factor. However, now there is a “broad consensus on a list of ‘helpful policies’ that includes openness to competition, the use of international markets, public provision of incentives for investment and export, a high level of literacy and schooling, successful land reforms, and other social opportunities that widen participation in the process of economic expansion.” To Sen “there is no reason at all to assume that any of these policies is inconsistent with greater democracy and had to be forcibly sustained by the elements of authoritarianism that happened to be present in South Korea or Singapore or China.”

A causal relationship between authoritarianism and rapid economic growth cannot be explicitly made. The task is to create an efficient democratic atmosphere where the above-mentioned welfare policies are effectively implemented; it is not to maintain the flawed belief that only authoritarianism could achieve them. Sen illustrates contrary evidence from other regions; for instance, the counter example of Botswana, the country with the best record of economic growth in Africa, indeed with “one of the finest records of economic growth in the whole world, has been an oasis of democracy on that continent over the decades. We need

---

1485 “But the overall picture is much more complex than these isolated observations might initially suggest, and systematic statistical studies give no real support to the claim that there is a general conflict between political rights and economic performance.” Sen (1999): “Human Rights and Economic Achievements”, 91; also cf. Sen (1999): Development as Freedom, 150.
more systematic empirical studies to sort out the claims and counter claims.”

The arguments that poor countries are not ‘mature’ enough for the democratic process and that poor people cannot take political freedoms seriously are widespread. Sen expounds: “According to this argument, poor people are interested, and have reason to be interested, in bread, not in democracy.”

“Priority must surely be given, so the argument runs, to fulfilling economic needs, even if it involves compromising political liberties. It is not hard to think that focusing on democracy and political liberty is a luxury that a poor country ‘cannot afford’.” This claim is often supplemented by an obtuse argument “that poor people are not really bothered by coercion”. Sen notes how such false logic causes enormous heteronomy towards the poorest and least privileged in the society. He illustrates the compulsory sterilization programme of Mrs Gandhi’s government in India during the ‘emergency period’ in the 1970s, which also suspended various legal rights and civil liberties. The policies of suspending political rights and freedoms, accompanied by “coercion to a poor population”, caused vehement defeat from one of the poorest electorates in the world in the general elections that followed. Sen spells out: “The poverty-stricken electorate of India showed no less interest in voting against coercive violation of political, civil, and reproductive rights than it takes in protesting against economic and social inequality.”

As Sen proves, the claim that the poor would reject democracy is not sustained by empirical evidences. He rightly observes that if the poor are consulted, as it happened in the Indian general elections, they would not show much enthusiasm for authoritarian governments in other parts of the world – a testing that does not happen in many parts of the world, for instance in China. He affirms:

---


While arguments are often presented to suggest that people who are very poor do not value freedom in general and reproductive freedom in particular, the evidence, insofar as it exists, is certainly to the contrary. People do, of course, value – and have reason to value – other things as well, including well-being and security, but that does not make them indifferent to their political, civil or reproductive rights.¹⁴⁹³

Sen thus argues that “the intensity of economic needs adds to – rather than subtracts from – the urgency of political freedoms”.¹⁴⁹⁴ “Throughout the nineteenth century, theorists of democracy found it quite natural to discuss whether one country or another was ‘fit for democracy’”. This thinking changed only in the twentieth century with the recognition that the question itself was wrong: “A country does not have to be deemed fit for democracy; rather, it has to become fit through democracy. This is indeed a momentous change, extending the potential reach of democracy to cover billions of people, with their varying histories and cultures and disparate levels of affluence.”¹⁴⁹⁵ Sen thus debunks the claim that poor people would invariably prefer food to freedom. Since political freedoms are essential for development, he consistently argues that poor, yet democratic India holds promise for a long-term and sustainable growth rather than authoritarian China.¹⁴⁹⁶ With all its imperfections, India’s multi-party democratic system, with guaranteed political freedoms and a relatively free news media, has given Indian citizens various opportunities and liberties that Chinese citizens have lacked.¹⁴⁹⁷

5.2.3. Three Important Roles of Political Freedom

The inevitability of political freedoms, according to Sen, is particularly embodied in the great idea of democracy, which entails “a plurality of

---

He outlines these virtues in three categories: the intrinsic importance, the instrumental role and the constructive role.\footnote{1498}

\subsection*{Intrinsic}

Beyond economics’ exclusive preoccupation with the instrumental value of rights, Sen persistently defended the significance of their intrinsic value; political participation and freedom have thus an intrinsic importance even without considering the good outcomes they may yield.\footnote{1499} “Indeed, the case for democracy and civil rights cannot be based on their likely positive impact on economic growth, nor can that case be demolished by their likely negative effect on economic growth. If these rights have a value of their own, then this value, it appears, can be obtained at the little or no cost to economic growth.”\footnote{1500} Freedom, in general, is intrinsic to the good life; civil and political freedoms are internal to individuals as social beings. “Political and social participation has intrinsic value for human life and well-being. To be prevented from participation in the political life of the community is a major deprivation.”\footnote{1501} Even when people who enjoy favourable economic circumstances are denied some important freedoms, like the denial of the opportunity to take part in crucial decisions regarding public affairs, they are confronted with serious deprivations. “Since political and civil freedoms are constitutive elements of human freedom, their denial is a handicap in itself.”\footnote{1502} This conception arises from Sen’s normative understanding of human beings, which considers freedoms and liberties inherent to human nature. It challenges the temptation of ‘developmentalism’ to reduce human beings to the sum total of their needs.

In terms of the importance of their freedom to decide what they want (including what needs to fulfil), to live the way they would like (whether or not the chosen lifestyle is seen as a need), and to do what they have reason to want to do (even if the reason is not one of fulfilling needs) […] There is a big issue of individual choice here […]. There are some important grounds for favouring a freedom-oriented view—focusing on the enhancement of hu-

\footnotesize
\begin{itemize}
  \item \footnote{1501} Sen (1999): “Democracy as a Universal Value”, 10.
\end{itemize}
man capability—rather than seeing human beings only in their more elementary ‘animal’ form of having needs that demand fulfilment.\textsuperscript{1503}

Exclusive focus on needs, therefore, does not see human beings beyond their animal part; their distinctly human element lies in freedom and autonomy. Human beings are not merely consumers, they are also “agents of change who can—given the opportunity—think, assess, evaluate, resolve, inspire, agitate, and, through these means, reshape the world”.\textsuperscript{1504} Sen argues that it would be catastrophic to neglect this inherent human nature in the name of improving material well-being. He, therefore, reiterates that the instrumental role of freedom in the developmental process should not overlook the constitutive role. Human beings as moral agents have a right to active political participation, at the local and higher levels, in determining the shape of one’s social and economic environment. “The instrumental role of democracy and human rights, important as it undoubtedly is, has to be distinguished from its constitutive importance.”\textsuperscript{1505}

True development, in other words, necessarily involves the active participation of informed human beings in the processes of social change. Development is not to be confused with something that is done to people. Throughout his works, Sen emphasizes that people should not be seen as passive recipients of social patterning but active agents of their own well-being: “The first question relates to the need, emphasized throughout this work, to see people—even beneficiaries—as agents rather than as motionless patients. The objects of ‘targeting’ are active themselves, and their activities can make the targeting achievements quite different from targeting attempts.”\textsuperscript{1506} Without denying the significant role of social arrangements in the process of development, Sen’s development agenda focuses on the agency of people. His approach which “concentrates on substantive freedoms inescapably focuses on the agency and judgment of individuals; they cannot be seen merely as patients to whom benefits will be dispensed by the process of development. Responsible adults must be in charge of their own well-being; it is for them to decide how to use their capabilities.”\textsuperscript{1507}

\textsuperscript{1506} Sen (1999): Development as Freedom, 137.
Development, in this perspective, is not a “fierce” process, with much “blood, sweat and tears” and excluding the “luxury” of democracy.\textsuperscript{1508}

b. Instrumental

In the conceptualization of development as ‘expansion of substantive freedoms’, freedoms are not only the “primary end” of development but also its “principal means”. Thus, along with the “constitutive role”, an important “instrumental role” is equally affirmed.\textsuperscript{1509} Due to causally significant relations, deprivation of political freedoms leads to bad results, such as the denial of social and economic opportunities that are important for well-being.\textsuperscript{1510} It will be noted how political freedoms have a protective and promoting role in the process of human development. Sen’s empirical researches illustrate positive relations between civil and political rights and economic security, particularly demonstrating an important protective role in preventing major social disasters and generating an appropriate political response. He states: “Whether and how a government responds to needs and sufferings may well depend on how much pressure is put on it, and the exercise of political rights (such as voting, criticizing, protesting, and so on) can make a real difference.”\textsuperscript{1511}

Sen’s seminal research on causal connections of famine prevention and political freedom emphasized the protective role of democracy, particularly for the poor. He observes that no major famine has occurred in any country with a functioning democratic form of government and a relatively free press.\textsuperscript{1512} He describes the protective cover of democracy:

No substantial famine has ever occurred in any independent country with a democratic form of government and a relatively free press. Famines have occurred in ancient kingdoms and contemporary authoritarian societies, in primitive tribal communities and in modern technocratic dictatorships, in colonial economies run by imperialists from the north and in newly independent coun-

\textsuperscript{1511} Sen (1999): “Human Rights and Economic Achievements”, 92. If the problem is severe malnutrition, however, the record is not so clear: since Deng’s reforms, autocratic China has a better record in this respect than democratic India.
tries of the south run by despotic national leaders or by intolerant single parties.\footnote{1513 Sen (1999): Development as Freedom, 152.}

The experiences of India vindicate it: While under British rule, the Bengal Famine in 1943 killed between 2 and 3 million people. Later, in democratic India, regular elections (the fear of facing electoral repercussions for failure to act), criticisms of opposition parties and the crucial role of the free press that reports freely and questions government policies, etc. prevented it from happening again.\footnote{1514 Cf. Sen (1999): Development as Freedom, 152.} It is contrasted with the contrary experience of famine in China after the ‘Great Leap Forward’, in which 23 to 30 million people died because of the flawed policies. Sen concludes: “No democratic country with opposition parties and a free press would have allowed this to happen.”\footnote{1515 Sen (1999): “Human Rights and Economic Achievements”, 92–93.}

Political freedoms also can have “a major role in providing incentives and information in the solution of acute economic needs”.\footnote{1516 Sen (1999): Development as Freedom, 147.} This empirically challenges the claim that authoritarian governments are better suited for faster economic development. The market system cannot be left to the so-called self-regulating ‘invisible hand’ nor to the whims of dictators, but to the protective power of democracy. According to Sen, the recent financial crisis and general economic recession in East and Southeast Asia are, inter alia, the penalties of undemocratic governance.

There is, I believe, an important lesson here. Many economic technocrats recommend the use of economic incentives (which the market system provides) while ignoring political incentives (which democratic systems could guarantee). This is to opt for a deeply unbalanced set of ground rules. The protective power of democracy may not be missed much when a country is lucky enough to be facing no serious calamity, when everything is going quite smoothly. Yet the danger of insecurity, arising from changed economic or other circumstances, or from uncorrected mistakes of policy, can lurk behind what looks like a healthy state.\footnote{1517 Sen (1999): “Democracy as a Universal Value”, 9.}

Political freedoms, especially democracy, contribute positively to economic and human development. Fulfilment of many welfare rights is directly related to political and civil freedoms. For instance, enjoyment of the highest attainable standard of health requires enjoyment of the rights to in-
formation and education, as well as the right to an adequate standard of living. Transparency is intrinsically related to the general development of a country. Public participation and democracy play important roles in enhancing the ‘hearing’ that people get when expressing and supporting their claims to political attention (including claims of economic needs). Civil and political rights are instrumental in forcefully drawing attention to general needs and in demanding appropriate public action, through voting, criticising, protesting, thus all giving a voice to the people. Sen thus envisions a richer notion of democracy, founded on public discussion that goes beyond the mere mechanical processes of voting and majority rule. Thus, he makes a persuasive case for political freedoms in view of its role in promoting integral development and demonstrates that democracy is not a luxury that can await the arrival of general prosperity; rather it is an ally of the poor and catalyst of the process of development.

c. Constructive

Sen’s system of social evaluation functions within the framework of social choice theory, which is founded on the interactive process. This democratic process is crucial in the formation of values; he now underlines that democracy plays a constructive role in the conceptualization of economic needs as well. He argues that “a proper understanding of what economic needs are—their content and their force—requires discussion and exchange […] open discussion, debate, criticism, and dissent, are central to the processes of generating informed and reflected choices.” Thus, “political rights, including the freedom of expression and discussion, are not only pivotal in inducing social responses to economic needs, they are also central to the conceptualization of economic needs themselves.”

The putative dichotomy between economic needs and political rights arise from “the presumption that needs are something solid and given,

whereas rights are discretionary and perhaps even a little ad hoc. In fact, political and civil rights play an important constructive role in promoting public discussion which permits citizens to form, in an informed way, their values and conceptions of needs.\textsuperscript{1524} Sen thus presents a dynamic view of needs that are formed through a discursive process of public discussion, which is hedged by political liberty and civil rights.\textsuperscript{1525}

Sen emphasizes the reach and effectiveness of open dialogue in assessing social and political problems. Public discussions, for instance, can play an important role in reducing the high rates of fertility that characterize many developing countries. It is empirically proven that a reduction of the fertility rate is positively related to literacy. Literacy supports public discussion and interaction. Referring to the experiences of the Indian state of Kerala, Sen argues that the formation of the consciousness that “a happy family is a small family” can be nurtured through much discussion and debate, in contrast to the coercive method adopted in China.

Kerala now has a fertility rate of 1.7 (similar to that in Britain and France, and well below China’s 1.9), and this has been achieved with no coercion, but mainly through the emergence of new values – a process in which political and social dialogues have played a major part. The high level of literacy of the Kerala population, especially female literacy, which is higher than that of every province of China, has greatly contributed to making such social and political dialogues possible.\textsuperscript{1526}

State coercion of population control in India during the emergency in the 1970s, through various restricting means, did not have much impact; moreover, it had worsened the sex ratio. More than state coercion, social awareness and social change occurred through education and public activism.\textsuperscript{1527} Public discussion can also contribute significantly to overcoming cultural prejudices: Sen’s ground-breaking research about the “missing women” revealed the massive female disadvantage in life expectancy, showing how females fail to survive infancy and childhood.\textsuperscript{1528} The discrimination against women in Asia, North Africa and other parts of the world arises from social prejudices and preferences that ultimately result

\begin{itemize}
\item \textsuperscript{1524} Sen (1995): “Wrongs and Rights in Development”.
\item \textsuperscript{1527} Sen (1999): \textit{Development as Freedom}, 224.
\end{itemize}
in grave gender inequality and comparative neglect of women. The better gender equality in Kerala is the result of education and conscientization of women. The female-male ratio of the Kerala population is now around 1.04 – similar to that in Europe and America (and most unlike that in the rest of India, Bangladesh, Pakistan, China, West Asia and North Africa). The “missing women” can be saved only through value formation that leads to social transformation. Social change is a friendly and dialogical process, and political freedoms play an important role in it.

Sen illustrates also the example of political activism and public participation in the Indian state of Kerala in realizing better social opportunities in the society. Despite poverty and the failings of the Indian health services, Kerala has achieved better social indices with regard to life expectancy and infant-mortality rate. “Kerala, with its background of egalitarian politics, has been able to benefit further from continued public reasoning protected by a democratic system.”

Here, again, Sen envisions a broader notion of democracy, one that is a dialogical, educative and reformational process of democratic discussions and interactions – rather than a mere electoral process of deciding on ‘majority’ through balloting. The public agitation has a significant role in calling attention to pervasive social inequalities and deprivations and in overcoming them. “Democratic freedom can certainly be used to enhance social justice and a better and fairer politics. The process, however, is not automatic and requires activism on the part of politically engaged citizens.” Sen champions a shift from mere electoral niti to democratic nyaya, which is much more than mere voting; rather it is public discussion and social change. This nyaya approach in opposition to institutional niti approach depends more on our actual behaviour patterns than on the ‘safe’ hands of purely institutional virtuosity. The processes of public discussion “are crucial to the formation of values and priorities and we cannot, in general, take preferences as given independently of public dis-

1531 Fixation on majority has obviously its limitations. “The problem that a ruthless majority that has no compunction in eliminating minority rights would tend to make the society face a hard choice between honouring majority rule and guaranteeing minority rights.” Sen (2009): The Idea of Justice, 352.
Sen affirms the mutual enrichment of social-economic development and political freedom in eradicating poverty and removing social maladies, and he criticizes both the opposing tendencies of “postponability of social-change and human-development” (posh, for short) as in the case of India and “political unreadiness for speedy human-rights” (push, for short) as it happens in China. He states:

The ‘constructive’ role of rights makes it possible for citizens to interact with each other, to consider feasibilities, and to form values and priorities. This is a field in which the respective ideas of posh and push interact. Constructive discussions of this kind may be prevented by authoritarianism, through the banning of such political interactions (as in China), but they can also be substance constrained because of illiteracy and ignorance (as in much of India).

There is an interesting debate if civil and political rights ought to precede, accompany or follow economic growth. Liberalism and libertarianism argue for ‘preceding’ and economists in general, consequentialists and the authoritarians endorse ‘following’. Sen has persuasively argued that they accompany – for all human rights are intrinsically interrelated.

Conclusion

This chapter underlined the indivisibility and mutual interaction of all sets of rights, and it was indeed a vindication of the basic pattern of ‘liberty + welfare’ that ran through my analysis of Sen. Both economics that relegated any deontic values, and political philosophy which was not interested in results but minimally, captured the idea of human well-being. Sen demonstrates how liberty and welfare motives work simultaneously in all successful capitalist countries in the world.

All affluent countries in the world—those in Europe, as well as the US, Canada, Japan, Singapore, South Korea, Australia, and others—have, for quite some time now, depended partly on transactions and other payments that occur largely outside markets. These include unemployment benefits, public pensions, other features of social security, and the provision of education, health care, and a variety of other services distributed through nonmarket arrangements. The economic entitlements connected with such services are not based on private ownership and property rights.\textsuperscript{1538}

This establishes a positive correlation between liberties and the provision of social welfare beyond an unfettered capitalism. Combining what the market can and cannot achieve goes well beyond relying only on a profit-maximizing market economy and on personal entitlements confined to private ownership. Sen identifies here the “causal connections” of various freedoms. He identifies Japan to be the pioneering example of combining liberty and welfare rights, social opportunities and the market system.\textsuperscript{1539}

This sheds light on the need to have a development framework that is sensitive to various parameters that are relevant for enhancing human capabilities rather than just being preoccupied with economic statistics;\textsuperscript{1540} it shows also the necessity of acknowledging “multilateral interdependence”. Against prevailing apprehensions that too much of “social objectives” like paying attention to “education and healthcare would hamper economic growth”, he brings in the example of China. Because of its “social activities”, China’s rate of GNP growth is still clearly higher than ‘less social’ countries like India. In the same breath Sen adds that it is not ‘less democracy’ that contributed to this admirable achievement. A democratic regime can achieve it in the same way if it invests in the key social objectives, as mentioned above.\textsuperscript{1541}

Sen emphasizes the “extensive interconnections between political freedoms and the understanding and fulfillment of economic needs”.\textsuperscript{1542} The true geist of ‘development as freedom’ is an integration of liberty and welfare rights. Real life situations may occasionally demand trade-offs, but

\begin{thebibliography}{10}
\footnotesize
\end{thebibliography}
“the need for trade-offs is often exaggerated and is typically based on very rudimentary reasoning. Further, even when trade-offs have to be faced, they can be more reasonably—and more justly—addressed by taking an inclusive approach, which balances competing concerns, than by simply giving full priority to just one group over another.”

Hence there is no need for partisan solutions but for an integral approach to human rights that recognizes the indivisibility of human rights. Poverty eradication requires an inclusive strategy because human rights are relevant to poverty in multiple ways.

For China […] it may be crucial to see how the use of political and civil rights can not only protect against disasters, but also facilitate the process of social change, without the heavy penalties that result from coercive policies. While India gets substantial benefits from these rights in general, their contribution would be much more significant in alliance with social development. That combination could be momentous indeed.

Sen thus makes a compelling case to attempt a reasonable combination of both liberty and welfare rights.

**IV. An Appraisal of Sen’s Human Rights Discourse**

An analysis of Sen’s human rights discourse principally revealed his brilliant integration of liberty and welfare rights, through which he allayed widespread scepticism about the coherence and feasibility of all sets of human rights. This part of the book is an evaluation of his ideas of human rights, primarily focusing on his reception in the contemporary human rights discourse. In spite of the rich possibilities of an analysis, I limit it to his contribution to the integration of ideas of human rights and human development – which is certainly a vindication of the general pattern of this book: ‘liberty + welfare’. This rapprochement can be considered to be the most enduring feature of Sen’s human rights discourse. His lifelong advocacy for such an integral vision materialized, meanwhile, in the path-breaking UN Declaration of the Right to Development (RtD). The growing influence that he wields on various fora of UN and the policies of many countries is beyond dispute.

Firstly, I study Sen’s reception in human rights discourse through an ‘external review’ based on the writings of Arjun Sengupta, who became the independent expert on RtD for the United Nations Commission on Human Rights in 1999. His basic theoretical framework is founded on Sen’s approach to human rights, and a brief study of his notion of RtD reveals the extent to which Sen’s ideas of human rights are assimilated into the current human rights discourse. Secondly, there is a brief glimpse at Sen’s own opinion about the amalgamation of human rights and human development discourses, chiefly depending on his contribution to the Human Development Report 2000, which dealt with the topic “Human Rights and Human Development”.

1. A Paradigm Shift in the Conceptualization of Development and Human Rights

The end to the Cold War rivalries led to a reconceptualization of both development and human rights. With regard to the first, Sen’s revival of welfare economics and the resultant emergence of the idea of human development inaugurated a new era in the development thinking, in effect establishing a counter-discourse against the dominant utilitarian welfarist models. Accordingly, development is measured not simply on the basis of national income but also by other relevant well-being indices, as embodied in the Human Development Index (HDI) and the Human Development Reports of UN, which Sen co-initiated with his friend Mahbub ul Haq. This paradigm shift can be considered as Sen’s most enduring contribution to welfare economics. “The basic concern” in this new framework “is with our capability to lead the kinds of lives we have reason to value”. Hence it is a distinctly normative approach to measuring well-being in terms of the expansion of substantive freedoms, and development in terms of removing unfreedoms. This new focus on the actual life of the people is

---

1545 Sengupta was UN’s Independent Expert on Human Rights and Extreme Poverty and member of UNDP’s Commission on Legal Empowerment of the Poor. Elaborating the Declaration of the Right to Development adopted by the UN in 1986, he produced six reports on the right to development between 1999 and 2004.
captured in the title of the 2010 Human Development Report, *The Real Wealth of Nations*. Providing an alternative to the single-minded concentration on GDP, the human development approach reoriented itself to creating an enabling environment for people.

With regard to human rights, Sengupta rightly observes that the UDHR was the result of the immediate post-war consensus about human rights, which was a comprehensive approach that integrates all sets of human rights, including freedom from want. The Cold War polarization, unfortunately, ruptured the vision of the UDHR, resulting in two separate covenants of human rights: the Western democracies championing political rights and the second world socialist countries advocating social and economic rights. Sengupta spells out:

The post-war solidarity gave way to the Cold War and the countries were divided in their support of the different rights. So, instead of one unified covenant, those rights were codified in 1966 in two international covenants—one on civil and political rights, the other on economic, social and cultural rights. In spite of the integrity of these rights, the real politick of international relations at that time dictated a split in the treaty obligations of the different states in implementing these rights.

The UN Declaration on the Right to Development in 1986 was a watershed event that rediscovered the original unity of all human rights. This, however, failed to gain a complete consensus, as the world was still divided into two blocs. The end of the Cold War helped to reclaim the original vision of the UDHR, culminating in the Declaration of the Right to Development in Vienna in 1993, which integrates civil, political, economic, social and cultural rights. The new consensus underscores that “the right to development, as established in the Declaration, […] [is] a universal and inalienable right and an integral part of fundamental human rights”.

This declaration also guards against undue prioritization of any set of rights. “All rights have to be fulfilled together and the violation of one

---


would be as offensive as that of another.” 1552 RtD thus overcame the unfortunate bifurcation of human rights, affirming their essential idea of interrelatedness.

2. The Integration of Human Development and Human Rights

Development issues were conventionally monopolized by development economics, whereas human rights concerns were primarily championed by political philosophy. That actually led to the impoverishment of both disciplines and their programme. Welfare economics and their development agenda were modelled after the natural-positivistic sciences, which were averse to any normative considerations in development programmes. Such a distorted development model led to the paradoxical situation of high rates of economic growth over the past two decades, on the one hand, and prevalent hunger and starvation, on the other hand. Development programmes need to be regulated by principles of justice and equity. The challenge of poverty elimination and removal of inequalities cannot be left to the ‘self-organizing’ wisdom of invisible hand; rather it requires a new welfare economics of human development.

Sen’s integration of liberty and welfare took normative economics forward, thus resulting in a broader notion of well-being that comprises both human development and human freedoms. The project that he started with his “The Right not to be Hungry” 1553 is now well recognized in development economics and political philosophy as the right to development. As RtD entails a host of rights in it, it is the best tool to fight against poverty and vulnerability in the world. This amalgamation initiated multifaceted intersections within and between these disciplines; thus, it ultimately enriched both disciplines. The idea of human development has been substantially enriched by the human rights discourse. Human rights and human development “share a common vision and a common purpose—to secure the freedom, well-being and dignity of all people everywhere”. 1554 Simi-


352
larly, human rights draw attention, among others, to the relevance of fair and just processes, contrary to the exclusive outcome-focus of developmentalism.

The Human Rights-Based Approach to Development (HRBAD) is now an established development paradigm, which came into vogue in the 1990s. It pays attention to social and economic inequalities existing in the society, virtually blurring the grand distinction between human rights and human development. Many actors and agencies adopted the language of a right-based approach to development. UNDP’s Human Development Reports also went through a transition. The HDI started with some “elegantly simple” indices,1555 and new indices have been devised to supplement the HDI and enrich the evaluation. A milestone is the 2000 report, Human Rights and Human Development, which was totally dedicated to the HRBAD in order to eradicate poverty and inequality from the world. The UNDP was also instrumental in organizing many conferences related to the HRBAD, including the UN Millennium Summit, which set out developmental targets of Millennium Development Goals (MDGs) that seek a new global partnership to reduce extreme poverty.

Sen’s repositioning of actual human life at the centre of human rights discourse resulted in his ‘goal rights system’ in the form of “rights-consequentialism”, which is focused on the realization of rights and provided the theoretical basis to this new direction.1556 The MDGs and the new target of Sustainable Development Goals (SDGs) embody rights as ‘social goals’, thereby integrating both human rights and human development. The challenge ahead is clear: some 795 million people still go hungry and around 800 million people live in grinding poverty. This makes a double affirmation that rights realization can be a social goal and that development as a process takes place over a time, through concerted actions and coordinated policies.

In contrast to policies of the World Bank and the International Monetary Fund (IMF), which primarily focused on economic development, in the 1980s and 1990s UNICEF championed a more people-centred devel-

The UNESCO, the intellectual arm of UN, has long been mobilizing international public opinion with regard to the urgent problem of eradication of severe global poverty. The UNESCO published the collection *Freedom from Poverty as a Human Right*, composed of four volumes, addressing the problem from various vantage points. A philosophical approach was developed in *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor*, a legal approach was taken in *Freedom from Poverty as a Human Right: Law’s Duty to the Poor*, a political science perspective was elaborated in *Freedom from Poverty as a Human Right: Theory and Politics*, and the economics point of view was developed in *Freedom from Poverty as a Human Right: Economic Perspectives*.

Many NGOs like Oxfam, which are committed to fighting against poverty, initially concentrated on the provision of food to relieve famine, but over the years they developed strategies to combat the causes of poverty and famine. In 2000, Oxfam adopted a rights-based approach to poverty eradication, acknowledging the universality and indivisibility of human rights. Sen had been at the forefront of the fight, playing a key role in the rapprochement of human rights and development. He is one of the founding fathers of the World Institute for Development Economics Research at The United Nations University (UNU-WIDER), which published 18 works of Sen on development. UNU-WIDER is committed to...
“undertake multidisciplinary research and policy analysis on structural changes affecting the living conditions of the world’s poorest people”.\textsuperscript{1560} To summarize, we notice that an integration of human rights and human development led to a wide-spread consciousness that development is an ethical process, guided by the normative principles of human rights. A normatively steered HRBAD has thus gained great momentum in economics and political philosophy.

3. The Right to Development as a Vector of Rights and Processes: Sengupta

The integration of the domains of human rights and human development in the 1990’s is manifest in the fact that many UN bodies propagated the slogan ‘poverty is a violation of human rights’ to mobilize the international community to fight against the evil of poverty. Through a number of seminal works, Sengupta provided a rich theoretical foundation to the idea that extreme poverty should be considered as a violation of the right to development. He admits that he was “overwhelmingly influenced by Sen’s writings on rights and development” in writing reports about the idea of the right to development.\textsuperscript{1561} Sengupta defines RtD as “a vector of all the different human rights, the value of which improves if at least one right improves and no right deteriorates.”\textsuperscript{1562} In the following we analyse how this corroborates with Sen’s ideas of human rights.

3.1. The Nature and Content of RtD

The UN define RtD as follows: “The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in and contribute to and enjoy economic, social,

\textsuperscript{1560} United Nations University, World Institute for Development Economics Research (UNU-WIDER), Helsinki, Finland. Web, 08/12/2015, <http://unu.edu/about/unu-system/wider/overview>.


cultural, and political development in which all human rights and fundamental freedoms can be fully realised”\textsuperscript{1563} This normative anthropological vision, according to Sengupta, underlines three principles: (a) there is an inalienable human right that is called the right to development; (b) there is a particular process of economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized; and (c) the right to development is a human right by virtue of which every human person and all peoples are entitled to participate in it, contribute to and enjoy that particular process of development.\textsuperscript{1564} There are here three things to be defended: RtD as a human right, RtD as a right to a process of development, and agents of facilitation and implementation of this process of development.

3.1.1. The Prevailing Scepticism

The substance of RtD can be outlined only by substantiating the two stakeholder groups in the human rights discourse, the rights holders and the duty bearers. First, we try to grasp it by focusing on controversies regarding RtD. From a host of scepticisms about the substance and justification of RtD, three aspects are selected that are relevant to our discussion.

Human rights are individual rights

Third World protagonists and First World critics have projected RtD as a collective right, which is more than just the sum of individual or personal rights.\textsuperscript{1565} The admissibility of collective rights as human rights is now a recognized fact (for instance, cultural rights). RtD, however, visualizes


that “the human person is the central subject of development and should be the active participant and beneficiary of the right to development”.\textsuperscript{1566} This is in the spirit of Sen’s defence of ethical individualism when it comes to social evaluation. It would be improper to describe RtD simply a collective right.

\textbf{Justifiability}

RtD entails a claim to economic and social rights, which demand positive obligation; hence they are not justifiable. The legal positivist school regards them at best as social aspirations or statements of objectives.\textsuperscript{1567} Another related concern is the question of feasibility, especially in view of ‘resource constraints’ which would slow the process and extent of the realization of the right to development.\textsuperscript{1568} Sen convincingly established indivisibility and interdependence of human rights, calling attention to a richer understanding of the notion of freedom, beyond positive-negative divides. Prevention, protection and promotion are integral parts of the project of ‘realizing’ human rights. Feasibility problems are already addressed (C.III. 5.1). Sengupta is also of the opinion that unrealized rights are not non-rights. “This argument, however, does not hold because many of the civil and political rights also require as much positive action as economic and social rights, thereby consuming many resources.” The feasibility problem is something common to human rights discourse, not particular to welfare rights.\textsuperscript{1569}

\textbf{Coherence critique}

Coherence critique demands that each right should be correlated with some corresponding duty-holder, who ought to deliver that particular

\textsuperscript{1566} Cf. UN General Assembly (1993): \textit{Declaration on the Right to Development}, #2.
right. RtD entails a wide area of positive rights and obligations, and it may not be always possible to identify a duty-holder in cases like ‘right to food or medical care or basic education’. The challenge is to get out of legal positivist structures.\textsuperscript{1570} We have already noticed how Sen’s goal rights system masterly answers these critiques. Now we would like to situate the argumentation in the context of RtD.

3.1.2. RtD as a Human Right

Sengupta conceptualizes human rights primarily as ethical demands for relevant freedoms that are inherent to human dignity.

Poverty has always been considered a degradation of human dignity, extreme poverty a form of extreme degradation: Poor people cannot lead a life commensurate with the standards of civilized existence. They are afflicted with hunger, malnutrition, ill health, unsanitary housing and living conditions, and often lack education. They do not have the resources to overcome these afflications. Nor does society provide the means for them to overcome these afflications. They lose their self-respect and ability to participate in any kind of fulfilling social life. In short, poor people lack the freedom to lead a life with dignity.\textsuperscript{1571}

The UDHR envisioned recognition of \textit{equity inherent in human dignity} “with equal and inalienable rights as the foundation of freedom and justice”;\textsuperscript{1572} in a similar fashion RtD defends the dignity of the human person and strive to enable others to flourish their valuable freedoms.\textsuperscript{1573} Similar to the Sen-criterion of viability, Sengupta argues that human rights are recognized by the “norm-creating process” of a community.\textsuperscript{1574} The rights become ‘norms’ of behaviour or action of the agents, such as other individuals, the state or the international community, who can contribute to the ful-

\begin{flushright}
\textsuperscript{1572} Sengupta (2001): “Right to Development as a Human Right”, 2535.
\textsuperscript{1573} Cf. UN General Assembly (1993): \textit{Declaration on the Right to Development}, §2 \textsuperscript{1}.
\end{flushright}
filment of those rights. Such an approach needs to be removed from the narrow confines of legal positivism.

Even if these may not be legally enforceable, these obligations are no less binding on moral agents as constraints on their behavior. If these rights can be institutionalized and made into binding legal rights, they probably will be more regularly realized. But even if they are not, and even if such rights are not always actually realized, the importance of moral rights claims would remain as grounds for public action and for making people do what they should do according to their obligations. Those obligations may be legally non-binding if they cannot be perfectly specified, but there are still ethical grounds for carrying them out.

Even without the specificity of legal rights, the ethical demands of RtD have substance and relevance to motivate social change. Sengupta emphasizes that moral rights have “a very powerful appeal for establishing standards of behavior of social agents”, though they lack the reach and force of legal rights, especially against authorities. Moral responsibility is, however, no lesser obligation. “Moral rights involve the same binding obligations as legal rights, once the rights are properly defined and the obligations are clearly specified.” Sengupta underscores that there are several ways of enforcing a binding obligation. Administrative systems, social norms, public action and peer pressure, as well as civil society movements, are several examples of enforcing the obligations related to a right.

Sengupta constructs the idea of obligation on Sen’s theoretical framework: “Rights are entitlements that require, in this view, correlated duties. If person A has a right to some x, then there has to be some agency, say B, that has a duty to provide A with x.” Like Sen, he underscores the need to transcend the rigid positivistic demand of binary matching of rights with duties, where duty bearers are clearly defined. This makes room for a

flexible and broader understanding of the right-duty correlation because claims arising out of these rights are “addressed generally to anyone who can help”.\textsuperscript{1581} It is a demanding task to defend obligation involved in RtD since it lies primarily in the moral domain of imperfect obligations, where every human person is a duty holder.\textsuperscript{1582} RtD entails obligations to “respect, protect, promote and fulfill”, thus going beyond a negative-positive divide.\textsuperscript{1583} It also foresees a multiplicity of duty-bearers, for states, operating nationally and internationally, bear a special obligation in promoting and coordinating the process of development.\textsuperscript{1584} States have an obligation to steward the resources and institutions in such a way that reduction of disparities or achievement of equity is ensured. More than focusing on the realization of individual rights, RtD foresees simultaneous realization of many rights in view the common good.\textsuperscript{1585} The ‘feasibility’ of RtD thus requires concerted efforts of a number of duty-bearers. Sengupta argues that even if RtD lies mostly in the world of imperfect obligations, feasibility can be established, at least in principle, by a planned and progressive realization of rights through coordinated efforts of multiple duty holders.\textsuperscript{1586}

\begin{itemize}
\item \textsuperscript{1581} Sen (1999): Development as Freedom, 230.
\item \textsuperscript{1582} Sengupta (2001): “Right to Development as a Human Right”, 2529. About the nature of obligation involved in RtD, the Declaration affirms that “all human beings have a responsibility for development, individually and collectively”, to facilitate and fulfil “their human rights and fundamental freedoms”. UN General Assembly (1993): Declaration on the Right to Development, #2, § 2.
\item \textsuperscript{1583} Sengupta rightly notes that all rights have both negative and positive elements. Respecting a right entails only negative aspect of freedom, whereas protecting, promoting and fulfilling involve both these elements. For instance, both the ‘negative’ right of freedom from torture and the ‘positive’ right of the right to food require a combination of negative and positive duties in a general structure where a particular right must be respected, protected, promoted by many duty-holders. Cf. Sengupta (2009): “Elements of a Theory of the Right to Development”, 87–88.
\item \textsuperscript{1584} Cf. UN General Assembly (1993): Declaration on the Right to Development, #2, § 2; Sengupta (2001): “Right to Development as a Human Right”, 2528.
\item \textsuperscript{1585} Cf. Sengupta (2002): “On the Theory and Practice of the Right to Development”, 875. The commitment to the common good needs not exclude the underlying principle of ‘ethical individualism’ inherent to the capability approach.
\item \textsuperscript{1586} Cf. Sengupta (2013): “Conceptualizing the Right to Development for the Twenty-first Century”, 68.
\end{itemize}
3.1.3. RtD as a Right to Process of Development

Since the realization of RtD is not immediately and completely possible, it is often described as a “manifesto right” or an “abstract right”. Sen has persuasively argued that the problem of non-realization does not handicap RtD. Sengupta argues in the same direction: all human rights declarations, like the UDHR, set ‘a common standard of achievement for all peoples and all nations’, which will only be progressively realized. Various contingencies, such as resource constraints, lack of infrastructure, etc., hinder the realization, but “to say that until it is actually realized it cannot be regarded as a human right is to deny its essential character and its role in social transformation”. RtD is built upon the realistic idea of a ‘progressive realization of rights over time’. Sengupta notes that even negative freedoms, like freedom from torture, cannot be secured immediately after legislation is adopted. “It requires time not only to build up the institutions that will enforce the observance of rights, but also to allow the legislation to be absorbed in the social structure.”

Acknowledging this process-nature of the notion of development in RtD is a significant paradigm shift in development thinking. Sengupta spells out: “Development is a process. Development is not an event that happens on a particular day, nor is it a final product that materializes at a particular hour. We can only say whether a country is more developed or less developed, compared to other countries or to its own past performance.” In the RtD framework, the process of development is thus conceived as “a continuum and the aim is the progressive realization of all the rights to the extent feasible.”

---


This idea of progressive realization is buttressed on Sen’s notion of ‘metaright’ – a right which may not be immediately achievable but can be achieved if appropriate policies are adopted. A right may not be rapidly realized for all persons; thus, it may remain an abstract background right. As already mentioned, a right to something, say x, generates a right to programme and policies p(x), which is a metaright to ‘x’. Even if x may remain an abstract and background right, the right to p(x) is a valid and concrete right.\textsuperscript{1593} The conceptualization of RtD as a right to metaright understands that “there is seldom a one-to-one correspondence between a policy P and the outcome R, especially when one is talking about a social system with interacting agents”. Individuals might not automatically increase their “freedoms unless specific policies were adopted to achieve them.”\textsuperscript{1594} Policies are planned in such a way that they have a high probability of producing the outcome, of realizing the right, without overlooking the fact that even with best efforts some right may remain unrealized for the time being.\textsuperscript{1595}

In the framework of metarights, the exaggerated gulf between negative and positive obligations are overcome – not only is a violation of a right condemned but also the denial of a right. “If a policy or action P has a large positive impact on the right R, and a non-action (−P) leads to a regression of the right (−R), then such non-action would be equivalent to a violation, provided of course the duty-bearer is aware of that effect.” In this structure, culpable inaction from the individual persons and national states would amount to a violation of a human right. This sets serious responsibility on national states to adopt policies and programmes to fight against the evils of famine, hunger and poverty.\textsuperscript{1596}

The state has primary responsibility for the realization of RtD. “Of all the duty-bearers, the rights instruments specify the Nation-States to be the primary duty-bearers, in the sense that they have to design and implement the policies that directly affect the right-holders; enact laws, rules and procedures, necessary for that purpose; establish new institutions and negoti-
ate and work out the programmes of assistance and cooperation with other agents of the international community, with the purpose of fulfilling the right.”

States work not in isolation but in collaboration with international authorities and the community. “If the right to food, education, health are [sic] regarded as components of a human right to development, the state has to accept the primary responsibility of delivering the right either on its own or in collaboration with others.”

Since the process of development is contingent upon actions taken by many duty bearers, the implementation of RtD requires “a coordinated system” of a properly designed programme of action, where different routes of implementation are combined. Various duty holders need to agree upon a procedure for the realization of the right, operating “in a coordinated manner according to a properly designed program of action, which also may require institutional changes”. Causal connections between various rights are also underlined. “But when realizing the right to development is seen not as realizing a few rights in isolation but as implementing all or most rights in a planned manner in tandem with an appropriately high and sustainable growth of the economy and change in its structure, the importance of international cooperation becomes even more evident.”

Sengupta conceptualizes the obligation of the international community beyond mere monetary help:

The obligation of international cooperation is not only confined to providing financial assistance. It extends to cooperation in the areas of trade, technolo-

1598 Sengupta (2001): “Right to Development as a Human Right”, 2530
gy, debt and international capital markets. The Official Development Assistance (ODA) is only one element of this set of obligations, which may be very important for some developing countries. But trade, debt and technology transfer may have a much greater impact on many developing countries if the developed countries follow faithfully the principles they propound.\textsuperscript{1602}

In short, it is about transferring the benefits of development to the poor through appropriate mechanisms.\textsuperscript{1603}

3.2. Value Addition

In the dominant neo-classical approaches, justice and human rights were mere peripheral concerns. RtD nonetheless makes the development programme an ethical affair.\textsuperscript{1604} The integration of human rights and human development in RtD renders the development process a qualitative \textit{value addition}. It can be considered as the most significant advancement in modern welfare economics. The crux of value addition is the affirmation of fundamental values of equity and justice in the process of development.\textsuperscript{1605} The preambular statement of the Declaration on the Right to Development underlines it: “equality of opportunity for development is a prerogative of nations and of individuals who make up nations.”\textsuperscript{1606} This normative anthropological vision emanates from “the idea of equality of all human beings in rights, dignity and opportunity, and is associated with fairness or the principles of a just society”.\textsuperscript{1607} Sengupta outlines how RtD envisions a new economic order based on fairness and solidarity.

The Declaration on the Right to Development is […] founded on the notion that the right to development implies a claim for a social order-based on equity. Not only do several of its articles clearly call for equality of opportunity, equality of access to resources, equality in the sharing of benefits and fairness of distribution, as well as equality in the rights to participation, its preambular paragraphs also call for the New International Economic Order […] an economic and social order based on equity and justice. The have-nots of interna-

\begin{itemize}
  \item \textsuperscript{1602} Essex Human Rights Review (2004): “The Right to Development”, 95.
  \item \textsuperscript{1603} Cf. Sengupta (2007): “Poverty Eradication and Human Rights”, 344.
  \item \textsuperscript{1604} A vision that is well argued in Sen’s seminal work \textit{On Ethics and Economics}.
  \item \textsuperscript{1606} Sengupta (2001): “Right to Development as a Human Right”, 2535.
\end{itemize}
tional economy would have a right to share equally in the decision-making privileges as well as in the distribution of the benefits just as the rich developed countries.\textsuperscript{1608}

The rights thus become “norms” of behaviour for the agents, like individuals, the state or the international community, who can contribute to the fulfilment of those rights.\textsuperscript{1609} Here I study the normative shift in development policy under two aspects: “what is achieved” and “how is it achieved”.

3.2.1. The Objective of Development: What Is Achieved?

Determining the constituent elements of well-being is critically important in the debates on development. Conventional economics measured development simply in terms of growth, income or opulence, hence focusing on increasing GNP. Sengupta accentuates the urgent need of different indices in measuring development.\textsuperscript{1610} He acknowledges the paradigm shift that occurred through the capability approach of Sen in the way we think about development. This is manifested in the Human Development Reports of the UNDP and the HDI.\textsuperscript{1611} Sengupta notes: “The right to development builds upon the notion of human development and can be described as the right to human development, defined as a development process that expands substantive freedoms and thereby realizes all human rights.”\textsuperscript{1612} Development as ‘expansion of substantial freedoms’,\textsuperscript{1613} as a normative measure, takes “the concept of well-being beyond the conventional notions of economic growth to include the expansion of opportunities and capabilities to enjoy those opportunities, captured in the indicators of social and human development, which in turn expand substantive freedoms”.\textsuperscript{1614} Commitment to justice and fairness thus becomes a primary determinant

\begin{footnotes}
\end{footnotes}
of development.\textsuperscript{1615} The very notion of capability is a normative benchmark that is deeply committed to equity and fairness.

This is a program against the prevalent economic and political theories, which fail properly to distinguish between the ends and means of development. “Viewing development in terms of expanding substantive freedoms directs attention to the ends that make development important, rather than merely to some of the means that, inter alia, play a prominent role in the process.”\textsuperscript{1616} If the objective of development is understood in terms of enhancing our substantive freedoms – our capabilities – then economic growth consisting of the accumulation of wealth and gross national product etc. would only be means serving this objective.\textsuperscript{1617} Freedom itself can also be a means to another freedom; thus in the capability framework freedom is the “primary end” and the “principal means” of development.\textsuperscript{1618}

Reinventing well-being in the space of fundamental freedoms urges to focus directly on the actual life of the people. Sengupta notes:

> All human development indicators in Sen’s framework become indicators of freedoms. When those freedoms are identified with rights which are claimed, as entitlement, by the people, we get development as realization of human rights. The indicators of food, health, education, shelters, and so on are seen as the right to food, the right to health, the right to education, the right to shelter or housing and so forth, which have to be realized as entitlements and consistent with human rights standards (or as rights-based, as we often called them).\textsuperscript{1619}

RtD hedges well-being on the principle of “equality of opportunity for all” as well as occasions to “participate in and contribute to and to enjoy” the development process, where “fundamental freedoms can be fully realised”.\textsuperscript{1620} The focus on freedoms nevertheless does not neglect “the importance of the growth of income and output which enhanced the expan-

\begin{flushright}
\end{flushright}

\textsuperscript{1615} Sengupta observes: “One advantage of that would be to situate such human rights firmly in a theory of justice that would bring out the logical implications of a concept of equity. That would hopefully improve our ability to operationalise the notion of equity and fairness embedded in the right to development.” Sengupta (2001): “Right to Development as a Human Right”, 2535.

\begin{flushright}
\textsuperscript{1620} Sengupta (2001): “Right to Development as a Human Right”, 2535.
\end{flushright}
sion of basic resources and the opportunities for development. But it had to be realised in a manner that ensured a fair distribution and equality in access to the resources and expanded the fundamental freedoms of the individuals.”

3.2.2. The Process of Development: How Is It Achieved?

In the RtD framework, it is ethically qualified how well-being is achieved. Deep commitment to rights prevents RtD from an exclusive focus on outcomes. Even the celebrated HDI is, in this sense, limited. Sen concedes the limitation of the HDI, which is a combination of the GDP with some simple measures of health and education, because it does not say how they are achieved or if the procedures followed are consistent with the HRBAD. Hence, there is an urgent need to concentrate on process freedoms and human rights. Sengupta illustrates: “The ‘human rights thinking’ is essentially concerned with not only the nature of those outcomes, which are the objects of claim, but how those outcomes are brought about, and through what kind of social arrangements and public and individual action, so that the duties and responsibilities of different agents can be specified.”

Taking process freedom seriously also means respecting the agency of human persons in the process of development and enabling all persons to participate in the development process. Sengupta accentuates that the process of development should be “a participatory, nondiscriminatory, accountable and transparent process with equity in decision-making and sharing of the fruits of the process”. To be participatory demands that “the decisions will have to be taken with the full involvement of the beneficiaries, keeping in mind that any delays that occur as a result of the consultation process should be minimized”. Making people capable is a

process that will not be automatically realized through the market system or through the transfer of money to the poor.\footnote{Cf. Sengupta (2013): “Conceptualizing the Right to Development for the Twenty-first Century”, 69; Sengupta (2001): “Right to Development as a Human Right”, 2535–2536.} As Sen would have put it, a prosperous community of slaves, who do not have civil and political rights, cannot be regarded as a community with well-being.\footnote{Cf. Sengupta (2001): “Right to Development as a Human Right”, 2536. “But we do not necessarily want to be happy slaves or delirious vassals.” Sen (1999): Development as Freedom, 62.} The process itself is a right [p(x)], which cannot be compromised.

Planned process focusing on the worst-off

Because RtD functions according to the principle of equity, it would not tolerate any process inequality for the sake of better general output. Development is intended to be coordinated for the entire population, “respecting the demands of equity and justice”.\footnote{Cf. Sengupta (2001): “Right to Development as a Human Right”, 2535. The Declaration on RtD underlines it: “States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.” UN General Assembly (1993): Declaration on the Right to Development, #2 § 3. Emphasis added. Also cf. Sengupta (2013): “Conceptualizing the Right to Development for the Twenty-first Century”, 69.} Since equity and justice determine the whole structure of development, those who are most deprived in the society deserve special attention and priority in designing and implementing policies and allocating resources. However, the issue of prioritization is inevitable in a process of progressive realization, especially when there are challenges of feasibility related to resource constraints. Sengupta argues that such a prioritization needs not contradict the basic principles of indivisibility, interdependence and interrelatedness of RtD.\footnote{Cf. Sengupta (2002): “On the Theory and Practice of the Right to Development”, 866–867.} Unavoidable trade-offs are not supposed to be adversarial to the poor.\footnote{Cf. Sengupta (2013): “Conceptualizing the Right to Development for the Twenty-first Century”, 69.}
Drèze and Sen observe how subsidies in India promote those who are better off and how the poorest are left without a voice in many development programmes. The RtD principles are thus in opposition to many claims of neoclassical economics that presume that those worst-off in the society would ultimately benefit from the economic abundance of the rich, as the ‘trickle-down theory’ asserts. The myth that the benefits would trickle down to the poor when the rich get richer is diametrically opposed to the fundamental principles of justice. There is a widespread belief that equity and economic development are irreconcilable, as manifested, for instance, in the ‘Kuznets thesis’ that income growth and income equality are negatively related, which means that policies to increase equality may actually lead to reduced growth. This claim is not empirically substantiated, and even if this claim has some empirical validity, this is not a fair route to development. Development is not about redistributing something for the ‘minimum need’ of the poor from the abundance of the rich. Acknowledging equity and justice as the ‘primary determinants’ of development process may also require slowing down the economic development for the sake of equity. However, it is wrong to claim that economic development and justice do not go hand in hand. In summary, greater economic development does not necessarily guarantee equal opportunity for the least privileged. RtD envisions an integral enhancement.

Economic growth, attended by increased inequalities or disparities and rising concentrations of wealth and economic power, and without any improvement in indicators of social development, education, health, gender balance and environmental protection respecting the human rights standards and, what is most important, if such growth is associated with any violation of civil and political rights, it cannot fulfill the human right to development.

1632 The hypothesis put forward by Simon Kuznets sanctions income inequality among different social groups in the early stages of economic development. He claims that this inequality would decrease as the national economy grows further. To put it differently, a focus on decreasing income disparity in the early stages of development programme would hamper the general well-being. Cf. Kuznets, Simon (1955): “Economic Growth and Income Inequality”, American Economic Review, 45(1), 1–28.
This demonstrates the critical relevance of the expansion of social securities in the development process, especially for economically weak countries. The legislation and implementation of the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA, 2005) and the right to food bill (National Food Security Act, 2013) by the Indian government are an encouraging step in this direction. This shows how a metaright to RtD can be legislated and implemented, taking it beyond moral domain. The responsibility of the international community, according to Sengupta, should also take concrete form through more international collaboration and international institutions in the framework of a mechanism named “Development Compact”, which foresees a renewed partnership between the international community and the developing country.1635 As Sen persuasively argued, positive obligations generate not merely an obligation of charity but a correlative right. And according to Sengupta, the recognition of extreme poverty as a human rights violation demands some sacrifice and adjustment on the part of those who are not poor.1636

Interrelatedness of Ends and Means

Another value added is the greater recognition of the interrelatedness of rights, as RtD is concerned with the realization of the full range of economic, social, cultural, civil and political rights. “All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights.”1637 This challenges the myth that civil and political rights are not important for the poor. Sen persuasively presented how political freedoms, especially democratic freedoms, are important in enhancing the freedoms of the poor. Sengupta argues in the same line: “Under the right to development approach, fulfilling civil and political rights is as important as fulfilling economic and social rights, not just in their instrumental roles but also in their substantive, constitutive role. A violation of any right is tantamount to a

1637 UN General Assembly (1993): Declaration on the Right to Development, #6 § 2.
failure to realize the right to development.”  

Looking at the right to development as a process brings out the value added clearly: it is not merely the realization of those rights individually, but their realization together in a manner that takes into account their effects on each other, both at a particular time and over a period of time. Similarly, an improvement in the realization of the right to development implies that the realization of some rights has improved while no other right is violated or has deteriorated.  

A fair and sustainable development process needs to acknowledge the integral nature of various sets human rights. Taking seriously the “causal connections” of various freedoms prompts taking these rights “in their totality as an integrated whole, by recognizing fully the implications of their interrelations and that no particular right should be violated in fulfilling any other right. There cannot be any trade-off between these rights; the violation of any right cannot be compensated by the improved realization of any other right.”  

Since all the elements of RtD are interdependent, the realization of one right depends on the level of realization of other rights. These are also dependent on other non-rights elements like the growth of GDP and other resources, which again are dependent on the realization of the rights to health and education, as well as to freedom of information. This is about recognizing the multilateral dependence of both the intrinsic and instrumental values of human rights and other factors relevant for human development.  

Since RtD is realized progressively, it can happen that “some rights could be realized earlier than the others, without violating or retrogressing on the fulfillment of any right. The comparison could be then between the incremental changes in the realization of the right rather than between giv-

C. SEN’S HUMAN RIGHTS DISCOURSE

ing up some in exchange of a gain in others.” Sengupta resolves many tensions in this regard with the help of Sen’s seminal concept of metaright. Even when an international consensus about the validity or attainability of all the rights recognized as human rights may not be reached in the near future; there can be “a full consensus about implementing the right to development as a process of development that has a high probability to lead to the realization of these rights over time”. He emphasizes the integral nature of human rights by employing Sen’s goal rights system, where three levels of implementation, namely respecting, protecting and fulfilling, are integrated.

Sengupta notes: “Interdependence can also be understood over time, as a sequence of what happens today related to what happens tomorrow, and also at a particular point in time, as the interaction of cross-sections of elements that are related to each other where the value of a single element depends upon the value of other elements.” RtD thus focuses “not merely on the realization of those rights individually, but the realization of them together in a manner that takes into account their effects on each other, both at a particular time and over a period of time. Similarly, an improvement in the realization of the right to development implies that the realization of some rights has improved while no other right is violated or has deteriorated.”

Due to the enormous interrelations, Sengupta describes RtD as “a ‘vector’ of all the different rights and freedoms. Each element of the vector is a human right just as the vector itself is a human right. They will all have to be implemented, in full accordance with human rights standards.”

Conclusion

This section was a vindication of Sen’s ideas of human rights, principally based on Sengupta’s articulation of RtD. It has been outlined how the integration of ideas of human rights and human development brought about a paradigm shift in welfare economics. In this concluding section, we identify two overarching principles which can be considered central to RtD.

Firstly, a deep awareness of the interrelatedness of human rights and human development ultimately led to a subsumption of both these ideas (from interrelatedness to amalgamation). Sengupta states that “the approach of the right to development subsumes within itself the approach of human development. It is carrying out a process of human development in a manner fulfilling human rights standards.” The integration of human development and human rights – welfare and liberty – is most evident in the current strategies of international agencies and NGOs, who articulate development goals in human rights language. Well-being is thus understood in terms of the materialization of human rights.

Secondly, focusing on the most vulnerable people, RtD emphasizes the idea of accountability and culpability. It reiterates that poverty alleviation is not a matter of charity but of obligation. Often affluent or rich countries feel they should help the poor only out of charity or humanity. The HRBAD shifts the focus from charity to justice because a moral duty is imposed on all those who are able to help. Though frequently defined in the domain of ‘imperfect’ obligations, RtD enforces a serious requirement of accountability from all agents who partake in the process of development. The failure to implement the rights establishes possible culpability. Sengupta states: “The search for accountability leading up to culpability is a genuine value addition of the human rights approach to the fulfillment of human development.” And he continues that “there must be mechanisms for establishing culpability for violations, for monitoring and for re-

dress”. The emphasis on the obligations of national and international communities in implementing and realizing RtD is a guard against widespread complacence and indifference towards the common good of our interrelated global community.

4. The Integration of Human Rights and Human Development: Sen

Capability approach’s focus on the expansion of substantive freedoms takes a direct interest in the actual life of people. This interest in “enriching the lives and freedoms of ordinary people” shares a common motivation with declarations of human rights. Sen spells out: “The promotion of human development and the fulfilment of human rights share, in many ways, a common motivation, and reflect a fundamental commitment to promoting the freedom, well-being and dignity of individuals in all societies.” Hence, it is helpful to understand them in “a more integrated way” to gain a comprehensive vision. Similarities and dissimilarities between both concepts will complement and enrich each other. “Human development and human rights are close enough in motivation and concern to be compatible and congruous, and they are different enough in strategy and design to supplement each other fruitfully.”

Sen elucidates the common motivation and basic compatibility underlying both concepts. Capabilities, on the one hand, include a wide range of freedoms of being able to meet bodily requirements, the enabling opportunities provided by liberty or schooling, or social freedoms like the capability to participate in the life of the community. Such capabilities are the range of things a person can do and be in leading a life, and they are incorporated into the HDI. On the other hand, human rights as claims over others – individuals, groups, societies or states – entail both immunity from interference by others and a claim on the attention and assistance

1653 Sengupta (2013): “Conceptualizing the Right to Development for the Twenty-first Century”, 71. Perhaps, the most important source of added value in the human rights approach is the emphasis it places on the accountability of policymakers and other actors whose actions have an impact on the rights of people. “Rights imply duties, and duties demand accountability.” UN OHCHR (2002): #23.
All these negative and positive claims are meant to defend one’s substantive freedoms; hence, the idea of freedom combines both notions: development and rights. The ultimate goal of both routes is guaranteeing the basic freedoms that people have reason to value.

The ideas of human development and those of human rights are linked in a compatible and complementary way. If human development focuses on the enhancement of the capabilities and freedoms that the members of a community enjoy, human rights represent the claims that individuals have on the conduct of individual and collective agents and on the design of social arrangements to facilitate or secure these capabilities and freedoms.

The human development programmes were primarily concerned with the social and economic enhancement of the people; even the HDI captures primarily socio-economic concerns like longevity and literacy. That it is more difficult to quantify political and civil rights, thus integrating them in an index, does not make them in any way less important in the human development perspective, because they are extremely important for enhancing the capabilities of people, especially the poor. Similarly, the human rights discourse is not merely about political freedoms but also about real opportunities in life, like the right to education, to adequate health care and to other freedoms, which were indeed epitomized in the Declaration on the Right to Development and the Vienna Declaration. A full spectrum of human rights entails the demands of human development as well.

The basic difference between the two approaches lies not in their subject matter but in their form and focus.

4.1. What Human Rights Add to Human Development

It is already stated that both approaches are sufficiently distinct to complement and enrich each other. Now we investigate what human rights add to human development.

1659 Cf. Sen (2000): “Human Rights and Human Development”, 20. He observes that there were attempts in earlier Human Development Reports to measure political and civil freedoms with composite indicators; it was, however, later given up.
The notion of duties to the fore

Though there are many legitimate freedoms that are appreciated, only some of the significant ones gain the status of a right, precisely because it makes a claim on other people and institutions in helping to realize it. This normative connection of a ‘claim’ (and correlate duty) takes the human rights approach beyond the idea of human development.

In the human development perspective, social progress of the valued kind is taken to be a very good thing, and this should encourage anyone who can help to do something to preserve and promote it. But the normative connection between laudable goals and reasons for action does not yield specific duties on the part of other individuals, collectivities or social institutions to bring about human development—or to guarantee the achievement of any specified level of human development, or of its components.1661

Once a claim is acknowledged as a right, it is qualitatively more than a mere social aspiration or a matter of charity; now it is a claim that sets duties on others. The HRBAD holds that others have responsibility – individually and collectively – to facilitate and enhance human development. Once an obligation is established, other concerns such as accountability, culpability and responsibility come to the fore. Sen adds: “This focus on locating accountability for failures within a social system can be a powerful tool in seeking remedy.”1662 The recognition of ‘accountability for failures’ is a powerful means that takes human development beyond the minimalism in mainstream developmentalism. An effective implementation of rights pays attention to both positive and negative interrelatedness factors. Thus, it is necessary to focus on how various inadequacies and failures in a social system tend to aggravate one another; similarly, it has to be considered how ‘coordinated’ actions of various agents and institutions complement each other.1663

1663 Sen observes: “A broader outlook is to focus on the actions, strategies and efforts that different duty bearers undertake to contribute to the fulfilment of specified human rights and to the advancement of the corresponding human development. It also leads to an analysis of the responsibilities of different actors and institutions when rights go unfulfilled.” Sen (2000): “Human Rights and Human Development”, 21.
How development is brought about – Process justice

Conventional welfare economics was consequentialist to the core and focused exclusively on outcomes of social arrangements. The tools of evaluation, developed by many human development approaches, are not sensitive to how those good outcomes were brought about. Human rights thinking covers this defect in two ways, thereby offering tools that focus directly on the process of development:

a) Individual rights set limits on the losses that individuals can permissibly be allowed, even in the promotion of noble social goals. Rights protect individuals and minorities from policies that benefit the community as a whole but place huge burdens on them.

b) Rights-thinking incorporates a distinction between how institutions and officials treat citizens and how they affect them. Human rights monitoring has traditionally focused on the conduct of public officials and the institutional structure within a society. Thus, it is a protection against unjust trade-offs and a claim on fair treatment from institutions and officials.

Enriching the assessments of social progress

While the traditional assessment of social progress was seriously limited by its association with developmentalism, the currency of capability as the relevant space of ‘evaluation’ is inclusive of broader demands of well-being. Institutions and social norms are evaluated on the basis of their contribution to the human development achievements within a society. Sen notices: “Gains in human development are not always attended by gains in human rights fulfillment, and subsequently a pure human development accounting may fail to pick up on the vulnerability of individuals and groups within a society.” He argues that the East Asian financial crisis was caused by “the instability of the market combined with inadequate social security provisions”.

Human rights assessment involves a reorientation of factual concentration which can broaden and enrich human development accounting. Assessments

of human rights fulfilment would, for example, focus not only on what progress has been made so far, but also on the extent to which the gains are socially protected against potential threats. The profound concern of the human rights literature with the duties of others in helping each human being live a better and less unfree life is thus quite relevant in considering both the ways and the means of promoting human development.\textsuperscript{1667}

Commitment to human rights thus foresees a human rights-inclusive assessment of institutions and programmes.

4.2. What Human Development Adds to Human Rights

Human development helps to augment the reach of the human rights approach.

Concreteness to human rights analysis

Unlike human rights and freedoms, human development can be quantitatively and qualitatively measured and articulated with definiteness. It is best captured in the HDI, which uses concrete indices to measure development. Sen opines that this can be discriminatingly used to give concreteness to human rights analysis.\textsuperscript{1668}

Assessment of the policies

Human rights-realization is a process that is supported by different policies and programmes; hence an effective right-implementation requires that the impacts of various human rights policies are assessed and the routes with the best probabilities are chosen. Human development analysis has better resources for such an evaluation of achievements and outcomes. Sen’s conceptualization of human rights as social goals can profit a lot from such an approach.\textsuperscript{1669}

\begin{flushright}
\end{flushright}
Creating an enabling social environment for the fulfilment of human rights

The fulfilment of human rights depends on appropriate social conditions. Human development is aimed at creating an enabling environment to enhance the range of capabilities. Sen states: “By attending to this process of human development, human rights analysis can get a fuller assessment of what is feasible given the resource and institutional constraints that prevail within a society, and a clearer understanding of the ways and means of making a more attractive set of policy choices feasible.”

As noted, the engineering approach’s sensitivity to the deep interrelations of numerous variables, including resources, institutions and policies, is significant in realizing human rights as well. Sen outlines: “Focusing on causally important institutional and operational variables, the human development literature brings to discussion and analysis of human rights some additional understanding of policies that will best promote human rights in a world that is inescapably pluralist in terms of causal influences and interactive impacts.” Paying attention to such causal interconnectedness is very important for the effective realization of human rights.

The dynamism of the notion of development

The idea of human development involves change and progress – moving on from where the human beings were earlier. This dynamism can be greatly helpful in considering the progressive realization of human rights over time. The element of dynamism also calls attention to the fact of mutual complementarities of liberty and welfare rights; even if all rights are valuable, pragmatism requires setting priorities and balancing trade-offs in a fair manner. This helps us to better grasp the problem of ‘progression’ in the human rights. Sen spells out: “By adding the perspective of

1672 Sen says: “Regardless of which kind of right is at issue, varying extents of crucial freedoms may be incorporated in different formulations of each right. Within the right to health, for example, the freedom to receive standard or primary medical care must be taken to be more basic than the freedom to receive costly surgical procedures. A poor country must insist on providing the former, but may have to wait until it is much richer to guarantee the second.” Sen (2000): “Human Rights and Human Development”, 24.
C. SEN’S HUMAN RIGHTS DISCOURSE

change and progress in conceptual and practical reasoning about human rights, human development can help to deepen the understanding and broaden the usefulness of the human rights approach.”

This is very relevant to substantiate the fact that some rights are only progressively realized.

Conclusion

Sen’s twofold motif ‘liberty + welfare’, which runs through his biography and philosophy, ultimately led to an integration of human rights and human development discourses. It provided a great momentum to development economics that culminated in the Right to Development. It established that poverty and deprivation are no more a matter of optional sporadic generosity but of justice and fairness. Sen and Sengupta have a morally compelling argument to prove that the poor have a right to development. This sets a special responsibility on the state and non-government actors to create an enabling environment through public service delivery, poverty reduction programmes and resource allocation.

Human rights bring the non-welfarist elements of poverty into focus. Poverty robs people of their dignity, making them voiceless and excluded. They live in a vicious circle of the multiple deprivations of poverty, which are mutually reinforcing. RtD recognizes the poor as rights holders, and the process of development is conceived in a framework where the poor are recognized as agents of change. Instead of being ‘nannied’, they have a voice with regard to the design and implementation of public policies. The poor are no more mere passive recipients of charity or government aid. Sen pertinently argued that people should be more vocal.

Development is not a matter to be left to the ‘providence’ of the invisible hand. Since the existing economic system heavily skewed in the favour of a few privileged – as described by the recent Oxfam report “An Economy for the 1%” (2016) – it is critically important that the development process is regulated by principles of justice. Sen’s goal rights system combined the demands of human development and human rights in the spacious space of substantive freedoms. The conceptualization of human

rights as social goals cogently overcomes many exaggerated tensions in the human rights discourse – rights and duties, positive and negative rights, legal and moral rights, and principles and praxis. And that is the route of RtD.

V. Some Limitations of Sen’s Human Rights Discourse


1. The Overestimation of animal rationale

Sen provided a normatively rich structure to human rationality, which was otherwise conceptualized very narrowly in rational choice theory. His idea of justice is founded on a social choice framework that is built on intellectual scrutiny and public discussion, where reasonable human beings value, weigh and choose. His human beings are reasonable and responsible moral agents, who choose the ‘better’ through a process of rational evaluation.

A great confidence in the faculty of human reason saturates Sen’s whole theoretical framework. He states that “reasoning is a robust source of hope and confidence in a world darkened by murky deeds – past and present”.\footnote{Sen (2009): The Idea of Justice, 46.} Reason has to be the ultimate arbiter of ethical beliefs.\footnote{Cf. Sen (2009): The Idea of Justice, 39.} He observes that the reliance on and rejection of reason went hand in hand in the Enlightenment period as manifested in the “overwhelming dominance of reason” and “different kinds of counter-rational strands” during
the ‘Age of Enlightenment’. Sen not only shares the Enlightenment confidence of human reasoning but also universalizes the phenomenon of Enlightenment whilst exploring the prevalence of reasoning and critical tradition in other corners of the world. He thus persuasively counts on the power of human reason in making reasonable, ethical judgements.

Both ‘rational choice theory’ propounded by neo-classical economics and ‘social choice theory’ of welfare economics confidently explored the possibilities of reason; nevertheless, they presuppose a human being reasoning in an ideal world, who is apparently constrained by no unreason at all. In Sen’s system of evaluation, even an apparent ‘irrational’ choice of a person can be a calculated rational choice. He focuses on a generic human person, who operates reasonably, ethically and responsibly. Such human beings seem not to be impaired by possible cases of *akrasia* – weakness of will.

It is hard not to agree with Sen about the reach of reason. However, there is legitimate scepticism about his valorisation of human reason. Ap-

1678 On the one hand, the Enlightenment contributed to departing from various unjust traditions; on the other hand, it was believed that “the Enlightenment over-sold the reach of reason” in view of its propensity towards atrocities in the post-Enlightenment world. This scepticism is manifest in the post-Enlightenment disillusionment in the beginning of the twentieth century, which is best embodied in Nietzsche’s scepticism and chilling vision of the future. Striking such a sceptical note, Jonathan Clover evaluates Enlightenment contribution to be ‘thin, mechanical, and naïve’. Cf. Sen (2009): *The Idea of Justice*, 34. See Glover, Jonathan (1999): *Humanity: A Moral History of the Twentieth Century*, London: Jonathan Cape, 6–7.

1679 Sen highlights the prevalence of reasoning in India, especially through Indian emperor Akbar. He is identified to be instrumental in instilling secular and inter-religious richness in the Indian tradition. His critical approach to ‘the marshy land of tradition’ was based on his overarching thesis of ‘the pursuit of reason’ as “the way to address difficult problems of good behaviour and the challenges of constructing a just society.” Akbar believed that “the ‘path of reason’ or ‘the rule of the intellect’ (rahi aql) must be the basic determinant of good and just behaviour as well as of an acceptable framework of legal duties and entitlements”. Sen (2009): *The Idea of Justice*, 37–38.


1681 Cf. Sen (1977): “Rational Fools”, 340. However, it seems that over the years he became soberer about his grasp of the problem of *akrasia*. In his recent book, he studies the problem of weakness of the will and admits the gap between the ideal and the real – “the wide gap between resolve and performance”. Cf. Sen (2015): *The Country of First Boys and Other Essays*, ii.


derstanding of the broadening and liberating role of our feelings can constitute good subject matter for reasoning itself.\textsuperscript{1686}

Sen observes that “the quintessential Enlightenment authors” Smith\textsuperscript{1687} and Hume saw reasoning and feeling as deeply interrelated activities, and their philosophy vindicated the positive role of many instinctive reactions. He, however, is not blind to possible irrational emotions; nevertheless, he hopes that they can be critically corrected by reason, which he considers as “the ultimate arbitrator” of ethical evaluation.\textsuperscript{1688} As both Smith and Hume recognized the abiding need for reasoned scrutiny, Sen holds that it would be fatal to give “unscrutinized instincts an unconditional final say”.\textsuperscript{1689} He thus argues that unreason is corrected by better reason, and irrational emotions by rational scrutiny, making *reason* the final corrective authority. Yet the pervasiveness and influences of unreason and irrational instincts are much more than what he seems to concede. He indeed acknowledged the positive role of emotions and instincts in identifying injustices, but he integrated only insufficiently their negative influences in his idea of justice.

Reason seems to be Sen’s most important ally in the process of enhancing the world. His starting point, even in matters of many developmental issues, is that we need to “think clearly and collectively” and have “clarity of vision and understanding” about the operation of society.\textsuperscript{1690} He rightly argues that there is a “mistaken presumption” about the causation of famines;\textsuperscript{1691} he suggests that such irrational presumptions about causation and prevention of various social or environmental evils are to be overcome by *intellectual probing*. “To prevent catastrophes caused by human negligence or callous obduracy, we need critical scrutiny, not just goodwill towards others. The reasoning is our ally in this, not a threat that endangers us.”\textsuperscript{1692} His optimistic claim that a free press and democracy can prevent famine is also confronted with much criticism, though the causal connections are absolutely true. Studying the historical debate about the over-

\begin{thebibliography}{99}
\bibitem{1687} Smith extensively discusses the central role of emotions and psychological response in his *Theory of Moral Sentiments*.
\end{thebibliography}
population, he rightly takes side with Condorcet’s pro-freedom approach, rejecting Malthus’s anti-freedom arguments. He believes in a non-coercive attitudinal change that occurs through freedom and power of reasoning.\textsuperscript{1693} Clear understanding, for Sen, is part of problem-solving. He pithily notes: “Human ordeals thrive on ignorance. To understand a problem with clarity is already half way towards solving it.”\textsuperscript{1694}

Also in the case of addressing environmental issues, Sen favours a discursive method of a fuller “social choice formulation” that appeals to the civic nature of human beings in contrast to a ‘technocratic’ or institutional solution which is imposed from above.\textsuperscript{1695} His famous \textit{Identity and Violence} is also optimistic to believe that the end of violence in the world would be attained through the removal of misconceptions of singularist identity. Appiah rightly notes that the violence of the obstinate terrorists, for example, cannot be met merely with a \textit{correct understanding} of the identity. As he rightly observes, “sometimes justice requires sword”.\textsuperscript{1696}

My critique is that in his attempt not to be labelled as an institutionalist, Sen leans too much towards the ethical side. In this process, he gives less credit to the significant ‘engineering’ aspect, which he himself highlighted in development economics that takes care of the institutional aspect. Had he better assimilated the lessons of the engineering approach in his greater idea of justice, he would not have completely shied away from some ‘technocratic’ solutions in confronting glaring injustices of the world. I would argue that his moral \textit{nyaya} framework could better profit from the institutional \textit{niti} approach as well. A balanced combination of just institu-

tions and behavioural changes – a healthy combination of niti and nyaya approaches – would make the capability approach more workable. This is very important in the case of the human rights discourse because important institutional changes are inevitable in the human rights realization. I don’t want to say that Sen overlooked the relevance of social institutions and provisions; the criticism is that his confidence in the behavioural change made him concentrate less on legal and institutional routes.

2. The Insufficient Treatment of Structural Causes of Injustices

Human reason is constrained not only from within but also from without. There are different power blocs that constrain reasonable, responsible people, thus causing biases, polarizations and antagonisms. Sen’s *The Idea of Justice* is often criticized for its failure to take seriously the unsymmetrical power structure in the society. “[T]he questions of antagonism, hegemony and imperialism are absolutely missing in his book and one cannot comprehensively understand the notions of justice and injustice without addressing those issues.”

He is also criticized for neglecting “the problematic nature of the public realm and the exploitative nature of capitalism”. Especially a global discussion without pre-determined theories is susceptible to being thwarted by existing power equations in the global order – the policies and programme of society are influenced by this power bloc.

Sen goes beyond the Westphalian model of state-sovereignty to embrace a global perspective.

He envisions a global public discussion, which seems to be very ambitious given the unavailability of any such global institutions. There is some truth in this criticism: “The problem is that Sen’s concept of democracy seems an idealistic one where political
power, political economy, and struggle are absent.”

It is no secret that the global common good is heavily damaged by vested interests of multinational corporations. In a world where the wealth owned by just 62 individuals is equal to that which is owned by 3.6 billion people who form the bottom half of humanity (Oxfam report, 2016), it will be naïve to believe that the poor will be equal partners in a global public discussion. The majority of people live in a situation in which they are not at all able to exercise their agency – but this agency is essential in Sen’s system of moral evaluation.

Sen’s insufficient treatment of asymmetric power equations in society led to his inadequate treatment of the problem of active violation of negative freedom — the commission aspect of negative freedom. Sen’s ethical approach concentrates primarily on individual interactions and behaviours, whereas Thomas Pogge’s institutional approach focuses on pernicious institutions that cause and perpetuate poverty and deprivations in the world. Sen misses a deeper sensitivity to the negative impact of such institutions. Pogge focuses on the active violations of the rights of the poor and invokes the “negative moral duty” of the international community to avoid causing harm. He argues that a focus on positive duty can deflect attention from more stringent negative duties, in particular, the negative duty of not exposing people to life-threatening poverty and to shield them from harm, which demands more urgent consideration.

Pogge shows that the sufferings of the poor are caused not merely by too little help, but they are much more actively caused by the exploitive system of global political and economic arrangements. The enormity of harm is alarming:

My main claim is then that, by shaping and enforcing the social conditions that foreseeably and avoidably cause the monumental suffering of global poverty, we are harming the global poor—or, to put it more descriptively, we are active participants in the largest, though not the gravest, crime against humanity ever committed. Adolf Hitler and Joseph Stalin were vastly more evil than our political leaders, but in terms of killing and harming people they never came anywhere near causing 18 million deaths per year.

---

He alleges that the wealthy in Western liberal democracies get natural resources from poor countries collaborating with kleptocrats, thus harming the world’s poor. Severe poverty and deprivations in Africa are related to the affluence of the West:

Severe poverty [...] its persistence is driven by the ways that economic interactions are structured: by interlocking national and international institutional arrangements. The mere fact that the poorer half of humankind consume under 2% of the global product (at market exchange rates) strongly suggests that severe poverty is wholly or very largely avoidable today.

Thomas Piketty, like Pogge, makes a structural analysis of the society and shows how poverty and inequalities in the world are caused and perpetuated by neoliberal capitalism. Very often, such structures of global exploitation are not so visible, and hence the people are not bothered by it. The world economy is controlled by such invisible power structures that reign the world supported by a biased system. It is meanwhile well-known that many global institutions – including the UN and the World Bank – are controlled by modern imperial powers, which create international laws for their own advantages and misuse ‘human rights interventions’, in effect, causing graver human rights violations. The fact that five permanent members of the UN are the top arms traders reveals the complexity of ‘freedom politics’.

My critique is not that Sen totally missed the point; yet his idea of justice only insufficiently integrates the institutional challenge of justice. There is indeed an element in Sen that protests against institutions that maintain hegemony and power relations. He deliberately kept away from organizations like World Bank, despite the offers to assume some important responsibilities. Again, in an address to the General Assembly of the United Nations (2004), he observes that the fruits of globalization are not justly distributed, which reveals the need to “reexamine the adequacy of global institutional arrangements”, like “trade agreements, medical ini-

1705 The book Development as Freedom is based on lectures given by Sen at the World Bank in 1996. He however cautiously maintains a sceptical distance from such a colossal institution. “The World Bank has not invariably been my favorite organization. The power to do good goes almost always with the possibility to do the opposite, and as a professional economist, I have had occasions in the past to wonder whether the Bank could not have done very much better.” Sen (1999): Development as Freedom, xiii.
tiatives, educational exchanges, facilities for technological dissemination, ecological debts, often incurred by irresponsible military rulers of the past.\textsuperscript{1706} He notices how the global poor are handicapped by such systems: “These include not only inefficient as well as inequitable trade restrictions that repress exports from the poorer countries, but also patent law which can serve as counterproductive barriers to the use of life-saving drugs – vital for diseases like AIDS – and can provide inadequate incentive for medical research aimed at developing non-repeating medicine, such as vaccines.”\textsuperscript{1707} He also highlighted the involvement of the world powers in the globalized trade in arms. For many years, the G8 countries are responsible for more than four-fifths of the international exports of arms and armaments – the USA alone is responsible for about half of the world’s export of arms to other countries.\textsuperscript{1708}

It is in his recent collaborative work with Drèze that Sen deals more with the asymmetry of power structures in the Indian society. They diagnose that the growing inequities – poverty, hunger, malnutrition, illiteracy, and gender and caste inequality – are the outcome of India’s dysfunctional public reasoning. The media decidedly hijacks the direction of public debate to comfortable zones, and India’s collective consciousness is not informed of the burning issues of the worst-off, who make up the majority. The urgent challenges of the poor, like the problem of open defecation, are not at all thematized in mainstream media, “the public discussion in India tends to be constricted to the lives and concerns of the relatively affluent”, thus reflecting “a serious bias that needs critical scrutiny”.\textsuperscript{1709} Such biases and ‘framings’ make Sen’s important condition of “unobstructed information” almost impossible. This is much truer of the global arena as well.

Drèze and Sen note that “the difficulties of asymmetric information or of monopoly power (when they are strong)” are harming development programmes.\textsuperscript{1710} They lament how the real poor are sidelined.\textsuperscript{1711} There exists a “politics of subsidizing powerful consumers” where privileged

\textsuperscript{1709} Cf. Drèze and Sen (2013): \textit{An Uncertain Glory}, 280.  
\textsuperscript{1710} Cf. Drèze and Sen (2013): \textit{An Uncertain Glory}, 83.  
\textsuperscript{1711} Drèze and Sen note: “While the vocal advocates of subsidized power get what they want, many of the poorest Indians, about a third of the population (around 400 million people), are not even connected to any electric supply. It is amazing how little hearing the ‘perpetually powerless’ receive compared with
pressure groups enjoy the fruits of subsidies through their political influence. “Similar issues arise with the pricing policies of many other sources of power, such as petrol and diesel, with the same implicit priority being given to the relatively affluent, rather than those who have little means – and no instruments – to make significant use of artificially cheapened fuel.”

Thus Drèze and Sen had thematized “the damaging influence of ‘class and stratification’” in the economic and ecological endeavours. As Sen’s idea of justice starts from the experience of injustice, his approach can certainly include these concerns. Though he emphasizes that poverty analysis must deal with both “the genesis and prevalence of deprivation”, his analysis is chiefly limited to the prevalence of poverty. There are no efforts to look for the causes of those injustices and the structures that perpetrate them. Injustice is taken as a ‘given’ fact, and Sen does not raise pertinent questions about their origins. He thus theorizes within the status quo, without daring to challenge the structures. The geopolitics, in the name of power and resources, and the new forms of colonialization under the aegis of capitalist hegemony etc. are not sufficiently studied. Maybe this is related to the fact that he developed his capability approach vis-à-vis social contract theory that is deeply sensitive to power, antagonism and egoism in the society. Sen’s moral cosmopolitan approach builds on the bright side of humans and envisions a social transformation that occurs through the moral agency of rational human beings.

Sen’s optimistic approach focuses more on the positive role of institutions in enabling people. He explores the constructive role of the UN, international and national NGOs, news media, etc. The fact that many global institutions cause and perpetuate poverty and deprivation of the poor is not taken seriously. Sen circumvents this important question about the causation and perpetuation of poverty and inequalities through global institutions – a vast area of active violation of negative freedoms. Especially important is the context of the current rhetoric that the poor are solely responsible for their plight, closing eyes to the social, economic and institu-

---

1712 Drèze and Sen (2013): An Uncertain Glory, 88–89.
tional structures that oppress them. The poor are not inherently poor, as some presume, but they are made poor.

I argue that Sen’s realization-focused approach to justice and human rights – with its primary focus on the removal of injustices – can be substantially enriched by exploring the origin and causal connections of injustices in the global politics, as done by Pogge. At the same time, it should be admitted that Pogge’s focus on negative obligations only minimally deals with the challenges of injustice. The liberation from obstructive global structures is critically important in enhancing justice, but it should be accompanied by enabling situations and institutions as proposed by Sen’s capability approach. It thus becomes evident that Pogge’s institutional approach and Sen’s capability approach can be mutually complementary.

3. The Insufficient Treatment of Group Rights

Our social nexus has not only negative influence on our well-being as mentioned above but also positive impacts on our individual and collective well-being. This section argues that Sen’s inattention to the negative impacts of our social web of relations led to his insufficient treatment of the positive influences of our social existence on our values and well-being. Sen admirably saved human agents from being mere self-interest maximizers and emphasized various possibilities of human solidarity. He clearly acknowledges the social influences on the capabilities of a human person: “The freedom of agency that we individually have is inescapably qualified and constrained by the social, political and economic opportunities that are available to us.” As already mentioned, his critique of Rawlsian space of evaluation was based on his focus on personal and socio-environmental conversion factors, which makes ‘capability’ dependent on the ‘context’. He also admits that “[i]ndividual freedom is quintessentially a social product, and there is a two-way relation between (1) social arrangements to expand individual freedoms and (2) the use of individual

---

freedoms not only to improve the respective lives but also to make the social arrangements more appropriate and effective.”

Nevertheless, the individual human person remains the basic unit of social analysis in his evaluative system. Social influences, institutions and structures are evaluated only in an instrumental way and to the extent they bear causal importance for individual’s well-being. Unlike ‘methodological individualism’, that tends to be atomistic, it is “ethical individualism”, \textsuperscript{1718} which considers each human person as an end in oneself in the Aristotelian-Kantian tradition. Sen’s commitment to the fate of each human person is manifested in his new measurement of poverty. The fate of an individual human person was not significant in the prevalent crude aggregate measure of poverty, as in the ‘head count measure’, which is not sensitive to the extent of income shortfalls:

[Constructing a poverty index] seems to be simply to count the number of the poor and check the percentage of the total population belonging to this category. This ratio, which we shall call the head-count ratio \( H \), is obviously a very crude index. An unchanged number of people below the “poverty line” may go with a sharp rise in the extent of the short-fall of income from the poverty line. The measure is also completely insensitive to the distribution of income among the poor.\textsuperscript{1719}

Such an aggregation neglects the fact that “people could be a \textit{little} below the line, or a \textit{lot}, and also the distribution of income among the poor \textit{may or may not} be itself very unequal”.\textsuperscript{1720} Another measure of poverty, the income gap ratio, improved poverty measurements in comparison to the headcount ratio, as it measures the depth of poverty, paying attention to how far the poor are from the poverty line. This measure is, however, insensitive to the number of ‘heads’ involved.\textsuperscript{1721} Both approaches have

\begin{itemize}
\item \textsuperscript{1717} Sen (1999): \textit{Development as Freedom}, 31.
\item \textsuperscript{1720} Cf. Sen (1992): \textit{Inequality Reexamined}, 102.
\item \textsuperscript{1721} The policy makers who are tempted to yield easy and fast result would focus on people who are nearest to the poverty line, in effect worsening the situation of the poorest. Cf. Sen (1992): \textit{Inequality Reexamined}, 103.
\end{itemize}
their relative merits as they address different aspects of poverty. This calls for the need to combine $H$ and $I$. Sen, however, notices that this combination will remain inadequate since neither of them pays attention to the distribution of income among the poor.\footnote{Sen (1992): *Inequality Reexamined*, 103.} He, therefore, suggests a new axiomatic formulation to measure poverty: now known as the *Sen Index*, it is sensitive to the distribution of poverty among the poor. It combines the head-count ratio, the poverty-gap measure and a measure of the distribution of income among the poor (the Gini coefficient). The statement of the axiom:

$$P = H \left[ I + (1 - I) G \right]$$


Sen’s sensitivity to depth and distribution of poverty was a deliberate attempt to circumvent injustices involved in the aggregate valuations that overlook relative deprivations of individuals in the group. “He makes individual freedoms and capabilities the one relevant space for evaluation of quality of life, with structures of living together assessed only instrumentally.”\footnote{Stewart and Deneulin (2002): “Amartya Sen’s Contribution to Development Thinking”, 68. On the contrary, Maritain applied the Aristotelian notion of “superadditive property”, where the whole is more than the addition of its parts, to emphasize the superiority of the common good.} If a social evaluation makes use of a collective unit of analysis, such as family, social class or bigger affiliations, it will not reflect inequalities within the groups. Sen argues that an intra-household distribution of income and resources is of paramount importance in the assessment of well-being. This is also very significant in dealing with the problem of multiple deprivations.

Sen’s capability approach thus places the individual as the basic unit of social evaluation; it can, therefore, only insufficiently accommodate the collective structures, which are of paramount importance in ensuring our welfare. Fighting against injustice is often a group initiative; class and caste struggles, race and gender issues etc. demand also some collective
entitlement and an enabling environment.\textsuperscript{1725} His famous *Identity and Violence* is a strong statement against many communitarian anthropological assumptions; he resists the mistake of considering identity just as a destiny, as something that a person simply inherits. Even his idea of other-centred notions of commitment derives from the meta-ranking of the individual acting moral agent. True though he is in many respects, he nevertheless seriously misses the collective elements that determine our identity, values and choices. Although Sen states that he belongs largely to the “world of social science”,\textsuperscript{1726} his capability approach to human well-being is significantly limited by its inadequate treatment of the *social construction of meaning*. Human beings are in a web of relations; accordingly, they should be understood as being composed both socially and psychologically in the specific social and cultural contexts.\textsuperscript{1727} Sen often misses this relational aspect of freedom, as Stuart Corbridge observes:

> But Sen’s commitment to the individual is not always backed up by sensitivity to the claims of individuals acting in social groups, and especially not those groups adopting what he calls a narrow identity. Here again we run into difficulties that arise from the normative bias of Sen’s work (his desire to celebrate individual freedom) and the possibility that the freedoms of many poor people are best expanded by collective mobilizations (not all of which are especially ‘liberal’).\textsuperscript{1728}

In the same vein, Sen is criticized for his advocacy of ‘liberal’ democracy, precluding alternative democratic forms like cooperative democracy that


takes social movements for global justice more seriously.\textsuperscript{1729} Similarly, Hartley Dean notes that Sen obscures the reality of “the constitutive nature of human interdependency”.\textsuperscript{1730}

In spite of some sensitivity to social influences on human well-being, there is a fundamental tension in Sen between Smith and Marx. His commitment to freedom makes him side more with the behavioural approach of Smith than the structural approach of Marx. Despite Sen’s admirable sensitivity to the context of the moral agent and the influences of social institutions, his overestimation of human reason and agency only insufficiently acknowledge the enormous influence of the social fabric in our values, choices and well-being. It seems that sometimes Sen’s rational moral agents act very sober and reasonable, being able to stand above the social. It is nevertheless important to take note of the role of ‘structures of living together’ in our general well-being, as Stewart and Deneulin remark:

\begin{quote}
[T]he task of development policies should be not only to enhance “valuable” individual capabilities, but also to enhance “valuable” structures of living together. The latter can be defined as the structures of living together which will have a positive impact on people’s wellbeing (both instrumentally and intrinsically), enabling individuals to be freer agents, and encouraging them to form valuable objectives. In other words, flourishing individuals generally need and depend on functional families, cooperative and high-trust societies, and social contexts which contribute to the development of individuals who choose “valuable” capabilities. We don’t believe Sen would deny any of this, but the individualism of the approach leads us away from these issues, and to a belief that there are autonomous individuals whose choices are somehow independent of the society in which they live.\textsuperscript{1731}
\end{quote}

Despite the great momentum Sen achieved by taking welfare economics beyond the narrow structures of utilitarianism, his individualism limits the reach of his social analysis. Stewart and Deneulin rightly summarize: “He is handicapped by his individualistic perspective from both fully identify-

\textsuperscript{1731} Stewart and Deneulin (2002): “Amartya Sen’s Contribution to Development Thinking”, 68.
ing the good life, and analyzing political mechanisms for achieving it.”

Though RtD is often considered to be a group right, Sen substantiates it basically as a right of the individual person in accordance with his ethical individualism. This is indeed related to his commitment to ‘ethical individualism’ and the difficulties involved in the justification of ‘group’ rights. Still, his insufficient absorption of the social embeddedness of human beings impairs his general idea of justice.

4. The Insufficient Treatment of Ecological Issues

Unlike Maritain, who philosophized before the advent of great ecological consciousness, more ecological sensitivity is justifiably expected from Sen because of his contemporaneity. However, ecological concerns are only insufficiently integrated into his general idea of justice. The primary concern of Sen’s intellectual project is human development, and his theoretical framework is accordingly anthropocentric, which is well reflected in his treatment of ecological problems. He himself conceded that his contributions and influence in the field of environmental economics are meagre. Some significant statements of Sen about ecological issues come, interestingly, from his collaborative works with Jean Drèze and Sudhir Anand, which attests to his insufficient treatment of the urgent issue of the contemporary world. The insufficient ecological sensitivity weakens the integrity of his general idea of justice, especially his human rights discourse. This observation is absolutely true: “If there is one noticeable gap in Sen’s analysis, it is the lack of concern with the environment and ecological changes.”

There are certainly many resources in Sen’s capability approach that enrich debates on ecological issues. For instance, the paradigm shift of the

1733 Sen states: “Capability is, in fact, no more than a perspective in terms of which the advantages and disadvantages of a person can be reasonably assessed”. Sen (2009): The Idea of Justice, 296–297. Emphasis added.
maximand from commodities and income to substantive freedoms can indeed be a great catalyst for environmental concerns – a shift from commodity-command to capability, departing from what Marx referred as “commodity fetishism”. This paradigm shift can protect nature from the assaults of developmentalism. Furthermore, focusing on capabilities rather than on functionings affirms the agency of the person. He accordingly substantiates the environmental concerns from the civic nature of humans. His notion of the obligations of ‘effective power’ also instructs us about our obligation to animals because of the enormous power we possess.

Despite its primary focus on human development, Sen extends his capability approach to include environmental concerns in the sense of the Humean pointer to the growing “boundaries of justice” that encloses distant people of future generations as well. This also confirms the relevance of epistemology for ethics, for a broader approach to justice that deals with economic and environmental causations and connections. This broadening of boundaries of justice arises from his broadening of anthropology that conceives human beings as more than the sum of their needs, affirming the need “to take an adequately broad view of human beings in dealing with the environmental problems we face and the predicament of unsustainability with which we are threatened”. Environmental concerns are thus conceptualized in the framework of “social evaluation” that appeals to human values and priorities, manifesting “an inescapable human connection in assessing the environment”.

---


1737 Cf. Sen (2004): “Why We Should Preserve the Spotted Owl”.


This rich anthropology is capacious enough to address many human rights concerns. Sen treats environmental issues as a social justice problem that brings the worst-off back to the middle. He challenges many prevalent perceptions about nature, like the claim that it is composed of a pre-existing nature, that it is valued for its own sake, or the conception of nature as something that can only be worsenable – as if it is not improvable through development.\textsuperscript{1743} Sen thus considers nature only instrumentally, and ultimately it is supposed to serve human capabilities. He takes a case against a mono-dimensional approach to the environmental crisis, where conservation-first advocates neglect the poor. Beyond the romantic longing for the ‘old good days’, or the champions of extreme types of ‘de-growth’ movements, he conceptualizes development as a process to enhance the environment. In his framework, nature is not something static, it is something to be shaped and used by and for human beings.\textsuperscript{1744}

Sen integrates ecological concerns with general development programmes. “Valuation is, among other things, a developmental process. This is to be included in our values and commitments.”\textsuperscript{1745} He notes that “the value of the environment cannot be just a matter of what there is, but must also consist of the opportunities it offers to people. The impact of the environment on human lives must be among the principal considerations in assessing the value of the environment.”\textsuperscript{1746} Nature is not just there for passive preservation, it is also a matter of active pursuit of enhancing and improving through constructive human interferences. Here Sen combines the notion of effective power to protect (as mentioned above) and constructive power to intervene: “Our power to intervene and to do it with effectiveness and reasoning may be substantially enhanced by the process of development itself.”\textsuperscript{1747} Sen endorses basically an instrumental approach: “It is not so much that humanity is trying to sustain the natural world, but rather that humanity is trying to sustain itself. It is us that will have to ‘go’ unless we can put the world around us in reasonable order. The precariousness of nature is our peril, our fragility.”\textsuperscript{1748} Development is not just a process of increasing the effective freedom of human beings; in addition,
“that power can be used to preserve and enrich the environment, and not just to decimate it”. He holds that changes like reduction of population, improving environmental awareness etc. are better brought about through education. Sen thus dismantles the misconception that development and preservation are irreconcilable.

Sen draws attention to a serious fairness problem: “While environmental degradation may affect the life of all some lives are much more severely harmed than others.” He, therefore, envisions an environment-inclusive approach to development. Environment protection is no hidden agenda of the West, as some conspire; rather it is an ally of the poor. He is also equally suspicious of the clamour for intergenerational justice while forgetting a more urgent need of intragenerational justice. Sen consequently argues for the need of the demands of universalism to be applied intragenerationally and intergenerationally. Our concern for the future should not exclude what we find hic et nunc. “The moral value of sustaining what we now have depends on the quality of what we have, and the entire approach of sustainable development directs us as much toward the present as toward the future.” He thus concludes: “It would be a gross violation of the universalist principle if we were to be obsessed about intergenerational equity without at the same time seizing the problem of intragenerational equity: the ethic of universalism certainly demands such impartiality.” His emphasis on the relevance of ‘public goods’ also contributes to environmental awareness. Public goods challenge the grand delusion that every commodity can be bought and sold in the market; they refer to the significant non-marketable influence on our welfare. Public goods like air, water, sunshine etc. are consumed together rather than separately. This renders public goods a particular ethical quality since they are crucially important for the common good; in his system, public goods play an important role in enabling people in general and the poor in particular.

Sen warns against false priorities of environmental politics. He notices, for instance, that there is a one-dimensional focus on ‘carbon emissions’ neglecting the dangerous consequences of nuclear energy, which has more serious environmental and social risks.\textsuperscript{1755} This demands transcending the temptations of market profits in environmental concerns that may overlook serious social ‘externalities’ of emission and pollution involved in opting for ‘cheap’ energy sources like nuclear energy. He argues for alternative sources of power like wind and solar energy, supported by state subsidies.\textsuperscript{1756} Also he calls for a broadening in the scientific research, particularly aimed at overcoming “the biases in environmental thinking that have come from an overconcentration on the richer parts of humanity, and the comparative neglect of research that can expand the generation, storage, and efficient use of environmentally safe energy, particularly in poorer countries, including those in the tropics”. We have to ally for “the need for greater energy use for a large number of deprived people in the world”, which is important for the poorer parts of the globe. He champions a rapid development of the economic use of solar power, urgently important for the poorer parts of the globe – yet something that affluent but sun-starved Europe may not readily see. “Our scientific priorities as well as our ethical commitments demand more—and multi-directional—engagement.”\textsuperscript{1757}

This analysis shows that Sen does not belong to the ‘preservationists’, as his focus is on human flourishing. In contrast to Sen’s anthropocentric shift, Nussbaum’s version of capability approach tried to incorporate animal rights as well in a non-anthropocentric non-instrumental fashion. Thus, the flourishing of other species gains a normative base, which is founded on the ‘dignity of living organisms’.\textsuperscript{1758} Even when Sen recognizes the inherent value of other species, it is substantiated only ‘instrumentally’ through the agency of human persons – ultimately making the capability approach a clear anthropocentric approach. His unique contribu-

\textsuperscript{1755} Cf. Sen (2014): “Global Warming Is Just One of Many Environmental Threats that Demand Our Attention”.

\textsuperscript{1756} Cf. Drèze and Sen (2013): \textit{An Uncertain Glory}, 92–94.

\textsuperscript{1757} Sen (2014): “Global Warming Is Just One of Many Environmental Threats that Demand Our Attention”.

tion to the ecological debate would be his treatment of environmental issues in terms of distributive justice, challenging the skewed politics of environmentalism driven at the cost of the poor and their urgent needs. But that is just one element of a bigger problem of the ecological crisis.

5. The Absolutization of Political Freedom

Democracy is the sine qua non of Sen’s capability approach. It is founded on the human faculties of reason and relationality. He is a passionate proponent of democracy and endorses a democratic system that is more than mere electoral balloting, conceiving it as a “government by discussion” as expounded by democratic theorists like John Stuart Mill and Walter Bagehot. As already discussed, he cogently argued that political freedom is positively related to the process of development. One of Sen’s powerful arguments for democracy was that the poor invariably choose political freedom when they are to choose between freedom and development. In order to substantiate it, he drew attention to the revealing historical event of the poor Indian electorate overthrowing the authoritarian Indira Gandhi regime. Ironically, the Indian poor remained poor, while people of many East Asian countries, who were denied some of their important political freedoms, achieved incredible growth within one generation. It has already been shown that Sen is one of the most ardent critics of the glorification of the ‘East Asian wonder’ and the ‘Lee hypothesis’. Are there good reasons to allow some trade-off between welfare and political freedom in view of general well-being?

The inevitability of political freedom for development, as it is asserted in Sen’s conception, is not undisputed. Zakaria, for instance, endorses “liberal autocrats” for an efficient development after the model of East Asian regimes. According to him, semi-democratic systems with patriarchs or a one-party system would guarantee a broader range of political and economic freedoms than many “illiberal democracies”. In a choice between illiberal democrats and benevolent autocrats, he espouses liberal au-

---

tocracy.\textsuperscript{1760} It may seem to work better against the perils of populism and majoritarian biases that prevail in some liberal democratic countries. The point here is not to defend ‘some’ autocracy as an answer to the fears of the tyranny and triumphalism of the majority but to study the cogency of Sen’s claim that the poor people would \textit{invariably} choose political freedom if they are given a choice.

In many countries, special export zones exist where workers are required to give up several of their rights in order to be employed.\textsuperscript{1761} This, nevertheless, is to be distinguished from having no political rights at all, as this is a special case where citizens deliberately waive their rights – they freely bargain their basic rights away. Gaertner rightly argues: “A very fundamental position is to argue that once a right has been given to human beings, they should be granted the liberty to freely decide what to do with it. In other words, they should not only be able to exercise it but also be free to waive or even to sell it. As far as suicide or organs are concerned, many people would not defend such an extensive liberty.”\textsuperscript{1762} In view of Sen’s support for the agency of the people, it is not easy to resist this argument. Sen is absolutely right in emphasizing the intrinsic value of political freedom, but it is up to the agency of each person to determine what one is going to do with this intrinsic and important value.

Reasonable people should not invariably choose democratic freedom if his arguments in “Rational Fools” are to be taken seriously (as it makes room for apparently \textit{irrational} choices, which may be totally rational from the perspective of the moral agent). Even when we underline the great significance of democratic values, it is equally important to make room for sacrificing them if someone deliberately chooses to do that. This is the logic behind Sen’s focus on \textit{capability} rather than \textit{functioning}, and logically he must leave the matter to the choosing moral agent, lest he himself is accused of being paternalist.

An experiment conducted in several countries about the possible trade-offs between growth and human rights reveals that German students’ priority for political freedoms and human rights got reduced over a period of time. Similarly, non-Western countries were ready to sacrifice valuable

\begin{footnotesize}
\begin{enumerate}
\end{enumerate}
\end{footnotesize}
political freedoms to 'buy' economic growth, at least for a foreseeable period of time.\textsuperscript{1763} Gaertner underlines the complexity of a trade-off between political freedoms and economic growth that eludes an easy answer.\textsuperscript{1764}

Sen concedes the difficult relation between freedom and welfare. While referring to the complex and paradoxical relation between India’s democratic route and China’s autocratic route, he observes: “These influences may be very complex and may also involve apparently perplexing contrasts, e.g. between (1) India’s better record than China’s in avoiding famines, and (2) India’s total failure to deal with endemic malnutrition and morbidity in the way China has been able to do.”\textsuperscript{1765} Despite apparent complexities and ambiguities, Sen does not find a reason to sacrifice freedom for the sake of welfare. “The connection between political rights and economic growth is ambiguous and contingent, but there is little evidence to vindicate Lee thesis. The observed international contrasts make it hard to reject the view that these rights do not hinder economic growth in any significant way.”\textsuperscript{1766}

Gaertner rightly notes that real-world situations call for trade-offs between values, a fact Sen consistently underscores in his human rights discourse.\textsuperscript{1767} Sen’s general idea of justice makes room for qualified recognition of redistribution, which foresees limited restriction of individual freedom for a better general outcome. If such a curtailing of personal freedom can, theoretically, be possible, why is it that political freedom/democracy cannot be minimally restricted for an enhancement of the common good? This is at least partially substantiated by empirical evidences from the East Asian countries. It will, however, topple Sen’s formulation of ‘development = freedom’.

6. The Risks of Total Non-Essentialism

Sen’s idea of justice is founded on a social choice evaluative process of reflection, weighing, public discussion and reasoned agreement. This democratic deliberation is actually a strategy to guard against possible paternalistic tendencies. As stated earlier, he tends to theorize in an ideal world, where there are no antagonisms or struggles. However, in the actual world it is quite possible that the truth is hijacked by the powerful or the majority. If minimal and benevolent paternalism could be a theoretical option for the sake of general well-being, would it also be beneficial to uphold some minimal essentialism in the human rights discourse? Would it not be helpful in enhancing the life of the poor in view of the hegemonic power relations existing in the world, where a fair process of global public discussion might not take place? The problem of collective amnesia about widespread poverty and deprivations in the world, for example, manifests the need for some general agreement in view of existing constraints and interferences.

I take evidence from the contrast between Sen’s “Elements of a Theory of Human Rights” and The Idea of Justice. On the one hand, he strives to be completely non-essential, but when it comes to human rights, he switches over to a “theory” rather than a mere “idea”, as if he presumes some sort of essentialism. The capability approach of Nussbaum, however, holds that some paternalism is unavoidable, or even desired. Nussbaum attempts a “convergence between an intelligently normative proceduralism and a substantive good theory of a non-Platonist kind, sensitive to people’s actual beliefs and values”. It is actually an integration of Sen’s procedural justification and Aristotelian essentialism. Is it not meaningful to accept some element of “paternalism”, as Nussbaum proposes, rather than starting from a vacuum? In view of the pervasiveness of unreason and power politics, it is highly desirable that some minimal essentialism will not damage Sen’s idea of justice. This is not a metaphysical realist essentialism that is externalist; rather it is “a historically grounded em-

---

pirical essentialism” that is internalist, as Nussbaum has outlined.\textsuperscript{1771} This, however, does not endorse her finished list of capabilities, because weighing and prioritizing are inevitable for a context-sensitive human rights discourse.

Sen attempted to save human autonomy from possible paternalism that is common in many ‘theories’ of justice. This is ultimately manifest in his refusal to endorse “one pre-determined canonical list of capabilities, chosen by theorists without any general social discussion or public reasoning”.\textsuperscript{1772} His comparative approach was a methodological alternative to prevalent transcendental approaches that concentrates ranking alternative social arrangements.\textsuperscript{1773} It is at once a strength and a weakness in the Sen system of evaluation that there is no clear-cut distinction between good and bad. He is against “the grand partition between the ‘just’ and the ‘non-just’”\textsuperscript{1774} because the real world is not neatly divided between the unjust and the just.

Transcendence is a lumped-together view of the world, with all possible social arrangements seen either as ‘unjust’ or as ‘just,’ without further distinctions. In contrast, the human development approach, and the social choice theory on which the human development reasoning draws explicitly or by implication, are firmly tied to asking ‘comparative’ questions: how can we advance justice or reduce injustice in the world?\textsuperscript{1775}

This is an excellent guard against black and white thinking and dogmatization. But the problem associated with the unavailability of the good and the bad makes the process of public discussion really challenging.

Besides, his comparative framework is not a ‘totalist’ ordering, which demands a complete ranking, but a case of partial ordering, which leaves room for incompleteness. Such a non-totalist route takes human agency and human freedom seriously; conflicts among free human agents with regard to the ranking of alternatives can be presupposed, which in turn challenges the pretensions of transcendental theorists, who “assume such conflicts away or claim they can always be transcended”.\textsuperscript{1776} Sen elucidates

\begin{thebibliography}{9}
\end{thebibliography}
that such confusion and incompleteness are not an embarrassment for the practical reason.\footnote{\cite{Sen2000:ConsequentialEvaluationandPracticalReason;Sen1997:MaximizationandtheActofChoice}}

A partial ranking requires only a ‘maximal set’, which does not necessitate the ranking of all alternatives as in the case of an ‘optimal set’.\footnote{\cite{Sen2009:TheIdeaofJustice:x,Sen2002/2011:RationalityandFreedom:160}} This points to the fact that the search for justice has no endpoint – incompleteness is thus inherent to the notion of justice. The most plausible way is the advancement of justice in the framework of a progressive enhancement. In summary, Sen’s idea of justice gives a procedural orientation to a reasonable discourse, and this discourse presupposes immense pluralism in moral convictions. It thus provides an orientation to what contributes to the well-being of people, without closing an alliance with any school of justice.\footnote{\cite{Neuhäuser2015:AmartyaSensBeitragzueneinerpraktischenWirtschaftsethik}} Such a comparative approach works well in the case of ‘manifest’ injustices;\footnote{\cite{Sen2009:TheIdeaofJustice:103}} however, many ethical issues are subtle, lingering in grey zones, where the problems are not as patent as Sen presumes. If the case is more than simply diagnosing injustices, it is often helpful to have some general agreement about the idea of justice. Sen’s approach is a great help in dealing with criminally gross injustices, and it has rightly made its space in contemporary political philosophy. However, in matters of general concerns of justice, some minimal essentialism is helpful at least to guide the process of public discussion since there exists no ideal atmosphere for dialogue and discussions.

\footnote{\begin{itemize}
\item Sen admits: “In fact, a theory of justice that makes systematic room for incompleteness can allow one to arrive at quite strong – and strongly relevant – judgments (for example, about the injustice of continuing famines in a world of prosperity, or of persistently grotesque subjugation of women, and so on), without having to find highly differentiated assessments of every political and social arrangement in comparison with every other arrangement.” Sen (2009): \textit{The Idea of Justice}, 103.
\end{itemize}}
Conclusion

The ‘shortcomings’ in Sen’s human rights discourse outlined here arise, actually, from the ‘strengths’ of his approach to justice. The underlying problem in his general idea of justice is his over-confidence in human sanity that fails to pay sufficient attention to the constraints from within and without. His insufficient treatment of group rights and ecological challenges is a serious deficiency in view of the contemporaneity of those issues. As already mentioned, a lion’s part of his commendable contributions in this regard is either collaborative works or appeared in the popular literature. This reveals that these key ideas are not essentially integrated into his general idea of justice. Arguably, Sen’s most important theoretical agenda was ‘informational broadening’, and the above criticism actually manifests that there are areas where this programme did not work very well. His system is basically open to learning from other approaches; hence it can be easily complemented with richer information.
This part of the book compares the human rights discourses of Maritain and of Sen. Actually, Maritain’s essentialist Thomistic philosophy exhibits more commonalities with Martha Nussbaum’s quasi-essentialist version of the capability approach. Though at first glance Maritain and Sen seem to be mismatched, there are some significant similarities between them; this section seeks to identify them. First, some general characteristics in their political philosophy and methodological framework are analysed; then, similarities in their human rights discourses are identified. Dissimilarities are not separately studied; they are integrated into the analysis.

I. Some Common Characteristics

1. Old Answers to New Questions

Both Maritain and Sen harked back to old traditions – medieval Thomas Aquinas and classical Adam Smith, respectively – which were largely misinterpreted and misrepresented over the centuries. They rediscovered pertinent, yet unexplored, resources of both Aquinas and Smith, demonstrating that they are more contemporary and significant than they are represented by their modern apologists.

1.1. Maritain and Aquinas

Thomism’s influence on the secular world during the Enlightenment was meagre, and it was believed that the ‘death of Thomism’ led to the rise of

the human rights discourse. From the middle of the twentieth century, there was a growing mistrust against Thomism in the Church as well, culminating in the dethroning of Thomism in Vatican II. This is validated by the observation of Joseph Ratzinger that Thomism is a “blunt instrument” to dialogue with others. At the same time, Aquinas is also recognized as a progressive. For instance, the great economist and Nobel Laureate Friedrich August von Hayek identifies Thomas Aquinas as the ‘first Whig’ – the Whigs were the heirs of the Scottish Enlightenment, who emphasized economic and political liberty, thus paving way for the emerging philosophy of liberalism. In theology, Johann Baptist Metz notes that it was Aquinas, not Kant nor Descartes, who made an “anthropological shift” in philosophy. This sheds light on the multifarious nature of Aquinas.

Recently Pope Francis remembered that he studied philosophy in the language of “decadent and largely bankrupt Thomism”. Thomism was indeed a rich dialogical approach to philosophy, which brought the rational moral agents back to the focus – a sort of medieval virtue ethics. Later on, canon law dominated ethical life, which gradually led to the eclipse of Thomism. Francisco Suarez (1548–1617) was chiefly instrumental in this legal shift in the moral theological tradition of the Church, propagating an image of God as a legislator. This resulted in the manualization of natural law (canonization) through neo-Scholasticism, ultimately taking a very paternalist turn. This form of Thomism dominated until Vatican II. Thus, it is not without reason that Maritain persistently resisted being called a ‘neo-Thomist’ and deliberately called himself ‘Thomist’, referring to his

1782 Cf. Strauss (1953): Natural Right and History.
intention to remain faithful to the real Thomas Aquinas.\footnote{1789} He indeed took Thomism beyond the ‘interpreters’ like Baroque scholasticists and neo-scholastic manualists, exploring the richness of Thomism anew in the twentieth century.

Maritain reinstated \textit{human nature} as the tool of ethical evaluation, and not institutions and laws. His emphasis on the scope of human reason rendered political philosophy a new accent, which had enormous ramifications for the human rights conception of the Church and the wider world. It is also interesting to note that the \textit{aggiornamento}, a revolt against didactic impersonal and ahistoric neo-Scholasticism, sought an alternative in some version of Thomism, be it French Nouvelle Théologie (\textit{Ressourcement} movement) or the German and Belgian Transcendental Thomism. Even Ratzinger’s critical positioning to the natural law approach is accomplished in an Augustinian-Thomist methodology. The natural law tradition was later carried over to Catholic theology through the personalism of John Paul II in the Mounier-Scheler tradition.

Aquinas was significantly dialogical in his approach, which is evident, for instance, in the obvious influences of the Muslim philosopher Averroës on his philosophy.\footnote{1790} Maritain displays an admirable capacity to enrich his personalism with other streams of thoughts. He shares the legacy of Thomism’s ongoing conversation with the world: “[We] are not concerned with an archaeological but a living Thomism […] we must combat the prejudices of those who would […] fail to understand its essentially progressive nature […]. By assimilating whatever truth is contained in these partial [philosophical] systems it will expand its own substance and deduce from it more and more penetrating shafts of light which will reveal the forces concealed in its truths.”\footnote{1791} Moreover, Thomism’s ever-new engagement with the present assimilated the fruits of the Enlightenment project. Chappell rightly observes: “In political philosophy and in ethics, Thomism has not come to abolish the Enlightenment project, but to fulfil it.”\footnote{1792} It is to be noted that Maritain always assimilated something from his adversaries. He started as a staunch critic of positivism, Bergsonian

\begin{thebibliography}{9}
\footnotesize
\end{thebibliography}
philosophy, etc., which provided his earlier works with an apologetic nature. However, in the course of time, he started generously assimilating many elements into his political philosophy from the so-called ‘modern’ philosophies.

Here I take a cue from Maritain’s own vision of Thomism. He mentions “two opposite eternal instincts of errors”: “on the one hand the instinct of accumulative inertia of a backward Scholasticism which attached itself in the Christian tradition to accidental and perishable elements”, and “on the other hand […] an instinct of spendthrift disassociation represented in that time by the Averroist movement and which gave its fruits later in anthropocentric humanism of modern times”. Maritain attempts unflaggingly to strike a balance between “univocist inertia which clings to what is dead and done with the temporal ideal of medieval Christendom” and “whole ideology of revolutionary decomposition, which raises against the very idea of Christendom”. This exhibits his desire for a meaningful synthesis of the old and the new, which would then naturally give rise to a contemporary rendering of Thomism. Maritain was indeed faithful to Thomism, but it was not a mere ‘slavish attachment’ to Thomas or Aristotle, just mechanically repeating them. He believed that it was his vocation to inculturate the time-proven concepts into contemporary problems. “Although employing St. Thomas, Maritain is always a man of the twentieth century.”

In her analysis of Rawls’ “political liberalism”, Nussbaum recognizes the historical role of Maritain in the philosophical landscape.

Indeed, it is worthy of note that the first example of political liberalism in the Western tradition is probably the neo-Aristotelian Thomism of Jacques Maritain. In *Man and the State* he argues that a certain sort of respect for the dignity of the human person, and a corresponding recognition of a core set of human rights, should be at the heart of the modern state – and that this view can be affirmed both by Catholics and other Christians, who derive it from their religious doctrines of the soul, and also by secular citizens, as many who believe that human beings are dignified creatures worthy of respect and who are averse to treating human beings as mere commodities.

---

This liberal shift in Maritain was not without consequences. Crosson is right, to a certain extent, when he observes that, in applying the liberal language of individual rights to Thomistic philosophy, Maritain got himself into a “conceptual muddle”. This observation is true of Maritain: “Maritain is an enigma. Some find in Maritain an authentic Thomist. Others warn him for going beyond Thomist principles and conclusions. Still, others find Maritain’s expansion of Aquinas’ mind completely foreign.” There is an underlying tension between Maritain the Thomist and Maritain the political philosopher, yet his intellectual edifice is not an eclectic conglomeration of ideas; he consistently remains adherent to Thomist principles. His philosophical agenda was not a preservation of the conceptual purity of Thomism, taking an atavistic route; he was primarily seeking answers to the burning social problems by employing the conceptual tools of Thomistic metaphysics. It is rightly identified that Vatican II brought about a shift from classicism to historical consciousness – from an ahistorical neo-scholastic natural law approach to a direct interest in the actual life of the people. It is interesting that a Thomist himself contributed significantly to this process, as was already mentioned in his role in paving the way for Vatican II. “Paradoxically, although Maritain was among the most traditional of the classical Thomistic philosophers in his epistemology and metaphysics, he was the most open minded and modern in his understanding and appreciation of contemporary culture.”

---

1796 Maritain constantly experienced a lot of opposition from ‘true Thomists’ like Garrigou-Lagrange from Vatican. His works only narrowly escaped being put in the “index”, especially his Integral Humanism.
1.2. Sen and Smith

Sen is *sui generis* among economists, one who, with his ‘heterodox’ style, travelled an alternate path in economics. His intellectual career is, however, an attempt to rediscover the ‘orthodox’ tradition of economics – the forgotten tradition of political economy. Walsh rightly observes that Sen inaugurated the second phase of the revival of the classical political economy in the twentieth century:

>T]he revival of classical economic theory in the 20th century has successfully completed a first phase, in which the work of Ricardo was its main point of reference, and that it has, for some time now, been entering a second phase, in which the work of Adam Smith is gaining prominence. I shall then argue that a number of the works of Amartya Sen illuminate and develop certain of the ideas of Adam Smith. Sen’s contribution to the development of Smithian ideas is, on this view, wholly to do with the second stage of the classical revival.1802

Sen stands in the tradition of the classical political economy of Smith and Marx, which is directly interested in welfare economics. Among the classical economists, he primarily enjoyed reading Adam Smith; Marx occupies the second place.1803 Sen’s rereading of Smith broadened not only the discipline of economics but also philosophy. He argued that Smith’s *The Wealth of Nations* is to be read along with his first and last book, *The Theory of Moral Sentiments*,1804 to avoid falling into reductionism. Firstly, Smith has a broad understanding of anthropology that makes room for other-centred interests as well. Sen argues that the simplistic ‘the butcher, the brewer and the baker’ interpretation of Smith makes him a guru of self-love and turns a blind eye to richer parts of his works.1805 He clarifies: “The role of self-love in explaining particular economic phenomena does

---

nothing to reduce the relevance of different motivations in the understanding of other economic regularities.”

Sen underlines:

The support that believers in, and advocates of, selfinterested behaviour have sought in Adam Smith is, in fact, hard to find on a wider and less biased reading of Smith. The professor of moral philosophy and the pioneer economist did not, in fact, lead a life of spectacular schizophrenia. Indeed, it is precisely the narrowing of the broad Smithian view of human beings, in modern economies, that can be seen as one of the major deficiencies of contemporary economic theory. This impoverishment is closely related to the distancing of economics from ethics.

This narrowing of the broad Smithian view of human beings in modern economics drastically handicapped modern economic theories, leading to the distancing of economics from ethics. Sen explored the ‘ethical ‘origin of economics without overlooking the significant contributions of the ‘engineering’ approach represented by the neo-classical approach. He notes that economics originated from politics, and in the Aristotelian sense politics is considered to be “the master art”, which uses the rest of the sciences, including economics, for human ends – one’s own ends, without excluding those of the others. Hence political economy is concerned with deeper, normative, questions related to human well-being.

Against the backdrop of the financial crisis in the year 2008, there arose a serious debate about the nature of capitalism that eventually divided the discussion into two camps – defenders of unfettered capitalism resisting any change and others who demand substantial reforms, which they called “new capitalism”. Sen, in this regard, called for a ressourcement in economics:

The present economic crises do not, I would argue, call for a “new capitalism,” but they do demand a new understanding of older ideas, such as those of Smith and, nearer our time, of Pigou, many of which have been sadly neglected. What is also needed is a clearheaded perception of how different institutions actually work, and of how a variety of organizations—from the market to the institutions of the state—can go beyond short-term solutions and contribute to producing a more decent economic world.

---

1809 The topic of the symposium in Paris in this regard was “New World, New Capitalism”, where the social market system of Germany was a favourite candidate.
1810 Sen (2009): “Capitalism Beyond the Crisis”.

414
Sen thus points to the need to rediscover the old and rich tradition of political economy. He notes: “Smith argues that while ‘prudence’ was ‘of all the virtues that which is most helpful to the individual’, ‘humanity, justice, generosity, and public spirit, are the qualities most useful to others’”. Economics is thus inherently embedded in justice-related issues, making it an ethical affair. The Smithian heritage is the ‘missing link’ to scholastic economics: It was also primarily preoccupied with justice and the common good, which is well developed by Sen in our time. Richard Hooper observes: “Most economists these days eschew moral philosophy—namely, the consideration of social justice—because they consider it too ‘soft’ for rigorous analytical treatment. But Sen harks back to the older and richer tradition of evaluating the considerations of economic efficiency—which dominate most modern economic analyses—with respect to their general social consequences. Such judgments require an ethical framework.”

His exploration of the tradition of political economy enriched both economics and philosophy.

Thus, both Maritain and Sen fought against the reductionist tendencies of ‘neo’-versions – neo-Scholasticism and neo-classical economics, which substantially narrowed the vision of Aquinas and Smith. They fought against “the smallness that threw upon” Aquinas and Smith, making room for more autonomy and considerations of justice, in effect broadening the scope of human moral agents.

2. A Broad Anthropology

*Mismeasuring Our Lives* is the title of a report co-authored by Sen, realized at the request of the former President Nicolas Sarkozy of France, against the backdrop of global financial crisis 2008. Sen’s academic career is a constant revolt against ‘mismeasuring’ human lives – the temptation to reduce human life to one single metric, be it happiness as in utilitarian-
Economics was lost in the world of econometrics, which was concerned with numbers, statistics and theorems, forgetting what actually happens to human persons. Sen developed a multidimensional concept of well-being that derives from his rich anthropology. It is already analysed in section C.II.2.1. how he challenged the behavioural assumptions of the notion of "rational economic man" that takes a "very narrow view of human beings" founded on utilitarian informational base.\textsuperscript{1815} He affirms that human beings are not only economic agents but also moral agents.

Maritain has also fought against liberal atomistic individualism and totalitarian collectivist communism that impaired the "dignity" of the human person. His personalist approach attempted to restore the real dignity of the human person and thereby enriched anthropology. An integral humanism "tends essentially to render the human being more truly human, and to manifest his original greatness by having him participate in all that which can enrich him in nature and in history".\textsuperscript{1816} He was fighting against prevailing positivist approaches, such as economism, biologism or scientism, which propagate a partial and fragmented understanding of human nature. However, Maritain’s concept of ‘being more truly human’ – his idea of human dignity – tends to be often spiritual and abstract, without taking much care of the welfare needs of humans. Sen, on the other hand, envisioned human dignity in existential terms, focusing on the actual life of the people.

Sen’s capability approach is buttressed on the notion of the agency of human person – be it in achieving certain capabilities, thus having functionings, or setting priorities among multiple identities, thus underscoring a “multi-dimensional and dynamic character of human beings in which people constitute their identity and pursue human flourishing”.\textsuperscript{1817} It is already described how his writings battled against an impoverished vision of humanity that reduces the identity of a human person to a single dominant identity and neatly divides civilizations according to \textit{a priori} monolithic categories, thereby propagating an apocalyptic fear about ‘the clash of civ-

\begin{thebibliography}{99}
\bibitem{1816} Maritain (1936/2012): “Integral Humanism”, 153.
\bibitem{1817} Giovanola (2009): “Re-Thinking the Anthropological and Ethical Foundation of Economics and Business”, 436.
\end{thebibliography}
Sen develops his notion of identity by anchoring it on human agency. He celebrates the complexity of human identity, giving credit to the myriad identities within each individual. It is obvious that he understands the notion of identity in a social choice framework: it is not one principal, unchosen identity, like ‘destiny’ over which one has no command; it is a matter of choice and responsibility. Such a liberal approach will be a first step towards building peace on earth. We are not ‘rational fools’ imprisoned in a single identity.

This liberal approach does not deny the basic social nature of humans. As mentioned above, the basis of the notion of commitment is human solidarity. Sen’s idea of justice is built upon his confidence in our shared humanity and our shared common pursuit to enhance the world; he points to “basic human abilities – to understand, to sympathize, to argue – people need not be inescapably doomed to isolated lives without communication and collaboration. It is bad enough that the world in which we live has so much deprivation of one kind or another (from being hungry to being tyrannized); it would be even more terrible if we were not able to communicate, respond and altercate.”

Sen’s magisterial The Idea of Justice ends with a call for solidarity as an antidote to solitariness. Maritain also brilliantly substantiated the social nature of the human person and individual (section A.II.2.). The idea of common good in Maritain originates from the concept of human beings as being-in-relation.

Democracy reiterates the social nature of human beings; Maritain endorsed it as indispensable for political life and Sen for political life as well as for epistemology. Maritain envisions not a bourgeois democracy à la Rousseau but a personalist one. He was cautious of the Rousseauan conception of democratism; democracy for him is more than just a system of government, a rule by the majority; it is rather a human way of life. Also Sen represents not a skinny ballot-democracy but a government by discussion, as Mill and Bagehot envisioned it. His departure from institu-

tionalism opts for behavioural transformation, which is in many ways similar to Maritain’s call for a moral rationalization of politics.\footnote{Cf. Maritain (1942): “The End of Machiavellianism”.
}

}

}

Sen persistently argues: “A person is not only an entity that can enjoy one’s own consumption, experience, and appreciate one’s welfare, and have one’s goals, but also an entity that can examine one’s values and objectives and choose in the light of those values and objectives.”\footnote{Sen (2002/2011): *Rationality and Freedom*, 36.
}

There is indeed a certain sublimation of the human person in Sen, ridding her of ‘commodity fetishism’\footnote{Cf. Sen (1990): “Development as Capability Expansion”, 44. Even without appealing to theological warrants, it is now in vogue to anchor human rights on a certain metaphysical notion of ‘the sacredness of the person’, beyond the foundation of self/autonomy, which is strategic to uphold the human dignity in precarious situations. The common secular understanding of ‘human dignity’ is founded either on human autonomy, which implies that human beings are autonomous beings capable of making choices (Kant), or on a sense of empathy that most human beings feel for other sentient creatures (Rousseau). But such an understanding fails to protect the rights of persons of diminished capacity, and
} and affirming
these values and objectives as the ‘real wealth of nations’, as the *Human Development Report 2010* puts it.1832

**Rationality**

Both Maritain and Sen have confidence in the faculty of human reason. As already mentioned, Aquinas is known for his ‘anthropological shift’ in philosophy, making human reason the locus of philosophizing. We have seen how Maritain paved way for a ‘kantianization’ of human nature that departs largely from conventional Thomism. His dissatisfaction with Bergson was because of his romanticism, which denied the role of reason in favour of intuition. Sen, in turn, affirmed the need to have a ‘reasonable justification’. We have seen that Maritain revived the possibility of the faculty of reason through his ‘existential intellectualism’. His program was also against the pessimism of Nietzsche, Freud, etc. We have noted how he validates the range and reach of human reason. Natural law, which is often perceived as static, becomes very dynamic and personal in the characterization of Maritain, especially in the ‘gnoseological’ element of natural law. This is Maritain’s answer to the progressive nature of moral conscience of humanity, which also makes room for extension or a reformulation of the list of human rights. His elevation of the *person* and *reason* refocused the moral compass on the human person. Referring to his collaboration with *Action Française*, he later regrettably mentioned his basing human dignity on a transient feeling is too fragile; thus, there is a need to transcend both Kant and Rousseau in order to defend human dignity and subsequently human rights. Cf. Glendon, Mary Ann (1999): “Foundations of Human Rights: The Unfinished Business”, *American Journal of Jurisprudence*, 44(1), 12–13. Drawing on sociologists such as Émile Durkheim, Max Weber and Ernst Troeltsch, Hans Joas proposes an affirmative genealogy of human rights, in which human rights are the result of a process of the “sacralisation” of every human being. Cf. Joas (2013): *Sacredness of the Person*. However, appeal to human dignity, even in its non-theistic renditions, is not uncontroversial. Cf. Schroeder, Doris (2012): “Human Rights and Human Dignity: An Appeal to Separate the Conjoined Twins”, *Ethical Theory Moral Practice*, 15(3), 323–335.

mistake of being “impudently docile” to his spiritual directors. It was indeed a decisive moment to apply one’s own reason and conscience.  

Maritain emphasizes human nature, whereas Sen points to human freedom – the freedom to choose. Maritain’s personalism emerged from disappointment with the Enlightenment project, whereas Sen’s capability approach is inspired by the Enlightenment confidence in human reason. Maritain’s idea of ‘connatural’ knowledge, with its explicit theological imprint, deliberately limited the self-sufficiency of human rationality. His placing of metaphysics over epistemology was indeed an antidote to modern philosophical trends of relativization and scepticism. He was not endorsing a pure reason in the Kantian sense. We noticed, referring to the history of the drafting of *Dignitatis humanae*, how the French championed the dignity of the human person (natural law) and Americans the conscience (individual freedom). The Church opted for human nature. This sheds light on a deep divide in the Catholic moral theology. The Church is very cautious of the valorisation of human reason.

Maritain was deeply sensitive to the irrationalities of human beings. He often thematised the tension between ‘animality and personality’ of human beings. Though he admitted that a human being is “an animal gifted with reason”, he was very cautious of the possible negative impacts of irrational instincts and feelings in social and political life. Hence, he underlined the need to tame the irrational reason through proper education. He also notes that a community can collectively turn irrational. The Nazi revolution is mentioned as an example of “irrational forces and evil passions” and “the latent barbarism and of perversion” of political communities. Humanity is therefore in need of a “fruitful and creative revolution” that stirs

1833 Maritain spent the rest of his life regretting this political association, which resulted from a youthful lapse of judgment. Maritain’s letter many years later to his friend and one-time student Yves Simon states that “the cause of this error was my obedience to the advice of Father Clérissac, for whom I have so much veneration and to whom in addition I owe so much. How is one to make sense of these things on the morrow of one’s conversion? […] I never read Maurras’ books, and I relied on the wisdom of my director. I paid a high price for this mistake.” As cited in Crane (2009): “Jacques Maritain, the Mystery of Israel, and the Holocaust”, 29–30. Hittinger notes: “With naive and imprudent docility, he failed to distinguish between what constituted, for a Catholic, the supreme teaching authority of the church and what was merely the expression of personal opinion by individual clergymen.” Hittinger (2002): *Liberty, Wisdom, and Grace*, 14.
up “righteous passions and generous instincts” so that it may progress toward emancipation and unification.\textsuperscript{1834}

Maritain was well aware that pure reason, be it in the form of a ‘scientific’ creed or a ‘bourgeois rationalism’, is incapable of ensuring spiritual unity of mankind, as was evidenced in the tragic events that happened in the wake of World War II. Consequently, he states emphatically: “We have been confronted with the fact that religion and metaphysics are an essential part of human culture, primary and indispensable incentives in the very life of society.”\textsuperscript{1835} The UDHR manifests a return to the spiritual, as already mentioned.

Sen, on the other hand, has unshakable faith in humanity and rationality. He stands against the post-Enlightenment pessimism of reason, as in the case of Nietzsche, Freud, etc. He is not unaware of the irrationalities of humans; he is, however, optimistic that unreason can be corrected by better reason and that the individual can be corrected by the public (public discussion). Moral philosophy, which was deeply influenced by neoclassical economics since the 1870s, endorsed a one-dimensional notion of human rationality in terms of utility maximization, thus, in effect, failing to accommodate sufficiently human rights and freedoms. As already established, Sen provided a broader structure to human rationality in a social choice framework, in contrast to the narrow rational choice theory. He revolted against mere ‘rationalistic’ (making room for values, commitments, etc.) and ‘materialistic’ (making room for capability) representations of human beings.

**Humanistic or theological?**

Maritain’s personalism is essentially theistic; it is already noted that his project of the primacy of the spiritual culminated in his \textit{Integral Humanism} (1936). His \textit{The Twilight of Civilization} (1939) was written in the backdrop of threats of totalitarianism, in both fascist and Marxist kind, and here he emphasized the need to reinvent the spiritual roots of humanity. His deep sensitivity to the irrationalities and weaknesses of human beings conceptualizes a human person in need of grace. Maritain illustrates that

\begin{itemize}
\item \textsuperscript{1835} Maritain (1951/1998): \textit{Man and the State}, 109.
\end{itemize}
from the eighteenth century onwards there arose a tendency to think of “Nature with a capital N and Reason with a capital R, as abstract divinities sitting in a Platonic heaven”.\textsuperscript{1836} He bluntly calls anthropocentric humanism “inhuman humanism and its dialectic as the \textit{tragedy of humanism}”.\textsuperscript{1837} His notion of intuition is a program that makes human beings totally dependent on the divine illumination. Though personally he is a believer, it is to be noted that he does not limit the range of his argumentation to theology. He observes that though St. Thomas articulated “the existence of the eternal law on the basis of theological arguments”, it “is a philosophical truth as well, one which the philosopher with his means alone can reach and establish”.\textsuperscript{1838} Similarly he underlines that he argues “as a philosopher, not as a theologian, but as a Christian philosopher”.\textsuperscript{1839} Thus he leaves a lot of space open for differently thinking dialogue partners.

Sen considers himself to be “a thoroughly unreligious person”.\textsuperscript{1840} Tagore, who conferred the title Mahatma (Great Soul) on Gandhi, gave him an unusual name: ‘Amartya’, meaning ‘immortal’ or ‘divine’. Though he was born in an Ashram\textsuperscript{1841} and grew up with such a divine name, in the course of his life he became an atheist, who worries more about the mundane and mortals. What came from this humanist was “a secular saint”.\textsuperscript{1842} In contrast to the efforts of religion to form a ‘holy’ human being, Sen’s approach is to make way for both self-centred and other-centred values – both materialistic and sublime. He situates himself between “the high-minded oversimplification of intensely ethical behaviour” and “the low-minded over-simplification of ubiquitous selfishness”.\textsuperscript{1843}

Sen dealt extensively with the negative influences of religions. He is, however, not anti-theistic. Nevertheless, he does not fail to acknowledge the contributions of religions in bettering the world. He is very critical of

\begin{thebibliography}{9}
\bibitem{1837} Maritain (1936/2012): “Integral Humanism”, 169.
\bibitem{1840} Sen (2012): “Values and Justice”, 104.
\bibitem{1841} Santiniketan was not only an Ashram but also a centre of holistic education founded on reason and scientific research with a global perspective.
\end{thebibliography}
Nietzsche’s naïve accusation of Christianity as the cause of the nastiness of the world in which we live. According to him, such a judgemental conclusion militates against “the lives and achievements of Martin Luther King, or Mother Theresa, or Desmond Tutu, who have tried to reduce injustice in the world and have done so with non-negligible success”. He judges religion on the basis of the humanism it manifests; he intervenes in the wider public like a secular prophet for values and peace. His humanism is evident in a poem of his mentor Tagore which he often quotes and which is replete with a humanism that takes interest in the real life of people instead of being lost in the world of spiritualism.

*Leave this chanting and singing and telling of beads! Whom dost thou worship in this lonely dark corner of a temple with doors all shut? Open thine eyes and see thy God is not before thee! He is there where the tiller is tilling the hard ground and where the pathmaker is breaking stones. He is with them in sun and in shower, and his garment is covered with dust.*

A testimony to the greatness of Sen is that he does not feel defeated in learning from the religious scriptures. His works are replete with abundant resources from Hindu scriptures (but critically analysed) and also from others. He defends our responsibility to help others, quoting Buddha’s analogy and Jesus Christ’s parable of the Good Samaritan – our responsibility of effective power and of discovering our near and distant neighbours. Given his emphasis on the agency of human person, Sen’s capability approach cannot discard someone’s option for religion. But his philosophy is completely silent about the spiritual or the transcendental. Ethics can be considered to be his religion, and the debate is on whether ethics is deeper than religion. He tends more toward social and personal transformation through interactions and dialogue. His focus on the negative influences of religions led him to explore the heterodox traditions in them.

---

1846 This is from *Gitanjali*, a collection of poems for which Tagore won the Nobel Prize. Sen (2005): *The Argumentative Indian*, 96–97.
For instance, as opposed to the widespread perception that India is essentially spiritual, he shows that Sanskrit has a larger atheistic literature collection than what exists in any other classical language. The philosophy of Lokayata and the school of Cārvāka etc. are deeply sceptical and materialistic. Not least, the atheist religion of Buddhism has deeply imprinted the cultural fabric of India. As a result, he is inimically confronted by the Hindu Nationalist BJP and seemingly ‘worried’ Hindus.1848

Conclusion

We have seen how Maritain and Sen presented a broader notion of human beings. Even though they differ in their understanding of the origin and reach of human reason, both of them found their political philosophy on the bedrock of the human person. Their concentration on the well-being of humans makes their framework deeply anthropocentric, which in fact is a handicap for their human rights discourse when it comes to ecological justice. But their humanistic and humane framework is to be appreciated.

3. A Synthetic Approach

Both Maritain and Sen are multifaceted personalities. They dealt with various topics and also engaged themselves in various capacities that provided certain broadness to their philosophy. We can see that both of them attempted a middle path beyond naive ideological categorization of libertarian liberalism and collective communitarianism.

1849 The oldest university in the world, Nalanda, was revived as a result of an extensive pan-Asian project, and Sen was elected as the chancellor. But due to extraordinarily large interference in academia by the pro-Hindu nationalist government headed by BJP, he was forced to give up the candidature for a second term.
1851 In a much-acclaimed essay, historian Lynn White argued that the main strands of Judeo-Christian thinking had encouraged the overexploitation of the nature by maintaining the superiority of humans over all other forms of life on earth and by depicting all of the nature as created for the use of humans. Cf. White (1967): “The Historical Roots of Our Ecologic Crisis”.

424
3.1. Maritain

Maritain was a prolific writer who produced works in speculative philosophy, political philosophy, art, spirituality, etc. He was not only an academician but also an ambassador, head of international bodies and an activist. These engagements provide his works a synthetic nature. Like Sen, he too resisted being hijacked by any ideology. To combat the dangers of compartmentalization, Maritain therefore tried to ‘integrate’ fragmented elements.\textsuperscript{1852} In contradistinction to individualist liberalism and totalist communism, Maritain’s personalism attempted to tread a via media. This is similar to the left Catholic and liberal Catholic movements in the twentieth century, which deliberately kept aloof from extremes of the left and the right. A Christian version of the left and the right was incorporated in the middle way of personalism, especially in the Catholic personalism that was founded on the principles of Thomistic personalism in Maritain’s rendition.\textsuperscript{1853} Maritain, therefore, deliberately distinguished his philosophy from personalist doctrines of many hues, from Nietzschean to dictatorial and anarchist. “A principal concern of Thomistic personalism is to avoid both excesses.”\textsuperscript{1854}

We have seen how Maritain’s idea of society brought both the ‘personal’ and the ‘social’ together in a balanced way without falling into the extremes of individualism and communism. He also confronted the extremes of the progressives and the conservatives.\textsuperscript{1855} Interestingly, Maritain is characterized both as a progressive or conservative. He, however, attempted to position himself in the middle ground of the personalist philosophy. Hittinger rightly mentions that Maritain wanted to avoid the extremes of the pre-conciliar Manicheanism and the post-conciliar Pelagianism.\textsuperscript{1856} Though this book situates Maritain in the liberal tradition of Rawls, he considered himself to be on the left: We have noticed that Maritain started as a social revolutionary, and even in his twilight years he writes that “in

\begin{flushright}
\footnotesize
\end{flushright}
temperament I am what people call a man of the left.” But we know that he was equally of the right.

The principle at the heart of Catholic theology is “both-and” rather than “either-or”, which is a guard against exaggerated polarizations. Personalism, for Maritain, was a middle path between individualist liberalism and collective communism. Sen’s Capability approach also positions itself between liberalism (dominant political philosophy) and consequentialism (dominant economics). Sen learned the great virtue of “middle path” from his “illustrious countryman Gautama Buddha” that teaches about non-extremism. This led him to develop a framework that denies the “all or nothing” framework.

3.2. Sen

Gopalakrishna Gandhi calls attention to Sen’s consistent use of the conversational punctuation mark em dash (—), “which marks a break of thought, a change of emphasis, or the interpolation of a related but separate idea, within parent stream of thought”. He indeed emphasizes the effectiveness and charm of Sen’s style of writing. But it also sheds light on his admirable ability to be dialogical to other streams of thoughts. Ironically Sen is attacked precisely because of his synthetic approach, which Zakaria considers to be unbecoming of pure economics, built on “a single grand idea” – a “killer theorem”, as he calls it. In contrast to this ad hominem criticism, famous economist Arrow rightly notes that it is more important to understand how various parts “interplay” in the prolific works of Sen than trying to isolate one particular work.

Unlike some other work which has been awarded this Prize, especially in economic theory, we cannot do justice to Sen’s work in social welfare on the basis of one or two seminal papers, although there have been several such, as I

will point out. Rather it is the work as a whole and the way the various parts interplay that must be understood to see the importance of Sen’s contribution. His exploration of the notions of social welfare takes place at every level of analysis, formal-mathematical, conceptual, and empirical. It is by far the most comprehensive study of its kind, drawing on profound understanding of both economics and moral philosophy.\footnote{1863}{Arrow (1999): “Amartya K. Sen’s Contributions to the Study of Social Welfare”}


His works range over economics, philosophy, social choice theory, welfare economics, theory of measurement, development economics, public health, gender studies, moral and political philosophy, the problem of violence, and recently even law and medicine. The well-being of the human person – ‘enhancing human capabilities’ – is the pivotal point that guides all his works, demonstrating the synergy of interdisciplinarity. Most remarkable is his excellent combination of economics, ethics and philosophy.

Sen’s revival of the classical tradition of the political economy brought economics out of its narrow box and provided it a much larger canvas. Arrow identifies the “truly unique contribution” of Sen, “his extraordinary synthesis of economic and philosophical reasoning on the bases for social policy”.\footnote{1865}{Arrow (1999): “Amartya K. Sen’s Contributions to the Study of Social Welfare”, 172.}

Sen himself is deeply conscious of his double-role: “Since economics is meant to be my profession, no matter what I make of my love affair with philosophy.”\footnote{1866}{Sen (2009): The Idea of Justice, 269.}

Atkinson observes that even as a graduate student Sen had the courage to ignore “the conventional lines of demarcation” between disciplines.\footnote{1867}{Atkinson (1999): “The Contributions of Amartya Sen to Welfare Economics”, 189.}

His later academic career was a programme against compartmentalization and reductionism, opening up vistas of interdisciplinarity. This helped him to develop his intellectual edifice in the interface of various disciplines, consequently preparing fertile ground for a
modern political economy. An integrated and interdisciplinary approach to economic questions was, therefore, a blend of philosophy, economics and social sciences. True economics cannot be detached from philosophy or political science. Karl Marx was primarily a philosopher; his political vision was an outgrowth of his reflection on economic systems. The intersection of both disciplines in the person and work of Sen substantially broadened the reach and range of these disciplines.\textsuperscript{1868} Sen takes “a broad view of the subject and has done much to enlarge the perspective of economists. He is as much at home writing for the \textit{Journal of Philosophy} as for the \textit{Economic Journal}; at Harvard, he was both Professor of Economics and Professor of Philosophy.”\textsuperscript{1869}

What Sen and his wife Emma Rothschild observe about the writings of Smith summarizes his own academic life – the fundamental trait of interdisciplinarity, which underlies the corpus of his writings. Adam Smith’s writings on economic subjects are “diverse, discursive, and interspersed with everything else that he wrote”. Economic science life is “intricately interconnected with the rest of life”. And they add: “Economic thought was interconnected with the rest of thought, or with legal, philosophical, and moral reflection. In the speculative thought of philosophers, as in the plans and projects of merchants, the economic and the political were virtually impossible to distinguish.”\textsuperscript{1870}

Sen narrates that, from early childhood, he had a duality of interests in Sanskrit and Mathematics – aesthetics and analytics. He had a “fascination with abstract thinking” and “curiosity about the world around us” – both theory and praxis.\textsuperscript{1871} His synthetic and integrating approach carefully took a via media, broadening and interfacing different streams of thought,

\textsuperscript{1868} Sen observes: “While I am interested both in economics and in philosophy, the union of my interests in the two fields far exceeds their intersection. When, many years later, I had the privilege of working with some major philosophers (such as John Rawls, Isaiah Berlin, Bernard Williams, Ronald Dworkin, Derek Parfit, Thomas Scanlon, Robert Nozick, and others), I felt very grateful to Triniti for having given me the opportunity as well as the courage to get into exacting philosophy.” Sen (1998): “Amartya Sen – Biographical”.
I. Some Common Characteristics

economics and philosophy, value and facts, deontology and consequentialism, universalism and particularism, first and second generation human rights, etc. In order to bring the human person to the centre, he must have been forced to get rid of some ‘purities’ of theory, which is fittingly called as the ‘impurities of Sen’.\footnote{1872}{Majumdar (1998): “Amartya Sen in Search of Impure Welfare Economics”} Not the purity of theory but the possibilities of life are important for Sen. This is similarly true of Maritain, allegedly leading to some “conceptual muddle”.\footnote{1873}{Crosson (1983): “Maritain and Natural Rights”, 912.}

Hence it is not fair to pin Sen to the binaries of liberal or left; he instead takes an integral approach that invokes Adam Smith and Karl Marx in the same breath.\footnote{1874}{Chakraborty, Achin (1998): “Amartya Sen and Our World of Exaggerated Opposites”, Economic & Political Weekly, 33(51), 3241–3242.} This was an attempt to take economics back to the tradition of political economy, in the line of Smith, Marx, Mill, Edgeworth, Wicksell and Marshall, who dared to develop economics in an interdisciplinary way. Sen explains: “Most of modern economics tends to concentrate too heavily on very narrow things, leaving out enormous areas of what are seen as political and sociological factors on the one side, and philosophical issues on the other. But these issues are often central to economic problems themselves. Taking an interest in them is part of our own heritage. After all, the subject of modern economics was in a sense founded by Adam Smith, who had an enormously broad view of economics.”\footnote{1875}{Klamer (1989): “A Conversation with Amartya Sen”, 140–141.}

His economics is not lost in the world of narrow technical questions; now, the existential problems of starvation, famines, poverty and human development are back into the broad structure of welfare economics.

It is this interdisciplinarity that motivated Sen to develop a multidimensional approach to well-being. His theoretical framework was broad enough to combine the behavioural approach of Smith and the structural approach of Marx. Again, he argues for both market efficiency and social equity, integrating both engineering and ethical approaches in his framework. His approach to human identity is also deeply plural, celebrating the complexity and diversity of human identity that fights against a solitarist understanding of human identity. He guarded against parochialism and dualisms, as is reflected in his rejection of the contractarian structure of Rawls and in his overcoming of the fact-value dichotomy. Most interest-

\begin{footnotes}
\footnotetext{1873}{D. Crosson (1983): “Maritain and Natural Rights”, 912.}
\footnotetext{1875}{Klamer (1989): “A Conversation with Amartya Sen”, 140–141.}
\end{footnotes}
ingly, for Sen there is no grand division between good and bad, or “just” and “nonjust”, nor an all-or-nothing dichotomous thinking. This shows that he revolts against all sorts of polarizations.

As a student in Calcutta, Sen had some sympathies for left politics, but his “commitment to general tolerance and pluralism” kept him away from being involved in it. In his recent book he advises communists in India to rethink their policies and priorities instead of being pre-occupied with wrong and antiquated ideologies. Interestingly he wishes for a “right-wing party that is secular and not communal”; “a clear-headed pro-market, pro-business party, that does not depend on religious politics, and does not prioritize one religious community over all others”. Sen thus does not have any slavish allegiance to any philosophy or ideology. He theorizes beyond bellicose binaries; his framework seeks commonalities and complementarities in a synthetic way.

Conclusion

Both Maritain and Sen found a via media between polarizing extremes. This provided their philosophy with a significant synergy. It is not easy to be ‘in the middle’, because there is always the danger of being skewed to either of the sides. Maritain explicitly tilted toward the liberal side, and Sen, in his honest attempt to balance both liberty and welfare, sided more with liberty. The general attempt to tread the middle path is, however, to be appreciated.

4. The Methodology: Realization-focused Comparative Approach

In this section, employing Sen’s methodology of “realization-focused comparative approach” as an analytical tool, I evaluate both Sen’s and Maritain’s methodology. First, the comparative approach in view of a practical agreement is explored; then I will look at the realization-focused approach in view of enhancing human life.

4.1. The Possibility of a Practical Agreement on Principles of Action

Human rights activists are often quite impatient with the intellectual interpretation of human rights because they want them to change the world. Despite his direct interest in outcomes and his departure from redundant ‘transcendental’ theories, Sen underlines a mutually conditioning relation between theory and praxis. In his framework, interpretation of the reach and viability of human rights is indispensable. It is already noted that Maritain was primarily interested in ‘interpreting’ human rights. This section deals with their methodology of interpreting the viability of human rights, which can be extensively used in political philosophy as a template for agreeing upon wider issues of enhancing justice.

There are two prominent approaches to pluralism. One is represented by the agonistic theory of post-structuralists, like Chantal Mouffe, who hold that ethical conflicts are essentially irreconcilable (and it ought to be so). The other is represented by consensus-seeking discursive approaches, championed by Rawls and Habermas, who hold that ethical conflicts are not fundamentally irreconcilable. This section reveals that both Maritain and Sen take a middle path between agonism and consensus, thus striving to find principles of action for the amelioration of the social situation. It will be a case of plural justification, where each party has one’s own motivating reasons to remove injustices.

Maritain’s endorsement of a practical agreement

Maritain’s extensive engagement with speculative Thomistic philosophy is almost passé; nevertheless, his pragmatic political philosophy is still relevant for our current debates in political philosophy. I argue that Maritain’s pragmatic approach of a ‘practical agreement’ – not based on the convergence of dogmas but of praxis – is similar to the comparative approach postulated by Sen. This methodology will be very effective in fighting against injustices in the world.

In 1946, UNESCO formed a committee of leading thinkers of that time to study the philosophical foundations of human rights as a preparation for the colossal task of drafting the UDHR. The committee undertook a huge

democratic procedure, sending questionnaires to some significant personalities in all corners of the world, similar to Adam Smith’s methodological device of the impartial spectator, which seeks “perspectives from far as well as near”. Surprisingly, the proposed rights and pronounced values from various parts of the world were fundamentally similar. However, everyone had one’s own justification for human rights. Maritain’s suggestion for bracketing out the question of “why” in purpose of a practical agreement provided a breakthrough in the discussions. This endorsement of a practical agreement is a radical departure from the prevalent dogmatic and deductive tradition of neo-Scholasticism. The affirmation of the feasibility of some common standards without ‘overlapping consensus’ was a bold endeavour in political philosophy.

Still, there was a need of some ‘norm’ that substantiates the basis of human rights. The UDHR does not immediately begin with the list of human rights but with the justification of the ‘norm’ of human rights – the human person is the glue that unites all the human rights. In the face of “incompatible political philosophies”, Maritain uses a metaphor of a keyboard and music to emphasize the principle of dynamic unification/tonality. “Different music is played on this same keyboard, either in harmony or in discord with human dignity.” So begins UDHR: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” Though the word ‘human dignity’ is sublime, it remains abstract, and hence its constitutive elements are immediately added as reason and conscience.

Cf. Sen (2009): The Idea of Justice, 162. In the pursuit of re-orienteeering the world, it was a herculean task to agree on some ‘common principles’. A group of philosophers (from Christian, Confucian, Hindu and Muslim cultures) under the leadership of Maritain were assigned to look into the matter. By means of a questionnaire they collected opinions from many leaders of the world, ranging from Mahatma Gandhi to Teilhard de Chardin. It was proved that an agreement on “common standards of decency” was possible though there were different justifications based on philosophic and political affiliations. This referred to the possibility of a cross-cultural agreement concerning certain rights that are implicit in human nature. Maritain (1949): “Introduction”, 10.

UDHR, #1.
There are thirty ‘keys’ in the UDHR which are in tune with human dignity; there will be different music of human rights, according to the different weights and priorities that each country gives to them. There is space for legitimate pluralism in the human rights discourse as long as the music is in harmony with the fundamental principle of human dignity; for someone who is not open for diversity and pluralism, a symphony may sound like a disturbing cacophony. Maritain underlines: “Here we are no longer dealing with the mere enumeration of human rights, but with the principle of dynamic unification whereby they are brought into play with the tone scale, with the specific key in which different kinds of music are played on the same keyboard, music which in the event is in tune with, or harmful to, human dignity.”

Maritain was, in principle, ready to accept even a new draft of human rights with different weights and priorities.

Sen’s comparative justice

Maritain’s acknowledgement of “a single body of beliefs for guidance in action” even without consensus on dogmas is very similar to Sen’s idea of comparative justice. Sen is utterly opposed to the temptation of the prevalent political philosophies to seek ‘transcendental’ principles. His starting point in the pursuit of justice is an agreement on the manifest injustices in the world, which is easily accessible to any reasonable human being, and on the aim to work for the “removal of manifest injustice”. What Maritain illustrates as “a collective effort of comparing, recasting, and perfecting the drafts in order to make them acceptable to all as points of practical convergence, regardless of the divergences in theoretical perspectives” is not very different from the procedure of “open and informed scrutiny” of Sen.

Sen states: “Open discussion, debate, criticism, and dissent are central to the processes of generating informed and reflected choices.”

dorses a ‘comparative’ approach that seeks the better and not the best. In contrast to the prevalent social contract theory in political philosophy, which is limited by its parochialism, and the neo-classical ‘rational choice theory’ in economics, which is limited by its notion of a reductionist rationality, Sen makes use of a framework of social choice theory that underscores the wide scope of active public reasoning beyond boundaries.\footnote{Cf. Sen (2009): The Idea of Justice, 402.} It is such a comparative approach that materializes a rapprochement of ethics and economics.\footnote{Cf. Neuhäuser (2015): “Amartya Sens Beitrag zu einer praktischen Wirtschaftsethik”.} A comparative approach endorses ‘plural justification’. Surprisingly Maritain also makes room for plural justifications: To understand this, it is only necessary to make the appropriate distinction between the rational justifications involved in the spiritual dynamism of a philosophic doctrine or religious faith, and the practical conclusions which, although justified in different ways by different persons, are principles of action with a common ground of similarity for everyone. I am quite certain that my way of justifying belief in the rights of man and the ideal of liberty, equality and fraternity is the only way with a firm foundation in truth. This does not prevent me from being in agreement on these practical convictions with people who are certain that their way of justifying them, entirely different from mine or opposed to mine in its theoretical dynamism, is equally the only way founded upon truth.\footnote{Cf. Maritain (1949): “Introduction”, 10.}

Without giving up his Thomistic justification of human rights, Maritain makes room for similar justifications of human rights from others. Giving room for plural justifications departs from the medieval univocist iner\textit{t}ia,\footnote{Cf. Maritain (1936/2012): “Integral Humanism”, 283.} thus making justice-debate polyvocal. One is not asked to get rid of personal convictions in the name of some overlapping consensus. As already mentioned, this is in resonance with a highly complex geology of the mind,\footnote{Cf. Maritain (1949): “Introduction”, 12.} which demands practical agreement on praxis that departs from dogmatic or doctrinal rigidity.

For Sen, ‘plural justification’ is not primarily for the affirmation of the idea of justice but for the condemnation of injustice:

I will examine the procedure of what can be called ‘plural grounding’, that is, of using a number of different lines of condemnation, without seeking an agreement on their relative merits. The underlying issue is whether we have

to agree on one specific line of censure for a reasoned consensus on the diagnosis of an injustice that calls for urgent rectification. What is important to note here, as central to the idea of justice, is that we can have a strong sense of injustice on many different grounds, and yet not agree on one particular ground as being the dominant reason for the diagnosis of injustice.  

Reasons for the condemnation of injustice or justifications for justice are verified in a discursive process of ‘public discussion’. The multiplicity of competing principles, or the plurality of impartial reasons, makes it impossible to reject such legitimate well-defended reasons. “Indeed, even entirely impartial judges, who are not moved by vested interest or by personal eccentricity, may see the force of several disparate reasons of justice in a case like this, and they may well end up differing from each other on what decisions should be taken, since the competing arguments all have some claim to impartial support.”

We are often confronted with two extremes: objectivism, which presumes to reach some permanent ahistorical truth, and relativism, which holds that truths are completely relative, making no room for any commonalities. Absolute objectivism defiantly militates against the possibilities of human reason, and absolute relativism denies the basic idea of human communion and communication, solidarity and sociability. A plural justification, however, attempts to agree upon praxis – common action of removal of injustice, thus actualizing enhancement of justice. An entanglement of objectivity and subjectivity is manifested in Sen’s idea of ‘positional objectivity’.

This makes room for a plurality of values in contrast to many schools of thought that attempt to reduce all the distinct values to a single source of importance. Sen notes that they are “fed by fear and panic about what is called non-commensurability – that is, irreducible diversity between distinct objects of value”. He endorses pluralism and diversity of goods and values.

What is being asserted here is a refusal to see the problem in terms of an a priori need for descriptive homogeneity of what is to be valued. This arbitrary requirement of descriptive homogeneity of the objects of value has to be clearly distinguished from the question as to whether ethical evaluation must lead to a complete and consistent order. The important—and entirely non-ar-

bitary—problem of ordering diverse bundles of goods certainly remains, and will have to be addressed when dealing with the major question of ethical conflicts. But the issue of ethical ordering must not be confused with that of descriptive homogeneity.  

Acknowledgement of pluralism presupposes respect for difference, making room for contingency, uncertainty and incompleteness that can take only a comparative route. Underlining the need to judge the relative importance of distinct objects in the face of pluralism, Sen observes that “nearly all appraisals undertaken as a part of normal living involve prioritization and weighing of distinct concerns, and that there is nothing particularly special in the recognition that evaluation has to grapple with competing priorities”.  

The acknowledgement of plural reasons and values does not make a broad theory of justice handicapped. Sen refers to “the recognition that a broad theory of justice that makes room for noncongruent considerations within the body of that broad theory need not thereby make itself incoherent, or unmanageable, or useless. Definite conclusions can emerge despite the plurality.”  

The social ranking, in the face of multiple reasons and values, can only be a case of “partial orderings based on the intersection – or commonality – of distinct rankings drawing on different reasons of justice that can all survive the scrutiny of public reasoning”. Reasoned scrutiny may not solve all decisional problems, but it yields in many cases a conclusive judgement. Sen states: “We go as far as we reasonably can.” While the “dictatorship of relativism” is identified as the major enemy to be defeated, he pertinently fights against the dictatorship of the absolutism, making room for a plurality of reasons.

There are two advancements that Sen makes in the human rights discourse in comparison to Maritain. Firstly, he broadened the need of justification. Maritain brackets the important question of ‘why’, that means, he does not expect a ‘rational scrutiny’ of justifications for practical action. However, in the theoretical framework of Sen one is supposed to bring

---

one’s justifications to a public discussion and to pass the test of ‘rational scrutiny’. This calls for a culture of public justification. Completely bracketing the key question of ‘why’ would make the basis of human rights feeble.\textsuperscript{1906} One cannot just escape this important task of justification and interpretation. Sen proves how various \textit{whys} can survive simultaneously. We need not have a consensus or discordance, because various reasons for acting are possible. Secondly, Sen broadened the idea of the dignity of the human person – which is rather abstract in Maritain – to include the actual life of a human person in a \textit{nyaya} structure, affirming that “what happens to the world must matter and be significant in our moral and political thinking”.\textsuperscript{1907}

Conclusion

Kierkegaard had made a revealing observation about theoretical edifices constructed by philosophers. “Most systematizers stand in the same relation to their systems as the man who builds a great castle and lives in an adjoining shack; they do not live in their great systematic structure […]. Metaphorically speaking, a person’s ideas must be the building he lives in – otherwise there is something terribly wrong.”\textsuperscript{1908} This is a statement about ‘larger-than-life’ philosophical structures construed by transcendental approaches. In the face of real-life challenges, Maritain comes out as a realist and pragmatic philosopher, not as a speculative philosopher he used to be. Arguably, Maritain’s signature contribution to the formulation of the UDHR was his idea of a modus operandi for a \textit{practical} agreement for \textit{action}. Though there were attempts from defenders of European values and propagators of religious beliefs to hijack the platform of the UDHR, his practical approach was recognized as the feasible solution. Similarly, capability approach’s prime concern is more evaluative than deontic. It is

\textsuperscript{1906} Sen holds that “practical arguments and pronouncements” has to be “adequately matched by critical scrutiny of the basis and congruity of the underlying concepts.” He reiterates the need of giving a sound intellectual basis to the idea of human rights: “The conceptual doubts about the idea of human rights must be addressed and its intellectual basis clarified, if it is to command reasoned and sustained loyalty.” Sen (2009): \textit{The Idea of Justice}, 356.


not concerned with identifying right and wrong but with ordering worse and better, and hence it follows a comparative approach. It is basically not an essentialist but a procedural approach to justice. Lack of consensus or disagreement about weights and priorities are not fatal to the crucial project of bettering the world.

For Maritain, political pluralism belongs essentially to a truly political society, whereas his political philosophy just tolerates cultural or religious pluralism for the sake of political unity, mostly to get out of the ‘impasse’ posed by enormous pluralism. But for Sen, pluralism belongs to the very nature of the human existence and the idea of justice. In the depth of his heart, Maritain remained an uncompromising Thomist. This divided heart is manifested in his bitter criticism about the reforms of Vatican II in *The Peasant of the Garonne*.

4.2. The Possibility of Praxis

Marx famously said: “The philosophers have only interpreted the world, in various ways. The point, however, is to change it.” Sen had an intellectual agenda not only to interpret the world but also to *change* it. Human rights are, for him, not only inviolable norms of justice but also a programme for action. For him, most of the philosophers ultimately end by interpreting the world, without being bothered with the realization of human rights. As already mentioned, although Maritain was primarily interpreting the world, it does not negate the fact that he was also an activist who engaged himself in the world. He can be called the most influential layman in the Church in the twentieth century. He was actively involved in fighting against anti-Semitism, he worked as the French ambassador to the Vatican, headed the UNESCO committee and, above all, was a passionate professor. Still, there is something bizarre about Maritain when it comes to action. It is already mentioned how he skews to spiritualism (A.V.1.). The decisive split between the intellectualism of the Thomists and the activism of the personalists of the *Esprit* group indicates the depth of the divide. Maritain then committed himself to the ‘intellectual’ elaboration of politi-

---

cal philosophy on the basis of Thomistic metaphysics. He later conceded that he was more committed to the apostolate of the intellect and truth – a seeker of truth.\textsuperscript{1911} Maritain is rightly criticized by Gustavo Gutiérrez for his ‘mild reformism’ and moralism, which is detached from a liberating praxis.\textsuperscript{1912}

Sen underlines that the realm of perfect ideas is a philosophical myth; hence, rather than constructing a ‘theory’ of justice, he attempts to remedy manifest injustice through a realization-focused comparative approach. It is about real-life choices in a social choice framework to enhance actual life. Sen believes that Hobbes’ observation that human life is ‘nasty, brutish and short’ can still be a good starting point for a theory of justice.\textsuperscript{1913}

Sen’s pragmatic philosophy starts from the experience of injustice, and his philosophy is often concerned with the life of “the hopeless beggar, the precarious landless labourer, the dominated housewife, the hardened unemployed, or the over-exhausted coolies”.\textsuperscript{1914} The ultimate goal of ‘theorizing’ is not primarily theory in itself but actual realization; the guiding concern is ‘how would justice be advanced?’ and not ‘what would be perfectly just institutions?’.\textsuperscript{1915} His realization-focused perspective makes it easier to understand that the prevention of manifest injustice in the world is more important than seeking the perfectly just.

For example, when people agitated for the abolition of slavery in the eighteenth and nineteenth centuries, they were not labouring under the illusion that the abolition of slavery would make the world perfectly just. It was their claim, rather, that a society with slavery was totally unjust [...] It was the diagnosis of an intolerable injustice in slavery that made abolition an overwhelming priority, and this did not require the search for a consensus on what a perfectly just society would look like.\textsuperscript{1916}

The perspective that focuses on the appraisal of ‘social realizations’ through the elimination of remediable injustices around us is very significant in overcoming widespread deprivations in the world.\textsuperscript{1917} Sen’s political philosophy is richly informed by his expertise in economics – welfare

\begin{itemize}
\item \textsuperscript{1911} Cf. Amato (1975): \textit{Mounier and Maritain}, 162.
\item \textsuperscript{1912} Cf. Gutiérrez, (1973): \textit{A Theology of Liberation}, 56.
\end{itemize}
economics, which is characterized by the study of poverty, hunger, inequalities and deprivations in the society. He considers himself to be in the tradition of Adam Smith, Mary Wollstonecraft, Marquis de Condorcet, John Stuart Mill and Karl Marx, who were genuinely interested in ‘removing injustice’. Consequence sensitivity of economics dovetails with liberty concerns of political philosophy in the capability framework of Sen.

Maritain’s liberal philosophy defined ‘freedom’ primarily in the sense of negative freedom – principally a programme to protect the rights of the person against the intrusion of the state. Even his elaboration of ‘the right of the working person’ was in the liberal line, like the right to form a trade union, etc. This is also evident in his clear prioritization of liberty rights. It is already underlined how Sen integrated deontology and consequentialism into the goal rights system. In this, human rights are conceived as social goals, and there is direct interest in realization and non-realization of rights. The goal rights system is constructed on Sen’s deep sensitivity to ‘interrelatedness’ – a lesson he learnt from the engineering aspect of economics. Actual life entails all these interconnections – interrelations of negative and positive freedoms, instrumental and intrinsic freedoms, freedoms and institutions, and negative and positive obligations. In section C.III.1.2. we have seen how negative and positive aspects of freedom are two sides of the same coin. Their instrumental and intrinsic roles are also analysed. Sen’s idea of human rights as social goals combines both liberty and welfare. The most consistent thread that runs through his entire corpus is his focus on the life that people actually live; institutions and rules play only an instrumental role.\textsuperscript{1918}

Sen affirms the instrumental relevance of institutions and rules, but “the realized actuality” is the measure of social evaluation. It circumvents the mistake of transcendental institutionalism that confuses ultimate \textit{objective} and the \textit{means} in its pursuit of perfecting the institutional rules for justice. “By proposing a fundamental shift in the focus of attention from the means of living to the actual opportunities a person has, the capability approach aims at a fairly radical change in the standard evaluative approaches widely used in economics and social studies.”\textsuperscript{1919} Hence, capabilities – substantial freedoms – are underlined as the currency of well-being in the assessment of social arrangements.

\begin{flushright}
\end{flushright}
The conceptualization of human rights in the space of ‘freedoms’ in the framework of a goal rights system has extensively advanced the range of the notion of obligation in Sen’s human rights discourse, affirming the interrelatedness of both negative and positive obligations. We have noticed how welfare rights were sidelined for a long while (as if social and economic rights were concessions made to the Soviet Union by the drafting on the UDHR). Sen brilliantly established the interrelatedness of both liberty and welfare rights. The right to life, which is often understood merely in terms of constraints, should then be understood in a broader framework, in which this ‘fundamental’ right is linked with the right to food, education, healthcare, and not least civil and political protections, like freedom of speech. No right is understood in isolation. This contributes substantially to broadening the human rights dynamics, which will accelerate global campaign against the scandal of poverty.

The notion of a right to the process of development, for instance, acknowledges the incremental nature of obligations. The idea of RtD challenges the widespread belief that the right to basic subsistence is only ‘aspirational’ and not real.\(^\text{1920}\) The dominance of liberal tradition indeed emphasized rights but defined ‘obligations’ in minimalist terms. Emblematic of liberal philosophy, Maritain deals with rights in details, whereas his treatment of the notion of obligations is meagre. Had he been a faithful Thomistic, he would have spoken only about obligations. It is impressive that he incorporated significant ideas of rights into Thomism but failed to complement it with a rich notion of obligation. In dealing with the idea of common good, Maritain has, however, outlined the duties of the ‘individual’ to the society (cf. A.II.2.1.). The centrality of the common good is but only insufficiently incorporated into his human rights discourse. Had Maritain dealt with the scholastic pre-history of modern economics, he would have focused more on justice and well-being than on the transcendental theory of human rights. Sen’s focus on the actual life of the people led to the expansion of the idea of human rights, not only through affirming both liberty and welfare rights but also through broadening the notion of obligation.

To summarize, there is an urgent need to conceptualize a philosophy that starts from the experiences of injustices and is directly interested in

the improvement of the social situation. This, however, requires a comparative approach to social evaluation.

II. Some Commonalities in the Human Rights Discourses

1. Human Rights as Ethical Claims

Reclaiming the ethical foundation of human rights confronts fierce criticism from positivism – both from the legal and philosophical version of it. This section manifests how Maritain and Sen established the primacy of ethics over state sovereignty and fought against the hyperbolical fact-value dichotomy.

Maritain formulated his political philosophy against the background of the horrors of the despotic states in the name of ‘statolatry’, an experience that underlined the dangerous doctrine of the omnipotence of the state. His programme, therefore, was to save autonomous human beings from the dictatorship of the state.

The State is not the supreme incarnation of the Idea, as Hegel believed; the State is not a kind of collective superman; the State is but an agency entitled to use power and coercion, and made up of experts or specialists in public order and welfare, an instrument in the service of man. Putting man at the service of that instrument is political perversion. The human person as an individual is for the body politic and the body politic is for the human person as a person. But man is by no means for the State. The State is for man.¹⁹²¹

Maritain carefully affirms that the state has only an instrumental role: to serve the human person and to guard the body politic and the common good. Justice is the driving force and the principle of the state: “[T]he primary duty of the modern State is the enforcement of social justice.”¹⁹²² He is particularly cautious of a paternalistic state that promotes “statization” in the name of nationalization.¹⁹²³ He, therefore, challenges the concept of sovereignty of state.¹⁹²⁴ Maritain affirms: “In order to think in a consistent manner in political philosophy, we have to discard the concept of

Sovereignty, which is but one with the concept of Absolutism.” According to him, neither the state nor the people are sovereign; they do not possess power without accountability. He constantly maintained that not all things belong to the domain of Caesar; people delegate him the task of protecting the polis according to the principles of justice.

It is already mentioned that Sen formulates his theoretical framework in opposition to Rawls’ statism – institutionalism. Social contract theory, based on the sovereignty of states, confers rights only on its citizens. Moreover, it is not a thing of bygone past that the state tyrannizes, massacres and harms its own citizens. Thus, it is imperative that the political is subordinate to the ethical. Maritain states: “Politics is a branch of Ethics”. Hence the authority of the state – not the power – and the supervision of the people through democracy are to be guided by moral reason: “The worst temptation for mankind, in the epochs of dark night and universal perturbation, is to give up Moral Reason. Reason must never abdicate. The task of ethics is humble but it is also magnanimous in carrying the mutable application of immutable moral principles even in the midst of the agonies of an unhappy world, as far as there is in it a gleam of humanity.”

Maritain’s ordering of politics under ethics was a programme. Political principles emerge not from contracts of people but from fundamental moral principles. Maritain, therefore, holds that “the civil society does not have to grant but to recognize” the human rights. This is a clear departure from legal positivism that makes a sharp distinction between fact and value. Frank H. Knight, an economist and radical empiricist who adheres to the ‘sociological’ philosophy of value, finds in Maritain’s *The Rights of Man and Natural Law* only “empty verbiage or sheer absurdity”. The conflict between ethical and positivist approaches is perennial, as is evident from Bentham’s diagnosis that “natural rights is simple nonsense: natural and imprescriptible rights, rhetorical nonsense, nonsense upon stilts”.

Both of them, Maritain and Sen, fought against the positivist fact-value dichotomy. Sen’s heterodox approach explores the normative tradition of Smith, Mill, Marx, Edgeworth, Marshall, Pigou and many others. Particularly his Smithian framework rejects the neoclassical assumption of sharp fact-value dichotomy and the claim that ethical reflections are meaningless and nonsensical. Sen articulates: “The peculiarly narrow view of ‘meaning’ championed by logical positivists – enough to cause disorder in philosophy itself – caused total chaos in welfare economics when it was supplemented by some additional home-grown confusions liberally supplied by economists themselves.”

He argues a case for a “broad Smithian view”, and he deliberately keeps away from metaphysics.

What Sen actually envisions is a case of entanglement of fact and value. Hilary Putnam challenges the dogma that “fact is fact and value is value and never the twain shall meet”. He argues a case for the “entanglement of facts, analysis and values”, and he credits that Sen’s reinventing of economics manifests “a direct function of the collapse of the fact-value dichotomy”. Sen contends that objectivity in ethics should not be sought in ontology, as was done by many philosophical traditions, which, according to him, are not helpful and misguided. We are not lost between the empirical objects of positivism and the ethical objects of metaphysics. There is indeed a distinction and an overlap between description and evaluation.

[E]thics cannot be simply a matter of truthful description of specific objects. Rather […] ‘real ethical questions are a species of practical question, and practical questions don’t only involve valuings, they involve a complex mixture of philosophical beliefs, religious beliefs, and factual beliefs as well’. The actual procedures used in pursuit of objectivity may not be always clear,

1934 The supporters of absolute dichotomy presuppose such pure metaphysics. Walsh (2000): “Smith after Sen”, 20. It is, however, interesting to note that the capability approach is sometimes positioned in the space of ontology: “Sen’s capability approach is fundamentally an ontological exercise. It is concerned with the development of ontological categories, such as ‘functioning’ and ‘capability’, which help us to describe human well-being.” Martins, Nuno Ornelas (2012): “Values, Objectivity and Moral Realism”, in Caldas, José Castro und Neves, Victor (eds.), Facts, Values and Objectivity in Economics, London: Routledge, 85.
nor spelt out, but [...] this can be done with clarity if the underlying issues are adequately scrutinized.  

Sen acknowledges the differences between the normative and the positive but holds that this “separation” is blown out of proportion. A grand separation of them is not tenable “in terms of their respective epistemic and ethical contents”. He states: “It is actually quite important to insist that once our ethics lead us to the kind of questions that we ought to ask, we must then seek, in the case of mainly empirical questions, as factually sound answers as possible (within the limits of the nature of the questions asked).”  

Sen emphasizes that it requires “conscience”, which is sensitive to inequalities, and “empirical sweat”, which helps us to make sense of unfreedoms in the society – a vision that does not separate the empirical and the ethical. This envisions a mutual enrichment – an “inter-linked view” in which ethics and economics make substantial contributions to each other.  

Sen conceded that the moral and the political are interconnected in the capability approach, as Putnam powerfully explored. What Walsh calls ‘the entanglement’ of facts and values is plentifully present in the concept of capability. Sen affirms the need for critical reasoning behind normativity, which has not to be taken for granted as in the case of Martha Nussbaum.  

In the same line, Maritain argues that a philosophy that does not go beyond fact cannot recognize the value – “Value objectively true in itself.” He, therefore, raises a pertinent question: “How, then, can one claim rights if one does not believe in values? If the affirmation of the intrinsic value and dignity of man is nonsense, the affirmation of the natural right of man is nonsense also.”  

Maritain substantiates human rights metaphysically on the basis of nature, whereas Sen justifies them on the basis of fact-value entanglement, thus taking rather an empirical turn.  

Thus, both Maritain and Sen agree that human rights have an inherently ethical basis; accordingly, human rights are anchored on human dignity, not on state sovereignty.

---

2. The Universality of Human Rights

The previously mentioned reasons for an ethical basis of human rights also vindicate a robust case for their universality. There are millions of people who are stateless; hence there arises the contradiction between state sovereignty and global humanitarianism. We confront many complex global challenges, such as environmental problems, global terrorism, etc., which transcend national boundaries and are to be fought beyond national borders. It is remarkable that the UDHR was first named “United Nations Declaration of Human Rights” and then “International Declaration of Human Rights”; it was only the third Committee that affirmed the “universal” character of human rights, which ultimately acknowledged the universality of the addressees.\textsuperscript{1941} 

Sen rightly notes that in our global world, unfortunately, local theories dominate political philosophy. The mainstream theories of justice, including that of Rawls, are contractarian, and they are seriously dwarfed when it comes to global justice, as it works “within the framework of transcendental institutionalism”.\textsuperscript{1942} As originally structured by Thomas Hobbes, the institutional focus of contractarian theory presupposes a sovereign state to apply principles of justice. Sen thus shows how transcendental institutionalism neglects the global.\textsuperscript{1943} “In fact, it is the combination of the institutional view and the transcendental understanding of justice that makes considerations of global justice impossible to entertain within the boundaries of mainstream theories of justice today.”\textsuperscript{1944}


\textsuperscript{1943} Sen identifies two reasons for Rawls’ scepticism about the use of public reasoning at the global level: firstly because of “the inapplicability of the exacting framework of transcendental justice at the global level, because of institutional limitations”, and secondly because of his “insistence on linking public reasoning with the contractarian format of the ‘original position’”. This involves a devised deliberative exercise that would appear to be hard to apply beyond the limits of a particular society (or a particular “people”, as Rawls defines this collectivity in his later works). Cf. Sen (2006): “What Do We Want from a Theory of Justice?”, 229.

\textsuperscript{1944} Sen (2008): “The Idea of Justice”, 340. Such a deep sense of impossibility is expressed by Thomas Nagel: “It seems to me very difficult to resist Hobbes’s claim about the relation between justice and sovereignty”; “if Hobbes is right,
Only the parties directly involved in the social contract have a voice. Social contract attempts “regulating the institutions”.\footnote{1945} Thus, the application of a theory of justice requires “an extensive cluster of institutions that determines the basic structure of a fully just society.”\footnote{1946} A serious limitation is Rawls’ reliance on “the territorially moored perspectives of a particular society” and on “free and equal citizens who are born into that society in which they lead their lives”\footnote{1947} hence the original position, which is supposed to be impartial, ends up in being “territorially isolated.”\footnote{1948}

Sen identifies here a serious “normative collapse”. “When people across the world agitate to get more global justice—and I emphasize here the comparative word ‘more’—they are not clamouring for some kind of ‘minimal humanitarianism’\footnote{1949} but merely for the elimination of some outrageously unjust arrangements to enhance global justice, as Adam Smith, or Condorcet or Mary Wollstonecraft did in their own time, and on which agreements can be generated through public discussion, despite a continuing divergence of views on other matters.”\footnote{1950} He thus diagnoses that “the theory of justice, as formulated under the currently dominant transcendental institutionalism, reduces many of the most relevant issues of justice into empty”.\footnote{1951} Hence he attempts an alternative model that is global and comparative.

\footnote{1946} Later in his The Law of Peoples, Rawls compromised his own principles of justice to include global justice, which works as a kind of ‘supplement’ to his national pursuit of the demands of his “justice as fairness”. Sen, however, finds that “this supplementation comes in a very emaciated form”, in the form of some negotiations, which does not really stand the demands of global justice. Cf. Sen (2009): The Idea of Justice, 26; Sen (2008): “The Idea of Justice”, 340–341.
As already stated, Sen goes beyond the Westphalian model of state-sovereignty to embrace the “universality of inclusion”. He pertinently argues that neither “a grand universalism” – a collectivity of all the people in the Kantian sense – nor a “national particularism” in the Rawlsian sense of national states can encompass the demands of global justice. He endorses “a third conception with an adequate recognition of the plurality of relations involved across the globe”, a conception that is based on a deep awareness of “plural affiliation” of each human person.\textsuperscript{1952} We have a vector of identities, from the most basic identity as ‘human being’ to other identities based on a number of solidarities; some of them may be relevant only within national boundaries while many others range across the borders.\textsuperscript{1953} Sen carefully differentiates his global vision from an ‘international’ approach that ultimately is based on national identities. His focus is on our multiple identities in the globalized world, referring to commerce, science, literature, music, medicine, political agitations, also through global NGOs, the news media and so on.\textsuperscript{1954} The European Union concept of shared sovereignty is an example of going beyond the concept of the Westphalian sovereignty state.

For Maritain, the basis of human rights is natural law. Since human nature is globally shared, his vision is self-evidently universal. Though he speaks about global common good, he did not develop an effective methodology that is inclusively universal. Maritain’s world was primarily limited to the Christian West. This is evident from his claim of Christian inspiration of democracy as if both of them were symbiotic. For such a grand claim, he provides only scant textual and historical evidence. Sidney Hook brings this general perception into words: “Catholicism is the oldest and greatest totalitarian movement in history.”\textsuperscript{1955} Maritain has an utmost theocentric vision of democracy, which is conceptualized specifically in a Western Christian milieu; hence here arises the issue of the scope of such a Christian-inspired democracy in multi-religious global context. 

tain’s refusal to be neutral about religion is one of his major deficiencies as a philosopher.1956 The Peasant of the Garonne was really a lamentation of an old man who was distressed at the twilight of the Christian Europe, due to the onslaught of secularism. There has been an optimist in Maritain who dreamt of reinstating Christendom. This is an enigma in his person: on the one hand, he initiated the secularization process, on the other hand, he is overwhelmed by the effect it made in real life.

In a world that is broken up into fragments by narrow domestic walls,1957 Sen underscores an ‘open’ impartiality beyond borders, in contrast to Rawls’ ‘closed’ impartiality. That is indispensable to substantiate the universality of human rights. It can be said that Sen is essentially global, whereas Maritain is only tentatively global.

3. The Indivisibility of Human Rights

With regard to the UDHR, Glendon puts it rightly: “The prevailing approach to the rights it contains is pick-and-choose, cafeteria-style. The universality principle itself has been challenged, sometimes by governments claiming all rights are relative, sometimes by those who charge that universality is a cover for cultural imperialism.”1958 It is already illustrated in sections C.III.4. (Human rights as Social Goals) and C.III.5. (Interdependence of Human Rights) that Sen emphatically established the indivisibility and interrelatedness of human rights. The underlying tension is between liberty and welfare rights.

Maritain indeed confronted the tension between liberty and welfare. In The Rights of Man and the Natural Law (1944) he developed an extensive list of human rights, whereas in Man and the State there is only a short

1956 John DiJoseph, however, opines that Maritain’s definition of democracy as a way of life or state of mind substantiated on the spiritual nature of human beings “is broad enough to encompass any culture that embraces man’s spirituality with political institutions that provide for universal suffrage and ruled ultimately by the people.” Such a regime may then be considered “indirectly influenced by Christianity and to that extent was Christian inspired”. Since Maritain was convinced of a “common substratum moral and ethical principles” of all peoples, such an expansive theory of human rights is not out of place. DiJoseph (1996): Jacques Maritain and the Moral Foundation of Democracy, 151.
discussion on particular rights. More attention is, however, devoted to an analysis of the increasing tensions between the so-called old and new rights, about mutual limitations and dependence of human rights, ultimately seeking a unification of all human rights. Maritain calls liberty rights the “old” rights and welfare rights the “new” rights. He acknowledges the current geopolitical tension and opines that the USA would suppress the new rights, whereas Russia would violate the old rights of the person. He calls for the recognition of the new rights, especially the rights of the working persons, without treating them merely as children or servants, recognizing their spiritual depth (dignity). He fosters an integral approach beyond ‘arbitrarily magnified’ ideological antagonism. “It is no more necessary to be a follower of Rousseau to recognize the rights of the individual than it is to be a Marxist to recognize the economic and social rights.”

Maritain notes that the UDHR takes an integral view of human rights and they enrich and limit each other. His personalism also took a middle way between liberal and communitarian traditions; hence his human rights discourse seeks a “dynamic unification” of all human rights on the basis of human dignity. Both the liberal and communitarian traditions order human rights differently, according to their “hierarchy of values”, which would preempt certain essential rights of human being. He holds that his personalist approach takes an integral route that accommodates “intrinsically human, moral, and spiritual goods and […] man’s freedom of autonomy”. Since rights are mutually conditioning, conflicts between various rights are expected; thus, an open and flexible approach to human rights is required.

Both Maritain and Sen affirm the indivisibility of human rights without polarizing the generations of human rights. On the one hand, Maritain affirms the indivisibility of human rights; on the other hand, he sets an absolute priority for liberal rights. He gives explicit priority to the rights of the person at the cost of the rights of the individual. This metaphysical dualism fails to encompass the actual life of human beings in their existen-

---

tial life situation. Sen rightly observes that the assertion of the indivisibility and importance of all human rights foresees a denial of a hierarchy of different kinds of rights (economic, civil, cultural, political and social). Nevertheless, he adds that it is a different case if, due to the scarcity of resources and institutional constraints, a state prioritizes securing different rights for the purpose of better implementation. In all, sensitivity to the indivisibility of human rights is essential to the integration of welfare and liberty.

Conclusion

This section revealed some significant similarities between Maritain’s personalism and Sen’s capability approach. Both revived two old traditions to seek solutions to contemporary problems; neither Thomism nor Smithian political economy can be dismissed as passé. Their interdisciplinary and practical approach to political philosophy provides great resources to fight against many global challenges, especially poverty and deprivations. A practical agreement on urgent problems of our time, without wasting time and energy speculating about transcendental ideas, i.e., a philosophy that starts from the experiences of injustice, is a good starting point for social ethics that is directly interested in removing injustices in the world. A framework in which principles and praxis are mutually conditioning is required to take a direct interest in ‘realizations’ rather than being lost in the efforts of setting the rules and institutions right. It was made clear that Maritain failed to focus on praxis – a shared characteristic of the liberal tradition. Sen’s direct interest in outcomes extends the notion of obligation, which substantially broadened his human rights discourse. Their affirmation of the ethical nature of human rights calls for various means of promoting and realizing human rights, without being limited by legal positivism. Giving credit to the interrelatedness of various sets of rights liberates human rights discourse from the prevalent minimalism. Acknowledging the universality of the human rights provides us with a universally applicable benchmark for social justice in our collective effort of enhancing the quality of life.
GENERAL CONCLUSION: The Contours of an Effective Social Ethics

This book outlined human rights discourses according to Maritain and Sen, focusing on the compatibility of the notions of liberty and welfare. The general conclusion attempts to construct a template for social ethics in the broader context of the demands of justice and underscores the relevance of integrating both liberty and welfare considerations in it. The reinvention of the idea of justice and human rights in the twentieth century is greatly indebted to the affirmation of the ‘person’, in which Maritain’s Thomistic personalism played a decisive role. As it has become evident that Thomism exhibited a great skill of adaptability, the prospects of social ethics proposed here transcend the Thomistic natural law tradition. Porter rightly notes: “Aquinas’ permanent significance lies precisely in the fact that his thought contains the seeds of its own transcendence”, as he himself transcended both Aristotle and Augustine. Similarly, it was shown that Maritain’s integral humanism must be complemented and transcended by Sen’s capability approach, thereby broadening the idea of human dignity to better integrate both liberty and welfare concerns.

It is elucidated that the idea of liberty in mainstream liberalism and the notion of welfare in prevalent welfarist approaches exclude each other primarily due to the liberal-socialist divide in politics and philosophy. Beyond the utilitarian structure that limits human beings as the locus of their own well-being, Sen’s affirmation of human beings as moral agents describes a broader notion of well-being that is inclusive of liberty. Though the tension between liberty and welfare permeates nearly all aspects of human life and decisions, their presumed irreconcilability is overblown. Sen’s formulation of capability as the currency of well-being integrates both liberty and welfare into the space of substantive freedoms – a notion of freedom that is concerned not only with the absence of interferences but also with the presence of real opportunities in life. The integration of liberty and welfare – food and freedom – in the idea of the Right to Develop-

ment also manifests the significance of the twin-motif ‘liberty + welfare’ in all social ethical questions, dismantling all protracted polarizations and sharp schisms.

1. Liberty

Despite Maritain’s deep scepticism towards the hubris of human rationality, his personalism substantially advanced the scope of human reason in moral reasoning. Needless to say, Sen is greatly confident of the faculty of human reason, and his system actually builds on it. His evaluative process is buttressed on two basic human structures, namely rationality and relationality. Firstly, we deal with rationality – the decisive role of the moral agent in making normative choices and in designing and participating in a welfare programme; secondly, with relationality – the significant process of vindication of our claims in a process of public discussion.

1.1. Confidence in the Human Moral Agents

The development of modern liberalism can be traced back to the Thomistic ‘anthropological shift’ in the medieval period. Against this background, it is no accident that Maritain is considered to be a kind of forerunner of the liberal philosophy of Rawls. Unfortunately, neo-Scholasticism, with its syllogistic type of ‘demonstration’ based on a chain of self-evident propositions grasped only by intuition, rendered no active role to the rational moral human agent. It was Vatican II that made a paradigm shift, making the human being the ‘pivotal point’ of moral considerations; conscience is thus identified as the sanctum sanctorum of ethical decisions. It is reiterated by Dignitatis humanae through its declaration that each human person has the freedom to make one’s own choice with regard to religious beliefs. Departing significantly from traditional ‘institutional’ stance of the Catholic theology, it was recognized that the moral compass to judge a situation lies in the human person’s faculty to evaluate, judge and choose. Hence no rules supersede ‘conscience’. This retrieval of the idea of conscience – individual freedom – was thus a milestone in Chris-

1967 Gaudium et spes, #3 b.
tian conception of human rights. Similarly, Sen affirms that normative questions are not supposed to be left to “the ‘safe’ hands of purely institutional virtuosity” nor to ‘technocratic’ solutions of the experts imposed from above. It is a matter to be left to the moral agency of human beings.

A return to the moral subject is reflected in Karl Rahner’s affirmation that we are capable of making a ‘fundamental option’, which is also inspired by the Ignatian method of discernment – a process of moral decision making. Similarly, Bernard Häring defined morality in the space of freedom, departing definitively from the manualist neo-scholastic tradition. This turn to the freedom of human subject should also certainly foresee autonomous and independent thinking as in the case of Richard McCormick’s notion of “conscientious dissent” and Charles Curran’s idea of “faithful dissent”. Recently, Sen reiterated “the centrality of the right to dissent” in any modern democratic society, which is in resonance with his general confidence in the human moral agent’s ability to reason, weigh and choose.

Similarly, Maritain’s differentiation of the ‘gnoseological’ element of natural law, contrary to the naturalism and moralism of neo-Scholasticism, affirmed that lex naturalis is appropriated through recta ratio, consequently making room for the moral agency of human beings. In opposition to the ordo-thinking of the Middle Ages that rendered only limited instrumental role to human reason, recognition of human being as a subject renders an active and creative role to the human reason and moral agency. Reason combined with free will becomes the benchmark of human subject. When personalism gains precedence over naturalism, human beings are not merely imprisoned in the rational expediency of a finished human nature; rather they are the agents who actively design and perfect their human nature. Political dirigisme or Church moralism considers human be-

---


454
ings only as ‘patient’ – recipient. The recognition of human persons as ra-
tional moral subjects belongs to the integral well-being of human beings.

The traditional Thomism had a broader understanding of human moral agency. There was, for instance, the notion of epikeia, which calls for ‘in-
carnating’ a generic law into a particular contingent situation, thus making ethics more existential and dynamic.\footnote{Epikeia was originally the privilege of every rational human being, but it was later maintained only by legal experts due to the legal shift through Suarez. Cf. Virt (2013): “Moral Norms and the Forgotten Virtue of Epikeia”, 17–34.} This was similar to the ‘Lesbian rule’ that underscored the importance of flexibility and equity in meting out justice.\footnote{It was a mason’s rule made of lead that can be bent according to the flutes and curves of a molding – measure for irregular surfaces. This rule was constructed of a pliable sort of lead found on the island of Lesbos, and hence, lesbian rule. This is alluded to Aristotle.} Sen’s pertinent critique of libertarianism that it “justifies inequality through equality”\footnote{Cf. Sen (1992): Inequality Reexamined, 21.} is true of many transcendental theories which justify injustices in the name of neutrality. In opposition to Rawls’ neutral ‘original position’ realized through the apparatus of ‘veil of igno-
grance’, Sen underscored the fundamental situatedness of each human per-
son through his notion of ‘positional objectivity’. This does not mean a useless multiplication of opinions; each opinion has to stand the test of ‘reasoned scrutiny’. But there is no readily available a priori objectivity. Maritain actually provides only one basic principle of morality – do good and avoid evil – thus leaving the vast moral terrain to the power of judge-
ment of human persons.\footnote{Cf. Maritain (1951/1998): Man and the State, 90.} It is indeed required to balance the subjective and objective poles of moral discernment. According to Sen, this is best done in a discursive process of rational scrutiny and public discussion, which orders the comparative merits of available alternatives.

\section*{1.2. Relevance of a Discursive Process}

The immediate corollary of the affirmation of the liberty of the subject is pluralism, and the fact of pluralism presupposes a discursive approach. Aquinas followed a dialogical approach, which is evident from his essen-
tial indebtedness to Muslim philosopher Averroës. Similarly, unlike the quanta cura confrontational attitude of the Church, Maritain dialogued
with his time and integrated Kantian ideas into his philosophy in order to justify human rights.

Sen’s capability approach revolts against the reduction of ‘truth’ into some homogenous magnitude, as it often happens in the ‘transcendental’ approaches. His agenda, the revival of welfare economics and philosophy, was based on ‘informational broadening’. As there is no *simpliciter* – truth without qualification – it is essential that we overcome epistemological naivety of being fixed on a single fact. What Sen calls “descriptive richness” attempts to know more about something; the vividness and richness of facts generate in us a moral judgement. Since informational broadening is a case of partial ordering, it foresees only maximization, and not optimization – the collection of all possible information. This means that the idea of justice is inherently incomplete and the search for justice has no endpoint. The Sen system of social evaluation is deliberately incomplete – a feature that can be called his epistemological humility.

The notion of ‘graduality’ in the traditional moral theology/philosophy holds that moral knowledge, as well as its realization, is not an event but a process – a gradual process. Even theological knowledge is now conceptualized in a procedural way. We can notice a *historical* development in the moral consciousness of the Church in many matters. Earlier, for instance, the Church considered usury as a mortal sin, based on natural law. The idea of revelation in *Dei verbum*, for instance, is conceptualized in a deeply personal and relational way, departing explicitly from the traditional static view. Theological investigations are understood to be *fides quaerens intellectum*: since it is “seeking”, it is an ongoing process. Theology has also good reasons to embrace epistemological humility.

Another level of informational broadening is the public discussion. Beyond an “all-or-nothing” dichotomous thinking, Sen envisions a democratic process of public discussion in a social choice framework. In comparison to transcendental approaches, a discursive and comparative approach is undecided and fragile, but “in social investigation and measurement, it is undoubtedly more important to be vaguely right than to be precisely

---


wrong”. He thus proposes a comparative justice that seeks a plurality of reasons for the removal of injustices – similar to Maritain’s practical agreement on principles of action.

Comparative thinking helps us map a new and rich terrain that seeks to reason across the lines of differences. This can be applied not only for agreeing on social concerns but also for theological enrichment. The new approach of ‘comparative theology’, for instance, pays attention to deepening one’s own religious traditions through becoming more informed of the dynamics of faith in other traditions. Unlike interreligious studies, comparative theology does not approach other religions with neutrality; rather it is interested in the search for truths in a dialogical process. A non-apologetic dialogical approach opens up an enriching and uniting interface. The document Nostra Aetate attests to the Church’s decisive openness to ‘the other’. It reiterated that the Church does not reject anything that is true and holy in other religions. Josef Neuner, Jacques Dupius, Raimundo Panikkar etc. attempted to explore the good and holy elements of other religious traditions. The bipolar understanding of the Church as ecclesia docens and ecclesia discerns shows that there is a large area where the Church can learn from others. Recent attempts of Pope Francis to ‘ask and hear the people’ are vaguely reassuring for a future course of democratic reasoning in the Church. Sensus fidelium need not be restricted to the faithful; it can be extended to voices from all the corners of the world.

Sen’s approach is neither absolutist, militating against anything different, nor relativistic, like solipsist post-modernism that is irritated by anything that is coherent and unified. He builds on the possibility of plural justifications of truth. The UDHR left the justification of human rights open; there is thus room for religious approaches as well. There are similar

1980 As a preparation for the synod on family life, a worldwide poll of Catholics was conducted through a questionnaire to seek their opinions on Church teachings.
attempts in theology as well, named ‘polydoxy’, which argues that there are multiple forms of right belief.\textsuperscript{1981} Sen’s social choice perspective appeals to our shared humanity – the power of communion and communication – in formulating our shared values. Moral values are not supposed to be imposed by draconic process from above; they are formed in a discursive process. There is no easy ‘technocratic or institutional fix’ for moral and developmental questions.

2. Welfare

According to Sen’s theoretical framework, it is required firstly to focus on what is ‘obvious’ rather than running after the ‘obscure’; and secondly, to focus also on ‘changing’ the world along with ‘interpreting’ it.

2.1. A Sense of Injustice as the Starting Point of Social Ethics

The prevalent approaches in political philosophy waste a lot of energy running after the chimera of ‘transcendental’ theories. Sen considers patent injustice as the proper starting point of philosophy; he rightly argues that a reasoned agreement on reasons for removal of those injustices is relatively easy to reach. Likewise, in response to Auschwitz, Hans Jonas has famously said that “[t]he perception of the malum is infinitely easier to us than the perception of the bonum; it is more direct, more compelling, less given to differences of opinion and taste, and most of all, obtruding itself without our looking for it.”\textsuperscript{1982} Similarly, formulating his theology against the backdrop of the horrors of Auschwitz, theologian Johann Baptist Metz developed a theology founded on memoria passionis that considers “the suffering of the poor” as the starting point of all theological discourse. The UDHR is also developed in the backdrop of “barbarous acts which have outraged the conscience of mankind”, as affirmed in its preamble. This approach significantly enriched liberation theology, which considers the experiences of the poor as the locus theologicus. This indeed


was a spontaneous outcome of the Second Vatican Council’s theological paradigm-shift, starting a theology from the ‘joys and sorrows’ of the people. Most of the Council members had experienced two world wars and were experiencing the hostility of the Cold War in the shadows of an imminent nuclear war, and they knew well where to begin.

The dominant social contract theory presupposes that the people entering into a contract are equal and independent – as evident in the Rawlsian idea of reciprocity between the contracting equals. Sen’s capability approach, nevertheless, starts from the startling reality of inequalities existing in our uneven societies. Generally, theological premises also presume an ideal situation that in effect fails to consider the contingencies of real life. A philosophy or theology that starts from the ‘joys and sorrows of the people’ can only be non-transcendental. Sen thus calls for an ‘empirical turn’, to philosophize from the real. Going beyond the exaggerated fact-value dichotomy, he underlines the epistemic and ethical relevance of the real – the fact. And the most challenging fact around us – the sign of the time – is the scandal of poverty.

Thus, such signs of the time – the manifest injustices in front of our eyes – obtain a normative value. It is, however, high time to develop a sense of heightened urgency and response in order to resist the tendencies of indifference and complacency, which consider poverty and inequalities merely as a non-problem. Calling attention to the danger of the increasing deprivations of the underprivileged, despite an aggregate ‘economic’ growth in India, which looks ‘more like islands of California in a sea of sub-Saharan Africa’, Sen persuasively underlines “the need for impatience” which would lead to actions.\footnote{Drèze and Sen (2013): An Uncertain Glory, final chapter.}

2.2. A Realization-focused Framework

Philosophical discourses are often characterized by a yawning gap between principles and performance. Sen’s comparative justice, which starts from the experience of injustice, is far more concerned with the removal of injustices than with producing volumes on theories of justice. His formulations of the nyaya system and the conceptualization of human rights as social goals etc. are instruments that are focused on ‘realizations’.
capability approach is not primarily concerned with designing the best rules and institutions but with what really happens to human life. Conceptualized in the liberal tradition – exclusively as constraints – human rights and obligations fail to do justice to liberating praxis. At the same time, it is critically important to recognize that political freedom is an inevitable ally in the process of development.

The social doctrines of the Catholic Church have not been well-equipped in respect of praxis. Liberation theology emerged partly out of desperation to the traditional theologies’ pre-occupation with ‘orthodoxy’ without paying sufficient attention to the urgent liberating praxis that is required to enhance the life of the poor.\textsuperscript{1984} Right ‘belief’ should be followed by right action. Sen’s reference to the Marxian distinction between interpreting and changing aims for mutual enrichment of both theory and praxis; this, however, does not mean prioritizing one over the other.

Though the Catholic Church has a long tradition of caritas, modern Catholic social teaching has its origin in \textit{Rerum Novarum} (1891); nevertheless, it cannot be denied that, to a certain extent, the Church was caught up in the comfort zone of “theological narcissism”, as observed by Pope Francis. He urgently calls for a change of course and strategy, to go out to the existential peripheries of human life. He states: “An authentic faith – which is never comfortable or completely personal – always involves a deep desire to change the world, to transmit values, to leave this earth somehow better that we found it.”\textsuperscript{1985} It sheds light on Gutiérrez’s criticism of Maritain’s personalism for its “ecclesial narcissism”, which fails to seek a real transformation in the society.\textsuperscript{1986} Sen’s realization-focused approach motivates us to get up from the ‘dogmatic slumber’ and to work for transforming the world. The Church generally situates the positive obligations to help others and to enhance the world in the space of ‘charity’. Sen proved that even positive obligations generate correlate rights.

The affirmation that the poor have a ‘right’ to development emphasizes that the poor are the \textit{subjects} whose claims are to be seriously considered. Sen’s expansion of the idea of obligation and his extension of the notion of the neighbourhood to the global level challenge the Church to reinvent the meaning of ‘caritas’ and ‘catholic’. Moreover, there is now an emerg-

\textsuperscript{1985} \textit{Evangelii Gaudium}, # 183.
ing global aspiration for a better world as envisioned in the Millennium Development Goals and the Sustainable Development Goals, which appeal to solidarities across borders.

Conclusion

The paradoxical situation of enormous economic growth and pervasive poverty in the world calls for an inclusive approach to development that transcends the prevalent refracted views. Political philosophy in general and human rights discourse in particular have been guided by narrow and faulty binaries of ‘liberty’ and ‘welfare’, which are abysmally inadequate to enhance the actual life of the people. A confluence of both liberty and welfare – food and freedom, as Sen articulated it – is required for capturing the actual life. In fact, this conception has gained cogency in the recent efforts of integrating the disciplines of human development and human rights.

Today, the aspiration for liberty is pervasive more than ever. The revolutionary waves of the ‘Arab Spring’, craving for liberty and democracy, were, unfortunately, short-lived. The phenomenon of authoritarianism and nationalism is no longer confined to some communist or theocratic or kleptocratic regimes; it now sways through the whole world, including the ‘liberal democratic’ West. It is imperative to reclaim the value of liberty, lest we lose the cherished values of moral autonomy, pluralism and tolerance.

Similarly, the question of welfare is undoubtedly more urgent than ever. In our increasingly prospering world, almost the half of humankind still lives in extreme poverty, while just 1% of the population thrives with greater wealth than the other 99%. This state of affairs exactly resembles the Pareto injustice “with some people in extreme misery and others rolling in luxury”, as mentioned by Sen. The ethically driven Human Rights-Based Approach to Development brings the realization of human rights into focus. Acknowledging the interdependence and mutual reinforcement of both liberty and welfare is essential for any effective and integral social change.
Bibliography

Primary Sources

Jacques Maritain


https://doi.org/10.5771/9783845284491
Generiert durch IP '54.70.40.11', am 21.12.2018, 03:15:34.
Das Erstellen und Weitergeben von Kopien dieses PDFs ist nicht zulässig.


Amartya Sen


470


Secondary Literature


Bibliography


Bibliography


Bibliography


https://doi.org/10.5771/9783845284491
Generiert durch IP '54.70.40.11', am 21.12.2018, 03:15:34.
Das Erstellen und Weitergeben von Kopien dieses PDFs ist nicht zulässig.


Bibliography


Nagel, Thomas (1986), The View from Nowhere, Oxford: Oxford University Press.


Bibliography


Bibliography


488


