

Jiji Philip

The Human Rights Discourse between Liberty and Welfare

A Dialogue with Jacques Maritain and Amartya Sen



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Jiji Philip

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“It is justice, not charity, that is wanting in the world.”
Mary Wollstonecraft, *A Vindication of the Rights of Woman* (1792).

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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.

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Münster
September 2017

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Abbreviations

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

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

1 Oxfam (2016): “An Economy for the 1%”, Oxford: Oxfam International. Web, 24/01/2016, <https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp210-economy-one-percent-tax-havens-180116-en_0.pdf>.

2 Cf. Piketty, Thomas (2014): *Capital in the Twenty-First Century*, Cambridge, Mass. and London: The Belknap Press of Harvard University Press.

3 Pogge, Thomas (2007): “Introduction”, in Pogge, Thomas (ed.), *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor?*, Vol. I, Oxford: Oxford University Press, UNESCO Publishing, 1.

4 Cf. Drèze, Jean and Sen, Amartya (2013): *An Uncertain Glory: India and its Contradictions*, London: Allen Lane, 276–287.

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”.⁵ 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,

5 Beitz, Charles (2005): “Cosmopolitan and Global Justice”, *The Journal of Ethics*, 9(1/2), 11.

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*

6 Glendon, Mary Ann (1998): “Reflections on the UDHR”, *First Things*, 82, April, 23–25, 25. Also cf. Glendon, Mary Ann (2001): *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, New York: Random House.

7 Cf. Moyn, Samuel (2012): *The Last Utopia: Human Rights in History*, Cambridge, Mass.: The Belknap Press of Harvard University Press, 2, 52, 73–78, 81. Interestingly, in the Cold War period, many Europeans equated democracy with Christian democracy. Cf. Moyn, Samuel (2015): *Christian Human Rights*, Philadelphia: University of Pennsylvania Press.

(2009), in which he considers capability as the *equilibrandum* 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-

8 Sen recently republished his first major work, *Collective Choice and Social Welfare*, expanding it with eleven new chapters, dealing particularly with the demands of democracy and voting. Sen, Amartya (2017): *Collective Choice and Social Welfare: Expanded Edition*, U.K.: Penguin. Also cf. Maskin, Eric and Sen, Amartya (2017): “The Rules of the Game: A New Electoral System”, *The New York Review of Books*, January 19. Web, 20/02/2017, <<http://www.nybooks.com/articles/2017/01/19/rules-of-the-game-new-electoral-system/>>.

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

ally.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;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 generousities 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.”¹¹ The challenge is to ac-

9 Sen, Amartya (1987): *Food and Freedom: Sir John Crawford Memorial Lecture*, Washington, D.C., 5. Web, 14/06/2015, <<http://wphna.org/wp-content/uploads/2015/02/1985-Sen-Food-and-freedom.pdf>>.

10 Sen, Amartya (2009): *The Idea of Justice*, London: Penguin Books, 398.

11 Wollstonecraft, Mary (1792): *A Vindication of the Rights of Woman*, as quoted in The United Nations Development Programme (ed.), *Human Development Report 2000: Human Rights and Human Development*, New York and Oxford: Oxford University Press, 73.

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.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.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.”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

12 Pogge (2007): “Introduction”, 4.

13 Pogge, Thomas (2005): “Real World Justice”, *Journal of Ethics*, 9(1/2), 33.

14 Robinson, Mary (2002): “Talking Point with Zeinab Badawi”, BBC News, November, 21. Web, 18/07/2015, <http://news.bbc.co.uk/2/hi/talking_point/forum/1673034.stm>.

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.¹⁵ 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."¹⁶

15 Rawls himself, however, credits Maritain only once in his works, in a scanty footnote to refer to the notion of common good in Catholic moral and political thought along with St. Thomas Aquinas and John Finnis. Cf. Rawls, John (1999/2000): *The Law of Peoples with "The Idea of Public Reason Revisited"*, Cambridge and London: Harvard University Press, 142.

16 Taylor, Charles (1999): "Conditions of an Unforced Consensus on Human Rights", in Bauer, Joanne R. and Bell, Daniel A. (eds.), *The East Asian Challenge for Human Rights*, Cambridge and London [among others]: Cambridge University Press, 124.

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 admirations, 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

17 Cf. Nussbaum, Martha Craven (2001): "Political Objectivity", *New Literary History*, 32(4), 892–893.

18 Nussbaum, Martha C. (2003): "Langfristige Fürsorge und soziale Gerechtigkeit: Eine Herausforderung der konventionellen Ideen des Gesellschaftsvertrages", *Deutsche Zeitschrift für Philosophie*, 51(2), 183. However, Maritain's epithets as Rawls' *avant la lettre* and warrantor of the UDHR are not undisputed. Confer, for instance, Saure, Philipp (2017): *Christliches Naturrecht in der pluralistischen Moderne: Jacques Maritains Kritik der Allgemeinen Erklärung der Menschenrechte*, Paderborn: Schöningh.

19 Nussbaum, Martha C. (2000): "Aristotle, Politics, and Human Capabilities: A Response to Antony, Arneson, Charlesworth, and Mulgan", *Ethics*, 111(1), 105.

chapter titled “On the Philosophy of Human Rights”, a personalist Maritain ‘confesses’ his unflinching 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.

20 Nussbaum (2000): “Aristotle, Politics, and Human Capabilities”, 105.

21 Cooper, John W. (1985): *The Theology of Freedom: The Legacy of Jacques Maritain and Reinhold Niebuhr*, Macon, GA: Mercer, 64.

22 Maritain, Jacques (1942/2011): *The Rights of Man and the Natural Law*, Anson, Doris C. (trans.), New York: Charles Scribner’s Sons, 136.

23 Maritain, Jacques (1951/1998): *Man and the State*, Chicago, IL: University of Chicago Press, 109. Emphasis original.

There are already a few works that compare the Maritain's personalist philosophy with Rawls' political liberalism.²⁴ 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,²⁵ 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-

24 Patrick Neal observes: "Maritain's articulation of the analogue of the theme of overlapping consensus and also of the condition giving rise to the need for it is very close to that of Rawls." Neal, Patrick (2000): "Three Readings of Political Liberalism: Rawls, Maritain and Crick", *Journal of Political Ideologies*, 5(2), 227. Similarly, there are efforts to understand the liberal tradition of Maritain in the light of John Rawls in order to search for a meaningful Catholic understanding of human rights. Confer, for instance, Clark, Meghan J. (2012): "Reasoned Agreement versus Practical Reasonableness: Grounding Human Rights in Maritain and Rawls", *The Heythrop Journal*, 53(4), 637–648. Thaddeus Konzinski finds many similarities between Rawls and Maritain, but he is extremely sceptical of the project of a liberal state. Cf. Kozinski, Thaddeus J. (2013): *The Political Problem of Religious Pluralism: And Why Philosophers Can't Solve It*, Lanham, Md.: Lexington Books.

25 Cf. Moyn (2010): *The Last Utopia*.

gressive *prise de conscience*,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".²⁷ "The increasing Christianization of human rights after World War II"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

26 Maritain, Jacques (1959): *On the Philosophy of History*, Evans, Joseph W. (ed.), London: Geoffrey Bles, 55.

27 Moyn, Samuel (2011): "Personalism, Community and the Origins of Human Rights", in Hoffmann, Stefan-Ludwig (ed.), *Human Rights in the Twentieth Century*, Cambridge: Cambridge University Press, 87.

28 Moyn (200): *The Last Utopia*, 74.

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

29 Sen, Amartya (2009): “The Power of a Declaration”, *The New Republic*, February 4. Web, 11/04/2014, <<https://newrepublic.com/article/62158/the-power-declaration>>.

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.

31 Glendon, Mary A. (1998): “Knowing the Universal Declaration of Human Rights”, *Notre Dame Law Review*, 73(5), 1153.

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"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

32 Robeyns, Ingrid (2000): *An Unworkable Idea or a Promising Alternative? Sen's Capability Approach Re-Examined*, Leuven: Centre for Economic Studies Discussion Paper 00.30 Katholieke Universiteit, 3. Web, 27/04/2015, <<https://feb.kuleuven.be/eng/ew/discussionpapers/Dps00/DPS0030.pdf>>.

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

33 Sen (2009): “The Power of a Declaration”.

people. In a rather affluent Europe, Maritain diagnosed a spiritual decadence caused by ‘statutory’, and Sen worried about the factors that denied 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 tradition 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 people.

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 flourishing and social justice. His redefinition of the notion of well-being in the space of capability brought attention to the non-economic elements of development 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 theoretical 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 human rights only about liberty rights. Liberty is inalienable to the notion of well-being, and welfare is likewise essential to human dignity. Sen’s ‘realization-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 capability, all categories of freedom gain significance – positive and negative freedom, but also instrumental and intrinsic freedom. The acknowledgment 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",³⁴ 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-

34 Sen (2009): *The Idea of Justice*, ix.