

## Introduction

(1) This introduction will probably look nothing like one. In particular, it will not systematically summarize the arguments or findings. Instead, various almost random reflections will follow. As a concession to a presumptive expectation, however, they will close explaining briefly how the different components of the book hang together.

This informal introductory inquiry will assume that attempts at systematization in the fields at issue tend to fail or to engender distortion. As an alternative, it will aim to arrive at modest miscellaneous insights. These will derive, directly or indirectly, from the exploration that unfolds in the main piece. They will not have their origin identified (a) because they do not possess a singular or clear one and (b) to avoid interrupting the flow.

(2) Overwhelmingly, humanity appears to appreciate rights. It might sheerly value their availability against any abominable abuse that a powerful public or private party might perpetrate against a weaker one. Alternately, this appreciation of them might hinge on their potential facilitation of equitable or peaceful coexistence.

Doubtless, someone might contrariwise reject the rightful commitments under the microscope. She might cynically view them as an adaptable tool wielded to criticize one's enemies. Or, as a rigid Marxist, her rejection of them might rather rest on their service as an instrument of mystification. She might deplore their supposed utilization to distract the proletariat from the combat for communism.

In the teeth of this type of repudiation, such safeguards will surely continue to interest people; maybe all the way up to 2100 or beyond. Since 1945, they have nationally and internationally generated an intense interest in conjunction with an institutionalized infrastructure. Palpably, no one can tell how exactly they will evolve into the future.

These tendered cogitations themselves purport to remain relevant past the immediate present. Nonetheless, they may seem to enjoy a scant chance of success in realizing their purport. After all, their focus falls on discussions and dispositions that transpired primordially between 2000 and 2020. Ultimately, it might occasion a loss of relevance through the narrowness of not only its chronological but also its geographic boundaries, which enclose principally Latin America and subsidiarily Europe, as perceived from the United States.

(3) On the other side of the scale, the geographically and chronologically traced delimitation might validate itself by virtue of the apparently exciting developments around politics in the primarily comprehended places and times. Precisely in 2014, a tetrad of women wore the presidential sash in Iberian America: the Brazilian Dilma Rousseff, the Argentine Cristina Fernández, the Chilean Michelle Bachelet, and the Costa Rican Laura Chinchilla.<sup>1</sup> They held 20% of the presidencies and presided over roughly 45% of the population there.<sup>2</sup> Parenthetically, a couple more commanded in chief in the neighboring English-speaking Caribbean: “Portia Simpson-Miller [in] Jamaica, the . . . largest . . . island, . . . and Kamla Persad-Bissessar in Trinidad and Tobago, the . . . biggest exporter of oil and natural gas.”<sup>3</sup>

This attempted justificatory explanation of the focal limits might wax, beyond feminist, progressive. It might build on the advance of a wide-ranging variety of leftist leaders all over Iberian American territory. In tandem,

<sup>1</sup> Simon Romero, *On Election Day, Latin America Willingly Trades Machismo for Female Clout*, N.Y. TIMES, Dec. 15, 2013, at A10 (“Michelle Bachelet, a former president . . . narrowly missed a first-round victory in November . . .”) (“In Brazil, . . . Dilma Rousseff, . . . who was elected in 2010, is preparing to run for a new term as president in 2014. In neighboring Argentina, Cristina Fernández de Kirchner is in her second term as president, and in Central America, Laura Chinchilla is wrapping up her term as Costa Rica’s first female president.”); Hiroko Tabuchi and Steve Eder, *A Plan to Mine the Minnesota Wilderness Hit a Dead End. Then Trump Became President*, N.Y. TIMES, July 2, 2020 (“Michelle Bachelet [won the] 2013 election.”); Ernesto Londoño, *Impeached President Rousseff of Brazil Pursues a Senate Seat*, N.Y. TIMES, June 30, 2018 (“Dilma Rousseff . . . narrowly [won] the 2014 presidential election.”).

<sup>2</sup> Four out of twenty heads of state in the region, which here includes Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru, Panama, Puerto Rico, Venezuela, and Uruguay, add up to 20%. Incidentally, Puerto Ricans elect a Governor, not a President, for their territory, which belongs to the United States. The concerned countries possess a population of around 280 million or 45% of the regional total (629 million). See United Nations, Department of Economic and Social Affairs, Population Division, *World Population Prospects 2019: Data Booklet* at 18–19, ST/ESA/SER.A/424 (2019) (on file with author).

<sup>3</sup> Simon Romero, *On Election Day, Latin America Willingly Trades Machismo for Female Clout*, N.Y. TIMES, Dec. 15, 2013, at A10.

Raúl Castro, Rafael Correa, Mauricio Funes, Nicolás Maduro, Evo Morales, Daniel Ortega, and José Mujica reached office respectively in Cuba, Ecuador, El Salvador, Venezuela, Bolivia, Nicaragua, and Uruguay. Conjointly with their previously mentioned female regional colleagues, who might have loosely aligned with them ideologically, they added up to twelve out of the twenty chief commanders on the ground.

Worldwide, this landscape might have awed self-avowed partisans of progressivism. Simultaneously, it might have horrified conservatives. Curiously, neither the fears of these nor the hopes of progressives appear to have panned out, at least with respect to the redeemable promises on the table. Overall, the degree of compliance seems not to have varied enormously between the (a) left and (b) right wings. On the other hand, the former appears to have predominantly focused on positive guaranties, the latter on negative ones.

This whole panorama might itself invite deliberations of the type embarked upon anon. Indeed, it might cry for them inasmuch as the leadership or officialdom itself eagerly plunged head on into or launched them during this period. As commented at the outset of the volume, a passionate (often nasty) debate displaced the usual platitudes around the deliberated-upon freedoms.

(4) Appositely, the textual analysis ruminates on how ideological adversaries might come to support the same system. It tries to capitalize on the distinctness and interplay of the principled and political facets of the dissected protections. Accordingly, the adversarial supporters might embrace a single norm despite diverging on its politics. As an illustration, they might (a) agree that an instated administration may not repress somebody based on a belief of hers yet (b) disagree on whether it must subsidize an underprivileged perspective.

At this juncture, a deceivingly alluring compromise might occur to them: They might compromise to the advantage of one of them or split their difference. Under this split option, the effectuation machinery established by them might demand financing a demonstrably deprived viewpoint fifty percent of the time: say, regularly on every odd-numbered year. In counterpoint, they might regard a permissible policy as necessarily part of the principle and therefore balk at such an unprincipled settlement. Randomly meeting halfway, or fully yielding, at this conjuncture might strike them as unacceptable in spades.

Instead, they might empower their democratically elected government to decide on such funding as a matter of governmental discretion. As opposed to downright deferring to such a decision, however, a court might at their behest intervene afterward against any arbitrariness or an abandonment of the charge to consider candidates for subsidies. It might stop an arbitrary allocation or

distribution or a flagrant refusal or defunding, and resign itself to diving deeper into polemics in this sphere than in that of pure precept, so to speak. The competent judge might determine that the authorities have acted arbitrarily or refused flagrantly and might do so through the undergirding normatively configured parameter. She might conclude that they have essentially undermined the parametric command with their comportment.

Regardless, one might want to eschew decoupling drastically the preceptive from the political (or policy) dimension. A liberty of the scrutinized sort might mainly consist in a norm requiring certain narrowly delineated departments plus politicized engagements. Admittedly, it might breed disputation when fleshed out or applied, even under such a somewhat conventional conception.

The exemplary opponents might never completely concur on exegeses or applications. Irrespective, they might crucially collect around the invoked conceptional core. This kernel might operate parallelly to the thicker “idea of an overlapping consensus” promoted by John Rawls.<sup>4</sup> It might convergently belong to an “account,” such as his, “of stability”<sup>5</sup> while divergently springing from the “fact of a plurality of reasonable” albeit “incompatible” piecemeal, not “comprehensive[,] doctrines.”<sup>6</sup>

Consistently with his description, the nuclear conceptualization at stake might “not . . . replace” these ampler articulations or “give them a true foundation.”<sup>7</sup> Displaying further consistency, it might anyhow lend itself to validation from them.<sup>8</sup> Under his influence, one might urge understanding it as “simply a consequence of, . . . continuous with,” or “an acceptable approximation” of them.<sup>9</sup>

As with his delineation, “everyone” might expect impartiality from and share (a) the conceptualized nucleus, though not (b) the amply articulated

<sup>4</sup> JOHN RAWLS, *POLITICAL LIBERALISM* xiv (1993) (One of the “main ideas” of “political liberalism [is] the idea of an overlapping consensus.”).

<sup>5</sup> *Id.* at xxx.

<sup>6</sup> *Id.* at xvii (“The fact of a plurality of reasonable but incompatible comprehensive doctrines—the fact of reasonable pluralism” renders the idea “of an overlapping consensus” necessary or “needed.”); *see generally id.* at xvi (“A modern democratic society is characterized not simply by a pluralism of comprehensive religious, philosophical, and moral doctrines but by a pluralism of incompatible yet reasonable comprehensive doctrines.”).

<sup>7</sup> *Cf. id.* at xviii (“The intention is not to replace those comprehensive views, nor to give them a true foundation.”).

<sup>8</sup> *Cf. id.* (“The problem of political liberalism is to work out a conception of political justice for a constitutional democratic regime that the plurality of reasonable doctrines . . . might endorse.”).

<sup>9</sup> *Cf. id.* at xix (“In some cases the political conception is simply a consequence of, or simply continuous with, a citizen’s comprehensive doctrine; in others, it may be related as an acceptable approximation given the circumstances of the social world . . .”).

visions.<sup>10</sup> She might separate these from the former and their “elements” from its, tracking the “distinctions.”<sup>11</sup> It might provide “a basis on which [to] discuss[]” and answer “fundamental . . . questions.”<sup>12</sup>

In one of his culminating opuses, Rawls himself transports his outlook from the domestic to the global realm.<sup>13</sup> From the onset, his scheme situates “human rights” among the “familiar” or “traditional” tenets of “justice” there.<sup>14</sup> In view of the “greater” cultural “diversity” in the comprehensively doctrinal content that any transnational communal constituent may “affirm[],”<sup>15</sup> it construes them thinly.<sup>16</sup>

In his depiction, they do not incorporate their civic or constitutionalized cousins, whether “individualist” or “associationist.”<sup>17</sup> Moreover, he portrays them as “set[ting] a necessary,” although “not sufficient, standard” of “decency” for inter alia any polity planning to participate, as purely “decent” or as supplementally “liberal,”<sup>18</sup> in the community of nations.<sup>19</sup> These

<sup>10</sup> *Cf. id.* (“[T]he political conception is shared by everyone while the reasonable doctrines are not . . . . [Political liberalism] has to distinguish the public point of view from the many nonpublic (not private) points of view [and] has to be impartial . . . between the points of view of reasonable comprehensive doctrines.”).

<sup>11</sup> *Cf. id.* (“Similarly, there will be many parallel distinctions. For the elements of the political conception of justice must be separated from the analogous elements within comprehensive doctrines. We must keep track of where we are.”).

<sup>12</sup> *Cf. id.* at xx–xxi (“When citizens share a reasonable political conception of justice, they have a basis on which public discussion of fundamental political questions can proceed and be reasonably decided, not of course in all cases but we hope in most cases of constitutional essentials and matters of basic justice.”).

<sup>13</sup> See JOHN RAWLS, *THE LAW OF PEOPLES* 55 (1999) (“I distinguish between the public reason of liberal peoples and the public reason of the Society of Peoples. The first is the public reason of equal citizens of domestic society debating the constitutional essentials and matters of basic justice concerning their own government; the second is the public reason of free and equal liberal peoples debating their mutual relations as peoples.”).

<sup>14</sup> *Id.* at 37; *cf. id.* at 42 (Such “principles are open to different interpretations. It is these *interpretations*, of which there are many, that are to be debated in the second-level original position.”).

<sup>15</sup> *Id.* at 40.

<sup>16</sup> *Id.* at 55 (“Here note the parallel: public reason is invoked by members of the Society of Peoples, and its principles are addressed to peoples as peoples. They are not expressed in terms of comprehensive doctrines of truth or of right, which may hold sway in this or that society, but in terms that can be shared by different peoples.”).

<sup>17</sup> *Id.* at 79–80; *see also id.* at 81 (“What I call human rights are, as I have said, a proper subset of the rights possessed by citizens in a liberal constitutional democratic regime, or of the rights of the members of a decent hierarchical society.”).

<sup>18</sup> *Id.* at 80 (“The list of human rights honored by both liberal and decent hierarchical regimes should be understood as universal rights . . . .”); *cf. id.* at 121 (“We have supposed that decent societies would affirm the same Law of Peoples that would hold among just liberal societies. This enabled that law to be universal in its reach.”).

<sup>19</sup> *Id.* at 80.

judiciable pledges “play a special role” by circumscribing (1) the justification “for war” or (2) “a regime’s internal autonomy.”<sup>20</sup> In tune, he interprets them as justifying, whenever gravely outraged—or as proscribing, when basically honored—a “forceful sanction[]” or an “intervention.”<sup>21</sup>

His argumentation concentrates on supranationally embedding them within his reasonably endorsable legal and moral regimen. Purportedly, it enables him to endorse them along with this legally and morally regulatory assemblage. In any event, he might himself recognize their endorsement as less problematic, qualitatively as well as quantitatively,<sup>22</sup> or as equally desirable. Of course, substantiating them separately or in detail never manages to attract his attention.

The consensual overlap around these vindicable promises might integrate, beyond their formulation, their basic interpretation. It might center (a) materially on dignity as their cardinal concept embrace from many a standpoint or (b) adjectively on the alluded-to alternation, elaborated later, between discipline and deference in their enforcement.<sup>23</sup>

Curiously, real controversy about them does not seem to surface during the process of consenting to them or listing them in a treaty. It appears to crop up inaugurally upon their implementation. Insofar as appealing, the material or adjective approach cited in the previous paragraph might temper any implementational strife around them.

(5) How do these guaranties, another recurrent query goes, relate to social justice? Generally, they seem to advance it. Nevertheless, it might sometimes

<sup>20</sup> *Id.* at 79.

<sup>21</sup> *Id.* at 81.

<sup>22</sup> Indubitably, one might regard the affirmation of the principle of “human rights” (“6”) as easier singly than concurrently with those of “freedom and independence,” observance of “treaties” or “undertakings,” equality and capacity to contract, the “duty of non-intervention,” “the right of self-defense” as the sole “reason[]” “to . . . war,” the obligation to “certain specified restrictions in the conduct of war,” and the “duty to assist [those] living under unfavorable conditions” (“1”-“5”, “7”-“8”). *Id.* at 37.

<sup>23</sup> Compare Jürgen Habermas, *Das utopische Gefälle: Das Konzept der Menschenwürde und die realistische Utopie der Menschenrechte*, 8 BLÄTTER FÜR DEUTSCHE UND INTERNATIONALE POLITIK 43, 46 (2010) (“The same human dignity for everyone bottoms the indivisibility of all human rights. The violated ‘human dignity’ is a seismograph that shows what constitutes a democratic legal order, to wit, precisely the rights that the citizens of a political community must give themselves so as to respect each other as members of a voluntary association of free and equal persons.”) (“Die gleiche Menschenwürde eines jeden begründet die Unteilbarkeit aller Menschenrechte. Die verletzte ‘Menschenwürde’ ist ein Seismograph, der anzeigt, was für eine demokratische Rechtsordnung konstitutiv ist – nämlich genau die Rechte, die sich die Bürger eines politischen Gemeinwesens geben müssen, damit sie sich gegenseitig als Mitglieder einer freiwilligen Assoziation von Freien und Gleichen achten können.”) with Chapter 7, *infra*.

not profit at all from them as actualized. In extremis, they might unavoidably counter it.

Affirmative entitlements, which might zero in on work, health, housing, or the like, might not appreciably differ on this front. Still, they might normally contribute the most to the creation of a just society. Without doubt, their own contribution might ride on those of politically concerted action. Inevitably, it might pale in comparison to them.

Over and above, one might likewise aspire to more frequently and intensely clashing revolutionary ideals. These might evoke the struggle against an unspeakable evil such as slavery or colonization and for a radical societal transformation. As a result, they might themselves qualify as “emancipatory” or “anti-colonial.”

(6) Self-evidently, rights will occupy the center stage in the upcoming rumination. In the main, they will do so in their “strictest sense,” that of “a claim,” as spelled out by Judy Thomson under the inspiration of Wesley Hohfeld.<sup>24</sup> A guaranty, which appears not to exist in her categorial catalog yet will permeate the one ahead, resembles them. Notwithstanding, it demarcates itself from them, in her construal or perhaps that of anybody else, by conjuring a charter, statute, or regulation that guarantees it.

An entitlement, which she seems not to entertain either, recalls them too. Specifically, it might refer to something to which a law or contract entitles one. A triad among the other constructs she does examine, “privileges, powers, and immunities,”<sup>25</sup> will rarely feature in the ensuing pages. In contrast, a fourth one, that of “liberties,”<sup>26</sup> will recurrently emerge. As constructed, it will encompass, beyond what it does in her estimation and ordinarily, safeguarded, sheltered, shielded, or protected possibilities or capacities. “Safeguards,” “protections,” or “freedoms” will parade beside it and approximate it in meaning.

The proffered ponderations will neither delve into nor develop this differentiated demarcation as an entirety. They will merely presume it upon deploying whatever terminology might pertain to them. Incidentally, the notion of a principle will similarly star in them. It will alternate, as significantly synonymous, with those of a (a) precept or (b) norm. The latter will additionally denote an encapsulating enactment, especially a supranational

<sup>24</sup> JUDITH JARVIS THOMSON, *THE REALM OF RIGHTS* 41 (1990) (citing Wesley Newcomb Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 23 *YALE L.J.* 16 (1913)).

<sup>25</sup> *Id.* at 40.

<sup>26</sup> *Id.* at 56.

one. Occasionally, the adjectives “principled,” “preceptive,” or “normative” will pop up alongside the corresponding adverbs “preceptively” or “normatively.”

(7) Part I will conceive of the pondered justiciable pledges as described earlier. It will begin with and seek to settle a seemingly conceptual dispute around them within the Organization of American States. The next partial segment (Part II) will concretize them by exploring several instances of them. It will contend that, independently of the initially depicted overarching structure, they spawn specific challenges in each such instantiation.

Part III will study the prospect of confliction between them. It will maintain that, as principled, they may contingently conflict in a particular context, such as whenever a pair of them should but cannot attain fulfillment in synchrony. The partial closer (Part IV) will home in on the inner connection between some of their subsets. It will argue that negative, substantive, and national entitlements interconnect with and presuppose their positive, procedural, and international ostensibly opposite numbers. Naturally, a detailed summary will precede every step in this progression. To boot, an analogously atypical Conclusion will wrap up.

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