

RIGHT TO LIFE, LIBERTY, PROPERTY: A SEAMLESS TRILOGY TO PROSPERITY

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Then God said, "Let us make man in our image, after our likeness; and let them have dominion over the fish of the sea, and over the birds of the air, and over the cattle, and over all the earth, and over every creeping thing that creeps upon the earth." So God created man in his own image, in the image of God he created him; male and female he created them. And God blessed them, and God said to them, "Be fruitful and multiply, and fill the earth and subdue it; and have dominion over the fish of the sea and over the birds of the air and over every living thing that moves upon the earth." And God said, "Behold, I have given you every plant yielding seed which is upon the face of all the earth, and every tree with seed in its fruit; you shall have them for food. And to every beast of the earth, and to every bird of the air, and to everything that creeps on the earth, everything that has the breath of life, I have given every green plant for food." And it was so. And God saw everything that he had made, and behold, it was very good.

-- Genesis 1:26-31

President Ronald Reagan said: "Only when the human spirit is allowed to invent and create, only when individuals are given a personal stake in deciding economic policies and benefiting from their success -- only then can societies remain economically alive, dynamic, prosperous, progressive and free." Today, there is general agreement by the most prosperous nations that the democratic government which provides utmost liberty to its people achieve the greatest general peace and prosperity.¹ The risk is that a select few – most likely the rich, the powerful, or the privileged – can forcefully invoke their liberty and fundamental rights to trump those of the poor and less privileged, especially their socio-economic rights.² Thus, in 1896, the U.S. Supreme Court upheld the lower courts' decision in the case of *Plessy v. Ferguson*³ which upheld the constitutionality of State law requiring the furnishing of "equal but separate" facilities for rail transportation and requiring the separation of "white and colored" passengers, noting that since the separate cars provided equal services, the equal protection clause

¹ THOMAS WICKERT, *THE PROSPERITY OF LIBERTY: A THEORY OF FREEDOM* (2012) (derived from the works of Frederic Bastiat).

² FRIEDRICH HAYEK, *THE CONSTITUTION OF LIBERTY*, (1978) ("The importance of our being free to do a particular thing has nothing to do with the question of whether we or the majority are ever likely to make use of that particular possibility. To grant no more freedom than all can exercise would be to misconceive its function completely. The freedom that will be used by only one man in a million may be more important to society and more beneficial to the majority than any freedom that we all use.").

³ *Plessy v. Ferguson*, 163 U.S. 537 (1896).

of the 14th Amendment was not violated. In another case, the U.S. Supreme Court ruled that a Chinese student was not denied equal protection by being classified with African Americans and sent to school with them rather than with whites.⁴

One's liberty is bound to collide with another's right. In the case of *Philippine Blooming Mills Employment Organization, et al v. Philippine Blooming Mills Co., Inc. and CIR*, G.R. No. L-31195, June 5, 1973, the Philippine Blooming Mills Employees Organization (PBMEO), a legitimate labor union composed of workers at Philippine Blooming Mills Co. Inc. (Company), staged a mass demonstration at Malacañang, in protest against alleged abuses of the police, to be participated in by the workers in the first shift (from 6 A.M. to 2 P.M.) as well as those in the regular second and third shifts (from 7 A.M. to 4 P.M. and from 8 A.M. to 5 P.M., respectively).

The Company acknowledged that the demonstration is an inalienable right of the union and the workers but emphasized, however, that any demonstration for that matter should not unduly prejudice the normal operation of the business. The Company informed the union that while all workers may join the demonstration, the first and regular shifts should be excused and should they fail to report for work, they shall be dismissed.

Despite the Company's pleas, all the workers of PBMEO, including those in the first and regular shifts joined the demonstration. The officers and workers of the first and regular shifts were charged with a violation of the Labor Code of the Philippines and of their CBA providing for "No Strike and No Lockout." After following proper procedure, the Company dismissed the first and regular shift workers who joined the demonstration.

The Philippine Supreme Court ruled in favor of the workers of the union, declaring the Company as the one guilty of unfair labor practice. Its refusal to permit all his workers to join the mass demonstration against alleged police abuses and the subsequent separation of some workers constituted an unconstitutional restraint on the freedom of expression, freedom of assembly and freedom petition for redress of grievances. The crucial portion of the Court's decision states:

"The superiority of these freedoms over property rights is underscored by the fact that a mere reasonable or rational relation between the means employed by the law and its object or purpose — that the law is neither arbitrary nor discriminatory nor oppressive — would suffice to validate a law which restricts or impairs property rights. On the other hand, a constitutional or valid infringement of human rights requires a more stringent criterion, namely existence of a grave and immediate danger of a substantive evil which the State has the right to prevent.

In seeking sanctuary behind their freedom of expression well as their right of assembly and of petition against alleged persecution of local

⁴ Gong Lum v. Rice, 275 U.S. 78 (1927).

officialdom, the employees and laborers of herein private respondent firm were fighting for their very survival, utilizing only the weapons afforded them by the Constitution — the untrammelled enjoyment of their basic human rights. The pretension of their employer that it would suffer loss or damage by reason of the absence of its employees from 6 o'clock in the morning to 2 o'clock in the afternoon, is a plea for the preservation merely of their property rights. Such apprehended loss or damage would not spell the difference between the life and death of the firm or its owners or its management. x x x Material loss can be repaired or adequately compensated. The debasement of the human being broken in morale and brutalized in spirit-can never be fully evaluated in monetary terms. The wounds fester and the scars remain to humiliate him to his dying day, even as he cries in anguish for retribution, denial of which is like rubbing salt on bruised tissues.

As heretofore stated, the primacy of human rights — freedom of expression, of peaceful assembly and of petition for redress of grievances — over property rights has been sustained.” (emphasis added)

The *Philippine Blooming Mills* case followed the US cases of *March v. Alabama* (326 U.S. 501, 509) and *Tucker v. Texas* (326 U.S. 517, 519-520) where the US Supreme Court declared the primacy of human rights over property rights. In the more recent case of *Aberasturi v. People and Escalante, Jr.*, February 14, 2011, G.R. No. 172203, the Philippine Supreme Court acknowledged the existence of a hierarchy of rights, when it said that “Freedom of expression enjoys an exalted place in the hierarchy of constitutional rights.”

Of interest in the *Philippine Blooming Mills* case is the portion in the Decision that states, “Such apprehended loss or damage would not spell the difference between the life and death of the firm or its owners or its management. x x x Material loss can be repaired or adequately compensated”. Had the loss been of a nature or magnitude that would spell the difference between the life and death of the person, would the decision have been different? If the case were between three workers respectively assigned to three daily time shifts, and lowly a sari-sari store owner, principally dependent on the store’s daily earning for the owner’s subsistence, would the decision be different?

This hierarchy of human rights also figured prominently in the case of *Social Justice Society v. Atienza*, G.R. No. 156052, 13 February 2008, where the oil companies (i.e., Chevron, Petron, Shell) stood to lose billions of pesos when the City of Manila decided to implement Ordinance No. 8027 requiring the relocation of oil terminals in Pandacan. The Supreme Court said:

“However, based on the hierarchy of constitutionally protected rights, the right to life enjoys precedence over the right to property (emphasis added). The reason is obvious: life is irreplaceable, property is

not. When the state or LGU's exercise of police power clashes with a few individuals' right to property, the former should prevail."

Ordinance No. 8027, approved by Manila City Council on November 28, 2001, reclassifies portions of Pandacan and Sta. Ana from industrial to commercial and directs the owners and operators of businesses to cease and desist from operating their businesses within 6 months from the Ordinance's effectivity. The Court described Ordinance No. 8027 as a measure enacted pursuant to the delegated police power of local government units "to promote the order, safety, and health, morals, and general welfare of the society." Said Ordinance was enacted right after the Philippines, along with the rest of the world, witnessed the horror of the September 11, 2001 attack on the Twin Towers of the World Trade Center in New York City. The objective of the Ordinance is to protect the residents of Manila from the catastrophic devastation that will surely occur in case of a terrorist attack on the Pandacan Terminals."⁵

Historically, human rights were categorized by generations. Rights involving fundamental freedom that serve to protect the citizens from the excesses of the State are referred to as first generation rights. These negative rights that encompass the classic civil-political rights emerged from the American and the French Revolutions.⁶ Since the eighteenth and nineteenth century, positive law recognized only first generation rights. The 1776 Virginia Declaration of Rights, for instance, contained rights to freedom of the press, trial by jury, free elections, and respect for property, but omitted social rights related to the welfare function of the State. The first twelve amendments of the US Constitution guarantees only physical security and a functioning judicial system. The 1789 Declaration des Droits de l' Homme et du Citoyen of France only created a functioning system of governance. The classic rights contained in many constitutions during the 19th century were purely confined to classical freedoms.⁷

In the early twentieth century, social and economic rights were acknowledged at a constitutional level, particularly the 1917 Soviet Constitution, the 1937 Irish Constitution, and the German Weimar Constitution. Socio-economic rights were classified as second generation rights. These rights surfaced under the German authoritarian leader Bismarck, who fought for the welfare of German workers in the late nineteenth century. These rights arose from social welfare concern.⁸

Ireland, France, Germany, Portugal, Spain, and a growing number of countries have included second generation rights in their constitutions. International human rights currently include social and economic rights.

⁵ Social Justice Society v. Atienza, G.R. No. 156052 (2008).

⁶ Justice Albie Sachs, *Social and Economic Rights: Can They Be Made Justiciable?*, 53 SOUTHERN METHODIST UNIVERSITY LAW REV 1381 (2000).

⁷ *Heirarchy of Rights Protection*, available at <http://www.lawteacher.net/administrative-law/essays/a-hierarchy-of-rights-protection-administrative-law-essay.php> [hereinafter H. Rights Protection].

⁸ *Id.*

Justice Albie Sachs believes that the historical classification of rights into generations led to the different treatment of the second generation rights as less important than the first.⁹ The classification established a hierarchy of rights protection. The 1993 Vienna Conference on Human Rights apparently was aware of this unequal treatment, and it accepted that social and economic rights are indivisible from and interdependent with civil and political rights. They are all of equal importance. Hector Gros Espiell notes that:

Only the full recognition of all of these rights can guarantee the real existence of any one of them, since without the effective enjoyment of economic, social and cultural rights, civil and political rights are reduced to merely formal categories. Conversely, without the reality of civil and political rights, without effective liberty understood in its broadest sense, economic, social and cultural rights in turn lack any real significance. This idea of the necessary integrality, interdependence and indivisibility regarding the concept and the reality of the content of human rights that is, in a certain sense, implicit in the Charter of the United Nations, was compiled, expanded and systematized in the 1948 Universal Declaration of Human Rights, definitively reaffirmed in the Universal Covenants on Human Rights approved by the General Assembly in 1966, and in force since 1976, as well as in the Proclamation of Teheran of 1968, and the Resolution of the General Assembly, adopted on December 16, 1977, on the criteria and means for improving the effective enjoyment of fundamental rights and liberties (Resolution n. 32/130).¹⁰

Perhaps, the center of legal development in the area of socio-economic rights is South Africa. Its Constitution provides for greater transparency, participatory democracy, protection of cultural values and socio-economic equality. The Preamble of the African Charter on Human and Peoples' Rights declares "that the satisfaction of socio-economic rights is a guarantee for the enjoyment of civil-political rights." Under the Charter, the State's obligation to implement is not qualified by considerations of "available resources." As pointed out by the Constitutional Court of South Africa in *The Government of the Republic of South Africa, et. al. v. Irene Grootboom*, October 4, 2000¹¹,

"Our Constitution entrenches both civil and political rights and social and economic rights. All the rights in our Bill of Rights are inter-related and mutually supporting. There can be no doubt that human dignity, freedom and equality, the foundational values of our society, are denied those who have no food, clothing or shelter. Affording socio-economic rights to all people therefore enables them to enjoy the other rights enshrined in

⁹ Sachs, *supra* note 6.

¹⁰ HECTOR GROS ESPIELL, LOS DERECHOS ECONÓMICOS, SOCIALES Y CULTURALES EN EL SISTEMA INTERAMERICANO 16-17 (1986).

¹¹ South Africa v. Grootboom, Case CCT 11/00 (Oct. 4, 2000), available at [http://www.escri-net.org/sites/default/files/Grootboom_Judgment_Full_Text_\(CC\)_0.pdf](http://www.escri-net.org/sites/default/files/Grootboom_Judgment_Full_Text_(CC)_0.pdf).

Chapter 2. The realisation of these rights is also key to the advancement of race and gender equality and the evolution of a society in which men and women are equally able to achieve their full potential.”

The advocates for socio-economic rights declare that the “generations of rights” era is over. A “hierarchy of rights” would only lead to prioritize protections. Senator Jose Diokno observed that “...many legal aid lawyers for the poorer people have been detained; a few have been shot and wounded during peaceful assembly... [it is] a painful lesson to learn that we cannot enjoy civil-political rights unless we enjoy socio-economic rights, any more than we can insure the latter, unless we can exercise the former... [it is] true that a hungry man does not have much freedom of choice but when a well fed man does not have freedom of choice, he cannot protect himself against hunger.”¹²

Kofi Annan emphasized that “...in time of global tensions and division, some wish to focus on civil-political rights, others would like to see equal attention on socio-economic rights, complaining bitterly that if you are struggling to live, voting is no longer important...” He believes “the cause of human rights has the potential to bridge those division and restore a sense of common purpose among States and nations.”¹³

Not everyone is convinced about the equality and indivisibility of all human rights. There are those who think that social and economic rights are vague, indeterminate, and too costly to be capable of being judicially enforced. Civil and political rights, on the other hand, have been ascertained evolutionary by judicial jurisprudence, and are no longer considered vague. Scott and Macklem point out that the “historical, ideological, and philosophical exclusions of social rights from adjudicative experience have resulted in a failure to accumulate experience that would render the imprecision of social rights less and less true as time goes on”.¹⁴

Although economic, social and cultural rights might be seen as requiring high levels of investment compared to civil and political rights which are perceived to simply require the State to refrain from interfering with individual freedoms, civil and political rights, also require substantial investment for their full realization. For example, the full enforcement of civil and political rights would require infrastructures such as an efficient court system, prisons observing the minimum living conditions for prisoners, legal aid, free and fair elections, and so on. Also, there are social, economic and cultural rights

¹² *H. Rights Protection, supra note 7.*

¹³ *Id.*

¹⁴ Craig Scott and Patrick Macklem, *Constitutional Ropes of Sand or Justiciable Guarantees? Social Rights in a New South African Constitution*, 141 U. PA. L. REV. 1, 69-73 (1992) (This view is shared by David Bilchitz, *Towards a Reasonableness Approach to the Minimum Core: Laying the Foundations for Future Socio-Economic Rights to its Jurisprudence*, 19 SAJHR 1 (2003) and Illan Wall, *The Aspirational Nature of Economic, Social and Cultural Rights; an Examination of an Unsound Case, the Logical and Factual Misconception of Rights*, COLR 1 (2004)).

that simply require the State to refrain from interfering with individual freedoms, such as trade union freedoms or the right to seek work of one's choosing.¹⁵

In reality, the enjoyment of all human rights is intertwined. Thus, it is difficult for individuals who cannot read and write to find work, to take part in political activities, or to exercise their freedom of expression.¹⁶ Consequently, it is problematic to dichotomize civil and political rights on one side, and economic, social, and cultural on the other, and to rank them in a hierarchy of importance.

This growing realization of the importance of all human rights led to the negotiation and adoption of two separate international covenants in December of 1966 – the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights – which, taken together with the Universal Declaration of Human Rights, constitute the international human rights doctrine.¹⁷ In recent decades, the separation has since been abandoned, and human rights treaties such as the Convention on the Rights of the Child or the Convention on the Rights of Persons with Disabilities have incorporated all rights.¹⁸

The principle of indivisibility of human rights affirms that the right to property is not inferior to the other rights, such as freedom of expression or freedom of worship. They are inseparably interrelated. For instance, freedom of speech involves communication of one's opinions and ideas using one's body and property. Lichtenberg argues that freedom of the press is simply a form of property right summed up by the principle "no money, no voice".¹⁹

Some believe that the right to property equals right to life. A denial of a person's basic physical needs, such as food, clothing, shelter, fruits of his labor is a denial of one's right to life. In "An Arrow against all Tyrants" (1646) Richard Overton argued that:

"To every individual in nature is given an individual property by nature not to be invaded or usurped by any. For everyone, as he is himself, so he has a self propriety, else he could not be himself; and of this no second may presume to deprive of without manifest violation and affront to the very principles of nature of the rules of equity and justice between man and man. Mine and thine cannot be, except this. No man has power over my rights and liberties, and I over no man."²⁰

¹⁵ UN Human Rights, *Key concepts on ESCRs - Are economic, social and cultural rights fundamentally different from civil and political rights?*, available at <http://www.ohchr.org/EN/Issues/ESCR/Pages/AreESCRfundamentallydifferentfromcivilandpoliticalrights.aspx> [hereinafter UNHR].

¹⁶ *Id.*

¹⁷ PHILIP ALSTON, *THE UNITED NATIONS AND HUMAN RIGHTS* 24-37 (Clarendon Press 1992).

¹⁸ UNHR, *supra* note 15.

¹⁹ KAREN SANDERS, *ETHICS & JOURNALISM* 68 (Sage Pub., 2003).

²⁰ MICHELINE ISHAY, *THE HISTORY OF HUMAN RIGHTS: FROM ANCIENT TIMES TO THE GLOBALIZED ERA* 92 (U. Cal. Press. 2008).

The English Levellers identified property earned as the fruits of one's labor as sacred under the biblical injunction "thou shall not steal". John Locke (1632 – 1704), in his *Second Treatise on Civil Government* (1689), proclaimed that "everyman has a property in his person; this nobody has a right to but himself. The labor of his body and the work of his hand, we may say, are properly his". According to Locke the right to property and the right to life were inalienable rights, and that it was the duty of the State to secure these rights for individuals.²¹

Frederick Bastiat in "The Law" (1850) writes that God's gift to humankind is life – physical and moral life. But life cannot maintain itself alone. Humankind has the responsibility of preserving, developing, and perfecting it. By the application of human faculties to the natural resources placed around us by the Creator of life, these resources become products. "Life, faculties, production – in other words, individuality, liberty, and property – this is man." And these three gifts from God precede all human legislation, and are superior to it. "Life, Liberty and property do not exist because men have made laws. On the contrary, it was the fact that life, liberty, and property existed beforehand that caused men to make laws in the first place."

The right to property is recognized in Article 17 of the Universal Declaration of Human Rights. It is also found in the European Convention on Human Rights and in regional human rights instruments of Africa and the Americas.²² It is not subordinate to any right. There is no hierarchy of rights — all rights are equally deserving, and an approach that would place some rights over others must be avoided. No right is inherently superior to another right.²³

Perhaps, cases that present a clash of rights²⁴ involving the right to property ought not to be resolved based on a perceived hierarchy of rights, but on the following principles –

²¹ DABIEL W. ROSSIDES, *SOCIAL THEORY: ITS ORIGINS, HISTORY, AND CONTEMPORARY RELEVANCE* 52–54 (Rowman & Littlefield Pub. 1998).

²² GUDMUNDUR ALFREDSSON & ASBJORN EIDE, *THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: A COMMON STANDARD OF ACHIEVEMENT* 364 (Martinus Nijhoff Pub. 1999).

²³ *Dagenais v. Canadian Broadcasting Corp.*, 3 S.C.R. 877 (1994).

²⁴ Examples of competing or colliding rights are: (1) An employer, who claims to be a "born again" Christian, shares his religious beliefs with his employees. He invites them to his bible studies, prayer meetings, and he gives them Christian bibles. His employees do not welcome his conduct in their workplace. They assert their right to be free from discrimination based on creed, which they claim includes the right not to be subjected to proselytizing at work. The employer argues that he is exercising his freedom of expression rights; (2) A Filipino Catholic is asked to remove a wooden cross, Christmas lights, and Christmas tree from his balcony because these allegedly violate the condominium's regulations and interfere with the neighbours' enjoyment of the view. The Filipino might claim discrimination on the ground of creed while the condominium co-owners might claim a right to peaceful enjoyment of property (see *Syndicat Northcrest v. Amselem*, 2004 SCC 47); (3) In *R. v. O'Connor*, [1995] 4 S.C.R. 411, a case involving sexual offenses, the Supreme Court of Canada established a balance between the right of privacy of the victim's medical and therapeutic records in the possession of third parties such as physicians, and the accused's demand to release said records for his defense; (4) Some parents might favor sex education curriculum based on the right to public education and non-discrimination based on sexual orientation; other parents might oppose claiming discrimination on the ground of religious creed; (5) A religious organization imposes

(1) Aim to respect the importance of the rights involved; (2) Rights may not extend as far as claimed; (3) Must look at extent of interference (only *actual* burdens on rights trigger conflicts); (4) The core of a right is more protected than its periphery; (5) The full context, facts and constitutional values at stake, specially the principles of Social Justice, must be considered.

(1) Respect the importance of the rights involved -- Where rights appear to be in conflict, it is best to adopt the approach that respects the importance of the rights involved, as much as possible. There may be a “solution” that allows the enjoyment of each right. This may involve changing conditions or adjusting the way one or both parties enjoy their rights, such as altering schedules, working conditions, activity locations, and so on. For example, a woman with a disability uses a service dog to perform her work duties as a teacher, but a student in the classroom has her disability (allergies) triggered by the presence of the service dog. These competing rights claims might be resolved by assessing the needs of both parties and recognizing the equal importance of both needs. The employer/service provider might first look at the accommodation needs of both the employee and the student to find out if these are actually in conflict. Can the employee be supported through other ways without using the service dog? Are there alternative options for meeting the student’s needs? Are there other instructors the student can study with, or other sessions she could attend? Exploring a combination of solutions might allow each to enjoy their rights.

(2) Rights may not extend as far as claimed -- For competing rights to arise, a legal right must first be found to exist.²⁵ Not every rights claim is legally valid. For example, there are those that are presented as a human right claim, when it is in fact a mere “customer preference” For example, those who object to breastfeeding in public might present a freedom of expression claim to request the woman cover herself or to move to a private area, *etc.* At first glance, there appears to be a conflict between freedom of expression and freedom from discrimination based on sex. But court decisions in other jurisdictions have already established a woman’s right to breastfeed in public.²⁶ These decisions have ruled that preventing a woman from breastfeeding in public is discriminatory. Absent any compelling, equally valid right (such as those related to health or safety), a woman has an unqualified right to breastfeed in public. There is no established positive legal right to individual preference. Not even a strong individual preference against public breastfeeding could stop the exercise of an established equality right.²⁷ An employee claiming discrimination after her employer denies her request for flexible work hours to meet childcare responsibilities is not a “competing rights” issues but is simply a

a religious code of behavior to its employees. An employee was dismissed because he is in a same-sex relationship. The dismissed employee might claim discrimination on the ground of sexual orientation while the religious organization might claim valid restrictions on terms of employment based on religious freedom and freedom of expression [Ontario Human Rights Commission v. Horizons, 2010 ONSC 2105 (CanLII)] .

²⁵ ONTARIO HUMAN RIGHTS COMMISSION, POLICY ON COMPETING HUMAN RIGHTS (2012), *citing* R. v. N.S., 102 O.R. (3d) 161 (ONCA 2010) [hereinafter Ontario HRC].

²⁶ *See, e.g.* Quebec et Giguere v. Montreal (Ville) 47 C.H.R.R. D/67. (2003).

²⁷ Ontario HRC, *supra* note 25.

request for accommodation on humanitarian grounds. The employer may cite financial hardship which could limit his ability to accommodate the request.²⁸ For instance, the right to non-discrimination in employment may not extend to personal care attendants contracted directly by the people in need who may have their own personal preferences such as sex, age, or the ability to speak a certain language.²⁹

(3) Must look at extent of interference (only *actual* burdens on rights trigger conflicts) -- Recognizing one's rights does not necessarily result to a violation of another person's rights. There must be an actual impact on the rights of another. Moreover, mere speculation of a rights violation is not enough. It must be shown that the enjoyment of one's right will harm another. Moreover, the extent of the harm or intrusion should be serious or substantial; if trivial, the right is not likely to be accorded any protection.³⁰ Many cases that present an apparent conflict of rights are resolved after examining whether the claims are actually found within the established boundaries of the rights. Properly delineating the boundaries of the rights help resolves any conflict between them. After properly scoping the boundaries of the rights, there might be no actual intrusion of one right onto the other. The right interference may simply be a perception and not real. As Justice Iacobucci has noted:

B. (R.) is a classic example of definitional reconciliation. Where a parent's right to religion is defined as not extending to the right to allow for religious medical choices which can harm a child, there really is no conflict between freedom of religion and life, liberty, and security of the person. This sentiment was echoed in *Trinity Western* where the Supreme Court noted that 'this is a case where any potential conflict should be resolved through a proper delineation of the rights and values involved. In essence, *properly defining the scope of the rights avoids a conflict in this case* (emphasis in original).³¹

(4) The core of a right is more protected than its periphery – An action violating the “core” of a right would most likely be more restricted than one found to violate the “periphery” of a right. For example, the courts have said that while it is constitutionally infirm to require religious officials to perform same-sex marriages contrary to their religious beliefs, it would not be constitutionally objectionable to require a person operating a business to offer his printing services to a same-sex organization even if he thinks it violates his religious beliefs. In the latter case, the court noted that commercial enterprise is at the “periphery” of freedom of religion, and therefore, the religious rights

²⁸ *Id.*

²⁹ Ontario Human Rights Code, § 24(1)(c) (1962).

³⁰ Ontario HRC, *supra* note 25.

³¹ *Id.*, citing The Honourable Justice Frank Iacobucci, *Reconciling Rights' The Supreme Court of Canada's Approach to Competing Charter Rights*, 20 SUP CT L REV. 137, 163 (2003).

had to give way to the right to be free from discrimination in services based on sexual orientation.³²

(5) The full context, facts and constitutional values at stake, specially the constitutional provisions on social justice, must be considered – Human rights do not exist in a vacuum, and they should be examined in the light of the factual context and the constitutional values in which they arise. For example, the impact of exercising the freedom of expression on another in a specific factual setting should be carefully assessed because as noted by Justice Rosalie Abella in her dissenting opinion in *Bou Malhab v. Diffusion Métromédia CMR Inc.*, “[T]here is a big difference between yelling “fire” in a crowded theatre and yelling “theatre” in a crowded fire station.”³³ The precise content, tone, and manner of delivery of the expression have a significant impact on gauging the degree of its constitutional protection.

In resolving conflicting rights, the courts must be guided by the values and principles essential to a free and democratic society, namely respect for the inherent dignity of the human person, commitment to social justice, equality, rule of law, love, and peace, promotion of the common good, establishment of a just and humane society that embodies the people’s ideals and aspirations, conservation of the country’s patrimony, and all those inscribed in the Philippine Constitution’s Preamble.

The values extolled in the Preamble are not seen as hierarchical; one establishes and gives meaning to the other. The equality of each individual is fostered by creating a climate of mutual respect. At the same time, a just and humane society is created by appreciating the inherent dignity and worth of each individual.³⁴

There have been cases where certain claims lost because these claims were not consistent with society’s underlying values, and vice versa. In Canada, *Chamberlain v. Surrey School District No. 36*³⁵ involved a challenge to a school board’s decision not to approve three books showing same-sex parented families as learning resources to teach the family life curriculum. The Supreme Court of Canada noted that while religious concerns of some parents could be considered, they could not be used to deny equal recognition and respect to other members of the community. While the court recognized the right to hold religious views, including the view that the practices of others are undesirable, these views could not become the basis of school policy if the school were to function in a climate of tolerance and respect.

³² Brockie v. Brillinger (No. 2), 43 C.H.R.R. D/90 (Ont. Sup.Ct. 2002) (the Divisional Court noted that Mr. Brockie’s exercise of his right to freedom of religion in the business world is, at best, at the right’s periphery. Therefore, his right to freedom of religion may be legally restricted if found to cause harm to another, such as violating one’s right to be free from discrimination based on sexual orientation. The court left open the question of whether a different conclusion could be reached if the material being printed contained material that “might reasonably be held to be in direct conflict with the core elements of Mr. Brockie’s religious beliefs.”).

³³ Bou Malhab v. Diffusion Métromédia CMR Inc., 1 S.C.R. 214, ¶96 (2011).

³⁴ Ontario HRC, *supra* note 25.

³⁵ Chamberlain v. Surrey School District No. 36, 4 S.C.R. 710 (2002).

At this point, it is appropriate to discuss more lengthily the concept of social justice because in the Philippine legal setting, the constitutional provisions on social justice appear to be all-embracing, reflecting numerous constitutional values. Moreover, as Philippine jurisprudence shows, social justice is often alluded to in cases involving marginalized and disadvantaged parties. Social Justice has become a counter-balance to the rights of the rich, powerful, and influential, the claims of the State, and the severity of the law.

The United Nations considered the term "social justice" as a substitute for the protection of human rights. It first appeared in United Nations texts during the second half of the 1960s. At the initiative of the Soviet Union, and with the support of developing countries, the term was used in the Declaration on Social Progress and Development, adopted in 1969.³⁶

Traces of the concept of social justice can be detected in Ancient and Renaissance philosophy in the works of Socrates³⁷, Plato³⁸, Aristotle³⁹, Thomas Aquinas⁴⁰, Spinoza⁴¹ and Thomas Paine.⁴² But the term "social justice" was explicitly used only from the 1840s. A Jesuit priest named Luigi Taparelli is typically credited with coining the term,⁴³ and it spread during the revolutions of 1848. In the late industrial revolution, progressive American legal scholars, particularly Louis Brandeis and Roscoe Pound started to use the term more. International law and institutions began to use the word from the early 20th century, . it was also embedded in international law and institutions began to use the word, starting with the Treaty of Versailles of 1919. The Constitution of the International Labour Organization states in its Preamble that "universal and lasting peace can be established only if it is based upon social justice. In the later 20th century, John Rawls in "A Theory of Justice" (1971) extensively wrote about social justice. In 1993, the Vienna Declaration and Programme of Action dealt with social justice as a purpose of the human rights education.⁴⁴ In the Philippine legal setting, social justice is not limited to who gets what in terms of material resources, time or opportunities,⁴⁵ but is much more comprehensive. The

³⁶ UN Department of Economic and Social Affairs, Division for Social Policy and Development, The International Forum for Social Development, *Social Justice in an Open World: The Role of the United Nations*, UN ST/ESA/305 52 (2006).

³⁷ PLATO, CRITO (360 B.C.E).

³⁸ PLATO, THE REPUBLIC (380 B.C.E.).

³⁹ ARISTOTLE, NICOMACHEAN ETHICS, Book V(3) (350 B.C.E).

⁴⁰ NICHOLAS M. HEALY, THOMAS AQUINAS: THEOLOGIAN OF THE CHRISTIAN LIFE (Ashgate Pub. 2003).

⁴¹ RAY MONK & FREDERIC RAPHAEL, THE GREAT PHILOSOPHERS 135-174 (2000), *citing* TRACTATUS DE INTELLECTUS EMENDATIONE (1677) OR ON THE IMPROVEMENT OF THE UNDERSTANDING.

⁴² THOMAS PAINE, RIGHTS OF MAN (1791).

⁴³ J. ZAIDA, S. MAJHANOVICH, & V. RUST, EDUCATION AND SOCIAL JUSTICE (2006).

⁴⁴ Vienna Declaration and Programme of Action, Part II.D, available at <http://www.ohchr.org/Documents/ProfessionalInterest/vienna.pdf>.

⁴⁵ See JOHN RAWLS, A THEORY OF JUSTICE (1971).

Philippine Constitution on social justice encompasses socio-economic rights spread out in Article II (Declaration of Principles and State Policies), Article XIII (Social Justice and Human Rights), Article XIV (Education, Science and Technology, Arts, Culture, and Sports) and Article XV (The Family).

Article XIII alone provides for the enhancement of human dignity, reduction of social, economic, and political inequalities, removal of cultural inequities, creation of economic opportunities based on freedom of initiative and self-reliance, full protection to labor, full employment and equality of employment opportunities, rights to self-organization, collective bargaining and negotiations, peaceful concerted activities, security of tenure, humane conditions of work and a living wage, participation in policy and decision-making processes, shared responsibility between labor and management, right of labor to its share in the fruits of production, right of enterprises to reasonable returns to investments, expansion and growth. Social justice also promotes industrialization, privatization of public sector enterprises, the right of landless farmers to own the lands they till or to receive a just share of the fruits, the just distribution of all agricultural lands, agrarian reform, stewardship in the disposition or utilization of other natural resources, homestead rights of small settlers, rights of indigenous communities to their ancestral lands, rights of fishworkers to a just share in the utilization of marine and fishing resources, urban land reform, affordable and decent housing and basic services, respect for the rights of small property owners, integrated and comprehensive health development, affordable health care, priority for the needs of the under-privileged, sick, elderly, disabled, women, and children, free medical care to paupers, effective food and drug regulatory system, the rehabilitation, self-development, and self-reliance of disabled persons and their integration into the mainstream of society, the protection of working women, respect for the role of independent people's organizations, the rights of subsistence fishermen, especially of local communities, to the preferential use of the communal marine and fishing resources, the protection, development, and conservation of marine and fishing resources, effective participation at all levels of social, political, and economic decision-making, and the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad.

Thus, the comprehensiveness of social justice in the Philippine Constitution allowed the Supreme Court, through Mr. Chief Justice Panganiban, in *Philippine Commercial International Bank v. Abad*, G.R. No. 158045, February 28, 2005, to grant separation pay to an employee whose employment was lawfully terminated by the employer.

x x x an employee dismissed for any of the just causes enumerated under Article 282 of the Labor Code is not, as a rule, entitled to separation pay.⁴⁶

As an exception, allowing the grant of separation pay or some other financial assistance to an employee dismissed for just causes is based on equity.⁴⁷ The Court has granted separation pay as a measure of social

⁴⁶ San Miguel Corp. v. Lao, 433 Phil. 890, 897 (2002).

⁴⁷ Aparente Sr. v. NLRC, 387 Phil. 96, 107 (2000).

justice even when an employee has been validly dismissed, as long as the dismissal was not due to serious misconduct or reflective of personal integrity or morality.

This equitable principle was explained in *San Miguel Corporation v. Lao*⁴⁸ as follows:

“In *Soco v. Mercantile Corporation of Davao* [148 SCRA 526, March 16, 1987], separation pay was granted to an employee who had been dismissed for using the company vehicle for a private purpose. In *Tanala v. National Labor Relations Commission* [322 Phil. 342, January 24, 1996] the payment of separation pay to an employee who had been dismissed for quarreling with a fellow worker outside the company premises was sustained. Likewise, in *Filipro, Inc. v. NLRC* [229 Phil. 150, October 16, 1999], an award of separation pay was decreed in favor of an employee who had been validly dismissed for preferring certain dealers in violation of company policy. The Court, however, disallowed the grant of separation pay to employees dismissed for serious misconduct or for some other causes reflecting on his moral character. In the case of *Philippine Long Distance Telephone Co. (PLDT) v. NLRC and Abucay* [164 SCRA 671, 682, August 23, 1988], the Court clarified a perceived incongruence in its several pronouncements by stating thusly:

‘We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.

‘x x x x x x x x x

‘The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. At best it may mitigate the penalty but it certainly will not condone the offense.’

In *CIR v Central Luzon Drug Corp.*, G.R. No. 159647, April 15, 2005, the Supreme Court, again through Mr. Chief Justice Panganiban, allowed tax credits to private establishments who extend discounts to senior citizens as required by law even if the establishments report a net loss. The *tax credit* may still be deducted from a *future*, not a *present*, tax liability. Said the Supreme Court:

⁴⁸ *San Miguel Corp. v. Lao*, 433 Phil. 890, 897 (2002).

While it is a declared commitment under Section 1 of RA 7432, social justice “cannot be invoked to trample on the rights of property owners who under our Constitution and laws are also entitled to protection. The social justice consecrated in our [C]onstitution [is] not intended to take away rights from a person and give them to another who is not entitled thereto.” For this reason, a just compensation for income that is taken away x x x becomes necessary. It is in the *tax credit* that our legislators find support to realize social justice, and no administrative body can alter that fact.

In *Employees' Compensation Commission v. CA and Alvaran*, G.R. No. 115858, June 28, 1996, the GSIS denied the claim of a police officer's widow because at the time of the police officer's death, he was at the Mandaluyong Police Station accompanying his son for an investigation when he was supposed to be at the Pasig Provincial Jail as 2nd Shift Jailer and with a specific duty to perform at said provincial jail. From the perspective of the GSIS, the deceased police officer “was plainly acting as a father to his son, an act which is purely personal, foreign and unrelated to his employment. His having been killed at the place where he was not required to be and while he was not in the performance of his duty, cannot be considered to have arisen out of and in the course of employment.”

Mr. Chief Justice Panganiban, speaking for the Supreme Court, reversed the GSIS ruling, holding that “for purposes of determining compensation to be given their widows and orphans, policemen -- by the nature of their functions -- are deemed to be on 24-hour duty. x x x since the public demands, as it ought to, strict performance of duty by our lawmen in maintaining peace and security, the government, in the same measure, must be ready to compensate their heirs who are left without any means of support. Applying social justice, the Court said:

Finally, in *Vicente vs. Employees' Compensation Commission*, we held that in case of doubt, “the sympathy of the law on social security is toward its beneficiaries, and the law, by its own terms, requires a construction of utmost liberality in their favor.” For this reason, this Court lends a very sympathetic ear to the cries of the poor widows and orphans of police officers. If we must demand - as we ought to - strict accountability from our policemen in safeguarding peace and order day and night, we must also to the same extent be ready to compensate their loved ones who, by their untimely death, are left without any means of supporting themselves.

Revisiting the case of *Philippine Blooming Mills Employment Organization, et al v. Philippine Blooming Mills Co., Inc. and CIR*⁴⁹, the Court could have arrived at the same decision favoring the employees without declaring a hierarchy of human rights. There was no showing that the extent of the intrusion or harm to the employer or the Company was serious or substantial. The Supreme Court said that the employer's claim of loss is

⁴⁹ Phil. Blooming Mills Employment Org., et al v. Phil. Blooming Mills Co., Inc., G.R. No. L-31195 (1973).

a plea for the preservation of their property rights which would not spell the difference between the life and death of the firm or its owners. Material loss can be repaired or adequately compensated. On the other hand, the employees' anguish is much more serious. As the Court observed, "the debasement of the human being broken in morale and brutalized in spirit-can never be fully evaluated in monetary terms. The wounds fester and the scars remain to humiliate him to his dying day, even as he cries in anguish for retribution, denial of which is like rubbing salt on bruised tissues."

Moreover, the employer failed to point out what "core" of its right was violated. It is doubtful that it's right to property was seriously threatened. There was no showing that the strike could directly violate the employer's right to property; at the utmost, the strike could impose management adjustments or affect the size of its profits.

Social justice was also on the side of the employees. They had more to lose in life than the company. If the situation had been different where the employer is a mere sari-sari store owner and where the strike could seriously affect his means of livelihood, perhaps the decision would have been different. Either the court would accommodate both rights by reinstating the workers without pay, holding that the workers should have staged their strike outside their shift, or upheld the dismissal with separation pay.

A U.S. Supreme Court case⁵⁰ involving the right to property was decided without any mention of a hierarchy of rights. Zacchini, an entertainer, performs a "human cannonball" act in which he is shot from a cannon into a net some 200 feet away. He was engaged to perform at the fair grounds. Members of the public attending the fair were not charged a separate admission fee to observe his act. A freelance reporter for Scripps-Howard Broadcasting Co., the operator of a television broadcasting station, attended the fair. Zacchini noticed that the reporter carried a small movie camera. Upon Zacchini's request, the reporter did not videotape Zacchini's performance that day, but he did so the next day. The film clip recording the entire act, approximately 15 seconds in length, was shown on the TV news program that night, together with a favorable commentary.

Zacchini brought action for damages, alleging that showing the film of his act without his consent constitutes an unlawful appropriation of his professional property and a violation of his "right to publicity value of his performance."⁵¹ He is not contending that his appearance at the fair and his performance could not be reported by the press as newsworthy items. His complaint is that respondent filmed his entire act and displayed that film on television for the public to see and enjoy. This, he claimed, was an appropriation of his professional property.

The TV Company contended that the principle enunciated in the case of *New York Times Co. v. Sullivan*, 376 U. S. 254 (1964) and other cases is that "the press has a privilege to report matters of legitimate public interest even though such reports might

⁵⁰ Zacchini v. Scripps-Howard Broadcasting Co, 433 U.S. 562 (1977).

⁵¹ Zacchini v. Scripps-Howard Broadcasting Co., 47 Ohio St. 2d 224, 351 N. E. 2d 454, 455 (1976).

intrude on matters otherwise private," and concluded, therefore, that the press is also "privileged when an individual seeks to publicly exploit his talents while keeping the benefits private."⁵²

The Court ruled that the First and Fourteenth Amendments do not immunize the media when they broadcast a performer's entire act without his consent. The broadcast of a film of petitioner's entire act poses a substantial threat to the economic value of that performance. Zacchini's act is the product of petitioner's own talents and energy, the end result of much time, effort, and expense. Much of its economic value lies in the "right of exclusive control over the publicity given to his performance"; if the public can see the act free on television, it will be less willing to pay to see it at the fair. The effect of a public broadcast of the performance is similar to preventing petitioner from charging an admission fee.

There is no doubt that entertainment, as well as news, enjoys First Amendment protection. It is also true that entertainment itself can be important news. But it is important to note that neither the public nor respondent will be deprived of the benefit of petitioner's performance as long as his commercial stake in his act is appropriately recognized. Petitioner does not seek to enjoin the broadcast of his performance; he simply wants to be paid for it.

The joint dissent opinion of Mr. Justice Powell, Mr. Justice Brennan, and Mr. Justice Marshall pointed out that there is no indication that the TV Company made any commercial use of the film. Instead, it simply reported on a newsworthy event by means of film coverage. The report was part of an ordinary daily news program, consuming a total of 15 seconds. It is a routine example of the press' fulfilling its vital informing function.

According to the dissenters, the Court's holding that the station's ordinary news report may give rise to substantial liability has disturbing implications, for the decision could lead to a degree of media self-censorship.⁵³ A television news editor, unsure whether certain film footage might be held to portray an "entire act", may decline coverage—even of clearly newsworthy events—or confine the broadcast to toned-down verbal reporting, perhaps with an occasional still picture. "The public is then the loser. This is hardly the kind of news reportage that the First Amendment is meant to foster".⁵⁴ The Zacchini case is a classic example of a clash between a private economic right and a public right. The court chose to adopt the approach that respects the importance of both rights. It recognized the right of the media to report Zacchini's performance as newsworthy items, or even to broadcast Zacchini's entire act, but it also accommodated Zacchini's "right of exclusive control over the publicity given to his performance" and his right to be compensated for the appropriation of his property without his consent. The

⁵² *Zacchini v. Scripps-Howard Broadcasting Co.*, 47 Ohio St. 2d, at 234, 351 N. E. 2d, at 461 (1976).

⁵³ *Smith v. California*, 361 U. S. 147, 150-154 (1959).

⁵⁴ See generally *Miami Herald Publishing Co. v. Tornillo*, 418 U. S. 241, 257-258 (1974); *Time, Inc. v. Hill*, 385 U. S. 374, 389 (1967); *New York Times Co. v. Sullivan*, 376 U. S. 254, 270-272, 279 (1964).

TV Company's defense that there was no commercial use of the film fails to consider that even news programs compete for ratings. The more people tune in to a news program, the higher the rating. High ratings translate to more advertisers, more clients, more commercial value.

The TV Company's right to report news – the “core” of the right – was not challenged by Zacchini. What the TV company wants the court to uphold is its broadcast of Zacchini's entire act, which appears to be mere “periphery” of the right – periphery because the TV company was not able to establish that broadcasting the entire performance – which was merely for entertainment purposes -- was necessary for its vital informing function.

Finally, the Zacchini case applied social justice principles as found in the Philippine constitution in deciding the case. such as the creation of economic opportunities, full protection to labor, right of labor to its share in the fruits of production, right of enterprises to reasonable returns to investments, respect for the rights of small property owners, and the protection of human rights.

In a California case,⁵⁵ the California Supreme Court upheld property rights, which includes the right not to surrender one's property to an unlawful demand, over another's claim to right to life. In this case, a customer sued a KFC restaurant for damages for her emotional distress, medical expenses, loss of wages and earning capacity. The plaintiff customer alleged that she was seized and held at gunpoint by an armed robber who demanded money from the restaurant and her, and threatened her with serious injury if KFC employees did not give him the money in the cash register. The store cashier did not comply, instead falsely telling the robber that she would have to get the key for cash register from the back of the restaurant. The robber became agitated and angry, shoved the gun on plaintiff's back, and told the cashier he would shoot the plaintiff. The plaintiff screamed at the cashier who then opened the register and gave the money to the robber. The robber then fled.

The majority opinion of the Supreme Court of California held that there is no duty to comply with the demands of a robber even when the robber is holding and threatening a hostage. There is no basis to assume that yielding to the robber's demands would guarantee the hostage's safety. Robbers are unpredictable and often injure victims and others even when there is no resistance. A finding of a duty to comply would be contrary to the public interest as it would encourage hostage taking by robbers. Since the KFC employee did not engage in active resistance to the robbery, there is no issue on whether the employee's right to engage the robber includes a duty to avoid injury to third persons or whether a duty exists to avoid physical resistance that might provoke a robber to harm third persons. The rule is simply that “there is no duty to comply with a robber's unlawful demand for the surrender of property. Simple refusal to obey does not breach any duty to third persons present on the premises”.

⁵⁵ KFC of California, Inc. v. Sup Ct LA County, 14 Cal.4th 814, 59 Cal.Rptr.2d 756; 927 P.2d 1260, No. S051085 (1997).

The Supreme Court of California refused to extend a person's claim to right to life to imposing a duty of an innocent third person to surrender his property. The KFC customer's right to life was being seriously threatened by the robber, but her right did not translate to a recognition of a duty on the part of the KFC employee to surrender property rights, especially to the unlawful demand of the robber, even when it meant putting the customer's life in grave danger. The Court was careful not to engage in a discussion of a hierarchy of rights, but resolved the case based on the principle that not all rights extend as far as claimed.

In a series of cases beginning with *Lloyd Corp. Ltd. v. Tanner*, 407 U.S. 551 (1972), the United States Supreme Court has made it clear that *private property owners* may restrict freedom of speech on private premises. *Lloyd* involved the Lloyd Center in Portland with extensive parking facilities, malls, auditorium, skating rink, and multi-level buildings with stores. The Center is privately-owned. The Court ruled that the Center, being privately-owned, could ban leafleting against the Vietnam War. In *Hudgens v. National Labor Relations Bd.*, 424 U.S. 507 (1976), the Court ruled that a shopping mall owner could exclude striking union members from picketing in front of their employer's store leased from the mall owner. Then, the Court, in *Pruneyard Shopping Center v. Robins*, 447 U.S. 74 (1980), ruled that a private shopping center may restrict the freedom of speech inside mall premises. The Court upheld a shopping mall owner's exclusion of certain students protesting a U.N. resolution against Zionism. *Pruneyard* qualified, however, that state law may authorize speech even inside mall premises.

The Washington Supreme Court addressed the speech issue in malls for the first time in *Alderwood Assoc. v. Wash. Environmental Council*, 96 Wn.2d 230, 635 P.2d 108 (1981). By one vote, the Court said that the Washington Constitution is more protective of individual speech, and declared that signature-gathering at some place at a certain time in a certain manner is a constitutionally guaranteed practice.

In *Southcenter Joint Venture v. National Democratic Policy Committee*, 113 Wn.2d 413, 780 P.2d 1282 (1989), the Court ruled that the followers of Lyndon LaRouche had no right to solicit contributions or sell literature at Southcenter because it was a privately owned shopping mall. It ruled that the Constitutional injunction against any action restricting freedom of speech refers to state action, not action by private owners. Thus, mall and store owners may restrain persons from engaging in political, charitable, or religious activities on their premises.

In *Walmart, Inc. v. Progressive Campaigns, Inc.*, 139 Wn.2d 623, 989 P.2d 524 (1999), signature gatherers for an initiative wanted to take signatures inside traditional grocery stores which were not shopping malls. Walmart banned all signature gathering and charitable solicitations on its stores' premises. The Court acknowledged a limited right to gather signatures for initiative/referendum measures, but the Court held that such a limited right was not applicable to Walmart's stores which does not qualify as a public forum. The exception to the property owner's sovereignty over his property in favor of activities for an initiative or referendum is where the private property is a shopping center that bears the earmarks of a town square or public forum.

In summation, Washington law, like federal law, allows a private property owner to exclude all speech-related activities from the private premises. Both constitutional provisions protect speech from *government* action limiting such speech, but not restrictions by private property owners. Washington seems to recognize a narrow exception that may allow signature gathering for initiatives and referenda on private premises, but only to shopping malls or other places having the characteristics of a public forum, and subject to the restrictions of place, time, and manner.

The shopping mall cases were clearly resolved not on the basis of a hierarchy of rights, but on the principles previously discussed in this paper. The shopping malls may provide the place, time, and manner for the political, charitable, or religious activities, solicitations, or signature-gathering with the objective of respecting and allowing the rights involved. Moreover, the courts noted that freedom of speech did not extend to private premises where the rights of the owner should be respected as well. The injunction against any action that curtails speech refers to government action not restrictions imposed by private owners on one's own property. Finally, restrictions imposed by the shopping malls do not seriously impact on the person's freedom of speech as the person may still proceed with his speech activities, solicitations, or signature-gathering outside the private premises.

While the courts have not established a clear rule or formula to resolve cases involving competing rights, there are certain legal principles that provide some guidance. First, where rights appear to be in conflict, decision-makers are urged to try to "reconcile" both sets of rights. Second, in resolving the case, the decision-maker should determine which one is the established right, not a mere individual preference. Another principle is that there must be an actual impact on the rights of another. Mere speculation of a rights violation is not enough. Third, the core of a right is more protected than its periphery. And finally, the full context, facts and constitutional values at stake, specially the constitutional provisions on social justice, should be considered.

It should be noted that the discussion in this paper is limited to competing or colliding private human rights, involving right to property. Cases that involve one's right to property against the State's police power or eminent domain or those that involve intellectual property rights against the right to health are outside the scope of this paper. Perhaps, that would be a good topic for future studies.

Respect for private property promotes human creativity and flourishing. Private property, which includes the talents, skills, and abilities of people, allows them to choose and specialize on different occupations, enterprises, products, lifestyles, etc. without interfering with the freedom of others to do the same. They apply their abilities and knowledge to the creation of goods and services.

It can be said that human rights are extensions of property rights. For example, if the government owns all the printing presses, paper, and distribution systems, there is no freedom of the press. If the government owns all buildings and prints all reading materials, there is no freedom of religion. It can also be said that property right is an

extension of the right to life, which is the most fundamental of all rights. The right to life necessarily includes the right to defend that life from harm. It must also include the right to sustain that life through one's labor and property. Property rights are, thus, an extension to the right to life. To a poor individual, his bread for the day, his wages for his toil, his humble abode are his life's essentials. When even these are taken away, he is stripped of his humanity. How can he think of let alone exercise his freedom of expression or the meaning of liberty when he has nothing to eat.

It is curious that God created property first before humans. He designed property to be humanity's source of food, even source of life. It is also curious to note that of the values that both the constitutions of the United States and the Philippines so sacredly protect, it is only property – the other two being life and liberty – that people cannot be deprived of without due process of law **and** just compensation. With due process of law, life and liberty can be taken away even without compensation.

In the beginning, God created property, then humans, then bestowed upon them the freedom to use and dominate property, then He exhorted them to multiply, be fruitful, be prosperous. Property, Life, Liberty – one seamless Right on the road to Prosperity.