Resolving Conflicts of Rights: Russ Shaffer-Landau and Judith Jarvis Thomson Revisited

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ABSTRACT

This manuscript examines two accounts that discuss rights disputes. On the one hand, Russ Shafer-Landau argues for specificationism (or what is referred to here as SA), which deems rights as having innate limitations. One the other, Judith Jarvis Thomson defends infringement theory (or what is referred to here as IVA), which views rights to be competing factors. Shafer-Landau in "Specifying Absolute Rights" endeavored to discredit Thomson's IVA and promote his favored theory. This material responds to and criticizes the claims Shafer-Landau pressed in his article. First part of the thesis addresses his concerns and finds them unconvincing. Using tools of logic, it is demonstrated that Shafer-Landau's demands on compensation are without warrant. More than this, his demands on the tripartite are misguided. Second part tackles some shortcomings of SA. One of which is the finding that two of the three arguments Shafer-Landau posited for SA's superiority run counter to each other. Should Shafer-Landau save one, it would remain untenable for the foundations therein rest on a mistake. Finally, his position of SA being sufficiently explanatory is in itself wanting. Though this material does not go as far as proving which theory is practically better, the project is not bereft of purpose. By the end, IVA would already have been relieved of the criticisms whereas SA would be confronted with multiple challenges.

Key words: *Conflict of rights, Specificationism, Infringement Theory*

I. Introduction

Maria promised a friend that she would meet her at lunch in the park. Because of this promise Maria made, the friend is now entitled to expect her at the time and place agreed. Maria, on the other end of the promise, is obligated to assure that what has been promised obtains. But suppose minutes before the agreed time, Maria receives a phone call from her boss requesting her to address an untimely client concern. As an employee, Maria is obliged to answer to her boss and to the client. In such a case, both the friend and the employer have rights for Maria's presence and efforts. However, due to that the two activities are to happen at the same time in different locations, Maria could not possibly attend to both. At best, she could only fulfill either one of the claims.

This case is an instance of what has come to be known as the conflict of rights. A conflict of rights occurs when two or more rights cannot be acted upon, fulfilled, protected or, in general, advanced at the same time.[1]

Here, the conflict is between the friend's right to Maria's presence and the employer's right to her efforts. Since the two cannot be fulfilled simultaneously, here arises a tension between the friend's and the employer's separate claims. The two rights are in conflict with each other because Maria—the entity to whom the entitlements are directed at—is in no position to assure that the two rights obtain. She can only pursue one, and the pursuance of one results to a compromise of the other.

Apart from this quotidian example, the issue of conflicting rights is echoed, if not more pronounced, in the legal sphere. Majority of cases filed in courts concerns opposed claims by aggrieved parties. In fact, before the high court is legible to adjudicate on a case, one of the requisites is that "there must be an actual case or controversy involving a conflict of rights susceptible of judicial determination."[2]

To name a distinct few from the indefinitely increasing pool, one citizen has filed charges against newspaper group, complaining that the newspaper published defamatory claims against him. The court perceived this as a strife between the newspaper's right to free expression and the citizen's right against defamation.[3] In another, a group of parents on behalf of their children sued a school for expelling the children who resisted participation in a flag ceremony. The parents and children belonged to a certain religious sect which discouraged them from participating in ceremonial rights. The problem revolves around the children's right to exercise their religion and the school's right to expel students.[4] Third and last, in a landmark case, a union of workers filed suit against its employer, arguing that the employer is depriving the workers of their right to assembly. Rightfully so, the court construed it as a conflict between the worker's right to assembly and the owner's right to property.[5]

These are just among the multitude of cases embodying rights disputes. Within the law, rights are the central elements of issues to be resolved. Outside of law, rights, entitlements, and claims are also controlling figures. Rights are involved in the most mundane and most complex of situations. In almost every case, one could invoke a right to which one is entitled to. In such a

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[1] The use of "advancement" to encompass the variety of actions concerning rights is adopted from Hallie Liberto. See Hallie Liberto, "The Moral Specification of Rights: A Restricted Account," *Law and Philosophy* 33, no. 2 (2014): 195, DOI: 10.1007/s10982-013-9183-4.

[2] Artemio Panganiban , Separate Opinion on Sanlakas v. Reyes, G.R. No. 159085 (S.C. 2004).

[3] Policarpio v. Manila Times, G.R. No. L-16027 (S.C. 1962).

[4] Ebralinag et al v. The Division Superintendent of Schools of Cebu, G.R. No. 95770 (S.C. 1993).

[5] Philippine Blooming Mills Employment Organization v. Philippine Blooming Mills Co., G.R. No. L-31195 (S.C. 1973).

system where rights are easily available to us, tension between and among rights are practically everywhere.

Given this ubiquity, philosophers and legal scholars alike have probed, and continues to do so, this phenomenon of competing rights. In trying to resolve the apparent conflict of rights, multiple theories have been proposed. The two I will be examining here are Judith Jarvis Thomson's Infringement-Violation Account (IVA) and Russ Shafer-Landau's Specificationist Account (SA).

Thomson's account of rights conflict resolves it by claiming that rights have varying stringencies.[6] In one occasion, rights trump over other considerations. Other times, the considerations have a stronger appeal and the rights gives way to the consideration. Apart from this notion of varying stringency, IVA makes use of a laddered examination of infringement and violation.[7] This will be examined in more detail below, but to just introduce the idea, one right is supposedly infringed when a rights conflict occurs. This infringement then is subject to an examination of whether or not the infringement would constitute a violation.

Seeing that this account has several problems, Shafer-Landau publishes an article questioning Thomson's IVA.[8] In his article, his goals were simple: to point out some deficiencies in Thomson's theory and to propose his Specificationist views. This view, SA, is committed to the idea that rights are maximally stringent.[9] That is, in all cases where rights are present, rights trump over all other considerations. In cases of seeming rights conflict, said view argues that there is not a tension between two rights because one of the rights was not engaged in the situation.[10]

Shafer-Landau's arguments in his article are intriguing and stimulating. His Specificationism is one that is a common reference in the literature of both Specificationism and rights conflict.[11] However, despite his work being looked upon in the field, there is hardly any resource that tackles the arguments presented in the paper head-on.[12] The arguments he presented to IVA strike the account at its very core. Nevertheless, Thomson has not posed a response to Shafer-Landau's scathing remarks and neither does any of the authors that also utilize her account. Left untouched, the arguments against IVA and arguments for SA stand

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[6] Judith Jarvis Thomson, The Realm of Rights (Massachusetts: Harvard University Press, 1990), 153-154.
[7] Thomson, "Self Defense and Rights," in The Lindley Lecture (Kansas: University of Kansas, 1977), 10.
[8] Russ Shafer-Landau, "Specifying Absolute Rights," Arizona Law Review 37, no. 209.
[9] Ibid, 209.
[10] Ibid, 210.
[11] Some works that cite Shafer-Landau's article are: Liberto, "The Moral Specification of Rights: A Restricted Account." Jose Juan Moreso, "Ways of Solving Conflicts of Rights: Proportionalism and Specificationism," Ratio Juris 25, no. 1 (2012). John Oberdiek, "Specifying Rights Out of Necessity," Oxford Journal of Legal Studies 28, no. 1 (2008). Christopher Wellman, "On Conflicts between Rights," Law and Philosophy 14, no. 3 (1995). Grégoire Webber, The Negotiable Constitution: On the Limitation of Rights (New York: Cambridge University Press, 2009).
[12] One that is critical of Shafer-Landau's SA is Danny Frederick in "Pro-Tanto versus Absolute Rights," The Philosophical Forum 45, no. 4 (2014). However, Frederick is more concerned with promoting what he calls pro-tanto rights as opposed to responding directly to Shafer-Landau's claims.

their ground.

The project of this thesis is to address Shafer-Landau's points in his paper. This is discussed in two chapters: one is dedicated to diffusing Shafer-Landau's attacks against IVA (Chapter 3); the other is to refute his arguments for SA (Chapter 4). Prior to these, an exposition of IVA and SA is in order (Chapter 2).

II. EXPOSITION

A. Infringement-Violation Account

The first account to be examined is that which allows for the existence of conflict of rights: the Infringement-Violation Account (IVA). This theory to be analyzed is a composite of works that utilize the infringement-violation distinction.[13] Mostly, however, it stems from the work of Judith Jarvis Thomson to whom the distinction is owed.[14]

To IVA, when rights are in conflict, the way to resolve this is to reduce the stringency of a right while retaining that the situation is still within the scope of the right.[15] Consider an example commonly used in the literature of conflicting rights.[16] Suppose a hiker was exploring the mountains when suddenly a snowstorm engulfs the entire area he is in. The snowstorm is making the journey difficult for the hiker. More than that, it is a deadly one and if the hiker does not find shelter soon, it would be a tragic fate for him. Luckily, the hiker sees a cabin nearby. He approaches the cabin but finds that despite the cabin being well-kept, nobody is home. Left without not much of a choice, the hiker lets himself in. Hours and days pass and the snowstorm does not abate. To survive, the hiker chopped up some furniture in the cabin for firewood and helps himself to the food therein. In such a case, is there a conflict of rights?

To IVA, yes there is. Particularly, what persists in the situation is a conflict between the cabin owner's right to property and the hiker's right to life. In the given example, the conflict arises because in the problem at hand, the two rights cannot be advanced at the same time. That is, only one of the two is performable. Now to resolve this, IVA reduces the stringency of the right to property. This is done by accommodating the other right in question, that is the hiker's right to life. While still maintaining that the owner's right to property is present in the situation, IVA adjusts by reducing its strength in order to allow the hiker's right to life to be advanced.[17]

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[13] One contributor is Joel Feinberg. See Feinberg, "Voluntary Euthanasia and the Inalienable Right to Life," Tanner Lecture on Human Values (Michigan: The University of Michigan, 1977).
[14] Thomson, "Some Ruminations on Rights," Arizona Law Review 19, no. 45 (1977): 47.
[15] Shafer-Landau, "Specifying Absolute Rights," 209.
[16] Feinberg, "Voluntary Euthanasia," 233.
[17] Ibid.

How it does this reduction of stringency, IVA proceeds to address the conflict in two stages: (1) probing if a right has been infringed, and; (2) if there is an infringement, probing if a right has been violated.[18] By "infringement", Thomson means that another right has been engaged. In contemporary setting, rights infringement has become synonymous to "violation," "wronged," "breach," and "transgression," among other interpretations, one example of which is the commonly used phrase "copyright infringement." Thomson's use of "infringement" deviates from these usual denotations. For Thomson and for IVA, when a right has been infringed, it does not necessarily mean that the right of the other person has been illegally disregarded. Instead, "infringement" in IVA only entails that the right has been merely interacted with.

Thomson's "violation," on the contrary, coincides with our usual understanding. A rights violation occurs when the interaction with the right is impermissible. Phrased differently, a violation obtains when the act committed by the person other than the right-bearer is judged to be wrong. In the hiker case, IVA claims that given the rights conflict, the hiker has infringed on the cabin owner's right to property by helping himself in and using the resources present. The infringement, however, pace IVA, is permissible because the hiker's life was the price to be paid. This permissibility of the act is what constitutes the hiker's break in as a non-violation of the owner's right to property. In other words, although the owner's right to property has been infringed, no violation of the same right has occurred because the hiker is warranted to do as he did.[19] To fully understand the distinction between infringement and violation, consider a revised account of the Cabin case.

Suppose that another hiker is treading another mountain. Similar to the original Cabin case, this hiker finds an unoccupied cabin along the way. He enters the Cabin without the permission of the owner and uses the food and other available resources just as the hiker in the unaltered case. However, one crucial element distinguishes this revised case from the original: there is no snowstorm present. In such a case, this hiker's life is not at stake. He is simply a vandal who sought to make himself comfortable in the cabin on a sunny day. If so, it could not possibly be said that his right to life trumps over the cabin owner's property. There is no permissible break-in. This evaluation of the altered hiker's actions being impermissible or unjust is what constitutes a rights violation.[20] The original Cabin case was a mere rights infringement because the break-in was found to be just; the revised Cabin case a rights violation because the act, in those specified circumstances, was unjust.

Finally, it should be noted that one feature prominently held by IVA is the notion

[18] Thomson, "Some Rumination on Rights," 47.
[19] Feinberg, "Voluntary Euthanasia," 233
[20] Christopher Wellman, Rights, Forfeiture and Punishment, (New York: Oxford University Press, 2017), 68-69.

of compensation.[21] Compensation here can be an act (e.g. apology) accorded to the right-bearer or a material (e.g. furniture) provided to the right-bearer in exchange for the used resource. IVA's concept of compensation stems from Thomson's recognition that in moral dilemmas such as in the Cabin case, there is what she calls a "moral residue."[22] The hiker borrowed the cabin and used the resources available without the owner's permission. Although he is permitted to do so, IVA maintains that the hiker could not simply leave the premises once the snowstorm abates without being upfront to the owner about it. The hiker is morally obliged, upon having used the owner's properties, to reimburse what he has utilized. In his occupation of the cabin, there is a "residue" that the hiker needs to address. And the way to address this is to compensate. Where there is rights infringement and/or violation, compensation is in order.

B. Specificationist account

On the issue of rights conflict, Specificationist Account (SA), as espoused by Russ Shafer-Landau, denies that such a conflict exists. Given a situation where there is a seeming tension between two or more rights, SA dispels this conundrum by positing that the right of the one of the agents in the situation is not operative.[23] This is due to that the scope of the right does not include such particular situations.

Consider again the Cabin case mentioned in the previous section. Following Shafer-Landau, the problem of the Cabin case can be summarized as follows:

(1) The cabin owner has an exclusive right to the use of the cabin.
(2) Therefore all others have a duty not to use the cabin without the owner's permission.
(3) Therefore it is impermissible for anyone else to use the cabin without the owner's permission.
(4) But it is permissible for the hiker to use the cabin without permission.[24]

The four together, says SA, constitutes a contradiction. To avoid this, SA recommends that (1) be abandoned. (3), it is supposed, follows from (2) and (4) follows from (3). Hence, the only way to address the contradiction, is to dismiss (1). By abandoning (1), the rest of the claims can be tailored accordingly. What is/are SA's reason for doing so?

To understand SA's position on the non-existence of rights conflicts is to understand its conception of a right and a right's content. If, for IVA rights are always operative, SA, on the contrary, holds that the content of a right includes its exceptions,

[21] Thomson, "Self-Defense and Rights," 11.
[22] Thomson, The Realm of Rights, 84.
[23] Shafer-Landau, "Specifying Absolute Rights," 210.
[24] Ibid, 209.

and that a right is changing as it is subject to later additions of exceptions. Let us discuss this one by one.

For example, SA does not hold that one has right to life simpliciter, that is an unqualified right. Rather, that someone has a right to property where this right includes every exception established.[25] One such exception could include the case where the government needs the land for road widening. Since the land sequestration is directed at the good of the community, such a circumstance is added as an exception to the right to property. Hence, in SA, when one says that one has a right to property, this does not mean the right to property simpliciter as espoused by IVA, but a right to property that contains several exceptions such as the one supposed.

Apart from the inclusion of exceptions into the content of the right, SA maintains that these exceptions can increase. If there are novel or unexpected circumstances that are not extant exceptions of the right, but ones that should be, such circumstances could be added to the list of exceptions. This feature of post hoc patchwork is a feature exclusive to SA.[26]

Given these notion of rights, SA contends that in the Cabin case, insofar as the hiker is in a life-or-death situation where getting inside the and making use of the cabin is the only way to save his life, the owner does not a right to property in this particular situation. In other cases, sure, the cabin owner has a right to his property. But as understood in the SA structure, the right to property contains exclusions and one of such conclusions is when the someone is dying and the only way to save him is to permit entrance to the property. This way, SA deflects (1).

By averting from (1) SA is able to construe that rights conflict do not exist. More than that, it is able to stipulate, as Shafer-Landau does, that rights are absolute, i.e. maximally stringent.[27]

III. RELIEVING IVA

In the course of promoting SA, Shafer-Landau had to show that IVA is in several ways inadequate. To do this, he directed his criticisms to two important aspects of IVA. The first attack is on IVA's commitment to the notion of compensation. The second attack is focused on the relation of rights and duties. To dispute these claims and to take the load off of IVA is what animates this third chapter.

[25] Ibid, 212.
[26] Ibid, 214.
[27] Ibid, 225.

A. **On the compensation charges**

With respect to the notion of compensation, Shafer-Landau has two problems: (1) that IVA needs to explain why some compensation is at times present where right infringement is not, and (2) that IVA needs to explain how infringement meets the necessary and sufficient conditions for compensation. Shafer-Landau's inquiries are interesting and warrants a response.

There are instances where compensation is on the table, but without a trace of rights infringement. An example Shafer-Landau used to illustrate this point is when a customer drops by a gas station to fill up his car. The customer uses the product of the station, and from this, owes the gas station compensation in the form of payment for the resource. However, from this instance of compensation, no rights were infringed. Shafer-Landau then prompts IVA to explain how this compensation can exist without any rights being infringed.[28]

This is indeed puzzling at first blush. But upon further examination, and with a few tools of logic, this can easily be dispelled. The IVA premise is that compensation is necessary if a rights infringement has been caused. Alternatively, we can express this as "If rights infringement (I), then compensation (C)". Symbolically, this can be written as I → C.

Shafer-Landau's argument that compensation should also result to a rights infringement is, at best, fallacious. Using the above equation is useful to see this point.

$$\begin{aligned} &I \rightarrow C \\ &\quad C \\ &\therefore I \end{aligned}$$

This series of premises and conclusion is what is known as the fallacy of affirming the consequent. This is exactly what Shafer-Landau does in his invocation of the gas station example and the like. In the example, there is, according to him, compensation owed. Because of this compensation, he then proceeds to find the rights infringements, is dismayed at the discovery that there is none, and faults IVA for this. Given the above fallacy, however, the search for rights infringement in the gas station example is in the first instance misguided. There is nothing that allows I to obtain from an instantiation of C, if the IVA tenets are to be followed. In no way is Shafer-Landau in a position to demand the existence of rights infringement in an instance where compensation is present. Because of this, there is no reason for IVA to resolve this particular concern.

[28] Ibid, 216.

A more pressing matter is the second inquiry on compensation. Shafer-Landau states that infringement should be a necessary and sufficient condition for compensation for the IVA program to set sail.[29] The necessary element is a given as provided by the fact that if a right has been infringed, IVA acknowledges the need to compensate. The sufficient element, meanwhile, is controversial. IVA, he says, needs to prove sufficiency. Otherwise, if infringement is not a sufficient condition, if IVA is in need of other reasons to make the jump to compensation being a sufficient condition, this will weaken one of IVA's main tenets. In addition, these other reasons could be used by SA to make its case. Without having to say that a right has been infringed, SA could then point to these reasons which made sufficient the invocation of compensation.

This, I argue, is a hasty request. Similar to the first posed problem, Shafer-Landau's positions seem intuitive. But similar to the other problem, this request for explanations on the necessity and sufficiency conditions is ill-conceived.

IVA only promotes the relationship of infringement and compensation as: if there is infringement there is compensation owed, as expressed by the $I \rightarrow C$ equation. The conditions of necessity and sufficiency to apply to the $I \rightarrow C$ formula would be ascribing to IVA something that is beyond its scope. For something to be a necessary and sufficient condition, this should satisfy a one-to-one correspondence. That is, in terms of the infringement-compensation relation, to be a necessary and sufficient condition requires that infringement result to compensation and compensation result to infringement. Instead of the equation being "If there is infringement, then compensation is needed," the necessary and sufficient condition Shafer-Landau reformulates the equation to "Compensation is needed if and only if there is infringement." This makes it a two-way bridge between I and C resulting to $I \rightarrow C \wedge C \rightarrow I$. Symbolically, this tantamounts to $I \Leftrightarrow C$. Nowhere does IVA press this material equivalence. And nowhere does it have to claim it need be so. For IVA to maintain its notion of compensation, it only needs to argue for the $I \rightarrow C$ relation. Abstractions from this implication is beyond the contours of IVA.

B. On the right-duty-deontic judgment charge*

Apart from the supposed deficiencies on compensation, Shafer-Landau also pointed out that IVA lacked explanations on several aspects of the right, duties, and deontic judgments.

[29] Ibid, 217.

Consider the cabin case again:

(1) The cabin owner has an exclusive right to the use of the cabin.

(2) Therefore all others have a duty not to use the cabin without the owner's permission.

(3) Therefore it is impermissible for anyone else to use the cabin without the owner's permission.

(4) But it is permissible for the hiker to use the cabin without permission.

This breakdown, as mentioned in the previous chapter, presents to us a contradiction in that all four cannot be maintained. To extinguish this contradiction, Shafer-Landau posits that SA would deny (1). (2) follows from (1), (3) follows from (2), and (4) follows from (3). By denying (1) the rest of the equation are modified accordingly. IVA, however, as Shafer-Landau notes has not provided its answer as to which of the four it would deny.[30]

True enough, not one friend of IVA has identified which exactly among (1) - (4) IVA would come to abandon given the fact that not one has directly replied to Shafer-Landau's claims and demands as of writing. But, given the extant literature on IVA, specifically those by Thomson, it is possible to construe a route IVA would presumably take. Thomson, in many of her articles, discusses whether rights are absolute or not. By absolute, we mean that the right triumphs over other considerations at all costs. For Thomson, she defends the view that rights are not absolute in that there are situations where rights are not stringent.[31] One such situation is this Cabin case. If rights were absolute, that is if the owner's property right is absolute, it would not be permissible at all for the hiker to enter the premises under any circumstance. But as scholars who have chanced upon the hypothetical have admitted, the hiker is permitted to enter the cabin and use the resources available to him. This demonstrates that the property right of the cabin owner is not absolute. Some special circumstances, such as the Cabin case, warrant the infringement of a right and thus renders its absolute status untenable.

Relating this back to Shafer-Landau's demand of which IVA would deny, there is reason to believe that IVA would strike-through (1). In (1), it states "the cabin owner has an exclusive right to the use of the cabin." IVA would not deny that the Cabin owner has a right in the present issue. It is this very recognition of the right that allows for the infringement and compensation to obtain. What IVA would deny, nevertheless, is the idea of "exclusive" right. This exclusivity is closely related—and to a certain extent similar—to the aforementioned absolute status of rights. Property rights are absolute if they are the more stringent or more enforceable against all other considerations. Property rights are exclusive if they are stringent and enforceable regardless of the situation. Thomson

*Special thanks to Prof. Boongaling for pointing out several mistakes.

[30] Ibid, 210.

[31] Thomson, "Self-Defense and Rights," 11.

denies the supposed absoluteness of rights. As such, it is likely that Thomson would also deny this exclusivity. (1) then becomes "The cabin owner has a right to the use of the cabin" where the term "exclusive" is omitted.

The other demand with respect to rights, duties, and deontic judgments is that, according to Shafer-Landau, IVA has not proposed any theory on how to bar the inference from a full- fledged right to a full-fledged duty.[32] Recall that IVA posits that it is permissible for the hiker to use the cabin. This deontic judgment is, Shafer-Landau believes, rooted from the lack of duty on the hiker's part. But, IVA recognizes that the owner does in fact have a right in the present issue. Shafer-Landau then prompts IVA to explain how the existence of a right results to lack of duty, if full-fledged rights always entail full-fledged duties.

To answer this other demand, IVA does not need to bar the inference from rights to duties. As mentioned above, Thomson recognizes that full-fledged rights entail full-fledged duties. Hence, there is no need for IVA to explain how the right to duty is to be barred as Shafer- Landau posits. IVA maintains that there is a property right, but this property right is not absolute and is amenable to other considerations. This dent in the property right, in so far as rights result to duties, is carried over to the duty of other people with respect to the property. As the property right of the owner is not absolute, the hiker does not have a duty to the owner in the particular case at hand. The inference from right to duty remains.

The agenda of this section was to discredit what Shafer-Landau has posited as IVA's deficiencies. With the above, we believe that much has been established. But, this section could be extended further and provide a glimpse on a boost for IVA.

SA has a strictly formulated framework. It only allows for either the compliance or violation of a right. A right is complied with if it is not interfered with; a right is violated if it is, in any manner, meddled with. As attractive as this simplicity is, it simply cannot capture all the dynamics of a rights conflict. As shown by necessity cases such as the Cabin case, there are instances where it is permissible to interfere with a right without necessarily having to resort to a rights violation. IVA, by virtue of introducing the distinction between a rights infringement and a rights violation, provides moral theorists with a more expansive framework than the strict SA. IVA allocates an area of debate about the nature of the act, i.e. if it is unjust or not, with its differentiation of rights infringement and rights violation. Through this, it is possible to put a line between what actions are justifiable and which actions are not.

[32] Shafer-Landau, "Specifying Absolute Rights," 222.

IV. DOWNPLAYING SA

In his article, Shafer-Landau posits three arguments for SA: one, that SA is compatible with Particularism, i.e. the view that there can be no moral principles (hereinafter Argument 1); two, that SA presents a workable theory of the relation among rights, duty, and deontic judgments (Argument 2), and; three, that IVA fails Thomson's explanatory efficacy test and that SA rights are sufficiently explanatory (Argument 3).[33] The second argument has been entertained in the previous section. For reasons to be identified later, the third argument shall be examined first and then the other. It is the position of this section that the first and third arguments together are not compatible.

A. **Two inconsistent arguments**

With regard to Argument 3, there are a couple of propositions at work here so a bit of unpacking is wanting.

In one of her articles, Thomson faults SA for being unable to sufficiently explain why an act is permissible or not.[34] Based from this criticism, Shafer-Landau construes what he believes as the explanatory test for Thomson.[35][36] Rights are explanatory if a moral principle[37] is conjoined with factual instances which together entail a more particular conclusion. Given this feature, Shafer-Landau demonstrates that IVA fails the very same standards Thomson accuses SA of not being able to meet. How IVA fails said test, Shafer-Landau proves this in an aggregate of propositions. If my understanding is correct, the reasoning is as follows:

(P1) An account passes an explanatory test if it conjoins a moral principle and a factual claim that would result to a more particular conclusion.
(P2) IVA does not use a moral principle.
(C) IVA fails the explanatory test.

But before the conclusion can be held, Shafer-Landau needed to prove first that P2 is correct. To posit that IVA does not use a moral principle in its explanatory venture, Shafer- Landau argues that there are no moral principles in the first place, so these cannot be at IVA's disposal. Phrased differently, for IVA to say that it uses a moral principle and factual claim to prove explanatory efficacy is false because there are no moral principles available to IVA.

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[33] Shafer-Landau, "Specifying Absolute Rights," 223.
[34] Thomson, "Self- Defense and Rights," 9.
[35] Shafer-Landau, "Specifying Absolute Rights," 212.
[36] Shafer-Landau, "Specifying Absolute Rights," 212.
36 In large part, I believe Shafer-Landau's interpretation and construal of the explanatory test is misplaced. But for the sake of argument, its truth is to be granted.
[37] Moral principle here coming to mean "X has a right".

Well and good. Proceeding then to the Argument 1, it stipulates that only SA is compatible with Particularism. Flipping the statement over, it states that IVA is incompatible with Particularism. Such a conclusion is proven in the following way:

(P1*) Particularism uses narrowly tailored rights.
(P2*) Any theory that uses narrowly tailored rights are compatible with Particularism.
(P3*) SA uses narrowly tailored rights.
(C*) Therefore SA compatible with Particularism.

Using the same idea, this is how the proof for IVA's incompatibility with Particularism looks like:

(P1**) Particularism uses narrowly tailored rights.
(P2**) Any theory that uses narrowly tailored rights are compatible with Particularism.
(P3**) IVA uses generally described rights.
(C**) Therefore IVA is incompatible with Particularism.

These sets of premises and conclusions appear valid. Alone, Argument 1 can be maintained. However, when the premises and conclusions from the Argument 3 are meshed with the set for the Argument 1, the problem surfaces.

Focus on P3** which states that IVA uses generally described rights.[38] The ontological claim here for Argument 1 is that there are generally described principles such as rights. Focus now on the P2 of Argument 3. It says that IVA does not use a moral principle because there are no general moral principles to begin with. The ontological claim for this set of arguments meanwhile is that there are no generally described moral principles. Put succinctly, Argument 1 ascribes a positive ontological claim on generally described moral principles while Argument 3 ascribes a negative ontological claim on the same generally described moral principles. This inconsistency has disastrous consequences. Depending on which ontological claim is held, only one between Argument 1 and Argument 3 is tenable.

Let us take first the ontological claim that there are general moral principles. If this is true, or at least if this is the claim held, Argument 1 (IVA-Particularism incompatibility) is valid. However, by the same token, if the ontological claim that there are general moral principles is held, Argument 3 (IVA fails Thomson's explanatory test) would not follow. To reiterate, the reason why IVA is said to fail the explanatory test is

[38] By "generally described rights," I am supposing Shafer-Landau meant the properties are taken to be applicable in a wide range of circumstances without attending to their nuances. In a sense, this is equivalent to the terms "principle," "moral principle," "properties," "moral properties," "general rights," and other similar terminologies as employed by Shafer-Landau in his article.

because it cannot use moral principles which in turn is caused by the belief that there are no moral principles. To hold Argument 1 would be to give up Argument 3.

Conversely, we could also side with the ontological claim, for the sake of argument, that there no general moral principles. If this position is held, Argument 3 would then be tenable. But, in exchange, if we think there are no general moral principles, Argument 1 could not be valid. To say that there are no moral principles is counter the premise that IVA uses generally described moral principles. In this case, to hold Argument 3 amounts to forsaking Argument 1.

Maintaining both Arguments 1 and 3 at the same time gives us an inconsistent framework. The one only nullifies the other and vice versa. Nevertheless, Shafer-Landau could still save the enterprise by picking either one of the arguments. This does not assure though that the argument chosen would establish still the positive case for SA.

B. An attempt to avoid the inconsistency

Should Shafer-Landau decide to retain Argument 1, he would have to side with the positive ontological claim on general principles. Recall that the claim to Particularism is that each instance is different from another and so the judgment on the one cannot be the same on the other, which makes general moral principles impossible to come by. Because SA could accommodate this, it is then the only doctrine compatible with Particularism.

To this, IVA could submit a rejoinder saying that it, too, is compatible with Particularism. To say that it is not because it uses general moral principles is a misdirected attack. IVA is compatible with Particularism. Sure, IVA begins with general rights such as the right to life, liberty, and property. However, IVA claims that rights are not absolute. Rights, for IVA, could win in one occasion and lose in another. This stance allows IVA to change positions depending on the situation, similar to the requirements of Particularism. In addition, IVA proceeds to the further examinations of infringement and violation to decide the permissibility or impermissibility of the act. These examinations also enable its general principles of rights to be situated in different contexts without necessarily having to result to the same single outcome. By virtue of rights not being absolute and of the infringement and violation steps, IVA enables a case-to-case analysis that does not transpose the moral property of a natural property to other natural properties like it.

The misstep I think rests on Shafer-Landau's insertion of Particularism in the picture. He believes that the principles targeted by Particularism are equal to the rights principles used by IVA. This is mistaken. Particularism's aim is directed to principles that

function normatively and/or deliberatively.[39] Principles function normatively when they constitute properties for right- and wrong-making. Principles function deliberatively when they aid the agent on what to do. An example of a moral principle is the utilitarian principle of maximizing utility. This utilitarian principle embodies both the normative and deliberative function simultaneously.[40] It is normative when it is used to examine when an act is right or wrong, e.g. when the principle of maximizing utility is used to decide between saving five people versus saving one where the utilitarian opts for the former. It is deliberative when the same principle is capable of dictating what should be done, e.g. that the agent should save the five instead of the one because saving the five maximizes utility. As per conceptual design, the moral principles attacked by Particularism is said to be exceptionless, explanatory, and interrelated. By exceptionless, principles are law-like generalizations where if A is found to result to B, A should in all occasions, without exclusion, result to B. By explanatory it means that the principles are capable of explaining or justifying moral claims. Finally, principles as interrelated means that they are part of a system.

In Shafer-Landau's article, what he considers the moral principles are the rights that both IVA and SA reflect in their respective theories. Examples of such principles then would be right to life, right to property, and so on. However, IVA does not coincide with either the conceptual makeup nor with the functions of Particularism's principles. One of the requirements to be met by a concept of principle is that it be exceptionless. As we have said, IVA does not promote an exceptionless characteristic of rights as it believes that rights are not absolute. With this, IVA deviates from the principles that Particularism frowns upon.

Another loophole is that Principles, according to moral Particularism, function either normatively or deliberatively. The right to, say, life in IVA does not function normatively nor deliberatively. For it to be normative, IVA's right to life should give a reason why an act is right or wrong. Given the IVA framework, however, the right to life, or any right it recognizes for the matter, does not inherently contain the rightness or wrongness nor the goodness or badness of an action. Apart from the right, it should be recalled, IVA makes use of the infringement-violation distinction. If the right infringement is not a violation, it is permissible. If the right infringement is a violation, it is not permissible. This permissibility/impermissibility is what determines whether the act is right or wrong, whether it is good or bad, not the right to life itself.

To pin the moral principles on the rights is I believe a misattribution on Shafer-Landau's part. The right is not a moral principle in the sense that moral Particularism demands. If one wants to examine the moral principles which animate a structure of

[39] Mark Lance and Margaret Little, "Particularism and Antitheory," in The Oxford Handbook of Ethical Theory, ed. David Copp (New York: Oxford University Press, 2006), 569- 570.
[40] Ibid.

rights, it should direct its attention to what makes the act permissible or impermissible.

This I think is the same reason why Argument 3 would not also work should Shafer- Landau opt for it. Should Shafer-Landau decide to retain Argument 3, he should hold that there are no general principles. Because there are no general properties, IVA fails Thomson's test. Even if we grant that Argument 3 is valid, IVA could still hold its ground by pointing out a hole in Shafer-Landau's argument. A theory is supposedly explanatory if it compounds a moral principle with factual claims to result to a more detailed conclusion. In IVA an example of this fashion would be the conjunction of the moral claim "Everyone has a right to their property" and the factual claims "the hiker is stranded", "there is a snowstorm" and so on. This results to the judgment that it is permissible for the hiker to enter. But the moral principle in the strict Particularist sense that Shafer-Landau seeks is not present in any of these.

C. SA not sufficiently explanatory

Before this section ends, I would like to go back to Argument 3. Apart from the fact that the third argument claims that IVA fails the explanatory test, it also claims that SA is explanatorily superior. So far the former has been addressed. To complete the examination, the latter also need to be fleshed out.

SA is explanatorily superior because it supposedly can give an explanation on the permissibility or impermissibility of an action. In the Cabin case, SA deems it permissible for the hiker to enter the cabin even without the consent of the cabin owner. It is permissible on the grounds that he has no duty to recognize against the owner's property. This non-existence of duty, in turn, results from the non-existence of the right to property in such a case. For easier reading, SA's reasoning is as follows:

(right) The owner has no right to property against the hiker in the circumstance provided.
(duty) Therefore, the hiker does not have duty not to use the cabin.
(deontic judgment) Therefore, it is permissible for the hiker to use the cabin.[41]

Because the series of statements is consistent, Shafer-Landau calls this SA's explanatory efficacy. Banking heavily on the right-duty-deontic judgment tripartite, Shafer-Landau argues that since only SA can account for this kind of consistency, SA then has the better hand.

IVA, he assumes, cannot manifest this consistency in right-duty-deontic judgment triad. But why should this view of IVA be accepted? IVA too could construe a consistent

[41] This is patterned after the initial formulations of the hiker case.

flow of these three elements. As demonstrated in the previous chapter, when it comes to the (1)-(4) breakdown of the Cabin case, IVA could well deny (1) and modify the rest of the series, accordingly. In this modification, like SA, it too could have a continuous flow from right to duty to deontic judgment. In this manner, there is no reason to suppose that SA is better simply because it has a uniform framework. IVA can achieve this same consistency.

However, this supposed sufficient explanation allures questioning. It is said to be explanatory because it can readily make sense of the triad. The hiker is freezing in the snowstorm, therefore, the cabin owner has no exclusive right in this particular instance. From this no right, the duty and deontic judgment follow. SA says that when we invoke rights, it is not meant that rights are unqualified. Rights, under SA, come with several exceptions such as that in the cabin case. But here, we are prompted to ask, what is the explanation for these exceptions? Certainly, it is implausible to say that the right at the very beginning of its historical or conceptual recognition has already been attributed with these exceptions. Even SA itself in Shafer-Landau's account recognizes that exceptions can still be added later on should we find ourselves in novel and unexpected circumstances. So the question arises again, what are the reasons for adopting these exceptions?

SA is yet to give an explanation of this angle of its theory. It is easy to say that SA is explanatory because it follows the tripartite of rights, duties, and deontic judgments. But how it arrives at the exceptions of the right in the first place is a mystery. It is incumbent on SA to provide an account of how exactly exceptions to rights are construed and what are the variables for determining such exceptions in the same way that it is also incumbent on IVA to explain why the right is not absolute. Whatever justification SA has for discerning these exceptions, these resources are also available for IVA.

Shafer-Landau lauds SA because it supposedly can explain why an act is permissible or impermissible. However, this very determination of permissibility or impermissibility is begging the question. Before SA can say for certain that it has explanatory efficacy and is therefore superior to IVA, it should first take time to address this anomaly.

V. CONCLUSION

Competing rights are a prevalent occurrence. It is in home when parents assert their rights over their children's rights. It is in school when teachers use academic freedom to override the parent's or the student's inclinations. It is in the workplace when an employer requests

something from an employee. It is in the streets when the government takes a parcel of land from a property owner.

Because of its omnipresence, scholars have been preoccupied with this particular issue for quite a while now. As they delved into this phenomenon, what they have found to be the most pressing is to find out how to resolve this. Thomson and her colleagues resorted to reducing the stringency of a right in question while maintaining that there is indeed a conflict of rights. On top of that, her proposed solution incorporates the infringement-violation distinction (IVA).

Shafer-Landau responded to Thomson's theory and argued that specification (SA) was a better solution. In SA there are no conflict of rights because only one right is operative. Where rights conflict, says SA, the stringency of rights should be retained while the scope be reduced. This is the gist that animates SA.

The objective of this thesis was to offer a counter-response to Shafer-Landau's claims. First, it has been shown that Shafer-Landau's accusations on IVA's deficiencies were unwarranted. The demand of infringement-compensatory explication rested on a misunderstanding of the relation between infringement and compensation. The demand for an explanation of the relationship between right and duty was already provided by IVA in one of Thomson's works. Second, this thesis has demonstrated that Shafer-Landau's claims to SA's superiority are problematic. His first and third arguments for SA's superiority are inconsistent with each other because they hold two different ontological claims. His second argument for the superiority has been undermined with the provided right-duty relation.

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