Article

The Method as Justification: An Alternative Characterization of the Central Problem of Justifying Freedoms and Rights

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Abstract: In a stage-wise view of the process of constructing and realizing a system of freedoms and rights, one central problem is the establishment of robust bases of justification towards a greater degree of acceptability of the system's theoretical framework. By drawing insights from various theories of rights as well as from the works of Rawls, Sen, and Habermas, two characterizations of the central problem of justification are presented. The first characterization is in terms of adopting a fundamental universal principle or set of principles in establishing the bases of justification. The second and alternative characterization invokes the notion of the method as justification and is in terms of establishing the appropriate procedures and conditions under which a reasonable system of freedoms and rights could be constructed and justified. It is argued that this alternative characterization is more plausible because it evades the tension between the pluralistic character of human reality and the narrow universalizing character of fundamental principles in the first characterization. Following this argument, this paper draws from the constructivist approach of Rawls and the discourse theory of Habermas and presents a conceptual sketch of the constructive and integrative approach towards establishing robust bases of justification for a system of freedoms and rights.

Keywords: Justification, freedoms, rights constructive and integrative approach

A Stage-Wise View

In this paper, I invoke a stage-wise view of the process of constructing and realizing a system or a theoretical framework of freedoms and rights.[1] Particularly, I think of this process as consisting of three principal steps. First, the fundamental justifications for freedoms and rights must be established and these justifications must be acceptable to its subjects. Second, the theoretical framework must be constructed with due regard to the important considerations and concerns pertaining to freedoms and rights. In my own conception, and probably in line with analogous or similar conceptions of other thinkers, many of these important considerations and concerns have something to do with making reasonable[2] valuations, together with the associated reasonable weighing of valuations, across different contexts of valuation. Third, the system of freedoms and rights must be, in some sense, adjusted or qualified based on considerations of realizability. Given this mental picture of a three-step process of constructing and realizing a system of freedoms and rights, the corresponding three central problems in the philosophy of freedoms and rights can be identified and characterized. These are the central problems of 1) justifying freedoms and rights, 2) making reasonable valuations, and 3) realizing a system of freedoms and rights. My motivation is my presupposition that addressing the philosophical problems that correspond to the primary steps in constructing and realizing a system of freedoms and rights would consequently lead to a more plausible theoretical framework. This idea of the stage-wise view and of the three-step process of constructing and realizing a system of freedoms and rights certainly needs more development and elaboration but for the purpose of this paper, I simply intend to present some reflections on the first central problem of justifying freedoms and rights and to argue for an alternative characterization of this central problem. Inevitably, some of the discussions on the first central problem would be linked to concerns pertaining to the other two central problems but the elaborate characterizations of the central

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[1] As an initial remark to help the reader locate this idea, I need to declare that this conception is influenced by John Rawls' constructivist approach and by Amartya Sen's distinction between the process aspect and the opportunity aspect of freedom, which is somewhat related to invoking concerns of realizability as a central problem in the philosophy of freedoms and rights. See John Rawls, "The Law of Peoples," in *Critical Inquiry*, 20:1 (1993), 39-40 and Amartya Sen, *Development as Freedom* (New York: Alfred A. Knopf, Inc., 1999), 17-19.

[2] Here, what I have in mind is a conception of reasonability that is quite similar but not necessarily identical to Rawls' notion of what it means to be reasonable, which he distinguishes from his notion of what it means to be rational, as well as to Sen's broader conception of rationality. See John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 48-54 and Amartya Sen, *Rationality and Freedom* (Cambridge: Belknap Press, 2002), 3-7, 19-22.

problems of making reasonable valuations and of realizing a system of freedoms and rights are pursued in separate junctures.

Robustness

I believe that it is a plausible assertion that robustness is a key consideration in evaluating the reasonability of a system or theoretical framework of freedoms and rights. By robustness, I mean to say the theoretical strength of a system of freedoms and rights which leads to a high degree of general acceptability that is independent of an external driving force (e.g., the coercive power of the state). Thus, for the purpose of making a sharper distinction against the external coercive forces that could be employed to drive the acceptability of a system of freedoms and rights, a possible, but perhaps inadequate, alternative terminology for the robustness of a system of freedoms and rights is the "internal" theoretical strength of the system. This is not to be taken to mean that some form of absolute robustness is to be aspired for in practice to the point that a system of freedoms and rights is deemed absolutely acceptable by all individuals and groups in such a way that all individuals and groups could be reliably expected to voluntarily comply with the provisions (e.g., the consequent right-claims, restrictions, duties, etc.) of the system without the need for any external coercive driving force. Serious doubts could be raised on the feasibility of realizing such an aspiration. Instead, a certain high degree of robustness could be aspired for such that the robustness is sufficient to entail a corresponding high degree of general acceptability of the system of freedoms and rights and consequently, individuals and groups would generally, though certainly not absolutely, be reliably expected to voluntarily comply with the provisions of the system with minimal need for an external coercive driving force.[3] I also believe that it is both a logically and intuitively plausible assertion that the robustness of a system of freedoms and rights is, to some significant extent, dependent on the robustness of the fundamental bases of justification for the system of freedoms and rights. If the fundamental bases of justification are not robust,

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[3] Here, the idea of robustness that leads to a general acceptability of a system of freedoms and rights and that entails a minimal need for an external coercive force could be taken to have some overlap with the liberalist notion of the minimal state, and perhaps rightly so. However, the idea I am espousing here is that robustness is a fundamental consideration in evaluating the reasonability of a system of freedoms and rights, which may or may not be liberalist. In this somewhat broader conception, the notion of minimal external coercive force is only invoked in relation to the general acceptability of the system of freedoms and rights. Conceivably, this notion allows for certain other considerations which could require more extensive external coercive forces. For an example of an account of the notion of the minimal state, see Robert Nozick, *Anarchy, State, and Utopia* (Oxford: Blackwell, 1974), 26-28.

then conceivably, a general acceptability of its theoretical framework cannot be expected and, thus, a greater extent of external coercive force would be needed to drive the system of freedoms and rights. Thus, it follows that one central problem that needs to be addressed, if it is desired that the system of freedoms and rights becomes acceptable or reasonable, is the problem of establishing robust fundamental bases of justification.

The First Characterization

Conceivably, the problem of establishing robust fundamental bases of justification can be characterized in a variety of ways, and for the purpose of the ongoing discussion I can think of at least two ways. First, the problem can be characterized in terms of adopting a fundamental principle or set of principles, which could be stipulated or justified to be inviolable, ultimate, absolute, or primary, and on which the system of freedoms and rights shall be based. [4] Since the fundamental principle or set of principles is regarded to be, in a sense, universal, it is also held as the comprehensive basis of all valuations, including moral, social, and political valuations, and these comprehensive valuations translate into the particular valuations of a system of freedoms and rights. Thus, since the valuations of the system of freedoms and rights are directly derived from a universal fundamental principle, these valuations, like the primacy of individual liberty or the ideal of equality for instance, are also taken to have a somewhat universal character.

To elaborate on this first characterization, I invoke the dichotomous distinction between deontological and teleological conceptions of freedoms and rights. It would also be evident later on that this distinction is also relevant in the discussions on the second characterization of the central problem of justification. A simple designation of the distinction can be proposed—deontological conceptions regard freedoms and rights to have value in themselves and independent from consequentialist considerations while teleological conceptions put primacy on consequentialist considerations in establishing the fundamental principle or set of principles for the system of freedoms and rights. Following the first characterization of the central problem of justification, some of the major deontological conceptions of freedoms and rights that have been espoused are based on

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[4] This is analogous, or perhaps even almost identical, to what has been described by Dr. Armando Ochangco in a course he taught at the University of the Philippines-Diliman, "Human Rights: Problems, Issues, Perspective" (academic year 2013-2014). In one of his lectures, he spoke of the "modernist" approach which aims to establish a fundamental set of axioms from which all other provisions shall be derived.

certain philosophical views that adopt some notion of natural law or human nature. [5]

At least a number of the more prominent philosophical views have theological foundations. For instance, Leibniz's view is that human reason is a manifestation of the fact that human beings are created in God's image. Locke, on the other hand, characterizes human nature in terms of the natural law which is the component of divine law that can be comprehended by natural human reason. [6] Other accounts of the natural law or of human nature are unlike that of Leibniz or Locke in the sense that they are non-theological in grounding. However, these other accounts nonetheless characterize natural law or human nature in terms of a fundamental principle which is deemed to be inviolable, ultimate, absolute, or primary, and thus in a sense, universal. For instance, what Rawls calls "rational intuitionism" regards human reason itself to be the source of moral valuations and of other valuations as well, including valuations associated with the deontological conception of freedoms and rights.[7] Analogous to this would be such views that regard the human capability of reason or choice as the justification for certain natural freedoms and rights. For instance, H. L. A. Hart's view is that the natural capability of choice of human beings justifies the right of all human beings to be free as both a natural and an absolute right.[8] Other views espouse a notion of an intrinsic human value, like Gregory Vlastos' conception of the "human worth," which is analogous to Kant's doctrine that human beings are "ends in themselves."[9] Still, other views draw justification from a notion of an independently absolute or universal standard of morality. For instance, Alan Gewirth asserts that certain rights can be justifiably deemed absolute based on some sense of absolute morality. [10]

Other views even adopt, or attempt to adopt, the principles and ideals of human liberties and rights themselves to be the foundations of other, more comprehensive valuations, including moral valuations. Along these lines would be Ronald Dworkin's conception of rights, particularly the right to moral and political freedom, as "trumps" against utilitarian

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[5] *The Universal Declaration of Human Rights* could also be read as espousing such notion of a natural law or of human nature. For instance, its Preamble speaks of the "inherent dignity and of the equal and inalienable rights of all members of the human family" while Article 1 declares that "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

[6] These accounts of the philosophical views espoused by Leibniz and Locke are entirely drawn from Rawls' reconstruction. Rawls, "The Law of Peoples," 39.

[7] *Ibid.*

[8] H. L. A. Hart, "Are there any Natural Rights?," in *Theories of Rights*, ed. by Jeremy Waldron (Oxford: Oxford University Press, 1984), 77-78.

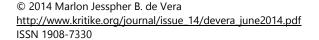[9] Gregory Vlastos, "Justice and Equality," in *Ibid.*, 55-56.

[10] Alan Gewirth, "Are there any Absolute Rights?," reprinted in *Ibid.*, 97-100.

considerations,[11] and to a more explicit extent, J. L. Mackie's notion of a right-based morality.[12] Various deontological conceptions of freedoms and rights following the first characterization of the central problem of justification differ in the sense that some draw from theological foundations while others do not, and each typology of conception is to some extent, unique in terms of the origin and form of the fundamental justifying principle it adopts. Nonetheless, the deontological conceptions mentioned here can be considered as more parallel than different, not only by virtue of their deontological character, but also because they all adopt a fundamental principle or set of principles that are held to be, to some extent, universal, and these fundamental principles, being universal in character, are also adopted as the fundamental justification not only for certain conceptions of freedoms and rights but also for more comprehensive set of valuations including a broad range of moral, political, and social valuations. Thus, for deontological conceptions following the first characterization of the problem of justification, the *prima facie* distinctions between the doctrine of freedoms and rights, and other more comprehensive doctrines (e.g., morality) as well as other more particular doctrines are often unclear.

I now proceed to a brief discussion of teleological conceptions of freedoms and rights that follow the first characterization of the central problem of justification. I limit the scope of this discussion, in consideration of the limitations in space, to a discussion of the utilitarian doctrine, which could probably be considered as the most prominent teleological conception both in relation to more comprehensive concerns as well as to the particular subject of freedoms and rights. Utilitarianism can be characterized in various ways, usually in terms of how the concept of utility is defined, but for the purpose of this discussion, I draw from Sen's reconstructive account of utilitarianism.

Sen identifies two main forms of utilitarianism—1) the classical form, attributed to Jeremy Bentham, which defines utility as some form of "mental achievement," particularly as pleasure, satisfaction, or happiness, and 2) the modern form, which defines utility in terms of the achievement of choice of the fulfilment of desire. Sen's reconstructive account likewise identifies three components of utilitarianism—1) "consequentialism," which purports that evaluations be based on consequences and results, 2) "welfarism," which demands that the consequential evaluation be carried out in terms of utility, and 3) "sum ranking," which contends that the primary objective would be to maximize total utility, regardless of distribution among individuals.[13]

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[11] Ronald Dworkin, "Rights as Trumps," in *Ibid.*, 158-159.

[12] J. L. Mackie, "Can there be a Right-based Moral Theory?," in *Ibid.*, 168-181.

[13] Sen, *Development as Freedom*, 56-60.

From this reconstructive account of utilitarianism, it is not difficult to see its differences from the deontological conceptions previously discussed. The differences go beyond the fundamental typological distinction between deontological notions and teleological notions, and extend towards the conceptual consequences of such a distinction. For instance, the component of "sum ranking" in utilitarianism can be contrasted to the principle of putting primacy on individual value espoused by many, if not most, deontological notions. Conceivably, other teleological conceptions, which regard other forms of consequences apart from utility as the fundamental bases of valuations, can be invoked and compared with deontological conceptions, both in a comprehensive manner and in relation to the subject of freedoms and rights.

My intuition is that, on the surface, teleological conceptions could appear to be in a sense and to some extent more dynamic than deontological conceptions. For instance, in the particular subject of freedoms and rights, teleological conceptions could be perceived as more dynamic since valuations pertaining to freedoms and rights could be adjusted depending on the "accounting" of total utility; on the other hand, deontological conceptions could be regarded as less dynamic because deontological valuations on freedoms and rights generally tend to remain constant and unadjusted across different contexts. Nonetheless, I believe that this contrast between deontological and teleological conceptions is minor at the most and that they are still more similar than different because both conceptions follow the first characterization of the central problem of justification. Conceptions of freedoms and rights that follow the first characterization of the central problem of justification, whether these conceptions are deontological or teleological in character, adopt a fundamental principle or set of principles, which is stipulated or justified to have a somewhat universal character, as the basis of valuations, both in the subject of freedoms and rights, as well as in more comprehensive realms.

I now argue that conceptions of freedoms and rights that follow the first characterization of the central problem of justification, a characterization in terms of establishing bases of justification by adopting a certain universal principle or set of principles, is problematic, whether the conception is deontological or teleological. For deontological conceptions, a significant part of the problem is brought about by the metaphysical baggage[14] of the fundamental doctrines, whether theological or non-theological, adopted in establishing the bases of justification. Following Margaret MacDonald's account, the metaphysical baggage becomes even more insurmountable because of the attempt to justify these fundamental doctrines, like notions of

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[14] I am borrowing the term "metaphysical baggage" from Dr. Ochangco.

human nature or natural law for instance, through a methodology that is analogous to formulating a scientific or mathematical proof.[15] Going beyond the problem of the metaphysical baggage of adopted fundamental doctrines, I believe that the general problem that afflicts conceptions of freedoms and rights that adopt a fundamental doctrine in establishing the bases of justification is the burden of the universal claim of legitimacy brought about by the espoused universal character of the fundamental doctrine. This burden is directly brought about by the tension or conflict between the universal claim of legitimacy and actual human realities. [16]   Qualifying further, the problem is brought about by the conflict between the narrow universalizing character of the claim to legitimacy and the pluralistic character of human reality. The pluralistic character of human reality can be characterized in many different ways. In a more abstract level, human reality is pluralistic in a sense that there could be other valid justifications for legitimacy apart from scientific and mathematical proofs, beyond the Humean prejudice against anything that is neither analytic nor synthetic. MacDonald argues that the justification for the deontological value of rights should not depend on some empirical or scientific form of evidence or proof but rather on the persuasive strength or power of defence (similar to how a lawyer defends a client).[17]   The pluralism of human reality can also be characterized in terms of the broad range of informational bases within which a normative conception can be justified.

Sen's main criticism of utilitarianism is on the limitations of the informational base of the utilitarian doctrine which excludes certain relevant concerns like distribution, non-utility concerns such as freedoms and rights, and the factor of mental conditioning and adaptation.[18] Human reality is also pluralistic in a sense that there could be various scopes of concern, in a general sense, and a reasonable normative conception in one scope of concern may not be as reasonable when applied to another scope of concern. Thus, Rawls makes the distinction between a "comprehensive doctrine" (which could be a moral, religious, or philosophical doctrine) and a "political conception of justice."[19]   The pluralism of human reality can also be characterized in terms of the wide variety of aspects of valuation in human life in general. J. Raz criticizes right-based moral theories because of their narrowness, in a way that such theories do not accommodate the moral

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[15] Margaret MacDonald, "Natural Rights," reprinted in *Theories of Rights*, 25.

[16] Here, I draw from the discussions on the tension or conflict "between facticity and validity" by Jürgen Habermas but I attempt to frame the ideas in more general terms. See Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. by William Rehg (Cambridge, Massachusetts: The MIT Press, 1996), 9-17.

[17] MacDonald, "Natural Rights," 36-40.

[18] Sen, *Development as Freedom*, 62-63.

[19] Rawls, *Political Liberalism*, 11-15.

importance of "ordinary reasons for actions," the moral significance of heroic action, as well as other humanistic values that are non-individualistic and not based on conventional notions of rights and duties. Thus, Raz espouses a pluralistic view of the fundamentals of morality.[20] In his notion of the "rational fool," Sen also espouses a pluralistic understanding of rationality or rational choice to include other reasons for choice aside from self-interest.[21] In a more summative and possibly more concrete level, the pluralism of human reality can be characterized simply but broadly in terms of the different attributes or elements of individual and collective humanity — genders, ethnicities, personal preferences, intrinsic and acquired capacities, religions, cultures, political systems, philosophies, and so on.

I believe that the tension or conflict between the narrow universalizing character of the claim to legitimacy of a normative conception that adopts a universal fundamental principle as its base of justification and the highly pluralistic character of human reality is basic and internal. Thus, I suspect that a system or theoretical framework of freedoms and rights that is justified by adopting a universal fundamental principle or set of principles, following the first characterization of the central problem of justification, would remain problematic even after several levels of qualification and even deconstruction.

An Alternative Characterization

Having argued that a system of freedoms and rights that is justified following the first characterization of the central problem of justification is intrinsically problematic, I now discuss a second way of characterizing the central problem of justification which I would argue for as more plausible. This second characterization is directly derived from the primary problem that arose from the first characterization, which is the problem of the resulting tension or conflict between the narrow universalizing character of the claim to legitimacy and the pluralistic character of human reality, and thus this second characterization could be taken as geared towards addressing this main problem. I call the second characterization the constructive and integrative approach towards establishing robust bases of justification. In this approach, the robustness of the established bases of justification relies on the acceptability or reasonability of the procedures or conditions of construction and integration rather than of the adopted fundamental doctrine/s. Thus, this characterization primarily invokes the notion of the method as justification. I suppose it is already apparent at this stage that this

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[20] J. Raz, "Right-based Moralities," in *Theories of Rights*, 182-186.

[21] Sen, *Rationality and Freedom*, 6-7.

conception of the second characterization is heavily influenced by ideas from Rawls and Habermas, particularly by the constructivist approach of Rawls and the discourse theory of Habermas.[22] In the constructive and integrative approach, the specifications of the problem is first defined, after which the reasonable aspects of the pluralistic human reality are acknowledged and taken into consideration in establishing a reasonable starting point, and if appropriate, in identifying the reasonable initial "constructive and integrative agents." From the reasonable starting point, the constructive and integrative agents would then employ a reasonable procedure and secure reasonable conditions under which the process of construction and integration towards a solution to the defined problem would be performed. The reasonable procedures and conditions of construction and integration would also establish the bases of justification of the solution to the defined problem.

Certainly, there is a need to elaborate on the conceptions of the two operative words—construction and integration—in the terminology of the approach being described. By "construction," I mean the process of collecting reasonable elements and assembling these elements into a structure or framework to construct the solution to the defined problem.   By "integration," I mean the process of ensuring that the relevant aspects of the pluralistic character of human reality are adequately considered in the process of construction as well as in processes of reconstruction, as new relevant aspects of the pluralistic human reality arise.[23] It is evident from the way that the constructive and integrative approach has been described so far that it is essentially a methodological approach that is analogous to the representation of the three-step process of constructing and realizing a system of freedoms and rights, which I have briefly described in the introductory remarks.   I have thus far described the constructive and integrative approach in a broad and general sense and so at this point, I now attempt to apply this approach to the subject of establishing and justifying an acceptable and reasonable system of freedoms and rights.

In the first step of defining the specifications of the problem, it is not sufficient to simply state the objective of establishing and justifying an acceptable and reasonable system of freedoms and rights as such; instead, the

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[22] In a footnote in the first section, I have already cited a brief discussion of the constructivist approach of Rawls in his "The Law of Peoples." A more comprehensive discussion can be found in Rawls, *Political Liberalism*, 89-99. For a brief account of the discourse theory of Habermas, see Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, 447-450.

[23] These characterizations of the processes of construction and integration draw inspiration in part from the conceptions of "assimilation" and "accommodation" in Jean Piaget's theory of cognitive development. See Jean Piaget, *The Origins of Intelligence in Children*, trans. by Margaret Cook (Madison, Conn.: International Universities Press, 1998).

next level/s of specifications must likewise be stipulated. For instance, it must be defined whether the objective is to establish a comprehensive philosophical doctrine or a political conception or a legal framework for freedoms and rights, or whether the theoretical framework would be deemed applicable for all human beings or only for specific subjects or perhaps for a broader subject base, or whether it would be applicable for a certain typology of a domestic society or for a much broader scope involving different typologies of domestic societies.[24] Ideally, the specifications of the problem should be defined in a reasonably clear yet not overly restrictive manner so that the succeeding steps in the constructive and integrative approach would in turn be carried out with a higher degree of reasonability.

After defining the specifications of the problem of establishing a system of freedoms and rights, the reasonable aspects of the pluralistic human reality in relation to the definition of the problem would then have to be acknowledged and considered in establishing the reasonable starting point. In Rawls' conception of the constructivist approach towards a political conception of justice, he proposes the notion of the original position, which I believe could also be taken as a reasonable starting point in the problem of establishing a system of freedoms and rights. In the idea of the original position, the starting point comprises of rational individuals or their representatives, who are situated under reasonable conditions and who are under the veil of ignorance, which means that they are generally ignorant of certain information that correspond to the comprehensive doctrines that the subjects they represent adopt or they themselves adopt, as well as of certain information that correspond to the individualistic interests of the subjects they represent or to their own individualistic interests. In other words, the rational individuals or their representatives are ignorant of certain information which could drive them to be unreasonable.[25] However, Rawls emphasizes that the ideas of the original position and the veil of ignorance are representational devices and are thus hypothetical.[26] Nonetheless, I believe that the conception of the original position is consistent with what I have described as the step of establishing a reasonable starting point and identifying the reasonable constructive and integrative agents, and the idea of the veil of ignorance is consistent with what I have described as the step of acknowledging the reasonable aspects of the pluralistic human reality. Thus, in an actual employment of the constructive and integrative approach,

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[24] This is in line with how Rawls characterizes his notion of the constructivist approach in his *Political Liberalism* and "The Law of Peoples."

[25] For a discussion on the original position and the veil of ignorance, see John Rawls, *A Theory of Justice* (Cambridge: Belknap Press, 1999), 162-168.

[26] Rawls, *Political Liberalism*, 24.

equivalent concretizations of the hypothetical conceptions of the original position and the veil of ignorance could be adopted.

In the methodological constructive and integrative approach towards a system of freedoms and rights, the next step would then be the establishment of the reasonable procedures and conditions of construction and integration on which the bases of justification of the system of freedoms and rights would depend. It is worthy of note that the reasonable procedures and conditions in the preceding steps of the constructive and integrative approach could also be included in the bases of justification of the system of freedoms and rights. Since the starting point is established reasonably and the reasonable aspects of the pluralistic human reality are acknowledged and considered based on a clear definition of the specifications of the problem, the constructive and integrative agents are now in the position to employ the reasonable procedures and secure the reasonable conditions under which the process of construction and integration for a system of freedoms and rights shall be carried out. To somewhat concretize the discussion on this step, I invoke the discourse theory of Habermas as an illustration of how reasonable procedures and conditions can establish the bases of justification for a system of freedoms and rights. Following Habermas' view and applying it to the current discussion, a procedure of discursive deliberation within conditions where communicative freedoms are upheld and not undermined could plausibly establish the reasonable bases of justification for a system of freedoms and rights. Such procedures and conditions would also allow for the process of integration during the construction and possible reconstruction of the system of freedoms and rights.

I would also like to provide some focus on the integrative character of the constructive and integrative approach. The integrative character embraces the pluralistic human reality and, thus, allows for the deconstruction of strict dichotomies and other such conceptual fragmentations which are inevitable when bases of justification are established by adopting a universal fundamental principle. For instance, a system of freedoms and rights justified and established through the constructive and integrative approach need not be exclusively deontological or exclusively teleological. The constructive and integrative approach could combine both deontological valuations and consequentialist considerations.

To illustrate the plausibility of such a conception, I invoke some examples of how a conception of freedoms and rights, which is established and justified in a way that accommodates the pluralistic human reality, though not necessarily in a way that is analogous or identical to the constructive and integrative approach I have described, could assimilate both deontological and consequentialist valuations. One example would be Sen's account of "the evaluative reason" and "the effectiveness reason" for

characterizing development in terms of freedom. The two reasons correspond to the argument that freedom is both constitutive of and instrumental towards human development. Thus, Sen regards freedoms as both intrinsically valuable and inseparable from consequentialist considerations.[27] Another example would be Scanlon's two-tier view which integrates deontological valuations of freedoms and rights within a consequentialist theory. This view is presented as an example which embraces the pluralistic human reality because in Scanlon's theory, the deontological worth of freedoms and rights "places limits" on consequentialist evaluations in consideration of the diversity of cases where such evaluations could arise.[28]

Given these examples, I believe that the integrative character of the constructive and integrative approach enables some form of dynamism in the system of freedoms and rights while preserving certain reasonable deontological valuations. In this sense, the integrative character could be regarded as an essential element in establishing robust bases of justification towards a robust theoretical framework of freedoms and rights.

Conclusion

In the course of this paper's discussions on the central problem of justifying freedoms and rights, a partiality in favor of the second characterization of the central problem of justification has been developed. This second characterization is in terms of establishing the procedures and conditions under which a reasonable system of freedoms and rights could be constructed and justified. I have argued that this second characterization, which invokes the notion of the method as justification, is a plausible alternative to the first characterization of the central problem of justifying freedoms and rights, which is in terms of adopting a fundamental universal principle or set of principles in establishing the bases of justification. Following the second characterization, I have sketched the conception of the constructive and integrative approach towards establishing a system of freedoms and rights. Conceivably, the application of this methodological approach would involve the constructive and integrative agents selecting and adopting certain fundamental principles in the process of constructing the system of freedoms and rights. Nonetheless, I emphasize that the problem does not arise from adapting fundamental principles *per se*, but from regarding these fundamental principles as universal and in relying on establishing bases of justification that are dependent on these fundamental

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[27] Sen, *Development as Freedom*, 4-5.
[28] T. M. Scanlon, "Rights, Goals, and Fairness," in *Theories of Rights*, 137-138.

principles. At least in this juncture, I have come to the tentative conclusion that establishing bases of justification that rely on the reasonability of the procedures and conditions under which the system of freedoms and rights is to be constructed and reconstructed, would lead to a high level of robustness of the theoretical framework. Moreover, the tension and conflict between the theoretical framework's claim to legitimacy and the pluralistic character of human reality would be plausibly minimized, if not eliminated.

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