

THE FUTURE OF COMMUNAL IDENTITIES: INHERENT CONTRADICTION BETWEEN HUMAN RIGHTS FRAMEWORK AND COLLECTIVE IDENTITIES

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Abstract

The Human rights framework is presumed to be the most reasonable, workable and institutionally realizable mechanism to protect communal identities in multi-ethnic, religious and culturally diversified societies. Multi-culturalism acknowledges the differences among different cultural, religious and ethnic particularities due to the incommensurability of their comprehensive doctrines. Thus it cannot offer any overriding socio-political mechanism which transcends the sphere of cultural particularity. It is generally believed that human rights framework provides the basis of a just political order and establishes socio political harmony in a multi-cultural society. Ironically there is an inherent antagonistic relationship between human rights struggles and collective identities of specific communities. Human rights are the rights of individuals and not of the community, therefore communal disintegration is the unintended consequence of the institutionalization of the human rights mechanism. In this paper we will try to explain the inherent contradiction between communal identity and human rights framework.

This paper has been divided into two sections. The first section deals with the ontological justification of human rights and the priority of right over good. The second section will try to identify the inherent contradictions in this prioritization of right over good and also discuss the role of the community and history in the constitution of individual selfhood. In conclusion the implication is that communal disintegration is the unintended consequence of human rights politics.

Section 1

Kant provides the metaphysical foundation for liberalism in general and constitutional democracy in particular. Kantian distinction between empirically determined reason and pure practical reason is very significant regarding the absolute defense of liberal politics. The empirically determined reason guides our actions within a sphere of desire and instincts. The practical reason contains unconditional imperative i.e., it is not influenced or determined by our empirical awareness. Thus it deals with the formal aspect of the truth. Kant defends his idea of categorical imperative on the basis of pure practical reason. Thereby the validity of categorical imperative is not determined by its content, but rather by its form. Kant's idea of categorical imperative provides the justification of 'pure law'. This formal law of conduct provides the ultimate justification for the derivation of substantive moral principles. Categorical imperative is in fact the principle of universalizability. The ethical principles which can be passed through the test of universalizability are considered as substantive moral laws. The conditions of universalization may be conceived as follows: firstly the requirement to universalize rules out differential treatment between individuals on arbitrary grounds. Secondly the truth value of the formal principle must not be determined by individuals' personal preferences but it must be true for all. Finally, and most importantly the formal principles which are being chosen by an individual must be independent of his particular value system. It means that the individual chooses principles as if he is 'anyone' (i.e., not a person having a specific identify or possessing a specific value system).

Every ideology presumes a particular conception of the person. Kant provides the basic philosophical assumption underlying 'right-based liberal' conception of the person in general, while that of Rawls is in particular.¹ Kant provides an epistemological argument for the justification of a transcendental subject. His

epistemological argument is grounded in the ontological incapacity of the subject regarding the possibility of self-knowledge. He believes that if the self is the sum total of desires, virtues and inclinations then it is not possible to apprehend a unified self in which, all these desires, aims, dispositions converge. And if there is a self, it is not empirically demonstrable. Introspective analysis cannot deliver self-awareness on the basis of these empirical appearances. Nevertheless Kant claims that we can presume the possibility of a unified self. He says, "I can grasp the manifold of the representation in one consciousness, and do I call the one and all mine. For otherwise I should have as many - colored and diverse a self as I have representation of which, I am conscious to myself. (Kant, I., 1787, p. 154.)

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This means that there is an antecedently individuated self that brings together diverse perceptions and holds them together in a single consciousness or awareness. Kant believes that the experience of impressions and the object of experience are not the source of moral obligations. It is Reason which provides the basis of moral obligation (das Sollen). Kant acknowledges that external factors, natural causes and even sensory stimulations do affect the individual's derive to 'will' something but he claims that "they cannot produce (my state of) being under obligation". (Ibid., p. 371). This rational sense of moral obligations helps us to unveil the conception of the self presumed by Kant. The conception of reason presumed by Kant is two-dimensional. He believes that the individual can relate himself to the object, rationally 'either by merely determining it and its concept... or making it real'(Ibid., p. 8) He considers the first function as theoretical and the second function as practical. Kant acknowledges that the conflict of desires is inevitable however; the nature of conflict has been differentiated by him. He contrasts the conflict of desires with 'duty'. The purpose of practical reason is to resolve this conflict between desire and duty. Kornor believes that the Kantian linguistic expression presumes a particular structure

1. The subsequent section will focus on the communitarian critique on liberal's conception of self and its possible implications therefore it is necessary to explicate their conception of self.

of terminology and generally 'the logical grammar of the term 'duty' is different from the grammar of desire and impulse' (Korner, S., 1954, p. 130) Moreover in the Kantian paradigm the conflict of desire and duty simply means the 'conflict of one desire with the other' (Ibid., p. 130.) And the purpose of practical reason is to resolve this 'conflict' with a sense of moral obligation. Thereby we consider Kantian ethics as rationality bounded by desires.

66 The Kantian idea of the categorical imperative is helpful in understanding a particular kind of 'self' and the 'ontological' possibility of individual autonomy. Kant believes that everything in nature is determined by the Law. But 'only a rational being has the ability to act according to the presentation (Vorstellung) of the law i.e., according to principles'. (Paton, 1947, page 412) This means that the individual's capacity or autonomy to adopt maxims makes man's existence moral or immoral. This reveals the inevitable link between the individual's liberty and his morality. Kant's emphasis on the practical necessity of the categorical imperative makes his claim vulnerable because in his framework the choice of ends is governed by the order of desires that an individual has. Thus in real life situations people may have different ends because they may order their desires differently. So the difficulty arises that 'our subjective qua-rational beings to the categorical imperative cannot be explained in terms of our seeking ends which depend on our desire'. (Korner, 1954 p. 145) In order to resolve this difficulty Kant introduces a conception of the self, which is, an end in itself. Thus the transcendental 'self' itself provides the ground for the necessity of practical law. This notion of 'end' is independent of any kind of desire. This emancipation of the self from the instrumental chain of means/end relationship holds the harmony of every rational 'will' and binds them all together in a coherent moral order. (See Ibid., p. 145-147).

The Kantian notion of 'self' is that of a 'rational self'. Being a rational self it is an end in itself i.e., the 'absolute end'. The theoretical corollary of this absolute end is that 'man stands outside all causal chains and consequently outside every hierarchy of means and

ends' (Ibid., p. 147) The Kantian commitment with the prioritization of the rational self as an absolute end compels him to reformulate the structure of the categorical imperative in the following manner: 'Act in such a way that you treat humanity, both in your own person and in the person of all others, never as a means only but always equally as an end'. (Paton 1947, p. 429) Kant claims that this new formulation of the categorical imperative provides the same result as those that we were getting from the old formulation of categorical imperative. Korner believes that this new formulation reflects the moral intuitions of human beings in general and Western man in particular. Therefore, the postulate, 'man as end in himself', corresponds to the moral experiences at least to moral experience of our culture'. (Korner 1954, p. 148) Kant adopts an anthropocentric approach and presumes that the individual has a capacity to 'will' autonomously. By autonomy Kant means the individual's ontological capacity to determine his ends and virtues independent of history and social determinism. The Kantian subject not only has the desire, but also the capacity to determine his ends autonomously. His subject stands outside or independent of history and culture. Good-based liberalism (utilitarianism) has been rejected by Kantians like Rawls because, in it, the individual becomes a means to realize certain ends, as Kant considers the individual as an end-in-himself. In order to sustain the autonomy of the self, the value of non-interference has lexical priority over all other substantive values. The natural corollary of this precedence is that the right has priority over the good, i.e., 'the subject is prior to his end'. (Sandel 1982, p. 7) The existence of the antecedently individuated self reveals that our voluntary actions are not determined by the community or culture but there is an autonomous and self determined agency functioning independently of the world and standing outside history. This super-sensible paradigm of the self legitimizes the possibility of the existence of a free and transcendental subject. This transcendental subject is actually independent of the causal determinism prevailing in this sensible world. The subject is free, autonomous and self-determined. The conception of self emerges from Kantian analysis

as follows: the self is rational, autonomous and a-historical. The autonomy of the self emancipates it from the organic chain between means and ends, thus it is an end in itself. This legitimizes the priority of right over the good. The rational self is not only subject to moral law (universal principle) but also the creator of it. This transcendently rational, unencumbered and antecedently individuated self is ontologically capable of legislating. The nature of legislation is universalist, because the 'idea of the will of any rational being (is interpreted) as a universally legislative will'. (Paton, 1947 p. 43)

Kant's aim was to reconcile the antagonistic relationship between science and morality. He believes that the Newtonian world view provides the justification of universal determinism and the Rousseauian moral philosophy defends the individual's autonomy. Kant tries to resolve this paradoxical co-existence of natural determinism and moral freedom by differentiating the phenomenal world from the noumenal world. In the Kantian framework 'the world of phenomena is what science can know, the world of noumena is the realm which is opened up by morality'. (Pierre, 1972 p.582)

In order to discover metaphysical foundation of liberalism this distinction between phenomena and nominee provides the basis of dichotomy in the Kantian conception of self. Kant differentiates the lower self from that of the upper one. The lower self is the phenomenal one, which is a part of the empirical world. On the other hand the upper self is the nominal aspect of self, which is a part of the intellectual world ('the world of things in themselves'): This nominal world is unknowable. Kant insists that although the nominal world cannot be known it can be believed in. He introduces the concept of 'rational belief', the belief which leads us (beyond experience) to the idea of freedom. Thus as a nominal being man is absolutely free. On the other hand in the phenomenal world man is heteronomously determined. 'This duality of human nature is overcome in Kant's kingdom of ends'. (Ansari 1990, p. 22) The kingdom of ends is a union of several rational individuals in a system of law. In such a sphere all the ends determined by pure rational will are

harmonized in an organic whole. In the kingdom of ends 'each individual realizes his private ends by means of the other and regards the other as an end in himself'. (Ibid. p. 42) Thus we can say that the kingdom of ends is a sphere in which the actions determined by pure reason, and actions determined by desires are completely harmonized with each other and the contradiction between reason and desire will be abolished. In the Kantian framework the 'Kingdom of ends' is realized through a course of history. Thus the contradiction between the desires and pure reason will be eliminated through a teleological process of self-development. Thus man as a rational being is teleological destined to construct a perfect social arrangement i.e., the Kingdom of ends.

The secular defense of liberal values (liberty, tolerance, privacy and self determination) has two different dimensions. The rational defense of the individual's moral life is provided by Kant. The other defense is provided by J. Stuart Mill with a reasonable touch of empiricism and scientific rationality. No doubt the conception of rationality used by these thinkers is very different from each other. But we can roughly say that in the Kantian framework the individual's will, moral self and pure reason are organically linked with each other. He successfully justifies the autonomy of the 'individual's will' by the reconciliation of the idea of moral duty and the natural order of causal determinism. His idea of duty is in fact a theoretical instrument which rationally justifies the Christian ethics through a secular framework. On the basis of categorical imperative Kant justifies most of the Christian values (which cannot rationally be justified in the absence of his values of responsibility/duty). He defends his idea of duty by the prioritization of the upper self which is rational, autonomous and independent of natural causal order. This does not mean that Kant denies natural causality but he believes that an individual's capacity to rationalize enables him to transcend the natural order of causality and to grasp formal relations. Therefore in the Kantian framework the validity of individual moral acts is conditioned by the autonomy of will. The ontological justification of the autonomy of self and its capacity to provide universally valid

moral values justifies the priority of individual liberty, as an inviolable right which is necessary to sustain moral structure and social justice. The priority of right, duty of tolerance and respect of other's autonomy are the inevitable corollaries of Kantian philosophy. 'The duty of individual autonomy readily implies the right to individual autonomy; and an individual's right to individual autonomy plainly implies their duty to respect the autonomy of others'. (Ibid. p. 46) The philosophical defense of liberal values on the basis of external reason (universally valid reason) justifies its universality. The individual autonomy of self lies in the possession of soul. In the Kantian framework, human beings are, as possessors of soul, able to discover universally valid moral principles. This ability of self is derived from the specific interpretation of man as 'the possessor of reason'. (Ibid. p. 47) This formal rationality criterion provided by Kant is one of the major defenses of the universality of liberalism. The possession of rational self provides an ontological justification of the Archimedean position, which transcends cultural, social and historical specificities. This capacity of self to have an access in a-historical realm is justifiable 'because the possession of soul can be a wholly external characteristic of man as a member of society'. (Ibid. p.47).

Rawls and Liberal Legacy

Rawls revitalizes the liberal argument when liberalism was becoming unfashionable. He redefines liberal theory and improves the institutional structure provided by Locke, Kant and Mill for the sustenance of liberalism. He is not satisfied with good-based-liberalism expounded by the utilitarians. He considers that 'utilitarianism is a teleological theory whereas justice as fairness is not (Rawls 1971 p 30). He claims that the utilitarian version of liberalism is basically teleological therefore it eventually collapses into consequentialism. This consequentialism is the result of the prioritization of good-over-right, which undermines the priority of an individual's right of self-determination. Justice as fairness is defined as a liberal theory which 'either does not specify the good independently from right, or does not interpret the right as maximizing the good'. (Ibid. P.30) For him the

priority of individual liberty must be considered as an absolute right, which cannot be overridden even for the general welfare of the society. So he justifies the priority of right over good. This precedence of right over the good has been considered fundamentally a moral category, because everybody has a right to frame, revise and rationally pursue his own conception of good. The priority of right over good justifies the anti-consequential and anti-teleological nature of justice as fairness. In short it is claimed that in the Rawlsian framework the value of noninterference is not derived from substantive values. 'The right is prior to the good not only in that its claim takes precedence but also in that its principles are independently derived'. (Sandel 1982, p.2) Rawls considers his right-based-liberalism as a deontological theory. He defines his deontological liberalism as, a theory about justice and in particular about the primacy of justice among moral and political ideals'. (Ibid. p 1)

In this section we will try to excavate the ontological assumptions of Rawlsian right based liberalism which sustain the priority of right over good in general and principles of justice in particular; this excavation eventually challenges its claim to be deontological in the substantive sense. The nature of the agreement which takes place in the original position is embryonically contractarian. Rawlsian social contract model is the evolutionary form of the contractarian approach of Locke, Rousseau and Kant. (See Rawls 1971, p.11) Lockean commitment with the prioritization of fundamental rights and its corresponding institutions (i.e., private property economy and constitutional democracy) identifies the organic relation between justice as fairness and Locke's contract doctrine.

The protection of fundamental rights in the Lockean framework through a body of rights is decisive for the constitution of civil society and its corresponding institutions. Rawls believes that '[for] the role of equal rights in Locke is precisely to ensure that the permissible departures from the state of nature are those which respect these rights and serve the common interests'. (Ibid. p. 33) It implies that the realization of common interest is dependent on the respect of individual

liberty and its institutional protection through a system of law. Rawls also appreciates the conditions of formal equality which are established by Locke in the state of nature.

The structure or constraints of the original position tell us how Kantian metaphysical conceptions are incorporated by Rawls. The derivation of the principles of justice behind the veil of ignorance reveals that the choice of the fair principles is not on the basis of the value or interest perspective of particular individuals, but rather as though they are just anyone. Since individuals are ignorant about their own conceptions of good and social position, therefore they must choose principles of justice which protect their interests irrespective of those interests and values which are organically linked with the type of person they turn out to be in the real world. The structure of the original position and the theoretical instrument of 'veil of ignorance' is an intellectual attempt to reconcile pure reason and desires in an organic whole. The original position is a hypothetical choice situation in which the empirical self and the rational self combine in order to derive fair principles of justice. The individuals in the original position are both phenomenal beings, in the sense that they are self-interested and nominal beings in that they choose abstract and fair principles of justice as if they were anyone (i.e., independent of their particularities). In this way Rawls provides a reinterpretation of the functioning of the 'Kingdom of end' in contemporary modern democratic societies.

Rawls's idea of the 'original position' helps us to unveil his metaphysical assumptions, which sustain his liberal political theory. The constraints of the original position embody 'the fundamental principles governing our moral powers (and) our sense of justice'. (Ibid. p. 51) It implies that the original position presumes a schematic representation of a particular mental process of most human beings.²

There is an important distinction between Kant and Rawls. Although both consider the individual as an end in himself, Kant is primarily concerned with duty while Rawls is primarily concerned with right. Kant emphasizes the importance of duty to determine the moral quality of an act, whereas the Rawlsian approach is right based. Rawls is not interested in discovering the intrinsic or essential worth of a moral act or value. In his framework actions are means for the protection of individual rights.

The prioritization of right over good is the defining characteristic of Rawlsian right-based-liberalism. The basic right (i.e., the right of an individual to be treated equally) is claimed to be natural because the prioritization of right is not the product of legislation or a hypothetical contract. This prioritization emerges from the metaphysical assumptions which are interwoven in the fabric of the original position. The prioritization of right is not the product of a contract; rather it constitutes the independent grounds for judging legislation, customs and convictions. The principles of justice and their corresponding institutions protect the priority of fundamental rights (i.e., the rights of a man to be treated equally) and all other rights all actually derived from this natural right.

In the Rawlsian framework the self 'is prior to the ends affirmed by it' (Rawls 1971. P. 561). It implies that an individual autonomously chooses his ends while the ends (an individual possesses) do not constitute his self.

So an individual is ontologically free to determine, change, revise and frame his own conceptions of good, and in such determination he is not dependent on anything other than himself. Thus according to Rawls a 'moral person is a subject with ends he has chosen and his fundamental preferences are for conditions that enable him to pursue a mode of life that expresses his nature as a free, equal rational being' (Ibid. p 561).

2. See Ibid., p. 49-63. Rawls uses the analogy of grammatical structure to explain the schematic presentation of different mental capacities in order to provide the justification of the original position.

The worth of the self is not determined by the ends it has chosen. Since ends are determined by equally free, moral and rational individuals therefore, all ends are of equal worth and value. As Rawls claims 'imagine someone whose only pleasure is to count blades of grass... the definition of the good forces us to admit that the good for this man is indeed the counting of blades of grass' (Ibid. p 432). This Rawlsian example is very revealing to analyze the unity and possessions of the self. If all the ends are of equal value (because individuals are naturally free to determine their ends) then the unit of the self is achieved by an arbitrary act of will. It means that the Rawlsian self is ontologically dispossessed, because it is always at a distance from its ends. Thus his ends, and conceptions of good are possessed by it but they (ends) can never be constitutive of a self. So it (self) is always devoid of any specific, inseparable good which constitutes its selfhood, thus it remains empty. This hollow self is ontologically incapable not only of understanding others but also itself. It is because of this dispossessed self that one can choose any 'good' or 'end' that one likes to choose in a liberal democratic institutional structure provided by Rawls. Since self-knowledge is not ontologically possible (by implication) in the Rawlsian framework therefore objective ordering of desires is also not possible in it. The relative merits of desires are determined by simply the concatenation of desires. Thus the moral life of an individual becomes insignificant or trivial regarding the sustenance of a just socio-political order.

Rawls considers Locke, Kant and Mill as liberals due to their commitment to individual autonomy. The defining characteristic of liberalism, which contrasts it from the work of Plato, Aristotle and Christian thought represented by Aquinas and Augustine is the possibility of the plurality of the conceptions of the good in a free democratic society. For Rawls the conception of the person presumed by utilitarians is a major obstacle in the realization of pluralism. He categorically claims that 'classical utilitarianism and the contemporary version of utilitarianism imply a conception of the person which makes this doctrine incompatible with the presupposition that there are

many rational conceptions of the good' (Ibid. p 160)

In order to understand his idea of social justice, the Rawlsian conception of the person and its relation with the accumulation of primary goods is crucial, Rawls considers:

- i) Each person to be a moral person.
- ii) Each person is defined as 'someone who desires to take part in social cooperation. (Ibid. p 164)
- iii) The moral life of each person is rested upon the highest order interests of that individual.
- iv) The highest order interests of the person are:
 - a. The realization of his own interests.
 - b. The exercise of two capacities:
 - i His capacity to acknowledge or honour the fair terms of cooperation.
 - ii. The capacity to define, decide, revise and rationally pursue his own conception of the good. ((See Ibid. p 160-168).

So the conception of the person which sustains the Rawlsian procedural conception of justice as fairness in a concrete life situation is a person who has, 'both the capacity and the desire to cooperate on fair terms with others for reciprocal advantage'. (Ibid. p. 165)

So the defining characteristics of the Rawlsian conception of person are that people are equally free, rational and self-interested. These qualities are claimed to be necessary for the realization of a fair bargain among mutually disinterested individuals in the original position.

Whenever we talk about any particular conception of the person, no matter how formal the conception is, there are some normative claims associated with this conception. For instance: what is the justification for the Rawlsian claim that the sanctity of the higher order-interest of the individual lies in the prioritization of right over the good? The conception of the person presumed by Rawls is based on a particular worldview. The Rawlsian rationalization regarding the social, moral and political issues must be compatible with this worldview, which reflects the moral intuitions of Western society. This metaphysical presumption prioritizes a particular kind of life style and a particular kind of value structure.

Two fundamental questions are relevant in this context:

- a) Is Rawls argument universalistic or culture specific?
- b) To what extent is Rawls justified in his claim about the equality of substantive (private) conceptions of the good?

The idea of the original position is an abstraction from the particularity of the contractors. The blockage of the knowledge through the veil of ignorance neutralizes the particular differences among the individuals so that they can derive such principles of justice, which can be used as a preamble for the constitution of a just political order. Rawls considers the original position as an 'Archimedean position' (Ibid. p 260) due to which it seems that the Rawls principles of justice are claimed to be universal. This universalizability of the principles of justice is the manifestation of the prioritization of "external (public) reason", which is central in justifying the politics of rights. The external reason sustains the equality of all substantive (private) values by the prioritization of the value of non-interference, reflecting the higher order interests of the contractors in the original position.

Rawls idea of the state is claimed to be anti-perfectionist. The state deliberately ignores perfectionist ideas which direct individuals lives i.e., autonomous pursuit of their private conceptions of the good. The Rawlsian State remains neutral regarding the conceptions of good held by the individuals. The purpose of the state is to provide such a workable framework within which individuals are free to frame, revise, and rationally pursue their own conceptions of the good.

The Rawlsian idea of the veil of ignorance provides a secular framework. In such a framework substantive values have no significance in the establishment of a just socio-political arrangement in general and principles of justice in particular. It is important to note that in Rawlsian political theory the role of the State is neutral. But not in all situations, it protects the system of rights and provides such a mechanism in which private conceptions of good are freely realizable. This implies that the State remains neutral regarding the issue of good but not in the case of right.

Section 2

The Priority of Right under Question?

The communarians' critique on Rawls's theory of justice is very revealing to understand the origin and development of Western moral and political thought. They criticize Rawls on the grounds of his incoherent conception of self and his skepticism about the objectivity of moral grounds. According to them he ignores the importance of the community in the constitution of the individual's identity. They are also dissatisfied with Rawls antecedently individuated self and consider his neutral conception of person as fictitious.

The communarians believe that contemporary Western moral/political culture is in a state of intellectual confusion. The unavailability of an objective and moral basis of liberal democratic culture is the root cause of that confusion. The communarians believe that liberalism does not provide any objective basis for the evaluation of different conceptions of good. The liberal commitment with the prioritization of right (which is independently derived from any objective general good) trivializes the importance of good and consequently that of the community. The ordering of good simply becomes a matter of concatenation. The choice of the substantive conception of the good cannot be justified by one person to another or even to himself. Moral debate must be irrational because of the aesthetics of good. Because of the trivial significance of good, and the prioritization of right over good, moral judgments become merely the expression of personal preferences. In such an emotive discourse, language merely conceals the ultimate and apparent irrationality in liberal political thought. Liberal communarians claim that Rawls' liberal argument is basically rhetoric because of the aesthetics of good.

The priority of the right over the good is the foundation stone for the theory of justice. This presumption justifies the claim regarding the neutrality among competing conceptions of the good. The communarians are not satisfied with this priority of

the right over the good, and believe that the prioritization of the right over the good undermines the role of community in the constitution of the individual's selfhood, and trivializes the significance of good in the determination of a body of rights. Unlike Rawls, the communitarians claim that the rights are derived from good therefore, good has precedence over right a communitarian framework. The role of the community in the determination of good, and the derivation of rights are central according to them. They believe that the good is historically determined and culturally specific therefore the good is always derived from cultural history of a particular community. So, the communitarian perspective prioritizes the community over individuals.

The Rawlsian conception of person is central to sustain the liberal public order and the prioritization of right over the good. The general characteristics of the Rawlsian conception of self discussed in our previous section are as follows:

- (1) The concept of self is antecedently individuated.
- (2) Good has trivial significance in the derivation of the principles of justice.
- (3) These liberal principles presume a universally valid reason.
- (4) Since the self is basically unencumbered, there are no objective grounds for self-interpretation and moral growth.
- (5) The most important among all, the right has precedence over good.

The Rawlsian subject is not identified by his preferences, aims and objectives, rather he is identified 'by the capacity to think and act autonomously'. (Rawls 1971, p. 43) Sandel, disagrees with this Rawlsian approach. He claims that Rawls recasts the Kantian subject with a reasonable touch of empiricism but the formal element (in this right-based liberal version) has not completely been eliminated due to the a-historical and a-cultural nature of the subject. (See Sandel 1982. P.4). Theoretically speaking there is no role for history and culture in the derivation of the first-order ethical principles. The principles of justice have been derived by the universally valid reason and can legitimately be

applied cross-culturally. In this right-based liberalism there is no theoretical instrument which makes possible the objective ordering of the individual's preferences so there is no possibility of self-interpretation and moral growth. The unencumbered self is in itself considered to be the end in itself. The identity of this self is that it has not objectively been identified by anything other than itself, '...my values and ends do not define one's identity. Further one must regard oneself as the bearer of a self distinct from one's values and ends whatever they may be. (Ibid. p 12).

The over-arching category which legitimizes all these aspects of right-based-liberalism is the priority of the right over the good. It endorses the institutional guarantee of equal freedom for all, which sustains the equality of all substantive goods. Thus the priority of right is the precondition and unqualified moral primacy for the derivation of fair principles of justice. Since Rawls believes that if the principles of justice are derived on the basis of any particular conception of the good (for instance, maximization of social welfare, maximization of discounted consumption, revelation, tradition etc.) then this particularity of the good leads to consequentialism. The implementation of any particular conception of good through the State structure eventually restricts the individual's freedom, thereby violating the individual's fundamental right of self-determination. The prioritization of the right in general and principles of justice in particular eliminate the possibility of the 'coercive imposition of one's conception of the good upon persons who might hold differing conceptions of the good'. (Mulhall and A. Swift 1992, p. 43) Thus it ensures the freedom of all.

Sandel rejects this Rawlsian right-based liberalism because it presumes an incoherent conception of self which eventually limits the scope of justice. He conceives the priority of the right over the good as the limit of justice, and the same kind of sentiments have been shared by Macintyre and Taylor with him.

The Liberal-Communitarian critique of Rawlsian right-based-liberalism is basically three dimensional:

- (a) The role of the community in the constitution of

the self.

- (b) The illegitimacy of the detachment of self from its ends and history.
- (c) The possibility of moral growth, and the prioritization of the good over the right.

The human self is not to be treated as the object of scientific study. According to Taylor, man is a self-interpreting animal and there is no possibility of having an abstract realm which transcends historical specificity and the particularity of a linguistic community. The self-interpreting capacity of the individual is the defining characteristic of human beings. In this regard human beings are considered to be 'creatures whose identity as persons depends upon their orientation and attachment to the conceptions of the good which they derive from the matrix for their linguistic community'. (Ibid. p. 102) This means that the constitution of the individual's identity depends upon the orientation and attachment derived from the social matrix of a particular linguistic community. The self is embedded in a particular community and answers the questions which have emerged and are organically related to the ontological basis of that community. The Rawlsian self is antecedently individuated and independent of history and culture. Because of this a-historical temper self-interpretation is ontologically not possible within the liberal framework. Taylor emphasizes that self-interpretation is the defining characteristic of human being but this self-interpretation is made possible by a bounded rationality, the rationality derived from the social matrix of a particular language community. Taylor believes that the unencumbered self is not possible because historical specificity is inescapable. The self is ontologically incapable of escaping from the linguistic/moral space in which it has been situated. 'To understand our predicament in terms of finding or losing orientation in moral space is to take the space which our framework seeks to define as ontologically basis'. (Taylor 1982, p. 40) The moral space in which the self is interpreting itself exists independently irrespective of whether it is considered as legitimate for moral evaluation or not. The natural corollary of this is that the community exists independently and is ontologically prior to the individual self. Taylor has

claimed that 'finding one's bearings is something one does in a space that exists independently both of one and one's success or failure in orienting oneself within it'. (Muhall and A. Swift 1982, p. 106).

Taylor's distinction between moral intuitions and instinctual intuitions is also crucial in determining the role of the community in the constitution of self identity. The rational elucidation or articulation of moral intuitions is possible on the basis of participation in a particular linguistic community only. '[The] moral judgments and intuitions are essentially capable of rational elucidation or articulation, a process that requires the invocation of fundamental and wide ranging evaluative frameworks also deriving from the community'. (Ibid. p. 102) So the community is a structural precondition for the constitution of a moral self. On the other hand the articulation of moral intuitions has linguistic predication. That is to say the articulation is possible in a linguistic matrix in which the self has been situated. The meaning of moral intuitions has not been derived at an Archimedean position, rather it is contextually determined. This context is actually derived from certain meta-ethical narratives which are ontologically grounded in a particular kind of historical specificity. The natural corollary of this metaphysical presumption is that man is condemned to interpret himself subject to the constraint that the space of this self-interpretation is not being determined by the individual, moreover 'there is no such thing as the structure of meaning for him independently of this interpretation of him for one is woven into the other'. (Ibid. p. 109).

The self is situated in a hermeneutical sphere of meaning and there is no possibility of transcendence from hermeneutical activity. It essentially negates the possibility of an Archimedean standpoint. This means that the community is the theoretical precondition for the derivation of meaning by the self, because it provides the content of interpretation. There is a possibility of more than one interpretation in a given community, and every interpretation is authentic because it is the manifestation of the linguistic matrix in which the self has been situated. Further 'the

relationship between a person's inner life and the vocabulary available to him for characterizing or interpreting it is an intimate one' (Ibid. p. 109). Despite this fact that every interpretation is just an interpretation, it is bounded by the experience (in a wider sense), which the self has had as a participant in the linguistic community which legitimately constitutes its self-identity. This means that there is no final meaning. Meaning is necessarily derived from the interpretations. The content of these interpretations are provided by the language and history of a community which is in a state of evolution.

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It is important to note that interpretation by definition does not provide fixed meanings. In order to reach meaning we do not have any instrument other than interpretation. But, there is a possibility to objectively evaluate and order these interpretations on the basis of the meta-ethical narrative, which provide the substance of rationality and are by themselves supra-rational. For instance, liberalism, communism, socialism, social welfare, democracy, popular democracy are all different interpretations which claim to objectify the meta-ethical narrative which emerged during the particular course of European history. In this way Taylor rejects the antecedently individuated self and asserts that it is not possible to derive abstract principles which are universally applicable. Since he presumes the community as the ontological precondition for the constitution of the self, inter-subjective discourse is necessary for the constitution of selfhood. Taylor rejects the possibility of the existence of isolate self, rather it is a 'self only in relation to certain interlocutors'. (Taylor 1989, p.36) Self-interpretation is possible in the linguistic matrix which is prior to the self. The individual is free to interpret but the medium is not derived from the self. This means that the derivation of meaning is a communal phenomenon. In a more precise sense, goods or ends are communally derived by the self in relation to different interlocutors. Taylor says 'in relation to those conversation partners who were essential to my achieving self-definition [and] in relation to those who are now crucial to my continuing grasp of language of the self understanding'. (Ibid. p. 36).

The self always has a virtue which legitimizes its meaningful existence in the hermeneutical sphere which provides the grounds for the culmination of inter-subjective consensus. In Taylor's words, the self always finds itself in a 'web of interlocutors'. (Ibid. p. 36).

Sandel's perspective is slightly different in this regard. He thinks that Rawls claims that the conception of justice is political and the person is an autonomous chooser of ends, because this autonomous 'capacity must be given prior to its exercise, the locus of moral worth in human beings must be seen as given prior to its ends'. (Mulhall and Swift 1992, p. 45) This priority of the self over its ends actually reflects the 'essential unity of the self (which) is already provided by the conception of right'. (Rawls 1971, p. 563).

Sandel believes that the conception of antecedently individuated self presumed by Rawls is metaphysical (i.e., implying a specific ontology). The autonomy of the self is not only a potentiality, 'rather it forms the essence of his or her identity'. (Mulhall and Swift, p. 47). Since in Rawlsian framework the value of non-interference which justifies this autonomy of the self has lexical priority over other substantive values. Therefore Rawls has explicitly acknowledges that 'the self is prior to the ends which are affirmed by it'; even a dominant end must be chosen from among numerous possibilities. There is no way to get beyond deliberative rationality. We should therefore reverse the relation between the right and the good proposed by teleological doctrines and view the right as prior'. (Rawls 1971, p. 560) The objective priority of the value of non-interference is the manifestation of a particular kind of metaphysical conception of personhood. It implies that 'a self for whom justice has absolute priority over other values is a self whose bounds are absolutely prior to its choice of ends'. (Mullah and Swift p. 47) Sandel claims that the original position provides legitimate room to sustain the metaphysical picture of Rawlsian antecedently individuated self. The contractors in the original position have some preconceived notion about the society they ought to construct. For instance the contractarian foundation is considered to be the

only legitimate grounding for all social relations. Equally autonomous individuals are engaged in social relations for the pursuit of their own personal benefits. This social cooperation is necessary for the realization of their specific goods. Rawls clearly acknowledges that 'individuals in the original position are mutually disinterested'. (Ibid. p 48).

Rawls in his contractarian theory presumes two metaphysical presumptions as follows:

- (a) Individuals are distinct persons.
- (b) Pluralism (social order which presumes equality of incommensurable conceptions of good).

Rawls' conception of a well-ordered society presumes distinct persons who cooperate with each other in a pluralistic social matrix. So 'the plurality of distinct person with separate system of ends is an essential feature of human societies'. (Rawls 1971, p. 28) The priority of the right serves two purposes simultaneously; firstly, it ensures the autonomy of separate individuals and secondly it ensures the possibility for the realization of incommensurable conceptions of good. According to Rawls, 'metaphysically speaking, we are distinct individuals first and only later do we form relationships with others and engage in cooperative activity; so those relationships cannot be integral to our constitution as selves'. (Mulhall and Swift p. 49).

Sandel believes that this Rawlsian conception of justice is socially constructed. Rawls presumes a social matrix as the precondition for the constitution of the system of cooperation. If we accept this Rawlsian claim then the social force (community) had already constituted individuals when they were engaging in contract for the pursuit of their own benefits. This implies that 'the plurality of persons is prior to their unity'. (Ibid. p 49) Since the community is the ontological precondition of the individual's self-hood therefore the conditions of social unity and cooperation presume the communal attachments which are ontologically inescapable. The natural corollary of this prioritization is that a person is neither antecedently individuated nor independent of the social matrix or history of the community while individuals 'are essentially constituted

as selves in advance of any such engagement with other'. (Ibid. p49).

Sandel believes that Rawlsian consideration of self-interestedness as the only legitimate motivating force for the social contract is not only an assumption, rather it is a metaphysical condition which is necessary for the derivation of two principles of justice. In other words the condition of self interestedness is necessary for the realization of the constraints of the original position. Rawls believes that autonomy and equality of opportunities are not only the interests of the self, rather 'they are the interests of a self that regards its conception of good as worthy of recognition and that advances claims in its behalf as deserving satisfaction'. (Rawls 1971, p. 127).

The legitimate detachment of the self from the ends reveals the ontological incapacity of the Rawlsian conception of the person to grasp the nexus between the individuals and their ends to which they are committed. This ontological impediment reveals an inevitable epistemological deficiency that there is always a dichotomy between the subject and the object, self and its ends. The corollary of this dichotomy between subject and object is that 'the self beyond the reach of experience, to make it invulnerable, to fix its identity once for all'. (Sandel 1982, p. 62) This unencumbency of the self reveals its ontological capacity to change, revise and frame ends and conceptions of good. In short the unencumbency of the self justifies the free choice of ends and virtues.

Sandel considers this detachment as illegitimate and fictitious. He believes that the determination of ends and virtues is not a matter of choosing among given preferences. The normative status of ends must be excavated or discovered, in other words, one's 'fundamental preferences in morality as well as politics would surely be for the conditions of self-knowledge rather than the conditions of choices'. (Mulhall and Swift, p. 50) Moreover this Rawlsian rejection of a fixed identity for the sustenance of liberty rejects the possibility of intra-subjective understanding. The

Rawlsian antecedently individuated self 'rules out the possibility of what we might call 'intersubjective' or 'intrasubjective' forms of self-understanding, ways of conceiving the subject that do not assume its bounds to be given in advance'. (Sandel 1982, p. 62) 'Thus it rules out the possibility of objective evaluation of moral discourse, and morality becomes a matter of subjective expression. The issues of self, ends and rights are also analyzed by MacIntyre but in a different perspective. MacIntyre believes that it is partially true that the use of language in contemporary moral culture is overwhelmingly emotivistic but it is not true that moral utterances are essentially emotivistic. He thinks that moral evaluation must have a rational context.

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Modern culture is emotivistic precisely in the sense that moral discourse is no longer rational. In the Rawlsian system moral discourse is concerned only to alter preferences and feelings of those you address. The Rawlsian unencumbered self abandons the possibility of genuinely impersonal, objective and moral criterion for altering opinions. This makes it impossible to treat persons as ends within the Rawlsian system. MacIntyre believes that in the Rawlsian framework there is no rational criterion to order different substantive goods. The Rawlsian self is not capable of interpreting itself, so there is no ontologically grounded and metaphysically backed instrument to order different substantive goods. Thus the moral evaluation is logically not possible in the Rawlsian system. It means that you and I do not mutually arrive at a moral conclusion that can be shown to be true in some objective sense. I merely influence or dominate you to accept my moral position by altering your emotions.

The Rawlsian antecedently individuated self is not being identified with its moral viewpoint. Such a self has no character, no foundation and is unencumbered. Its moral judgments are ultimately arbitrary and purely personal. Whatever I have chosen is worthwhile in that its value lies in the sense that I have freely chosen it. The Rawlsian person stands outside history and there can be no such thing as moral personal development.

Rawls does not succeed in distinguishing between human nature in itself and its true potential, because of the ignorance of the 'vital distinction between man-as-he-happens-to-be and man-as-he-could-be-if-he-realized-his-essential-nature'. (Mulhall and Swift, p. 78) MacIntyre believes that people like Kant, Kierkegaard, Smith etc. have failed to provide a substantive ground for the realization of human potential, which is inevitable for moral and spiritual development of the individual. It is one of the reasons that 'the eighteenth century moral philosophers engaged in what was an inevitably unsuccessful project'. (MacIntyre 1981, p. 53).

According to MacIntyre the purpose of ethics is to help human beings to realize their potential. The Rawlsian right-based-liberalism is devoid of telos (purpose/potential) and because of this axiological deficiency Rawls cannot justify morality per-se. MacIntyre believes that human telos is 'vital to morality, understood as a rationally justifiable or objective enterprise', because it alone can license immediate transitions from 'is' to 'ought'. (Mulhall and Swift p. 79) This means that without identifying a 'telos', existing character traits cannot be identified as good/bad. In a nutshell without 'telos' there can be no ground for morality. MacIntyre is presuming an Aristotelian framework for the objective moral evaluation of human conducts. In such a framework telos is considered as a theoretical instrument which provides the basis for judging existing character and is grounded in the culture and history of a civilization.

We can summarize our discussion as follows:

- (i) The conception of the self presumed by the liberal-communitarian is actually the rejection of any political theory which presumes an antecedently individuated or unencumbered self which is independent of history and transcendental to the linguistic community.
- (ii) The community is considered to be the structural pre-condition for the constitution of the self as unity which contradicts the fundamental assumption (i.e., possibility of antecedently individuated self) of a-social individualism.