

## RAWLS AND DEONTOLOGICAL LIBERALISM

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### Abstract

*We would philosophically analyze the underlying foundations of right in the metaphysical morality of Kant and that empirical and sociological inclination of Rawls towards Kantian conception of person. We believe that Rawls shifts from the Kantian conception of person which is a transcendental self. However, he does not altogether detach himself with the project of deontological ethics i.e. priority of right over the good. If we critically analyze the Rawlsian methodology of deontological ethics, we may scrutinize ontological reasons or grounds beyond his deontological ethics. Central theme of the moral theory is that of the theory of person. We must critically analyze the Kantian perspective on the deontological ethics. In this article we would excavate the fact that liberalism prioritizes a particular conception of good, which is higher good of liberal political society. It has priority over all other moral comprehensive doctrines, which is contradiction of deontological liberalism e.g. priority of right over the good. In the same realm of reasoning, it would emerge that Rawlsian Liberalism confines theory of justice to only liberal societies. In this way, this theory is not cross-culturally applicable and would only regulate liberal societies at large. We would discuss that super powers have lost their credibility to teach constitutional democracy to the non-liberal world under this theory which restrains deontological ethics as culturally specific and historically determined.*

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### Deontological Liberalism:

The exposition and analysis of the various aspects of the theory of justice as fairness demands that the doctrine should be further examined under the ethics and metaphysical perspectives. The reason is that any theory is socially and practicably justified under some hide of ethical and metaphysical import.

Further, in order to arrive at the central contention of this study, it is essential to go through an exposition of the Kantian conception of self. The reason for this is that Rawls' conception of person seems either to transgress from what they derive from the Kantian conceptions or to distort the Kantian grounds on which Rawls conceptions stand.

The philosophical analysis shows that the theory which presumes deontological ethics is to extract the idea of primacy of justice. It presumes the primacy of justice in the sense that justice is primary among other political, religious and comprehensive moral doctrines. For Rawls the political conception of justice strengthens the society being composed of diverse associations of the persons who possess different conceptions of good and differ in their particular interests and aims. Rawls may bring it in these words, "[the] society is best arranged when it is governed by principles of justice that do not themselves presuppose any particular conception of good."<sup>1</sup>

On the full deontological politics, the socio- political justice presumes the system "...in which priority of right is derived in a way that does not depend on any particular values and ends...."<sup>2</sup>

When problem of priority arises between right and good, then politico-legal framework is prioritized over the non-political or moral order. It follows that the two principles of justice do not authenticate any one's conceptions of the good, but only confirm the concept of right.

We would try to excavate that the deontological conception of justice which is influenced by the Kant. In order to understand Rawls' deontological liberalism, we must fathom the Kant's philosophical interpretation of *primacy of justice* and that of *priority of right over the good*. Moreover, both the moral and foundational priority of justice hangs together in the Kantian paradigm. Justice is not to be confused with other moral values which are substantively dependent on the particular conceptions of good in society. Rather, justice [priority of right] in Kantian sense, outweigh moral comprehensive values, because the principles of justice are not subject to the underlying goods that persons do assert, pursue and reconstruct in their independent capacity of choices.

In this sense, deontological liberalism presumes the basis in which absolute priority [primacy of justice] and the sanctity of individual rights is asserted. From the perspective of this scheme justice is described to have been derived independently of any determinate

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<sup>1</sup> Sandel. M. Liberalism and the Limits of Justice. Op cit. p. 1.

<sup>2</sup> Keeney. Patrick. Liberalism, Communitarianism and Education. Reclaiming liberal education. Augusta publishing, Ltd., 2007. p. 81.

conception of the good which is seen as morally overriding by the virtue of its foundational priority.

### **Kant on the Deontology of Self:**

If, as Kant held, the moral law is to be categorical and absolute. It is independently derived from all ends, and then same must be true of moral subject. A reason is the core of philosophical reconstruction of the laws regulating socio-moral relationship among moral persons. Reason provides the standard of the systematic study of laws. So, pure reason establishes system of universal values, which is not independently possible, as Kant believes that rational knowledge is empirical, material or formal. This is the reasons why, Kant holds that pure philosophy is based on “a priori principles” that does not depend on empirical one. So, the subject [person] is an autonomous and rational being who acts independently of external coercion, and he is able to understand the system of rules which he autonomously wills and desires to be regulated by the principles. Kant says:

The good will is not good because of its efficacy in achieving same proposed end. Rather it is only good because of its willing i.e. its good and the condition of all others, even for the desire for happiness.<sup>3</sup>

Kant believes that categorical moral law is not subject to moral experience or anything like it; rather it is *based on the subject who is capable of autonomy*. For Kant, subject is a capable of an autonomous will; he is able to interpret laws by the power of his will. The subject could *evaluate* itself above the world of senses and thus participate in an ideal and absolute realm, one which is independent of our social and psychological inclinations.

For Kant, the categorical moral law depends on the idea of primacy of subject’s will. Moreover, the liberty and capacity of subject to legislate and act autonomously underlie the profound ground of free will of rational being. This is what Kant says that, “...will is in its all actions a law to itself.”<sup>4</sup> Kant further strengthens the argument by holding that categorical moral law presumes that autonomy of will must be consistent with the freedom of rational being. In this regard Kant suggests that “Freedom must be presupposed as a property of the will of rational being”.<sup>5</sup>

The concept of freedom is merely abstract because it can not be turned out as real in human nature. Then what must be the basis for the claim of the autonomy of will? Kant may bring forth twofold argument in order to strengthen and support his philosophical interpretation of the subject.

#### 1. epistemological

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<sup>3</sup> Kant. I. *Foundations of the Metaphysics of Morals*. In *early Modern Philosophy*, 2005 by Jonathan Bennit. *Early Modern Text* (Philosophy topics by Modern day Philosophers. p. 5.

<sup>4</sup> Kant. I. *Groundwork of the Metaphysics of Morals*. Cambridge Texts in the History of Philosophy. Edited and Translated by Mary Gregor, Introduction by Christine M. Korsgaard. Cambridge University Press. 1998, p.52.

<sup>5</sup> *Ibid.* p. 53.

## 2. practical

Kant supports the idea of the priority of subject hence he would give up the epistemological certainty of the rational psychology, because for him, the self is not empirical entity to appear in the spatio-temporal phenomena at this level. For the reason that we see the epistemological argument begins by examining the presupposition of self-knowledge. Introspection can only deliver to the senses objects of experience, because when self is to introspect, it would find nothing more than these manifold of perceptions or deliverances of senses. Thus, subject knows itself through manifold object of experiences given in phenomenal order of the world out there. Subject may be inclined towards, or dispose himself to, or contemplates manifold of sensations. Yet we may understand that this kind of self-knowledge bears limitations also, because self is behind what is given after these appearances, or to have capacity to trace out the transcending features of these appearances. For Kant, rational being is unable to know things in themselves, or even himself. He knows himself only through introspection e.g. inner sensations. Because "...*I think* which must be capable of accompanying all my perceptions, is not located in time..."<sup>6</sup>

As a result, neither introspection nor innermost sensations can account for something which unifies the manifold of experiences, because if inner sensations are able to show what is beyond their appearance, then it may/must dissolve into yet another appearance. Hence subject can know objects of experience only when subject [transcendental self] is affected by them or otherwise nothing is knowable in itself. While, Kant suggests that the man is unable to know things in themselves. For this reason Kant says that:

...we must admit and assume behind appearances something else that is not appearance, namely things in themselves, although, since we can never become acquainted with them but only how they affect us, we resign ourselves to being unable to come any closer to them or to know what they are in themselves.<sup>7</sup>

This distinction between the world of senses and world of understanding, the distinction between the world in itself and world we know it, is what Kant *admittedly* says *spatio-temporal world* which provides *manifold deliverances* to the transcendental self. Because, space and time are preconditions of human experiences of sensible world. For Kant, world in itself is trans-empirical and the world itself as it appears is empirical. While man obtains knowledge of himself through inner senses or consequent appearances of his nature. There must exist something which is "...behind the objects of senses, something else invisible and acting of itself..."<sup>8</sup> That is transcendental capacity which is something further behind the stream of experience; an apparatus of mind which necessarily contributes various ordering elements to our sensations, such as space, time and causality and which unifies our perceptions into symmetry of thoughts. Without such elements, our

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<sup>6</sup> Korner. S. Kant. Published by penguin books. 1955. p. 67.

<sup>7</sup> Kant. I. *Ground work of the Metaphysics of Morals*, op cit. p. 56.

<sup>8</sup> *Ibid.* p. 57.

experiences would be chaotic, scattered and unintelligible; the experience of an emptiness.

This something which is *antecedent* to any particular experience and systematically organizes our uneven sensations and impressions and unifies them into a single cluster of consciousness, Kant calls it “ego as is constituted in itself”.<sup>9</sup> Kant further says that this ego transcends every thing that “... sensibility can ever afford it...”<sup>10</sup> to consciousness. In this way, for Kant all sensuous conceptions are brought under rule. As Michael sandal puts it:

[The ego] provides the principles of unity without which our self-perception would be nothing more than a stream of disconnected and over changing representations and perceptions of no one.<sup>11</sup>

Kant on the other hand, may yet imply moral cum epistemologically unified foundationalist conception of person as his claim substantiates that self as an ego is “...I (which) can grasp the manifold of representation in one consciousness, and should have as many colures and diverse a self as I have representations of which, I am conscious to myself.”<sup>12</sup> Here, we may excavate the ontological possibility within synthetic unity of apperception because the unified and individuated self, which symmetrically organizes manifold sensations and conjoins them into the single consciousness. Kant, indeed, tries to reconcile epistemological antagonism between rationalism and that of empiricism by his thesis of transcendental idealism.

In Kantian framework, subject is situated either in the factual world of history, society culture and traditions, or that of transcendental capacity of synthetic unity of apperception. Thus a metaphysical conception of self is rational subject because subject possesses reason, whereas reason in Kantian sense is either theoretical e.g. pure reason or practical which determine the identity of self in different domains.

As Kant says that this reason is twofold as that person is able to establish his relations to the world of experiences or knowledge, rationally “...either merely by determining it or its concepts...or making it real.”<sup>13</sup>

Former is theoretical aspect and later is practical aspect. This implies that ego as a transcendental subject as well as the object of experience suggests two ways of conceiving the laws that govern human experience. As a part of a nature man is bound by the laws of sensible world, hence under the laws of casual determination. If freedom were based on any property of will according to the laws of nature, then a free will would be an absurdity, yet, it was only under the idea of freedom that an “autonomous will” could be ascribed to all rational being, freedom must be presupposed if we are to think of ourselves as rational creatures endowed with a will as sandal says, “We must necessarily

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<sup>9</sup> Ibid. 56.

<sup>10</sup> Ibid. p.57.

<sup>11</sup> Sandel. M. *Liberalism and Limits of Justice*. p. 8.

<sup>12</sup> Kant 1, (1887) *Critique of Pure Reason* (11 ed.) trans. N.K Smith London Mac Millallan 1927, p. 154.

<sup>13</sup> Ibid. p.8.

grant that every rational being who has a will has also the idea of freedom and that it acts only under this idea.”<sup>14</sup>

For Kant the presupposition of the autonomy of the will was necessarily grounded in the faculty of reason because “reason must regard itself as the author of its own principles, independently of foreign influence.”<sup>15</sup>

If a subject is to be a truly self-regulating then we must presuppose the freedom of the will as a necessary quality of self, as distinct from any particular desires and attachments it may form in the sensible world. Further it is the:

...notion of subject prior to and independent of experience, such as the Kantian ethics requires, appears not only possible but indispensable, a necessary presupposition of the possibility of freedom.<sup>16</sup>

Sandel further comments that “all laws.....which are directed to objects make for heteronomy, which belongs only to the natural laws, and which can apply only to the world of senses”, he further interprets the Kantian person as saying:

Were I wholly an empirical being, I would not be capable, for every exercise of will would be conditioned by the desire for some object. All choice would be heteronomous choice, governed by the pursuit of some end. My will could never be a first cause, only the effect of some prior cause, the instrument of one or another impulse or inclination.<sup>17</sup>

Sandel describes it such as:

Any theory of self of the form, I am x, y, z collapses the distance between subject and situation which is necessary to any coherent conception of a particular human subject.<sup>18</sup>

Above argument succinctly articulates the situation of Kantian subject; individual [self] is to be construed as an entity existing antecedently to the particularities of the personal history of subject. Kantian subject stands prior to his previous choices and contingencies of the birth and that of place, otherwise self is not autonomous [in Kantian paradigm] nor it may enjoy future choices, if it is to be defined in relations to what Kant calls specific ends or aims which persons choose in their contingent circumstances.

Kant believes that the freedom requires self to be detached from his probable circumstances, because it is indispensable for a [deontological] self to be distinct from those qualities which it affirms and the situation which defines what self is itself. Indeed,

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<sup>14</sup> Sandel. M. Liberalism and the Limits of Justice. op cit. p. 65.

<sup>15</sup> Sandel. M. Liberalism and the Limits of Justice. Op cit. p. 67.

<sup>16</sup> Sandel. M. Procedural Republic and Unencumbered Self, op cit. pp. 81, 86.

<sup>17</sup> Ibid. p. 78.

<sup>18</sup> Sandel. M. Liberalism and the Limits of Justice. op cit. p. 20.

Kant differentiates between what self *has* from what self *is*. So, *to have* and *to be* characters of self are distinct absolutely. As sandal writes:

This space or measure of detachment is essential to the ineliminably possessive aspect of any coherent conception of self. The possessive aspect of the self means that I can never fully be constituted by my attributes that there must always be some attributes I have rather than am. Otherwise just any change in my situation, however slight, would change the person I am.<sup>19</sup>

So, without some such distinctions, the subject would merely be a concatenation of various contingent desires wants and ends,

...whose identity would blur indistinguishably into (its) situation. Without some distinction between subject and object of possession, it becomes impossible to distinguish what is “me” from what is mine, and we are left with what might be called a radically situated subject.<sup>20</sup>

This implies that the subject who is a *radically situated self* may be *inadequate* to the concept of personhood. In the very same situation persons’ ideals, values and appraisal may be *thoroughly inadequate* and *irreconcilable* to the theory of justice as fairness. The argument goes on to describe the situation such as the *right must be prior to the good*, so too must be the *subject prior to its ends and attachments*. The deontological self must be construed as existing prior to whatever specific ends are sought, what matters, above all in the Kantian deontological ethics, is not the ends chosen, but the autonomous capacity of self to choose.

However, it is difficult to know how such a conception can avoid charges of arbitrariness. The Kantian conception of person which detaches the subject from the empirical features is nothing more than the abstract consciousness. The abstract consciousness is a bare consciousness of emptiness. Abstract consciousness is consciousness of what? Consciousness of emptiness happens in transcendence and vacuum which is not possible to be known. For the reason that, neither transcendence nor void passes through normal human perception. Therefore this a priori consciousness is unknowable; hence philosophical theorization of such introspection is trivial.

Thus Kantian self turns out to be a radically disembodied and hallow subject. We observe that the radically situated subject is incapable of standing aloof from the sensible world and is totally inadequate to the notion of personhood in the same way that *a standard of appraisal* which is *absolutely engrossed with existing values* of society *turns out* to be *inadequate* to the concept of justice. The disembodied self also remains aloof and incapable of bringing the distance between the ideal realm of pure reason and human circumstances which provide justice its occasion ultimately. Kant’s transcendental or noumenal self, one who lacks altogether an empirical foundations, secures the priority of

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<sup>19</sup> Ibid. p. 20.

<sup>20</sup> Ibid. pp. 20. 21.

self and hence the priority of right [justice], only at the cost of denying the human situation.

Kant may, yet use his theoretical fabricate of categorical imperative regarding his notion of subject who is autonomous self. Subject is able to act in conformity with the system of rules- the rules which Kant declares laws which are to regulate everything.

According to Kant rational self is autonomous subject having capacity to choose and act in accordance with the rational principles [laws] of justice. It entails that the self is free when he is able to act in obedience of the rational principles and constitutional laws that he has chosen in his autonomous rational capacity. Therefore, liberty and morality are to be convulsed together with the autonomous capacity of self to choose freely and his act morally. However, Kantian categorical imperative describes that the autonomous subject is capable to choose ends. In this way, *subject* is not rationally involved in *choosing or rejecting* things, rather he *desires to choose* between *alternative choices*.

In this way there is no rational and free person to choose among many choices in vacuum but he/she chooses on the basis of his/her desires, so rational choices are to be undermined by the range of desires of persons. Thus every one who is able to choose among manifold choices possesses different desires and have diverse interests, some times very irreconcilable desires. Therefore, Kant tries to resolve this issue of manifold desires<sup>21</sup> through his conception of self who is not “means to end”, he chooses as an end in himself. For the reason that, “...only rational being has ability to act according to the presentation of the law i.e. according to principles.”<sup>22</sup>

The rational subject is end in himself, and he is the source of principles [laws in practice]. It is the duty of each rational and autonomous subject to abide by the law and interact with other rational fellows according to the system of laws. The categorical imperative requires that the autonomous self must “...act in such a way that you treat humanity, both your own person and in the person of all others, never as means only but always equally as end in himself.”<sup>23</sup> Thus, Kant presupposes the notion of the self as antecedently prior to his ends, desires and goods that he chooses. It implies that deontological ethics describes that *right is prior to good as the self is prior to its ends*.

To summarize the argument, so far on the Kantian view, the priority of justice is both *moral and foundational*. It is moral in the sense that the demands of justice *outweigh* other moral and political interests, no matter how pressing such interest may be. And it is *foundational* in the sense that *justice is an end* or [virtue] to regulate these ends. This is so because of the particular view of self. As subject is prior to its ends, so is the right prior to good. Hence, society is most excellently governed by the principles which *do not presuppose* any empirical and [which, we recall according to Kant, can all be summed up by the concept of happiness], for such principles [other than the liberal principles] would fail to respect individuals as creatures capable of autonomy. *It would treat them as objects rather than subjects as means instead of ends in themselves.*

<sup>21</sup> The desire which can not be reconciled, therefore, these desire are in conflict.

<sup>22</sup> Kant. I. *Groundwork of Metaphysics of Morals*. In H.J. Patton London. p. 412.

<sup>23</sup> *Ibid.* p 249.

Yet in Kant's transcendental idealism, the cost of securing the priority of subject (and the priority of right) is purchased at too high a price, we arrive at an absolute and categorical moral law only by *denying the impact of phenomenal world, and it is unclear how an empty and abstract creature could, without arbitrariness, produce determinant principles of justice?*

We observe that Kant wins the primacy of justice only at the cost of relinquishing too much to the obscurity of transcendental subject. The metaphysics idea, for all its advantages, succeeds only by denying human circumstances. Kant sought the transcendental deduction as a *necessary presupposition* of the categorical nature of the moral law. However, contemporary liberal thinkers *avoid* the *metaphysical obscurities* of Kantian philosophy. They *reject* Kant's first premise, namely the empirical principles do not deem fit as basis for the moral law and they argue just as Rawls does, that "...moral philosophy must be free to use contingent assumptions and general facts as it pleases."<sup>24</sup>

### **Rawls On the Deontological Liberalism:**

So far we have been preoccupied with the Kantian transcendental idealism and the transcendental conception of self. Rawls derives a main influence from the Kantian philosophy. Even though, Rawls does not give up Kantian methodology, he reshapes it by theoretically attempting to preserve the moral force of Kant's metaphysical ethics within the scope of empirical theory. In theory Rawls says that:

...to develop a viable Kantian conception of justice, the force and content of Kant's doctrine must be detached from its background in transcendental idealism [and recast within the] canons of reasonable empiricism.<sup>25</sup>

Rawls' central aim of liberal theory is to strengthen the liberal politics without "metaphysical embarrassment", and to arrive at a deontological ethics with a "Humean face."<sup>26</sup> In short, what is *required* is a view which *affirms* the *priority of subject*, yet situates the subject closer to the *lived world of human experience*, than what Kant's ideal metaphysics allows. Rawls may yet *fail to encounter theoretical vulnerability* which his theory would face. We would bring it to the light that Rawlsian deontological liberalism is vulnerable because of its being associated with Kantian [metaphysical] subject, because "[the] deontology with Humean face either fails as deontology or recreates in the original position the disembodied subject."<sup>27</sup> As Rawls writes in his theory of justice literature that it is difficult "to develop a viable Kantian conception of justice".

Rawls takes Humean influence depicts the meaning of subject which is empirically situated in the thoroughgoing lived world of experience or that of world of facts, because

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<sup>24</sup> Rawls. J. A theory of Justice. Op cit. p 51.

<sup>25</sup> Rawls. John. A Theory of Justice. Op cit. p. 51. see also law of the People, Rawls and the agenda of Social justice.

<sup>26</sup> Sandel. M. Liberalism and the Limits of Justice. Op cit. p. 14.

<sup>27</sup> Ibid.

Kant's metaphysics fails to situate subject in the spatio-temporal order. Therefore, deontological liberal such as Rawls would prioritize his political conception of justice and that of conception of person within the Humean paradigm rather than Kantian.

Nonetheless, we observe that Rawls' project may not succeed, because it is verily difficult for Rawls to salvage the priority of right without recourse to the difficulties of his theory of person encountered in Kant's transcendental deduction. Simultaneously we analyze that it is not a simple or easier task for liberal philosopher to preserve the primacy of justice without recourse to metaphysics. In this way, Rawls may not *circumvent the charges of arbitrariness, if he tries to avoid the transcendental idealism on the one hand, but follows Kant in scrutinizing the categorical foundations of his social ethics on the other.*

Rawls may still try to defend himself by simply positing the notion of a-historical and disembodied subject who is supposed to have capacity to choose, and his capacity is not to be determined by arbitrary desires and personal end of self. Rawls believes that such persons are able to formulate method of distributing social goods in accordance with the impartial strictures of the principles of justice. Rawls believes that political agents are to choose under the veil of ignorance, which is a method *to detach agents from their particularities and specific recognition in the personal history, natural endowments and of social status.*

#### **Rawls on the Conception of Person:**

As it stands, Rawls conception of subject (person) is a claim about what is most worthy of respect in our treatment of Human being; it is a substantive moral position and one which Rawls explicitly considers as a central to his theory. Rawls claims that his conception of person is not ontologically specific.<sup>28</sup> He claims that his conception of persons has a representative social and political position within a *constitutional history* of American society.

Rawls avoids ontological accounts of self, because he thinks that the original position is not to signify a particular Human behavior, but his conception of person depicts a political agent who is free, equal and autonomous citizen of the liberal political state. However, Rawls reconsiders his theoretical position on Kantian conception of the person which is transcendental. Even though Rawlsian conception of person is somewhat identical to the Kantian person at the level that Kantian person is autonomous chooser of his own ends independent of his socio-political or historical leanings, so is Rawls' political conception of person who is able to choose principles of justice independent of his emotional desires, historical standing or his psychological propensities. Thus, self is autonomous chooser. Nevertheless, Rawls adopts deontological method to describe his conception of person unlike Kant. Far we have already observed that Kant believes that the rational ego must be transcendental, if he is to be a free and autonomous law giver in real sense. Rawls reconstructs this conception of law giver; he believes that it is not

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<sup>28</sup> Rawls denies that his conception of "person is means to ends", rather, for him, person is an autonomous self who is able to determine his conceptions of good independent of others' intervention.

possible for a transcendental self to constitute meaning of law in a transcendental void. Whereas, the political conception of a person must have a legitimate position in a particular community, *even if he is autonomous and free to determine his own conception of good independent of his socio-cultural influence*. In this way, Rawls would split his person into twofold identities.

Rawls may split his conception of person either into private or public affairs. In private sphere Rawlsian Person must deal with his own private affairs independent of public intervening. He is absolutely free in his private sphere, provided he does not violate the same freedom for all. On the contrary, in the public sphere self must be defined “...independent from and not identified with any particular conception with the scheme of final ends...”<sup>29</sup>

This implies that there exists no confusion of private and public spheres to deteriorate either public or private identity of person. Even though, a person may change his mind, ideology, religion or his own personal preferences overnight, it would not affect his public identity at all. Rawls holds that it is not possible for a *self to constitute his identity in void*; because a person is brought up in a particular family which undertakes responsibility *to indoctrinate* the traditional values in the mind of the social being. His [person’s] social behavior corresponds to the traditions, values, ideas, cultural and religious beliefs *existing mightily* in a particular linguistic community. From this it appears that Rawls’ conception of self is both unencumbered<sup>30</sup> as well as encumbered self.<sup>31</sup>

We may describe the unencumbancy of the person such that it shows that a person is free in his private sphere. Whereas, incumbency depicts that self is a political or a legal person who is an autonomous author of a “...self-authenticating valid claims...”<sup>32</sup> This is how, Rawls claims that *legal self must suspend his encumbrance where he/she acts in relation to the body of rights*. However, problem arises here that how private and public identities of the self are to be *reconciled*? We have seen that *neither private nor public spheres do affect each other*. So we observe *this mechanism fails in a democratic system because neither encumbrances of self nor unencumbrances influence each other. Than what identity is constituted in emptiness*.

However, Rawls may give importance to a citizen over the moral person in the living world of species. Indeed, Rawls avoids the intervening force of comprehensive moral doctrines over the political life of individual citizens generally, because he thinks that comprehensive moral doctrines are absolutely diverse in nature. Hence these doctrines would usher into perpetual conflicts among social agents leading to broad-based dissension in a highly pluralist society. Deontological liberalism describes the situation of

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<sup>29</sup> Rawls, John. *Political Liberalism*. Op cit. p. 30.

<sup>30</sup> Unencumbered is a self is autonomous person having capacity to form, revise and rationally reconstruct his own conceptions of good in his private sphere.

<sup>31</sup> Encumbered is restrained to intervene in others’ freedom, so there are public restrictions when he acts in his public life.

<sup>32</sup> Ibid. p.32.

person such as person is not to be explicated by the character that he has driven from his class, ethnicity, religion, or membership in any tradition or community. Thus autonomous person is not defined by these contingently derived attributes, because liberalism enables person to either accept or reject the values associated with any of these roles.

*This is a contradiction in Rawls; raising the problem of identity of self independently of class, ethnicity, religion, and society as a whole.* On the other hand, if we accept the Rawlsian claim that person is autonomous because he has a capacity of choice, than question arises for how the capacity of choice itself is a *transcendental faculty of self*. From this it follows that the capacity of choice, being transcendence, can not constitute the *meaning of self* either in private sphere or in public sphere without recourse to the metaphysics.

Rawls' emphasis upon the human subject as an autonomous chooser of ends leads him to assign an absolute moral priority to the subject over its ends. What most fundamentally deserves respect in human subject is their *capacity to choose their aims and ends* rather than *specific choices they make*; and since that capacity must be *given prior* to its exercise, the *locus of moral worth* in human subject must be seen as *given prior to its ends*. However, this assignment of moral priority is both matched and explained by the assignment of a *metaphysical priority*. *The essential unity of human subject is also something given prior to the ends that it chooses, and it is the absoluteness of this priority accounts for the absoluteness of a moral priority. Why is Rawls committed to this priority?*

Sandel depicts that there are certain passages in his theory which articulate the nature of human subject "...the [Self] is prior to the ends which are affirmed by it, even a dominant end must be chosen from among numerous possibilities."<sup>33</sup>

The unity of self is established prior to its choices during the course of experience. Rawls would readily accept this because he claims that "[the] main idea is that given the priority of right, the choice of our conception of good is framed within definite limits...the essential unity of self<sup>34</sup> is already provided by the conception of right."<sup>35</sup>

Rawls writes in theory that:

What we can not do is to express our nature by following a plan that views the sense of justice as but one desire to be weighed against other. For this sentiment reveals what the person is, and to compromise it is not to achieve for self free reign, but to give way to the contingencies and accidents of the world.<sup>36</sup>

<sup>33</sup> Rawls, John. *A theory of Justice*. op cit. p. 560. see justice as fairness in Collected papers of Rawls.

<sup>34</sup> In the Sandelian perspective this *antecedent unity of the self* means that the human subject is always and irreducibly prior to his/her values and ends. Human self as a sovereign agency is not dependent on the contingent circumstances but guaranteed in advance.

<sup>35</sup> Rawls, John. *A Theory of Justice*. Op cit. p. 563.

<sup>36</sup> *Ibid.* p. 575.

In other words, Rawls sometimes *seems to give impression* that the self is a self-authenticating source of valid claims. Therefore, the autonomy of human subject is an absolutely fundamental value outweighing all other values. In short, a subject for whom justice is the first virtue is not just an autonomous chooser of ends but an *antecedently individuated subject*; a self for whom justice has priority over all other values.

### Critical Appraisal of the Rawls' Conception of Person:

So far we have surveyed Rawls' philosophical anthropology along with some critical views; Rawlsian methodology scrutinizes the conception of moral personality as an autonomous chooser of ends.

The first and foremost reason is that the *identity of the self* does not depend on the system of ends which are inevitably related to a human subject in social circumstances. Other than this, all the social circumstances do not affect the identity of the self in any way, for the reason that human subject is detached from system of ends by an exercise of subject's will.<sup>37</sup>

The recognition or the self knowledge is more important than the recognition of choices. This sociological paradigm outweighs the introspective *analyses of the self*.<sup>38</sup> It leads to the idea that human subject must commit himself to a certain goal or life project as an outcome of the process of self-scrutiny and decipher the manifestation of their innermost being. In this realm of reasoning Rawlsian **person** turns out to be *controversial and non-neutral*.

Another reason is very significant here. It has to do with the question as to how Rawls organizes a theoretical mechanism in which human subject is to be committed to shape his/her identity? If we believe that self is prior to ends or human subject is an antecedently *individuated self*. It is simultaneously *identical* to the system of ends in many cases, *even supposing that* it may be the situation; nonetheless his *identity* would remain *unaffected by the ends*. We observe that in the Rawlsian framework, self-identity is not inevitably identical or integral to the system of ends. Rawls believes that ends can not describe what the subject is, rather it could describe what the subject seeks or possess, because the identity of the person is to be fixed prior to choices of ends in order *to detach what self is from what the self has*.<sup>39</sup>

One of the *outcomes of this detachment* of the self would *befall* the subject *beyond the empirical world* or to the *transcendental synthetic unity of apperception*. This self must be *metaphysical* and a *bare one* in the sense that self is *immune* from competing values, social indoctrinations and historical experiences which *blend* in to a cluster of his moral personality. If the identity of the human subject is not *community-directed*, subject is not able to establish his relation to the *other-directed ends* to which he is *committed* and than

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<sup>37</sup> Human will means freedom as a law, in other words man is a law giver, whereas, the end of subject is the particular preferences of a person.

<sup>38</sup> Introspective analysis stand for mere study of what self is in itself, or what self is beyond the social world.

<sup>39</sup> This point would return Rawls to the Kantian paradigm of transcendental idealism if he tries to make his conception of the person invulnerable to fix its identity once and for all.

all the *commitments* of the *bare subject would be empty*. Another reason, which is more specific and committed to the previous arguments, is that the Rawlsian *conception of person* is not fully detached from the Kantian metaphysics. Consequently priority of subject restricts Rawls' ideal of political community to an impoverished understanding. Rawlsian conception of self turns out to be a specific epistemological and psychological view in the sense that priority of subject is identical with the theory that subject is also prior to its social, moral and comprehensive ideals and values of community.

This implies that the Rawls is inclined *to eradicate* anything other than voluntarist relations, in advance, between the *system of ends and that of self*. However, Rawls believes that either adoption or pursuit of ends and aims of the subject may change or reshape the identity of self, and bring it to the line of good of society determining the self in a very constitutive sense. In this theoretical symmetry Rawlsian self would be manipulated in the jar of *conflicting visions of life*, and the neutrality of the principles of justice would *suffer due to the diverse conceptions of goods* in society. Henceforth, the society itself may turn into the non-neutral collectivity.

Although, the principles of justice do protect the identical rights of the every citizen which society is not to violate on any ground. Thus freedom is a general value in a liberal political society only in order to ensure that the freedom of all other citizens would not be violated by the individuals who have the same right to entertain their equal liberty.

In order to protect the equal freedom for all citizens of the liberal political state, it is incumbent upon the liberal society to remain maximally neutral among competing conceptions of the good. However, we see that this commitment to a certain conception of the person is non-neutral. The argument suggests that:

1. The *commitment of neutrality* [among diverse conceptions of good] at the level of political level is *predominated* and subject to *a high degree of inadequacy*. For the reason that it *presupposes* the foundations of *non-neutrality* of human subject in the *paradigm of metaphysics*.
2. The second outcome of this argument must imply that the *metaphysical non-neutrality* would definitely affect the political and moral paradigms in terms of actually diminishing the neutrality conditions discovered in both political and moral mechanism.

We may extract the idea that if such conception of person is the significant source of identifying priority of right over the good in a deontological framework, the conception itself would prove to be detrimental to the existence of a liberal political society.

Even though we may hold that Rawlsian person is not to transcend all moral and political values of his citizenship in a liberal political state, nonetheless, society does not wholly depend on the political percepts alone but it is predominantly constituted by the moral comprehensive, political, and religious percepts which historically determine the political traditions of the basic structures of the society.

For this reason, we find the fact that theory of justice that Rawls espouses, must bear a very *little scope for the people* who believe that their non-political relationships with others are to be construed in terms of constitutive of a particular community because community constitutes their identity either as catholic or protestant or a Muslim.

Hence, it is clear that the theory of justice would cause unintended consequences to follow from these presuppositions. Moreover these consequences follow because the theory of justice may require social agents to shun their undeniable goods in favor of greater good of justice securing the system of individual right of freedom. Liberal version may fail to justify sacrifices by persons in the name of justice. And simultaneously these sacrifices, on the name of justice, are tended to the conception of antecedently individuated self.

However, Rawls does not wholly ignore the communal origin of the conceptions of the good. Rawls avoids these sociological errors but he fails to acknowledge the constitutive significance of the goods which are inherently embedded in socio-cultural and historical traditions of society that fixes the identity of the social creatures. This leads us to doubt the liberal claims of maximal neutrality between diverse and incommensurable conceptions of goods.

### **Deontology Requires Ontological Foundations:**

We reach to an important point that the deontological liberalism [as Rawlsian liberalism] avoids any ontological account of self and society.<sup>40</sup> It objectifies the priority of right over the good. However, this ontological liberalism requires the ontological basis. We would confine our discussion to this thesis here.

Deontological liberalism gives priority to justice, fairness and individual rights. The core thesis of this liberalism has been explored earlier. It is a theory of justice which does not seek particular ends. Rather, it strengthens the position of citizens to pursue, revise and rationally reconstruct their own goods and final ends. While, in this order no one is allowed to violate the same liberty for all. As sandal says:

It, therefore, is governed by the principles that do not presuppose any particular conceptions of good. What justifies these regulative principles is not that they maximize the general welfare or ultimate virtues or otherwise promote the good, but rather that they conform to the concept of right, a moral category given prior to the good, and independent of it.<sup>41</sup>

We further observe that in its *very nature*, the basic structure of a "...just society seeks to provide a framework within which its citizens can pursue their own values and ends,

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<sup>40</sup> Rawls also avoids the epistemological account of self, because he thinks that such a self would give a metaphysical characters to his conception of person.

<sup>41</sup> Sandel. M. Procedural Republic and Unencumbered Self. *Philosophy and Public Affairs*. Op cit. p. 83.

consistent with a similar liberty for others.”<sup>42</sup> Sandel writes that the priority of right over the good has twofold criteria such as:

Firstly: The priority of right means that individual rights are not to be sacrificed for the sake of general good.

Secondly: The principles of justice that specify these rights can not be premised on any particular vision of the good life.<sup>43</sup>

In the same realm of argument we observe that if “priority of right over the good” must be known in relation to a culture, traditions, taboos, customs and a history of particular linguistic community, then it is not possible to contrast right with good. For this reason, right is again reducible to what is permissible by society legitimately, otherwise it does not allow what is illegitimate or come in direct difference with the existing document of rights which rational persons are supposed to have chosen in compliance with existing values of community.

It entails that right is not independently formulated; rather it is inescapably rooted into the seeds of social and political system of the linguistic community. *Right has the historical roots in the linguistic community to which it regulates.* Consequently, *right and good both have similar historical background.* As it is observed that *good is embedded within the cultural strictures of society so has the right traditional root within the locus of community.* For that reason, *conception of right which Rawls prioritize in his scheme of justice has historical roots in the society liberal political society of USA.* It further leads us to construe that the “right” in liberal deontological hypothesis is, indeed a highest order good of the liberal political society of America in particular and other liberal societies in general.

*Neither the priority matters, nor the contrast of right/good is problematic. Right has the same roots as do the conception of good.* No one can articulate either right or good independent of a linguistic community because *self* is not “...Full being/s in this perspective until we can say what moves us, what our lives are build around...”<sup>44</sup>

Taylor says:

Where good means the primary goal of consequentialist theory where right is decided simply by its instrumental significance for this end, then ought indeed to insist that the right can be primary to the good. But we use good in the sense of this discussion where it means whatever is marked out as higher by a quantitative distinction, than we could say that the reverse is the case, that in a sense the good is always primary to the right...the good is in its articulation, gives the point of the rules which define the rights.<sup>45</sup>

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<sup>42</sup> Ibid. p. 83.

<sup>43</sup> Ibid.

<sup>44</sup> M. Taylor. C. *Sources of Self*. The Making of Modern Identity. Oxford University Press. 1982. p. 92.

<sup>45</sup> Taylor. M. C. *Sources of Self*. Op cit. p. 89.

This implies that neither right is prior to good, nor good is independent of the right. Good is indispensable to the articulation of right, which is deeply rooted within the core of a linguistic community, because "...rights are always practiced in a community..."<sup>46</sup> Rawls himself realizes in his later work "Political Liberalism", that citizens can/could not "...view themselves apart from certain religious, philosophical and moral convictions."<sup>47</sup> It applies to a democratic political society and requires public support. Any such political conception of justice, he believes, begins with a political traditions and it requires essentially an overlapping consensus of citizens in the plural society. As Rawls writes that, "...overlapping consensus all opposing philosophical and religious doctrines likely to persist and to gain adherents in a more or less just constitutional democratic society."<sup>48</sup>

He further says that "a political conception would be preferred by reasonable persons [citizens] over any other conception [of justice]." <sup>49</sup> Accordingly, he introduces the idea of **overlapping consensus** in order to support this view. He holds that an overlapping consensus would constitutionally strengthen the social cooperation once for all.

Rawls says:

An overlapping consensus consists on all reasonable opposing religious, philosophical and moral doctrines likely to persist over generations and to gain a sizable body of adherents in a more or less just constitutional regime, as in which the criterion of justice is that political conception itself.<sup>50</sup>

It seems that Rawls' discussion of citizenship in this political conception of justice resolves the problem of incumbency and unencumbancy of the self. Even though, we observe that the dual aspects of self would sink it into the intricacy of metaphysics. However, if we disengage his conception of self from the metaphysical dominion, it may lead to the meaninglessness of the conception of self. Since, Rawls may confuse metaphysical conception of self with sociological one.

This leads us to identify his vulnerability to reject ontological aspect of incumbency of self. Simultaneously, the ontological priority of right over the good is worth refutable. The democratic society would indeed prefer one conception of justice over other [many] conceptions of justice, goods, and comprehensive moral doctrines in the highly plural society such as USA. Every member [citizen] of the liberal democratic society is obliged to acknowledge the liberal thesis "prioritization of right over the good" before he/she enters the liberal system in a democratic society. In this way, "prioritization of right" over the good in constitutional democratic society is itself a materialization of "hyper good".<sup>51</sup>

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<sup>46</sup> Raz. J. The Morality of Freedom. Clarendon Press Oxford. 1986, p. 21.

<sup>47</sup> Rawls. J. Political Liberalism. Op cit. p. 31.

<sup>48</sup> Ibid. p. 131.

<sup>49</sup> Ibid. p.15.

<sup>50</sup> Rawls. John. Political Liberalism. p. 15.

<sup>51</sup> Taylor. M. Sources of Self, op. cit pp. 69-70.

Therefore priority of right is highest-order good as a good of liberal society of USA in particular and western European societies in general. In this way, highest order good is culturally specific and determined historically. This is the main reason that Rawls has shifted from the globalization of liberalism and prefers the relativism of his theory of justice as fairness to historically determined and culturally specific society

### Concluding remarks:

- Rawls tries to put the theory of deontological ethics prior to all political theories e.g. theories of utilitarianism, intuitionism, and perfectionism.
- The foundations of Rawlsian liberalism must presuppose the process where by principles of justice are chosen irrespective of private and personal preferences of individuals [contractors] in the original position. Hence, principle of justice would necessarily regulate the basic structure of society without any prejudiced politics. This political mechanism would definitely confirm the priority of right.
- Rawlsian legal conception of justice is not totally detached from the Kantian deontology. Although, he may circumvent the Kantian sway on his theory, and rejuvenate his theory of person as an empirical self.<sup>52</sup> Even so, he fails to detach his theory from Kantian conception of transcendental person. He may still try to keep his theory supposedly attached with Kantian deontology i.e. Kants' overemphasis on the thesis priority of right over the good.
- From the above point we may excavate an idea that Kantian self is split into vagary of dualism. For instance, self known as empirical and the self as purely rational or transcendental. In other words, for Kant, self is either a lower self or a upper self. However, Rawls tries to outwit this distinction and organizes his theory of persons resistant of Kantian conception of person in principle.
- A further analysis demonstrates that Rawls' conception of person is not exclusively non-metaphysical. It involves an account of person which is either defined as a-cultural and a-historical being in the original position as hypothetical situation in social contract.
- We have further extracted a inconsistent view and a contradiction in Rawls' theory of deontological liberalism as it follows. Priority of right over the good is nothing more then a problematic idea because *Rawls priority of right over the good is itself questionable in the sense that liberalism is prior to all other moral, political and comprehensive doctrines and political systems in the world in general, and in liberal society/ies in particular.* Consequently, liberal political conception of justice is based on ontological ethics because deontology presumes the ontological bases in terms of liberal conception of good (right) that is prior to all other goods. In this sense, liberal interpretation of priority of right is either **hyper good** and **prior good of all goods in world politics**.
- Liberal justice is not globally applicable, rather it deems fit to constitutional democracies in the liberal political world. Therefore, Liberalism have lost any justification of teaching liberal democracy to any non-liberal states in the world. Simultaneously, its preemptive strike do not bear any moral respect, but on the other side, it has lost any legal position or legitimacy to subjugate Iran, Iraq, Afghanistan, or any other non-liberal state like Pakistan to its political domination. Since, these state have their own reasonable political systems which must not be disturbed by super powers in present or prospective future.

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<sup>52</sup> Rawls may conjure up his conception of person with reference to Humean empirical theories.