

## Sandel's Critique of Rawls' Deontological Doctrine

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### Abstract

This paper examines Sandel's critique of Rawls' deontological doctrine. Rawls' response has led the present author to discover inconsistencies in Rawls' relation of the good and the right. These inconsistencies have led me to conclude that the self and its ends are inseparable, and that the right and the good must be viewed equally. I conclude by showing that Sandel neither accords priority to the right nor to the good, and that he is unfairly classified as a communitarian.

### Sandel's critique of Rawls in *Liberalism and the Limits of Justice*: Political liberalism depends on an overlapping consensus:

Sandel maintains that in *Political Liberalism*, Rawls no longer defends the Kantian conception of the person as a moral ideal. For Sandel, the political liberalism of the later Rawls seeks the support of an overlapping consensus; it no longer seeks a philosophical foundation for the principles of justice. Given that political liberalism no longer depends for its justification on the Kantian moral conception of the person, Rawls maintains that it now "aims for a political conception of justice as a freestanding view" (Rawls, 1996: 10). In this sense, Sandel maintains, political liberalism "applies the principles of toleration to philosophy itself" (Sandel, 1998a: 190)

In his critique of Rawls' *Political Liberalism*, Sandel argues that it offers a less convincing defense for the priority of right when detached from the Kantian conception of the person. While political liberalism endeavours to rescue the priority of right from controversies about the nature of the unencumbered self, Sandel argues, it unfortunately becomes vulnerable on other grounds. According to Sandel, conceived as a political conception of justice, Liberalism is open to three objections. The following objection is more convincing,

For political liberalism, the case for the priority of the right over the good depends on the claim that modern democratic societies are characterized by a 'fact of reasonable pluralism' about the good. While it is certainly true that people in modern democratic societies hold a variety of conflicting moral and religious views, it cannot be said that there is a 'fact of reasonable pluralism' about morality and religion that does not also apply to questions of justice (Sandel, 1998a: 196.)

For Rawls, in modern democratic societies there exists a reasonable pluralism of conflicting and sometimes incommensurable comprehensive doctrines with their conceptions of the good. Rawls proposes a solution: "faced with the fact of reasonable pluralism, a liberal view removes from the political agenda the most

divisive issues, serious contentions about which must undermine the bases of social cooperation" (Rawls, 1996: 157).

For Sandel, the disagreements prevailing in modern democratic societies about moral and religious issues can similarly be observed in political conceptions of justice. In modern liberal democratic societies, liberal theorists hold a variety of conflicting and sometimes incommensurable views on justice. Sandel then correctly asks: "Do not these debates display a 'fact of reasonable pluralism' about justice? If so, how does the pluralism about justice that prevails in modern democratic societies differ from the pluralism about morality and religion" (Sandel, 1998a: 204). Consequently, the basis upon which Rawls defends the priority of right over the good is unconvincing.

Rawls conceives citizens as free and equal persons, and he also conceives "the diversity of reasonable religious, philosophical, and moral doctrines found in democratic societies as a permanent feature of their public culture" (Rawls, 1996: 136). And he maintains the view that the fact of reasonable pluralism about religious, philosophical, and moral doctrines must not be conceived as an unfortunate condition of human life because it is the outcome of the free exercise of free human reason under the conditions of liberty (Rawls, 19996: 145). In a real democratic society, people are free to maintain religious and moral doctrines of their own choices, even when they are incommensurable. Rawls correctly holds that this is reasonable since it is in accordance with the conditions of liberty.

In a similar fashion, Rawls might have completed his claim by adding that the fact of reasonable pluralism about political conceptions of justice prevailing in modern democratic societies is a permanent feature of citizens' political culture. It is in accordance with the demands of a liberal democratic society, Rawls should maintain, that its citizens show a variety of conflicting views on political issues such as justice in particular. And since terms such as conflict and diversity are unavoidable in political issues, Rawls should conclude that a fact of reasonable pluralism is the necessary outcome of the free exercise of free human reason under the conditions of liberty.

Rawls discusses extensively a fact of reasonable pluralism about morality and religion, but ignores an observable fact of reasonable pluralism applying to matters pertaining to justice. Rawls must have discussed a fact of reasonable pluralism manifested in both comprehensive and political views, and show why despite the fact that the fact of reasonable pluralism exists in both views, he thinks that the right is prior to the good.

Sandel doubts the plausibility of Rawls' proposal that "given the 'fact of reasonable pluralism', the problem is to find principles of justice that free and equal citizens can affirm despite their moral, philosophical, and religious differences" (Sandel, 1998a: 203). Sandel argues that this proposal is likely to be inoperable because of the existing disagreements about the choice of the principles of justice. Unlike Rawls, for instance, Nozick holds the view that improving the conditions of the least advantaged members of society is a favour, not an

entitlement. Inevitably, a fact of reasonable pluralism about the choice of principles of justice prevails. Defenders of Rawls too confess that "it is unrealistic to suppose that everyone endorses the principles of justice for reasons specified by the Kantian interpretation" (Freeman, 2003: 304).

Inevitable disagreements about issues pertaining to the realm of political conception of justice deserve to be called a fact reasonable pluralism. Sandel correctly concludes that if we can seek a reflective equilibrium regarding controversial principles, we can do the same about the conceptions of the good (Sandel, 1998a: 207).

Rawls assumes that the representatives in the original position are confronted with a variety of reasonable conceptions of justice. Representatives are expected to agree on one conception that is preferable among those enumerated, and the procedure they deploy for arriving at a decision is that of comparing a series of options. Rawls concludes that the parties would choose his two principles of justice because they would be shown to be preferable. Given that Rawls has deployed a procedure by means of which a reflection on conflicting views about conceptions of justice can lead the parties in the original position to choose the two principles which are shown to be preferable, why cannot the parties follow the same procedure in the case of moral and religious conflicting views? Sandel's argument is convincing in that if our reflection about controversial principles of distributive justice can enable us to attain a reflective equilibrium, the same procedure can be deployed in controversial conceptions of the good. Freeman correctly concludes that "there is no assurance after all that justice will occupy a supremely regulative position in each person's conception of the good" (Freeman, 2003: 308)

#### **Rawls defends liberalism by defending the Kantian conception of the person:**

In his *A Theory of Justice*, Rawls defends the idea of the priority of right over the good by defending Kant's conception of the person. We have to recall Kant's teaching on autonomy to see the basis of Rawls' claim that the right is prior to the good. In his interpretation of Kant, Rawls maintains that:

of particular importance is the conception of persons as reasonable and rational, and, therefore, as free and equal, and the basic units of agency and responsibility. Kant's idea of autonomy requires that there exists no moral order prior to and independent of those conceptions that is to determine the form of the procedure that specifies the content of first principles of right and justice among free and equal persons (Rawls, [1989] 1999: 512).

From Kant's idea of autonomy, Rawls maintains the view that the content of the first principles of right is that we are free and equal persons. Consequently, it is from the conception of persons as reasonable and rational and hence as free and equal that Rawls draws the conclusion that the right is prior to the good.

It is in accordance with Kant's teaching on rational agents as autonomous that the autonomy of the rational will is the basis of man's incomparable dignity. If the

autonomy of the rational will is the basis of man's incomparable dignity, the various claims a rational agent espouses, whatever they are, are necessarily subordinate to his worth as a self-determining being since they are incomparable to his worth. In other words, the self is more valuable than its claims, ends and desires.

In his interpretation of Kant on autonomy, Rawls maintains that "a person is acting autonomously when the principles of his action are chosen by him as the most adequate possible expression of his nature as a free and equal rational being" (Rawls, 1971: 253). Accordingly, Rawls identifies Kant's categorical imperatives with his principles of justice because as principles of conduct, they apply to persons in virtue of their nature as free and equal rational beings. For Rawls, "to act from the principles of justice is to act from categorical imperatives in the sense that they apply to us whatever in particular our aims are" (Rawls, 1971: 253). Given that the value of man's worth is incomparable to his various claims, whether they are aims or desires, we can conclude that a person's rights that protect his dignity as a person are prior to whatever he desires or aims at.

In accordance with Kantian doctrine, Rawls reverses the relation between the idea of right and that of the good misconceived by teleological doctrines. According to Rawls, "the self is prior to the ends which are affirmed by it; even a dominant end must be chosen from among numerous possibilities... We should therefore reverse the relation between the right and the good proposed by teleological doctrines and view the right as prior" (Rawls, 1971: 560). Given Kant's autonomous rational agent, the 'self' being of incomparable worth to whatever it desires or aims at must be necessarily prior to its ends.

However, the main issue at stake about Rawls' liberalism, Sandel maintains, is not so much the relative weight of individual claims but the terms of relation between the right and the good (Sandel, 1998a: 186). Sandel's discontent rests on Rawls' claim that 'rights can be identified and justified in a way that does not presuppose any conception of the good'. A perception of an unencumbered self is strictly speaking inconceivable since it does not correspond with our deepest understanding of self-perception. For Sandel, the self is encumbered to its particular ends and related to other selves.

In as far as the question of the relation between the right and the good is concerned, Rawls seems to overstate his view when maintaining that rights can be identified and justified in a way that does not presuppose any conception of the good. In his interpretation of Kant, Rawls maintains the view that as free and equal persons, "we are able to act independently of our natural desires and needs" (Rawls, [1989]1999: 525). The term 'independent' means not connected with another or with each other, that is, separate. Rawls' contention cited here means that a person can exist even without his natural desires and needs. For Rawls, a person can exist even without the necessities deriving from his nature, that is, his natural desires and needs. But, even if a person as a person is endowed with an inviolable dignity, he cannot exist independently of his natural desires and needs.

Rawls' unencumbered self that exists independently of its natural desires is unimaginable.

Some may argue that Rawls cannot be taken as asserting that a person can divest himself of his needs and desires in this sense. Defenders of Rawls too maintain that his conception of the person does "not imply that we can generally step back from each and every one of our ends, or that we are metaphysically detached from them" (Freeman, 2003: 466). But we have shown that it is Rawls himself who claims that a person is such that she can act detached from her natural desires and ends. He construes a conception of the person that can exist without his natural desires and needs. Rawls' identification of the self that stands behind its aims, desires, and the like, led Rorty to correctly infer that this disembodied entity seems to be a kind of a substrate that lies behind its ends (Rorty, 1985: 217).

Rawls' main argument seems to be that the person is more valuable than his possessions, and consequently the former must necessarily be prior to the latter. Showing his dissatisfaction about Rawls' claim that the right is prior to the good, Sandel raises the following questions:

Why should we adopt the standpoint of the political conception of the person in the first place? Why should our political identities not express the moral and religious and communal convictions we affirm in our personal lives? Why insist on the separation between our identities as citizens and our identity as moral persons more broadly conceived? Why, in deliberating about justice, should we set aside the moral judgments that inform the rest of our lives? (Sandel, 1998a: 193)

To the first question, Rawls would presumably respond by explicating the standpoint of the conception of the person, a conception according to which human dignity whose value is of incomparable worth deserves to be respected. That is to say, the person as a person deserves respect in the first place. And consequently rights that secure personhood deserve respect. Moreover, Rawls would presumably add, it is important that we should adopt the conception of the person in the first place so that in the long run when the idea of the community is introduced, the person may not be absorbed by the notion of the community. 'Absorbed' here means that communal convictions may not determine individuals' lives. If we do not first adopt the conception of the person, Rawls would argue, some of his rights may be violated when the idea of the community is introduced. Given that a person may not be used as a means but as an end in itself, a clear and distinct conception of the person is necessary in the first place.

To the remaining questions, I presume that Rawls would respond by restating the claim he made in his reply to Habermas that his position is not comprehensive but an account of the political and is limited to that. For Rawls, "political philosophy, as understood in political liberalism, consists largely of different political conceptions of right and justice viewed as freestanding" (Rawls, 1996: 374). In reply to Sandel, Rawls would maintain that his political liberalism is a doctrine that falls under the category of the political, and as such, it restricts itself to the

conceptions of right and justice. Comprehensive doctrines fall outside the scope of political liberalism, Rawls would respond.

**Sandel's Critique of Rawls in *Democracy's Discontent: The priority of Right***

In his later work, *Democracy's Discontent*, Sandel persists in raising questions concerning Rawls' claim that the right is prior to the good. Sandel's persistence on this issue requires a re-examination of his argumentation. Sandel asks,

Why insist on separating our identity as citizens from our identity as persons more broadly conceived? Why should political deliberation not reflect our best understanding of the highest human ends? Don't arguments about justice and rights unavoidably draw on particular conceptions of the good life, whether we admit it or not? (Sandel, 1998b: 322).

First, Sandel's argument runs as follows: the notion of the Kantian conception of the person upon which Rawls relies in his claim excludes other characteristic features of our personhood. Our identity as persons more broadly conceived comprises who we are and what we have, namely, ends, desires and the like. So why should we not insist on our identity as persons more broadly conceived, rather than restrict ourselves on the narrow conception of the person? It would be hard for Rawls to dissociate who we are from what we possess. But he would presumably maintain that by separating who the person is from what the person has he does not ignore the later, he is simply drawing this distinction to show why the former is prior to the latter.

To come up with a more convincing argument against Rawls, Sandel should have shown specifically the weakness of the Kantian notion of autonomy itself, a notion upon which the conception of the person is derived. Sandel himself maintains that "the question is not whether rights should be respected" (Sandel, 1998a: 186), and given that rights secure man's inviolable dignity, the implication seems to be that Sandel sanctions Kant's notion of the person. Now, Rawls claims that rights should be respected, and the claim that Sandel is in agreement with is derived from the Kantian conception of the person which states that as autonomous rational beings we are endowed with a dignity that is of incomparable value. The self that is endowed with an inviolable dignity is secured by rights. The value of rights lies in that they protect the self, and this implies that they are equally important. Now, the ends, desires and claims that the self has are not essential constituents of the self, and so they are subordinate to the self. So, for Rawls, the right that protects the self must be prior to the good.

Second, Sandel asks: "Why should political deliberation not reflect our best understanding of the highest human ends?" Sandel should have specified the highest human ends he thinks political deliberation should reflect upon. However, if by the human end he means a dominant end, Rawls has an answer. For Rawls, "the self is prior to the ends which are affirmed by it; even a dominant end must be chosen from among numerous possibilities" (Rawls, 1971: 560). The claim that the self is prior to its dominant ends is based on Kant's conception of the person, a conception which Sandel has not yet refuted. Moreover, Rawls does not say that

political deliberation should not reflect on our highest human ends. His claim is simply that the self is prior even to its highest ends.

Third, Sandel pursues asking: Don't arguments about justice and rights unavoidably draw on particular conceptions of the good life, whether we admit it or not? Sandel raises this question to challenge Rawls' claim that "the political conception does not presuppose accepting any particular comprehensive religious, philosophical, or moral doctrine; rather the political conception presents itself as ... a reasonable conception for the basic structure alone" (Rawls, 1999: 450). For Rawls, arguments about justice and rights cannot draw on particular conceptions of the good life because political liberalism restricts itself to the domain of the political. In Rawls' own words, political liberalism "consists in a conception of politics, not of the whole life" (Rawls, 1999: 450).

For Sandel, in real life questions about conceptions of justice and right are inseparably intertwined with conceptions of the good, and so accordingly they must be discussed and taken collectively. Sandel's argument runs as follows: if in practice it is the case that politics and morality are intertwined, why should not political deliberation reflect on moral issues? Sandel's claim that in practice 'arguments about justice and rights unavoidably draw on particular conceptions of the good life' is true. A political theory that does not correspond to its application in practice does not make sense.

Besides the controversy between Rawls and Sandel about right and good, Rawls is caught up in a number of inconsistencies in his endeavour to explicate the correct relation between the right and the good. First, for Rawls, argument about justice and rights cannot draw on particular conceptions of the good life because political liberalism is strictly confined to the domain of the political. Unlike comprehensive doctrines, political liberalism "consists in a conception of politics, not of the whole life" (Rawls, 1999: 450). As I have shown, this corresponds to Rawls' reply to Habermas. But Rawls also maintains that "a conception of political justice must contain within itself sufficient space, as it were, for ways of life that can gain devoted support. In a phrase: justice draws the limit, the good shows the point" (Rawls, 1999: 449). This means that a conception of political justice must incorporate particular conceptions of the good. The implication is that political liberalism no longer restricts itself to the domain of the political.

Second, in his interpretation of Kant, Rawls maintains that "we are free not only in the sense that we are able to act independently of our natural desires and needs, but also free in the sense that we have a principle regulative of both ends and means from which to act, a principle of autonomy appropriate to us as reasonable and rational beings" (Rawls, 1999: 525). According to Rawls, as free and equal persons, we have the ability to act independently of our desires and needs. And the implication is that our existence does not presuppose our natural desires and needs. In as far as the relation between the right and the good is concerned Rawls maintains that rights can be identified in a way that does not presuppose any conception of the good.

But Rawls also holds the view that “the right and the good are **complementary** [my emphasis], and the priority of right does not deny this” (Rawls, 1999: 450). The term ‘complementary’ means combining entities in such a way as to form a complete whole. So, I understand Rawls to mean that the relation between the ideas of the right and that of the good is such that one cannot exist without the other. The relation between the right and the good is inclusive in the sense that they combine in order to form a whole. Later Rawls restates this claim and maintains that “the priority of right does not mean that ideas of the good must be avoided; that is impossible” (Rawls, 1999: 467). Despite Rawls’ claim that the right is prior, he maintains that it cannot exist independently of the good. To clarify this point, Rawls vehemently insists that it is ‘impossible’ to dissociate the right from the good because they are unavoidably complementary. Inevitably, it is hard to reconcile Rawls’ claim that it is impossible to avoid an inescapable complementarity existing between the idea of right and that of the good with his other claim that we can act independently of our natural desires and needs, that is to say, arguments about justice and rights do not presuppose any particular comprehensive good.

I believe my presumption that Rawls would restate his reply to Habermas when responding to Sandel’s questions is a plausible one. Basing myself on Rawls’ argumentation both in his theory and his reply to Habermas, I believe that this could be one of the best possible responses he might make to Sandel. Both in his *Liberalism and the Limits of Justice* and *Democracy’s Discontent*, however, Sandel persistently asks why Rawls’ political liberalism detaches itself from morality, religion, and the like. This persistence indicates that Sandel would still remain discontent if Rawls restated his reply to Habermas when responding to his (Sandel’s) challenge. Undoubtedly, Sandel’s discontent is justifiable. In the real world, it is hard if not impossible to detach politics from the different beliefs people have. As a matter of fact, like other humans, politicians necessarily do have certain beliefs: moral, religious, or philosophical. Rawls, for instance, believes in Kant’s moral theory.

Unfortunately, Rawls wrongly construes political liberalism as a superior doctrine that can be deployed to resolve the conflicts existing in comprehensive doctrines. And he mistakenly thinks that liberal principles can be used as guidelines to resolve moral or religious issues. But, having shown that a fact of reasonable pluralism applies also to questions about justice and right, Rawls does not tell us why comprehensive doctrines cannot be deployed to resolve the conflicts existing in political liberalism, given that this is characterized by a reasonable fact of pluralism.

The supposed superiority of the right that Rawls’ political liberalism claim can also be seen in Rawls’ teaching that questions about justice and right are prior to the questions pertaining to economics. Nielsen has persuasively succeeded in demonstrating that the subordination of the economic good is detrimental to the very rights that Rawls thinks are prior to everything. The serious inconsistencies I have shown do not only show Rawls’ failure to put his theory intact, they also



indicate that the issue of the priority of right constitutes another problem to the already existing problem under discussion.

**The same conceptions of right and different conceptions of the good:**

Sandel maintains that egalitarian liberals together with those who follow other forms of Kantian liberalism such as libertarian liberals have one main claim in common: "That we are separate, individual persons, each with our own aims, interests, and conceptions of the good life" (Sandel, 1998b: 11). This amounts to saying that as distinct persons, we each have different goals, interests and conceptions of the good. Each must pursue her own good because we cannot have the same common good. This is inferred from the contrast Rawls makes between the idea of the right and that of the good. For Rawls, [it is] a good thing that individual's conceptions of their good should differ in significant ways, whereas this is not so for the conceptions of right. In a well-ordered society citizens hold the same principles of right and they try to reach the same judgments in particular cases... On the other hand, individuals find their good in different ways, and many things may be good for one person that would not be good for another (Rawls, 1971: 447-448).

First, I have attempted to show that it is not the case that persons holding the same principles of right can always reach the same judgments in individual cases whether they be of political, philosophical, religious, or moral character. I have also shown that it is not the case that citizens of a well-ordered society can in the first place agree on the same principles of right. Rawls' own highly disputed principle of distributive justice is a typical example.

Second, Rawls' claim that many things may be good for one person that would not be good for another implies that it is hard to find a common good that citizens of a well-ordered society can agree upon and pursue collectively. As separate individual persons we have different conceptions of the good. Now, it is important to note that the phrase 'conceptions of the good' is very broad, and as such can be deployed to denote different doctrines. It can be used in the contexts of religion, morality, and economics.

In as far as the economic good which Sandel calls the economic right is concerned Rawls' claim cannot be applicable. In as far as the economic good is concerned many things may be good for one person that would be good for all persons. In his defense against the accusation that primary goods may lead people to overemphasize their individualistic bias, Rawls maintains that, "income and wealth are the legal command over the material means in general necessary to realize people's needs and interests, whether as individuals or as members of associations, and the desire for such goods is not peculiar to a particular type of society" (Rawls, 1999: 273).

It is in this sense that Rawls conceives wealth as a primary good, that is to say, a social primary good without which we cannot carry out our plans and lead a complete life. The representatives in the original position, therefore, will

unanimously opt for wealth as a primary good that all members of a well-ordered society desire to possess. Rawls correctly distinguishes 'wealth' from its adjective 'wealthy', and maintains that,

someone who is wealthy, or who aspires to be so, is someone who has or strives to possess, far more wealth than the average person. Relative to others, one's command over the means necessary to attain human ends is, or is sought to be very great. But assuming that people in the original position desire wealth does not imply that they desire to be wealthy (Rawls, 1999: 272-273).

According to Rawls, the representatives in the original position do not opt to be wealthy for that would imply that they aspire to have more than they need. They believe that sufficient wealth is enough for them to carry out their plans and lead a complete life. Therefore, the desire to be wealthy is excluded in the original position, and cannot be regarded as a primary good. I cannot pursue further the distinction Rawls makes between wealth and the wealthy. I am particularly interested in Rawls' claim that the people in the original position unanimously desire to have wealth because this is what the citizens of a well-ordered society aspire to have. This supports my claim that in as far as the economic good is concerned, individuals have the same conception of the good. And, if this is the case, Rawls is inconsistent in his claim that individuals differ in significant ways in their conceptions of the good. In as far as wealth is concerned, this is not the case.

#### **Does Sandel provide us with an alternative?**

Having criticized Rawls' principles, particularly the first principle of justice, Sandel does not give us a preferable alternative. However, some people hold the view that besides arguing against the primacy that Rawls accords to deontological conceptions of justice and the priority of the right over the good, Sandel accords primacy to teleological conceptions of justice and to the priority of the good over the right. Despite Sandel's own claim that he does not find himself on the communitarian side (Sandel, 1998a: ix), others maintain that he is a strong communitarian critic or Rawls' liberal conception of right (Trackman and Gatién, 1999: 20). The claim that Sandel is a strong communitarian, and that he accords primacy to teleological conceptions of justice and the primacy of the good over the right implies that it is not true that besides criticizing Rawls he does not provide us with what he believes to be a preferable alternative.

Trackman and Gatién's believe that Sandel is both a strong communitarian critic of Rawls, and that he accords primacy to teleological conceptions of justice. The priority of the good over the right is presumably based on Sandel's claim that, The communitarian critics,... make the case for a politics of the common good. Recalling the arguments of Hegel against Kant, they question the liberal claim for the priority of the right over the good, and the picture of the freely choosing individual it embodies. Following Aristotle, they argue that we cannot justify political arrangements without reference to common purposes and ends, and that we cannot conceive of ourselves without reference to our role as citizens, as participants in a common life (Sandel, 1991: 247).

First, these communitarians misinterpret Hegel if they claim that Hegel, contrary to Kant, makes a claim for the priority of the good over the right. The correct interpretation of Hegel is that neither does he make a claim for the priority of the right over the good nor for the good over the right. In his theory, while acknowledging that rights must be respected, Hegel also maintains that individuals recognize that they must be committed to the common good. Hegel vehemently opposes the communitarian Platonic view that tends to undermine individual rights in favour of the common good. This being the case, it is anomalous that Sandel's communitarian critics can cite the authority of Hegel when making their case for a politics of the common good. They recall part of Hegel's theory that appears to be compatible with their doctrine and ignore the rest.

Second, if Sandel favours Aristotelian teleological conceptions of justice that accord priority of the good over the right as Trackman and Gatien claim, then Sandel is a strong communitarian critic of Rawls, and he provides an alternative that is sharply opposed to that of Rawls. But Trackman and Gatien ignore the fact that Sandel himself denies the charge that he is a communitarian in the first place. In the article cited above, Sandel specifies that the view that recalls Hegel's arguments and follows Aristotle is not his own view, but the view of communitarian critics. Sandel maintains that, "the term 'communitarianism' is misleading, however, insofar as it implies that rights should rest on the values or preferences that prevail in any given community at any given time. Few, if any, of those who have challenged the priority of the right are communitarian in this sense" (Sandel, 1994: 1767). Sandel acknowledges that he challenges the priority of the right over the good, and denies that he makes a case for the priority of the good over the right.

For Sandel, "the question is not whether rights should be respected, but whether rights can be identified and justified in a way that does not presuppose any particular conception of the good" (Sandel, 1994: 1767). He repeatedly raises this argument in his two major works. Sandel agrees that rights must be respected. But he is opposed to the view that construes rights independently of the good, a view that ends up according priority of the right over the good. From this mode of thought, there is no convincing reason to claim that Sandel is a strong communitarian.

In his two major works, namely, *Liberalism and the Limits of Justice* and *Democracy's Discontent*, Sandel's main objective is to demonstrate that Rawls' Kantian conception of the person that begets an unencumbered self, fails to provide a proper account of the person. For Sandel, the fact that the self is inseparable from its desires, interests, and the like, implies that the right cannot be detached from the good. Since the right and the good are inseparable, that is, one cannot exist without the other, Sandel concludes that there is no reason to claim that the right is prior to the good. He does not make a case for the priority of the good over the right, rather, he argues that Rawls is not justified to maintain that the right is prior over the good.

In the end, having attempted to show that Rawls wrongly accords the priority of the right over the good, Sandel does not tell us exactly how the two should be related, that is, whether the good must be considered to be prior to the right. Therefore, Trackman's and Gatien's contention does injustice to Sandel.

Kymlicka's interpretation of Sandel supports my claim that it is not true that Sandel accords priority of the good over the right. According to Kymlicka, Sandel's argument "is that if the state is committed to neutrality amongst conceptions of the good, then it must also be neutral amongst conceptions of communal identity and civic virtue, since these are inextricably tied to particular conceptions of the good life" (Kymlicka, 1998: 135). I have shown earlier that Sandel correctly maintains that the pluralism about justice that prevails in modern democratic societies does not differ from pluralism in the domains of morality and religion. So, the case for the priority of the right over the good cannot be based on the claim that modern societies are characterized by a fact of reasonable pluralism about the good. Sandel, as Kymlicka's interpretation suggests, holds a neutral position. He neither argues for the priority of the right nor the priority of the good. Sandel never explicitly addresses the question whether the good is prior to the right. It is not surprising, therefore, that he has provided no real argument why we should regard the good as being prior to the right.

Trackman and Gatien unfairly identify Sandel as a strong communitarian. Sandel is discontent with egalitarian liberalism, not to mention libertarian liberalism because of the emphasis these views accord to rights. I presume that he is discontent with a strong communitarian view that regards community rights as being prior to individual rights, given his claim that individual rights must be respected. In his critique of Rawls, he maintains that he is opposed to the idea of the priority of right, and not to the claim that rights must be respected. We are not justified to infer that Sandel is a strong communitarian simply because he rejects Rawls' overemphasis of the importance of rights. Now, Sandel attempts to show only the weaknesses of egalitarian liberalism and decides not to write about the shortcomings of communitarianism. It does not follow that he should be labeled as a strong communitarian simply because he has not shown its weaknesses.

Trackman and Gatien have labeled Sandel as a strong communitarian without proving their claim. Let us conclude this debate with another comparison. Kymlicka challenges Rawls' principle of distributive justice with persuasive arguments. It is important to note that Kymlicka does not argue against Rawls' claim that people must be assisted. Rather, he argues that Rawls' difference principle does not address the case of people who by their own choices and effort have succeeded to secure a larger income than others. Yet, we still regard Kymlicka as an egalitarian liberal despite the fact that he has shown some defects in Rawls' principle of distributive justice. In a similar pattern, Sandel challenges Rawls' liberty principle with persuasive arguments. It is important to note that Sandel does not argue against Rawls' claim that rights must be respected. Rather, he argues against the idea of according priority to rights. Therefore, Sandel should not be classified as a communitarian critic of Rawls simply because he argues against the idea of the priority of right. Instead, he should be classified as a critic of

Rawls who thinks that it is wrong to accord the priority of right over the good. Given that Sandel has not made a case for the priority of the good over the right, it is unfair to regard him as a communitarian critic of Rawls' liberal conception of right.

### Conclusion

Rawls' inconsistencies regarding the relation between the right and the good attest to the fact that the inescapable complementarity existing between the idea of the right and that of the good is unavoidable. Just as teleological doctrines err by regarding the good as being prior to the right, so does Rawls' deontological doctrine in its claim that the right is prior to the good. The true conception of the person is that which construes the person wholly. This paper has attempted to show that Rawls' deontological doctrine overstates the right at the detriment of undermining the good. Defenders of Rawls conclude by confirming the point I have attempted to prove. First, they question Rawls' exclusive preoccupation with the value of autonomy. Second, they maintain that Rawlsian liberalism undermines the importance of citizens' commitment to conceptions of the good (Freeman, 2003: 475-477). Rawls' Kantian conception of the person that overemphasizes and overstates the self is detrimental to the ends that make a person a whole. Positing the ends and the self on the same footing in no way belittles the self. In fact, the self is what it is because of its ends, that is, it is shaped by its ends. Regarding the self and its ends inseparably is to correctly construe a person in toto.

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