Chapter – III

Rights, Good And Justice
In
The Context Of Development
Introduction

In the deontological view, what matters above all is not the end we choose but our capacity to choose them. As the right is prior to the good, so the subject is prior to its ends. In this chapter, the word right is used in broader sense which encompasses all human rights. The priority of right may give rise to misunderstanding that imply a liberal political conception of justice can not use any idea of good at all. The ideas of the good included must be political ideas; that is, they must belong to a reasonable political conception of justice or virtue so that we may assume that they are shared by citizens regarded as free and equal and they do not presuppose any particular comprehensive doctrine. Liberal framework does not mean that we are wholly without purpose and incapable of moral ties. It is capable of constituting meaning on its own as agent of construction in case of rights, and as agent of choice in case of good. All process tend towards some end even if they never reach it. Without this, the process become meaningless.

This chapter is divided into following two subchapters.

(i) Human Rights and Teleological Explanations
(ii) Human Flourishing.
Human Rights and Teleological Explanations

As an ethic, liberalism asserts the priority of the right over the good. Many liberals thinkers have emphasized the importance of justice and insisted on the sanctity of individual rights. In deontological view, the primacy of justice describes not only a moral priority but also privileged from of justification; the right is prior to the good not only in that its claim take precedence but also in that its principles are independently derived.¹

Justice is the standard by which conflicting values are reconciled and competing conception of the good accommodated if not always resolved.² J.S. Mill called Justice as the chief part and incomparably the most sacred and binding part of all morality.³

Within this view, justice is identified with the moral law so that it can be argued against utilitarianism that the virtue of the moral law does not consist in the fact that it promotes some goal or end presumed to be good. It is instead an end itself, given prior to all other ends.⁴ Sandel helps clarify these issues when he says that in deontological view, what matters above all is not the ends we choose but our capacity to choose them. And this capacity

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² Ibid. p.16

³ Ibid. p.2

being prior to any particular end it may affirm, resides in the subject. As the right is prior to the good, so the subject is prior to its ends. As far as Rawls is concerned, the concept of moral worth like the concept of the good, is secondary to those of right and justice and it plays no role in the substantive definition of distributive shares.

In the primary state of nature, individuals preserve complete freedom of action, including the freedom to kill one's fellow, freedom to appropriate the fruit of their labour etc. As a result, each individual's freedom of action is automatically exposed to the freedom of action of his or her fellow. The alternative to the primary state of nature, that is the secondary state of nature's spontaneous self-regulation of the coexistence of free agents is put aside in favour of reciprocal renunciation of freedom. The secondary state of nature involves a negative exchange in which the reciprocal give and take resides wholly in renunciation rather than positive actions. The right to life, like other right, is a problem of exchange rather than distribution. What is primary relevance of political legitimisation is communicative justice where the negative exchange of renunciation of freedom takes precedence over any positive exchange of goods and services.

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In the view of Otrified Hoffe, there remains a secondary argument for mutual renunciations of freedom based on distributive justice. To pass beyond the consensus, a circular exchange is required. He has given the following example. We may imagine for simplicity's sake, a society of three people or three groups and assign to each person or group a different dominant desire --- life for 'A', religious liberty for 'B', and honour for 'C'. He defines the dominant desire as a goal relative to which all other goals, even cumulatively, are less important. 'A' for whom life is paramount and religious belief and honour have little weight, can offer religious freedom to 'B' and honour to 'C' in exchange for their renunciation of murder. This offer will be accepted, since 'B' values his religious practices and 'C' his honour, more than they value their right to murder 'A'. The idea of a circular exchange shows a natural interest common to all human beings. The above example of Hoffe shows how circular exchange of freedom could be based on distributive justice.⁸

Rawls characterized a well-ordered society as one that designed to advance the good of its members and effectively regulated by a public conception of justice. Most traditional doctrines hold that to some degree, human nature is such that we acquire a desire to act justly when we have lived under and benefited from just institutions. Acting justly is a part of good. In this, even the conception of justice and goodness are compatible and theory as a whole, is congruent.⁹

⁸ Ibid. pp.256,257.
What makes the distribution of primary goods a concern for justice in Rawls' theory, is the assumed legitimacy of every individual's liberty to realise interest of their own choosing. If concept of teleological end is denied and the right to liberty is acknowledged, then primacy of liberty does entail that individuals be guaranteed the pre-conditions for exercising their liberty.¹⁰

Although the liberal theory emphasis the negative freedoms of the individual, it is still an equal freedom which is at issue. Because of this, there necessary lies the moral will as ground and pre-supposition behind that particular will. But if the moral will has a superior right to particular will, the liberal theory as an account of the sole valid distributive principle can not be correct. Asmaron Legesse argues that distributive justice and human rights are quite different concepts. While theory and conception of distributive justice might be based on human rights, it just may be based on other principle.¹¹

Kant, unlike Rawls, gives less weight to the importance of people having equal liberty to pursue their own ends, which is a basic principle of justice for Rawls. Kant thinks that people will naturally pursue their own happiness, but this is of no moral worth.¹² Rawls has given priority to the

¹⁰ Richard Dien Winfield, 'The Just Economy' Routledge, chapman and Hall Inc, (c) 1988 pp.43,44.
right over the good. He conceives of the right as the product of a collective choice in the original position, and the conceptions of the good are the products of individual choices in the real world. John Plamenatz's right as a power which a creature ought to possess, either because its exercise by him is itself good or else because it is a means to what all rational beings ought to protect him.

Lesley Jacobs in his enabling model of rights, argues that rights can be violated in two distinct ways. On the one hand, by interfering with people doing something that they have a right to do and, on the other hand, by depriving the right holder of the resources actually needed to do what he or she has a right to do. The point is that having certain rights to do things can justify state action designed to provide people with the resources those enable them to do what they could not otherwise have done.

Despite this strong argument in favour of the enabling model of rights, someone might point out that this model still subject to a very serious objection. The difficulty is that sometimes we do ascribe rights to people without holding that other are required to aid them in the exercise of those rights. But the enabling model of rights can be qualified to meet these sorts of counter example. This qualification requires a shift from a concern for the specific requirements of an individual to advance his or her own particular


15. Ibid.

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ends to a concern for the basic requirements of any individual, regardless of
the exact nature of his or her particular ends. In the view of Raymond Plant,
respect requires that the person be provided not with the specific means to
meet specific goals but, rather, with the basic goods of agency that are
required for the pursuit of any good at all. 16

A powerful case the enabling model of rights can be made by way of
John Rawls’s distinction between liberty and the worth of liberty.
Interference by others counts as a constraint on liberty. It can thus be said to
diminish a person’s liberty. 17 Alan Gewirth helds that the connection of
rights with good derives in the first instance from the generic purposive
features of human action, that person act for purposes they regard as good.
But the objects of rights are not these particular apparent good but rather the
freedom and well-being which are respectively the procedure and
substantive necessary conditions for any purposes either at all or with
general chances of success. 18

The idea of the priority of the right is an essential element in political
liberalism and it has a central role in justice as fairness. This priority may
give rise to misunderstanding that a liberal political conception of justice can
not use any idea of good at all, except those that are purely instrumental or
else that are a matter of preference or of individual choice. In the view of

16. Ibid.
17. Ibid.
18. Ibid.
Rawls, this must be incorrect, since the rights and the good are complementary and no conception of justice can draw entirely upon one or the other, but must combines both in a definite way.\textsuperscript{19}

The main restriction would be regarding the idea of good. The ideas of the good included must be political ideas, that is, they must belong to a reasonable political conception of justice so that we may assume:

1. That they are, or can be, shared by citizens regarded as free and equal.
2. That they don't presuppose any particular fully (or partially) comprehensive doctrine.\textsuperscript{20}

To spell out the meaning of the priority of rights stated in this general form, Rawls considers how ideas of the good found in justice as fairness. By priority of liberty, Rawls means the precedence of the principle of equal liberty over the second principle of justice.\textsuperscript{21} The two principle of justice derived from thin theory of good. It is important that although the thin theory of good is prior to the theory of right and the principles of justice, it is not substantial enough to undermine the priority of rights over the good that gives the conception its deontological character.\textsuperscript{22} In the view of Rawls, a well ordered society implies these following things.


\textsuperscript{20} Ibid. p.176

\textsuperscript{21} John Rawls, 'A Theory of Justice', Oxford University Press, Oxford, (c) 1971, pp.31, 244.

\textsuperscript{22} Michael J. Sandel, 'Liberalism and the Limits of Justice', Cambridge University Press, Cambridge, (c) 1982.
that it is a society in which everyone accepts and knows that everyone else accepts and publicly endorses the very same principles of justice.

* that its basic structure --- its main political and social institutions and how they hang together as one system of co-operation --- is publicly known or with good reason believed to satisfy those principles and

* that citizens have a normally effective sense of justice, that is one that enables them to understand and to apply the principles of justice, and for the most part to act from them as their circumstances requires. 23

Rawls clearly belong to a tradition of Kant rather than of Aristotle. The Justice seen by Aristotle as particular virtues, namely distributive and corrective, derive its meaning from the teleological framework of thought. Kant reversed the order of priority, attributing more importance to what is right and less what is good, so that justice requires its meaning from a deontological framework of thought. 24 While Aristotle treat justice as a particular virtue, welfare liberal not much concerned about virtue. Instead they try to bring charity under the scope of justice.

The Rawlsian view that while there are no natural injustice, there are reasons of justice to be concerned about natural misfortunes within societies in so far as these adversely affect the lot of the worst off. The Nozickian

\[\text{\[23\text{ John Rawls, 'Political Liberalism', Columbia University Press, New York, (c) 1993 p.189, 201,202}\]


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view that there are no natural injustices and no reasons of justice to be concerned about natural misfortunes either within or between societies.\textsuperscript{25}

The problem arises because contemporary liberalism like many other political philosophies tend to treat the individual society as the appropriate unit of justification. International justice is thought of an area of specialised concern that is most naturally addressed once a body of principles for the more fundamental case of the individual nation state is in hand. John Rawls describes himself as working with the notion of a self-contained national community. In his view, investigation of the principles of justice for the law of nations may appropriately be postponed until principles for a single society have been derived.\textsuperscript{26}

The very transformation that have made an international economic order a reality and international distributive justice a possibility. A full account of international distributive justice would require a complete theory of human needs. Michael Walzer puts that the largest sphere of justice is political community. MacIntyre argues that ethical reasoning must be internal to a particular tradition. Rawls' account of justice is for the basic structure of a society conceived of as a more or less self-contained national community. When Rawls finally relaxes the assumption that justice is internal to states, he argues only for selected principles of international


justice. The principle of international justice which are only first principle of justice such as non-intervention, self-determination, Pacta Sunt Survanda, principle of self-defence, and of just war. There is no international analogue of the second principle of justice. Hence no account of international distributive justice.27

Charles Beitz points out that even assuming the self-sufficiency of states, it is reasonable to think that representative of future states, meeting behind a veil of ignorance would choose principles of resources distribution that insure against the contingency of having only resource-poor territories. More critically he argues that the premise that states are relatively self-sufficient is false and hence that there are good grounds for thinking that there representative will agree on principles of international distributive justice as there were grounds for thinking that the parties to the original position would agree on a domestic principle for distributive justice.28

In the view of Amy Gutman, that relationship between freedom and equality within liberal egalitarian thought rests upon following two points.29
* that the act of choosing is an essential condition of freedom,
* that for our choice to be free, we must be able to exercise it within a context that offers us reasonable alternatives among which to choose.

In contemporary debate, the liberal rejoinder seems increasingly fragile and its moral basis seems increasingly unclear. The question is why should

28. ibid.
toleration and freedom of choice prevail when other important values are also at stake. Toleration and freedom of choice are values too but they can hardly be defended by the claim that no values can be defended. So it is a mistake to affirm liberal values by arguing that all values are merely subjective. 30

Autonomy is not the satisfaction of preferences, even if one's preferences are themselves rationally defensible and result from no coercive manipulation. Autonomy involves satisfying one's own preferences rather than having them satisfied. 31

Now the commitment to a framework that is neutral among ends, can be seen as a kind of value in the sense of Kantian liberal, is no relativism but its value consists precisely in its refusal to affirm a preferred way of life or conception of the good. For Kantian liberals, then the right is prior to the good in two senses. First, individual rights cannot be sacrificed for the sake of the general good and second, the principles of justice that specify these rights can not be premised on any particular vision of good life. 32

It is important to recall that on the deontological view, the notion of a self-barren of essential aims and attachments don't imply that we are being wholly without purpose or incapable of moral ties. This liberalism does not


32. Ibid.
hold that just anything goes. It affirms justice, not nihilism. The notion of a universe empty of intrinsic meaning does not, on the deontological view, imply a world wholly ungoverned by regulative principles, but rather a moral universe. inhibited by subjects capable of constituting meaning on their own—as agents of construction in case of the right, as agent of choice in case of good. 33

Justice was one of the cardinal virtues of antiquity: charity was the greatest of theological virtue. While utilitarian liberals urge us to maximise subjective good, deontological liberals marginalize charity. They seek principles for building institutions rather than characters. They have nothing to say about virtue. Welfare liberal think boundaries of obligations are the boundaries of justice. Charity is a matter of obligation because charity is more correctly seen as a matter of justice. Neo-Hegelian work depicts abstract liberal accounts of justice and rights as expressive of social order. They insist that obligation can best be embodied in characters and traditions rather than institutions. 35

A well-trodden path into modern deontological liberalism is to construct an account of rights by taking seriously the equality and liberty of agent. Human rights are construed as those equal liberties that can

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35. Ibid. p 222
consistently be assigned to all. Justice as a matter of securing the ‘maximal’ or ‘best’ set of liberties that can consistently enjoyed by all.\textsuperscript{36}

All processes tend towards some ‘end’; even if they never reach it. If not, the notion of ‘process’ becomes almost meaningless.\textsuperscript{37} Instrumental reasoning is irrelevant unless oriented by some goals. Hence Rawls allows that certain ‘primary goods’ --- rights and liberties, powers and opportunities, income and wealth --- are universally desired.\textsuperscript{38} Primary goods are generally necessary as social conditions and all purpose means to enable human beings to realize and exercise their moral power. These moral power are capacities to develop a sense of justice and a conception of good.\textsuperscript{39} In ‘A Theory of Justice’ Rawls notes that constructivism might undertake various task. The contractarian idea can be extended to the choice of more or less an entire ethical system … including principles for all virtues.\textsuperscript{40}

In the view of Sandel, the deontological vision is flawed both within its own terms and more generally as an account of our moral experience. Within its own terms, the deontological self stripped of all possible constitutive attachments in less liberated than disempowerment. As we have seen neither the right nor the good admits of the voluntarist derivation that deontology requires. As agents of construction, we don't really construct and as agents of choice we don't really choose. The difference principle

\textsuperscript{36} Ibid pp-226-227.  
\textsuperscript{38} Onora O'Neill 'Construction of Reason,' Cambridge University Press, Cambridge, © 1989, p. 208  
\textsuperscript{39} Ibid. p-210.  
\textsuperscript{40} John Rawls 'A Theory of Justice', Oxford University Press, Oxford, (c) 1971. p.17
contradicts the liberating aspiration of the deontological project. We cannot be persons for whom justice is primary and also persons for whom the difference principle is a principle of justice.\textsuperscript{41}

If the deontological ethic fails to redeem its own liberating promise, it also fails plausibly to account for certain indispensable aspects of our moral experience. But we can not regard ourselves as independent in this way without great cost of those loyalties and convictions whose moral force consists partly in the fact that living by them is inseparable from understanding ourselves as the particular persons we are as member of this family or community or nation or people as bearer of this history.\textsuperscript{42}

Liberalism teaches respect for the distance self and ends and when the distance is lost, we are submerged in circumstances that use to be our. But by seeking to secure this distance too completely, liberalism undermine its own insight. By putting the self-beyond the reach of politics it makes human agency an article of faith rather than an object of confining attention and concern, a premise of politics rather that its precarious achievement. It overlooks the danger when politics goes badly, not only disappointments but also dislocations are likely to result.\textsuperscript{43}


\textsuperscript{42} Ibid. p.179.

\textsuperscript{43} Ibid. p.183.
Contemporary political philosophy has been a debate between utilitarianism on the one hand and right based liberalism on the other. But the right based ethic has recently faced a growing challenge from a different direction, from a view that argues for a deeper understanding of citizenship and community than the liberal ethic allows. 44

Human Flourishing

We may wish to reverse the ordering of the good and the right, holding that the rights constrains acceptable conceptions of the good. For many neither the good nor the right will seem normatively basic, since both are to be derived from a prior conception of rationality. Finally, some theorists will reject the classification of moral theories in terms of their basic normative categories, arguing that the whole foundationalist enterprise in ethics should be abandoned. 45

In the view of Sumner, throughout the long history of ethics, virtually all theorists who have affirmed the priority of good, have grounded their moral structure on welfare or perfection. Welfare is subjective in a way that perfection is not. Perfection, by contrast, is objective, the criteria which determines the perfectionist value of a life are derived entirely from the natural kind to which the subject of the life belongs, and not at all from her


own choices or preferences. Therefore, while happiness is constitutive of welfare, it is only incidental to perfection. 46

The problem for perfectionism can therefore be generalized. Promoting any objective value as the fundamental good for ethics will infringe autonomy or individuality. Perfectionists can soften the impact of their theory of value by making autonomy one of the items in their conceptions of human good, but this is at best only a partial solution. Only a subjective theory, which incorporates the individual's point of view into its account of the good, is capable of acknowledging the status of human agents as determiners of the priorities for their own lives. 47

The subjectivity of welfare is once again a crucial factor. One of the problems with perfectionism is its propensity to override the concerns and priorities of individuals in the name of an external standards of the good. Since an assessment of an individual's welfare must take her own points of views into account, welfarism can not suffer from the same weakness, at least not to the same extent. However, the point must not be overstated. Since individual often have ends other than their own well-being, welfare cannot simply be identified with whatever we aim at. What someone wants for herself and what is best for her may still diverge. In such case, welfarism sides with welfare against individual preferences. The defence of this stand must be that there is no (ethical) value in the satisfaction of preference as

46. Ibid.
47. Ibid.
such, but only in the contribution it makes to the quality of life. In this, welfarism is in accord with perfectionism. However, there is a major difference. Welfare, not perfection, already takes into account the individual’s assessment of the quality of her life. The promotion of perfection right requires extensive infringement of autonomy, the promotion of individual welfare would likely require for less. In the view of Sumner, perfection should influence our ethical deliberations only when it contributes to some other value, such as well being.

The 'telos' of right means, according to Benn, for the sake of which right exists. He prefers not to speak of the purpose and end for which it exists, for that smacks too exclusively of consequentialism. Some rights may be ascribed because the consequences are generally good, but some may have a different sort of point, having to do, for instance, with respect owed to person. There are three fundamental moral propositions which would show us where to look for their tele, and suggest a way of testing whether a given claim that such a right existed could be justified.

(i) Natural persons ought to be respected as a moral persons.
(ii) Human beings are objects of value (axiotima)
(iii) Certain directions of human development are desirable, and certain qualities are human excellences.

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48. Ibid.
49. Ibid.
51. Ibid. p.247.
These propositions are not all of the same type. In the view of Benn, the first one is deontological; the second two are axiological. Since the notion of a right belongs to deontological, it will be necessary to show how the later can generate rights at all. 52

The ideal of autonomy is one of the 'tele' of that set of human rights which have to do with freedom, especially freedom of thought and expression, right against unreasonable detention, interference with free movement and forms of political repression generally. It is important to know, for instance, whether there are condition that a nomos will have to satisfy if a person acknowledging it as his own can do so rationally. Such conditions would then constitute logical limitation on the freedoms which can qualify as human rights, without their universality being compromised by vague notions like the 'weighing' or 'balancing' of considerations. 53

If the fulfilment of an individuals nature requires participation in a community, much will depend on the kind of community and the terms it lays down for participation. If the socialization of the individual's nature into a particular community is what counts, then the individualist does him no service in encouraging him to look critically at the community, alienating himself from the very social matrix necessary for his self-fulfilment. 54 There

52. Ibid. p.247.
53. Ibid. p.252.
54. Ibid. p.260.
is a kind of complementarity between individual self-realization and the common good, such that the individual has a right to the fulfilment which comes when he contributes his share to that good. The common good itself demanded the recognition of human rights, and a community which made it a condition for acceptance that individuals forfeit their independence of mind would be impoverishing itself. The argument from the common good of the community would then derive its moral force from the rights of individuals to enjoy that good.

The indeterminacy of rights apparently resulting from an extended version of necessary goods, leads some theorists to complain that the concept of a right loses its discriminatory force altogether, as virtually all goods that contribute to human flourishing may then be claimed as a rights. This is more of a practical than a theoretical objection. There is nothing in the logic of the concept of rights that will restrain it from covering an unknown quantity and unpredictable range of benefits that human beings will at some point think essential to their flourishing. All we will be able to say is that adequate ranges and scopes of rights will be less than those required for full flourishing.


Conclusion:

Justice is the standard by which conflicting values are reconciled and competing conceptions of good are accommodated. It is the most sacred and binding part of all moralities. Throughout the long history of ethics, virtually all theorists who have affirmed the priority of good, have grounded their moral structure on welfare and perfection. There will be no value in the satisfaction of preferences unless it makes the contribution to the quality of life. Similarly, perfection influences our ethical deliberation only when it contributes to some other values such as well-being. Certain directions of human development are desirable without which this process become meaningless.